Official Journal of the European Union

C 123

English edition

Information and Notices

Volume 61

9 April 2018

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(2018/C 123/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 7 February 2018 (request for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) — United Kingdom) — The Queen, on the application of: American Express Company v The Lords Commissioners of Her Majesty's Treasury

(Case C-304/16) ([1])

(Reference for a preliminary ruling — Regulation (EU) 2015/751 — Interchange fees for card-based payment transactions — Article 1(5) — Three party payment card scheme treated as equivalent to a four party payment card scheme — Conditions — Issuance by a three party payment card scheme of card-based payment instruments 'with a co-branding partner or through an agent' — Article 2(18) — Concept of 'three party payment card scheme' — Validity)

(2018/C 123/02)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: The Queen, on the application of: American Express Company

Defendant: The Lords Commissioners of Her Majesty's Treasury

Intervening parties: Diners Club International Limited, MasterCard Europe SA

Operative part of the judgment

1. *Article 1(5) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions must be interpreted as meaning that, in the context of an arrangement between a co-branding partner or an agent, on the one hand, and a three party payment card scheme, on the other, it is not a prerequisite of that scheme being regarded as issuing card-based payment instruments with a co-branding partner or through an agent and therefore being considered to be a four party payment card scheme, within the meaning of Article 1(5) of Regulation 2015/751, that that co-branding partner or agent act as an issuer, within the meaning of Article 2(2) of that regulation;*

2. *Consideration of the second question referred for a preliminary ruling has disclosed nothing capable of affecting the validity of Article 1(5) and Article 2(18) of Regulation 2015/751.*

([1]) OJ C 270, 25.7.2016.

Judgment of the Court (Grand Chamber) of 6 February 2018 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Criminal proceedings against Ömer Altun, Abubekir Altun, Sedrettin Maksutogullari, Yunus Altun, Absa NV, M. Sedat BVBA, Alnur BVBA

(Case C-359/16) ([1])

(Reference for a preliminary ruling — Migrant workers — Social security — Applicable legislation — Regulation (EEC) No 1408/71 — Article 14(1)(a) — Posted workers — Regulation (EEC) No 574/72 — Article 11(1)(a) — E 101 certificate — Probative value — Certificate fraudulently obtained or relied on)

(2018/C 123/03)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties in the main criminal proceedings

Ömer Altun, Abubekir Altun, Sedrettin Maksutogullari, Yunus Altun, Absa NV, M. Sedat BVBA, Alnur BVBA

Other party to the proceedings: Openbaar Ministerie

Operative part of the judgment

Article 14(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004, and Article 11(1)(a) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down rules for the application of Regulation No 1408/71, as amended and updated by Regulation No 118/97, must be interpreted as meaning that, when an institution of a Member State to which workers have been posted makes an application to the institution that issued E 101 certificates for the review and withdrawal of those certificates in the light of evidence, collected in the course of a judicial investigation, which supports the conclusion that those certificates were fraudulently obtained or relied on, and the issuing institution fails to take that evidence into consideration for the purpose of reviewing the grounds for the issue of those certificates, a national court may, in the context of proceedings brought against persons suspected of having used posted workers ostensibly covered by such certificates, disregard those certificates if, on the basis of that evidence and with due regard to the safeguards inherent in the right to a fair trial which must be granted to those persons, it finds the existence of such fraud.

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Sixth Chamber) of 8 February 2018 — European Commission v Federal Republic of Germany

(Case C-380/16) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 73 — Taxable amount — Articles 306 to 310 — Special scheme for travel agents — Exclusion from that scheme of sales to taxable undertakings — Overall determination of the taxable amount for a given period — Incompatibility)

(2018/C 123/04)

Language of the case: German

Parties

Applicant: European Commission (represented by: M. Owsiany-Hornung and M. Wasmeier, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and R. Kanitz, acting as Agents)

Intervener in support of the defendant: Kingdom of the Netherlands (represented by: M.K. Bulterman, C.S. Schillemans and B. Koopman, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by excluding from the special value-added-tax scheme applicable to travel agents travel services provided to taxable persons who use those services for their business, and by authorising travel agents, in so far as they are subject to that scheme, to determine the taxable amount for value added tax on an overall basis for groups of services or for all services provided during a tax year, the Federal Republic of Germany has failed to fulfil its obligations under Article 73 and Articles 306 to 310 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 314, 29.8.2016.

Judgment of the Court (Sixth Chamber) of 8 February 2018 — European Commission v Hellenic Republic

(Case C-590/16) ([1])

(Failure of a Member State to fulfil obligations — Directive 2008/118/EC — Article 7 — General arrangements for excise duty — Supply of petroleum products, without charging excise duty — Filling stations at the border of the Hellenic Republic with third countries — Chargeability of excise duty — Concept of 'release for consumption' of excise goods — Concept of 'departure from a duty suspension arrangement')

(2018/C 123/05)

Language of the case: Greece

Parties

Applicant: European Commission (represented by: F. Tomat and A. Kyratsou, acting as Agents)

Defendant: Hellenic Republic (represented by: E.–M. Mamouna and M. Tassopoulou, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by adopting and retaining in force legislation allowing the sale of tax-exempted petroleum products by the filling stations of Katastimata Aforologiton Eidon AE at the border posts of Kipoi Evrou (Greece), Kakavia (Greece) and Evzonoi (Greece) which are all situated in regions bordering third countries, namely the Republic of Turkey, the Republic of Albania and the former Yugoslav Republic of Macedonia, the Hellenic Republic has failed to fulfil its obligations under Article 7(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC;*

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

([1]) OJ C 30, 30.1.2017.

