Official Journal of the European Union

C 83

English edition

Information and Notices

Volume 61

5 March 2018

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(2018/C 083/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Ninth Chamber) of 18 January 2018 (request for a preliminary ruling from the Østre Landsret — Denmark) — Wind 1014 GmbH, Kurt Daell v Skatteministeriet

(Case C-249/15) ([1])

(References for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Restrictions — Motor vehicle leased by a resident of one Member State from a leasing company established in another Member State — Registration tax calculated proportionately to the duration of use of the vehicle — Requirement of approval from the national tax authorities before use — Justification — Prevention of circumvention of tax rules and fraud or abuse — Safeguarding States' powers of taxation — Proportionality)

(2018/C 083/02)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Wind 1014 GmbH, Kurt Daell

Defendant: Skatteministeriet

Operative part of the judgment

Article 56 TFEU must be interpreted as precluding a Member State's legislation and administrative practice, such as those at issue in the main proceedings, under which:

— *use by a resident in that Member State of a vehicle leased from a leasing company established in another Member State for the purpose of temporary use of that vehicle in the first Member State, in return for payment of a proportionate registration tax calculated proportionately to the duration of that use, is subject to prior approval of that payment by that Member State's tax authorities, without which the vehicle may not, in principle, be used in its territory, and*

— *the possibility of making immediate use of such a vehicle in that first Member State whilst the taxpayer's application to pay a proportionate registration tax on that vehicle based on the duration of use in that first Member State is being processed, is subject to advance payment of the full amount of registration tax, with provision made for repayment of the surplus paid, plus interest, if and when the taxpayer is eventually authorised by the tax authorities to pay the registration tax calculated proportionately.*

([1]) OJ C 245, 27.7.2015.

Judgment of the Court (Third Chamber) of 18 January 2018 (request for a preliminary ruling from the Juzgado de lo Social No 1 de Cuenca — Spain) — Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA, Ministerio Fiscal

(Case C-270/16) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(2)(b)(i) — Prohibition of discrimination based on disability — National legislation permitting, subject to certain conditions, the dismissal of an employee by reason of intermittent absences, even where justified — Worker's absences resulting from illnesses linked to his disability — Difference in treatment based on disability — Indirect discrimination — Whether justified — Combating absenteeism in the workplace — Whether appropriate — Whether proportionate)

(2018/C 083/03)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 1 de Cuenca

Parties to the main proceedings

Applicant: Carlos Enrique Ruiz Conejero

Defendant: Ferroser Servicios Auxiliares SA, Ministerio Fiscal

Operative part of the judgment

Article 2(2)(b)(i) of Council Directive 2008/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess.

([1]) OJ C 279, 1.8.2016.

Judgment of the Court (First Chamber) of 17 January 2018 — European Commission v Hellenic Republic

(Case C-363/16) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid declared unlawful and incompatible with the internal market — Obligation to recover — Second subparagraph of Article 108(2) TFEU — Regulation (EC) No 659/1999 — Article 14(3) — Undertaking benefiting from the aid declared insolvent — Insolvency proceedings — Registration of the liabilities in the schedule of liabilities — Cessation of activities — Suspension of insolvency proceedings for the purposes of examining the prospect of relaunching the business — Obligation to provide information — Failure to perform)

(2018/C 083/04)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Bouchagiar and B. Stromsky, acting as Agents,

Defendant: Hellenic Republic (represented by: K. Boskovits and V. Karra, acting as Agents.)

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, within the prescribed periods, all the measures necessary for the implementation of Commission Decision 2012/541/EU of 22 February 2012 on the State aid SA.26534 (C 27/10 ex NN 6/09) implemented by Greece in favour of United Textiles SA, and by failing to inform the Commission adequately of the measures taken pursuant to that decision, the Hellenic Republic has failed to fulfil its obligations under Articles 2 to 4 of that decision as and under the TFEU.*

2. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 305, 22.8.2016.

Judgment of the Court (Ninth Chamber) of 18 January 2018 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Stadion Amsterdam CV v Staatssecretaris van Financiën

(Case C-463/16) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 77/388/EEC — Third subparagraph of Article 12(3)(a) — Reduced rate of VAT — Annex H, category 7 — Single supply comprised of two distinct elements — Selective application of a reduced rate of VAT to one of those elements — 'World of Ajax' tour — Visit to the AFC Ajax museum)

(2018/C 083/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Stadion Amsterdam CV

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

The Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/4/EC of 19 January 2001, must be interpreted as meaning that a single supply, such as that at issue in the main proceedings, comprised of two distinct elements, one principal, the other ancillary, which, if they were supplied separately, would be subject to different rates of value added tax, must be taxed solely at the rate of value added tax applicable to that single supply, that rate being determined according to the principal element, even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified.

([1]) OJ C 410, 7.11.2016.

