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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 2 May 2018 (request for a preliminary ruling from the Tribunale di Varese — Italy) — Criminal proceedings against Mauro Scialdone

(Case C-574/15) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Protection of the European Union's financial interests — Article 4(3) TEU — Article 325(1) TFEU — Directive 2006/112/EC — PFI Convention — Penalties — Principles of equivalence and effectiveness — Failure to pay, within the time limit prescribed by law, the VAT resulting from an annual tax return — National legislation imposing a custodial sentence only where the amount of unpaid VAT exceeds a certain criminalisation threshold — National legislation imposing a lower criminalisation threshold for a failure to pay withholding income tax)

(2018/C 231/02)

Language of the case: Italian

Referring court

Tribunale di Varese

Party in the main proceedings

Mauro Scialdone

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 4 (3) TEU, and Article 325(1) TFEU must be interpreted as not precluding national legislation which provides that failure to pay, within the time limit prescribed by law, the value added tax (VAT) resulting from the annual tax return for a given financial year constitutes a criminal offence punishable by a custodial sentence only when the amount of unpaid VAT exceeds a criminalisation threshold of EUR 250 000, whereas a criminalisation threshold of EUR 150 000 is laid down for the offence of failing to pay withholding income tax.

([1]) OJ C 48, 8.2.2016.

Judgment of the Court (Grand Chamber) of 8 May 2018 (request for a preliminary ruling from the Raad voor Vreemdelingenbetwistingen — Belgium) — K.A. and Others v Belgische Staat

(Case C-82/16) ([1])

(Reference for a preliminary ruling — Border control, asylum, immigration — Article 20 TFEU — Charter of Fundamental Rights of the European Union — Articles 7 and 24 — Directive 2008/115/EC — Articles 5 and 11 — Third-country national subject to an entry ban — Application for residence for the purposes of family reunification with a Union citizen who has not exercised freedom of movement — Refusal to examine the application)

(2018/C 231/03)

Language of the case: Dutch

Referring court

Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicants: K.A., M.Z., M.J., N.N.N., O.I.O., R.I., B.A.

Defendant: Belgische Staat

Operative part of the judgment

1. *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 5 and 11 thereof, must be interpreted as not precluding a practice of a Member State that consists in not examining an application for residence for the purposes of family reunification, submitted on its territory by a third-country national family member of a Union citizen who is a national of that Member State and who has never exercised his or her right to freedom of movement, solely on the ground that that third-country national is the subject of a ban on entering the territory of that Member State.*

2. *Article 20 TFEU must be interpreted as meaning that:-*

— *a practice of a Member State that consists in not examining such an application solely on the ground stated above, without any examination of whether there exists a relationship of dependency between that Union citizen and that third-country national of such a nature that, in the event of a refusal to grant a derived right of residence to the third-country national, the Union citizen would, in practice, be compelled to leave the territory of the European Union as a whole and thereby be deprived of the genuine enjoyment of the substance of the rights conferred by that status, is precluded;*

— *where the Union citizen is an adult, a relationship of dependency, capable of justifying the grant, to the third-country national concerned, of a derived right of residence under Article 20 TFEU, is conceivable only in exceptional cases, where, in the light of all the relevant circumstances, any form of separation of the individual concerned from the member of his family on whom he is dependent is not possible;*

— *where the Union citizen is a minor, the assessment of the existence of such a relationship of dependency must be based on consideration, in the best interests of the child, of all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties to each of his parents, and the risks which separation from the third-country national parent might entail for that child's equilibrium; the existence of a family link with that third-country national, whether natural or legal, is not sufficient, and cohabitation with that third-country national is not necessary in order to establish such a relationship of dependency;*

— *it is immaterial that the relationship of dependency relied on by a third-country national in support of his application for residence for the purposes of family reunification comes into being after the imposition on him of an entry ban;*

— *it is immaterial that the entry ban imposed on the third-country national has become final at the time when he submits his application for residence for the purposes of family reunification; and*

— *it is immaterial that an entry ban, imposed on a third-country national who has submitted an application for residence for the purposes of family reunification, may be justified by non-compliance with an obligation to return; where such a ban is justified on public policy grounds, such grounds may permit a refusal to grant that third-country national a derived right of residence under Article 20 TFEU only if it is apparent from a specific assessment of all the circumstances of the individual case, in the light of the principle of proportionality, the best interests of any child or children concerned and fundamental rights, that the person concerned represents a genuine, present, and sufficiently serious threat to public policy.*

3. *Article 5 of Directive 2008/115 must be interpreted as precluding a national practice pursuant to which a return decision is adopted with respect to a third-country national, who has previously been the subject of a return decision, accompanied by an entry ban that remains in force, without any account being taken of the details of his or her family life, and in particular the interests of a minor child of that third-country national, referred to in an application for residence for the purposes of family reunification submitted after the adoption of such an entry ban, unless such details could have been provided earlier by the person concerned.*

([1]) OJ C 145, 25.4.2016.

Judgment of the Court (Grand Chamber) of 2 May 2018 (requests for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Middelburg, Raad voor Vreemdelingenbetwistingen — Netherlands, Belgium) — K. v Staatssecretaris van Veiligheid en Justitie (C-331/16), H.F v Belgische Staat (C-366/16).

(Joined Cases C-331/16 and C-366/16) ([1])

(Reference for a preliminary ruling — Citizenship of the European Union — Right to move and reside freely within the territory of the Member States — Directive 2004/38/EC — Second subparagraph of Article 27(2) — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Expulsion on grounds of public policy or public security — Conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society — Person whose asylum application has been refused for reasons within the scope of Article 1F of the Geneva Convention or Article 12(2) of Directive 2011/95/EU — Article 28(1) — Article 28(3)(a) — Protection against expulsion — Residence in the host Member State for the previous ten years — Imperative grounds of public security — Meaning)

(2018/C 231/04)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Middelburg, Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicants: K. (C-331/16), H.F. (C-366/16)

Defendants: Staatssecretaris van Veiligheid en Justitie (C-331/16), Belgische Staat (C-366/16).

Operative part of the judgment

1. *Article 27(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that the fact that a European Union citizen or a third-country national family member of such a citizen, who applies for a right of residence in the territory of a Member State, has been the subject, in the past, of a decision excluding him from refugee status under Article 1F of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 and supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, or Article 12(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, does not enable the competent authorities of that Member State to consider automatically that the mere presence of that individual in its territory constitutes, whether or not there is any risk of re-offending, a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, capable of justifying the adoption of measures on grounds of public policy or public security.*

   The finding that there is such a threat must be based on an assessment, by the competent authorities of the host Member State, of the personal conduct of the individual concerned, taking into consideration the findings of fact in the decision to exclude that individual from refugee status and the factors on which that decision is based, particularly the nature and gravity of the crimes or acts that he is alleged to have committed, the degree of his individual involvement in them, whether there are any grounds for excluding criminal liability, and whether or not he has been convicted. That overall assessment must also take account of the time that has elapsed since the date when the crimes or acts were allegedly committed and the subsequent conduct of that individual, particularly in relation to whether that conduct reveals the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 TEU, capable of disturbing the peace of mind and physical security of the population. The mere fact that the past conduct of that individual took place in a specific historical and social context in his country of origin, which is not liable to recur in the host Member State, does not preclude such a finding.

   In accordance with the principle of proportionality, the competent authorities of the host Member State must, in addition, weigh the protection of the fundamental interest of society at issue, on the one hand, against the interests of the person concerned in the exercise of his right to freedom of movement and residence as a Union citizen and in his right to respect for private and family life.

2. *Article 28(1) of Directive 2004/38 must be interpreted as meaning that, where the measures envisaged entail the expulsion of the individual concerned from the host Member State, that State must take account of, inter alia, the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in that Member State, the period of time that has elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with that Member State.*

   Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is not applicable to a European Union citizen who does not have a right of permanent residence in the host Member State, within the meaning of Article 16 and Article 28(2) of that directive.

(1) OJ C 326, 5.9.2016.
OJ C 343, 19.9.2016.

Judgment of the Court (Fourth Chamber) of 3 May 2018 — European Union Intellectual Property Office (EUIPO) v European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE

(Case C-376/16 P) ([1])

(Appeal — Public service contracts — Provision of external services for programme and project management and technical consultancy in the field of information technologies — Cascade procedure — Article 21 of the Statute of the Court of Justice of the European Union — Article 76 and Article 84(1) of the Rules of Procedure of the General Court — Ruling ultra petita prohibited — Weighting of sub-criteria within award criteria — Manifest errors of assessment — Regulation (EC, Euratom) No 1605/2002 — Article 100(2) — Decision rejecting a tender — Failure to state reasons — Loss of opportunity — Non-contractual liability of the European Union — Claim for damages)

(2018/C 231/05)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (EUIPO) (represented by: N. Bambara, acting as Agent, and by P. Wytinck and B. Hoorelbeke, lawyers)

Other parties to the proceedings: European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: M. Sfyri, C.-N. Dede and V. Alevizopoulou, dikigoroi)

Operative part of the judgment

The Court:

1. *Sets aside points 2 to 5 of the operative part of the judgment of the General Court of the European Union of 27 April 2016, European Dynamics Luxembourg and Others v EUIPO (T-556/11, EU:T:2016:248);*

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

3. *Dismisses the claim for damages brought by European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in Case T-556/11;*

4. *Orders the European Union Intellectual Property Office (EUIPO), European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear their own costs in relation to both the appeal proceedings and the proceedings at first instance.*

([1]) OJ C 402, 31.10.2016.