Judgment of the Court (First Chamber) of 7 February 2018 (Request for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) — United Kingdom) — The Queen, on the application of American Express Company v The Lords Commissioners of Her Majesty's Treasury

(Case C-643/16) ([1])

(Reference for a preliminary ruling — Directive (EU) 2015/2366 — Payment services in the internal market — Article 35(1) — Obligation to provide authorised or registered payment service providers with access to payment systems — Point (b) of the first subparagraph of Article 35(2) — Inapplicability of that obligation to payment systems composed exclusively of payment service providers belonging to a group — Applicability of that obligation to three party payment card schemes that have entered into co-branding or agency arrangements — Validity)

(2018/C 123/06)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: The Queen, on the application of American Express Company

Defendant: The Lords Commissioners of Her Majesty's Treasury

Interveners in support of the defendant: Diners Club International Limited, Mastercard Europe SA

Operative part of the judgment

1. *Point (b) of the first subparagraph of Article 35(2) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, must be interpreted as meaning that a three party payment card scheme that has entered into a co-branding agreement with a co-branding partner does not lose the benefit of the exception provided for by that provision and, therefore, is not subject to the obligation laid down in Article 35(1) of that directive in a situation where that co-branding partner is not a payment service provider and does not provide payment services within that scheme with respect to the co-branded products. However, a three party payment card scheme that makes use of an agent for the purposes of supplying payment services loses the benefit of that exception and, therefore, is subject to the obligation laid down in Article 35(1).*

2. *Consideration of the second question has revealed nothing capable of affecting the validity of Article 35 of Directive 2015/2366.*

([1]) OJ C 78, 13.3.2017.

Judgment of the Court (Sixth Chamber) of 8 February 2018 (request for a preliminary ruling from the Tribunale Amministrativo Regionale Calabria — Italy) — Lloyd's of London v Agenzia Regionale per la Protezione dell'Ambiente della Calabria

(Case C-144/17) ([1])

(Reference for a preliminary ruling — Public procurement — Articles 49 and 56 TFEU — Directive 2004/18/EC — Reasons for exclusion from a tendering procedure — Insurance services — Participation of several Lloyd's of London syndicates in the same tendering procedure — Signature of tenders by the Lloyd's of London General Representative for the country concerned — Principles of transparency, equal treatment and non-discrimination — Proportionality)

(2018/C 123/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale Calabria

Parties to the main proceedings

Applicant: Lloyd's of London

Defendant: Agenzia Regionale per la Protezione dell'Ambiente della Calabria

Operative part of the judgment

The principles of transparency, equal treatment and non-discrimination which derive from Articles 49 and 56 TFEU and are referred to in Article 2 of Directive 2004/18/EC of the Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that they do not preclude legislation of a Member State, such as that at issue in the main proceedings, which does not allow two syndicates of Lloyd's of London to be excluded from participation in the same procedure for the award of a public service contract for insurance merely because their respective tenders were each signed by the General Representative of Lloyd's of London for that Member State, but instead allows their exclusion if it appears, on the basis of unambiguous evidence, that their tenders were not drawn up independently.

([1]) OJ C 213, 3.7.2017.

Judgment of the Court (Tenth Chamber) of 8 February 2018 — European Commission v Kingdom of Spain

(Case C-181/17) ([1])

(Failure of a Member State to fulfil obligations — Transport policy — Regulation (EC) No 1071/2009 — Road transport operator — Licence for public transport — Conditions for grant — Article 3(1) and (2) — Article 5(b) — Number of vehicles required — National legislation — Stricter conditions for grant — Higher minimum number of vehicles)

(2018/C 123/08)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: V. Ester Casas, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by requiring undertakings to have at least three vehicles in order to obtain a public transport licence, the Kingdom of Spain has failed to fulfil its obligations under Article 3(1) and (2) and Article 5(b) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;*

2. *Orders the Kingdom of Spain to pay the costs.*

([1]) OJ C 195, 19.6.2017.

Appeal brought on 19 August 2017 by CBA Spielapparate- und Restaurantbetriebs GmbH against the order of the General Court (Third Chamber) of 19 June 2017 in Case T-906/16, CBA Spielapparate- und Restaurantbetriebs GmbH v European Commission

(Case C-508/17 P)

(2018/C 123/09)

Language of the case: German

Parties

Appellant: CBA Spielapparate- und Restaurantbetriebs GmbH (represented by: A. Schuster, Rechtsanwalt)

Other party to the proceedings: European Commission

By order of 8 February 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 15 December 2017 — Adelheid Krah v Universität Wien

(Case C-703/17)

(2018/C 123/10)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Appellant: Adelheid Krah

Respondent: Universität Wien

Questions referred

Question 1:

Must EU law, in particular Article 45 TFEU, Article 7(1) of Regulation (EU) No 492/2011 ([1]) of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, be interpreted as precluding a provision under which previous professionally-relevant periods of service of a member of the teaching staff of the University of Vienna can be recognised only up to a total period of three or four years, irrespective of whether these are periods of service with the University of Vienna or with other national or international universities or similar institutions?

Question 2:

Is a system of pay that does not provide for full recognition of previous professionally-relevant periods of service, but at the same time links a higher rate of pay to the duration of employment with the same employer, at variance with the freedom of movement for workers in accordance with Article 45(2) TFEU and Article 7(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union?

(1) OJ 2011 L 141, p. 1.

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 21 December 2017 — Ahmad Shah Ayubi

(Case C-713/17)

(2018/C 123/11)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicant: Ahmad Shah Ayubi

Defendant authority: Bezirkshauptmannschaft Linz-Land

Questions referred

1. Is Article 29 of Directive 2011/95/EU, (1) under which a Member State has the obligation to provide to beneficiaries of international protection (in the Member State that granted such protection) the necessary social assistance as provided to nationals of that Member State, to be interpreted as satisfying the criteria for direct applicability as developed in the case-law of the Court of Justice of the European Union?