Judgment of the Court (First Chamber) of 17 January 2018 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — CORPORATE COMPANIES s.r.o. v Ministerstvo financí ČR

(Case C-676/16) ([1])

(Reference for a preliminary ruling — Prevention of the use of the financial system for the purpose of money laundering and terrorist financing — Directive 2005/60/EC — Scope — Article 2(1), point 3(c) and Article 3, point 7(a) — Business activity of an undertaking consisting in the sale of companies already entered in the Register of Companies and formed solely for the purposes of sale — Sale by means of the transfer of the undertaking's holding in the ready-made company)

(2018/C 083/06)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: CORPORATE COMPANIES s.r.o.

Defendant: Ministerstvo financí ČR

Operative part of the judgment

Article 2(1), point 3(c) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, read in conjunction with Article 3, point 7 (a) of that directive, must be interpreted as meaning that a person, such as that at issue in the main proceedings, whose commercial activity consists in selling companies which it formed itself, without any prior request on the part of its potential clients, for the purposes of sale to those clients, by means of a transfer of its shares in the capital of the company being sold, falls within the scope of those provisions.

([1]) OJ C 86, 20.3.2017.

Judgment of the Court (Tenth Chamber) of 18 January 2018 (request for a preliminary ruling from the Conseil d'État — France) — Frédéric Jahin v Ministre de l'Économie et des Finances, Ministre des Affaires sociales et de la Santé

(Case C-45/17) ([1])

(Reference for a preliminary ruling — Free movement of capital — Articles 63 TFEU and 65 TFEU — Regulation (EC) No 883/2004 — Article 11 — Levies on income from assets contributing to the financing of the social security scheme of a Member State — Exemption for nationals of the European Union affiliated to a social security scheme of another Member State — Natural persons affiliated to a social security scheme of a third country — Difference of treatment — Restriction — Justification)

(2018/C 083/07)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Frédéric Jahin

Defendants: Ministre de l'Économie et des Finances, Ministre des Affaires sociales et de la Santé

Operative part of the judgment

Articles 63 TFEU and 65 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which a national of that Member State who resides in a third country other than a Member State of the European Economic Area (EEA) or the Swiss Confederation and is affiliated to a social security scheme in that third country is subject, in that Member State, to levies on income from assets for the purpose of contributing to the social security scheme established by that Member State, whereas an EU national covered by a social security scheme of another Member State is exempted therefrom by reason of the principle that the legislation of a single Member State only is to apply in matters of social security pursuant to Article 11 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

([1]) OJ C 121, 18.4.2017.

Judgment of the Court (Sixth Chamber) of 18 January 2018 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — INEOS Köln GmbH v Bundesrepublik Deutschland

(Case C-58/17) ([1])

(Reference for a preliminary ruling — Environment — Scheme for greenhouse gas emission allowance trading within the European Union — Directive 2003/87/EC — Article 10a — Transitional rules for harmonised free allocation of emission allowances — Period 2013-2020 — Decision 2011/278/EU — Article 3(h) — Concept of 'process emissions sub-installation' — Emissions stemming from the combustion of incompletely oxidised carbon — Liquid waste — Excluded)

(2018/C 083/08)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: INEOS Köln GmbH

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 3(h) of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which excludes from the concept of 'process emissions sub-installation', within the meaning of that provision, greenhouse gas emissions stemming from the combustion of incompletely oxidised carbon in a liquid state.

([1]) OJ C 144, 8.5.2017.

Judgment of the Court (Fifth Chamber) of 16 January 2018 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — E

(Case C-240/17) ([1])

(Reference for a preliminary ruling — Third-country national staying illegally in a Member State — Threat to public order and national security — Directive 2008/115/EC — Article 6(2) — Return decision — Ban on entry to the territory of the Member States — Alert for the purposes of refusing admission to the Schengen Area — Third-country national holding a valid residence permit issued by another Member State — Convention implementing the Schengen Agreement — Article 25(2) — Consultation procedure between the Member State issuing the alert and the Member State which issued the residence permit — Time limit — Failure of the Contracting State consulted to adopt a position — Consequences for the enforcement of return decisions and entry ban)

(2018/C 083/09)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

E

Operative part of the judgment

1. *Article 25(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 and which entered into force on 26 March 1995 must be interpreted as meaning that it is open to the Contracting State which intends to issue a return decision accompanied by a ban on entry and stay in the Schengen Area to a third-country national who holds a valid residence permit issued by another Contracting State to initiate the consultation procedure laid down in that provision even before the issue of the return decision. That procedure must, in any event, be initiated as soon as such a decision has been issued.*

2. *Article 25(2) of the Convention implementing the Schengen Agreement must be interpreted as meaning that it does not preclude the return decision accompanied by an entry ban issued by a Contracting State to a third-country national who is the holder of a valid residence permit issued by another Contracting State being enforced even though the consultation procedure laid down in that provision is ongoing, if that third-country national is regarded by the Contracting State issuing the alert as representing a threat to public order or national security, without prejudice to that third-country national's entitlement to rely on the rights he derives from that residence permit by going subsequently to the territory of the second Contracting State. However, after a reasonable time from the initiation of the consultation procedure and in the absence of a response from the Contracting State consulted, the Contracting State issuing the alert for the purposes of refusing entry must withdraw it and, if necessary, put the third-country national on its national list of alerts.*

