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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 24 November 2017 by Berliner Stadtwerke GmbH against the order of the General Court (Seventh Chamber) made on 20 September 2017 in Case T-719/16, Berliner Stadtwerke GmbH v European Union Intellectual Property Office

(Case C-655/17 P)

(2018/C 249/02)

Language of the case: German

Parties

Appellant: Berliner Stadtwerke GmbH (represented by: O. Spieker and A. Schönfleisch, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

By order of 31 May 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal as being in part manifestly inadmissible and in part manifestly unfounded and ordered the appellant to bear its own costs.

Appeal brought on 24 November 2017 by Berliner Stadtwerke GmbH against the order of the General Court (Seventh Chamber) made on 20 September 2017 in Case T-402/16, Berliner Stadtwerke GmbH v European Union Intellectual Property Office

(Case C-656/17 P)

(2018/C 249/03)

Language of the case: German

Parties

Appellant: Berliner Stadtwerke GmbH (represented by: O. Spieker and A. Schönfleisch, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

By order of 31 May 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal as being in part manifestly inadmissible and in part manifestly unfounded and ordered the appellant to bear its own costs.

Appeal brought on 27 November 2017 by Anastasia-Soultana Gaki against the order of the General Court (Sixth Chamber) made on 27 September 2017 in Case T-366/16, Gaki v Europol

(Case C-671/17 P)

(2018/C 249/04)

Language of the case: German

Parties

Appellant: Anastasia-Soultana Gaki (represented by: G. Keisers, Rechtsanwalt)

Other party to the proceedings: European Union Agency for Law Enforcement Cooperation (Europol)

By order of 7 June 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal as being in part manifestly unfounded and in part manifestly inadmissible and ordered the appellant to bear her own costs.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 9 January 2018 — Finnair PLC v Igor Turtschin and Others

(Case C-15/18)

(2018/C 249/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Defendant and appellant on a point of law: Finnair PLC

Applicants and respondents in the appeal on a point of law: Igor Turtschin, Evgeniya Turtschina, Leon Turtschin

The case was removed from the Register of the Court of Justice by order of the Court of 6 June 2018.

Appeal brought on 27 March 2018 by Deichmann SE against the judgment of the General Court (Fourth Chamber) delivered on 17 January 2018 in Case T-68/16: Deichmann SE v European Union Intellectual Property Office

(Case C-223/18 P)

(2018/C 249/06)

Language of the case: English

Parties

Appellant: Deichmann SE (represented by: C. Onken, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office; Munich, SL

Form of order sought

The appellant claims that the Court should:

— set aside the decision of the General Court of 17 January 2018 in case T-68/17;

— annul the decision of the Fourth Board of Appeal of the EUIPO of 4 December 2015 in case R 2345/2014-4;

— in the alternative refer the case back to the General Court of the European Union;

— order the respondent and the intervener to bear the costs both in relation to the proceedings at first instance and the appeal.

Pleas in law and main arguments

The appellant submits that the contested decision infringes Articles 51 (1) (a) and 15 (1) CTMR (now Articles 58 (1) (a) and 18 (1) of Regulation (EU) 2017/1001 ([1]) of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, hereinafter referred to as 'EUTMR') in several regards. In particular the General Court did not correctly determine the meaning of the term 'the trade mark' in Articles 51 (1) (a) and 15 (1) CTMR.

(1) First, the General Court misjudged the importance, and the legal consequences of, determining the type of mark concerned. It wrongly assumed that it did not matter whether the contested trademark was classified as a figurative mark or as a position mark. In fact, however, the distinction between different types of marks has a significant influence on their subject matter as well as on the way in which they are used. The use of the contested trademark as a figurative mark would differ considerably from the way in which it would be used if it was a position mark.

(2) Second, the General Court did not correctly determine the subject matter of the contested trademark, but regarded and treated the contested trade mark as a position mark. The contested mark is a figurative mark, since it has been applied for and registered as a figurative mark, and no description or disclaimer was entered that suggested otherwise. The mere use of broken lines does not make a figurative mark a position mark.