2. Is Article 29 of Directive 2011/95/EU to be interpreted as precluding national legislation which provides that only persons granted asylum with permanent residence be given social assistance in the form of needs-based minimum benefits in full and to the same extent as nationals of the Member State, but provides for the reduction of social assistance from needs-based minimum benefits for those persons granted asylum with only temporary residence, and consequently, in the same amount of social assistance as is awarded to persons eligible for subsidiary protection?

(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 Amtsgericht Hannover (Germany) lodged on 27 December 2017 — Sebastian Vollmer, Vera Sagalov v Swiss Global Air Lines AG

(Case C-721/17)

(2018/C 123/12)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Sebastian Vollmer, Vera Sagalov

Defendant: Swiss Global Air Lines AG

Questions referred

1. Can a right to compensation under Article 7 of Regulation (EC) No 261/2004 ([1]) also exist in the case where a passenger fails to catch a direct connecting flight due to a delay in arrival of less than three hours, with the result that there is a delay in arrival at the final destination of three hours or more, but the two flights were operated by different air carriers?

2. Can a right to compensation under Article 7 of Regulation (EC) No 261/2004 also exist in the case where the different air carriers are part of the same corporate group?

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

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 January 2018 — Michael Winterhoff, acting as liquidator in the insolvency of DIREKTexpress Holding AG v Finanzamt Ulm

(Case C-4/18)

(2018/C 123/13)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Michael Winterhoff, acting as liquidator in the insolvency of DIREKTexpress Holding AG

Defendant: Finanzamt Ulm

Question referred

Is an undertaking which effects the formal service of documents pursuant to provisions of public law a 'universal service provider', within the meaning of Article 2.13 of Directive 97/67/EC of 15 December 1997, ([1]) providing a universal postal service in whole or in part, and is such service exempt from tax under Article 132(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax? ([2])

([1]) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14).

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

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 January 2018 — Jochen Eisenbeis, acting as liquidator in the insolvency of JUREX GmbH v Bundeszentralamt für Steuern

(Case C-5/18)

(2018/C 123/14)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Jochen Eisenbeis, acting as liquidator in the insolvency of JUREX GmbH

Defendant: Bundeszentralamt für Steuern

Questions referred

1. Is the formal service of documents pursuant to provisions of public law (rules governing court procedure and laws governing service in administrative procedures — Paragraph 33(1) of the Postgesetz (Law on postal services) — a universal postal service under Article 3(4) of Directive 97/67/EC of 15 December 1997 ([1]) (the Postal Directive)?

2. If Question 1 is to be answered in the affirmative:

   Is an undertaking which effects the formal service of documents pursuant to provisions of public law a 'universal service provider', within the meaning of Article 2.13 of Directive 97/67/EC of 15 December 1997, providing a universal postal service in whole or in part, and is such service exempt from tax under Article 132(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax? ([2])

([1]) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14).
([2]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 9 January 2018 — Michael Dobersberger

(Case C-16/18)

(2018/C 123/15)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Michael Dobersberger

Other party: Magistrat der Stadt Wien

Questions referred

1. Does the scope of Directive 96/71/EC ([1]) of 16 December 1996 concerning the posting of workers in the framework of the provision of services (also referred to hereafter as the Directive for short), in particular Article 1(3)(a), also cover the provision of services such as the provision of food and drink to passengers, on-board service or cleaning services by the workers of a service-providing undertaking established in the Member State of posting (Hungary) in performance of a contract with a railway undertaking established in the host Member State (Austria) when these services are provided on international trains which also travel through the host Member State?

2. Does Article 1(3)(a) of the Directive also cover the situation where the service-providing undertaking established in the Member State of posting provides the services mentioned in Question 1 not in performance of a contract with the railway undertaking established in the host Member State, which is the ultimate beneficiary of the services (recipient of the services), but rather in performance of a contract with another undertaking based in the host Member State which, in turn, is in a contractual relationship (subcontracting chain) with the railway undertaking?

3. Does Article 1(3)(a) of the Directive also cover the situation where, to provide the services mentioned in Question 1, the service-providing undertaking established in the Member State of posting does not use its own workers but uses workers of another undertaking which were hired out to it back in the Member State of posting?

4. Irrespective of the answers to Questions 1 to 3: Does EU law, in particular the freedom to provide services (Article 56 and 57 TFEU), preclude a provision of national law which also mandatorily requires undertakings which post workers to the territory of another Member State for the purpose of providing a service to comply with terms and conditions of employment within the meaning of Article 3(1) of the Directive and to comply with accompanying obligations (such as, in particular, the obligation to provide a notification regarding the cross-border posting of workers to a public authority in the host Member State and the obligation to retain documents relating to the level of remuneration and to the social security registration of these workers) in situations in which (firstly) the workers posted across borders form part of the mobile staff of a railway undertaking that is active on a cross-border basis or of an undertaking which provides services typical for a railway undertaking (provision of food and drink to passengers, on-board service) on that undertaking's trains which cross the borders of the Member States, and in which (secondly) the posting is based either on no service contract at all or at least on no service contract between the undertaking making the posting and the recipient of the services which is active in another Member State, because the posting undertaking's obligation to provide services to the recipient of the services which is active in another Member State is established by way of subcontracts (a subcontracting chain), and in which (thirdly) the posted worker is not in an employment relationship with the undertaking making the posting but rather is in an employment relationship with a third-party undertaking which has hired out its workers to the undertaking making the posting back in the Member State in which the posting undertaking is established?