3. *Article 25(2) of the Convention implementing the Schengen Agreement must be interpreted as meaning that a third-country national who is the holder of a valid residence permit issued by a Contracting State, and to whom a return decision accompanied by an entry ban has been issued in another Contracting State, may rely before the national courts on the legal effects deriving from the consultation procedure on the Contracting State issuing the alert and the requirements deriving therefrom.*

([1]) OJ C 213, 3.7.2017.

Order of the Court (Eighth Chamber) of 11 January 2018 (requests for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio — Italy) — Amber Capital Italia Sgr SpA (C-654/16), Amber Capital Uk Llp (C-654/16), Bluebell Partners Limited (C-657/16), Elliot International LP (C-658/16), The Liverpool Limited Partnership (C-658/16), Elliot Associates LP (C-658/16) v Commissione Nazionale per le Società e la Borsa (Consob)

(Joined Cases C-654/16, C-657/16 and C-658/16) ([1])

(Reference for a preliminary ruling — Company law — Directive 2004/25/EC — Takeover bids — Second subparagraph of Article 5(4) — Possibility of altering the price of the bid in specific circumstances and in line with clearly determined criteria — National legislation providing for the fixing of the price of the bid at the price ascertained in the event of collusion between the offeror or persons acting in concert with it and one or more sellers — Concept of 'clearly determined criterion')

(2018/C 083/10)

Language of the cases: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Amber Capital Italia Sgr SpA (C-654/16), Amber Capital Uk Llp (C-654/16), Bluebell Partners Limited (C-657/16), Elliot International LP (C-658/16), The Liverpool Limited Partnership (C-658/16), Elliot Associates LP (C-658/16)

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Interveners: Hitachi Rail Italy Investments Srl, Hitachi Rail Italy SpA, Ansaldo Sts SpA (C-654/16), Finmeccanica SpA

Operative part of the order

The second subparagraph of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows the national supervisory authority to adjust upwards the price of a takeover bid in the event of collusion between the offeror or persons acting in concert with it and one or more sellers, by merely providing that, with regard to the price to which that takeover bid may thus be increased, that price is to correspond to the price ascertained by that authority, on condition that that price can be deduced in a sufficiently clear, precise and foreseeable manner from the body of national legislation, using methods of interpretation recognised by domestic law.

([1]) OJ C 121, 18.4.2017.

Order of the Court (Eighth Chamber) of 18 January 2018 — Monster Energy Company v European Union Intellectual Property Office (EUIPO)

(Case C-678/16 P) ([1])

(Appeal — Rules of Procedure — Article 181 — EU trade mark — Opposition proceedings — Figurative mark containing the word elements 'HotoGo self-heating can technology' — Composite mark — Application for registration — Opposition — Rejection — Appeal manifestly inadmissible)

(2018/C 083/11)

Language of the case: English

Parties

Appellant: Monster Energy Company (represented by: P. Brownlow, Solicitor)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: A. Folliard-Monguiral, acting as Agent)

Operative part of the order

1. *The appeal is dismissed.*

2. *Monster Energy Company shall pay the costs.*

(1) OJ C 144, 8.5.2017.

Order of the Court (Eighth Chamber) of 14 December 2017 — Verus Eood v European Union Intellectual Property Office (EUIPO), Maquet GmbH

(Case C-101/17 P) (1)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — EU trade mark — Invalidity proceedings — EU word mark LUCEO — Declaration of invalidity)

(2018/C 083/12)

Language of the case: German

Parties

Appellant: Verus Eood (represented by: C. Pfitzer, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: A. Schifko, acting as Agent), Maquet GmbH (represented by: N. Hebeis, Rechtsanwalt)

Operative part of the order

1) *The appeal is dismissed.*

2) *Verus Eood shall pay the costs.*

(1) OJ C 195, 19.6.2017.

Appeal brought on 17 August 2017 by Miguel Torres, SA against the judgment of the General Court (Second Chamber) delivered on 31 May 2017 in Case T-637/15: Alma-The Soul of Italian Wine v EUIPO — Miguel Torres

(Case C-499/17 P)

(2018/C 083/13)

Language of the case: English

Parties

Appellant: Miguel Torres, SA (represented by: A. von Mühlendahl, Rechtsanwalt, J. Güell Serra, abogado)

Other parties to the proceedings: Alma-The Soul of Italian Wine LLLP, European Union Intellectual Property Office

By order of 14 December 2017 the Court of Justice (Seventh Chamber) held that the appeal was inadmissible.

