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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Eighth Chamber) of 21 March 2018 (request for a preliminary ruling from the Juzgado de lo Social No 2 de Cádiz — Spain) — Moisés Vadillo González v Alestis Aerospace SL

(Case C-252/17) ([1])

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Insufficient information regarding the factual and legal context of the dispute in the main proceedings and lack of grounds justifying why an answer to the questions referred is necessary — Manifest inadmissibility)

(2018/C 190/02)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 2 de Cádiz

Parties to the main proceedings

Applicant: Moisés Vadillo González

Defendant: Alestis Aerospace SL

Intervener: Ministerio Fiscal

Operative part of the order

The request for a preliminary ruling made by the Juzgado de lo Social No 2 de Cádiz (Social Court No 2, Cádiz, Spain), by decision of 8 May 2017, is manifestly inadmissible.

([1]) OJ C 256, 7.8.2017.

Order of the Court (Sixth chamber) of 22 March 2018 (request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 2 de Zaragoza — Spain) — Pilar Centeno Meléndez v Universidad de Zaragoza

(Case C-315/17) ([1])

(Reference for a preliminary ruling — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — Rules for horizontal career progression — Grant of remuneration supplement — National legislation excluding non-established civil servants — Definition of 'employment conditions' and 'objective reasons')

(2018/C 190/03)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 2 de Zaragoza

Parties to the main proceedings

Applicant: Pilar Centeno Meléndez

Defendant: Universidad de Zaragoza

Operative part of the order

Clause 4(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which restricts participation in the regime for horizontal career progression of administrative and technical staff of the University of Zaragoza (Spain) and, accordingly, receipt of the remuneration supplement ensuing from participation in that regime to career civil servants and permanent contract agents, to the exclusion, in particular, of individuals employed as non-established civil servants.

([1]) OJ C 269, 14.8.2017.

Order of the Court (Sixth Chamber) of 16 January 2018 (request for a preliminary ruling from the Varhoven kasatsionen sad — Bulgaria) — PM v AH

(Case C-604/17) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Area of freedom, security and justice — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Jurisdiction of a court of a Member State to hear and determine an action relating to parental responsibility where the child is not resident in the territory of that State — Jurisdiction in matters relating to maintenance obligations — Regulation (EC) No 4/2009)

(2018/C 190/04)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Parties to the main proceedings

Applicant: PM

Defendant: AH

Operative part of the order

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a court of a Member State with jurisdiction, under Article 3(1)(b) of that regulation, to hear and determine an application for divorce between two spouses who are nationals of that Member State does not have jurisdiction to rule on rights of custody and rights of access in respect of the spouses' child in the case where, at the time when the court is seised, that child is habitually resident in another Member State, that the conditions for such jurisdiction, under Article 12 of that regulation, are not satisfied by that court, and that, on account of the circumstances of the main proceedings, it follows that neither does that court have such jurisdiction under Articles 9, 10 or 15 of that regulation. Furthermore, that court does not satisfy the conditions, laid down in Article 3(d) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, for having jurisdiction to rule on an application relating to maintenance.

([1]) OJ C 22, 22.1.2018.

Appeal brought on 21 November 2017 by Grupo Osborne S.A. against the judgment of the General Court (Seventh Chamber) delivered on 20 September 2017 in Case T-350/13, Jordi Nogués v EUIPO — Grupo Osborne (BADTORO)

(Case C-651/17 P)

(2018/C 190/05)

Language of the case: Spanish

Parties

Appellant: Grupo Osborne S.A. (represented by: J.M. Iglesias Monravá, abogado)

Other parties to the proceedings: Jordi Nogués S.L. and European Union Intellectual Property Office

By order of 12 April 2018, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Grupo Osborne S.A. to bear its own costs.

Appeal brought on 21 November 2017 by Grupo Osborne S.A. against the judgment of the General Court (Seventh Chamber) delivered on 20 September 2017 in Case T-386/15, Jordi Nogués v EUIPO — Grupo Osborne (BADTORO)

(Case C-652/17 P)

(2018/C 190/06)

Language of the case: Spanish

Parties

Appellant: Grupo Osborne S.A. (represented by: J.M. Iglesias Monravá, abogado)

Other parties to the proceedings: Jordi Nogués S.L. and European Union Intellectual Property Office

By order of 12 April 2018, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Grupo Osborne S.A. to bear its own costs.

Appeal brought on 24 November 2017 by RF against the order of the General Court (Sixth Chamber) delivered on 13 September 2017 in Case T-880/16, RF v Commission

(Case C-660/17 P)

(2018/C 190/07)

Language of the case: Polish

Parties

Appellant: RF (represented by: K. Komar-Komarowski, legal adviser)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the order under appeal and refer the case back to the General Court in order that it may re-examine the case and give a ruling on the merits, subject to appeal;

— alternatively — if the Court finds that the conditions for giving final judgment are satisfied in the present case — set aside the order under appeal and uphold the forms of order sought at first instance in their entirety;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

(1) The General Court infringed the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union, read in conjunction with Article 53 thereof, through misinterpretation of those provisions. In finding that the concepts of 'force majeure' and 'unforeseeable circumstances' were identical in terms of their meaning, the General Court infringed the principle of the reasonable legislator. Such a reading of those concepts also runs counter to the aim of Article 45 of the Statute, which is intended to compensate for any differences arising as a result of distance (between the place of residence of the parties and the location of the Court). Consequently, the General Court unreasonably failed to take account of the unforeseeable circumstances preventing the appellant from delivering the (original) paper version of the application on time.

(2) The General Court infringed Article 126 of its Rules of Procedure of 4 March 2015 by misapplying that provision. Despite there being no grounds for doing so, the General Court applied Article 126 of those Rules, unreasonably declaring the appellant's action manifestly inadmissible. The General Court's infringement of that provision was the inevitable and obvious result of its infringement of Article 45 of the Statute, read in conjunction with Article 53 thereof.

(3) The General Court incorrectly found that the appellant had not proved the existence of unforeseeable circumstances as referred to in the second paragraph of Article 45 of the Statute. The appellant proved the existence of unforeseeable circumstances. It not only submitted more evidence of those circumstances than was necessary but submitted all the evidence available to it in general. As regards ensuring the timely delivery of the parcel containing the application, the appellant exercised all the diligence that could reasonably be required of it. From the moment of sending the parcel, the appellant ceased to have any influence on its delivery process; from that point, any circumstances affecting the date of delivery were wholly outside the appellant's control.

(4) The General Court infringed Article 1, Article 6(1) and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, by hindering access to the Court and discriminating between the parties on the basis of their place of residence or establishment. The adoption by the General Court of a single extension on account of distance for all the Member States of the European Union has the effect of hindering access to the Court for parties residing or established at a considerable distance from the location of the Court, including in the provinces of their countries, and consequently constitutes discrimination between parties to proceedings depending on their place of residence.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 20 February 2018 — Logistik XXL GmbH v CMR Transport & Logistik

(Case C-135/18)

(2018/C 190/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Logistik XXL GmbH

Defendant: CMR Transport & Logistik

Questions referred

1. In the case of a judgment which orders the defendant, without restriction and unconditionally, to make a payment and against which an ordinary appeal has been lodged in the Member State of origin, or in the case of which the time limit for bringing such an appeal has not yet expired, does the order of the court of origin to the effect that that judgment is provisionally enforceable only on provision of a security constitute a condition within the meaning of point 4.4 of the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1])?

2. If Question 1 is answered in the affirmative, is this also the case where, in the Member State of origin, the judgment declared to be provisionally enforceable may be the subject of protective enforcement even though no security has been provided?

3. If Question 2 is answered in the affirmative:

   (a) How is the court of origin to proceed, in the case of a judgment which contains an enforceable obligation and against which an ordinary appeal has been lodged in the Member State of origin, or in the case of which the time limit for bringing such an appeal has not yet expired, with regard to the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, where that judgment, pursuant to its operative part or pursuant to a statutory provision, may not be enforced until after a security has been provided?

   (b) In those circumstances, must the court of origin issue the certificate, using the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, without furnishing the particulars stipulated in points 4.4.1. to 4.4.4 of that form?

   (c) In those circumstances, may the court of origin issue the certificate, using the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in such a way as to include — in point 4.4.1. or point 4.4.3. of that form, for example — additional information on the required provision of a security and to attach to that form the text of the relevant statutory provision?

4. If Question 2 is answered in the negative:

   (a) How is the court of origin to proceed with regard to the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, where, pursuant to a statutory provision in the Member State of origin, protective enforcement may not be pursued until after a certain period of time has elapsed?