(3) As a consequence, the General Court incorrectly assumed that Munich S.L. showed genuine use of its mark by showing the sale of shoes, to the side of which two intersecting lines were applied. This kind of use could only account for the use of a position mark, but not for the use of a figurative mark like the contested one.

([1]) OJ 2017, L 154, p. 1.

Request for a preliminary ruling from the Landesverwaltungsgericht Tirol (Austria) lodged on 30 March 2018 — PI

(Case C-230/18)

(2018/C 249/07)

Language of the case: German

Referring court

Landesverwaltungsgericht Tirol

Parties to the main proceedings

Complainant: PI

Defendant authority: Landespolizeidirektion Tirol

Questions referred

1. Is Article 15(2) of the Charter of Fundamental Rights of the European Union, according to which every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State, to be understood as precluding legislation of a Member State which, as in the case of Paragraph 19(3) of the Tiroler Landespolizeigesetz (Tyrol State police Law), LGBl. (State Law Gazette) No 60/1976, last amended by Law LGBl. No 56/2017, makes it possible for bodies of an authority, even without a prior administrative procedure, to be able to take measures of direct authority and coercive power, such as, in particular, the on-the-spot closure of a business establishment, without these merely being interim measures?

2. From the perspective of equality of arms and the perspective of an effective legal remedy, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, as laid down in Paragraph 19(3) and (4) of the Tyrol State police Law, provides for de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, without documentation and without providing confirmation to the person concerned?

3. From the perspective of equality of arms, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, for the purpose of annulling de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, requires a substantiated application to lift that closure from the person affected by those de facto measures, as laid down in Paragraph 19(3) and (4) of the Tyrol State police Law?

4. From the perspective of an effective legal remedy, is Article 47 of the Charter, in conjunction with Article 52 thereof, to be understood as precluding legislation of a Member State which, as in the case of Paragraph 19(4) of the Tyrol State police Law, allows only for a right to apply for annulment that is restricted to specific conditions in the case of a de facto coercive measure in the form of the closure of a business establishment?

Request for a preliminary ruling from the Thüringer Oberlandesgericht (Germany) lodged on 3 April 2018 — Saatgut-Treuhandverwaltungs GmbH v Freistaat Thüringen

(Case C-239/18)

(2018/C 249/08)

Language of the case: German

Referring court

Thüringer Oberlandesgericht

Parties to the main proceedings

Applicant: Saatgut-Treuhandverwaltungs GmbH

Defendant: Freistaat Thüringen

Questions referred

1. Does a right to information from official bodies under Article 11(1) of Regulation (EC) No 1768/95 ([1]) exist in a situation where a request relates solely to information concerning species of plants, without the request for information also seeking information on a protected variety?

2. If the answer to Question 1 is that such a right to information can exist:

   (a) Is a body which monitors subsidies for farmers from EU funds and, in that respect, stores data which relate to (plant) species obtained from farmers who apply for those subsidies to be regarded as an official body involved in the monitoring of agricultural production within the meaning of the first indent of Article 11(2) of Regulation (EC) No 1768/95?

(b) Is an official body justified in withholding the requested information if the provision of that information requires the data which it holds to be processed and catalogued by a third party and if doing so would require financial expense in the region of EUR 6 000? In that regard, is it relevant whether the person making the request is prepared to meet the costs incurred?

(1) Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14 (3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ 1995 L 173, p. 14).

Appeal brought on 4 April 2018 by Constantin Film Produktion GmbH against the judgment of the General Court (Sixth Chamber) delivered on 24 January 2018 in Case T-69/17, Constantin Film Produktion GmbH v European Union Intellectual Property Office

(Case C-240/18 P)

(2018/C 249/09)

Language of the case: German

Parties

Appellant: Constantin Film Produktion GmbH (represented by: E. Saarmann and P. Baronikians, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of 24 January 2018 in Case T-69/17;

— order the respondent to pay the costs.

Grounds of appeal and main arguments

In support of its appeal the appellant submits three grounds.