Appeal brought on 11 September 2017 by Josel, SL against the judgment of the General Court (Sixth Chamber) delivered on 28 June 2017 in Case T-333/15: Josel v EUIPO — Nationale-Nederlanden Nederland

(Case C-536/17 P)

(2018/C 083/14)

Language of the case: English

Parties

Appellant: Josel, SL (represented by: J. Güell Serra, abogado)

Other parties to the proceedings: European Union Intellectual Property Office, Nationale-Nederlanden Nederland BV

By order of 17 January 2018 the Court of Justice (Ninth Chamber) held that the appeal was inadmissible.

Appeal brought on 21 September 2017 by Cafés Pont SL against the judgment of the General Court (Fifth Chamber) delivered on 20 July 2017 in Case T-309/16: Cafés Pont v EUIPO — Giordano Vini

(Case C-559/17 P)

(2018/C 083/15)

Language of the case: English

Parties

Appellant: Cafés Pont SL (represented by: E. Manresa Medina, abogado)

Other parties to the proceedings: European Union Intellectual Property Office, Giordano Vini SpA

By order of 11 January 2018 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 28 November 2017 by Viridis Pharmaceutical Ltd against the judgment of the General Court (Second Chamber) delivered on 15 September 2017 in Case T-276/16, Viridis Pharmaceutical Ltd v European Union Intellectual Property Office (EUIPO)

(Case C-668/17 P)

(2018/C 083/16)

Language of the case: German

Parties

Appellant: Viridis Pharmaceutical Ltd (represented by: C. Spintig, Rechtsanwalt, S. Pietzcker, Rechtsanwalt, M. Prasse, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Hecht-Pharma GmbH

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment under appeal of the Second Chamber of the General Court;

2. refer the case back to the General Court;

3. order EUIPO to pay the appellant's costs;

In the alternative: order that the costs be reserved.

Grounds of appeal and main arguments

By the present appeal, the appellant claims that the General Court, in the judgment under appeal, infringed the EU trade mark Regulation ([1]) in several ways.

First, the appellant claims that the General Court infringed the first alternative set out in the first sentence of Article 58(1)(a) of the EU trade mark Regulation. The General Court, it submits, erred in law in assuming that use of a registered EU trade mark for a medicinal product for the purpose of preserving the rights in that trade mark can exist only where the necessary authorisation under the law relating to medicinal products has been issued. Moreover, the General Court also infringed that same rule by classifying the use of an EU trade mark in the context of a clinical study carried out in accordance with Article 8(3)(i) of Directive 2001/83/EC ([2]) as inherently mandatory and therefore as not constituting genuine use.

Furthermore, the appellant alleges infringement of the second alternative set out in the first sentence of Article 58(1)(a) of the EU trade mark Regulation. The General Court, it submits, erred in law in assuming that a clinical study carried out for the purposes of preparing an application for authorisation of a new medicinal product under the law governing medicinal products cannot then be used to justify the non-use of a trade mark if the clinical study was not applied until a significant amount of time had elapsed since registration of the trade mark and/or if the financial resources spent were not sufficient to enable the clinical study to be completed as rapidly as possible.

([1]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

Request for a preliminary ruling from the Helsingin käräjäoikeus (Finland) lodged on 12 December 2017 — Metirato Oy, in liquidation v Finnish State / Tax Authority, Estonian State / Maksu- ja Tolliamet

(Case C-695/17)

(2018/C 083/17)

Language of the case: Finnish

Referring court

Helsingin käräjäoikeus

Parties to the main proceedings

Applicant: Metirato Oy, in liquidation

Defendants: Finnish State / Tax Authority, Estonian State / Maksu- ja Tolliamet

Questions referred

1. Must the provisions of Article 13(1) of [Directive 2010/24] ([1]), according to which debts to be recovered pursuant to a request for recovery are to be treated by the requested State as being the debts of that State, be interpreted as meaning that

(a) the requested Member State is also a party to the legal proceedings concerning the restitution to the insolvency estate of sums paid following a recovery, or

(b) that the involvement of the requested State is limited to the recovery of the debt by enforcement and the lodgement of the claim in the insolvency proceedings, and that it is the applicant State which is the defendant in a request for recovery concerning the extent of the assets covered by the liquidation?

2. Must the directive be interpreted as meaning that the debts of another Member State are to be recovered using the same means, while remaining separate and distinct from the assets of the requested State, or must the directive be interpreted as meaning that those debts are to be recovered together with the debts of the requested State, in which case they are merged with the debts of the requested State. In other words: does the directive aim exclusively to prohibit the discrimination of debts of another Member State?

3. Is it possible for a dispute concerning restitution of assets to the insolvency estate to be treated as a dispute concerning the enforcement measures within the meaning of Article 14(2), and can it be inferred that, according to the directive, the requested State is also a defendant in such a dispute?

([1]) Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ 2010 L 84, p. 1).

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 15 December 2017 — D. H. v Ministerstvo vnitra

(Case C-704/17)

(2018/C 083/18)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: D. H.