   (b) In those circumstances, may the court of origin issue the certificate, using the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in such a way as to include — in point 4.4.1. or point 4.4.3. of that form, for example — additional information on that period of time and to attach to that form the text of the relevant statutory provision?

(1) OJ 2012 L 351, p. 1.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León (Spain) lodged on 27 February 2018 — Violeta Villar Láiz v Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS)

(Case C-161/18)

(2018/C 190/09)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla y León

Parties to the main proceedings

Appellant: Violeta Villar Láiz

Respondent: Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS)

Questions referred

1. Under Spanish law, in order to calculate a retirement pension, a percentage based on the number of years for which contributions have been paid throughout the person's entire working life must be applied to the reference basis, which is calculated on the basis of earnings in the most recent years. Must a rule of national law, such as that in Article 247(a) and Article 248(3) of the Ley General de la Seguridad Social (General Law on Social Security), which reduces the number of qualifying years for the purpose of applying the percentage in the case of periods of part-time working, be considered contrary to Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security? (1) Does Article 4(1) of Directive 79/7/EEC require that the number of years of contributions that are taken into account in order to determine the percentage to be applied in calculating the retirement pension be determined in the same way for full-time workers and part-time workers?

2. Must a rule of national law such as that in dispute in the present proceedings be interpreted as also being contrary to Article 21 of the Charter of Fundamental Rights of the European Union, thus requiring the national court to give full effect to the Charter and to refrain from applying the disputed provisions of national law, without requesting or awaiting the prior setting aside of the provisions by legislative or other constitutional means?

(1) OJ 1979 L 6, p. 24.

Reference for a preliminary ruling from the Court of Appeal (United Kingdom) made on 5 March 2018 — Safeway Ltd v Andrew Richard Newton, Safeway Pension Trustees Ltd

(Case C-171/18)

(2018/C 190/10)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: Safeway Ltd

Defendants: Andrew Richard Newton, Safeway Pension Trustees Ltd

Question referred

Where the rules of a pension scheme confer a power, as a matter of domestic law, upon the amendment of its Trust deed, to reduce retrospectively the value of both men's and women's accrued pension rights for a period between the date of a written announcement of intended changes to the scheme and the date when the Trust deed is actually amended, does Article 157 of the Treaty on the Functioning of the European Union (previously and at the material time Article 119 of the Treaty of Rome) require both men's and women's accrued pension rights to be treated as indefeasible during that period, in the sense that their pension rights are protected from retrospective reduction by the use of the domestic law power?

Reference for a preliminary ruling from the Court of Appeal (United Kingdom) made on 5 March 2018 — AMS Neve Ltd, Barnett Waddingham Trustees, Mark Crabtree v Heritage Audio SL, Pedro Rodríguez Arribas

(Case C-172/18)

(2018/C 190/11)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicants: AMS Neve Ltd, Barnett Waddingham Trustees, Mark Crabtree

Defendants: Heritage Audio SL, Pedro Rodríguez Arribas

Questions referred

In circumstances where an undertaking is established and domiciled in Member State A and has taken steps in that territory to advertise and offer for sale goods under a sign identical to an EU trade mark on a website targeted at traders and consumers in Member State B:

i) does an EU trade mark court in Member State B have jurisdiction to hear a claim for infringement of the EU trade mark in respect of the advertisement and offer for sale of the goods in that territory?

ii) if not, which other criteria are to be taken into account by that EU trade mark court in determining whether it has jurisdiction to hear that claim?

iii) in so far as the answer to (ii) requires that EU trade mark court to identify whether the undertaking has taken active steps in Member State B, which criteria are to be taken into account in determining whether the undertaking has taken such active steps?

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 16 March 2018 — KN v Minister for Justice and Equality

(Case C-191/18)

(2018/C 190/12)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: KN

Defendant: Minister for Justice and Equality

Questions referred

1. Having regard to:

   a) The giving by the United Kingdom of notice under Article 50 of the TEU;

   b) The uncertainty as to the arrangements which will be put in place between the European Union and the United Kingdom to govern relations after the departure of the United Kingdom; and

   c) The consequential uncertainty as to the extent to which KN would, in practice, be able to enjoy rights under the Treaties, the Charter or relevant legislation, should he be surrendered to the United Kingdom and remain incarcerated after the departure of the United Kingdom,

   Is a requested Member State required by European Union Law to decline to surrender to the United Kingdom a person the subject of a European arrest warrant, whose surrender would otherwise be required under the national law of the Member State,

   (i) in all cases?

   (ii) In some cases, having regard to the particular circumstances of the case?

   (iii) In no cases?

2. If the answer to Question 1 is that set out at (ii) what are the criteria or considerations which a court in the requested Member State must assess to determine whether surrender is prohibited?

3. In the context of Question 2 is the court of the requested Member State required to postpone the final decision on the execution of the European arrest warrant to await greater clarity about the relevant legal regime which is to be put in place after the withdrawal of the relevant requesting Member State from the Union

   (i) in all cases?

   (ii) In some cases, having regard to the particular circumstances of the case?

   (iii) In no cases?

4. If the answer to Question 3 is that set out at (ii) what are the criteria or considerations which a court in the requested Member State must assess to determine whether it is required to postpone the final decision on the execution of the European arrest warrant?

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 19 March 2018 — Jadran Dodič v BANKA KOPER, ALTA INVEST

(Case C-194/18)

(2018/C 190/13)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Appellant: Jadran Dodič

Respondents: BANKA KOPER, ALTA INVEST

Questions referred

1. Is Article 1(1) of Council Directive 2001/23/EC ([1]) to be interpreted as meaning that a transfer, such as that which took place in the circumstances of the present case, relating to financial instruments and other client assets (specifically, transferable securities), the accounts relating to clients' intangible debt securities and other financial and ancillary services, as well as the records, must be deemed to be a legal transfer of an undertaking or of part of an undertaking, bearing in mind that, after the first respondent ceased to engage in business as a stock-exchange intermediary, the decision whether provision of such services was to be entrusted to the second defendant was, ultimately, a matter for the clients?

2. In the circumstances described above, is the number of clients who, following the cessation of the first respondent's activities as a stock-exchange intermediary, now use the second respondent for the provision of those services, relevant?

3. Is the fact that the first respondent continues to provide services to the clients as a dependant financial promotion company and, in performing that role, cooperates with the second respondent, relevant in any way for the purpose of determining whether there was a transfer of a business or an undertaking?

([1]) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) — lodged on 19 March 2018 — Raúl Vítor Soares de Sousa v Autoridade Tributária e Aduaneira

(Case C-196/18)

(2018/C 190/14)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Raúl Vítor Soares de Sousa

Defendant: Autoridade Tributária e Aduaneira

Question referred

Does EU law, and Article 110 TFEU in particular, preclude a tax provision such as Article 2(1)(a) and (b) of the URT [(Unitary Road Tax)] Code from imposing a higher tax charge on vehicles of the same make, model, fuel type and age on the ground that they were first registered in other Member States?

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 20 March 2018 — CeDe Group AB v KAN Sp. z o.o. in bankruptcy

(Case C-198/18)

(2018/C 190/15)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: CeDe Group AB

Defendant: KAN Sp. z o.o. in bankruptcy

Questions referred

1. Must Article 4 of Regulation No 1346/2000 ([1]) be interpreted as meaning that it applies to an action which is brought before a Swedish court by the liquidator of a Polish company — which is the subject of insolvency proceedings in Poland — against a Swedish company for payment of goods delivered under an agreement into which the companies entered before that insolvency?

2. If the answer to the first question is in the affirmative, is it of any importance that, during the proceedings before the courts, the liquidator transfers the claim at issue to a company which enters the proceedings in the place of the liquidator?

3. If the answer to the second question is in the affirmative, is it of any importance if the company which has entered the proceedings thereafter becomes insolvent?

4. If the defendant in the proceedings before the courts in the situation set out in the first question claims that the liquidator's claim for payment should be set off against a counterclaim which arises from the same agreement as the claim, is that set-off situation covered by Article 4(2)(d)?

5. Is the relationship between Article 4(2)(d) and Article 6(1) of Regulation No 1346/2000 to be interpreted as meaning that Article 6(1) applies only if it is not possible under the law of the State of the opening of proceedings to apply a set-off, or can Article 6(1) also apply to other situations, for example where there is only a certain difference between the level of possibility of set-off in the legal orders in question or where there are no differences at all but set-off is nonetheless refused in the State of the opening of proceedings?