1. **Infringement of Article 7(1)(f) of the EU Trade Mark Regulation (EUTMR)**

The General Court of the European Union erred in refusing the EU trade mark application at issue on the basis of the absolute ground for refusal under Article 7(1)(f) of the EUTMR. (1) The sign applied for is not, it is submitted, contrary to accepted principles of morality.

The General Court of the European Union committed the following errors in its examination of the findings made by the Board of Appeal:

The General Court of the European Union examined the sign 'Fuck you, Goethe', instead of the specific sign applied for, namely 'Fack Ju Göhte'.

The General Court of the European Union erred in assuming that the sign applied for was marked by an inherent vulgarity, thereby overlooking the fact that the multi-word sign 'Fack Ju Göhte' is an original and distinctive artistic term which, on account of its misspelling, appears humorous and harmless.

The General Court of the European Union erred in law by confirming the Board of Appeal's determination of the relevant German-speaking public's perception. The appellant has proved the broad success of the film 'Fack Ju Göhte' in the German-speaking part of the European Union and the fact that the relevant public associates the sign applied for with amusement and entertainment. Even the (few) members of the public who have not yet heard of the film cannot possibly feel offended by the sign applied for in respect of the goods and services covered, as the phonetic spelling of the sign by itself deprives it of any seriousness. Furthermore, the sign applied for does not require any action on behalf of the general public, nor does it directly address or insult it.

2. **Infringement of the principle of equal treatment**

By not applying to the present case the findings of the European Union Intellectual Property Office concerning the application for the sign 'DIE WANDERHURE' (OHIM decision of 28 May 2015 — R 2889/2014-4 *Die Wanderhure*), the General Court of the European Union arbitrarily treated substantially similar situations in different ways.

3. **Infringement of the principles of legal certainty and sound administration**

By examining the sign 'Fuck you, Goethe' instead of 'Fack Ju Göhte' and by not applying the findings of the WANDERHURE decision, the General Court of the European Union took a decision which was unforeseeable and not verifiable.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1), as amended (replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).

Appeal brought on 3 April 2018 by the European Joint Undertaking for ITER and the Development of Fusion Energy against the judgment of the General Court (Fifth Chamber) delivered on 25 January 2018 in Case T-561/16, Galocha v Fusion for Energy Joint Undertaking

(Case C-243/18 P)

(2018/C 249/10)

Language of the case: Spanish

Parties

Appellant: European Joint Undertaking for ITER and the Development of Fusion Energy (represented by: G. Poszler and R. Hanak, acting as Agents)

Other party to the proceedings: Yosu Galocha

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 25 January 2018 in Case T-561/16 by which it annulled the reserve lists for selection procedure F4E/CA/ST/FGIV/2015/001 and the decisions of Fusion for Energy to appoint the successful candidates;

— if the Court of Justice upholds the appeal, order the applicant at first instance to bear the costs incurred at first instance and the costs of the present appeal.

Sole ground of appeal

Infringement of the principle of proportionality and, consequently, imposition of an excessive disadvantage on third parties who are beneficiaries of a decision which has been held to be unlawful.

Request for a preliminary ruling from the Tribunale ordinario di Udine (Italy) lodged on 9 April 2018 — Fallimento Tecnoservice Int. Srl v Poste Italiane SpA

(Case C-245/18)

(2018/C 249/11)

Language of the case: Italian

Referring court

Tribunale ordinario di Udine

Parties to the main proceedings

Applicant: Fallimento Tecnoservice Int. Srl

Defendant: Poste Italiane SpA

Question referred

Must Articles 74 and 75 of Directive 2007/64/EC, ([1]) in the version applicable on 3 August 2015, concerning a payment service provider's obligations and the limitations of such a provider's liability, as transposed into Italian law by Articles 24 and 25 of Decreto Legislativo No 1[1]/201[0], be interpreted as being applicable only to the payment service provider of the person who ordered the payment, or as being applicable also to the payee's payment service provider?

([1]) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1).