Defendant: Ministerstvo vnitra

Question referred

Does the interpretation of Article 9 of Directive 2013/33/EU ([1]) of the European Parliament and of the Council (OJ 2013 L 180, p. 96) in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights of the European Union preclude national legislation which does not allow the Nejvyšší správní soud (Supreme Administrative Court) to review a judicial decision concerning detention of a foreign national after the foreign national has been released from detention?

([1]) OJ 2013 L 180, p. 96.

Request for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 15 December 2017 — Patent-och registreringsverket v Mats Hansson

(Case C-705/17)

(2018/C 083/19)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicant: Patent-och registreringsverket

Defendant: Mats Hansson

Questions referred

1. Must Article 4(1)(b) of the Trade Marks Directive ([1]) be interpreted as meaning that the global assessment of all relevant factors which is to be made in an assessment of the likelihood of confusion may be affected by the fact that an element of the trade mark has expressly been excluded from protection on registration, that is to say, that a so-called disclaimer has been entered on registration?

2. If the answer to the first question is in the affirmative, can the disclaimer in such a case affect the global assessment in such a way that the competent authority has regard to the element in question but gives it a more limited importance so that it is not regarded as being distinctive, even if the element would de facto be distinctive and prominent in the earlier trade mark?

3. If the answer to the first question is in the affirmative and the answer to the second question in the negative, can the disclaimer even so affect the global assessment in any other way?

([1]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008, L 299, p. 25).

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 22 December 2017 — A

(Case C-716/17)

(2018/C 083/20)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicants: A

Questions referred

1. Does Article 45 TFEU, as interpreted following the EU Court of Justice's judgment of 8 November 2012 in Case C-461/11, ([1]) preclude a rule on jurisdiction such as the Danish one, the aim of which is to ensure *that* the court hearing a case involving debt relief has knowledge of and can take account in its assessment of the specific socio-economic situation in which the debtor and his or her family live and must be assumed will continue to live going forward, and *that* the assessment may be carried out according to previously-determined criteria establishing what can be deemed to be an acceptably modest standard of living under the debt relief arrangement?

If the answer to question 1 is that the restriction cannot be held to be justified, the EU Court of Justice is asked to answer the following question:

2. Must Article 45 TFEU be interpreted as also having direct effect as between private parties in a situation such as the present one, with the result that private creditors must accept reductions or total loss of amounts owed to them by a debtor who has moved to another country?

(1) Judgment of the Court of Justice of 8 November 2012, ECLI:EU:C:2012:704.

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 22 December 2017 — Vantaan kaupunki v Skanska Industrial Solutions Oy, NCC Industry Oy, Asfaltmix Oy

(Case C-724/17)

(2018/C 083/21)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Appellant: Vantaan kaupunki

Respondents: Skanska Industrial Solutions Oy, NCC Industry Oy, Asfaltmix Oy

Questions referred

1. Is the determination of which parties are liable for the compensation of damage caused by conduct contrary to Article 101 TFEU to be done by applying that article directly or on the basis of national provisions?

2. If the parties liable are determined directly on the basis of Article 101 TFEU, are those parties which fall within the concept of undertaking mentioned in that article liable for compensation? When determining the parties liable for compensation, are the same principles to be applied as the Court of Justice has applied to determining the parties liable in cases concerning penalty payments, in accordance with which liability may be founded in particular on belonging to the same economic unit or on economic continuity?

3. If the parties liable are determined on the basis of national provisions of a Member State, are national rules under which a company which, after acquiring the entire share capital of a company which took part in a cartel contrary to Article 101 TFEU, has dissolved the company in question and continued its activity is not liable for compensation for the damage caused by the anti-competitive conduct of the company in question, even though obtaining compensation form the dissolved company is impossible in practice or unreasonably difficult, contrary to the EU law requirement of effectiveness? Does the requirement of effectiveness preclude an interpretation of a Member State's domestic law making it a condition of compensation for damage that a transformation of the kind described has been implemented unlawfully or artificially in order to avoid liability for compensation for damage under competition law or otherwise fraudulently, or at least that the company knew or ought to have known of the competition infringement when implementing the transformation?

Action brought on 22 December 2017 — European Commission v Hellenic Republic

(Case C-729/17)

(2018/C 083/22)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: H. Tserepa-Lacombe and H. Støvlbæk, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The European Commission claims that the Court should:

— declare that, by restricting the legal form of mediation training service providers to non-profit companies, which have to be set up by at least one Bar Association and at least one Professional Chamber in Greece, as enacted in Law 3898/2010 and Presidential Decree 123/2011, Greece has failed to fulfil its obligations under Article 49 TFEU and Article 15(2)(b) and (c) and (3) of Directive 2006/123/EC ([1]).