(1) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

Action brought on 23 March 2018 — European Commission v Republic of Austria

(Case C-209/18)

(2018/C 190/16)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

1. hold that, by upholding requirements with regard to registered offices for patent law companies under Paragraph 29a(7), in conjunction with Paragraph 2(1)(c), of the Patentanwaltsgesetz (Law on patent lawyers; 'the PatAnwG') and for civil engineering companies under Paragraph 25(1) of the Ziviltechnikergesetz (Law on civil engineers; 'the ZTG'), with regard to the legal form and the share capital ownership of civil engineering companies under Paragraphs 26(1) and 28(1) of the ZTG, patent law companies under Paragraph 29a(1), (2) and (11) of the PatAnwG and veterinary companies under Paragraph 15a(1) of the Tierärztegesetz (Law on veterinarians) and the limitation on multidisciplinary activities for civil engineering companies under Paragraph 21(1) of the ZTG and for patent law companies under Paragraph 29(6) of the PatAnwG, the Republic of Austria has infringed its obligations under Article 14(1), Article 15(1), (2)(b) and (c) and (3), and Article 25 of the Services Directive (1) and under Articles 49 TFEU and 56 TFEU;

2. order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant claims as follows:

Austrian law still contains requirements with regard to the registered offices of professional companies of civil engineers and patent lawyers that infringe Article 14(1)(b) of the Services Directive. The provisions discriminate directly through the registered office of the company and indirectly through the nationality of the company's shareholders.

The requirements with regard to the legal form and the share capital ownership of companies of civil engineers, patent lawyers and veterinarians impede both Austrian service providers as well as the establishment of new service providers from other Member States in so far as they limit the capacity of those providers to open a second branch in Austria if they do not adapt their organisational structures in order to comply with those provisions.

The Austrian conditions requiring those particular professional companies to confine their activities to professional patent law services and civil engineering services infringe Article 25 of the Services Directive, as they limit both the establishment in Austria of second branches of multidisciplinary professional companies from other Member States as well as the establishment of first branches of such Austrian companies. This impedes the development of new, innovative business models that would place undertakings in a position to offer a wider range of services.

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

Request for a preliminary ruling from the District Court for Prague 8 (Czech Republic) lodged on 26 March 2018 — Libuše Králová v Primera Air Scandinavia

(Case C-215/18)

(2018/C 190/17)

Language of the case: Czech

Referring court

District Court for Prague 8

Parties to the main proceedings

Applicant: Libuše Králová

Defendant: Primera Air Scandinavia

Questions referred

1. Did a contractual relationship exist between the applicant and the defendant for the purposes of Article 5(1) of [Council] Regulation No 44/2001 ([1]) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, even though no contract had been concluded between the applicant and the defendant and the flight was part of a package of services provided on the basis of a contract between the applicant and a third party (travel agency)?

2. Can that relationship be qualified as a consumer relationship in accordance with Section 4, Article 15 to Article 17 of [Council] Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?

3. Does the defendant have legal capacity to be sued in an action seeking satisfaction of the claims arising from 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]) OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from the High Court (Ireland) made on 27 March 2018 — Minister for Justice and Equality v LM

(Case C-216/18)

(2018/C 190/18)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Minister for Justice and Equality

Defendant: LM

Questions referred

1. Notwithstanding the conclusions of the Court of Justice in Aranyosi and Caldararu, where a national court determines there is cogent evidence that conditions in the issuing Member State are incompatible with the fundamental right to a fair trial because the system of justice itself in the issuing Member State is no longer operating under the rule of law, is it necessary for the executing judicial authority to make any further assessment, specific and precise, as to the exposure of the individual concerned to the risk of unfair trial where his trial will take place within a system no longer operating within the rule of law?

2. If the test to be applied requires a specific assessment of the requested person's real risk of a flagrant denial of justice and where the national court has concluded that there is a systemic breach of the rule of law, is the national court as executing judicial authority obliged to revert to the issuing judicial authority for any further necessary information that could enable the national court discount the existence of the risk to an unfair trial and if so, what guarantees as to fair trial would be required?

Request for a preliminary ruling from the Cour de cassation (France) lodged on 29 March 2018 — GRDF SA v Eni Gas & Power France SA, Direct énergie, Commission de régulation de l'énergie, Procureur général près la Cour d'appel de Paris

(Case C-236/18)

(2018/C 190/19)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: GRDF SA

Respondents: Eni Gas & Power France SA, Direct énergie, Commission de régulation de l'énergie, Procureur général près la Cour d'appel de Paris

Question referred

Is Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009, ([1]) and in particular Article 41(11) thereof, to be interpreted as requiring that a regulatory authority, when settling a dispute, must have power to issue a decision which applies to the whole of the period to which that dispute relates, regardless of the date on which that dispute arose between the parties, in particular by drawing the consequences of the non-conformity of a contract with the provisions of the directive by means of a decision taking effect as regards the whole of the contractual period?

([1]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

Request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 3 April 2018 — Pauline Stiernon, Marion Goraguer, Muriel Buccarello, Clémentine Vasseur, Manon Pirotton, Anissa Quotb v Etat belge, SPF Santé publique, Communauté française de Belgique

(Case C-237/18)

(2018/C 190/20)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Pauline Stiernon, Marion Goraguer, Muriel Buccarello, Clémentine Vasseur, Manon Pirotton, Anissa Quotb

Defendants: Etat belge, SPF Santé publique, Communauté française de Belgique

Question referred

Inasmuch as Royal Order of 02/07/2009 establishing the list of allied health professions does not list psychomotor therapy as an allied health profession, although an undergraduate degree in psychomotor therapy has been established in Belgium, thereby restricting the freedom of movement of persons, the freedom to choose an occupation and the right to engage in work, does [that Royal Order] infringe Articles 20, 21 and 45 of the Treaty on the Functioning of the European Union and Article 15 of the Charter of Fundamental Rights?

Appeal brought on 4 April 2018 by Larko Geniki Metalleftiki kai Metallourgiki AE against the judgment of the General Court (Sixth Chamber) delivered on 1 February 2018 in Case T-423/14, Larko v Commission

(Case C-244/18 PP)

(2018/C 190/21)

Language of the case: Greek

Parties

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

Other party to the proceedings: European Commission

Form of order sought

— Grant the appeal.

— Refer the case back to the General Court for reassessment, reserving the costs of the proceedings.

Pleas in law and main arguments

In support of its appeal, the appellant relies on the following four grounds of appeal:

1. **First ground of appeal, alleging infringement of Article 107(1) TFEU in respect of the conclusion that Measure No 3 conferred an advantage on the appellant, misapplying the private investor principle.**

2. **Second ground of appeal, alleging infringement of Article 107(1) TFEU and Article 296(2) TFEU in respect of the conclusion that Measures No 2 and 4 conferred an advantage on the appellant.** With regard to Measure No 2 (2008 guarantee): misinterpretation of the temporal criterion in the concept of undertaking in difficulty. Misinterpretation of the criterion of remuneration of the guarantee. With regard to Measure No 4 (2010 guarantee): (a) failure to state reasons regarding the granting of the guarantee as a current practice; (b) failure to state reasons regarding the irreparable harm that the appellant claims to have suffered; (c) failure to state reasons and infringement of Article 107(1) TFEU and of the principle of protection of legitimate expectations as regards the conditions of the guarantee and the amount of the commission; (d) failure to state reasons regarding the particular position of the National Bank of Greece SA (ETE) as private shareholder.

3. **Third ground of appeal, alleging infringement of Article 107(3)(b) and Article 296(2) TFUE in respect of the conclusion that Measure No 6 was incompatible with the common market.** (a) As regards the application of the 2011 Temporary Framework; (b) as regards the application of the Rescue and Restructuring Guidelines.

4. **Fourth ground of appeal, alleging infringement of Article 108(2) TFEU, Article 14(1) of Regulation No 659/1999 ([1]) and Article 296(2) TFEU regarding the quantification of the aid amount to be recovered by Measures 2, 4 and 6**. As regards the points accepted in the judgment under appeal concerning the specificities of the State aid in the form of guarantees.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 6 April 2018 by the Hellenic Republic against the judgment delivered on 1 February 2018 in Case T-506/15 Hellenic Republic v European Commission

(Case C-252/18 PP)

(2018/C 190/22)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: G. Kanellopoulos, E. Leftheriotou, A. Vasilopoulou and E. Chroni)

Other party to the proceedings: European Commission

Form of order sought

The appellant asks the Court to grant its appeal, set aside the judgment under appeal of the General Court of 1 February 2018 in Case T-506/15, in accordance with the maters specifically set out in its appeal, uphold the action brought by the Hellenic Republic on 29 August 2015 in accordance with the form of order set out in its application, annul Commission Decision 2015/1119/EU of 22 June 2015 in so far as it imposes (a) one-off and flat-rate financial corrections of EUR 313 483 531,71 for the 2009, 2010 and 2011 claim years in the sector of area-related direct aid, and (b) a flat-rate financial correction of 2 %, with regard to cross-compliance, in the 2011 claim year, and order the Commission to pay the costs of the proceeding.