([1]) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ 1997 L 18, p. 1.

Request for a preliminary ruling from the Tribunalul Mureș (Romania) lodged on 9 January 2018 — Criminal proceedings against Virgil Mailat, Delia Elena Mailat and Apcom Select SA

(Case C-17/18)

(2018/C 123/16)

Language of the case: Romanian

Referring court

Tribunalul Mureș

Parties to the main proceedings

Virgil Mailat, Delia Elena Mailat and Apcom Select SA

Questions referred

1. Does the conclusion of an agreement whereby a company leases a building in which specific catering activities had previously been carried on in a restaurant to another company, together with all capital equipment and inventory items, where the tenant company continues the same catering activities in a restaurant with the same name as was used previously, constitute a transfer of a business within the meaning of Articles 19 and 29 of Directive 2006/112/EC? ([1])

2. In the event that Question 1 is answered in the negative, is the transaction described above a supply of services that may be regarded as the letting of immovable property within the meaning of Article 135(1)(l) of [Directive 2006/112/EC], or a supply of complex services that may not be regarded as the letting of immovable property and that is taxable by operation of the law?

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

Request for a preliminary ruling from the Amtsgericht Darmstadt (Germany) lodged on 11 January 2018 — TopFit e. V., Daniele Biffi v Deutscher Leichtathletikverband e. V.

(Case C-22/18)

(2018/C 123/17)

Language of the case: German

Referring court

Amtsgericht Darmstadt

Parties to the main proceedings

Applicants: TopFit e. V., Daniele Biffi

Defendant: Deutscher Leichtathletikverband e. V.

Questions referred

1. Are Articles 18, 21 and 165 TFEU to be interpreted as meaning that a provision in the Athletics Rules of an association of a Member State which makes participation in national championships dependent on having the nationality of the Member State amounts to impermissible discrimination?

2. Are Articles 18, 21 and 165 TFEU to be interpreted as meaning that an association of a Member State impermissibly discriminates against amateur athletes who do not have the nationality of the Member State by allowing them to participate in national championships but only letting them start 'outside classification' or 'without classification' and not letting them participate in the finals of races and contests?

3. Are Articles 18, 21 and 165 TFEU to be interpreted as meaning that an association of a Member State impermissibly discriminates against amateur athletes who do not have the nationality of the Member State by excluding them from the award of national titles or from the standings?

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 17 January — Elektrorazpredelenie Yug EAD v Komisia za energiyno i vodno regulirane

(Case C-31/18)

(2018/C 123/18)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Elektrorazpredelenie Yug EAD

Defendant: Komisia za energiyno i vodno regulirane

Questions referred

1. Are the provisions of Article 2.3 and 2.5 of Directive 2009/72/EC ([1]) to be interpreted as meaning that the voltage is the sole criterion by which the distribution system is distinguished from the transmission system and, by extension, electricity 'distribution' activities are distinguished from electricity 'transmission' activities and that, despite their freedom of action to allocate system users to either the transmission or the distribution system, Member States are not allowed to introduce ownership of the assets used to exercise those activities as an additional criterion for the purpose of distinguishing transmission activities from distribution activities?

2. If the first question is answered in the affirmative: should electricity customers connected to the medium-voltage network always be treated as customers of the distribution system operator which holds a licence for the area concerned, irrespective of who owns the equipment to which the customer's electrical installations are directly connected and irrespective of the contracts concluded directly between the customer and the transmission system operator?

3. If the first question is answered in the negative: are national rules in keeping with the spirit and purpose of Directive 2009/72/EC permissible, such as those laid down in Paragraph 1(44), read in combination with Paragraph 1(20), of the Addenda to the Bulgarian Energy Law, which state that 'transmission of electricity' means the transport of electricity via the transmission network and that 'electricity transmission system' means all the power lines and installations used for the transmission, transformation from high to medium voltage and redistribution of electricity? All other things being equal, are national regulations permissible, such as those laid down in Article 88(1) of the Bulgarian Energy Law, which states that electricity is to be distributed and electricity distribution systems are to be operated by distribution network operators which own those networks in a specific area and hold an electricity distribution licence for that area?

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Text with EEA relevance) (OJ 2009 L 211, p. 55).

Action brought on 14 February 2018 — European Commission v Italian Republic

(Case C-122/18)

(2018/C 123/19)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Gattinara and C. Zadra, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that, by having failed and by continuing to fail to ensure that the public authorities avoid exceeding the time limits of 30 or 60 calendar days for paying their trade debts, the Italian Republic has failed to fulfil its obligations under Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2011 L 48, p. 1) and, in particular, its obligations as set out in Article 4 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The evidence before the Commission, which is based on the information provided by the Italian Republic during the pre-litigation procedure, indicates that the payment periods of 30 and 60 days set out in Article 4 of Directive 2011/7/EU on combating late payment have been exceeded, not by individual entities but by entire categories of public authorities, not in relation to one individual commercial transaction but in terms of the average time taken to pay, that is, in respect of all the transactions concluded by those authorities, and, lastly, not over a limited period but consistently, from September 2014 until the date on which the present action was brought. The Commission therefore considers that sustained and systematic infringement of Article 4 of that directive has been established.