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 12 April 2018 — Stadt Euskirchen v Rhenus Veniro GmbH & Co. KG

(Case C-253/18)

(2018/C 249/12)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Appellant: Stadt Euskirchen

Respondent: Rhenus Veniro GmbH & Co. KG

Other parties: SVE Stadtverkehr Euskirchen GmbH, RVK Regionalverkehr Köln GmbH

Question referred

Does Article 5(2)(e) of Regulation (EC) No 1370/2007, ([1]) which lays down the requirement to perform the major part of the public passenger transport service itself, prevent the internal operator from having that major part of the services performed by a company in which it has a 2,5 % holding and the remaining shares are held directly or indirectly by other competent authorities?

([1]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 11 April 2018 — State Street Bank International GmbH v Banca d'Italia

(Case C-255/18)

(2018/C 249/13)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: State Street Bank International GmbH

Defendant: Banca d'Italia

Questions referred

1. Should the 'changes of status' that do not have an effect on the contribution requirement under Article 12 of Regulation 2015/63 ([1]) include the merger by acquisition of an institution previously subject to supervision by a national resolution authority with its parent company in another Member State during the contribution period, and does this rule also apply where the merger and the resulting dissolution of the institution took place in 2015, at a time when the Member State had not yet formally established either the national resolution authority or the national resolution fund and the contributions had not yet been calculated?

2. Is Article 12 of Regulation 2015/63, in conjunction with Article 14 of that regulation and Articles 103 and 104 of Directive 2014/59, ([2]) to be interpreted as meaning that also in the case of the merger of an institution by acquisition with a parent company in another Member State during the contribution period, the institution is required to pay the contribution for that period in full, not on a pro rata basis according to the months when the institution was subject to supervision by the resolution authority of the first Member State, by analogy with the rules laid down for 'newly supervised' institutions under Article 12(1) of the regulation?

3. Are Directive 2014/59, Regulation 2015/63 and the principles governing the system of banking crisis resolution tools to be interpreted as meaning that the rules laid down for the ordinary contribution, in particular Article 12(2) of Regulation 2015/63, also apply, with regard to the timing of the identification of institutions required to contribute and the amount of the contribution, to the extraordinary contribution, bearing in mind the nature of that contribution and the conditions under which it may be imposed?

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

([2]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Request for a preliminary ruling from the Sąd Okręgowy w Poznaniu (Poland) lodged on 17 April 2018 — Aqua med sp. z o.o., established in Opalenica v Irena Skóra

(Case C-266/18)

(2018/C 249/14)

Language of the case: Polish

Referring court

Sąd Okręgowy w Poznaniu

Parties to the main proceedings

Applicant: Aqua med sp. z o.o., established in Opalenica

Defendant: Irena Skóra

Questions referred

1. Must a review, by a national court of its own motion, of the provisions of a contract concluded with a consumer determining which court has jurisdiction to hear a dispute, and which is based on Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) and on the case-law of the Court of Justice of the European Union (judgment in Case C-243/08, *Pannon GSM Zrt* v *Erzsébet Sustikné Győrfi*), also cover those provisions of the contract which, although governing the matter of jurisdiction for settling disputes between the parties, confine themselves to referring to rules of national law?

2. If the answer to the first question is in the affirmative, must the review by that court lead to rules of jurisdiction being applied in such a way as to guarantee consumers protection under the Directive, that is to say, that the case can be dealt with by the court which is closest to the consumer's place of domicile or habitual residence?

([1]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 17 April 2018 — Delta Antrepriză de Construcții și Montaj 93 SA v Compania Națională de Administrare a Infrastructurii Rutiere SA

(Case C-267/18)

(2018/C 249/15)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Delta Antrepriză de Construcții și Montaj 93 SA

Defendant: Compania Națională de Administrare a Infrastructurii Rutiere SA

Question referred

Can Article 57(4)(g) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC ([1]) be interpreted as meaning that the termination of a public works contract on the ground that part of the works was subcontracted without the contracting authority's authorisation constitutes a significant or persistent deficiency in the performance of a substantive requirement under a prior public contract leading to an economic operator being excluded from participation in a public procurement procedure?

([1]) OJ 2014 L 94, p. 65.