Pleas in law and main arguments

In support of the appeal, the appellant relies on five grounds:

A. In so far as the judgment under appeal examines the first and second grounds of appeal, concerning the correction of 25 % of area aid (paragraphs 48-140 of the judgment under appeal).

The first ground of appeal concerns the misinterpretation and application of Article 2 of Regulation (EC) No 796/2004 of the Commission of 21 April 2004, regarding the definition of pasture, and the misapplication of Article 296 TFEU, as well as the insufficient and inadequate reasoning of the judgment under appeal.

The second ground of appeal concerns the misinterpretation and misapplication of the Guidelines (document VI/5530/1997) with respect to whether the conditions for the imposition of a 25 % financial correction are met, misinterpretation and misapplication of Article 296 TFEU and of Articles 43, 44 and 137 of Regulation No 73/2009, insufficient and contradictory reasoning of the judgment under appeal, breach of the principle of equality of arms and alteration of the summary report.

B. In so far as the judgment under appeal examines the third ground of appeal, concerning the imposition of a 5 % financial correction for weaknesses in the Land Parcel Identification System (LPIS) (paragraphs 141-162 of the judgment under appeal).

The third ground of appeal concerns breach of the principle of legality, of good administration, of the rights of defence of the person concerned, breach of the principle of proportionality, misinterpretation and misapplication of Article 296 TFEU and insufficient reasoning.

C. In so far as the judgment under appeal examines the fourth ground of appeal, concerning the imposition of a financial correction of 2 % (paragraphs 163-183 of the judgment under appeal).

The fourth ground of appeal concerns the misinterpretation and misapplication of Article 31(2) of Regulation No 1122/2009 and Article 27 of Regulation No 796/2004, inadequate reasoning of the judgment under appeal, as well as a distortion of the content of the application.

D. In so far as the judgment under appeal examines the fifth ground of appeal, relating to the cross-compliance system (paragraphs 184 to 268 of the judgment under appeal).

The fifth ground of appeal concerns the erroneous interpretation and application of Article 11 of Regulation No 885/2006 and Article 31 of Regulation No 1290/2005, as well as insufficient reasoning of the judgment under appeal.

Order of the President of the Court of 23 January 2018 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Die Länderbahn GmbH DLB v DB Station & Service AG

(Case C-344/16) ([1])

(2018/C 190/23)

Language of the case: German

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

([1]) OJ C 428, 21.11.2016.

Order of the President of the Court of 16 February 2018 — Council of the European Union v PT Wilmar Bioenergi Indonesia, PT Wilmar Nabati Indonesia, European Commission, European Biodiesel Board (EBB)

(Case C-603/16 P) ([1])

(2018/C 190/24)

Language of the case: English

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

([1]) OJ C 30, 31.1.2017.

Order of the President of the Court of 16 February 2018 — Council of the European Union v PT Pelita Agung Agrindustri, European Commission, European Biodiesel Board (EBB)

(Case C-604/16 P) ([1])

(2018/C 190/25)

Language of the case: English

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

([1]) OJ C 30, 30.1.2017.

Order of the President of the Court of 16 February 2018 — Council of the European Union v PT Ciliandra Perkasa, European Commission, European Biodiesel Board (EBB)

(Case C-605/16 P) ([1])

(2018/C 190/26)

Language of the case: English

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

([1]) OJ C 30, 30.1.2017.

Order of the President of the Court of 16 February 2018 — Council of the European Union v PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas), European Commission, European Biodiesel Board (EBB)

(Case C-606/16 P) ([1])

(2018/C 190/27)

Language of the case: English

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

([1]) OJ C 30, 30.1.2017.

Order of the President of the Fourth Chamber of the Court of 23 January 2018 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Synthon BV v Astellas Pharma Inc.

(Case C-644/16) ([1])

(2018/C 190/28)

Language of the case: Dutch

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

([1]) OJ C 86, 20.3.2017.

Order of the President of the Ninth Chamber of the Court of 2 February 2018 — European Commission v Portuguese Republic

(Case C-170/17) ([1])

(2018/C 190/29)

Language of the case: Portuguese

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

([1]) OJ C 161, 22.5.2017.

Order of the President of the First Chamber of the Court of 7 February 2018 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Heinrich Denker v Gemeinde Thedinghausen, *intervening party:* Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

(Case C-206/17) ([1])

(2018/C 190/30)

Language of the case: German

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

([1]) OJ C 249, 31.7.2017.

Order of the President of the Court of 26 January 2018 (request for a preliminary ruling from the Hanseatisches Oberlandesgericht in Bremen — Germany) — Stadtwerke Delmenhorst GmbH v Manfred Bleckwehl

(Case C-309/17) ([1])

(2018/C 190/31)

Language of the case: German

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

([1]) OJ C 318, 25.9.2017.

Order of the President of the Court of 23 February 2018 (request for a preliminary ruling from the Supreme Court — Ireland) — Execution of a European arrest warrant issued in respect of Arkadiusz Piotr Lipinski

(Case C-376/17) ([1])

(2018/C 190/32)

Language of the case: English

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

([1]) OJ C 283, 28.8.2017.

Order of the President of the Court of 8 February 2018 — European Commission v Portuguese Republic

(Case C-383/17) ([1])

(2018/C 190/33)

Language of the case: Portuguese

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

([1]) OJ C 277, 21.8.2017.

Order of the President of the Court of 7 February 2018 (request for a preliminary ruling from the Verwaltungsgericht Hamburg — Germany) — British American Tobacco (Germany) GmbH v Freie und Hansestadt Hamburg

(Case C-439/17) ([1])

(2018/C 190/34)

Language of the case: German

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

([1]) OJ C 347, 16.10.2017.

Order of the President of the Court of 26 January 2018 (request for a preliminary ruling from the Sąd Okręgowy w Warszawie — Poland) — Passengers Rights sp. z o.o. v Deutsche Lufthansa AG

(Case C-490/17) ([1])

(2018/C 190/35)

Language of the case: Polish

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

([1]) OJ C 357, 23.10.2017.

Order of the President of the Court of 15 January 2018 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Anja Oehlke, Wolfgang Oehlke v TUIfly GmbH

(Case C-533/17) ([1])

(2018/C 190/36)

Language of the case: German

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

([1]) OJ C 424, 11.12.2017.

Order of the President of the Court of 28 February 2018 — European Commission v Slovak Republic

(Case C-605/17) ([1])

(2018/C 190/37)

Language of the case: Slovak

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

([1]) OJ C 13, 15.1.2018.

Order of the President of the Court of 28 February 2018 (request for a preliminary ruling from the Landesgericht Korneuburg — Austria) — Germanwings GmbH v Emina Pedić

(Case C-636/17) ([1])

(2018/C 190/38)

Language of the case: German

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

([1]) OJ C 63, 19.2.2018.

Order of the President of the Court of 1 March 2018 — Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v European Commission, LVMH Moët Hennessy-Louis Vuitton SA, Rolex, SA, The Swatch Group SA

(Case C-3/18 P) ([1])

(2018/C 190/39)

Language of the case: English

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

([1]) OJ C 104, 19.3.2018.

GENERAL COURT

Judgment of the General Court of 16 April 2018 — Polski Koncern Naftowy Orlen v EUIPO (shape of a petrol station)

(Cases T-339/15 to T-343/15) ([1])

(European Union trade mark — Application for EU three-dimensional marks — Shape of a petrol station — Absolute ground for refusal — Distinctiveness — Article 65(4) of Regulation (EC) No 207/2009 (now Article 72(4) of Regulation (EU) 2017/1001) — Acts having fully upheld the applicant's claims — Binding nature of the grounds of an order for reference — Admissibility — Obligation to state reasons)

(2018/C 190/40)

Language of the case: Polish

Parties

Applicant: Polski Koncern Naftowy Orlen SA (Płock, Poland) (represented by: M. Siciarek, J. Rasiewicz and M. Kaczmarska, lawyers)

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

Re:

Five actions brought against the decisions of the Fifth Board of Appeal of EUIPO of 2 April 2015 (Cases R 2245/2014-5, R 2247/2014-5, R 2248/2014-5, R 2249/2014-5 and R 2250/2014-5) concerning applications for registration of three-dimensional signs formed by the shape of a petrol station as EU trade marks.