Appeal brought on 6 December 2017 by Banca Monte dei Paschi di Siena SpA, Wise Dialog Bank SpA (Banca Widiba SpA) against the judgment of the General Court (Second Chamber) delivered on 26 September 2017 in Case T-83/16: Banca Monte dei Paschi di Siena and Banca Widiba SpA v EUIPO

(Case C-684/17 P)

(2018/C 231/06)

Language of the case: English

Parties

Appellants: Banca Monte dei Paschi di Siena SpA, Wise Dialog Bank SpA (Banca Widiba SpA) (represented by: L. Trevisan, D. Contini, avvocati)

Other party to the proceedings: European Union Intellectual Property Office

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

Appeal brought on 6 December 2017 by Banca Monte dei Paschi di Siena SpA, Wise Dialog Bank SpA (Banca Widiba SpA) against the judgment of the General Court (Second Chamber) delivered on 26 September 2017 in Case T-84/16: Banca Monte dei Paschi di Siena SpA and Banca Widiba SpA v EUIPO

(Case C-685/17 P)

(2018/C 231/07)

Language of the case: English

Parties

Appellants: Banca Monte dei Paschi di Siena SpA, Wise Dialog Bank SpA (Banca Widiba SpA) (represented by: L. Trevisan, D. Contini, avvocati)

Other party to the proceedings: European Union Intellectual Property Office

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

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 5 March 2018 — Pensions-Sicherungs-Verein VVaG v Günther Bauer

(Case C-168/18)

(2018/C 231/08)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: Pensions-Sicherungs-Verein VVaG

Respondent in the appeal on a point of law: Günther Bauer

Questions referred

1. Is Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer ([1]) applicable if occupational old-age pension benefits are provided via an inter-occupational pension institution subject to State supervision of financial services, and, for financial reasons, that institution legitimately reduces its benefits with the consent of the supervisory authority, and, although the employer must assume liability for the reductions vis-à-vis the former employees under national law, its insolvency means that it is unable to discharge its obligation to offset those benefit reductions?

2. If the first question referred is answered in the affirmative:

   Under what circumstances can a former employee's losses suffered in respect of occupational old-age pension benefits as a result of the insolvency of the employee be regarded as manifestly disproportionate and therefore oblige the Member States to ensure a minimum degree of protection against such losses, even though the former employee receives at least half of the benefits arising from his acquired pension rights?

3. If the first question referred is answered in the affirmative:

   Does Article 8 of Directive 2008/94/EC have direct effect and, if a Member State has failed to transpose the Directive into national law or has failed to transpose it correctly, does that provision confer rights on the individual that he can assert against the Member State before a national court?

4. If the third question referred is answered in the affirmative:

   Is an institution organised under private law that the Member State has designated — in a manner that is binding on employers — as an insolvency insurance institution for occupational pensions that is subject to State supervision of financial services and levies the contributions required for insolvency insurance from employers under public law, and, like an authority, can establish the conditions for enforcement by way of an administrative act, a public body of the Member State?

([1]) OJ 2008 L 283, p. 36.

Appeal brought on 6 March 2018 by PTC Therapeutics International Ltd against the judgment of the General Court (Second Chamber) delivered on 5 February 2018 in Case T-718/15: PTC Therapeutics International Ltd v European Medicines Agency (EMA)

(Case C-175/18 P)

(2018/C 231/09)

Language of the case: English

Parties

Appellant: PTC Therapeutics International Ltd (represented by: G. Castle, Solicitor, B. Kelly, Solicitor, K. Ewert, Rechtsanwalt, M. Demetriou QC, C. Thomas, Barrister)

Other parties to the proceedings: European Medicines Agency, European Confederation of Pharmaceutical Entrepreneurs (Eucope)

Form of order sought

The appellant claims that the Court should:

— grant PTC's appeal and set aside the judgment of the General Court;

— annul the decision communicated by the EMA to PTC on 25 November 2015 to release certain information under the Transparency Regulation ([1]);

— remit the said decision back to the EMA for further consideration regarding redaction of confidential passages for consultation with PTC; and

— order the EMA to pay PTC's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

The judgment should be annulled for the following reasons:

— the General Court failed to find that the documents in issue were protected by a general presumption of confidentiality;

— the General Court failed to find that the documents in issue in their entirety constitute commercially confidential information that is protected by Article 4(2) of the Transparency Regulation;

— the General Court failed to find that the documents in issue should be protected by Article 4(3) of the Transparency Regulation; and

— the EMA failed to carry out a balancing exercise as required by law.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001, L 145, p. 43).

Appeal brought on 7 March 2018 by MSD Animal Health Innovation GmbH, Intervet international BV against the judgment of the General Court (Second Chamber) delivered on 5 February 2018 in Case T-729/15: MSD Animal Health Innovation GmbH and Intervet international BV v European Medicines Agency

(Case C-178/18 P)

(2018/C 231/10)

Language of the case: English

Parties

Appellants: MSD Animal Health Innovation GmbH, Intervet international BV (represented by: P. Bogaert, advocaat, B. Kelly, Solicitor, J. Stratford QC, C. Thomas, Barrister)

Other party to the proceedings: European Medicines Agency

Form of order sought

The appellants claim that the Court should:

— grant the appellants' appeal and set aside the judgment of the General Court;

— annul the decision communicated by the EMA to the appellants on 3 December 2015 to release certain information under the Transparency Regulation (1); and

— order the EMA to pay the appellants' legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

The judgment should be annulled for the following reasons:

— the General Court failed to find that the documents in issue were protected by a general presumption of confidentiality;

— the General Court failed to find that the documents in issue in their entirety constitute commercially confidential information that is protected by Article 4(2) of the Transparency Regulation;

— the General Court failed to find that the documents in issue should be protected by Article 4(3) of the Transparency Regulation; and

— the EMA failed to carry out a balancing exercise as required by law.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001, L 145, p. 43).

Request for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 20 March 2018 — Deutsche Post AG, Klaus Leymann v Land Nordrhein-Westfalen

(Case C-203/18)

(2018/C 231/11)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicant: Deutsche Post AG, Klaus Leymann

Defendant: Land Nordrhein-Westfalen

Questions referred

1. Is the exception set out in Article 13(1)(d) of Regulation (EC) No 561/2006 ([1]) of the European Parliament and of the Council of 15 March 2006 as amended by Article 45(2) of Regulation (EU) No 165/2014 ([2]) of the European Parliament and of the Council of 4 February 2014 to be interpreted as covering only vehicles or combinations of vehicles that are used exclusively for the purpose of delivering packages in the context of the universal service, or can it additionally be applied where the vehicles or combinations of vehicles are used, predominantly or to a degree determined in some other way, also for the purpose of delivering packages in the context of the universal service?

2. In the context of the exception referred to in the first question, for the purposes of assessing whether vehicles or combinations of vehicles are used exclusively or, as the case may be, predominantly or to a degree determined in some other way, also for the purpose of delivering packages in the context of the universal service, is the general use of a vehicle or combination of vehicles to be used as a basis for that assessment, or the specific use of a vehicle or combination of vehicles for a single journey?

([1]) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

([2]) Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ 2014 L 60, p. 1).

Request for a preliminary ruling from the Schienen-Control Kommission (Austria) lodged on 23 March 2018 — WESTbahn Management GmbH v ÖBB-Infrastruktur AG

(Case C-210/18)

(2018/C 231/12)

Language of the case: German

Referring court

Schienen-Control Kommission

Parties to the main proceedings

Applicant: WESTbahn Management GmbH

Defendant: ÖBB-Infrastruktur AG

Questions referred

1. Is Paragraph 2(a) of Annex II to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, ([1]) to be interpreted as meaning that the notion of 'passenger stations, their buildings and other facilities' referred to therein covers the railway infrastructure 'passenger … platforms' listed in the second indent of Annex I to that directive?

2. If Question 1 is answered in the negative:

   Is Paragraph 1(c) of Annex II to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, to be interpreted as including the use of passenger platforms provided for in the second indent of Annex I to that directive within the notion of 'use of the railway infrastructure' referred to therein?

([1]) OJ 2012 L 343, p. 32.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 28 March 2018 — Budimex S.A.

(Case C-224/18)

(2018/C 231/13)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Budimex S.A.

Other party to the proceedings: Minister Finansów

Question referred

In a situation where the parties to a transaction have agreed that payment for construction works or construction/installation works requires express acceptance by the client of their performance in the formal record of acceptance for the works, does the performance of services, for the purposes of Article 63 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) in respect of such a transaction occur at the time of actual performance of the construction or construction/installation works, or at the time of acceptance of the performance of the works by the client, expressed in the formal record of acceptance?

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

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 28 March 2018 — Grupa Lotos S.A.

(Case C-225/18)

(2018/C 231/14)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Grupa Lotos S.A.

Defendant: Minister Finansów

Question referred

Are Article 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) and the principles of neutrality and proportionality contrary to a provision such as that in Article 88(1)(4) of the Law of 11 March 2004 on tax on goods and services (Dz. U. 2011, No 177, item 1054, as amended; currently Dz. U. of 2017, item 1221, as amended), under which a reduction or refund of input VAT does not apply to acquisitions by a taxable person of overnight accommodation and catering services, with the exception of the purchase of ready meals prepared for passengers by taxable persons providing passenger transport services, even where these provisions were introduced into the law on the basis of Article 17(6) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment? ([2])

([1]) OJ 2006 L 347, p. 1.
([2]) OJ 1977 L 145, p. 1.

Request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Hungary) lodged on 3 April 2018 — VE v WD

(Case C-227/18)

(2018/C 231/15)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Parties to the main proceedings

Applicant: VE

Defendant: WD

Questions referred

1. Taking into consideration the economic consequences, may it be considered that a contractual term is not unfair, that is to say, that it is in plain, intelligible language, where it places the exchange rate risk on the consumer — the term being drawn up (as a standard contractual term used by the seller or supplier, and not negotiated individually) in fulfilment of an obligation to provide information, necessarily of general character, laid down by law — but fails to state expressly that the amount of the repayment instalments to be paid in accordance with the loan agreement could be greater than the amount of the consumer's income as noted in the examination of creditworthiness carried out by the seller or supplier, or that the amount could rise to a much greater proportion of that income [than that envisaged], also taking into account the fact that the relevant national legislation requires a specific description of the risk in writing rather than a mere statement as to the existence of a risk and its allocation, and, in addition, that the Court of Justice declared in paragraph 74 of its judgment in Case C-26/13 that the seller or supplier must not only make the consumer aware of the risk, but that it is also necessary that, on the basis of that information, the consumer be able to assess the potentially significant economic consequences for him resulting from the exchange-rate risks allocated to him and, therefore, the total cost of the sum borrowed?

2. Taking into consideration the economic consequences, may it be considered that a contractual term is not unfair, that is to say, that it is in plain, intelligible language, where it places the exchange rate risk on the consumer — the term being drafted (as a standard contractual term used by the seller or supplier, and not negotiated individually) in fulfilment of an obligation to provide information, necessarily of general character, laid down by law — but fails to state expressly that the credit agreement does not set out any maximum limit for variations in the exchange rate, also taking into account the fact that the Court of Justice declared, in paragraph 74 of its judgment in Case-26/13, that the seller or supplier must not only make the consumer aware of the risk, but that it is also necessary that, on the basis of that information, the consumer be able to assess the potentially significant economic consequences for him resulting from the exchange-rate risks allocated to him and, therefore, the total cost of the sum borrowed?

