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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 24 January 2018 — European Commission v Italian Republic

(Case C-433/15) ([1])

(Failure of a Member State to fulfil obligations — Milk and milk products — Additional levy on milk — Tax years 1995/1996 to 2008/2009 — Regulation (EC) No 1234/2007 — Articles 79, 80 and 83 — Regulation (EC) No 595/2004 — Articles 15 and 17 — Infringement — Lack of effective payment of the levy within the time limits prescribed — Failure of recovery in the event of non-payment of the levy)

(2018/C 104/02)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: P. Rossi, D. Nardi and J. Guillem Carrau, acting as Agents)

Defendant: Italian Republic (represented by: represented by G. Palmieri, acting as Agent, and by P. Gentili and S. Fiorentino, avvocati dello Stato)

Operative part of the judgment

The Court:

1. *By failing to ensure that the additional levy payable in respect of quantities produced in Italy in excess of the national quota, from the first year in which the additional levy was in fact applied in Italy (1995/1996) until the last year in which there was surplus production in Italy (2008/2009),*

   — *was in fact allocated to the individual producers which had contributed to each of the production overruns and*

   — *was paid at the appropriate time, upon their being given notification of the amount payable, by the purchasers or the producers in the case of direct sales, or*

   — *where the levy was not paid within the period prescribed, was registered and, where possible, recovered by way of enforcement from those purchasers or producers,*

   the Italian Republic has failed to fulfil the obligations imposed on it by Articles 1 and 2 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, Article 4 of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector, Articles 79, 80 and 83 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), and, with regard to the Commission's implementing provisions, Article 7 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products, Article 11(1) and (2) of Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Regulation No 3950/92, and, finally, Articles 15 and 17 of Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Regulation No 1788/2003, as amended by Commission Regulation (EC) No 1468/2006 of 4 October 2006;

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

(1) OJ C 354, 26.10.2015.

Judgment of the Court (Grand Chamber) of 23 January 2018 (request for a preliminary ruling from the Consiglio di Stato) — F. Hoffmann-La Roche Ltd and Others v Autorità Garante della Concorrenza e del Mercato

(Case C-179/16) (1)

(Reference for a preliminary ruling — Competition — Article 101 TFEU — Agreements, decisions and concerted practices — Medicinal products — Directive 2001/83/EC — Regulation (EC) No 726/2004 — Allegations of risks associated with the use of a medicinal product for a treatment not covered by its marketing authorisation (off-label) — Definition of relevant market — Ancillary restriction — Restriction of competition by object — Exemption)

(2018/C 104/03)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: F. Hoffmann-La Roche Ltd, Roche SpA, Novartis AG, Novartis Farma SpA

Defendant: Autorità Garante della Concorrenza e del Mercato

Interveners in support of the defendant: Associazione Italiana delle Unità Dedicate Autonome Private di Day Surgery e dei Centri di Chirurgia Ambulatoriale (Aiudapds), Società Oftalmologica Italiana (SOI) — Associazione Medici Oculisti Italiani (AMOI), Regione Emilia-Romagna, Altroconsumo, Regione Lombardia, Coordinamento delle associazioni per la tutela dell'ambiente e dei diritti degli utenti e consumatori (Codacons), Agenzia Italiana del Farmaco (AIFA)

Operative part of the judgment

1. *Article 101 TFEU must be interpreted as meaning that, for the purposes of the application of that article, a national competition authority may include in the relevant market, in addition to the medicinal products authorised for the treatment of the diseases concerned, another medicinal product whose marketing authorisation does not cover that treatment but which is used for that purpose and is thus actually substitutable with the former. In order to determine whether such a relationship of substitutability exists, the competition authority must, in so far as conformity of the product at issue with the applicable provisions governing the manufacture or the marketing of that product has been examined by the competent authorities or courts, take account of the outcome of that examination by assessing any effects it may have on the structure of supply and demand.*

2. *Article 101(1) TFEU must be interpreted as meaning that an arrangement put in place between the parties to a licensing agreement regarding the exploitation of a medicinal product which, in order to reduce competitive pressure on the use of that product for the treatment of given diseases, is designed to restrict the conduct of third parties promoting the use of another medicinal product for the treatment of those diseases, does not fall outside the application of that provision on the ground that the arrangement is ancillary to that agreement.*

3. *Article 101(1) TFEU must be interpreted as meaning that an arrangement put in place between two undertakings marketing two competing products, which concerns the dissemination, in a context of scientific uncertainty, to the European Medicines Agency, healthcare professionals and the general public of misleading information relating to adverse reactions resulting from the use of one of those medicinal products for the treatment of diseases not covered by the marketing authorisation of that product, with a view to reducing the competitive pressure resulting from such use on the use of the other product, constitutes a restriction of competition 'by object' for the purposes of that provision.*

4. *Article 101 TFEU must be interpreted as meaning that such an arrangement cannot be exempt under Article 101(3) TFEU.*

(1) OJ C 222, 20.6.2016.

Judgment of the Court (Grand Chamber) of 23 January 2018 (request for a preliminary ruling from the Supreme Court of Gibraltar) — The Queen on the application of Albert Buhagiar and Others v Minister for Justice

(Case C-267/16) (1)

(Reference for a preliminary ruling — Territorial scope of EU law — Article 355(3) TFEU — Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties — Article 29 — Point 4 of Section I of Annex I — Exclusion of Gibraltar from the customs territory of the European Union — Implications — Directive 91/477/EEC — Article 1(4) — Article 12(2) — Annex II — European firearms pass — Hunting and target shooting activities — Applicability to the territory of Gibraltar — Obligation to transpose — No such obligation — Validity)

(2018/C 104/04)

Language of the case: English

Referring court

Supreme Court of Gibraltar

Parties to the main proceedings

Claimants: The Queen on the application of Albert Buhagiar, Wayne Piri, Stephanie Piri, Arthur Taylor, Henry Bonifacio, Colin Tomlinson, Darren Sheriff

Defendant: Minister for Justice

Operative part of the judgment

1. *Article 29 of the Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties, read in conjunction with point 4 of Section I of Annex I thereto, must be interpreted as meaning that Article 12(2) of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, read in conjunction with Article 1(4) thereof and Annex II thereto, does not apply on the territory of Gibraltar.*

2. *Examination of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Directive 91/477, as amended by Directive 2008/51.*

(1) OJ C 260, 18.7.2016.

Judgment of the Court (Ninth Chamber) of 25 January 2018 — European Commission v Czech Republic

(Case C-314/16) ([1])

(Failure of a Member State to fulfil obligations — Transport — Directive 2006/126/EC — Driving licences — Definitions of categories C1, C and D1)

(2018/C 104/05)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: J. Hottiaux and Z. Malůšková, acting as Agents)

Defendant: Czech Republic (represented by: M. Smolek, T. Müller and J. Vláčil, acting as Agents)

Operative part of the judgment

The Court:

1. *By failing to comply with the obligation to ensure that the definition of categories C1 and C covers only motor vehicles other than those in category D1 or D, the Czech Republic failed to fulfil its obligations under Article 4(1) and (4)(d) and (f) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences;*

2. *By restricting the definition of category D1 to motor vehicles designed and constructed for the carriage of more than eight passengers, the Czech Republic failed to fulfil its obligations under Article 4(1) and (4)(h) of that directive;*

3. *The Czech Republic is ordered to pay the costs.*

([1]) OJ C 287, 8.8.2016.

Judgment of the Court (Third Chamber) of 25 January 2018 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v Aziz Hasan

(Case C-360/16) ([1])

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Procedures and periods laid down for making a take back request — Unlawful return of a third-country national to a Member State that has transferred him — Article 24 — Take back procedure — Article 27 — Remedy — Scope of judicial review — Circumstances after the transfer)

(2018/C 104/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: Aziz Hasan

Operative part of the judgment

1. *Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of the regulation and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is that obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter;*

2. *Article 24 of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national who, after having made an application for international protection in a first Member State (Member State 'A'), was transferred to Member State 'A' as a result of the rejection of a fresh application lodged in a second Member State (Member State 'B') and has then returned, without a residence document, to Member State 'B', a take back procedure may be undertaken in respect of that third-country national and it is not possible to transfer that person anew to Member State 'A' without such a procedure being followed;*

3. *Article 24(2) of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national has returned, without a residence document, to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in that provision and those periods may not begin to run until the requesting Member State has become aware that the person concerned has returned to its territory;*

4. *Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2) of that regulation, the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge;*

5. *Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a Member State is still pending is not to be regarded as equivalent to the lodging of a new application for international protection in that Member State, as referred to in that provision;*

6. *Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection:*

   — *the Member State on whose territory that person is staying without a residence document can still make a take back request, and;*

   — *that provision does not allow the person to be transferred to another Member State without such a request being made.*

(1) OJ C 343, 19.9.2016.

Judgment of the Court (Grand Chamber) of 23 January 2018 (request for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Execution of a European arrest warrant issued against Dawid Piotrowski

(Case C-367/16) ([1])

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Surrender procedures between Member States — Grounds for mandatory non-execution — Article 3(3) — Minors — Requirement to verify the minimum age at which a minor may be regarded as criminally responsible or assessment, in each individual case, of the additional conditions laid down by the law of the executing Member State in order specifically to prosecute or convict a minor)

(2018/C 104/07)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Dawid Piotrowski

Operative part of the judgment

1. *Article 3(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, is to be interpreted as meaning that the judicial authority of the executing Member State must refuse to surrender only those minors who are the subject of a European arrest warrant and who, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based.*

2. *Article 3(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is to be interpreted as meaning that, in order to decide whether a minor who is the subject of a European arrest warrant is to be surrendered, the judicial authority of the executing Member State must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, without having to consider any additional conditions, relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor for such acts are specifically subject under the law of that Member State.*

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Third Chamber) of 25 January 2018 (request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság, Hungary) — F v Bevándorlási és Állampolgársági Hivatal

(Case C-473/16) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 7 — Respect for private and family life — Directive 2011/95/EU — Standards for granting refugee status or subsidiary protection status — Fear of persecution on grounds of sexual orientation — Article 4 — Assessment of facts and circumstances — Recourse to an expert's report — Psychological tests)

(2018/C 104/08)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: F

Defendant: Bevándorlási és Állampolgársági Hivatal

Operative part of the judgment

1. *Article 4 of Directive 2011/95/EC of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as meaning that it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the courts or tribunals seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.*

2. *Article 4 of Directive 2011/95, read in the light of Article 7 of the Charter of Fundamental Rights, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.*

([1]) OJ C 419, 14.11.2016.