Request for a preliminary ruling from the Curtea de Apel Bacău (Romania) lodged on 18 April 2018 — SC Onlineshop SRL v Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală a Vămilor

(Case C-268/18)

(2018/C 249/16)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Appellant: SC Onlineshop SRL

Respondents: Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală a Vămilor

Questions referred

1. Must the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, ([1]) as amended by Commission Implementing Regulation (EU) No 2016/1821 of 6 October 2016, ([2]) be interpreted as meaning that apparatus such as the GPS navigation system PNI S 506, at issue in the present dispute, is to be classified under tariff subheading 8526 91, subheading 8526 91 20, or heading 8528, subheading 8528 59 00, thereof?

2. Are the versions of the Combined Nomenclature, as amended, successively, by Commission Implementing Regulation (EU) No 698/2012 ([3]) and Commission Implementing Regulation (EU) No 459/2014, ([4]) relevant for the purposes of determining the correct tariff classification of apparatus such as the navigation system at issue in the present dispute, in the sense that they may be applicable, by analogy, to products which are similar to the navigation system in question, and does the application by analogy of those provisions support the interpretation of the [Combined Nomenclature] provided by the customs authority?

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

([2]) Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2016 L 294, p. 1).

([3]) Commission Implementing Regulation (EU) No 698/2012 of 25 July 2012 concerning the classification of certain goods in the Combined Nomenclature (OJ 2012 L 203, p. 34).

([4]) Commission Implementing Regulation (EU) No 459/2014 of 29 April 2014 amending certain regulations on the classification of goods in the Combined Nomenclature (OJ 2014 L 133, p. 43).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 25 April 2018 — Equitalia centro SpA v Poste Italiane SpA

(Case C-284/18)

(2018/C 249/17)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant (and respondent in the cross-appeal): Equitalia centro SpA

Respondent (and appellant in the cross-appeal): Poste Italiane SpA

Questions referred

1. Is a rule such as that provided for in the combined provisions of Article 10(3) decreto legislativo (Legislative Decree) No 504/1992 and Article 2(18)-(20) of legge (Law) No 662/1996 according to which a reservation of activity (monopoly) in favour of Poste Italiane s.p.a. is set up and maintained — even following the privatisation of the 'bancoposta' postal banking services provided by Poste Italiane s.p.a. — in relation to the management of the postal current account intended for the collection of the local tax ICI, contrary to Articles 14 TFEU (formerly Article 7D of the Treaty, then Article 16 TEC) and 106(2) TFEU (formerly Article 90 of the Treaty, then Article 86(2) TEC) and to classification as a service of general economic interest (SGEI), taking into account the evolution of State regulation in the area of tax collection which, since 1997 at least, allows taxpayers and local tax authorities to make payments and collections through the banking system?

2. If the answer to the first question is that the establishment of the statutory monopoly must be recognised as meeting the SGEI criteria, is a rule such as that resulting from the combined provisions of Article 10(3) decreto legislativo (Legislative Decree) No 504/1992, Article 2(18)-(20) of legge (Law) No 662/1996 and Article 3(1) decreto del Presidente della Repubblica (Presidential Decree) No 144/2001, which grant Poste Italiane s.p.a. the power unilaterally to determine the level of the fee, payable by the agent collecting the ICI taxes, that is applied to each management operation carried out on the postal current account in the name of the agent, contrary to Articles 106(2) TFEU (formerly Article 90 of the Treaty, then Article 86(2) TEC) and 107(1) TFEU (formerly Article 92 of the Treaty, then Article 87 TCE), according to the interpretation of such rules provided by the Court of Justice with reference to the requirements for distinguishing a lawful measure — compensatory of public service obligations — from unlawful State aid (judgment of the Court of Justice of 24 July 2003, *Altmark Trans* and *Regierungspräsidium Magdeburg*, C-280/00), regard being had to the fact that Poste Italiane spa, by board decision No 57/1996, set that fee at 100 Lire for the period from 1 April 1997 to 31 May 2001 and at EUR 0,23 for the period from 1 June 2001?