3. May Directive 93/13, ([1]) and in particular the last recital, point 1(o) of the Annex thereto, and Article 3(3) and Article 6 (1), be interpreted as meaning that — taking account especially of the requirement laid down, inter alia, in the judgment in Case C-42/15, according to which effective, proportionate and dissuasive penalties are necessary for consumer protection — the following are contrary to EU law: the case-law, legal interpretation or legislative measures of a Member State, pursuant to which the legal consequence (full invalidity on grounds of infringement of a legal rule, or compensation for damage or other consequence on any legal ground), deriving in that Member State from a credit check that is not thorough and exhaustive, fails to protect the consumer and is negligent (for example, by failing to examine the effect of the exchange-rate risk consisting in a significant increase in the repayment instalments and the principal sum due), is more disadvantageous for the consumer than the restitution of the initial situation (*restitutio in integrum*), whereby the debtor consumer is freed from liability for the exchange-rate risk, that is to say, from the increase in repayment instalments owing to exchange-rate variations and, where appropriate, is allowed to repay the loan principal in instalments?

4. With regard to the interpretation of the opportunity to examine all the terms of a contract, referred to in the twentieth recital of Directive 93/13, and the requirement that the contract be drafted in plain, intelligible language, laid down in Articles 4(2) and 5 of the same directive, are the relevant contractual terms to be regarded as not being unfair, where the loan agreement communicates any essential element (for example, the subject matter of the contract, namely the loan amount, the repayment instalments and the interest on the transaction) simply for information purposes, without making it clear whether or not the part communicated for information purposes is legally binding on the parties to the contract?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 3 April 2018 — Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others

(Case C-228/18)

(2018/C 231/16)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Defendant and appellant: Gazdasági Versenyhivatal

Applicants and respondents: Budapest Bank Nyrt., ING Bank NV Magyarországi Fióktelepe, OTP Bank Nyrt., Kereskedelmi és Hitelbank Zrt., Magyar Külkereskedelmi Bank Zrt., ERSTE Bank Hungary Nyrt., Visa Europe Ltd, MasterCard Europe SA

Questions referred

1. Can Article 81(1) EC [Article 101(1) TFEU] be interpreted as meaning that the same conduct can infringe this provision both because the object of the conduct is anti-competitive and also because its effect is anti-competitive, with the two cases being treated as separate grounds in law?

2. Can Article 81(1) EC [Article 101(1) TFEU] be interpreted as meaning that the agreement at issue in the proceedings, which was entered into by Hungarian banks and which establishes, in respect of the two bank card companies, MasterCard and Visa, a unitary amount for the interchange fee payable to the issuing banks for the use of the cards of those two companies, constitutes a restriction of competition by object?

3. Can Article 81(1) EC [Article 101(1) TFEU] be interpreted as meaning that the credit card companies can also be considered to be parties to an interbank agreement where they were not directly involved in defining the content of the agreement but facilitated its adoption and accepted and implemented it; or are these companies to be considered to have acted in concert with the banks that entered into the agreement?

4. Can Article 81(1) EC [Article 101(1) TFEU] be interpreted as meaning that, in view of the subject matter of the proceedings, for the purpose of finding an infringement of competition law, it is not necessary to differentiate between participation in the agreement and acting in concert with the banks that participated in the agreement?

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 28 March 2018 — Vega International Car Transport and Logistic — Trading GmbH

(Case C-235/18)

(2018/C 231/17)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Vega International Car Transport and Logistic — Trading GmbH

Other party to the proceedings: Dyrektor Izby Skarbowej w Warszawie (now the Dyrektor Izby Administracji Skarbowej w Warszawie)

Question referred

Does the concept referred to in Article 135(1)(b) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) include transactions consisting in the provision of fuel cards and in negotiating, financing and accounting for the purchase of fuel using those cards, or can such complex transactions be considered to be chain transactions the primary purpose of which is the supply of fuel?

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

Appeal brought on 16 April 2018 by the European Commission against the judgment of the General Court (Second Chamber) delivered on 5 February 2018 in Case T-216/15: Dôvera zdravotná poisťovňa, a.s. v European Commission

(Case C-262/18 P)

(2018/C 231/18)

Language of the case: English

Parties

Appellant: European Commission (represented by: P.J. Loewenthal, F. Tomat, Agents)

Other parties to the proceedings: Dôvera zdravotná poisťovňa a.s., Slovak Republic, Union zdravotná poisťovňa a.s.

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Second Chamber) of 5 February 2018 in Case T-216/15, Dôvera v Commission;

— refer the case back to the General Court for consideration;

— alternatively, make use of its power under the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union to give final judgment in the matter; and

— reserve the costs of the present proceedings, if it refers the case back to the General Court, or order Dôvera zdravotná poisťovňa a.s. and Union zdravotná poisťovňa a.s. to pay the costs of the proceedings, if it gives final judgment in the matter.

Pleas in law and main arguments

By the contested judgment, the General Court annulled Commission Decision (EU) 2015/248 of 15 October 2014 on the measures SA.23008 (2013/C) (ex2013/NN) granted by the Slovak Republic to Spoločná zdravotná poisťovňa a.s. (SZP) and Všeobecná zdravotná poisťovňa a.s. (VZP) (OJ 2015, L 41, p. 25).

The Commission puts forward three grounds in support of its appeal of the contested judgment.

First, the Commission considers the General Court to have failed to fulfil its duty to state reasons under Article 36 and 53, paragraph 1, of the Statute of the Court of Justice. In the contested judgment, the General Court claims to annul the contested decision by upholding the applicant's second plea at first instance, namely that the Commission was wrong to conclude that the Slovak compulsory health insurance scheme is predominantly solidarity-based. However, the legal standard it in fact applied to annul that decision is the one that the applicant proposed under its first plea at first instance, namely that the mere presence of any economic features transforms the provision of health insurance into an economic activity. Since the legal standard under the applicant's first and second pleas were mutually exclusive, the Commission is not in a position to understand on what basis the contested decision was annulled.

Second, the Commission considers the General Court to have committed an error of law by misinterpreting the notion of undertaking within the meaning of Article 107(1) TFEU. In the contested judgment, the General Court upheld the Commission's conclusion that the Slovak compulsory health insurance scheme was predominantly solidarity-based, as well as its explanation that its economic features were introduced to ensure that its social and solidarity objectives were attained. It nevertheless found that the Commission committed an error of assessment by concluding that the activity carried out by health insurers under the Slovak compulsory health insurance scheme is not economic in nature. It arrived at this conclusion by noting insurers' ability to make, use and distribute part of their profits and the competition between insurers for customers and on quality of services. It then found that the mere presence of for-profit insurers in Slovakia transform SZP and VZP by contagion into undertakings within the meaning of Article 107(1) TFEU. In so concluding, the General Court disregarded the case-law according to which a health insurance scheme that is predominantly solidarity-based and whose economic features were introduced to ensure the continuity of the scheme and the attainment of the social and solidarity objectives underpinning it is non-economic in nature, so that the health insurance providers operating under that scheme are not undertakings.

Third, the Commission considers the General Court to have distorted the evidence submitted to it at first instance in concluding that there was 'intense and complex competition' between health insurance providers in Slovakia, when the case file only pointed to a very limited amount of competition for the provision of non-mandatory benefits free of charge.

Request for a preliminary ruling from the Symvoulio tis Epikrateias (Greece) lodged on 24 April 2018 — Alain Flausch, Andrea Bosco, Estienne Roger Jean Pierre Albrespy, Association registered as Syndesmos Iiton, Association registered as Elliniko Diktyo — Filoi tis Fysis, Association registered as Syllogos Prostasias kai Perithalpsis Agias Zois (SPPAZ) v Ypourgos Perivallontos kai Energeias, Ypourgos Oikonomikon, Ypourgos Tourismou, Ypourgos Naftilias kai Nisiotikis Politikis

(Case C-280/18)

(2018/C 231/19)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicants:

Alain Flausch,

Andrea Bosco,

Estienne Roger Jean Pierre Albrespy,

Association registered as Syndesmos Iiton,

Association registered as Elliniko Diktyo — Filoi tis Fysis,

Association registered as Syllogos Prostasias kai Perithalpsis Agias Zois (SPPAZ)

Defendants:

Ypourgos Perivallontos kai Energeias,

Ypourgos Oikonomikon,

Ypourgos Tourismou,

Ypourgos Naftilias kai Nisiotikis Politikis

Intervening party:

105 Anonymi Touristiki kai Techniki Etaireia Ekmetallefsis Akiniton

Questions referred

1. Can Articles 6 and 11 of Directive 2011/92/EU, ([1]) read in combination with the provisions of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that provisions of national law as set out in paragraphs 8, 9 and 10 [of the order for reference], in which it is laid down that procedures preceding the adoption of decisions approving environmental conditions for projects and activities with a significant environmental impact (publication of environmental impact studies, public information and participation in the consultation process) are to be initiated and conducted primarily by the wider administrative unit (region) and not by the municipality concerned, are compatible with those articles?

2. Can Articles 6 and 11 of Directive 2011/92/EU, read in combination with the provisions of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that a system of provisions of national law as set out in the abovementioned paragraphs, which ultimately provides that publication of decisions approving the environmental conditions of projects and activities with a significant environmental impact, by means of posting them on a special website, creates a presumption of full knowledge on the part of every interested party for the purpose of exercising the legal remedy available under current legislation (application for annulment before the Symvoulio tis Epikrateias [Council of State]) within a period of sixty (60) days, is compatible with those articles, bearing in mind the legislative provisions governing publication of environmental impact studies and public information and participation during the procedure to approve the environmental conditions of those projects and activities, which provisions place the wider administrative unit (region), rather than the municipality concerned, at the centre of those procedures?

([1]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1).