— declare that, by subjecting the procedure for the recognition of academic qualifications to preconditions: the imposition of additional requirements related to the content of certificates and the imposition of compensatory measures without a prior assessment of real differences, and by maintaining in force provisions which lead to discrimination by requiring applicants for accreditation as professional mediators who have accreditation that was obtained outside Greece or from a recognised provider of training outside Greece following training provided in in Greece, to possess experience of having taken part in at least three mediation procedures, Greece has failed to fulfil its obligations under Article 49 TFEU, and Articles 13, 14 and 50(1) of, and Annex VII to, Directive 2005/36/EC ([2]).

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. **Infringement of the right of freedom of establishment laid down in Article 49 TFEU and in Article 15(2)(b) and (c) of Directive 2006/123/EC on services in the internal market.**

Article 5(1) of Law 3898/2010 together with the related Presidential Decree D. 123/2011 provides that companies that provide mediation training services must exclusively have the legal form of non-profit companies which are set up by at least one Bar Association and at least one of the Professional Chambers in Greece and that their operation is subject to the granting of authorisation by the authority referred to in Article 7 of that law.

Those restrictions cover both service providers that seek to be established for the first time in Greece and service providers that seek secondary establishment in the form of a subsidiary.

No natural or legal person other than the Bar Associations and the Professional Chambers is permitted to found training service providers for the training of mediators who can, on the basis of that training, take the examination for accreditation as professional mediators in Greece, if that person does not have the support of a Bar Association and a Professional Chamber of Greece.

In addition, the reality is that any service provider the current legal form of which is not non-profit making is excluded from the opportunity to provide, on payment of fees, the training of potential mediator candidates who can, on the basis of that training, take the examination for accreditation as professional mediators in Greece.

Last, any training provider from another Member State that is interested in providing the service in question on the payment of fees by students who register on mediation training courses is in reality excluded from entering the Greek market and from setting up a secondary establishment in the form of a subsidiary, if its current legal form is not non-profit making and its choice of subsidiary is not confined to non-profit-making entities.

The Commission considers that the above provisions establish a restriction on the right of freedom of establishment laid down in Article 49 TFEU and Article 15(2)(b) and (c) of Directive 2006/123/EC on the internal market.

That restriction is not covered by the exception in Article 51(1) TFEU because the provision of mediator training services is not an activity that is connected to the State, the exercise of official authority or indeed the 'administration of justice'. Further there is no legal justification in the interest of protecting the quality of the services, since that has no direct connection with the restriction on the legal form of the training service providers and the ownership of share capital.

2. **Infringement of Directive 2005/36/EC and Article 49 TFEU on the freedom of establishment.**

The Commission considers that the requirements in paragraph 2 of section A of the single article of Ministerial Decision No 109088/12.12.2011, in accordance with which the mediation training certificate must confirm the teaching methods, the number of participants, the number and qualifications of the trainers, the procedure for the examination and evaluation of candidates and the means of ensuring the integrity of that procedure, exceed what can be required for the evaluation of the level of professional knowledge and qualifications which the certificate-holder is certified to possess and do not permit a correct assessment of the question whether the training of the person concerned covers matters that are substantially different from those covered by the required accreditation in Greece. For those reasons the abovementioned provision is contrary to Articles 13, 14 and 50 of, and Annex VII to, Directive 2005/36/EC.

Further, paragraph 5 of section A of the above Ministerial Decision requires foreign mediators with full professional qualifications to demonstrate that in addition they possess experience of having taken part in at least three mediation procedures before their qualifications are recognised in Greece, although that requirement is not imposed on mediators who obtain their professional training in Greece. Consequently, the abovementioned provision is contrary to Article 13 of Directive 2005/36/EC, which provides that the competent authority of the host Member State is to permit access to and pursuit of the profession under the same conditions as apply to its nationals to applicants who are certified in another Member State, and is in breach of the principle of the prohibition of discrimination enshrined in Article 49 TFEU.

(1) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (*OJ 2006 L 376, p. 36*).

(2) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005, on the recognition of professional qualifications (*OJ 2005 L 255, p. 22*).

Appeal brought on 5 January 2018 by Ms against the order of the General Court (First Chamber) delivered on 31 May 2017 in Case T-17/16 Ms v Commission

(Case C-19/18 P)

(2018/C 083/23)

Language of the case: French

Parties

Appellant: Ms (represented by: L. Levi, avocat)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order of the General Court of 31 May 2017 in Case T-17/16;

— consequently, refer the case back to the General Court for judgment on the substance of the action brought before it at first instance, or if the Court of Justice were to consider that the state of the proceedings permits final judgment, to grant the appellant the relief sought at first instance and, accordingly,

— hold that the Commission is non-contractually liable on the basis of Article 268 and the second paragraph of Article 340 TFEU;

— order the production of the documents declared confidential by the Commission and providing the necessary basis for the exclusion decision;

— order payment of compensation for the non-material harm resulting from the Commission's wrongful conduct, assessed *ex aequo et bono* at EUR 20 000;

— order the Commission to publish a letter of apology to the applicant and to reinstate him within Team Europe;

— order the European Commission to pay the costs at first instance and on appeal.