3. Is a set of rules such as that put in place by Article 2(18)-(20) of legge (Law) No 662/1996, Article 3(1) decreto del Presidente della Repubblica (Presidential Decree) No 144/2001 and Article 10(3) decreto legislativo (Legislative Decree) No 504/1992, necessarily subjecting the agent to payment of the fee as unilaterally determined and/or varied by Poste Italiane s.p.a., contrary to Article 102, first paragraph, TFEU (formerly Article 86 of the Treaty, then Article 82(1) TEC), as interpreted by the Court of Justice (see judgments of the Court of Justice of 13 December 1991, Case C-18/88, *GB-Inno-BM,* of 25 June 1998, Case C-203/96, *Dusseldorp and Others,* and of 17 May 2001, Case C-340/99, *TNT TRACO*), since the agent is not otherwise able to withdraw from the postal current account contract without infringing the obligation laid down in Article 10(3) Decreto Legislativo No 504/1992 and, as a consequence, infringing its ICI-collection obligations in regard to the local tax authority?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 March 2018 — Agrenergy Srl v Ministero dello Sviluppo Economico

(Case C-286/18)

(2018/C 249/18)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Agrenergy Srl

Respondent: Ministero dello Sviluppo Economico

Question referred

Should Article 3(3)(a) of Directive 2009/28/EC ([1]) be interpreted — including in view of the general principle of the protection of legitimate expectations and the overall system of rules introduced by that directive to incentivise the production of energy from renewable sources — as rendering incompatible with EU law national legislation which allows the Italian Government, in subsequent implementing decrees, to reduce or even remove incentives introduced earlier?

([1]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 March 2018 — Fusignano Due Srl v Ministero dello Sviluppo Economico

(Case C-287/18)

(2018/C 249/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Fusignano Due Srl

Respondent: Ministero dello Sviluppo Economico

Question referred

Should Article 3(3)(a) of Directive 2009/28/EC ([1]) be interpreted — including in view of the general principle of the protection of legitimate expectations and the overall system of rules introduced by that directive to incentivise the production of energy from renewable sources — as rendering incompatible with EU law national legislation which allows the Italian Government, in subsequent implementing decrees, to reduce or even remove incentives introduced earlier?

([1]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Action brought on 26 April 2018 — European Commission v Portuguese Republic

(Case C-290/18)

(2018/C 249/20)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Costa de Oliveira and C. Hermes, Agents)

Defendant: Portuguese Republic

Form of order sought

The applicant claims that the Court of Justice should:

— declare that the Portuguese Republic has failed to fulfil its obligations under Article 4(4) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, ([1]) in not designating as special areas of conservation as soon as possible, and within six years at most, seven sites of Community importance for the Atlantic biogeographical region recognised by Commission Decision 2004/813/EC of 7 December 2004 ([2]) and 54 sites of Community importance for the Mediterranean biogeographical region recognised by Commission Decision 2006/613/EC of 19 July 2006; ([3])

— declare that the Portuguese Republic has failed to fulfil its obligations under Article 6(1) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, in not adopting the necessary conservation measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the seven sites of Community importance for the Atlantic biogeographical region recognised in Commission Decision 2004/813/EC of 7 December 2004, and on the 54 sites of Community importance for the Mediterranean biogeographical region recognised by Commission Decision 2006/613/EC of 19 July 2006;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Under Article 4(4) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, the Portuguese Republic ought to have designated as special areas of conservation seven sites of Community importance for the Atlantic biogeographical region, recognised by Commission Decision 2004/813/EC of 7 December 2004, and 54 sites of Community importance for the Mediterranean biogeographical region, recognised by Commission Decision 2006/613/EC of 19 July 2006, within six years at most from the date on which those decisions were adopted. The period referred to expired on 7 December 2010 and 19 July 2012, respectively. However, the Portuguese Republic has still not designated the sites of Community importance as special areas of conservation.

Article 6(1) of Directive 92/43/EEC requires the Member States to establish, for special areas of conservation, the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

The Commission considers the measures adopted by the Portuguese Republic, in particular, the Natura 2000 Network sectoral plan, as well as other measures referred to by the Portuguese authorities, do not correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II of the Directive and cannot, therefore, be considered 'necessary conservation measures', within the meaning of Article 6(1) of the Directive.