Appeal brought on 11 May 2018 by Eco-Bat Technologies Ltd, Berzelius Metall GmbH, Société traitements chimiques des métaux against the order of the General Court (Eighth Chamber) delivered on 21 March 2018 in Case T-361/17: Eco-Bat Technologies Ltd, Berzelius Metall GmbH, Société traitements chimiques des métaux v European Commission

(Case C-312/18 P)

(2018/C 231/20)

Language of the case: English

Parties

Appellants: Eco-Bat Technologies Ltd, Berzelius Metall GmbH, Société traitements chimiques des métaux (represented by: M. Brealey QC, I. Vandenborre, advocaat, S. Dionnet, avocat)

Other party to the proceedings: European Commission

Form of order sought

The applicants claim that the Court should:

— set aside the order of the General Court (Eight Chamber) of 21 March 2018 in case T-361/17, Eco-Bat Technologies and Others v Commission;

— declare admissible the appellant's application registered as case T-361/17;

— refer the case back to the General Court for the annulment or reduction of the penalty imposed by the Commission with the initial decision as amended by the correcting decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The General Court has committed an error in law in determining the reference date by looking at the initial, incomplete, decision instead of the full and final decision, correct and complete in every aspect (particularly in those aspects that are the object of the appeal). By doing so, the General Court has breached the appellant's fundamental rights (in particular, its right of defence). A person has the right to have the limitation period available in full as from the date of the substantive amendment decision. The General Court has also misinterpreted the Commission's duty to state reasons and the principle of good administration in assuming that the appellant should have resorted to assumptions in order to fully understand how the Commission arrived at the amount of the fine.

GENERAL COURT

Judgment of the General Court of 17 May 2018 — Bayer CropScience and Others v Commission

(Cases T-429/13 and T-451/13) ([1])

(Plant protection products — Active substances clothianidin, thiamethoxam and imidacloprid — Review of approval — Article 21 of Regulation (EC) No 1107/2009 — Prohibition of the use and sale of seeds treated with plant protection products containing the active substances in question — Article 49(2) of Regulation No 1107/2009 — Precautionary principle — Proportionality — Right to be heard — Non-contractual liability)

(2018/C 231/21)

Language of the case: English

Parties

Applicant in Case T-429/13: Bayer CropScience AG (Monheim am Rhein, Germany) (represented by: K. Nordlander, lawyer, and P. Harrison, Solicitor)

Applicants in Case T-451/13: Syngenta Crop Protection AG (Basel, Switzerland), and the 15 other applicants whose names appear in the annex to the judgment (represented initially by: D. Waelbroek, I. Antypas, lawyers, and D. Slater, Solicitor, and subsequently by D. Waelbroek and I. Antypas)

Defendant in Cases T-429/13 and T-451/13: European Commission (represented by: P. Ondrůšek and G. von Rintelen, acting as Agents)

Interveners in support of the applicants in Cases T-429/13 and T-451/13: Association générale des producteurs de maïs et autres céréales cultivées de la sous-famille des panicoïdées (AGPM) (Montardon, France) (represented by: L. Verdier and B. Trouvé, lawyers), The National Farmers' Union (NFU) (Stoneleigh, United Kingdom) (represented by: H. Mercer QC, and N. Winter, Solicitor), Association européenne pour la protection des cultures (ECPA) (Brussels, Belgium) (represented by: D. Abrahams, Barrister, I. de Seze and É. Mullier, lawyers), Rapool-Ring GmbH Qualitätsraps deutscher Züchter (Isernhagen, Germany) (represented initially by: C. Stallberg and U. Reese, and subsequently by U. Reese and J. Szemjonneck, lawyers), European Seed Association (ESA) (Brussels) (represented initially by: P. de Jong, P. Vlaemminck and B. Van Vooren, and subsequently by P. de Jong, K. Claeyé and E. Bertolotto, lawyers), Agricultural Industries Confederation Ltd (Peterborough, United Kingdom) (represented initially by: P. de Jong, P. Vlaemminck and B. Van Vooren, and subsequently by P. de Jong, K. Claeyé and E. Bertolotto, lawyers)

Interveners in support of the defendant in Cases T-429/13 and T-451/13: Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, U. Persson, E. Karlsson, L. Swedenborg and C. Hagerman, acting as Agents), Union nationale de l'apiculture française (UNAF), (Paris, France) (represented, in Case T-429/13, by: B. Fau and J.-F. Funke, lawyers, and, in Case T-451/13, by B. Fau), Deutscher Berufs- und Erwerbsimkerbund eV (Soltau, Germany), Österreichischer Erwerbsimkerbund (Großebersdorf, Austria) (represented by: A. Willand and B. Tschida, lawyers), Pesticide Action Network Europe (PAN Europe) (Brussels), Bee Life European Beekeeping Coordination (Bee Life) (Louvain-la-Neuve, Belgium), Buglife — The Invertebrate Conservation Trust (Peterborough) (represented by: B. Kloostra, lawyer), Stichting Greenpeace Council (Amsterdam, Netherlands) (represented by: B. Kloostra, lawyer)

Re:

Application (i) pursuant to Article 263 TFEU for annulment of Commission Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances (OJ 2013 L 139, p. 12), and (ii) in Case T-451/13, pursuant to Article 268 TFEU for compensation for the damage which the applicants claim to have suffered.

Operative part of the judgment

The Court:

1. *Orders that Cases T-429/13 and T-451/13 be joined for the purposes of the judgment closing the proceedings;*

2. *Dismisses the actions;*

3. *Orders Bayer CropScience AG, Syngenta Crop Protection AG and the other applicants whose names appear in the annex to bear their own costs, and to pay those incurred by the European Commission, the Union nationale de l'apiculture française (UNAF), Deutscher Berufs- und Erwerbsimkerbund eV and Österreichischer Erwerbsimkerbund;*

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

5. *Orders the Association générale des producteurs de maïs et autres céréales cultivées de la sous-famille des panicoïdées (AGPM), The National Farmers' Union (NFU), the Association européenne pour la protection des cultures (ECPA), Rapool-Ring GmbH Qualitätsraps deutscher Züchter, the European Seed Association (ESA), the Agricultural Industries Confederation Ltd, Pesticide Action Network Europe (PAN Europe), Bee Life European Beekeeping Coordination (Bee Life), Buglife — The Invertebrate Conservation Trust and Stichting Greenpeace Council to bear their own costs.*

([1]) OJ C 325, 9.11.2013.

Judgment of the General Court of 17 May 2018 — BASF Agro and Others v Commission

(Case T-584/13) ([1])

(Plant protection products — Active substance fipronil — Review of approval — Article 21 of Regulation (EC) No 1107/2009 — Prohibition of the use and sale of seeds treated with plant protection products containing the active substance in question — Article 49(2) of Regulation No 1107/2009 — Precautionary principle — Impact assessment)

(2018/C 231/22)

Language of the case: English

Parties

Applicants: BASF Agro BV (Arnhem, Netherlands) and the six other applicants whose names appear in the annex to the judgment (represented by: J.-P. Montfort and M. Peristeraki, lawyers)

Defendant: European Commission (represented by: P. Ondrůšek and G. von Rintelen, acting as Agents)

Interveners in support of the applicants: Association européenne pour la protection des cultures (ECPA) (Brussels, Belgium) (represented by: I. de Seze and É. Mullier, lawyers, and D. Abrahams, Barrister), European Seed Association (ESA) (Brussels) (represented initially by: P. de Jong, P. Vlaemminck and B. Van Vooren, and subsequently by P. de Jong, K. Claeyé and E. Bertolotto, lawyers)

Interveners in support of the defendant: Deutscher Berufs- und Erwerbsimkerbund eV (Soltau, Germany), Österreichischer Erwerbsimkerbund (Großebersdorf, Austria), Österreichischer Imkerbund (ÖIB) (Vienna, Austria) (represented by: A. Willand and B. Tschida, lawyers)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Implementing Regulation (EU) No 781/2013 of 14 August 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substance fipronil, and prohibiting the use and sale of seeds treated with plant protection products containing this active substance (OJ 2013 L 219, p. 22).

Operative part of the judgment

The Court:

1. *Annuls Articles 1, 3 and 4 of Commission Implementing Regulation (EU) No 781/2013 of 14 August 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substance fipronil, and prohibiting the use and sale of seeds treated with plant protection products containing this active substance;*

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

3. *Orders the European Commission to bear its own costs and to pay those incurred by BASF Agro BV and the other applicants whose names appear in the annex, as well as those incurred by the Association européenne pour la protection des cultures (ECPA) and the European Seed Association (ESA);*

4. *Orders Deutscher Berufs- und Erwerbsimkerbund eV, Österreichischer Erwerbsimkerbund and Österreichischer Imkerbund (ÖIB) to bear their own costs.*

(1) OJ C 9, 11.1.2014.

Judgment of the General Court of 8 May 2018 — Esso Raffinage v ECHA

(Case T-283/15) (1)

(REACH — Dossier evaluation — Compliance check of registrations — Check of information submitted and follow-up to dossier evaluation — Statement of non-compliance — Jurisdiction of the General Court — Actions for annulment — Challengeable act — Direct and individual concern — Admissibility — Legal basis — Articles 41, 42 and 126 of Regulation (EC) No 1907/2006)

(2018/C 231/23)

Language of the case: English

Parties

Applicant: Esso Raffinage (Courbevoie (France)) (represented by: M. Navin-Jones, solicitor)

Defendants: European Chemicals Agency (ECHA) (represented by: C. Jacquet, C. Schultheiss, W. Broere and M. Heikkilä, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: T. Henze, acting as Agent), French Republic (represented by: D. Colas and J. Traband, acting as Agents), and Kingdom of the Netherlands (represented by M. de Ree, M. Bulterman and M. Noort, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of the letter from ECHA of 1 April 2015 addressed to the French Ministère de l'ecologie du developement durable, des transports et du logement (Ministry of Ecology, Sustainable Development, Transport and Housing) and entitled 'Statement of Non-Compliance following a Dossier Evaluation Decision under Regulation (EC) No 1907/2006'.

Operative part of the judgment

The Court:

1. *Annuls the letter of the European Chemicals Agency (ECHA) of 1 April 2015 addressed to the French Ministère de l'ecologie du developement durable, des transports et du logement (Ministry of Ecology, Sustainable Development, Transport and Housing) and entitled 'Statement of Non-Compliance following a Dossier Evaluation Decision under Regulation (EC) No 1907/2006' and the annex thereto;*

2. *Orders Esso Raffinage and ECHA each to bear their own costs;*

3. *Orders the Federal Republic of Germany, The French Republic and the Kingdom of the Netherlands each to bear their own costs.*

(1) OJ C 320, 28.9.2015.