Operative part of the judgment

The Court:

1. *Orders the joinder of Cases T-339/15 to T-343/15 for the purposes of the judgment;*

2. *Dismisses the actions as inadmissible in respect of the goods and services which do not form part of the usual range of petrol stations (aviation fuel, petroleum coke, xylenes and wholesale fuel);*

3. *Annuls the decisions of the Fifth Board of Appeal of the European Union Intellectual Property Office of 2 April 2015 (Cases R 2245/2014-5, R 2247/2014-5, R 2248/2014-5, R 2249/2014-5 and R 2250/2014-5) in respect of the goods and services other than those which do not form part of the usual range of petrol stations (aviation fuel, petroleum coke, xylenes and wholesale fuel) and which are covered by the marks applied for;*

4. *Orders EUIPO to bear its own costs and to pay four fifths of the costs incurred by Polski Koncern Naftowy Orlen SA, which shall bear one fifth of its own costs.*

([1]) OJ C 279, 24.8.2015.

Judgment of the General Court of 19 April 2018 — Asia Leader International (Cambodia) v Commission

(Case T-462/15) ([1])

(Dumping — Imports of bicycles consigned from Cambodia, Pakistan and the Philippines — Extension to such imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Regulation (EU) 2015/776 — Circumvention — Transhipment — Article 13(1) and (2) and Article 18(3) of Regulation (EC) No 1225/2009 (now Article 13(1) and (2) and Article 18(3) of Regulation (EU) 2016/1036))

(2018/C 190/41)

Language of the case: English

Parties

Applicant: Asia Leader International (Cambodia) Co. Ltd (Tai Seng SEZ, Cambodia) (represented by: A. Bochon, lawyer, and R. MacLean, Solicitor)

Defendant: European Commission (represented by: J.-F. Brakeland, M. França and A. Demeneix, acting as Agents)

Re:

Action under Article 263 TFEU for annulment of Article 1(1) and (3) of Commission Implementing Regulation (EU) 2015/776 of 18 May 2015 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 502/2013 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Cambodia, Pakistan and the Philippines, whether declared as originating in Cambodia, Pakistan and the Philippines or not (OJ 2015 L 122, p. 4), to the extent that it concerns the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Asia Leader International (Cambodia) Co. Ltd to pay the costs.*

([1]) OJ C 320, 28.9.2015.

Judgment of the General Court of 23 April 2018 — Shanxi Taigang Stainless Steel v Commission

(Case T-675/15) ([1])

(Dumping — Imports of stainless steel cold-rolled flat products originating in China and Taiwan — Definitive anti-dumping duty — Implementing Regulation (EU) 2015/1429 — Article 2(7)(a) of Regulation (EC) No 1225/2009 (now Article 2(7)(a) of Regulation (EU) 2016/1036) — Normal value — Selection of the appropriate third country — Adjustments — Article 2(10)(k) of Regulation No 1225/2009 (now Article 2(10)(k) of Regulation 2016/1036) — Calculation of the dumping margin — Adjustments — Article 3(2), (6) and (7) of Regulation No 1225/2009 (now Article 3(2), (6) and (7) of Regulation 2016/1036) — Injury — Causal link)

(2018/C 190/42)

Language of the case: English

Parties

Applicant: Shanxi Taigang Stainless Steel Co. Ltd (Taiyuan, China) (represented by: N. Niejahr, lawyer, and F. Carlin, Barrister)

Defendant: European Commission (represented by: J.-F. Brakeland and A. Demeneix, Agents)

Intervener in support of the defendant: Eurofer, Association Européenne de l'Acier, ASBL (Luxembourg, Luxembourg) (represented by: J. Killick and G. Forwood, Barristers, and C. Van Haute, lawyer)

Re:

Application pursuant to Article 263 TFEU seeking the annulment in part of Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 224, p. 10).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Shanxi Taigang Stainless Steel Co. Ltd to bear its own costs and to pay those incurred by the European Commission and by Eurofer, Association européenne de l'acier, ASBL.*

(1) OJ C 38, 1.2.2016.

Judgment of the General Court of 20 April 2018 — holyGhost v EUIPO — CBM (holyGhost)

(Case T-439/16) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark holyGhost — Earlier EU word mark HOLY — 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 190/43)

Language of the case: German

Parties

Applicant: holyGhost GmbH (Munich, Germany) (represented by: M. Wiedemann and D. Engbrink, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: CBM Creative Brands Marken GmbH (Zurich, Switzerland)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 30 May 2016 (Case R 2867/2014-5), concerning opposition proceedings between CBM and holyGhost.

Operative part of the judgment

The Court:

1. *The action is dismissed;*

2. *HolyGhost GmbH is ordered to pay the costs.*

(1) OJ C 350, 26.9.2016.

Judgment of the General Court of 17 April 2018 — Şölen Çikolata Gıda Sanayi ve Ticaret v EUIPO (BOBO cornet)

(Case T-648/16) ([1])

(European Union trade mark — Opposition proceedings — Application for EU figurative mark BOBO cornet — Prior EU figurative mark OZMO cornet — 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 190/44)

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: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Elka Zaharieva (Plovdiv, Bulgaria)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 20 July 2016 (Case R 906/2015-4) concerning opposition proceedings between Şölen Çikolata Gıda Sanayi ve Ticaret and Ms Zaharieva.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Şölen Çikolata Gıda Sanayi ve Ticaret AŞ to pay the costs.*

([1]) OJ C 402, 31.10.2016.

Judgment of the General Court of 20 April 2018 — Mitrakos v EUIPO — Belasco Baquedano (YAMAS)

(Case T-15/17) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark YAMAS — Earlier EU word mark LLAMA — 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 190/45)

Language of the case: English

Parties

Applicant: Dimitrios Mitrakos (Palaio Faliro, Greece) (represented by: D. Bakopanou, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Juan Ignacio Belasco Baquedano (Viana, Spain) (represented by P. Merino Baylos, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 October 2016 (Case R 532/2016-2), relating to opposition proceedings between Mr Belasco Baquedano and Mr Mitrakos.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Dimitrios Mitrakos to pay the costs.*

(1) OJ C 63, 27.2.2017.

Judgment of the General Court of 19 April 2018 — Bernhard Rintisch v EUIPO, Compagnie laitière européenne (PROTICURD)

(Case T-25/17) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark PROTICURD — Earlier national word marks PROTI and PROTIPLUS — Earlier national figurative mark Proti Power — Relative ground for refusal — Obligation to state reasons — Article 75 of Regulation (EC) No 207/2009 (now Article 94 of Regulation (EU) 2017/1001) — Genuine use of the earlier marks — Article 42(2) and (3) of Regulation No 207/2009 (now Article 47(2) and (3) of Regulation 2017/1001) — Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001) — Goods not similar — No likelihood of confusion)

(2018/C 190/46)

Language of the case: English

Parties

Applicant: Bernhard Rintisch (Bottrop, Germany) (represented by: A. Dreyer, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Compagnie laitière européenne SA (Condé-sur-Vire, France)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 November 2016 (Case R 247/2016-4) relating to opposition proceedings between Mr Rintisch and Compagnie laitière européenne.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Bernhard Rintisch to pay the costs.*

(1) OJ C 63, 27.2.2017.

Judgment of the General Court of 13 April 2018 –Alba Aguilera and Others v EEAS

(Case T-119/17) ([1])

(Civil service — Officials — Members of the temporary staff — Members of the contract staff — Remuneration — EEAS staff posted to a third country — Article 10 of Annex X to the Staff Regulations — Annual assessment of the allowance for living conditions — Decision reducing the allowance for living conditions in Ethiopia from 30 % to 25 % — Failure to adopt general implementing provisions giving effect to Article 10 of Annex X to the Staff Regulations — Liability — Non-material damage)

(2018/C 190/47)

Language of the case: French

Parties

Applicants: Ruben Alba Aguilera (Addis Ababa, Ethiopia) and the other EEAS officials and agents whose names are listed in the annex (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European External Action Service (represented by: S. Marquardt and R. Spac, acting as Agents, and by M. Troncoso Ferrer, F.-M. Hislaire and S. Moya Izquierdo, lawyers)

Re:

Application pursuant to Article 270 TFEU seeking (i) the annulment of the EEAS decision of 19 April 2016 reducing, as of 1 January 2016, the allowance for living conditions paid to European Union staff posted to Ethiopia; and (ii), compensation in respect of the non-material damage allegedly suffered by the applicants.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European External Action Service (EEAS) of 19 April 2016 reducing, as of 1 January 2016, the allowance for living conditions paid to European Union staff posted to Ethiopia from 30 % to 25 % of the reference amount;*

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

3. *Orders the EEAS to pay the costs.*

([1]) OJ C 129, 24.4.2017.