Judgment of the Court (Third Chamber) of 25 January 2018 (request for a preliminary ruling from the Oberster Gerichtshof) — Maximilian Schrems v Facebook Ireland Limited

(Case C-498/16) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 44/2001 — Articles 15 and 16 — Jurisdiction in respect of consumer contracts — Definition of 'consumer' — Assignment between consumers of claims against the same trader or professional)

(2018/C 104/09)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Maximilian Schrems

Defendant: Facebook Ireland Limited

Operative part of the judgment

1. *Article 15 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the activities of publishing books, lecturing, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement do not entail the loss of a private Facebook account user's status as a 'consumer' within the meaning of that article.*

2. *Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it does not apply to the proceedings brought by a consumer for the purpose of asserting, in the courts of the place where he is domiciled, not only his own claims, but also claims assigned by other consumers domiciled in the same Member State, in other Member States or in non-member countries.*

([1]) OJ C 441, 28.11.2016.

Judgment of the Court (Eighth Chamber) of 24 January 2018 (requests for a preliminary ruling from the Corte suprema di cassazione — Italy) — Presidenza del Consiglio dei Ministri and Others v Gianni Pantuso and Others

(Joined Cases C-616/16 and C-617/16) ([1])

(Reference for a preliminary ruling — Coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors — Directives 75/363/EEC and 82/76/EEC — Specialist medical training — Appropriate remuneration — Application of Directive 82/76/EEC to training begun before the prescribed deadline for the Member States to transpose it and completed after that date)

(2018/C 104/10)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Presidenza del Consiglio dei Ministri, Università degli Studi di Palermo, Ministero della Salute, Ministero dell'Istruzione, dell'Università e della Ricerca Ministero del Tesoro

Defendants: Gianni Pantuso, Angelo Tralongo, Maria Michela D'Alessandro, Nello Grassi, Carmela Amato (C-616/16), Giovanna Castellano, Maria Concetta Pandolfo, Antonio Marletta, Vito Mannino, Olga Gagliardo, Emilio Nardi, Maria Catania, Massimo Gallucci, Giovanna Pischedda, Giambattista Gagliardo (C-617/16)

Operative part of the judgment

1. *Article 2(1)(c), Article 3(1) and (2) and the Annex to Council Directive 75/363/EEC of 16 June 1975 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors, as amended by Council Directive 82/76/EEC of 26 January 1982, must be interpreted as meaning that any period of full-time or part-time specialist medical training begun in 1982 and continued up to 1990 must be subject to appropriate remuneration, within the meaning of that Annex, provided that that training concerns a medical speciality common to all the Member States or to two or more of them and is referred to in Articles 5 or 7 of Council Directive 75/362/EEC of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services.*

2. *Article 2(1)(c), Article 3(1) and (2) and the Annex to Directive 75/363, as amended by Directive 82/76, must be interpreted as meaning that the existence of the obligation, for a Member State, to provide appropriate remuneration, within the meaning of that Annex, for any period of full-time or part-time specialist medical training begun in 1982 and continued up to 1990, does not depend on the adoption, by that Member State, of measures transposing Directive 82/76. The national court is required, when it applies provisions of national law adopted either before or after a directive, to interpret them as far as possible in the light of the wording and the purpose of those directives. Where, owing to the absence of national measures transposing Directive 82/76, the result prescribed by that directive cannot be achieved by interpretation, by taking account of the entirety of domestic law and applying the methods of interpretation recognised by it, EU law requires the Member State concerned to make good damage caused to individuals through failure to transpose that directive. It is for the referring court to determine whether all the conditions laid down in that regard by the case-law of the Court of Justice are met for the Member State to have incurred liability under EU law.*

3. *Article 2(1)(c), Article 3(1) and (2) and the Annex to Directive 75/363, as amended by Directive 82/76, must be interpreted as meaning that appropriate remuneration, within the meaning of that Annex, for any period of full-time or part-time specialist medical training begun in 1982 and continued up to 1990 must be paid for the period of that training from 1 January 1983 and until the end of that training.*

(1) OJ C 63, 27.2.2017.

Judgment of the Court (First Chamber) of 24 January 2018 — European Union Intellectual Property Office (EUIPO) v European Food SA, Société des produits Nestlé SA

(Case C-634/16 P) (1)

(Appeal — EU trade mark — Invalidity proceedings — Word mark FITNESS — Dismissal of the application for a declaration of invalidity)

(2018/C 104/11)

Language of the case: English

Parties

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

Other parties to the proceedings: European Food SA (represented by: I. Speciac, avocat), Société des produits Nestlé SA (represented by: A. Jaeger-Lenz and S. Cobet-Nüse, Rechtsanwältinnen and by A. Lambrecht, Rechtsanwalt)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Union Intellectual Property Office (EUIPO) to pay the costs.*

([1]) OJ C 86, 20.3.2017.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Petra Dziatkowiak, Thomas Erich Heinz Dziatkowiak v TUIfly GmbH

(Case C-352/17)

(2018/C 104/12)

Language of the case: German

Referring Court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Petra Dziatkowiak, Thomas Erich Heinz Dziatkowiak

Defendant: TUIfly GmbH

The case was removed from the Register of the Court of Justice by order of the Court of 24 November 2017.

Appeal brought on 13 September 2017 by Thomas Murphy against the judgment of the General Court (Fifth Chamber) delivered on 4 July 2017 in Case T-90/16: Murphy v EUIPO

(Case C-538/17 P)

(2018/C 104/13)

Language of the case: English

Parties

Appellant: Thomas Murphy (represented by: N. Travers SC, J. Gormley, BL, M. O'Connor, Solicitor)

Other parties to the proceedings: European Union Intellectual Property Office, Nike Innovate CV

By order of 30 January 2018 the Court of Justice (Ninth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 30 October 2017 — Powszechny Zakład Ubezpieczeń na Życie S.A. w Warszawie v Prezes Urzędu Ochrony Konkurencji i Konsumentów

(Case C-617/17)

(2018/C 104/14)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: Powszechny Zakład Ubezpieczeń na Życie S.A. w Warszawie

Defendant: Prezes Urzędu Ochrony Konkurencji i Konsumentów

Interveners: Edward Detka, Mirosław Krzyszczak, Zakład Projektowania i Programowania Systemów Sterowania Atempol sp. z o.o. w Piekarach Ślaskich, Tomasz Woźniak, Spółdzielnia Kółek Rolniczych w Bielinach, Lech Marchlewski, Ommer Polska sp. z o.o. w Krapkowicach, Zakład Przetwórstwa Drobiu Marica spółka jawna J.M.E.K. Wróbel sp. jawna w Bielsku Białej, Glimat Marcinek i S-ka sp. jawna w Gliwicach, HTS Polska sp. z o.o., Jastrzębskie Zakładów Remontowych Dźwigi sp. z o.o. w Jastrzębiu Zdroju, Petrofer — Polska sp. z o.o. w Nowinach, Paco Cases Andrzej Paczkowski, Piotr Paczkowski sp. jawna w Puszczykowie, Bożena Kubalańca, Zbigniew Arczykowski, Przedsiębiorstwo Produkcji Handlu i Usług Unipasz sp. z o.o. w Radzikowicach, Pietrzak B.B. Beata Pietrzak Bogdan Pietrzak sp. jawna w Katowicach, Ewelina Baranowska, Przemysław Nikiel, Marcin Nikiel, Janusz Walocha, Marek Grzegolec

Questions referred

1. Can Article 50 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that the application of the *ne bis in idem* principle presupposes not only that the offender and the facts are the same but also that the legal interest protected is the same?

2. Is Article 3 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, ([1]) in conjunction with Article 50 of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that the rules of EU competition law and of national competition law which are applied in parallel by the competition authority of a Member State protect the same legal interest?

([1]) OJ 2003 L 1, p. 1.

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 8 November 2017 — Prezes Urzędu Ochrony Konkurencji i Konsumentów v Orange Polska S.A.

(Case C-628/17)

(2018/C 104/15)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Prezes Urzędu Ochrony Konkurencji i Konsumentów

Respondent: Orange Polska S.A.

Questions referred

Is Article 8, in conjunction with Articles 9 and 2(j), of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ([1]) to be interpreted as meaning that the use of standard forms for the conclusion of distance contracts relating to the provision of telecommunications services, under which a consumer is required to make the final business decision in the presence of the courier handing over the standard-form contract (general terms and conditions), an aggressive commercial practice by a trader owing to undue influence:

(a) always, where the consumer, during the courier's visit, is unable freely to take cognisance of the content of the standard-form contract;

(b) only where the consumer has not previously and individually received all standard forms (for example, at his e-mail address or home address), even if he himself had the opportunity, prior to the courier's visit, to take cognisance of their content on the trader's website;

(c) only if additional findings were to point to unfair actions on the part of the trader, or on his behalf, for the purpose of restricting the consumer's decision-making freedom in regard to the business decision which he has to make?

([1]) OJ 2005 L 149, p. 22.

Request for a preliminary ruling from the Sąd Rejonowy w Siemianowicach Śląskich (Poland) lodged on 9 November 2017 — Powszechna Kasa Oszczędności (PKO) Bank Polski S.A. v Jacek Michalski

(Case C-632/17)

(2018/C 104/16)

Language of the case: Polish

Referring court

Sąd Rejonowy w Siemianowicach Śląskich

Parties to the main proceedings

Applicant: Powszechna Kasa Oszczędności (PKO) Bank Polski S.A.

Defendant: Jacek Michalski

Question referred

Must the provisions of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, ([1]) and in particular Article 6(1) and Article 7(1) thereof, and the provisions of Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, ([2]) and in particular Article 10 and Article 22(1) thereof, be interpreted as precluding the pursuit of a claim by a bank (the creditor) against a consumer (the debtor) on the basis of a banking ledger excerpt, signed by persons authorised to make statements regarding the bank's property rights and obligations and bearing the bank's stamp, and on the basis of proof that a request for payment had been submitted to the debtor in writing, in the context of an order-for-payment procedure as defined in Article 485 § 3 et seq. of the Polish Code of Civil Procedure?

([1]) OJ 1993 L 95, p. 29.
([2]) OJ 2008 L 133, p. 66.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 7 December 2017 — Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. v Prime Champ Deutschland Pilzkulturen GmbH

(Case C-686/17)

(2018/C 104/17)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V.

Defendant: Prime Champ Deutschland Pilzkulturen GmbH

Questions referred

1. For the purposes of the definition of the term 'country of origin' in Article 113a(1) of Regulation (EC) No 1234/2007 ([1]) and Article 76(1) of Regulation (EU) No 1308/2013, ([2]) are the definitions in Article 23 et seq. of the Community Customs Code ([3]) and Article 60 of the Union Customs Code ([4]) decisive?

2. Do cultivated mushrooms which are harvested in a national territory have their origin in that territory pursuant to Article 23 of Regulation (EEC) No 2913/92 and Article 60(1) of Regulation (EU) No 952/2013 if substantial production steps [take] place in other Member States of the European Union and the cultivated mushrooms have been transported to the relevant national territory only three days or fewer prior to the first harvest?

3. Is the prohibition on the making of misleading statements under Article 2(1)(a)(i) of Directive 2000/13/EC ([5]) and Article 7(1)(a) of Regulation (EU) No 1169/2011 ([6]) to be applied to the indication of origin that is required under Article 113a(1) of Regulation (EC) No 1234/2007 and Article 76(1) of Regulation (EU) No 1308/2013?