Judgment of the General Court of 17 May 2018 — Lithuania v Commission

(Case T-205/16) (1)

(Cohesion Fund — Expenditure excluded from financing — Technical support for Cohesion Fund management in Lithuania — VAT — Article 11(1) and (3) of Regulation (EC) No 16/2003 — Reduction of financial assistance)

(2018/C 231/24)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, R. Krasuckaitė and D. Stepanienė, acting as Agents)

Defendant: European Commission (represented by: B.-R. Killmann and J. Jokubauskaitė, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking annulment of Commission Decision C(2016) 969 final of 23 February 2016, concerning the reduction in support from the Cohesion Fund for the project 'Technical assistance for Cohesion Fund management in the Republic of Lithuania', in so far as that decision provides for a reduction in support in the amount of EUR 137 864,61 corresponding to VAT expenses.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2016) 969 final of 23 February 2016, concerning the reduction in support from the Cohesion Fund for the project 'Technical assistance for Cohesion Fund management in the Republic of Lithuania', in so far as that decision provides for a reduction in support in the amount of EUR 137 864,61 corresponding to VAT expenses;*

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

(1) OJ C 251, 11.7.2016.

Judgment of the General Court of 16 May 2018 — Troszczynski v Parliament

(Case T-626/16) (1)

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid — Power of the Secretary-General — Electa una via — Rights of the defence — Burden of proof — Obligation to state reasons — Political rights — Equal treatment — Misuse of power — Independence of the Members — Error of fact — Proportionality)

(2018/C 231/25)

Language of the case: French

Parties

Applicant: Mylène Troszczynski (Noyon, France) (represented initially by: M. Ceccaldi, and subsequently by F. Wagner, lawyers)

Defendant: European Parliament (represented by: G. Corstens and S. Seyr, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of the decision of the Secretary-General of the Parliament of 23 June 2016 concerning the recovery from the applicant of a sum of EUR 56 554 wrongfully paid as parliamentary assistance allowance and the debit note relating thereto.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Mylène Troszczynski to bear her own costs and to pay those incurred by the European Parliament, including those related to the interlocutory proceedings.*

([1]) OJ C 383, 17.10.2016.

Judgment of the General Court of 15 May 2018 — Wirecard v EUIPO (mycard2go)

(Case T-675/16) ([1])

(EU trade mark — Application for EU word mark mycard2go — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — Obligation to state reasons — Article 75, first sentence, of Regulation No 207/2009 (now Article 94, first sentence, of Regulation 2017/1001))

(2018/C 231/26)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 21 July 2016 (Case R 282/2016-4) concerning an application for registration of the word sign mycard2go as an EU trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 21 July 2016 (Case R 282/2016-4);*

2. *Dismisses the remainder of the application;*

3. *Orders EUIPO to bear its own costs and to pay those incurred by the applicant, including the costs necessarily incurred for the purposes of the appeal proceedings before EUIPO.*

([1]) OJ C 410, 7.11.2016.

Judgment of the General Court of 15 May 2018 — Wirecard v EUIPO (mycard2go)

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

(EU trade mark — Application for EU figurative mark mycard2go — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001))

(2018/C 231/27)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 21 July 2016 (Case R 280/2016-4) concerning an application for registration of the figurative sign mycard2go as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wirecard AG to pay the costs.*

([1]) OJ C 410, 7.11.2016.

Judgment of the General Court of 16 May 2018 — Deutsche Lufthansa v Commission

(Case T-712/16) ([1])

(Competition — Concentrations — Air transport market — Decision declaring a concentration compatible with the internal market subject to certain commitments — Request for a waiver of part of the obligations forming the subject matter of the commitments — Proportionality — Legitimate expectations — Principle of good administration — Misuse of powers)

(2018/C 231/28)

Language of the case: English

Parties

Applicant: Deutsche Lufthansa AG (Cologne, Germany) (represented by: S. Völcker, lawyer)

Defendant: European Commission (represented by: A. Biolan, H. Leupold and I. Zaloguin, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Decision C(2016) 4964 final of 25 July 2016 rejecting the applicant's request for a waiver of certain commitments rendered binding by the Commission Decision of 4 July 2005 approving the merger in Case COMP/M.3770 — Lufthansa/Swiss.

Operative part of the judgment

The Court:

1. *Annuls, in so far as it concerns the Zurich-Stockholm route, Commission Decision C(2016) 4964 final of 25 July 2016 rejecting Deutsche Lufthansa AG's request for a waiver of certain commitments rendered binding by the Commission decision of 4 July 2005 approving the merger in Case COMP/M.3770 — Lufthansa/Swiss;*

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

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

([1]) OJ C 462, 12.12.2016.

Judgment of the General Court of 16 May 2018 — Netflix International and Netflix v Commission

(Case T-818/16) ([1])

(Action for annulment — State aid — Aid planned by Germany to fund film production and distribution — Decision declaring aid compatible with the internal market — Act not of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

(2018/C 231/29)

Language of the case: English

Parties

Applicants: Netflix International BV (Amsterdam, Netherlands), Netflix, Inc. (Los Gatos, California, United States) (represented by: C. Alberdingk Thijm, S. van Schaik, S. van Velze and E.H. Janssen, lawyers)

Defendant: European Commission (represented by: J. Samnadda, G. Braun and B. Stromsky, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Decision (EU) 2016/2042 of 1 September 2016 on the aid scheme SA.38418 — 2014/C (ex 2014/N) which Germany is planning to implement for the funding of film production and distribution (OJ 2016 L 314, p. 63).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Declares that there is no need to rule on the applications to intervene lodged by the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands and the Filmförderungsanstalt;*

3. *Orders Netflix International BV and Netflix, Inc. to bear their own costs and to pay those incurred by the European Commission, with the exception of those relating to the applications to intervene;*

4. *Orders Netflix International, Netflix, the Commission, the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands and the Filmförderungsanstalt each to bear their own costs relating to the applications to intervene.*

(1) OJ C 30, 30.1.2017.

Judgment of the General Court of 15 May 2018 — Wirecard v EUIPO (mycard2go)

(Case T-860/16) (1)

(EU trade mark — Application for EU figurative mark mycard2go — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001))

(2018/C 231/30)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 3 October 2016 (Case R 281/2016-4) concerning an application for registration of the figurative sign mycard2go as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wirecard AG to pay the costs.*

(1) OJ C 38, 6.2.2017.

Judgment of the General Court of 16 May 2018 — Barnett v EESC

(Case T-23/17) (1)

(Civil service — Officials — Retirement pension — Early retirement without reduction of pension rights — Facility formerly provided for in Article 9(2) of Annex VIII to the Staff Regulations — Interests of the service — Compliance with an annulling judgment delivered by the Civil Service Tribunal — Liability)

(2018/C 231/31)

Language of the case: French

Parties

Applicant: Inge Barnett (Roskilde, Denmark) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Economic and Social Committee (represented by: M. Pascua Mateo, K. Gambino, X. Chamodraka, A. Carvajal and L. Camarena Januzec, acting as Agents, and by M. Troncoso Ferrer and F.-M. Hislaire, lawyers)

Re:

Application under Article 270 TFEU seeking, primarily, the annulment of the decision of the EESC of 21 March 2016, taken with a view to complying with the judgment of 22 September 2015, *Barnett* v *EESC* (F-20/14, EU:F:2015:107), refusing to grant the applicant early retirement without reduction of pension rights and, secondarily, compensation for the damage which she claims to have suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Inge Barnett to pay the costs.*

([1]) OJ C 104, 3.4.2017.

Judgment of the General Court of 16 May 2018 — Triggerball v EUIPO (Shape of a ball-like object with edges)

(Case T-387/17) ([1])

(EU trade mark — Application for a three-dimensional EU trade mark — Shape of a ball-like object with edges — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2018/C 231/32)

Language of the case: German

Parties

Applicant: Triggerball GmbH (Baiern-Piusheim, Germany) (represented by: H. Emrich, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 20 April 2017 (Case R 376/2017-4), concerning an application for registration of a three-dimensional sign consisting of the shape of a ball-like object with edges as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 256, 7.8.2017.

Action brought on 16 March 2018 — SCF Terminal (Cyprus) and S H B v Council and Others

(Case T-199/18)

(2018/C 231/33)

Language of the case: English

Parties

Applicants: SCF Terminal (Cyprus) LTD (Limassol, Cyprus) and S H B, Inc. (Monrovia, Liberia) (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

In support of the action, the applicants rely on four pleas in law which are in essence identical or similar to those relied on in Case T-197/18, *JV Voscf and Others* v *Council and Others*.

Action brought on 6 April 2018 — Czarnecki v Parliament

(Case T-230/18)

(2018/C 231/34)

Language of the case: French

Parties

Applicant: Ryszard Czarnecki (Warsaw, Poland) (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible;

— annul the contested decision of the European Parliament of 7 February 2018;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging, first, infringement of the principle of the presumption of innocence, the right of defence and the principle of equality of arms, and, secondly, infringement of the principle of sound administration, the principle of the proportionality and the right to freedom of expression.

2. Second plea in law, alleging a manifest error of assessment, a *fumus persecutionis* and misuse of powers.

3. Third plea in law, alleging infringement of the principle of legal certainty and the principle of protection of legitimate expectations.

Action brought on 12 April 2018 — Netflix International and Netflix v Commission

(Case T-238/18)

(2018/C 231/35)

Language of the case: English

Parties

Applicants: Netflix International BV (Amsterdam, Netherlands), Netflix, Inc. (Los Gatos, California, United States) (represented by: E. Batchelor, Solicitor, N. Niejahr, B. Hoorelbeke and A. Patsa, lawyers)

Defendants: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission Decision of 8 November 2017 on State aid SA.48950 (2017/N) on the prolongation of the aid scheme for the digitisation of cinematographic heritage works notified by France;

— annul the Commission Decision of 20 November 2017 on State aid SA.48907 (2017/N) on the prolongation of the automatic aid scheme for audiovisual work (fiction and creative documentaries) notified by France;

— annul the Commission Decision of 20 November 2017 on State aid SA.48699 (2017/N) on the prolongation of the automatic aid scheme for the production and preparation of cinematographic work notified by France; and

— order the Commission to bear its own costs and Netflix's costs in connection with these proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law.