Pleas in law and main arguments

The order under appeal is vitiated by an error of law in the legal classification of the basis of the action for damages brought before the General Court and infringement of the General Court's duty to state reasons.

The order under appeal is also vitiated by an error of law in the legal classification of the letter of agreement and infringement of the General Court's duty to state reasons. The latter distorted the file.

Action brought on 16 January 2018 — European Commission v Republic of Bulgaria

(Case C-27/18)

(2018/C 083/24)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: J. Samnadda, Y. Marinova and G. von Rintelen, acting as Agents)

Defendant: Republic of Bulgaria

Form of order sought

The Commission claims that the Court should:

— declare that, by failing to adopt, by 10 April 2016 at the latest, the laws, regulations and administrative provisions necessary to ensure compliance with *Directive 2014/26/EU* ([1]) *of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market* (OJ L 84, 20.3.2014, p. 72), or in any event, by failing to notify the Commission of such provisions, the Republic of Bulgaria has failed to fulfil its obligations under Article 43(1) of that directive;

— order the Republic of Bulgaria, pursuant to Article 260(3) TFEU, to pay a penalty payment, in view of its failure to fulfil its obligation to notify the Commission of the measures transposing Directive 2014/26/EU, in the amount of EUR 19 121,60 per day, calculated as from the date of delivery of the judgment upholding the application;

— order the Republic of Bulgaria to pay the costs relating to the proceedings.

Pleas in law and main arguments

1. Under Article 43(1) of Directive 2014/26/EU, Member States were required to bring into force the laws, regulations and administrative provisions necessary to ensure compliance with the directive by 10 April 2016 and immediately to inform the Commission thereof. In view of the failure to notify the national measures transposing the directive, the Commission has decided to bring the matter before the Court of Justice.

2. In its application the Commission proposes that the Republic of Bulgaria be ordered to pay a periodic penalty payment in the amount of EUR 19 121,60 per day. The amount of that periodic penalty payment has been calculated by taking into account the serious nature and duration of the infringement, and the deterrent effect, in the light of that Member State's ability to pay.

([1]) OJ 2014 L 84, p. 72.

Order of the President of the Court of 8 December 2017 (request for a preliminary ruling from the Tribunal Judicial da Comarca do Porto — Portugal) — David Fernando Leal da Fonseca v Varzim Sol — Turismo, Jogo e Animação, SA

(Case C-415/16) ([1])

(2018/C 083/25)

Language of the case: Portuguese

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

([1]) OJ C 392, 24.10.2016.

Order of the President of the Court of 14 November 2017 (request for a preliminary ruling from the Amtsgericht Hamburg — Germany) — Andreas Niemeyer v Brussels Airlines SA/NV

(Case C-269/17) ([1])

(2018/C 083/26)

Language of the case: German

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

([1]) OJ C 318, 25.9.2017.

Order of the President of the Court of 15 November 2017 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Heinz-Gerhard Albrecht v TUIfly GmbH

(Case C-277/17) ([1])

(2018/C 083/27)

Language of the case: German

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

([1]) OJ C 239, 24.7.2017.

Order of the President of the Court of 8 December 2017 — European Commission v French Republic

(Case C-420/17) ([1])

(2018/C 083/28)

Language of the case: French

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

([1]) OJ C 300, 11.9.2017.

Order of the President of the Court of 14 November 2017 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Ursula Kaufmann, Viktor Schay v TUIfly GmbH

(Case C-534/17) ([1])

(2018/C 083/29)

Language of the case: German

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

([1]) OJ C 424, 11.12.2017.

GENERAL COURT

Judgment of the General Court of 23 January 2018 — FV v Council

(Case T-639/16) ([1])

(Appeal — Civil service — Officials — Appraisal — Career evaluation report — Appraisal year 2013 — Dismissal of action at first instance — Composition of the adjudicating Chamber which delivered the judgment at first instance — Procedure for the appointment of a judge to the Civil Service Tribunal — Tribunal established by law — Principle of the lawful judge)

(2018/C 083/30)

Language of the case: French

Parties

Appellant: FV (represented by: L. Levi, avocat)

Other party to the proceedings: Council of the European Union (represented by: J.-B. Laignelot and M. Bauer, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 28 June 2016, *FV* v *Council* (F-40/15, EU:F:2016:137), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 28 June 2016, FV v Council, (F-40/15);*

2. *Refers the action to a Chamber of the Tribunal other than that which has ruled in the present appeal;*

3. *Reserves the costs.*

([1]) OJ C 419, 14.11.2016.