Judgment of the General Court of 17 April 2018 — Bielawski v EUIPO (HOUSE OF CARS)

(Case T-364/17) ([1])

(EU trade mark — Application for EU word mark HOUSE OF CARS — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Legitimate expectations — Legal certainty)

(2018/C 190/48)

Language of the case: Polish

Parties

Applicant: Marcin Bielawski (Warsaw, Poland) (represented by: M. Kondrat, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 27 March 2017 (Case R 2047/2016-5), concerning an application for registration of the word sign HOUSE OF CARS as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Marcin Bielawski to pay the costs.*

(1) OJ C 249, 31.7.2017.

Order of the General Court of 9 April 2018 — Make up for ever v EUIPO — L'Oréal (MAKE UP FOR EVER PROFESSIONAL)

(Case T-185/16) (1)

(EU trade mark — Application for a declaration of invalidity — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2018/C 190/49)

Language of the case: French

Parties

Applicant: Make up for ever (Paris, France) (represented by: C. Caron, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Bonne and D. Hanf, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: L'Oréal SA (Paris) (represented by: S. Micallef, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 5 February 2016 (Case R 3222/2014-5) relating to invalidity proceedings between L'Oréal and Make up for ever.

Operative part of the order

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

2. *Make up for ever and L'Oréal SA shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 243, 4.7.2016.

Order of the General Court of 9 April 2018 — Make up for ever v EUIPO — L'Oréal (MAKE UP FOR EVER)

(Case T-320/16) (1)

(EU trade mark — Application for a declaration of invalidity — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2018/C 190/50)

Language of the case: French

Parties

Applicant: Make up for ever (Paris, France) (represented by: C. Caron, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Bonne and D. Hanf, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: L'Oréal SA (Paris) (represented by: S. Micallef, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 21 March 2016 (Case R 985/2015-5) relating to invalidity proceedings between L'Oréal and Make up for ever.

Operative part of the order

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

2. *Make up for ever and L'Oréal SA shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 296, 16.8.2016.

Order of the General Court of 11 April 2018 — ABES v Commission

(Case T-813/16) ([1])

(Action for annulment — State aid — Grants from the Portuguese authorities to an entity providing social services for the elderly — Preliminary examination procedure — Decision finding no State aid — Action challenging the merits of the contested measure — No substantial effect on the competitive position — Inadmissibility)

(2018/C 190/51)

Language of the case: Portuguese

Parties

Applicant: ABES (São Pedro de Tomar, Portugal) (represented by: N. Mimoso Ruiz, lawyer)

Defendant: European Commission (represented by: M. França and K. Herrmann, acting as Agents)

Intervener in support of the defendant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo and M. J. Castanheira Neves, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2016) 5054 final of 9 August 2016 on State Aid SA.38920 (2014/NN), declaring, after the preliminary examination stage, that the grant awarded to Santa Casa de Misericórdia de Tomar does not constitute State aid within the meaning of Article 107(1) TFEU.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Abes — companhia de assistência, bem-estar e serviços para seniores, Lda is ordered to bear its own costs and to pay those incurred by the European Commission.*

3. *The Portuguese Republic is ordered to bear its own costs.*

([1]) OJ C 30, 30.1.2017.

Order of the General Court of 12 April 2018 — Lackmann Fleisch- und Feinkostfabrik v EUIPO (Лидер)

(Case T-386/17) ([1])

(EU trade mark — Application for EU figurative mark Лидер — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2018/C 190/52)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 28 April 2017 (Case R 2066/2016-1), concerning an application for registration of the figurative sign Лидер as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

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

([1]) OJ C 256, 7.8.2017.

Action brought on 28 February 2018 — De Esteban Alonso v Commission

(Case T-138/18)

(2018/C 190/53)

Language of the case: French

Parties

Applicant: Fernando De Esteban Alonso (Saint-Martin-de-Seignanx, France) (represented by: C. Huglo, lawyer)

Defendant: European Commission

Form of order sought

— Order OLAF to produce in full and complete form the note of 19 March 2003 produced in the case of *Franchet and Byk* v *Commission* (T-48/05) before the General Court of the European Union;

— Order the European Commission to pay the sum of EUR 1 102 291.68 (one million one hundred and two thousand two hundred and ninety-one euros and sixty-eight cents) as compensation for the losses suffered, to be adjusted if necessary, divided as follows:

  — in respect of the non-material harm suffered by reason of never having [been] heard as regards the facts which gave rise to the charges against him, the sum of EUR 60 000;

— in respect of the losses suffered as a result of the unlawful, unjustified and disproportionate conduct of the European Commission in pursuing procedures without any factual ground or material element:

— the sum of EUR 39 293,38 in respect of material harm, namely lawyers' fees;

— the sum of EUR 872,74 in respect of material harm, namely travel expenses;

— the sum of EUR 500 000 in respect of non-material harm, namely the undeniable damage caused to his reputation and honour;

— the sum of EUR 500 000 as compensation for the physical and mental harm adversely affecting his state of health;

— the sum of EUR 2 125,56 in respect of material harm, namely examination and medical costs.

— Order the European Commission to pay the sum of EUR 3 000 in respect of non-recoverable costs and all the costs of the action, to be adjusted if necessary.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging the unlawfulness of the European Commission's conduct and its serious wrongdoing, in that it failed to observe, firstly, the principle of sound administration; secondly, the duty of care and, thirdly, the principles of the rights of the defence by infringing Articles 41 and 48 of the Charter of Fundamental Rights.

Action brought on 5 March 2018 — Braesch and Others v Commission

(Case T-161/18)

(2018/C 190/54)

Language of the case: English

Parties

Applicants: Anthony Braesch (Luxembourg, Luxembourg), Trinity Investments DAC (Dublin, Ireland), Bybrook Capital Master Fund LP (Grand Cayman, Cayman Islands), Bybrook Capital Hazelton Master Fund LP (Grand Cayman), Bybrook Capital Badminton Fund LP (Grand Cayman) (represented by: M. Siragusa, A. Champsaur, G. Faella, and L. Prosperetti, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission decision C(2017) 4690 final of 4 July 2017, ([1]) in Case SA.47677 (2017/N);

— in the alternative, annul the said decision insofar as it concerns the treatment of the FRESH ([2]) Instruments;

— order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter;

— take any other measures the Court considers appropriate, including measures of organisation of procedure under Articles 89(3) and/or measures of inquiry under Article 91(1)(b) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission unlawfully endorsed burden sharing measures in the context of a precautionary recapitalisation, in violation of Articles 18 and 21 of Regulation (EU) No 806/2014 (failure to give reasons). ([3])

2. Second plea in law, alleging that the Commission unlawfully required the cancellation of the FRESH contracts (manifest error of law and fact in departing from the 2013 Banking Communication; ([4]) infringement of the principles of protection of legitimate expectations and equal treatment; failure to give reasons).

3. Third plea in law, alleging that the contested decision treats the FRESH holders in a discriminatory way (violation of the right to equal treatment, protected under Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('Charter') and Article 14 and Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'); manifest error of assessment; failure to give reasons).

4. Fourth plea in law, alleging that the contested decision infringes the FRESH holders' property rights (violation of property rights protected under Article 17 of the Charter and Article 1 of Protocol 1 of the ECHR; failure to give reasons).

5. Fifth plea in law, alleging that the Commission failed to open the formal investigation procedure, notwithstanding the fact that there were serious doubts about the compatibility of the measures with EU law (violation of Article 108(2) and (3) TFEU; violation of Article 4(3) and (4) of Council Regulation 2015/1589; ([5]) manifest error of assessment; failure to give reasons).

([1]) OJ 2018 C 40, p. 7.
([2]) Floating Rate Equity-linked Subordinated Hybrid (a form of bond).
([3]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
([4]) Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') (OJ 2013 C 216, p. 1).
([5]) 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 (OJ 2015 L 248, p. 9).

Action brought on 8 March 2018 — Région de Bruxelles-Capitale v Commission

(Case T-178/18)

(2018/C 190/55)

Language of the case: French

Parties

Applicant: Région de Bruxelles-Capitale (Brussels, Belgium) (represented by: A. Bailleux and B. Magarinos Rey, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— annul the contested regulation [Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2017 L 333, p. 10)], while maintaining its effects until its replacement within a reasonable period, and at the latest until 16 December 2021;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principles of a high level of protection of human health and of the environment. This plea is divided into two parts.

   — First part, alleging infringement of the obligation to ensure a high level of protection of human health and of the environment at the stage of the scientific assessment of risk, in so far as the contested regulation is based on a scientific assessment of risks to health and the environment that does not meet the requirements of the precautionary principle. According to the applicant, insufficiencies arise in relation to identification, selection and weighting, the treatment method and the interpretation of the available data and scientific studies.