4. Is it permitted to append additional, explanatory elements to the indication of origin prescribed under Article 113a(1) of Regulation (EC) No 1234/2007 and Article 76(1) of Regulation (EU) No 1308/2013 in order to counteract a misleading statement prohibited under Article 2(1)(a)(i) of Directive 2000/13/EC and Article 7(1)(a) of Regulation (EC) No 1169/2011?

([1]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation); OJ 2007 L 299, p. 1.

([2]) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007; OJ 2013 L 347, p. 671.

([3]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code; OJ 1992 L 302, p. 1.

([4]) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code; OJ 2013 L 269, p. 1.

([5]) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs; OJ 2000 L 109, p. 29.

([6]) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004; OJ 2011 L 304, p. 18.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 14 December 2017 — Allianz Vorsorgekasse AG

(Case C-699/17)

(2018/C 104/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Allianz Vorsorgekasse AG

Participating parties: Bundestheater-Holding GmbH, Burgtheater GmbH, Wiener Staatsoper GmbH, Volksoper Wien GmbH, ART for ART Theaterservice GmbH, fair-finance Vorsorgekasse AG

Question referred

Are the provisions of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement ([1]) and/or Articles 49 and 56 TFEU, and the principles of equal treatment and non-discrimination and the obligation of transparency which derive from them in respect of public procurement, applicable to the conclusion of contracts by a contracting authority with company provident funds in respect of the management and investment of contributions in cases where the conclusion of the contract and hence the choice of provident fund requires the approval of the workforce or its representatives and can therefore not be done by the contracting authority alone?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ 2014 L 94, p. 65.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 14 December 2017 — Finanzamt Kyritz v Wolf-Henning Peters

(Case C-700/17)

(2018/C 104/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Kyritz

Defendant: Wolf-Henning Peters

Questions referred

1. Is the tax exemption for the provision of medical care by a specialist in clinical chemistry and laboratory diagnostics, in circumstances like those of the main proceedings, assessed under Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) or under Article 132(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax?

2. Does the applicability of Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax — if this provision is applicable — require that a confidential relationship exist between the doctor and the person being treated?

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

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 28 December 2017 — Mohammed Bilali

(Case C-720/17)

(2018/C 104/20)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Mohammed Bilali

Respondent authority: Bundesamt für Fremdenwesen und Asyl

Question referred

Do the provisions of EU law, in particular Article 19(3) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 ([1]) (the Qualification Directive), preclude a national provision of a Member State concerning the possibility of revocation of subsidiary protection status pursuant to which subsidiary protection status may be revoked without a change in the factual circumstances themselves which are relevant for the purpose of granting that status, but rather only where the state of knowledge of the authority in this regard has undergone a change, and, in that context, without either a misrepresentation or an omission of facts on the part of the third-country national or stateless person having been a determinant factor in the granting of the subsidiary protection status?

(1) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 29 December 2017 — Lies Craeynest and Others v Brussels Hoofdstedelijk Gewest and Brussels Instituut voor Milieubeheer; other party: Belgische Staat

(Case C-723/17)

(2018/C 104/21)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicants: Lies Craeynest, Cristina Lopez Devaux, Frédéric Mertens, Stefan Vandermeulen, Karin De Schepper, ClientEarth

Defendants: Brussels Hoofdstedelijk Gewest and Brussels Instituut voor Milieubeheer

Other party: Belgische Staat

Questions referred

1. Should Article 4(3) and the second subparagraph of Article 19(1) of the Treaty on European Union, read in conjunction with the third paragraph of Article 288 of the Treaty on the Functioning of the European Union and Articles 6 and 7 of Directive 2008/50/EC ([1]) of 21 May 2008 on ambient air quality and cleaner air for Europe, be interpreted as meaning that, when it is alleged that a Member State has not sited the sampling points in a zone in accordance with the criteria set out in point B.1.(a) of Annex III to Directive 2008/50, it is for the national courts, on application by individuals who are directly affected by the exceedance of the limit values referred to in Article 13(1) of that directive, to examine whether the sampling points were sited in accordance with those criteria and, if they were not, to take all necessary measures against the national authority, such as an order, with a view to ensuring that the sampling points are sited in accordance with those criteria?

2. Is a limit value within the meaning of Article 13(1) and Article 23(1) of [Directive 2008/50/EC] exceeded in the case where an exceedance of a limit value with an averaging period of one calendar year, as laid down in Annex XI to that directive, has been established on the basis of the measurement results from one single sampling point within the meaning of Article 7 of that directive, or does such an exceedance occur only when this becomes apparent from the average of the measurement results from all sampling points in a particular zone within the meaning of Directive 2008/50?

([1]) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles (Belgium) lodged on 28 December 2017 — Edward Reich, Debora Lieber, Ella Reich, Ezra Bernard Reich v Koninklijke Luchtvaart Maatschappij NV

(Case C-730/17)

(2018/C 104/22)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicants: Edward Reich, Debora Lieber, Ella Reich, Ezra Bernard Reich

Defendant: Koninklijke Luchtvaart Maatschappij NV

Question referred

Are Articles 3, 5, 6 and 7 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]) ('Regulation No 261/2004') to be interpreted as meaning that — in the case where an operating Community air carrier, for the purposes of Regulation No 261/2004, concludes a contract for the carriage of passengers by air with consumers that includes a train journey from a railway station located in the territory of a Member State in which those consumers reside to an airport located in the territory of a second Member State from which the consumers will take their flight to their final destination, namely an airport located in the territory of a non-Member country, and those consumers have no legal connection with the company carrying out the train journey but the air carrier clearly has agreements with that company, and there was a long delay in the train journey, which is included in the contract, that resulted in those consumers being unable to catch their flight from the airport located in the territory of the second Member State — those consumers may rely on the rights provided for by Regulation No 261/2004 and demand compensation in accordance with Articles 5, 6 and 7 of that regulation?

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

Request for a preliminary ruling from the Augstākā tiesa (Latvia) lodged on 2 January 2018 — SIA Oriola Rīga v Valsts ieņēmumu dienests

(Case C-1/18)

(2018/C 104/23)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: SIA Oriola Rīga

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Where the imported goods are medicines, when the customs value of the imported goods is determined in accordance with Article 30(2)(b) of Council Regulation (EEC) No 2913/92 ([1]) of 12 October 1992 establishing the Community Customs Code and Article 151(4) of Commission Regulation (EEC) No 2454/93 ([2]) of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, must it be considered that similar goods are those medicines whose active ingredient and the quantity thereof are the same (or similar) or, rather, in order to identify similar goods, must account be taken of market position as well, that is to say, the popularity and demand, of the imported medicine in question and of its producer?

2. When the customs value of the imported goods is determined in accordance with Article 30(2)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, may the period of 90 days fixed in Article 152(1)(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be applied flexibly?

3. If that period may be applied flexibly, must priority be given to data on transactions effected closer to the time when the goods to be valued were imported and involving identical or similar goods that are sold in sufficient quantities to enable the unit price to be determined or, on the contrary, to transactions less close in time but actually involving the imported goods?

4. When the customs value of the imported goods is determined in accordance with Article 30(2)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, have the discounts granted, which determined the price at which the goods were in fact sold, to be applied?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).
([2]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

Request for a preliminary ruling from the Lietuvos Respublikos Konstitucinis Teismas (Lithuania) lodged on 2 January 2018 — A group of Members of the Seimas

(Case C-2/18)

(2018/C 104/24)

Language of the case: Lithuanian

Referring court

Lietuvos Respublikos Konstitucinis Teismas

Parties to the main proceedings

Applicant: A group of Members of the Seimas (Lithuanian Parliament)

Other party: the Lithuanian Parliament

Questions referred

1. Can Article 148(4) of Regulation No 1308/2013 ([1]) be interpreted as meaning that, for the purpose of strengthening the negotiating powers of raw milk producers and preventing unfair commercial practices, and taking into account certain particular structural features of the milk and milk products sector of the Member State and changes in the market for milk, it does not prohibit the establishment of a national legal regulatory framework which restricts the freedom of contracting parties to negotiate the purchase price of raw milk in the sense that a raw milk buyer is prohibited from paying different raw milk prices to raw milk sellers from the same group, grouped according to the volume of milk sold, who do not belong to a recognised milk producers' organisation, for raw milk of the same quality and composition as that delivered to the buyer via the same method, and, thus, the parties are unable to agree on a different raw milk purchase price by taking into account any other factors?

2. Can Article 148(4) of Regulation No 1308/2013 be interpreted as meaning that, for the purpose of strengthening the negotiating powers of raw milk producers and preventing unfair commercial practices, and taking into account certain particular structural features of the milk and milk products sector of the Member State and changes in the market for milk, it does not prohibit the establishment of a national legal regulatory framework which restricts the freedom of contracting parties to negotiate the purchase price of raw milk in the sense that a raw milk buyer is prohibited from unjustifiably reducing the purchase price of the raw milk, and a reduction of the price by more than 3 % is possible only if a State-empowered institution recognises such a reduction as being justified?

([1]) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

Appeal brought on 2 January 2018 by Confédération européenne des associations d'horlogers-réparateurs (CEAHR) against the judgment of the General Court (Second Chamber) delivered on 23 October 2017 in Case T-712/14: Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v European Commission

(Case C-3/18 P)

(2018/C 104/25)

Language of the case: English

Parties

Appellant: Confédération européenne des associations d'horlogers-réparateurs (CEAHR) (represented by: P. A. Benczek, Rechtsanwalt)

Other parties to the proceedings: European Commission, LVMH Moët Hennessy-Louis Vuitton SA, Rolex, SA, The Swatch Group SA

Form of order sought

The appellant claims that the Court should:

— set aside the operative part of the Judgment of the General Court; and

— annul the Commission Decision of 29 July 2014 in case AT.39097 — Watch Repair;

— in the alternative, refer these proceedings back to the General Court for further consideration;

— order the Commission and interveners to bear their own costs and to pay the costs of CEAHR, relating to both the proceedings and first instance and to any cost arising from this appeal;

— in the alternative, order the interveners to bear their own cost relating to the proceedings at first instance and any costs arising from this appeal.

Pleas in law and main arguments

By its first ground of appeal, the appellant argues that the General Court erred in law by drawing an analogy between the assessment of selective distributions systems in the case-law of this Court and the proper assessment of the selective repair system at issue in this case.

By its second ground of appeal, the appellant argues that the General Court made a series of errors of law and assessment in reaching the conclusion that the selective repair systems and refusals to supply at issue in this case is justified and proportionate. The appellant submits that the General Court manifestly erred in its conclusion that the Commission was entitled to conclude that Prestige Watches are complex and that this justifies the selective repair system and refusal to supply at issue in this case. The appellants submits further that the General Court manifestly erred in its conclusion that the Commission was entitled to conclude that there is a risk of counterfeiting of Prestige Watches that justifies the selective repair system and refusal to supply at issue in this case. The General Court manifestly erred in its conclusion that the Commission was entitled to conclude that it was likely that the conditions imposed by the Watch Manufacturers do not go beyond what it necessary.