GENERAL COURT

Judgment of the General Court of 21 February 2018 — Sergiy Klyuyev v Council

(Case T-731/15) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Duty to state reasons — Legal basis — Factual basis — Manifest error of assessment — Rights of defence — Right to property — Right to reputation — Proportionality — Protection of fundamental rights equivalent to that guaranteed in the European Union — Plea of illegality)

(2018/C 123/20)

Language of the case: English

Parties

Applicant: Sergiy Klyuyev (Donetsk, Ukraine) (represented by: R. Gherson, T. Garner, Solicitors, B. Kennelly QC and J. Pobjoy, Barrister)

Defendant: Council of the European Union (represented by: Á. de Elera-San Miguel Hurtado and J.-P. Hix, Agents)

Re:

APPLICATION under Article 263 TFEU seeking the annulment of (i) Council Decision (CFSP) 2015/1781 of 5 October 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 259, p. 23) and Council Implementing Regulation (EU) 2015/1777 of 5 October 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 259, p. 3), (ii) Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76) and Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 1) and (iii) Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 34) and Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 1), in so far as the applicant's name was retained on the list of persons, entities and bodies subject to those restrictive measures

Operative part of the judgment

The Court:

1. *Annuls Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine in so far as Mr Sergiy Klyuyev's name was retained on the list of persons, entities and bodies subject to those restrictive measures;*

2. *Orders the effects of Article 1 of Decision 2017/381 and of Article 1 of Implementing Regulation 2017/374 to be maintained in respect of Mr Klyuyev until the date of expiry of the period for bringing an appeal, as provided for in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union, or, if an appeal is brought within that period, until the date of dismissal of that appeal;*

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

4. *Orders Mr Klyuyev to bear his own costs and to pay those incurred by the Council of the European Union in relation to the claims for annulment made in the application and in the first statement of modification;*

5. *Orders the Council to bear its own costs and to pay those incurred by Mr Klyuyev in relation to the claim for annulment in part of Decision 2017/381 and of Implementing Regulation 2017/374 made in the second statement of modification.*

(1) OJ C 68, 22.2.2016.

Judgment of the General Court of 20 February 2018 — Deutsche Post v EUIPO — bpost (BEPOST)

(Case T-118/16) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark BEPOST — Earlier EU figurative mark ePost and earlier national word mark POST — Non-registered mark or sign used in the course of trade POST — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 8(4) of Regulation No 207/2009 (now Article 8(4) of Regulation 2017/1001) — No detriment to reputation and no dilution — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001) — Evidence presented for the first time before the General Court)

(2018/C 123/21)

Language of the case: English

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: K. Hamacher and G. Müllejans, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, G. Sakalaite-Orlovskiene and D. Walicka, acting as Agents,)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: bpost NV (Brussels, Belgium) (represented initially by L. Hubert and K. Ongena, and subsequently by H. Dhondt and J. Cassiman, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 18 January 2016 (Case R 3107/2014-1) relating to opposition proceedings between Deutsche Post and bpost

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deutsche Post AG to pay the costs.*

(1) OJ C 165, 10.5.2016.

Judgment of the General Court of 23 February 2018 — Schniga v CPVO (Gala Schnico)

(Case T-445/16) ([1])

(Plant variety rights — Application for Community plant variety rights for the plant variety Gala Schnico — Technical examination — Obligation to state reasons — First sentence of Article 75 of Regulation (EC) No 2100/94 — Uniformity — Article 8 of Regulation No 2100/94 — Complementary examination — Article 57(3) of Regulation No 2100/94 — Equal treatment — Examination of the facts by the CPVO of its own motion — Article 76 of Regulation No 2100/94)

(2018/C 123/22)

Language of the case: German

Parties

Applicant: Schniga GmbH (Bolzano, Italy) (represented by: G. Würtenberger and R. Kunze, lawyers)

Defendant: Community Plant Variety Office (CPVO) (represented by: M. Ekvad, F. Mattina and U. Braun-Mlodecka, acting as Agents, and by A. von Mühlendahl and H. Hartwig, lawyers)

Re:

Action brought against the decision of the Board of Appeal of the CPVO of 22 April 2016 (Case A 005/2014) concerning an application for a Community plant variety right in respect of the plant variety Gala Schnico.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 21 February 2018 — Repower v EUIPO — repowermap.org (REPOWER)

(Case T-727/16) ([1])

(EU trade mark — Decision of a Board of Appeal revoking an earlier decision — Article 80 of Regulation (EC) No 207/2009 (now Article 103 of Regulation (EU) 2017/1001) — General principle of law authorising the withdrawal of an unlawful administrative measure)

(2018/C 123/23)

Language of the case: French

Parties

Applicant: Repower AG (Brusio, Switzerland) (represented by: R. Kunz-Hallstein and H. P. Kunz-Hallstein, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: repowermap.org (Bern, Switzerland) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 3 August 2016 (Case R 2311/2014-5 (REV)), relating to invalidity proceedings between repowermap.org and Repower.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs and to pay the costs incurred by Repower AG and repowermap.org.*

(1) OJ C 462, 12.12.2016.

Judgment of the General Court of 20 February 2018 — Kwang Yang Motor v EUIPO — Schmidt (CK1)

(Case T-45/17) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark CK1 — Earlier EU figurative mark CK — 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 123/24)

Language of the case: English

Parties

Applicant: Kwang Yang Motor Co., Ltd (Kaohsiung, Taiwan) (represented by: A. González Hähnlein and A. Kleinheyer, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Udo Schmidt (Reken, Germany) (represented by: G. Rother and J. Vogtmeier, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 November 2016 (Case R 2193/2015-2), relating to opposition proceedings between Mr Schmidt and Kwang Yang Motor.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kwang Yang Motor Co., Ltd to pay the costs.*

(1) OJ C 78, 13.3.2017.