   — Second part, alleging infringement of the obligation to ensure a high level of protection of human health and the environment at the stage of policy assessment and risk management, in so far as the contested regulation fails to carry out a policy assessment and risk management that comply with the precautionary principle. The applicant submits, on the one hand, that the renewal of the approval occurred in circumstances in which significant deficiencies and uncertainties persist in relation to risk assessment, and, on the other hand, that the renewal is not accompanied by sufficient risk mitigation or risk reduction measures in the broad sense.

2. Second plea in law, alleging infringement of the obligation to state reasons and the principle of sound administration, in so far as the contested regulation contains an internal inconsistency. The applicant claims that the preamble and articles of that regulation suggest that glyphosate does not have any harmful effects on human or animal health or any unacceptable influence on the environment, whereas the specific provisions contained in Annex I to that regulation are underpinned by the existence of such effects. Such an internal inconsistency thus leaves the public uncertain as to whether or not glyphosate poses a risk to health or the environment.

Action brought on 15 March 2018 — Solwindet las Lomas v Commission

(Case T-190/18)

(2018/C 190/56)

Language of the case: English

Parties

Applicant: Solwindet las Lomas, SL (Girona, Spain) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul European Commission Decision of 10 November 2017 in State aid case SA.40348 (2015/NN) — Spain — Support for electricity generation from renewable energy sources, cogeneration and waste; ([1])

— order the Commission to pay the applicant's 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 the Commission infringed its obligation to initiate the formal investigation procedure. The applicant alleges that there is evidence of serious difficulties relating to the length and the circumstances of the preliminary investigation procedure.

2. Second plea in law, alleging that the Commission erred in law and committed a manifest error of assessment regarding the assessment of payments received by existing facilities under the previous scheme.

3. Third plea in law, alleging that the Commission failed to fulfil its duty to state reasons regarding the alleged existence of aid in relation to the payments received by existing facilities under the previous scheme.

(1) OJ 2017 C 442, p. 1.

Action brought on 16 March 2018 — JV Voscf and Others v Council and Others

(Case T-197/18)

(2018/C 190/57)

Language of the case: English

Parties

Applicants: JV Voscf LTD (Limassol, Cyprus) and 9 others (represented by: P. Tridimas, Barrister, K. Kakoulli, P. Panayides and C. Pericleous, lawyers)

Defendants: Council of the European Union, European Commission, European Central Bank, Eurogroup and European Union

Form of order sought

The applicants claim that the Court should:

— order the defendants to pay the applicants the sums shown in the schedule annexed to this application plus interest accruing from 26 March 2013 until the judgment of the Court;

— order the defendants to pay the costs.

In the alternative, by way of subsidiary claim, the applicants request the Court to:

— find that the European Union and/or the defendant institutions have incurred non-contractual liability;

— determine the procedure to be followed in order to establish the recoverable loss actually suffered by the applicants; and

— order the defendants to pay the costs.

Pleas in law and main arguments

The applicants consider that the bail-in measures adopted by the Republic of Cyprus were introduced solely in order to implement measures adopted by the defendants and were also approved by the defendant institutions. The applicants consider that the bail-in scheme is a serious violation and in support of their action, they rely on four pleas in law.

1. First plea in law, alleging violation of the right to property, as protected by Article 17(1) of the Charter of Fundamental Rights of the EU and Article 1 of Protocol 1 of the European Convention for the Protection of Fundamental Rights and Freedoms.

2. Second plea in law, alleging violation of the principle of proportionality.

3. Third plea in law, alleging violation of the principle of protection of legitimate expectations.

4. Fourth plea in law, alleging violation of the principle of non-discrimination.

Action brought on 23 March 2018 — PlasticsEurope v ECHA

(Case T-207/18)

(2018/C 190/58)

Language of the case: English

Parties

Applicant: PlasticsEurope (Brussels, Belgium) (represented by: R. Cana, E. Mullier, and F. Mattioli, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— Declare the application admissible and well-founded;

— Annul the contested decision;

— Order ECHA to pay the costs of these proceedings; and

— Take such other or further measure as justice may require.

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 that the defendant manifestly erred in its assessment of the information which, when properly assessed, could not support the defendant's conclusion, and because it failed to take into consideration all relevant information related to pending studies. The defendant also manifestly erred in its assessment because it failed to establish that (a) there is scientific evidence of probable serious effects due to its endocrine disrupting properties for the environment, and that (b) such evidence would give rise to an equivalent level of concern to substances listed in points (a) to (e) of Article 57 of REACH.

2. Second plea in law, alleging that the contested decision breaches Articles 59 and 57(f) of the REACH Regulation by identifying BPA as an SVHC on the basis of the criteria referred to in Article 57(f), since Article 57(f) only covers substances which have not yet been identified under Article 57(a) to (e).

3. Third plea in law, alleging that the contested decision breaches Article 2(8)(b) of the REACH Regulation since intermediates are exempt from the entire Title VII, and are thus outside the scope of Articles 57 and 59 and outside the scope of autorisation.

4. Fourth plea in law, alleging that the contested decision the principle of proportionality, since the inclusion of BPA in the candidate list, when it is a non-intermediate, exceeds the limits of what is appropriate and necessary to attain the objective pursued and is not the least onerous measure to which the agency could have had recourse.

Action brought on 26 March 2018 — Vanda Pharmaceuticals v Commission

(Case T-211/18)

(2018/C 190/59)

Language of the case: English

Parties

Applicant: Vanda Pharmaceuticals Ltd (London, United Kingdom) (represented by: M. Meulenbelt, B. Natens, A.-S. Melin, and C. Muttin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision C(2018) 252 final of 15 January 2018 refusing marketing authorisation under Regulation (EC) No 726/2004 for 'Fanaptum — iloperidone', a medicinal product for human use, together with the scientific conclusions and grounds for refusal of 9 November 2017 and the Assessment Report of the Committee for Medicinal Products for Human Use of 9 November 2017;

— in the alternative, annul only the said Commission Implementing Decision C(2018) 252 final;

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the risk assessment of the arrhythmogenic potential of iloperidone is based on a failure to state reasons (and, in any event, is manifestly erroneous), and violates the principle of equal treatment.

2. Second plea in law, alleging that the assessment of the risk minimisation measures proposed for iloperidone is based on a failure to state reasons (and, in any event, is manifestly erroneous), and violates Articles 5(1) and 5(4) of the Treaty on European Union (TEU) and the principle of equal treatment.

3. Third plea in law, alleging that the assessment of the consequences of the delayed onset of iloperidone is based on a failure to state reasons and violates Articles 5(1) and 5(4) TEU.

4. Fourth plea in law, alleging that the requirement to identify a population in which iloperidone would outperform other products violates Article 5(1), 5(2) and 5(3) TEU, Articles 12 and 81(2) of Regulation 726/2004, ([1]) and the principle of equal treatment.

5. Fifth plea in law, alleging that the overall risk-benefit assessment of iloperidone is based on a failure to state reasons (and, in any event, is manifestly erroneous).

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 29 March 2018 — Deutsche Lufthansa v Commission

(Case T-218/18)

(2018/C 190/60)

Language of the case: German

Parties

Applicant: Deutsche Lufthansa AG (Cologne, Germany) (represented by: A. Martin-Ehlers, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 31 July 2017 in Case SA.47969, C(2017)5289 — Hahn Airport;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant alleges, in essence, the following:

— procedural errors, as the defendant made a 'deal' with the Federal Republic of Germany with regard to the assessment of the aid granted to Flughafen Frankfurt-Hahn GmbH ('FFHG') and Ryanair;

— failure to take into account certain essential factual elements, despite the fact that the defendant was fully aware of these at the time when the contested decision was adopted;

— partially incorrect representation of the facts of the case;

— failure to take into account other aid in favour of FFHG that was ultimately passed on to Ryanair as the principal user of the airport.

Action brought on 28 March 2018 — Torrefazione Caffè Michele Battista v EUIPO — Battista Nino Caffè (Battistino)

(Case T-220/18)

(2018/C 190/61)

Language in which the application was lodged: Italian

Parties

Applicant: Torrefazione Caffè Michele Battista Srl (Triggiano, Italy) (represented by: V. Franchini, F. Paesan and R. Bia, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Battista Nino Caffè Srl (Triggiano, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark including the word element Battistino — International registration designating the European Union No 1 071 387

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 January 2018 in Case R 400/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and consequently reject the application for a declaration of invalidity of the mark at issue;

— order EUIPO and Battista Nino Caffè Srl to pay the costs of the present proceedings and of the two earlier sets of proceedings before the Cancellation Division of EUIPO and the Fifth Board of Appeal of EUIPO.

Pleas in law

— Infringement of Articles 64(2), 60(1)(a) and 8(1)(b) of Regulation 2017/1001.