By its third and fourth grounds of appeal, the appellant challenges the General Court's manifestly flawed assessment of the consequence of the refusal to supply spare parts on the existence of effective competition on the markets for the repair and maintenance of the relevant watches; and the related conclusion that there was a low likelihood of establishing an abuse of dominance in this case. The appellant submits the General Court erred in its conclusion that there is competition between authorized repairers and between those repairers and the manufacturers' in-house repair centers.

By its fifth grounds of appeal, the appellant argues that the General Court violated procedural rights by not admitting the appellant to submit responses to interventions after having missed a deadline due to extraordinary circumstances and by refusing to reopen the hearing following appellant's request to present new evidence.

By its sixth ground of appeal, the appellant argues that the General Court failed to exercise its discretion in determining whether the interveners are to bear their own cost incurred during the proceedings of the first instance.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 10 January 2018 — Eva Glawischnig-Piesczek v Facebook Ireland Limited

(Case C-18/18)

(2018/C 104/26)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Eva Glawischnig-Piesczek

Defendant: Facebook Ireland Limited

Questions referred

1. Does Article 15(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') ([1]) generally preclude any of the obligations listed below of a host provider which has not expeditiously removed illegal information, specifically not just this illegal information within the meaning of Article 14 (1)(a) of the Directive, but also other identically worded items of information:

   a.a. worldwide?

   a.b. in the relevant Member State?

   a.c. of the relevant user worldwide?

   a.d. of the relevant user in the relevant Member State?

2. In so far as Question 1 is answered in the negative: Does this also apply in each case for information with an equivalent meaning?

3. Does this also apply for information with an equivalent meaning as soon as the operator has become aware of this circumstance?

([1]) OJ 2000 L 178, p. 1.

Action brought on 9 January 2018 — European Commission v Grand Duchy of Luxembourg

(Case C-20/18)

(2018/C 104/27)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

The Commission claims that the Court should:

— find that, by failing to adopt, by no later than 10 April 2016, the laws, regulations and administrative provisions necessary to ensure compliance with Directive 2014/26/EU 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 2014 L 84, p. 72), or in any event by failing to communicate those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 43(1) of that directive;

— order the Grand Duchy of Luxembourg to pay, pursuant to Article 260(3) TFEU, a penalty payment of EUR 12 920 per day, from the date on which judgment is delivered in the present case, for failure to comply with the obligation to notify the measures transposing Directive 2014/26/EU;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

Member States were required, under Article 43(1) of Directive 2014/26/EU, to adopt the national measures required to transpose the obligations under that directive by no later than 10 April 2016. As Luxembourg failed to notify any measures transposing that directive, the Commission decided to bring the present action before the Court of Justice.

In its application, the Commission proposes that Luxembourg should be ordered to pay a penalty payment of EUR 12 920 per day. The amount of the penalty payment has been calculated by taking into account the gravity and duration of the infringement, as well as the deterrent effect in the light of that Member State's ability to pay.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 17 January 2018 — Verein für Konsumenteninformation v Deutsche Bahn AG

(Case C-28/18)

(2018/C 104/28)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: Deutsche Bahn AG

Question referred

Must Article 9(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (the SEPA Regulation) ([1]) be interpreted to mean that the payee is prohibited from making payment under the SEPA direct debit scheme dependent on the payer's place of residence being in the Member State in which the payee also has his establishment (residence), if payment in a different way, for example with a credit card, is also allowed?

([1]) OJ 2012 L 94, p. 22.

Appeal brought on 22 January 2018 by Claire Staelen against the order of the General Court (Third Chamber) made on 28 November 2017 in Case T-217/11 REV, Staelen v European Ombudsman

(Case C-45/18 P)

(2018/C 104/29)

Language of the case: French

Parties

Appellant: Claire Staelen (represented by: V. Olona, avocate)

Other party to the proceedings: European Ombudsman

Form of order sought

The appellant claims that the Court should:

— set aside order T-217/11 REV;

— declare admissible the application for revision of judgment T-217/11;

— order the respondent to pay all costs in relation to all of the proceedings.

Grounds of appeal and main arguments

In support of the appeal, the appellant advances several grounds of appeal alleging:

— partial illegality of Article 169 of the Rules of Procedure of the General Court;

— infringement of Article 169(1) of the Rules of Procedure of the General Court;

— distortion of the facts and error of law in so far as the General Court classified the decision of 19 May 2005 simultaneously as a list of suitable candidates and as a decision extending the validity of the list of suitable candidates;

— error of law in so far as the General Court held that a decision which was not notified to all of its addressees is challengeable, as well as infringement of the principle of equal treatment;

— distortion of the facts and manifestly contradictory findings of the General Court concerning the respondent's alleged lack of diligence, as well as infringement of the principles of legal certainty and legitimate expectations;

— lack of reasoning on the decisive nature of the new facts.

GENERAL COURT

Judgment of the General Court of 1 February 2018 — Larko v Commission

(Case T-412/14) ([1])

(Action for annulment — State aid — Sale of certain assets operated by an undertaking or belonging to that undertaking in the context of a privatisation programme — No economic continuity — Action by the beneficiary of the aid — No interest in bringing proceedings — Inadmissibility)

(2018/C 104/30)

Language of the case: Greek

Parties

Applicant: Larko Geniki Metalleftiki kai Metallourgiki AE (Athens, Greece) (represented by: I. Dryllerakis, N. Korogiannakis, I. Soufleros, E. Triantafyllou, G. Psaroudakis and E. Rantos, lawyers)

Defendant: European Commission (represented by: A. Bouchagiar, É. Gippini Fournier and B. Stromsky, Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of Commission Decision C(2014) 1805 of 27 March 2014 on the State aid SA.37954 (2013/N) — Greece — Sale of certain assets of Larco General Mining & Metallurgical Company S.A. (OJ 2014 C 156, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Larko Geniki Metalleftiki kai Metallourgiki AE to pay the costs.*

([1]) OJ C 292, 1.9.2014.

Judgment of the General Court of 1 February 2018 — Larko v Commission

(Case T-423/14) ([1])

(State aid — Aid implemented by Greece — Decision declaring the aid incompatible with the internal market — Concept of State aid — Advantage — Private investor test — Amount of aid to be recovered — Commission Notice on State aid in the form of guarantees)

(2018/C 104/31)

Language of the case: Greek

Parties

Applicant: Larko Geniki Metalleftiki kai Metallourgiki AE (Athens, Greece) (represented by: I. Dryllerakis, I. Soufleros, E. Triantafyllou, G. Psaroudakis, E. Rantos and N. Korogiannakis, lawyers)

Defendant: European Commission (represented by: A. Bouchagiar and É. Gippini Fournier, Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of Commission Decision 2014/539/EU of 27 March 2014 on the State aid SA.34572 (20113/C) (ex 13/NN) implemented by Greece for Larco General Mining & Metallurgical Company S.A. (OJ 2014 L 254, p. 24).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Larko Geniki Metalleftiki kai Metallourgiki AE to pay the costs.*

([1]) OJ C 292, 1.9.2014.

Judgment of the General Court of 5 February 2018 — Dôvera zdravotná poisťovňa v Commission

(Case T-216/15) ([1])

(State aid — Health insurance bodies — Capital increase, debt repayment, subsidies and Risk Equalisation Scheme — Decision finding no State aid — Concept of State aid — Concept of undertaking and economic activity — Principle of solidarity — State supervision — Activity that is economic in nature — Competition on quality — Presence of operators seeking to make a profit — Pursuit, use and distribution of profits — Error of law — Error of assessment)

(2018/C 104/32)

Language of the case: English

Parties

Applicant: Dôvera zdravotná poisťovňa, a.s. (Bratislava, Slovakia) (represented by: O. Brouwer and A. Pliego Selie, lawyers)

Defendant: European Commission (represented by: P.–J. Loewenthal and L. Armati, acting as Agents)

Intervener in support of the applicant: Union zdravotná poisťovňa a.s. (Bratislava) (represented by: initially E. Pijnacker Hordijk and A. ter Haar, and subsequently A. ter Haar, lawyers)

Intervener in support of the defendant: Slovak Republic (represented by: B. Ricziová, acting as Agent)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Decision (EU) 2015/248 of 15 October 2014 on the measures SA.23008 (2013/C) (ex 2013/NN) granted by the Slovak Republic to Spoločná zdravotná poisťovňa, a.s. (SZP) and Všeobecná zdravotná poisťovňa, a.s. (VšZP) (OJ 2015 L 41, p. 25).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision (EU) 2015/248 of 15 October 2014 on the measures SA.23008 (2013/C) (ex 2013/NN) implemented by the Slovak Republic for Spoločná zdravotná poisťovňa, a.s. (SZP) and Všeobecná zdravotná poisťovňa, a.s. (VšZP);*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Dôvera zdravotná poist'ovňa, a.s. and by Union zdravotná poist'ovňa a.s.;*

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

(1) OJ C 262, 10.8.2015.

Judgment of the General Court of 5 February 2018 — Pari Pharma v EMA

(Case T-235/15) (1)

(Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA and submitted in the context of the application for marketing authorisation for the medicinal product Vantobra — Decision to grant a third party access to the documents — Exception relating to the protection of commercial interests — No general presumption of confidentiality)

(2018/C 104/33)

Language of the case: English

Parties

Applicant: Pari Pharma GmbH (Starnberg, Germany) (represented by: M. Epping and W. Rehmann, lawyers)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, A. Rusanov, S. Marino, A. Spina and N. Rampal Olmedo, acting as Agents)

Interveners in support of the defendant: French Republic (represented by: D. Colas and J. Traband, acting as Agents) and Novartis Europharm Ltd (Camberley, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Re:

Action under Article 263 TFEU for the annulment of Decision EMA/271043/2015 of the EMA of 24 April 2015, granting to a third party, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to documents containing information submitted in the context of an application for marketing authorisation for the medicinal product Vantobra.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pari Pharma GmbH to bear its own costs and to pay those incurred by the European Medicines Agency (EMA), including those relating to the application for interim measures;*

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

4. *Orders Novartis Europharm Ltd to bear its own costs.*

(1) OJ C 221, 6.7.2015.

Judgment of the General Court of 1 February 2018 — European Dynamics Luxembourg and Others v ECHA

(Case T-477/15) ([1])

(Public supply contracts — Tender procedure — Provisions of information technology (IT) services for the applications of the ECHA — Rejection of an offer by a tenderer — Award criteria — Obligation to state reasons — Manifest errors of assessment — Non-contractual liability)

(2018/C 104/34)

Language of the case: English

Parties

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

Defendants: European Chemicals Agency (ECHA) (represented initially by: E. Maurage, W. Broere and M. Heikkilä, and subsequently by W. Broere and M. Heikkilä, acting as Agents, and by J. Stuyck and A.M. Vandromme, lawyers)

Re:

Application, first, under Article 263 TFEU, for annulment of the decisions notified to the applicants by letter of 25 June 2015, by which the European Chemicals Agency (ECHA) rejected their tender for the award of contract No ECHA/2014/86 for the provision of IT services for the IT applications of ECHA and awarded that contract to another bidder and, secondly, under Article 268 TFEU, for compensation for the damage which the applicants allegedly suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear its own costs and those incurred by the European Chemicals Agency (ECHA).*

([1]) OJ C 363, 3.11.2015.