Judgment of the General Court of 21 February 2018 — Laboratoire Nuxe v EUIPO — Camille and Tariot (NYouX)

(Case T-179/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark NYouX — Earlier national word mark NUXE — Obligation to state reasons — First sentence of Article 75 of Regulation (EC) No 207/2009 (now first sentence of Article 94(1) of Regulation (EU) 2017/1001) — Relative ground for refusal — Likelihood of confusion — Similarity of the goods — Similarity of the signs — Distinctive character — Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001))

(2018/C 123/25)

Language of the case: French

Parties

Applicant: Laboratoire Nuxe (Paris, France) (represented by: P. Wilhelm and J. Roux, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard–Monguiral and V. Ruzek, acting as Agents)

Other parties to the proceedings before the Board of Appeal of EUIPO: Élisabeth Camille (Alicante, Spain) and Jean–Yves Tariot (Alicante)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 January 2017 (Case R 718/2016-5), relating to opposition proceedings between, on the one hand, Laboratoire Nuxe and, on the other, Ms Camille and Mr Tariot.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 January 2017 (Case R 718/2016-5);*

2. *Orders EUIPO to pay the costs.*

([1]) OJ C 144, 8.5.2017.

Judgment of the General Court of 22 February 2018 — International Gaming Projects v EUIPO — Zitro IP (TRIPLE TURBO)

(Case T-210/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark TRIPLE TURBO — Earlier EU figurative mark TURBO — Relative ground for refusal — No 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 123/26)

Language of the case: Spanish

Parties

Applicant: International Gaming Projects Ltd (Qormi, Malta) (represented by: M. Garayalde Niño, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zitro IP Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 February 2017 (Case R 119/2016-4), relating to opposition proceedings between Zitro IP and International Gaming Projects.

Operative part of the judgment

The Court:

1) *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 February 2017 (Case R 119/2016-4);*

2) *Orders EUIPO to bear its own costs and to pay those incurred by International Gaming Projects Ltd;*

3) *Orders Zitro IP Sàrl to bear its own costs.*

(1) OJ C 161, 22.5.2017.

Order of the General Court of 9 February 2018 — Arcofin and Others v Commission

(Case T-711/14) (1)

(Action for annulment — State aid — Aid implemented by Belgium in favour of the ARCO Group financial cooperatives — Guarantee scheme protecting the shares of natural persons who are individual members of those cooperatives — Decision declaring the aid incompatible with the internal market — Selective advantage — Measure liable to distort or threaten to distort competition and to affect trade between Member States — Measure intended to remedy a serious disturbance in the economy of a Member State — Legitimate expectations — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2018/C 123/27)

Language of the case: French

Parties

Applicants: Arcofin SCRL (Brussels, Belgium), Arcopar SCRL (Brussels), Arcoplus (Brussels) (represented by: R. Martens, A. Verlinden and C. Maczkovics, lawyers)

Defendant: European Commission (represented by: L. Flynn and B. Stromsky, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (13/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives (OJ 2014 L 284, p. 53).

Operative part of the order

1. *The action is dismissed as being in part manifestly inadmissible and in part manifestly lacking any foundation in law.*

2. *Arcofin SCRL, Arcopar SCRL and Arcoplus shall pay the costs.*

(1) OJ C 409, 17.11.2014.

Order of the General Court of 7 February 2018 — AEIM and Kazenas v Commission

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

(Action for damages — Limitation — No proof of loss — Action manifestly bound to fail)

(2018/C 123/28)

Language of the case: French

Parties

Applicants: Application électronique industrielle moderne (AEIM) (Algrange, France) and Philippe Kazenas (Luxembourg, Luxembourg) (represented by: B. Wizel, lawyer)

Defendant: European Commission (represented initially by: S. Delaude and S. Lejeune, and subsequently by S. Delaude, acting as Agents)

Re:

Application based on Article 268 TFEU seeking compensation in respect of the loss allegedly suffered by the applicants as a result of acts of corruption committed by a servant of the Commission.

Operative part of the order

1. *The action is dismissed.*

2. *Application électronique industrielle moderne (AEIM) and Mr Philippe Kazenas shall pay the costs.*

([1]) OJ C 371, 10.10.2016.

Order of the General Court of 1 February 2018 — Collins v Parliament

(Case T-919/16) ([1])

(Privileges and immunities — Member of the European Parliament — Decision not to defend the privileges and immunities — Action manifestly inadmissible — Manifest lack of jurisdiction — Action manifestly lacking any foundation in law)

(2018/C 123/29)

Language of the case: English

Parties

Applicant: Jane Maria Collins (Hotham, United Kingdom) (represented by: I. Anderson, solicitor)

Defendant: European Parliament (represented by: S. Alonso de León and M. Dean, Agents)

Re:

Concerning, first, an action under Article 263 TFEU for the annulment of the decision of the European Parliament of 25 October 2016 not to defend the immunity and privileges of the applicant, secondly, an action under Article 268 TFEU seeking compensation for the damage allegedly incurred as a result of that decision and, thirdly, a request that the General Court should rule on the request for defence of the immunity and privileges of the applicant

Operative part of the order

1. *The action is dismissed.*

2. *Jane Maria Collins is ordered to bear her own costs and to pay those of the European Parliament.*

(1) OJ C 70, 6.3.2017.