Judgment of the General Court of 23 January 2018 — Wenger v EUIPO — Swissgear (SWISSGEAR)

(Case T-869/16) ([1])

(EU trade mark — Invalidity proceedings — EU word mark SWISSGEAR — Absolute grounds for refusal — No distinctive character — Descriptiveness — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — Article 52(1)(a) and Article 76 of Regulation No 207/2009 (now Article 59(1)(a) and Article 95 of Regulation 2017/1001))

(2018/C 083/31)

Language of the case: English

Parties

Applicant: Wenger SA (Delémont, Switzerland) (represented by: K. Ikas and A. Sulovsky, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Swissgear Sàrl (Baar, Switzerland) (represented by: J. Hacke, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 20 September 2016 (Case R 2098/2015-5), relating to invalidity proceedings between Swissgear and Wenger.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wenger SA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Swissgear Sàrl.*

([1]) OJ C 38, 6.2.2017.

Judgment of the General Court of 23 January 2018 — avanti v EUIPO (avanti)

(Case T-250/17) ([1])

(EU trade mark — Application for the EU figurative mark avanti — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2018/C 083/32)

Language of the case: German

Parties

Applicant: avanti GmbH (Hamburg, Germany) (represented by: M. Bahmann, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 14 February 2017 (Case R 801/2016-5), concerning an application for registration of the figurative sign Avanti as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 195, 19.6.2017.

Action brought on 17 January 2018 — OCU v ECB

(Case T-15/18)

(2018/C 083/33)

Language of the case: Spanish

Parties

Applicant: Organización de Consumidores y Usuarios (OCU) (Madrid, Spain) (represented by: E. Martínez Martínez and C. López-Mélida de Ramón, lawyers)

Defendant: European Central Bank (ECB)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision.

— Order the ECB to disclose to the applicant the full or confidential version of the documents.

— Order the ECB to pay the costs incurred.

Pleas in law and main arguments

This action seeks the annulment of the Decision of 17 November 2017, registered under number LS/MD/17/428, dismissing the applicant's 'confirmatory application for access to ECB documents' of 14 September 2017 and an order for the disclosure of the documents requested, relating to the resolution of the institution Banco Popular Español S.A.

In support of its action, the applicant relies on a single plea in law, based on the fundamental right set out in Article 41(2) of the Charter of Fundamental Rights of the European Union, namely the right to good administration, in the form of access to documents for the proper exercise of the right of defence.

Action brought on 17 January 2018 — Activos e Inversiones Monterosso v SRB

(Case T-16/18)

(2018/C 083/34)

Language of the case: Spanish

Parties

Applicant: Activos e Inversiones Monterosso, S.L. (Pantoja, Spain) (represented by: S. Rodríguez Bajón, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the SRB of 8 November 2017;

— order that the applicant be given access to the file in the terms sought in the application.

Pleas in law and main arguments

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

1. In its decision of 8 November 2017, the SRB clearly confuses the general right of access to documents, on which any EU citizen can rely, with the more specific right of access to the file, which can be exercised only by parties which have an interest in the proceedings to which the file relates. The SRB, however, concludes that the list of documents to which the applicant can be granted access is the same under both rights, a statement which is at variance with the law.

   The right of access to the file is clearly a separate right to that of access to documents. Whereas the former is one of the rights coming within the scope of the 'right to good administration' enshrined in the Charter of Fundamental Rights of the European Union, the latter is an independent right of a much more general nature and connected with the principle of public transparency.

2. This difference between those two rights implies that they are addressed to different persons and are protected differently, with the result that the right of access to the file can be invoked only by persons having an interest in the proceedings at issue, whereas the right of access to documents is granted to any EU citizen in relation to the documents held by the EU institutions.

3. The differing scope of those rights necessarily implies that the range of exceptions applicable to each right is also different. Accordingly, while one of the exceptions to the right of access to documents is that such access must not result in prejudice to the 'commercial interests' of the undertakings concerned, the right of access to the file, by contrast, is restricted by the fact that its exercise must not affect the 'business secrets' of the undertakings party to the proceedings. In that sense, the distinction between 'commercial interests', clearly a broad concept, and 'business secrets', a much more restrictive concept that refers to the set of knowledge that is specific to a given undertaking, known by a very specific group of persons, and disclosure of which may affect that undertaking, is justified. In this respect, the existence of business secrets must be weighed against the remaining interests involved, such as the right of defence.

4. Confidentiality, being another of the exceptions to which the right of access to the file is subject, must also be justified and is limited in a number of ways which must be taken into account, such that reliance cannot automatically be placed on confidentiality in order to deny the right of access to the file. Accordingly, reasons as to why confidentiality applies must be given, something which did not happen in the present case.

5. The key to the decision in the present case must lie in the application of Article 41(2)(b) of the Charter of Fundamental Rights of the European Union and, consequently, the SRB must, within the framework of Regulation No 806/2014, comply with the provisions of Article 90(4), and not those of 90(1), thereof.

Order of the General Court of 16 January 2018 — fritz-kulturgüter v EUIPO — Sumol + Compal Marcas (fritz-wasser)

(Case T-862/16) ([1])

(2018/C 083/35)

Language of the case: German

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

([1]) OJ C 38, 6.2.2017.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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