Judgment of the General Court of 1 February 2018 — Greece v Commission

(Case T-506/15) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Greece — Flat-rate financial corrections — Area-related aid scheme — Concept of permanent pasture — Conditions for imposing a flat-rate correction of 25 % — Communication under Article 11(1) of Regulation (EC) No 885/2006 — Article 31(2) of Regulation (EC) No 1122/2009 — Cross-compliance — Monitoring of statutory management requirements — Monitoring of good agricultural and environmental conditions — Duty to state reasons — Deduction of a correction annulled by a judgment of the General Court)

(2018/C 104/35)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, E. Leftheriotou, O. Tsirkinidou and A. Vasilopoulou, acting as Agents)

Defendant: European Commission (represented by: H. Kranenborg and D. Triantafyllou, acting as Agents)

Intervener in support of the applicant: Kingdom of Spain (represented by: A. Gavela Llopis, acting as Agent)

Re:

Application based on Article 263 TFEU seeking the annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 371, 9.11.2015.

Judgment of the General Court of 1 February 2018 — France v Commission

(Case T-518/15) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Metropolitan France's rural development programme — Rural development support measures — Areas with natural handicaps — Flat-rate financial correction — Expenditure incurred by France — On-the-spot controls — Loading criterion — Counting of animals — Increase in the flat-rate correction due to the recurrence of failure — Procedural safeguards)

(2018/C 104/36)

Language of the case: French

Parties

Applicant: French Republic (represented by: initially G. de Bergues, D. Colas, R. Coesme and A. Daly, then D. Colas, R. Coesme and A. Daly, finally D. Colas, R. Coesme, S. Horrenberger and E. de Moustier, acting as Agents)

Defendant: European Commission (represented by: A. Bouquet, A. Lewis and J. Aquilina, acting as Agents)

Intervener in support of the applicant: Kingdom of Spain (represented by: initially M. Sampol Pucurull, then V. Ester Casas, acting as Agents)

Re:

Action based on Article 263 TFEU and seeking the partial annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39).

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision (EU) 2015/1119 of 22 June 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) in so far as it applies a flat-rate correction increased by 10 % on the ground that the failure alleged of the French authorities in the field of the counting of animals was recurrent and had not been subject to improvements carried out by those authorities;*

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

3. *Orders the French Republic and the European Commission to bear their own costs;*

4. *Orders the Kingdom of Spain to bear its own costs.*

(1) OJ C 354, 26.10.2015.

Judgment of the General Court of 5 February 2018 — Edeka-Handelsgesellschaft Hessenring v Commission

(Case T-611/15) (1)

(Access to documents — Regulation (EC) No 1049/2001 — Table of contents of the Commission file relating to proceedings under Article 101 TFEU — Refusal of access — Obligation to state reasons — Obligation to inform about available remedies — Exception for the protection of the purpose of investigations — General presumption of confidentiality)

(2018/C 104/37)

Language of the case: German

Parties

Applicant: Edeka-Handelsgesellschaft Hessenring mbH (Melsungen, Germany) (represented by: E. Wagner and H. Hoffmeyer, lawyers)

Defendant: European Commission (represented by: initially F. Clotuche-Duvieusart, L. Wildpanner and A. Buchet, then F. Clotuche-Duvieusart, A. Buchet and F. Erlbacher and finally F. Clotuche-Duvieusart and A. Buchet, acting as Agents)

Re:

First, action based on Article 263 TFEU and seeking annulment of the Commission decision of 3 September 2015 refusing the applicant access to the non-confidential version of the Commission decision of 4 December 2013 relating to proceedings under Article 101 TFEU and of Article 53 of the EEA Agreement [Case AT.39914 — Euro Interest Rate Derivatives (EIRD) — Settlement procedure] and to the table of contents of the administrative file of that procedure and, secondly, action based on Article 265 TFEU and seeking a declaration that the Commission unlawfully failed to establish a non-confidential version of Decision C(2013) 8512 final and of the table of contents relating to that procedure.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Edeka-Handelsgesellschaft Hessenring mbH to pay the costs.*

(1) OJ C 27, 25.1.2016.

Judgment of the General Court of 5 February 2018 — PTC Therapeutics International v EMA

(Case T-718/15) (1)

(Access to documents — Regulation (EC) No 1049/2001 — Document held by the EMA and submitted in the context of the application for marketing authorisation for the medicinal product Translarna — Decision to grant a third party access to the document — Exception relating to the protection of commercial interests — No general presumption of confidentiality)

(2018/C 104/38)

Language of the case: English

Parties

Applicant: PTC Therapeutics International Ltd (Dublin, Ireland) (represented initially by: C. Thomas, Barrister, G. Castle, B. Kelly, H. Billson, Solicitors, and M. Demetriou QC, and, subsequently, by C. Thomas, M. Demetriou, G. Castle and B. Kelly)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, A. Spina, S. Marino, A. Rusanov and N. Rampal Olmedo, acting as Agents)

Intervener in support of the applicant: European Confederation of Pharmaceutical Entrepreneurs (Eucope) (represented by: D. Scannell, Barrister, and S. Cowlishaw, Solicitor)

Re:

Action under Article 263 TFEU for the annulment of Decision EMA/722323/2015 of the EMA of 25 November 2015, granting to a third party, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to a document containing information submitted in the context of an application for marketing authorisation for the medicinal product Translarna.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders PTC Therapeutics International Ltd to bear its own costs and to pay those incurred by the European Medicines Agency (EMA), including those relating to the application for interim measures;*

3. *Orders the European Confederation of Pharmaceutical Entrepreneurs (Eucope) to bear its own costs.*

(1) OJ C 59, 15.2.2016.

Judgment of the General Court of 5 February 2018 — MSD Animal Health Innovation and Intervet international v EMA

(Case T-729/15) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA and submitted in the context of the application for marketing authorisation for the veterinary medicinal product Bravecto — Decision to grant a third party access to the documents — Exception relating to the protection of commercial interests — No general presumption of confidentiality)

(2018/C 104/39)

Language of the case: English

Parties

Applicants: MSD Animal Health Innovation GmbH (Schwabenheim, Germany) and Intervet international BV (Boxmeer, Netherlands) (represented initially by: P. Bogaert, lawyer, B. Kelly and H. Billson, Solicitors, J. Stratford QC, and C. Thomas, Barrister, and, subsequently, by P. Bogaert, B. Kelly, J. Stratford, and C. Thomas)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, A. Spina, S. Marino, A. Rusanov and N. Rampal Olmedo, acting as Agents)

Re:

Action under Article 263 TFEU for the annulment of Decision EMA/785809/2015 of the EMA of 25 November 2015, granting to a third party, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to documents containing information submitted in the context of an application for marketing authorisation for the veterinary medicinal product Bravecto.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders MSD Animal Health Innovation GmbH and Intervet international BV to bear their own costs and to pay those incurred by the European Medicines Agency (EMA), including those relating to the application for interim measures.*

([1]) OJ C 59, 15.2.2006.

Judgment of the General Court of 1 February 2018 — Philip Morris Brands v EUIPO — Explosal (Superior Quality Cigarettes FILTER CIGARETTES Raquel)

(Case T-105/16) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Superior Quality Cigarettes FILTER CIGARETTES Raquel — Earlier international figurative mark Marlboro — Relative ground for refusal — Reputation — Production of evidence for the first time before the Board of Appeal — Discretion of the Board of Appeal — Article 76(2) of Regulation (EC) No 207/2009 (now Article 95(2) of Regulation (EU) 2017/1001) — Rule 50(1) of Regulation (EC) No 2868/95)

(2018/C 104/40)

Language of the case: English

Parties

Applicant: Philip Morris Brands Sàrl (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Explosal Ltd (Larnaca, Cyprus) (represented by: D. McFarland, Barrister)

Re:

Appeal against the decision of the First Board of Appeal of EUIPO of 4 January 2016 (Case R 2775/2014-1) concerning invalidity proceedings between Philip Morris and Explosal.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 January 2016 (Case R 2775/2014-1);*

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

3. *Orders EUIPO and Explosal Ltd to bear, in addition to their own costs, those incurred by Philip Morris Brands Sàrl.*

(1) OJ C 175, 17.5.2016.

Judgment of the General Court of 5 February 2018 — Ranocchia v ERCEA

(Case T-208/16) (1)

(Research and technological development — Calls for proposals and related activities under the ERC Work Programme 2015 — Framework Programme for Research and Innovation (2014-2020) — Horizon 2020 — Decision of the ERCEA declaring ineligible the proposal submitted by the applicant — Project concerning the identification of mathematical algorithms facilitating the reading and analysis of certain ancient manuscripts — Misuse of powers — Error of fact — Error of law — Manifest error of assessment)

(2018/C 104/41)

Language of the case: Italian

Parties

Applicant: Graziano Ranocchia (Rome, Italy) (represented by: C. Intino, lawyer)

Defendant: European Research Council Executive Agency (ERCEA) (represented initially by: E. Chacon Mohedano, R. Maggio Panizza and L. Moreau, and subsequently by E. Chacon Mohedano, R. Maggio Panizza and F. Sgritta, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of (i) ERCEA Decision Ares(2016) 1020667 of 26 February 2016, dismissing the applicant's application for a review of the decision refusing to subsidise research proposal No 682937, entitled 'PHercSchools2 — The Hellenistic Philosophical Schools in the Herculaneum Papyri', (ii) ERCEA Decision Ares(2015) 5922529 of 17 December 2015, refusing to subsidise that research proposal, and (iii) any prior, subsequent or connected measure linked to those decisions, in particular the list of projects approved for the 'ERC Consolidator Grant' support programme made public by the ERCEA's press release of 12 February 2016.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Graziano Ranocchia to pay the costs.*

(1) OJ C 243, 4.7.2016.

Judgment of the General Court of 5 December 2017 — El Corte Inglés v EUIPO — Elho Business & Sport (FRee STyLe)

(Case T-212/16) (1)

(EU trade mark — Invalidity proceedings — EU figurative mark FRee STyLe — Absolute ground for refusal — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Article 76 of Regulation No 207/2009 (now Article 95 of Regulation 2017/1001) — Equal treatment)

(2018/C 104/42)

Language of the case: English

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Elho Business & Sport Vertriebs GmbH (Obergriesbach, Germany) (represented by E. Warnke, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 12 February 2016 (Case R 377/2015-1), relating to invalidity proceedings between Elho Business & Sport and El Corte Inglés.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA, to pay the costs.*

(1) OJ C 243, 4.7.2016.