Action brought on 12 December 2017 — PV v Commission

(Case T-786/16)

(2018/C 123/30)

Language of the case: French

Parties

Applicant: PV (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Commission

Form of order sought

— Declare this application admissible and well-founded;

Consequently, order:

— the annulment of the contested decisions of 31 May 2016 and 5 July 2016 on the deductions from salary, in respect of which the applicant brought claims under Article 90(2) of the Staff Regulations on 29 July 2016 (R/492/16) and 30 July 2016 (R/493/16) respectively, both of which were rejected on 28 November 2016;

— the annulment of the contested decisions of 15 September 2016 and 11 July 2016 on the deductions from salary and the settling of the salary at zero with effect from July 2016, in respect of which the applicant brought a claim under Article 90(2) of the Staff Regulations on 19 September 2016 (R/496/16), which was rejected on 17 January 2017;

— the annulment of the contested decision of 21 September 2016 informing the applicant of an amalgamated debt of EUR 42 704,74 to the Commission, in respect of which a claim under Article 90(2) of the Staff Regulations was brought on 8 November 2016 (R/556/16) and rejected on 17 January 2017;

— the annulment of the contested debit note No 324417009991 of 20 July 2017 in the amount of EUR 42 704,74, demanding payment of the disputed debt of EUR 42 704,74, in respect of which a claim under Article 90(2) of the Staff Regulations was brought on 31 July 2017 (R/346/17) and rejected on 29 November 2017;

— the annulment of the revocation decision made by the tripartite Appointing Authority on 26 July 2016 against which the applicant brought a claim under Article 90(2) of the Staff Regulations, made on 3 October 2016 (R/510/16), which was rejected on 2 February 2017, and of the disciplinary procedure CMS 13/087 in all aspects;

— compensation for the loss suffered as a result of the psychological harassment in DG Employment, DG Budget, DG Interpretation and jointly by the Medical Service, PMO and DG HR, the first incident of harassment dating back to October 2008;

— the annulment of all the applicant's 2014, 2015 and 2016 appraisal reports due to harassment in DG SCIC;

and award the following damages on the basis of Article 340 TFEU:

— order compensation of EUR 889 000 in respect of the non-pecuniary harm and of EUR 132 828,67 in respect of the pecuniary harm suffered by the applicant as a result of those contested decisions, estimated, without prejudice to reassessment of the sum of EUR 1 021 828,67, together with late-payment interest until the date of settlement in full;

in the alternative, in the light of the harassment suffered and the 'intentionally false statements' used, which means that such irregularities cannot be tolerated by the EU legal order:

— the annulment of all the other claims for deductions from salary for the period from March 2015 to July 2016 — namely 12 decisions of 9.2.2015, 5.5.2015, 24.5.2015, 1.10.2015, 12.11.2015, 15.1.2016, 22.4.2016, 31.5.2016, 5.7.2016, 16.9.2016 and 11.7.2016 and all the rejections of his applications for annulment, namely decisions R/1110/14 of 11.3.2015, R/225/15 of 3 July 2015, R/292/15 of 23 July 2015, R/376/15 of 18 August 2015, R/419/15 of 25 September 2015, R/496/15 of 23 October 2015, R/787/15 and R/788/16 and R/71/16 of 21 March 2016, R/282/16 of 12 September 2016;

— the annulment of all the rejection decisions concerning the claims in respect of the appraisal procedures, namely the rejections R/1100/14 of 12 March 2015, R/313/15 of 11 August 2015, R/676/15 of 13 October 2015, R/127/16 and R/128/16 of 7 June 2016 and R/342/16 of 21 September 2016;

— the annulment of all the rejections of the applications for assistance — Article 24 of the Staff Regulations — of 23 October 2014, 20 January 2015, 20 March 2015, 30 July 2015 (application D/322/15), 15 March 2016 (application D/776/15) and 18 May 2016 respectively;

— the annulment of all the 'medical opinions' on unauthorised absences of Dr [X] of 16 and 18 July 2018 [sic], 8 August 2014, 4 September 2014, 4 December 2014, 4 February 2015, 13 April 2015, 4 June 2015, 11 August 2015, 14 October 2015, 4 December 2015, 5 February 2016, 22 March 2016, 18 April 2016, 3 June 2016, 30 June 2016 and 26 July 2016;

— the annulment of the 'medical opinions' of 27 June 2014 of Dr [X] and of 10 October 2014 of Dr [Y] which returned the applicant to those harassing him;

— the annulment of the rejection of the administrative claim R/182/16 of 14 July 2016 brought on 22 March 2016 concerning an unauthorised absence of 16 and 17 March 2016 at his home;

— the annulment of all the debt letters of 10 March 2015, 11 May 2015, 10 June 2015, 11 August 2015, 13 November 2015, 9 December 2015, 18 July 2016 respectively and the letters giving pre-notification of the debit note of 21 June 2016 and 21 September 2016;

and in any event:

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 1, 3, 4 and 31(1) of the Charter of Fundamental Rights of the European Union and Articles 1e, point 2, and 12a of the Staff Regulations of Officials of the European Union enshrining the prohibition of psychological harassment.

2. Second plea in law, alleging infringement of Articles 21a, 22b and 23 of the Staff Regulations on the prohibition of the commission of unlawful acts.

3. Third plea in law, alleging infringement of the principle of the duty of care and assistance, infringing Article 24 of the Staff Regulations.

4. Fourth plea in law, alleging infringement of Article 59 and incorrect interpretation of Article 60 of the Staff Regulations.

5. Fifth plea in law, alleging infringement of Articles 41 and 48 of the Charter of Fundamental Rights of the European Union concerning impartial treatment and the right to be heard respectively, the rights of the defence and of [Article] 3 of Annex IX to the Staff Regulations concerning the right to be heard by the Appointing Authority before referral to the Disciplinary Board and in accordance with the case-law in *Kerstens* v *Commission* (judgment of 14 February 2017, *Kerstens* v *Commission*, T-270/16 P, not published, EU:T:2017:74).

The applicant also seeks the award of damages of EUR 889 000 in respect of non-pecuniary harm and of EUR 132 828,67 in respect of pecuniary harm in accordance with Article 340 TFEU.