The applicants submit that the Commission violated Article 108(3) TFEU by not opening the formal investigation procedure provided for in Article 108(2) TFEU when examining the State aid schemes notified by France which are the subject of the contested decisions. The Commission was required to open the formal investigation procedure for each of the three State aid schemes on account of the serious difficulties it encountered in assessing each of them for compatibility with the internal market. By failing to open the formal investigation procedure, the Commission infringed the procedural rights of the applicants under Article 108(2) TFEU.

The applicants submit that the existence of serious difficulties is supported by:

— the circumstances and the length of the preliminary examination procedures that led to the adoption of the contested decisions; and

— the content of the contested decisions, in particular as this relates to the State aid schemes' financing mechanisms and the State aid schemes' compatibility with EU law other than the State aid provisions.

Action brought on 17 April 2018 — SKS Import Export v Commission

(Case T-239/18)

(2018/C 231/36)

Language of the case: French

Parties

Applicant: Société Kammama Saber (S.K.S) Import Export (Sousse Jawhara, Tunisia) (represented by: H. Chelly, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

and accordingly:

— partially annul Commission Delegated Regulation (EU) 2018/212 of 13 December 2017 in so far as it adds Tunisia to the list of third countries which present strategic deficiencies in their regimes on anti-money-laundering and countering terrorist financing;

— order the Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging lack of competence on the part of the Commission and infringement of essential procedural requirements in so far as the Commission exceeded its powers under the terms of the Association Agreement between Tunisia and the European Union, pursuant to which the Commission should have submitted the question to the Association Council so the latter could resolve the dispute or, alternatively, allow the parties to take the necessary measures to protect their interests.

2. Second plea in law, alleging manifest error of assessment as regards, first, the evaluation of Tunisia by the European Union and, secondly, the evaluation of Tunisia by the Financial Action Task Force. In that regard, the applicant considers that the Commission failed to take appropriate measures to manage the increased risk to the economic development process in Tunisia resulting from the contested delegated regulation.

3. Third plea in law, alleging infringement of the EU Treaties, in particular Article 216(2) TFEU, according to which international agreements are binding on the institutions.

Action brought on 18 April 2018 — Bruno v Commission

(Case T-241/18)

(2018/C 231/37)

Language of the case: French

Parties

Applicant: Luigi Bruno (Woluwé-Saint-Pierre, Belgium) (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

Declare and rule that

— the Authority Empowered to Conclude Contracts (AECC) of 4 July 2017 is annulled;

— in so far as necessary, the express decision rejecting the claim dated 18 January 2018 is annulled;

— the defendant shall pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law committed by the European Commission in the application of Article 11(1) and 12(1) of Annex VIII to the Staff Regulations in so far as, by its decision, the Commission rejected the applicant's application for grant of the leaving allowance provided for in Article 12(2) of that annex by, on the contrary, restricting him to application of article 11(1) of Annex VIII to the Staff Regulations, which, however, does not apply to his situation.

2. Second plea in law, raising a plea of illegality, in so far as the abovementioned provisions of the Staff Regulations infringe the principle of equal treatment and of non-discrimination because of a legislative lacuna.

Action brought on 18 April 2018 — VV v Commission

(Case T-242/18)

(2018/C 231/38)

Language of the case: French

Parties

Applicant: VV (represented by: F. Moyse, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of 19 June 2017 and, in so far as necessary, the rejection of the applicant's claim of 18 January 2018;

— Order the defendant to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the decision of the selection board of Open Competition EPSO/AD/322/16 — Administrators in the field of audit (AD 5/AD 7) (OJ 2016 C 171A, p. 1) not to admit her to that competition since she does not hold a university diploma attesting to completed studies of at least 3 years in the fields set out in the notice of that competition.

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

1. First plea in law, alleging an insufficient statement of reasons of the contested decision.

2. Second plea in law, alleging errors of assessment committed by the selection board in the evaluation of the information in the applicant's application. The selection board disregarded the notice of competition in finding that the applicant did not have a level of education which corresponds to completed university studies of at least 3 years attested by a final diploma, required for admission to the competition.

Action brought on 20 April 2018 — VW v Commission

(Case T-243/18)

(2018/C 231/39)

Language of the case: French

Parties

Applicant: VW (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

Declare and rule that,

— the decision of the Appointing Authority of 26 June 2017 is annulled;

— in so far as necessary, the express decision rejecting the claim dated 19 January 2018 is annulled;

— the defendant is ordered to pay the costs.

Pleas in law and main arguments

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

1. First and principal plea in law, raising a plea of illegality directed against Article 20 of Annex VIII to the Staff Regulations since it infringes the principle of equal treatment enshrined in Article 20 of the Charter of Fundamental Rights and Article 52 of that Charter.

2. Second plea in law, raised in the alternative, in the event that the applicant were not able to rely on Article 20 of Annex VIII to the Staff Regulations, alleging an error of law committed by the defendant institution in interpreting Article 27 of Annex VIII to the Staff Regulations and, in the further alternative, if there were no error of law, alleging infringement of the principle of equal treatment enshrined in Article 20 of the Charter of Fundamental Rights and infringement of the principle of proportionality enshrined in Article 52 of that Charter.

Action brought on 20 April 2018 — Synergy Hellas v Commission

(Case T-244/18)

(2018/C 231/40)

Language of the case: Greek

Parties

Applicant: d.d.Synergy Hellas Anonymi Emporiki Etairia Parochis Ypiresion Pliroforikis (Athens, Greece) (represented by: K. Damis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action admissible;

— annul Commission Decision C(2018) 1115 final of 19 February 2018 on the recovery of the sum of EUR 76 282,08, together with interest, from 'd.d.Synergy HELLAS ANONYMI EMPORIKI ETAIRIA PAROCHIS YPIRESION PLIROFORIKIS';

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 85 of Commission Regulation (EC, Euratom) No 2342/2002 ([1]):

   — the refusal by the Commission to accept the legitimate request to grant an additional period within which to make payment, despite the fact that 73 % of the capital has already been repaid, including all interest, and even though the personal security requested by the Commission for the entire amount originally due, together with interest, has been constituted, is contrary to the provisions of that Article;

   — the Commission's argument concerning the substantive legality of the contested measure is unfounded;

   — the Commission has failed to fulfil its obligation to state reasons for the contested decision.

2. Second plea in law, alleging infringement of, and/or exceeding the limits of its discretion and infringement of the principle of 'good administration'

   — the Commission exceeded the limits of its discretion when it adopted the contested decision by disregarding essential evidence submitted by the applicant and by adopting solutions likely to lead to the liquidation of the applicant.

3. Third plea in law, alleging infringement of the principle of proportionality

   — the contested decision does not constitute a measure necessary to achieve the objective pursued, in so far as the applicant continues to pay and in so far as it imposes an excessive burden on the applicant and presents a substantive threat to its very existence.

([1]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 23 April 2018 — RATP v Commission

(Case T-250/18)

(2018/C 231/41)

Language of the case: French

Parties

Applicant: Régie autonome des transports parisiens (RATP) (Paris, France) (represented by: E. Morgan de Rivery, P. Delelis and C. Lavin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 21 March 2018 granting partial access to documents pursuant to Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;

— in any event, order the Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 4(2), third indent, of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

2. Second plea in law, alleging infringement of Article 4(2), third indent, of Regulation No 1049/2001.

3. Third plea in law, alleging infringement of Article 4(2), first indent, of Regulation No 1049/2001, Article 8 of the European Convention for the Protection of Human Rights, Article 7 of the Charter of Fundamental Rights and Article 339 TFEU.

4. Fourth plea in law, alleging infringement of the obligation to state reasons.

Action brought on 23 April 2018 — US v ECB

(Case T-255/18)

(2018/C 231/42)

Language of the case: French

Parties

Applicant: US (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Central Bank

Form of order sought

— Declare this action admissible and well-founded;

consequently:

— annul the decision not to convert the applicant's contract, dated 13 June 2017;

— annul the decision of the ECB of 11 October 2017 rejecting the applicant's application for administrative review of 11 August 2017;

— annul the decision of the ECB of 13 February 2018, served on the applicant the same day, rejecting his grievance procedure instituted on 7 December 2017;

— award damages in respect of the losses suffered;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, raising a plea of illegality as regards the conversion policy, since that policy infringes Article 10(c) of the Conditions of Employment and Article 2.0 of the Staff Rules and was adopted contrary to the hierarchy of norms.

2. Second plea in law, raising a plea of illegality, in that Article 10(c) of the Conditions of Employment and Article 2.0 of the Staff Rules infringe Council Directive [1999]/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP and recital 6 of the ETUC, UNICE and CEEP framework agreement on fixed-term work.

3. Third plea in law, raising a plea of illegality of the Annual Salary and Bonus Review (ASBR) Guidelines, in that those guidelines infringe the obligation to state reasons and the principle of legal certainty.

4. Fourth plea in law, alleging manifest errors of assessment and infringement of the obligation to state reasons as regards, firstly, the salary steps awarded to the applicant; secondly, his 'continuous development' and, thirdly, the maintenance of the business needs for the applicant's knowledge, aptitudes and specific skills.

Action brought on 24 April 2018 — Arezzo Indústria e Comércio v EUIPO (SCHUTZ)

(Case T-256/18)

(2018/C 231/43)

Language of the case: Portuguese

Parties

Applicant: Arezzo Indústria e Comércio SA (Belo Horizonte, Brazil) (represented by: A. Sebastião and J. Pimenta, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark 'SCHUTZ' — Application for registration No 15 723 265

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 February 2018 in Case R 661/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 26 April 2018 — Roxtec v EUIPO — Wallmax (Representation of a black square containing seven concentric blue circles)

(Case T-261/18)

(2018/C 231/44)

Language in which the application was lodged: English

Parties

Applicant: Roxtec AB (Karlskrona, Sweden) (represented by: J. Olsson and J. Adamsson, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wallmax Srl (Milano, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark representing a black square containing seven concentric blue circles — EU trade mark No 14 338 735

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 8 January 2018 in Case R 940/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs incurred both in these proceedings and in the proceedings before EUIPO.

Plea in law

— Infringement of Article 7(1)(e)(ii) of Regulation No 2017/1001.