Judgment of the General Court of 5 December 2017 — El Corte Inglés v EUIPO — Elho Business & Sport (FREE STYLE)

(Case T-213/16) (1)

(EU trade mark — Invalidity proceedings — EU word mark FREE STYLE — Absolute ground for refusal — No distinctive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Article 76 of Regulation No 207/2009 (now Article 95 of Regulation 2017/1001) — Equal treatment)

(2018/C 104/43)

Language of the case: English

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Elho Business & Sport Vertriebs GmbH (Obergriesbach, Germany) (represented by E. Warnke, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 12 February 2016 (Case R 378/2015-1), relating to invalidity proceedings between Elho Business & Sport and El Corte Inglés.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA, to pay the costs.*

([1]) OJ C 243, 4.7.2016.

Judgment of the General Court of 1 February 2018 — Aldi Einkauf v EUIPO — Schwamm & Cie. (Le Coq de France)

(Case T-457/16) ([1])

(European Union trade mark — Opposition proceedings — Application for the European Union word mark Le Coq de France — Earlier national figurative mark le coq — Relative ground for refusal — Likelihood of confusion — Similarity of the goods and services — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 [now Article 8(1)(b) of Regulation (EC) 2017/1001])

(2018/C 104/44)

Language of the case: German

Parties

Applicant: Aldi Einkauf GmbH & Co. OHG (Essen, Germany) (represented by: N. Lützenrath, U. Rademacher, C. Fürsen and N. Bertram, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Schwamm & Cie. mbH (Saarbrucken, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 15 June 2016 (Case R 1786/2015-4) relating to opposition proceedings between Schwamm & Cie. And Aldi Einkauf.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aldi Einkauf GmbH & Co. OHG to pay the costs.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 7 February 2018 — Kondyterska korporatsiia 'Roshen' v EUIPO — Krasnyiy oktyabr (Representation of a crayfish)

(Case T-775/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark representing a crayfish — Earlier international registration of the figurative mark РАКОВЫЕ ШЕЙКИ — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 104/45)

Language of the case: English

Parties

Applicant: Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' (Kiev, Ukraine) (represented by: R. Žabolienė and I. Lukauskienė, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court: Moscow Confectionery Factory 'Krasnyiy oktyabr' OAO (Moscow, Russia) (represented by O. Spuhler, M. Geitz and J. Stock, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 11 August 2016 (Case R 2419/2015-1), relating to opposition proceedings between Moscow Confectionary Factory 'Krasnyiy oktyabr' and Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen'.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' to pay the costs.*

([1]) OJ C 475, 19.12.2016.

Judgment of the General Court of 7 February 2018 — Şölen Çikolata Gıda Sanayi ve Ticaret v EUIPO — Zaharieva (Display box for cornets)

(Case T-793/16) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a display box for cornets — Earlier international registration designating Bulgaria — Ground for invalidity — Use in the subsequent design of a distinctive sign the holder of which has the right to prohibit such use — Article 25(1)(e) of Regulation (EC) No 6/2002 — Obligation to state reasons — Article 62 of Regulation No 6/2002 — Duty of diligence — Article 63(1) of Regulation No 6/2002)

(2018/C 104/46)

Language of the case: English

Parties

Applicant: Şölen Çikolata Gıda Sanayi ve Ticaret AŞ (Şehitkamil Gaziantep, Turkey) (represented by: T. Tsenova, lawyer)

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 Court: Elka Zaharieva (Plovdiv, Bulgaria) (represented by: A. Kostov, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 12 September 2016 (Case R 1143/2015-3), relating to invalidity proceedings between Şölen Çikolata Gıda Sanayi ve Ticaret and Mrs Zaharieva.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 September 2016 (Case R 1143/2015-3);*

2. *Grants the application for a declaration that the design registered under number 002343244-0002 is invalid;*

3. *Orders EUIPO to bear its own costs and to pay the costs incurred by Şölen Çikolata Gıda Sanayi ve Ticaret before the General Court and before the Board of Appeal of EUIPO;*

4. *Orders Mrs Elka Zaharieva to bear her own costs.*

([1]) OJ C 22, 23.1.2017.

Judgment of the General Court of 7 February 2018 — Şölen Çikolata Gıda Sanayi ve Ticaret v EUIPO — Zaharieva (Ice cream cornet packaging)

(Case T-794/16) ([1])

(Community design — Invalidity proceedings — Registered Community design representing an ice cream cornet — Earlier international registration designating Bulgaria — Ground for invalidity — Use in the subsequent design of a distinctive sign the holder of which has the right to prohibit such use — Article 25 (1)(e) of Regulation (EC) No 6/2002 — Obligation to state reasons — Article 62 of Regulation No 6/2002 — Duty of diligence — Article 63(1) of Regulation No 6/2002)

(2018/C 104/47)

Language of the case: English

Parties

Applicant: Şölen Çikolata Gıda Sanayi ve Ticaret AŞ (Şehitkamil Gaziantep, Turkey) (represented by: T. Tsenova, lawyer)

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 Court: Elka Zaharieva (Plovdiv, Bulgaria) (represented by: A. Kostov, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 12 September 2016 (Case R 1144/2015-3), relating to invalidity proceedings between Şölen Çikolata Gıda Sanayi ve Ticaret and Mrs Zaharieva.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 September 2016 (Case R 1144/2015-3);*

2. *Grants the application for a declaration that the design registered under number 002343244-0001 is invalid;*

3. *Orders EUIPO to bear its own costs and to pay the costs incurred by Şölen Çikolata Gıda Sanayi ve Ticaret before the General Court and before the Board of Appeal of EUIPO;*

4. *Orders Mrs Elka Zaharieva to bear her own costs.*

([1]) OJ C 22, 23.1.2017.

Judgment of the General Court of 7 February 2018 — 'Krasnyiy oktyabr' v Kondyterska korporatsiia 'Roshen' (CRABS)

(Case T-795/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark CRABS — Earlier international registration of the figurative mark РАКОВЫЕ ШЕЙКИ — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 104/48)

Language of the case: English

Parties

Applicant: Moscow Confectionery Factory 'Krasnyiy oktyabr' OAO (Moscow, Russia) (represented by: O. Spuhler, M. Geitz and J. Stock, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court: Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' (Kiev, Ukraine) (represented by R. Žabolienė and I. Lukauskienė, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 11 August 2016 (Case R 2507/2015-1), relating to opposition proceedings between Moscow Confectionary Factory 'Krasnyiy oktyabr' and Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen'.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Moscow Confectionery Factory 'Krasnyiy oktyabr' OAO to pay the costs.*

([1]) OJ C 6, 9.1.2017.

Judgment of the General Court of 7 February 2018 — Access Info Europe v European Commission

(Case T-851/16) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — EU-Turkey statements of 8 and 18 March 2016 — Implementation by the European Union or by the Member States of the measures concerned — Documents drawn up or received by the legal service of an institution — Legal advice — Analyses of the legality of the measures provided for in connection with the implementation of the EU-Turkey statement of 8 March 2016 — Refusal to grant access — Article 4(1)(a) of Regulation No 1049/2001 — Exception relating to the protection of the public interest in respect of international relations — Second indent of Article 4(2) of Regulation No 1049/2001 — Exception relating to the protection of court proceedings — Exception relating to the protection of legal advice)

(2018/C 104/49)

Language of the case: English

Parties

Applicant: Access Info Europe (Madrid, Spain) (represented by: O. Brouwer, E. Raedts and J. Wolfhagen, lawyers)

Defendant: European Commission (represented by: A. Buchet and M. Konstantinidis, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Decision C(2016) 6029 final of 19 September 2016 confirming the refusal to grant the applicant access to documents from the Commission's Legal Service which purportedly concern the legality of the measures adopted by the European Union and its Member States in implementing the actions set out in the statement of the Heads of State or Government of the European Union of 8 March 2016, adopted following their meeting with the Turkish Prime Minister on 7 March 2016.

Operative part of the judgment

The Court:

1. *Annuls European Commission Decision C(2016) 6029 final of 19 September 2016, in so far as it refuses to grant partial access to Access Info Europe to the first sentence of the part entitled 'Legal framework' of the Commission document with the reference Ares (2016) 2453347, and to the first sentence of point I(a) entitled 'EU Legal Framework', of Attachment 1 to the Commission document with the reference Ares(2016) 2453181;*

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

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

([1]) OJ C 53, 20.2.2017.

Judgment of the General Court of 7 February 2018 — Access Info Europe v European Commission

(Case T-852/16) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — EU-Turkey statements of 8 and 18 March 2016 — Implementation by the European Union or by the Member States of the measures concerned — Documents drawn up or received by the legal service of an institution — Legal advice — Analyses of the legality of the measures provided for in connection with the implementation of the EU-Turkey statement of 18 March 2016 — Refusal to grant access — Article 4(1)(a) of Regulation No 1049/2001 — Exception relating to the protection of the public interest in respect of international relations — Second indent of Article 4(2) of Regulation No 1049/2001 — Exception relating to the protection of court proceedings — Exception relating to the protection of legal advice)

(2018/C 104/50)

Language of the case: English

Parties

Applicant: Access Info Europe (Madrid, Spain) (represented by: O. Brouwer, E. Raedts and J. Wolfhagen, lawyers)

Defendant: European Commission (represented by: A. Buchet and M. Konstantinidis, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Decision C(2016) 6030 final of 19 September 2016 confirming the refusal to grant the applicant access to documents from the Commission's Legal Service which purportedly concern the legality of the measures adopted by the European Union and its Member States in implementing the actions set out in the statement of the Heads of State or Government of the European Union of 18 March 2016, adopted following their meeting with the Turkish Prime Minister on the same day.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Access Info Europe to pay the costs.*

([1]) OJ C 53, 20.2.2017.

Judgment of the General Court of 1 February 2018 — Cantina e oleificio sociale di San Marzano v EUIPO — Miguel Torres (SANTORO)

(Case T-102/17) ([1])

(EU trade mark — Opposition proceedings — EU figurative mark SANTORO — Earlier EU word mark SANGRE DE TORO — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 104/51)

Language of the case: English

Parties

Applicant: Cantina e oleificio sociale di San Marzano (San Marzano di San Giuseppe, Italy) (represented initially by F. Jacobacci and E. Truffo, and subsequently by I. Carli, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Miguel Torres, SA (Vilafranca del Penedés, Spain) (represented by: J. Güell Serra, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 1 December 2016 (Case R 2018/2015-2), relating to opposition proceedings between Miguel Torres and Cantina e oleificio sociale di San Marzano.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cantina e oleificio sociale di San Marzano to pay the costs.*

(1) OJ C 121, 18.4.2017.