Action brought on 28 March 2018 — Torrefazione Caffè Michele Battista v EUIPO — Battista Nino Caffè (BATTISTINO)

(Case T-221/18)

(2018/C 190/62)

Language in which the application was lodged: Italian

Parties

Applicant: Torrefazione Caffè Michele Battista Srl (Triggiano, Italy) (represented by: V. Franchini, F. Paesan and R. Bia, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Battista Nino Caffè Srl (Triggiano, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the mark BATTISTINO — International registration designating the European Union No 1 070 313

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 January 2018 in Case R 402/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and consequently reject the application for a declaration of invalidity of the mark at issue;

— order EUIPO and Battista Nino Caffè Srl to pay the costs of the present proceedings and of the two earlier sets of proceedings before the Cancellation Division of EUIPO and the Fifth Board of Appeal of EUIPO.

Pleas in law

— Infringement of Articles 64(2), 60(1)(a) and 8(1)(b) of Regulation 2017/1001.

Action brought on 26 March 2018 — Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo v Commission

(Case T-223/18)

(2018/C 190/63)

Language of the case: Italian

Parties

Applicant: Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo (Albano Laziale, Italy) (represented by: F. Rosi, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— as a preliminary matter, declare the contested decision unlawful on the ground that it is drafted in English rather than in Italian;

— uphold the present action and consequently annul the Commission's decision for lack of grounds and thus for not being based on established conditions of inquiry;

— recognise that the SGEI scheme applies to the Italian healthcare system, and that the principles set out in the judgment of the Court of Justice of the European Union in the *Altmark* case of 2003 with regard to Articles 106 TFEU and 107 TFEU for the purposes of the application of State aid are therefore applicable. As a result, the Court should examine the Lazio Region's actions regarding the remuneration of public facilities, which should have complied with the principles established by the abovementioned rules and therefore should have limited the payments to the healthcare facilities under public ownership to the forecast reimbursement of costs according to the criteria set out in the *Altmark* judgment relating to the so-called average establishment, and declare that excessive financing constitutes overcompensation;

— recognise that the Lazio Region must remunerate the applicant in accordance with the average-undertaking principle and therefore also by taking into account the increases in labour costs in regard to all employees working in that establishment from 2005 to 2006, fixing this as a parameter for subsequent years;

— give effect to all legal consequences thus arising, including ordering the Commission to pay the costs of the proceedings as well as the costs incurred by the applicant.

Pleas in law and main arguments

The present action is directed against Commission Decision C (2017) 7973 final of 4 December 2017, which rejected the complaint brought by the applicant, an Italian religious hospital, concerning the alleged compensation of costs incurred by public hospitals in the Lazio Region. The contested decision finds that the measures under challenge do not amount to State aid.

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

1. First, the applicant objects to the use of English for drafting the authentic language version of the final decision.

2. The second plea in law alleges a failure to state adequate reasons. The Commission entirely omitted to consider certain substantial aspects of the question and failed to rebut certain objections raised by the applicant and proven by the documents submitted. The Commission is required to answer all questions raised by the applicant by virtue of the principles of transparency and good faith.

3. As the third plea in law, the applicant challenges the claim that in Italian law the healthcare system is characterised by the universality of care, that is to say, that 100 % of healthcare is provided by the national health service. In addition, the applicant complains that the Commission does not have proof that the Italian State funds, and therefore covers, 100 % of its own citizens' care, a claim which, it is submitted, fails entirely to correspond to the facts. The applicant contends that universality is not an abstract concept but must be concretely identified, verifiable and perceivable and cannot be assumed to exist merely because the Italian Government says so.

Action brought on 3 April 2018 — Microsemi Europe and Microsemi v Commission

(Case T-227/18)

(2018/C 190/64)

Language of the case: German

Parties

Applicants: Microsemi Europe Ltd (Reading, United Kingdom) and Microsemi Corp. (Aliso Viejo, California, United States) (represented by: D. Aulfes and J. Lenz, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the Commission of 23 January 2018 (in respect of Case AT.40529 — TSMC) based on Article 18 (3) of Regulation (EC) No 1/2003;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements, as the decision neither names the addressee nor allows the addressee to be identified with sufficient clarity.

2. Second plea in law, alleging a lack of authority, in so far as the second applicant is to be regarded as the addressee of the contested decision.

   The applicants submit that the Commission does not have the authority to issue acts with legal effects beyond the territory of the European Union and that it cannot require an undertaking with its seat in the United States of America to submit information.

3. Third plea in law, alleging infringement of the Treaties and of the legal provisions to be applied in their implementation, in so far as the second applicant is to be regarded as the addressee of the contested decision.

   In this respect it is submitted that the Commission cannot require an undertaking with its seat in the United States of America to submit information and that it is not permitted to give incorrect information to that undertaking with regard to the possibility of the imposition of pecuniary penalties.

4. Fourth plea in law, alleging infringement of the Treaties and of the legal provisions to be applied in their implementation.

   Further, the applicants submit that the Commission is not permitted to require the submission of information in respect of all the undertakings of a group on a global level pursuant to recital 23 of Regulation (EC) No 1/2003, but rather can require such information only in respect of the European market.

5. Fifth plea in law, alleging infringement of the Treaties and of the legal provisions to be applied in their implementation.

   Moreover, the applicants claim that the Commission also breaches the principle of proportionality when it requests information about markets outside of the European Union.

6. Sixth plea in law, alleging infringement of the Treaties and of the legal provisions to be applied in their implementation, in so far as the first applicant is to be regarded as the addressee of the contested decision.

   In this respect it is submitted that requiring information about a parent company in the United States of America and other associated undertakings in Europe from a subsidiary in the European Union amounts to a breach of the principle of proportionality.

7. Seventh plea in law, alleging a misuse of powers.

   The applicants claim that requesting information about associated undertakings in the European Union constitutes a misuse of powers, as those undertakings could be obliged to provide such information directly.

8. Eighth plea in law, alleging infringement of essential procedural requirements due to insufficient reasons being provided in the contested decision.

9. Ninth plea in law, alleging infringement of essential procedural requirements due to insufficient information on the purpose of the requests for information.

10. Tenth plea in law, alleging infringement of essential procedural requirements, as the questions asked in the contested decision are not permissible.

11. Eleventh plea in law, alleging infringement of the Treaties and of the legal provisions to be applied in their implementation, as the questions asked in the contested decision are imprecise.

12. Twelfth plea in law, alleging infringement of the Treaties and of the legal provisions to be applied in their implementation.

Action brought on 04 April 2018 — Biolatte v EUIPO (Biolatte)

(Case T-229/18)

(2018/C 190/65)

Language of the case: English

Parties

Applicant: Biolatte Oy (Turku, Finland) (represented by: J. Ikonen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'Biolatte' — Application for registration No 15 759 319

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 February 2018 in Case R 351/2017-1

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision in its entirety;

— order that the word mark registration should be granted in accordance with Biolatte Oy's application filed on 17 August 2016 (as amended on 28 October 2016).

Plea in law

— Infringement of article 7 (1)(b) of Regulation No 2017/1001.

Action brought on 6 April 2018 — Qualcomm/Commission

(Case T-235/18)

(2018/C 190/66)

Language of the case: English

Parties

Applicant: Qualcomm, Inc. (San Diego, California, United States) (represented by: M. Pinto de Lemos Fermiano Rato, M. Davilla and M. English, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Annul, or in the alternative, reduce substantially the amount of the fine;

— Order the measures of organisation or inquiry referred to in the application; and

— Order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is vitiated by manifest procedural errors;
2. Second plea in law, alleging that the contested decision commits manifest errors of assessment, fails to state reasons and distorts evidence in dismissing Qualcomm's efficiency defence;
3. Third plea in law, alleging that the contested decision commits manifest errors of law and of assessment in finding that the impugned agreements were capable of producing potential anticompetitive effects;
4. Fourth plea in law, alleging that the contested decision commits manifest errors of assessment regarding the definition of the relevant product market and the finding of dominance;
5. Fifth plea in law, alleging that the contested decision commits manifest errors of law and of assessment and fails to state reasons with regard to the duration of the alleged infringement;
6. Sixth plea in law, alleging that the contested decision commits manifest errors of assessment in applying the fining guidelines and infringes the principle of proportionality; and
7. Seventh plea in law, alleging that the contested decision commits manifest errors of assessment in establishing the Commission's jurisdiction and effect on trade between Member States.

Order of the General Court of 10 April 2018 — European Dynamics Luxembourg and Evropaïki Dynamiki v EIF

(Case T-320/17) ([1])

(2018/C 190/67)

Language of the case: English

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

([1]) OJ C 256, 7.8.2017.

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