Action brought on 26 April 2018 — Meblo Trade v EUIPO — Meblo Int (MEBLO)

(Case T-263/18)

(2018/C 231/45)

Language in which the application was lodged: English

Parties

Applicant: Meblo Trade d.o.o. (Zagreb, Croatia) (represented by: A. Ivanova, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Meblo Int, proizvodnja izdelkov za spanje d.o.o. (Nova Gorica, Slovenia)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in black and red MEBLO — EU trade mark No 3 431 731

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 27 February 2018 in Case R 883/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Plea in law

— Infringement of article 58(1)(a) of Regulation No 2017/1001.

Action brought on 27 April 2018 — Biernacka-Hoba v EUIPO — Formata Bogusław Hoba (Formata)

(Case T-265/18)

(2018/C 231/46)

Language in which the application was lodged: Polish

Parties

Applicant: Ilona Biernacka-Hoba (Aleksandrów Łódzki, Poland) (represented by: R. Rumpel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Formata Bogusław Hoba (Aleksandrów Łódzki, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word element 'Formata' — European Union trade mark No 11 529 427

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 13 February 2018 in Case R 2032/2017-4

Form of order sought

The applicant claims that the Court should:

— declare the action well founded;

— annul the contested decision in so far as it dismisses the application for a declaration that the trade mark 'Formata' No 11 529 427 is invalid;

— amend the contested decision by declaring the trade mark 'Formata' No 11 529 427 invalid;

— amend the contested decision in so far as it concerns the costs;

— order EUIPO to pay the costs.

Plea in law

— The Board of Appeal incorrectly considered that there was a lack of substantiation of the earlier trade mark.

Action brought on 30 April 2018 — Iceland Foods v EUIPO — Íslandsstofa (INSPIRED BY ICELAND)

(Case T-267/18)

(2018/C 231/47)

Language in which the application was lodged: English

Parties

Applicant: Iceland Foods Ltd (Deeside, United Kingdom) (represented by: S. Malynicz, QC, J. Hertzog, C. Hill and J. Warner, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Íslandsstofa (Reykjavik, Iceland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark INSPIRED BY ICELAND — Application for registration No 14 350 094

Procedure before EUIPO: Opposition proceedings

Contested decision: Interim Decision of the Fifth Board of Appeal of EUIPO of 7 February 2018 in Case R 340/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to bear their own costs and pay those of the applicant.

Pleas in law

— Infringement of Article 71 of Regulation No 2017/1001 by failing to decide the appeal;

— Infringement of an essential procedural requirement under Article 72 of Regulation No 2017/1001 in that the Board acted contrary to the principles of procedural economy and fairness in deciding to remit the case for re-examination of the contested mark on absolute grounds, while also pre-judging the applicability of absolute grounds without hearing from the applicant for annulment, thereby acting contrary to the principle of *audi alteram partem*.

Action brought on 27 April 2018 — Sandrone v EUIPO — J. Garcia Carrion (Luciano Sandrone)

(Case T-268/18)

(2018/C 231/48)

Language in which the application was lodged: English

Parties

Applicant: Luciano Sandrone (Barolo, Italy) (represented by: A. Borra, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: J. Garcia Carrion, SA (Jumilla, Spain)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'Luciano Sandrone' — Application for registration No 14 416 598

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 February 2018 in Case R 1207/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Lack of evidence of genuine use of the earlier mark in accordance with Article 42 (2) and (3) of Regulation No 2017/1001.

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

Action brought on 2 May 2018 — Inditex v EUIPO — Ffauf (ZARA)

(Case T-269/18)

(2018/C 231/49)

Language in which the application was lodged: Spanish

Parties

Applicant: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) (represented by: G. Macías Bonilla, G. Marín Raigal and E. Armero Lavie, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ffauf SA (Luxembourg, Luxembourg)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: European Union word mark ZARA — Application for registration No 8 929 952

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 2 February 2018 in Joined Cases R 359/2015-5 and R 409/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismissed the applicant's appeal, upheld in part the intervener's appeal and rejected the application for the European Union word mark ZARA No 8 929 952 for the following goods and services: Class 29 — preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes, milk products; edible oils and fats; Class 30 — rice, tapioca, sago, flour and preparations made from cereals, bread, pastry and confectionery products, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, rice-based snack food; Class 31 — fresh vegetables; Class 32 — fresh juices; Class 35 — retailing and wholesaling in shops, selling via global computer networks, by catalogue, by mail order, by telephone, by radio and television, and via other electronic means of preserved, frozen, dried and cooked vegetables; edible oils, rice, flour and preparations made from cereals, bread, vinegar, sauces (condiments); Class 43 — restaurant services (food), self-service restaurants, cafeterias;

— order EUIPO and, if appropriate, the intervener (Ffauf SA) to pay the costs arising from this action before the General Court;

— order the opponent, FFAUF, S.A, to pay the costs arising from Joined Cases R 359/2015-5 and R 409/2015-5 before the Fifth Board of Appeal of EUIPO.

Pleas in law

— Infringement of Articles 15(1) and 42(2) and (3) of Regulation No 207/2009 and of Rule 22(2) and (3) of Regulation No 2868/95;

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

Action brought on 3 May 2018 — Mauritsch/INEA

(Case T-271/18)

(2018/C 231/50)

Language of the case: English

Parties

Applicant: Walter Mauritsch (Vienna, Austria) (represented by: S. Rodrigues and A. Champetier, lawyers)

Defendant: Innovation and Networks Executive Agency (INEA)

Form of order sought

The applicant claims that the Court should:

— annul, first, the defendant's decision of 24 January 2018, rejecting the applicant's complaint of 4 October 2017, and, second, its decision of 2 August 2017, rejecting the applicant's request for compensation, filed on 10 April 2017;

— order the defendant to compensate the applicant for the material prejudice allegedly suffered as a result of the defendant's fault, amounting to the loss of his entitlement to unemployment benefits for a period of maximum three years, increased by the relevant interest rate; and

— order the defendant to reimburse the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a plea in law to the effect that the defendant failed to provide him with proper and clear information about his social security rights in the event of his refusal to sign the contract renewal. The applicant argues that he was not in a position to know that his refusal to sign the contract would be treated as resignation. Thus, the applicant was deprived of information and the defendant breached its duty of care and the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union.

Action brought on 27 April 2018 — Julius-K9 v EUIPO — El Corte Inglés (K9 UNIT)

(Case T-276/18)

(2018/C 231/51)

Language in which the application was lodged: English

Parties

Applicant: Julius-K9 Zrt (Szigetszentmiklós, Hungary) (represented by: G. Jambrik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: El Corte Inglés, SA (Madrid, Spain)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark K9 UNIT — Application for registration No 14 590 831

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 February 2018 in Case R 1432/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 4 May 2018 — Zitro IP v EUIPO (PICK & WIN MULTISLOT)

(Case T-277/18)

(2018/C 231/52)

Language of the case: Spanish

Parties

Applicant: Zitro IP Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark PICK & WIN MULTISLOT — Application for registration No 16 071 946

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 March 2018 in Case R 978/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 30 April 2018 — Alliance Pharmaceuticals v EUIPO — AxiCorp (AXICORP ALLIANCE)

(Case T-279/18)

(2018/C 231/53)

Language in which the application was lodged: English

Parties

Applicant: Alliance Pharmaceuticals Ltd (Wiltshire, United Kingdom) (represented by: M. Edenborough, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: AxiCorp GmbH (Friedrichsdorf/Ts, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the mark AXICORP ALLIANCE — International registration designating the European Union No 1 072 913

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 February 2018 in Case R 1473/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, the contested decision of the Fifth Board be altered to state that the opposition should be remitted to the Opposition Division for it to reconsider the opposition pursuant to Articles 8(1)(b) and 8(5) in addition to reconsidering the opposition pursuant to Article 8(4);

— order EUIPO to pay to the Applicant, the Applicant's costs of and occasioned by this Application and the costs before the Board. In the alternative, if the other party before the Board intervenes, then the Defendant and Intervener jointly and severally pay to the Applicant, the Applicant's costs of and occasioned by this Application and the costs before the Board.

Pleas in law

— Infringement of article 8(1) (b) of Regulation No 2017/1001;

— The Board wrongly constructed the specifications of the earlier registered marks and, as a consequence, it held that the evidence of use that had been adduced did not show genuine use for the goods included within those specifications.

Action brought on 4 May 2018 — M. I. Industries v EUIPO — Natural Instinct (Nature's Variety Instinct)

(Case T-287/18)

(2018/C 231/54)

Language in which the application was lodged: English

Parties

Applicant: M. I. Industries, Inc. (Lincoln, United States) (represented by: M. Montañá Mora, S. Sebe Marin, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Natural Instinct Ltd (Camberley, United Kingdom)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark Nature's Variety Instinct — Application for registration No 14 290 647

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 March 2018 in Case R 1659/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and –if applicable- the Opponent to jointly and severally pay all the costs of these proceedings.

Pleas in law

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

Action brought on 4 May 2018 — M. I. Industries v EUIPO — Natural Instinct (NATURE'S VARIETY INSTINCT)

(Case T-288/18)

(2018/C 231/55)

Language in which the application was lodged: English

Parties

Applicant: M. I. Industries, Inc. (Lincoln, Nebraska, United States) (represented by: M. Montañá Mora and S. Sebe Marin, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Natural Instinct Ltd (Camberley, United Kingdom)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark NATURE'S VARIETY INSTINCT — Application for registration No 14 290 589

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 28/02/2018 in Case R 1658/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and -if applicable- the Opponent to jointly and severally pay all the costs of these proceedings.