Order of the General Court of 22 January 2018 — Italy and Others v Commission

(Joined Cases T-125/13, T-152/13 and T-167/13) (1)

(State aid — Groundhandling services — Capital injections provided by SEA in favour of Sea Handling — Decision declaring the aid incompatible with the internal market and ordering its recovery — Partial removal from the register — Withdrawal — No need to adjudicate in part — Removal from the register of undertakings)

(2018/C 104/52)

Language of the cases: Italian

Parties

Applicant in Case T-125/13: Italian Republic (represented by: G. Palmieri, Agent, and S. Fiorentino, avvocato dello Stato)

Applicant in Case T-152/13: Sea Handling SpA (Somma Lombardo, Italy) (represented initially by B. Nascimbene, F. Rossi dal Pozzo, M. Merola and L. Cappelletti, and subsequently by B. Nascimbene, F. Rossi dal Pozzo and M. Merola, lawyers)

Applicant in Case T-167/13: Comune di Milano (Italy) (represented initially by S. Grassani and A. Franchi, and subsequently by S. Grassani, lawyers)

Interveners in support of the applicant in Case T-152/13: Società per azioni esercizi aeroportuali (SEA) (Segrate, Italy) (represented by: M. Merola, B. Nascimbene, F. Rossi dal Pozzo and M.C. Toniolo, lawyers) and Comune di Milano (Italy) (represented initially by S. Grassani and A. Franchi, and subsequently by S. Grassani, lawyers)

Defendant: European Commission (represented by: G. Conte and D. Grespan, Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of Commission Decision (EU) 2015/1225 of 19 December 2012 regarding injections of capital by SEA SpA into Sea Handling SpA (Case SA.21420 (C 14/10) (ex NN 25/10) (ex CP 175/06)) (OJ 2015 L 201, p. 1).

Operative part of the order

1. *Cases T-125/13, T-152/13 and T-167/13 are disjoined for the purposes of the oral part of the procedure and of the decision closing the proceedings.*

2. *Case T-125/13 is removed from the register of the General Court.*

3. *There is no longer any need to adjudicate on the action brought by Sea Handling SpA in Case T-152/13.*

4. *In Case T-125/13, the Italian Republic and the European Commission shall bear their own costs.*

5. *In Case T-152/13, Sea Handling and the Commission shall bear their own costs, including those in relation to the interlocutory proceedings. Società per azioni esercizi aeroportuali (SEA) and the Comune di Milano (Italy) shall bear their own costs in relation to Case T-152/13.*

6. *In Case T-167/13, the costs are reserved.*

(1) OJ C 114, 20.4.2013.

Order of the General Court of 23 January 2018 — QG v Commission

(Case T-845/16) (1)

(Action for annulment — State aid — Aid granted by the Spanish authorities to certain professional football clubs — Preferential tax rate applied in connection with corporate tax — Decision declaring the aid to be incompatible with the internal market — No interest in bringing proceedings — Manifest inadmissibility)

(2018/C 104/53)

Language of the case: Spanish

Parties

Applicant: QG (represented by: L. Ruiz Ezquerra, R. Oncina Borrego, I. Sobrepera Millet and A. Hernández Pardo, lawyers)

Defendant: European Commission (represented by: G. Luengo, B. Stromsky and P. Němečková, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2016) 4046 final of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs.

Operative part of the order

1. *The application for a decision that there is no need to adjudicate is dismissed.*

2. *The action is dismissed as manifestly inadmissible.*

3. *There is no longer any need to rule on the applications to intervene submitted by the Kingdom of Spain and Fútbol Club Barcelona.*

4. *QG shall pay the costs.*

5. *QG, the European Commission, the Kingdom of Spain and Fútbol Club Barcelona shall each bear their own respective costs relating to the applications to intervene.*

(1) OJ C 53, 20.2.2017.

Order of the General Court of 23 January 2018 — QF v Commission

(Case T-846/16) (1)

(Action for annulment — State aid — Aid granted by the Spanish authorities to certain professional football clubs — Preferential tax rate applied in connection with corporate tax — Decision declaring the aid to be incompatible with the internal market — No interest in bringing proceedings — Manifest inadmissibility)

(2018/C 104/54)

Language of the case: Spanish

Parties

Applicant: QF (represented by: L. Ruiz Ezquerra, R. Oncina Borrego, I. Sobrepera Millet and A. Hernández Pardo, lawyers)

Defendant: European Commission (represented by: G. Luengo, B. Stromsky and P. Němečková, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2016) 4046 final of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs.

Operative part of the order

1. *The application for a decision that there is no need to adjudicate is dismissed.*

2. *The action is dismissed as manifestly inadmissible.*

3. *There is no longer any need to rule on the applications to intervene submitted by the Kingdom of Spain and Fútbol Club Barcelona.*

4. *QF shall pay the costs.*

5. *QF, the European Commission, the Kingdom of Spain and Fútbol Club Barcelona shall each bear their own respective costs relating to the applications to intervene.*

(1) OJ C 53, 20.2.2017.

Order of the President of the General Court of 23 January 2018 — Seco Belgium and Vinçotte v Parliament

(Case T-812/17 R)

(Interim measures — Public procurement — Application for suspension of operation of a measure — Withdrawal of the contested act — No need to adjudicate in part — Application for an injunction — No urgency)

(2018/C 104/55)

Language of the case: French

Parties

Applicants: Seco Belgium (Brussels, Belgium) Vinçotte (Vilvoorde, Belgium) (represented by: A. Delvaux and R. Simar, lawyers)

Defendant: European Parliament (represented by: P. López-Carceller and Z. Nagy, acting as Agents)

Re:

Application on the basis of Articles 278 and 279 TFEU, first, for a suspension of the operation of the decision of the Parliament of 1 December 2017 to reject the applicants' tender in the tender procedure 06D 20/2017/M005 entitled 'Assignments to perform inspections and provide technical opinions in the context of construction works, projects and purchases at the European Parliament in Brussels' and to award the contract to another tenderer, and secondly, for an injunction against the Parliament.

Operative part of the order

1. *There is no need to adjudicate on the application for a suspension of the operation of the decision of the Parliament of 1 December 2017 to reject the tender of Seco Belgium and Vinçotte in the tender procedure 06D 20/2017/M005 entitled 'Assignments to perform inspections and provide technical opinions in the context of construction works, projects and purchases at the European Parliament in Brussels' and to award the contract to another tenderer.*

2. *The application for interim measures is dismissed as to the remainder.*

3. *The order of 21 December 2017, Seco Belgium and Vinçotte v Parliament (T-812/17 R), is set aside.*

4. *The costs are reserved.*

Action brought on 12 January 2018 — Eesti Apteekide Ühendus v Commission

(Case T-10/18)

(2018/C 104/56)

Language of the case: English

Parties

Applicant: Eesti Apteekide Ühendus MTÜ (Laagri, Estonia) (represented by: K. Paas-Mohando, and I. Kangur, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision SA.42028 (2017/NN) adopted on 23 October 2017; ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Estonian Pharmacies Association has the legal standing to bring an action for annulment of Commission decision SA.42028 (2017/NN).

   — In compliance with the judgment of the Court of Justice in Case C-313/90, ([2]) Commission decisions not to raise objections adopted at the end of a preliminary procedure are subject to judicial review;

— The Estonian Pharmacies Association has the legal standing to bring an action for annulment of the Commission decision SA.42028 (2017/NN) to the General Court as an interested party pursuant to Article 108(2) TFEU and Article 1(h) of Regulation No 2015/1589. ([3])

2. Second plea in law, alleging that the Commission was under the obligation to initiate a formal investigation procedure pursuant to Article 108(2) TFEU by virtue of the serious difficulties test. The Commission's serious difficulties in adopting the contested decision and thus the violation of the procedural safeguards provided by Article 108(2) TFEU are apparent from the following:

— The Commission has erred in law by finding that no advantage is given from State resources, because the Commission has failed to see that Finland has abused its regulatory discretion, which in turn has resulted in foregoing of State resources;

— The Commission has erred in law by finding no selective advantage, because the Commission has failed to adequately qualify the 'special tasks' as SGEI;

— The Commission has failed to collect material information in the preliminary procedure;

— The preliminary procedure was unreasonably long (close to 30 months);

— The Commission has resorted to an unprecedented legal definition 'special tasks';

— Finland amended its Universities Act during the preliminary proceedings pursuant to which Finland used to refund corporation tax and the pharmacy fee paid by Yliopiston Apteekki Oy to the University of Helsinki, which was the central regulation of one of the reported State aid measures.

([1]) OJ 2017, C 422, p. 10.
([2]) Judgment of 24 March 1993, *Comité International de la Rayonne et des Fibres Synthétiques and others* v *Commission*, C-313/90, EU: C:1993:111.
([3]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (Text with EEA relevance) (OJ 2015 L 248, p. 9).

Action brought on 19 January 2018 — Delfant Hoylaerts v Commission

(Case T-17/18)

(2018/C 104/57)

Language of the case: French

Parties

Applicant: Isabelle Delfant Hoylaerts (Montredon-des-Corbières, France) (represented by: E. Conquet, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's Rejection Decision of 21 March 2017;

— annul the Commission's implicit Rejection Decision of 20 October 2017;

— order the Commission to bear the costs relating to the medico-educational institution from 20 October 2017;

— order the Commission to pay to Ms Delfant Hoylaerts EUR 3 000 in damages as compensation for the financial and non-material losses suffered;

— order the Commission to pay the costs and to pay to Ms Delfant Hoylaerts EUR 3 000 in respect of non-recoverable expenses.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of Article 72 of the Staff Regulations of Officials of the European Union, the provisions of which have been adopted by the joint rules on sickness insurance for officials of the European Union, in particular Article 20, and by the Guide to Commission assistance for disabled children of staff entitled under the Staff Regulations.

According to the applicant, the Commission infringed the above provisions by adopting the decision to refuse to bear costs relating to a medico-educational institution ('MEI') for her disabled child. In that respect, she submits that that decision is based on a purely administrative misunderstanding and that the legal basis relied on by the Commission is lacking.

Finally, the applicant claims that the unfair conduct on the part of the Commission has serious consequences in that the Commission is incapable of taking sole responsibility for the costs of the MEI where the MEI is essential for her child. Thus, her psychological and financial circumstances have been exacerbated by the fault on the Commission's part.

Action brought on 19 January 2018 — Poland v Commission

(Case T-21/18)

(2018/C 104/58)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2017/2014 of 8 November 2017 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(2017) 7263) (OJ 2017 L 292, p. 61), in so far as it excludes from EU financing the net amounts of EUR 48 317 806,79 and EUR 26 638 201,22 in expenditure incurred by the payment agency accredited by the Republic of Poland;

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 52(1) of Regulation No 1306/2013 ([1]) through the application of a financial correction based on incorrect findings of fact and an incorrect interpretation of the law, despite the fact that the expenditure was effected by the Republic of Poland in conformity with EU law.

2. Second plea in law, alleging infringement of Article 52(2) of Regulation No 1306/2013 through the application of a flat-rate correction which was flagrantly excessive in relation to the risk of potential financial damage to the EU budget.

3. Third plea in law, alleging infringement of the second paragraph of Article 296 TFEU by reason of insufficient substantiation of the correction applied.

(1) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), as amended.