Action brought on 29 January 2018 — UZ v Parliament

(Case T-47/18)

(2018/C 123/31)

Language of the case: French

Parties

Applicant: UZ (represented by: J.-N. Louis, lawyer)

Defendant: European Parliament

Form of order sought

— Declare and rule,

— that the decision of the Secretary-General of the European Parliament of 27 February 2017 to impose on him the disciplinary penalty of a reduction in grade from grade AD 13, step 3, to grade AD 12, step 3, with effect from 1 March 2017 and the setting of his promotion points acquired at grade AD 13 to zero is annulled;

— that the decision rejecting his application for assistance is annulled;

— that the European Parliament is ordered to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 41 of the Charter of Fundamental Rights of the European Union and of Article 3 and 22 of Annex IX to the Staff Regulations of Officials of the European Union ('the Staff Regulations'), in that the applicant was not heard by the Appointing Authority for its decision under Article 3 of Annex IX or before rejecting the applicant's application for assistance under Article 24 of the Staff Regulations.

2. Second plea in law, alleging infringement of Article 9, 10 and 16 of Annex IX to the Staff Regulations, in that the contested disciplinary decision infringes the principle of proportionality and imposes on the applicant an overall penalty not provided for in Annex IX of the Staff Regulations, namely a reduction in grade, the withdrawal of promotion points and the applicant's exclusion from any managerial task.

3. Third plea in law, alleging irregularity in the work of the Disciplinary Board, in that not only was that Board improperly seised of the matter without the applicant being heard in advance, but it also disregarded, throughout the proceedings, the rights of the defence.

4. Fourth plea in law, alleging infringement of Article 24 of the Staff Regulations, in particular in so far as the Appointing Authority failed to hear the applicant before rejecting the applicant's application for assistance.

Action brought on 31 January 2018 — Fashion Energy v EUIPO — Retail Royalty (1st AMERICAN)

(Case T-54/18)

(2018/C 123/32)

Language in which the application was lodged: English

Parties

Applicant: Fashion Energy Srl (Milan, Italy) (represented by: T. Müller, F. Togo, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Retail Royalty Co. (Las Vegas, Nevada, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Application for EU figurative mark 1st AMERICAN — Application for registration No 8 622 078

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 15 November 2017 in Case R 693/2017-2

Form of order sought

The applicant claims that the Court should:

— stay proceedings pursuant to Art. 69(d) of the Rules of Procedure of the General Court until final and binding decision has been taken on the request for partial revocation against opposition mark EUTM 005066113;

— annul the contested decision;

— order EUIPO and the other party to pay the costs incurred by the Applicant.

Pleas in law

— Infringement of the principle of *audi alteram partem*;

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

Action brought on 6 February 2018 — Aeris Invest v SRB

(Case T-62/18)

(2018/C 123/33)

Language of the case: Spanish

Parties

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

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Annul the decision of the Appeal Panel of the Single Resolution Board in Case 43/2017 of 28 November 2017, as well as confirmatory Decision SRB/CM01/ARES(2017)4898090 of 6 September 2017; and

— Order the Single Resolution Board to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Decision SRB/ES/2017/01 on public access to the Single Resolution Board documents ('the Access Decision') infringes Article 90 of Regulation 80/2014 and Article 4 of Regulation 1049/2001 in that, first, it makes provisions ultra vires concerning the right of access to documents and, second, it creates exceptions to the right of access to documents which are not included in Regulation No 1049/2001. Thus, since its legal base is inapplicable under Article 277 TFEU, the Panel's decision must be annulled.

2. Second plea in law, alleging that the Panel's decision infringes Article 296 TFEU in that it merely claims, in vague and general terms, that disclosure of the full text of the 2016 Plan, the Resolution Decision and the Valuation Report infringes Article 4(1)(a) and 4(2) of Regulation 1049/2001.

3. Third plea in law, alleging that the Panel's decision infringes Article 15 of the Treaty on the functioning of the European Union, Article 42 of the Charter of Fundamental Rights of the European Union and Article 4(1)(a) of Regulation No 1049/2001, in that (i) the resolution policy for credit institutions is not a valid exception for restricting the fundamental right to access to documents, (ii) the requirements of Article 4(1)(a) of Regulation No 1049/2001 are not met, and (iii) the valuation of the interests at stake makes it necessary to grant access to the documents requested.

4. Fourth plea in law, alleging that the Panel's decision infringes Article 15 of the Treaty on the functioning of the European Union, Article 42 of the Charter of Fundamental Rights of the European Union and Article 4(2) of Regulation No 1049/2001, in that granting full access to the Resolution Decision, the Valuation Report and the 2016 Plan (i) does not affect the commercial interests of natural and legal persons and (ii) in any event, the weighing up of the interests at stake comes down in favour of granting access to the documents.

5. Fifth plea in law, alleging that the Panel's decision infringes Article 15 TFEU and Article 88 of Regulation No 806/2014, by denying access to information which is not protected by professional secrecy provided that (i) there exists no presumption of confidentiality pursuant to Article 88 of Regulation No 806/2014 and Article 339 TFEU and (ii) even if a presumption of confidentiality did exist, it would not apply because the documents are being requested for use in the context of legal proceedings.

6. Sixth plea in law, alleging that the Panel's decision amounts to misuse of power, in so far as it denies the applicant full access to the 2016 Plan claiming that that plan 'is fully covered by the exceptions set out in the third indent of Article 4 (1)(a), Article 4(1)(c) and Article 4(2) [of the Access Decision]' whereas, in fact, there are credible reasons for believing that the reason for that denial is none other than to hide the mistakes, gaps and shortcomings vitiating that plan.

Order of the General Court of 7 February 2018 — Alfa Laval Flow Equipment (Kunshan) v Commission

(Case T-204/17) ([1])

(2018/C 123/34)

Language of the case: Swedish

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

([1]) OJ C 161, 22.5.2017.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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