Plea in law

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

Action brought on 4 May 2018 — Agmin Italy v Commission

(Case T-290/18)

(2018/C 231/56)

Language of the case: Italian

Parties

Applicant: Agmin Italy SpA (Verona, Italy) (represented by: F. Guardascione, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— As a preliminary matter, find and declare the nullity and/or the invalidity and/or the lack of effect and/or the non-existence of (i) the contested decision on the grounds of unlawfulness, infringement of the principle of separation of investigative powers and decision-making powers, infringement of the rights of the defence, abuse of power in the form of distortion and erroneous assessment of the facts, manifest illogicality and inconsistency, and on the grounds of failure to conduct a proper investigation and unequal treatment, and (ii) for all the reasons set out above, any other earlier or subsequent act which is in any way related and/or connected to the act referred to above, with all the legal consequences thus arising;

— In any event, annul Decision DG NEAR of 7 March 2018 (ARES — 2018 — 1288022) notified on 9 March 2018, in so far as it is contested in the present case and, consequently, annul the related penalties;

— In the alternative, order the setting aside or reduction of the penalty imposed on Agmin on the ground that it is excessive and disproportionate to Agmin's actual conduct;

— In the further alternative, find that the facts described are such as to allow the rehabilitation of Agmin pursuant to Article 106(9) of Regulation No 966/2012;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The present action is brought against the European Commission's Decision of 7 March 2018 (ARES — 2018 — 1288022), excluding the applicant from participating in procurement and grant award procedures financed by the general budget of the European Union and by the European Development Fund for the maximum period of three years laid down in Article 106(14)(c) of Regulation No 966/2012 ([1]) and ordering publication [of information relating to that exclusion] on the Commission's website, following a failure to deliver the goods ordered (Lots 9 and 11) within the timeframes laid down in Supply Contract ENPI/2014/351-804, and a failure to replace the guarantee (pre-financing guarantee of EUR 89 430,71) submitted by Agmin to the Contracting Authority on 19 November 2014. That guarantee was issued by a body which, according to information received from the Bank of Italy, was authorised to issue guarantees in favour of banks and financial institutions authorised to issue credit, but not in favour of other bodies or entities, such as the Contracting Authority.

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

1. First plea in law, alleging abuse of power, in particular in the form of infringement of the principle of separation of investigative powers and decision-making powers, infringement of the rights of the defence, manifest illogicality, and a failure to state reasons.

2. Second plea in law, alleging infringement and/or misapplication of the 'Principles of European Contract Law 2002', applicable under Article 41 of the General Conditions of the Contract; and

3. Third plea in law, alleging infringement of the principle that the penalty should be proportionate pursuant to Article 5 TEU, in that the European Commission decided to impose on Agmin the maximum penalty of three years.

The applicant claims in particular that the contested decision infringes its rights in that the Commission, in making that decision, did not give proper consideration to the fact that the Contracting Authority was principally, or in the alternative, jointly responsible for the failed delivery because that authority, arbitrarily and unjustifiably, refused to replace the supplier of the goods with another producer that had indicated its availability to supply goods of an equivalent or higher quality to that indicated in the technical specifications set out in the contract notice.

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

Action brought on 7 May 2018 — Biedermann Technologies v EUIPO (Compliant Constructs)

(Case T-291/18)

(2018/C 231/57)

Language of the case: German

Parties

Applicant: Biedermann Technologies GmbH & Co. KG (Donaueschingen, Germany) (represented by: A. Jacob, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: EU word mark 'Compliant Constructs' — Application for registration No 16 125 461

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 March 2018 in Case R 1626/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and order registration;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 7 May 2018 — Polskie Linie Lotnicze 'LOT' v Commission

(Case T-296/18)

(2018/C 231/58)

Language of the case: Polish

Parties

Applicant: Polskie Linie Lotnicze 'LOT' S.A. (Warsaw, Poland) (represented by: M. Jeżewski, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision;

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

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 Commission infringed the provisions of the Treaty, in so far as they relate to, and directly or indirectly regulate, the conditions for consenting to mergers, including, in particular, Articles 101 and 102 of the Treaty and the provisions for their implementation, including, in particular, Article 6(1)(b) and Article 2(1) and (2) of Regulation No 139/2004, by failing to carry out a full assessment of the negative effects of the concentration on competition, including, inter alia, an assessment of the effects of the concentration on the relevant markets determined on the basis of the O&D model. An assessment of the concentration within the O&D model, however, would bring to light a series of distortions of competition caused by that concentration.

2. Second plea in law, alleging that the Commission incorrectly assessed the effects of the concentration in relation to the possibility of providing passenger air transport services and in relation to the airports concerned by the concentration, thereby committing a gross and manifest error of assessment. A properly conducted analytical examination of the concentration would necessarily lead to the conclusion that its realisation will give rise to a series of negative effects on competition, including the creation of a dominant position for Lufthansa at certain airports.

3. Third plea in law, alleging that the Commission infringed Regulation No 95/93 by infringing the principles of neutrality, transparency and non-discrimination in relation to the allocation of slots at certain airports.

4. Fourth plea in law, alleging that the Commission infringed the Guidelines on the assessment of horizontal mergers by failing to examine whether the alleged efficiency gains occasioned by the Transaction counteract its negative effects on competition.

5. Fifth plea in law, alleging that the Commission infringed the provisions of the Treaty and the provisions for their implementation by imposing obligations on Lufthansa which do not counteract the significant distortion of competition caused by the Transaction.

6. Sixth plea in law, alleging that the Commission infringed the provisions of the Treaty, including Article 107(1) TFEU, and the provisions for their implementation by failing to take into consideration the distortion of competition in the internal market occasioned by the Transaction in the context of the State aid granted to Air Berlin.

7. Seventh plea in law, alleging that the Commission infringed Article 296 TFEU by failing to provide an adequate statement of reasons for its Decision.

Action brought on 13 May 2018 — Yanukovych v Council

(Case T-300/18)

(2018/C 231/59)

Language of the case: English

Parties

Applicant: Viktor Feodorovych Yanukovych (Rostov on Don, Russia) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/333 of 5 March 2018 ([1]) and Council Implementing Regulation (EU) 2018/326 of 5 March 2018 ([2]), insofar as they concern the Applicant; and

— order the Council to bear the costs of the proceedings.

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 Applicant does not fulfil the stated criteria for a person to be listed at the relevant time. The Council of the European Union has failed to properly take into account and consider all of the material provided to it while also being highly selective in the material that it has taken into account. Arguments in support of this plea include that: the Applicant is merely the subject of pre-trial investigations which have stagnated and are clearly not sufficient to satisfy the relevant criterion; and the materials upon which the Council has based its decision to maintain the Applicant's name on the list are wholly inadequate, inconsistent, false and are not supported by any evidence.

2. Second plea in law, alleging that the Council made manifest errors of assessment in including the Applicant in the contested measures. In re-designating the Applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error. Moreover the reasons given in relation to the first plea apply equally to the second plea.

3. Third plea in law, alleging that the Council failed to state reasons. The Council has failed to identify the actual and specific reasons for the Applicant's designation. The 'statement of reasons' adopted in the Sixth Amending Decision and Sixth Amending Regulation for including the Applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.

4. Fourth plea in law, alleging that the Applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed adequately to consult with the Applicant prior to the re-designation, and the Applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances. At not stage has the Council/Applicant been provided with serious, credible or concrete evidence to justify the imposition of restrictive measures.

5. Fifth plea in law, alleging that the Council lacked a proper legal basis for the Sixth Amending Instruments. Arguments in support of the plea include the following: (a) The conditions for the Council relying on Article 29 TEU were not fulfilled by the Sixth Amending Decision. Amongst other things: (i) The Council's expressly invoked objectives are merely vague assertions; (ii) The basis lacks any sufficient connection to the proper standard of judicial review required in the present circumstances; and (iii) the imposition of restrictive supports and legitimises the conduct of the new regime in Ukraine that is itself undermining due process and the rule of law and is systematically violating human rights; (b) The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V of TEU; (c) There was no sufficient link for Article 215 TFEU to be relied on against the Applicant.

6. Sixth plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the Sixth Amending Instruments was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the European Union), and not the purposes/rationales stated on the face of the Sixth Amending Instruments. The designation criteria represent an extraordinary and wholesale delegation of power consistent with the Council's purpose.

7. Seventh plea in law, alleging that the Applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the European Union, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the Applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the Applicant's assets since the Ukraine authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the Applicant.

(1) Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 48).

(2) Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5).

Action brought on 13 May 2018 — Yanukovych v Council

(Case T-301/18)

(2018/C 231/60)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Saint Petersburg, Russia) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/333 of 5 March 2018 (1) and Council Implementing Regulation (EU) 2018/326 of 5 March 2018 (2), insofar as they concern the Applicant; and

— order the Council to bear the costs of the proceedings.

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 Applicant does not fulfil the stated criteria for a person to be listed at the relevant time. The Council of the European Union has failed to properly take into account and consider all of the material provided to it while also being highly selective in the material that it has taken into account. Arguments in support of this plea include that: the Applicant is merely the subject of pre-trial investigations which have stagnated and are clearly not sufficient to satisfy the relevant criterion; and the materials upon which the Council has based its decision to maintain the Applicant's name on the list are wholly inadequate, inconsistent, false and are not supported by any evidence.

2. Second plea in law, alleging that the Council made manifest errors of assessment in including the Applicant in the contested measures. In re-designating the Applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error. Moreover the reasons given in relation to the first plea apply equally to the second plea.

3. Third plea in law, alleging that the Council failed to state reasons. The Council has failed to identify the actual and specific reasons for the Applicant's designation. The 'statement of reasons' adopted in the Sixth Amending Decision and Sixth Amending Regulation for including the Applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.

4. Fourth plea in law, alleging that the Applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed adequately to consult with the Applicant prior to the re-designation, and the Applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances. At no stage has the Council/Applicant been provided with serious, credible or concrete evidence to justify the imposition of restrictive measures.

5. Fifth plea in law, alleging that the Council lacked a proper legal basis for the Sixth Amending Instruments. Arguments in support of the plea include the following: (a) The conditions for the Council relying on Article 29 TEU were not fulfilled by the Sixth Amending Decision. Amongst other things: (i) The Council's expressly invoked objectives are merely vague assertions; (ii) The basis lacks any sufficient connection to the proper standard of judicial review required in the present circumstances; and (iii) the imposition of restrictive supports and legitimises the conduct of the new regime in Ukraine that is itself undermining due process and the rule of law and is systematically violating human rights; (b) The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V of TEU. (c) There was no sufficient link for Article 215 TFEU to be relied on against the Applicant.

6. Sixth plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the Sixth Amending Instruments was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the European Union), and not the purposes/rationales stated on the face of the Sixth Amending Instruments. The designation criteria represent an extraordinary and wholesale delegation of power consistent with the Council's purpose.

7. Seventh plea in law, alleging that the Applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the European Union, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the Applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the Applicant's assets since the Ukraine authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the Applicant.

([1]) Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 48).

([2]) Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5).

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