Action brought on 19 January 2018 — Bulgaria v Commission

(Case T-22/18)

(2018/C 104/59)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: E. Petranova and L Zacharieva)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2017/2014 of 8 November 2017 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(2017) 7263), in so far as concerns budget item 6711, which excludes from financing by the European Commission, under the European Agricultural Fund for Rural Development (EAFRD), certain expenses of the Republic of Bulgaria in the amount of EUR 11 685 774,48, with a financial impact of EUR 11 412 865,79, after deduction of EUR 272 908,69;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. Grounds concerning amounts excluded from financing by the European Union on the basis of deficiency in key control 'Sufficient quality of on-the-spot checks' and deficiency in key control 'Adequate verification of payment claims'; on the basis of deficiency in key control 'Appropriate evaluation of reasonableness of costs' — expenditure related to direct purchases; on the basis of deficiency in key control 'Appropriate evaluation of reasonableness of costs' — expenditure related to evaluation committee':

   — Infringement of the conformity clearance procedure under Article 52 of Regulation No 1306/2013 and of Article 34 of Implementing Regulation No 908/2014 in connection with the addition by the Commission of new grounds in support of its findings on the quality of on-the-spot checks;

   — Infringement of the principle of legal certainty in connection with the lack of clear criteria and instructions concerning the sufficient quality of the on-the-spot checks;

— Infringement of the principle of sound financial management and the clearance procedure under Article 52 of Regulation No 1306/2013 in connection with the application of unjustified financial corrections;

— Infringement of the conformity clearance procedure under Article 52 of Regulation No 1306/2013 and of the guidelines for the calculation of financial corrections in connection with the financial correction applied under measure No 311 for the financial years 2013, 2014 and 2015;

— Infringement of the of the guidelines for the calculation of financial corrections in connection with the application of the amount of the financial correction which is not proportionate to the actual risk of financial harm caused to the European Union;

— Infringement of the conformity clearance procedure under Article 52 of Regulation No 1306/2013 and of the guidelines for the calculation of financial corrections concerning the application of the financial corrections in connection with the sufficient quality of the on-the-spot checks;

— Infringement of Article 34(6) of Implementing Regulation No 908/2014, Article 12(8) of Delegated Regulation No 907/2014, of the guidelines for the calculation of financial corrections and of the principle of proportionality in connection with the application of corrections in respect of all expenditure for which reimbursement has been requested;

— Infringement of the conformity clearance procedure under Article 52(2) of Regulation No 1306/2013, of the guidelines for the calculation of financial corrections and of the principle of proportionality in connection with the definition of the ground for applying corrections in respect of projects in the period under review;

2. Grounds solely concerning amounts excluded from financing by the European Union on the basis of deficiency in key control 'Appropriate evaluation of reasonableness of costs' — expenditure related to evaluation committee;

— Infringement of the conformity clearance procedure under Article 52 of Regulation No 1306/2013, of Article 12 of Delegated Regulation No 907/2014 and of the principle of legal certainty in connection with the guidelines for the calculation of financial corrections concerning the application of the methodology for calculating the financial corrections;

— Infringement of the principle of proportionality in connection with the amount of the financial corrections applied by the Commission.

Action brought on 19 January 2018 — PAN Europe v Commission

(Case T-25/18)

(2018/C 104/60)

Language of the case: English

Parties

Applicant: Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) (represented by: B. Kloostra, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision C(2017) 7604 final of 9 November 2017, partially refusing to grant the applicant access to documents relating to the drafting of Delegated Regulations on scientific criteria for the assessment of endocrine disrupting substances;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that, by adopting the contested decision, the Commission acted in breach of and wrongly applied Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001. ([1])

   — The Commission acted in breach of and wrongly applied Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 by applying it to information on a finished decision-making process.

   — The Commission acted in breach of Article 4(3) of Regulation (EC) 1049/2001 because it did not interpret or apply the ground for refusal in a sufficiently restrictive way and did not demonstrate that disclosure would seriously undermine the decision-making process.

2. Second plea in law, alleging that the Commission, by adopting the contested decision, acted in breach of Article 6(1) of Regulation (EC) No 1367/2006 ([2]) and Article 4(3) of Regulation 1049/2001.

   — The Commission has acted in breach of Article 6(1) of Regulation (EC) No 1367/2006 and Article 4(3) of Regulation 1049/2001 by not examining specifically and individually the documents referred to in the request for access and by not justifying for each specific document for which reason it should not be disclosed by not interpreting the ground for refusal of Article 4(3) of Regulation (EC) No 1049/2001 in a sufficiently restrictive way; furthermore, the Commission acted in breach of the abovementioned provisions because the Commission did not weigh the specific interest of protection of the decision-making process against the general interests of the disclosure of environmental information and by not stating sufficient reasons for the refusal.

3. Third plea in law, alleging that the Commission wrongly did not take into account that there is an overriding public interest in the disclosure of the requested information.

   — Because of the major change of policy during the decision-making process and the major change of the draft scientific criteria set during this process there is an overriding public interest in disclosure of the information requested.

([1]) Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 22 January 2018 — Asahi Intecc v EUIPO — Celesio (Celeson)

(Case T-36/18)

(2018/C 104/61)

Language in which the application was lodged: English

Parties

Applicant: Asahi Intecc Co. Ltd (Nagoya City, Japan) (represented by: T. Schmidpeter, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Celesio AG (Stuttgart, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the mark 'Celeson' – International registration designating the European Union No 1 254 798

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 November 2017 in Case R 1004/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition No B 2 644 816 filed by McKesson Europe AG (formerly Celesion AG) to the international registration designating the European Union in respect of the word mark Celeson applied for by the applicant;

— order EUIPO to bear its own costs and pay those incurred by the applicant for the purposes of the proceedings before the Court;

— order EUIPO and McKesson Europe AG (formerly Celesion AG) each to pay half of the costs necessarily incurred by the applicant for the purposes of the proceedings before the Board of Appeal of EUIPO.

Plea in law

— Infringement of Artcile 8(1)(b) Regulation No 2017/1001.

Action brought on 23 January 2018 — Stirlinx Arkadiusz Kamusiński v EUIPO — Heinrich Bauer Verlag (Brave Paper)

(Case T-37/18)

(2018/C 104/62)

Language in which the application was lodged: English

Parties

Applicant: Stirlinx Arkadiusz Kamusiński (Warsaw, Poland) (represented by: M. Pruszczyk, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Heinrich Bauer Verlag KG (Hamburg, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'Brave Paper' — Application for registration No 13 774 211

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 November 2017 in Case R 391/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the trademark to be registered for all applied goods and services;

— order EUIPO to bear the costs.

Pleas in law

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

Action brought on 24 January 2018 — Ecolab USA v EUIPO (SOLIDPOWER)

(Case T-40/18)

(2018/C 104/63)

Language of the case: English

Parties

Applicant: Ecolab USA, Inc. (Wilmington, Delaware, United States) (represented by: V. Töbelmann and K. Middelhoff, 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 word mark 'SOLIDPOWER' — Application for registration No 1 310 671

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 November 2017 in Case R 1182/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs as well as the costs of the Applicant.

Pleas in law

— Infringement of Articles 7(1)(b), 7(1)(c) and Article 7(2) of Regulation No 2017/1001.

Action brought on 24 January 2018 — Rietze v EUIPO — Volkswagen (Voitures)

(Case T-43/18)

(2018/C 104/64)

Language in which the application was lodged: German

Parties

Applicant: Rietze GmbH & Co. KG (Altdorf, Germany) (represented by: M. Krogmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Volkswagen AG (Wolfsburg, Germany)

Details of the proceedings before EUIPO

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

Design at issue: European Union design No 5467-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 21 November 2017 in Case R 1204/2016-3

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of EUIPO and declare EU design No 5467-0001 invalid;

— order EUIPO to pay the costs of the proceedings.

Pleas in law

— Infringement of Article 4(1), in conjunction with Article 6(1)(b), of Regulation No 6/2002.

Action brought on 29 January 2018 — Novenco Building & Industry v EUIPO — Novenco Ventilator (Beijing) (NOVENCO)

(Case T-45/18)

(2018/C 104/65)

Language in which the application was lodged: English

Parties

Applicant: Novenco Building & Industry A/S (Næstved, Denmark) (represented by: A. Rasmussen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Novenco Ventilator (Beijing) Co. Ltd (Beijing, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative sign 'NOVENCO' – International registration designating the European Union No 1 187 938

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 November 2017 in Case R 2354/2016-2

Form of order sought

The applicant claims that the Court should:

— partly annul the contested decision, namely for the goods of class 7 as covered by IR 1187938;

— order EUIPO to bear its own costs as well as the third party's costs, including those incurred during the appeal and opposition proceedings.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 26 January 2018 — NGV v EUIPO (LIEBLINGSWEIN)

(Case T-55/18)

(2018/C 104/66)

Language of the case: German

Parties

Applicant: NGV GmbH (Wildeshausen, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word element 'LIEBLINGSWEIN' — Application for registration No 15 326 515

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 November 2018 in Case R 291/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b), (c) and (g) of Regulation 2017/1001.

Action brought on 26 January 2018 — NGV v EUIPO (WEIN FÜR PROFIS)

(Case T-56/18)

(2018/C 104/67)

Language of the case: German

Parties

Applicant: NGV GmbH (Wildeshausen, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word elements 'WEIN FÜR PROFIS' — Application for registration No 15 326 549

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 November 2017 in Case R 501/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(c) of Regulation 2017/1001.

Action brought on 29 January 2018 — NGV v EUIPO (WEIN FÜR PROFIS)

(Case T-57/18)

(2018/C 104/68)

Language of the case: German

Parties

Applicant: NGV GmbH (Wildeshausen, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word elements 'WEIN FÜR PROFIS' — Application for registration No 15 326 531

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 November 2017 in Case R 502/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b), (c) and (g) of Regulation 2017/1001.

Action brought on 29 January 2018 — Hangzhou Lezoo traveling equipment v EUIPO — Promotional Traders (GREEN HERMIT)

(Case T-60/18)

(2018/C 104/69)

Language in which the application was lodged: English

Parties

Applicant: Hangzhou Lezoo traveling equipment Co. Ltd (Hangzhou, China) (represented by: D. Burghardt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Promotional Traders Pty Ltd (Subiaco, Australia)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'GREEN HERMIT' — EU trade mark No 11 835 964

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 27 November 2017 in Case R 857/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— remit the case to the Fourth Board of Appeal;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 59(1)(b) Regulation No 2017/1001;

— Infringement of Article 94(1) Regulation No 2017/1001.

Order of the General Court of 31 January 2018 — Stips v Commission

(Case T-740/16) ([1])

(2018/C 104/70)

Language of the case: French

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

([1]) OJ C 475, 19.12.2016.

Order of the General Court of 29 January 2018 — QE v Eurojust

(Case T-850/16) ([1])

(2018/C 104/71)

Language of the case: French

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

([1]) OJ C 38, 6.2.2017.

Order of the General Court of 31 January 2018 — Stips v Commission

(Case T-311/17) ([1])

(2018/C 104/72)

Language of the case: French

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

([1]) OJ C 231, 17.7.2017.

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