(1) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).
(2) Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1).
(3) Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1).

Reference for a preliminary ruling from the High Court (Ireland) made on 9 May 2018 — Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems

(Case C-311/18)

(2018/C 249/21)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Data Protection Commissioner

Defendants: Facebook Ireland Limited, Maximillian Schrems

Questions referred

1. In circumstances in which personal data is transferred by a private company from a European Union (EU) member state to a private company in a third country for a commercial purpose pursuant to Decision 2010/87/EU ([1]) as amended by Commission Decision 2016/2297 ([2]) ('the SCC Decision') and may be further processed in the third country by its authorities for purposes of national security but also for purposes of law enforcement and the conduct of the foreign affairs of the third country, does EU law (including the Charter of Fundamental Rights of the European Union ('the Charter')) apply to the transfer of the data notwithstanding the provisions of Article 4(2) of TEU in relation to nationalsecurity and the provisions of the first indent of Article 3(2) of Directive 95/46/EC ([3]) ('the Directive') in relation to public security, defence and State security?

2. (1) In determining whether there is a violation of the rights of an individual through the transfer of data from the EU to a third country under the SCC Decision where it may be further processed for national security purposes, is the relevant comparator for the purposes of the Directive:

   a) The Charter, TEU, TFEU, the Directive, ECHR (or any other provision of EU law); or

   b) The national laws of one or more member states?

   (2) If the relevant comparator is b), are the practices in the context of national security in one or more member states also to be included in the comparator?

3. When assessing whether a third country ensures the level of protection required by EU law to personal data transferred to that country for the purposes of Article 26 of the Directive, ought the level of protection in the third country be assessed by reference to:

   a) The applicable rules in the third country resulting from its domestic law or international commitments, and the practice designed to ensure compliance with those rules, to include the professional rules and security measures which are complied with in the third country;

   or

   b) The rules referred to in a) together with such administrative, regulatory and compliance practices and policy safeguards, procedures, protocols, oversight mechanisms and non judicial remedies as are in place in the third country?

4. Given the facts found by the High Court in relation to US law, if personal data is transferred from the EU to the US under the SCC Decision does this violate the rights of individuals under Articles 7 and/or 8 of the Charter?

5. Given the facts found by the High Court in relation to US law, if personal data is transferred from the EU to the US under the SCC Decision:

   a) Does the level of protection afforded by the US respect the essence of an individual's right to a judicial remedy for breach of his or her data privacy rights guaranteed by Article 47 of the Charter?

   If the answer to a) is yes,

   b) Are the limitations imposed by US law on an individual's right to a judicial remedy in the context of US national security proportionate within the meaning of Article 52 of the Charter and do not exceed what is necessary in a democratic society for national security purposes?

6. (1) What is the level of protection required to be afforded to personal data transferred to a third country pursuant to standard contractual clauses adopted in accordance with a decision of the Commission under Article 26(4) in light of the provisions of the Directive and in particular Articles 25 and 26 read in the light of the Charter?

   (2) What are the matters to be taken into account in assessing whether the level of protection afforded to data transferred to a third country under the SCC Decision satisfies the requirements of the Directive and the Charter?

7. Does the fact that the standard contractual clauses apply as between the data exporter and the data importer and do not bind the national authorities of a third country who may require the data importer to make available to its security services for further processing the personal data transferred pursuant to the clauses provided for in the SCC Decision preclude the clauses from adducing adequate safeguards as envisaged by Article 26(2) of the Directive?

8. If a third country data importer is subject to surveillance laws that in the view of a data protection authority conflict with the clauses of the Annex to the SCC Decision or Article 25 and 26 of the Directive and/or the Charter, is a data protection authority required to use its enforcement powers under Article 28(3) of the Directive to suspend data flows or is the exercise of those powers limited to exceptional cases only, in light of Recital 11 of the Directive, or can a data protection authority use its discretion not to suspend data flows?

9. (1) For the purposes of Article 25(6) of the Directive, does Decision (EU) 2016/1250 ([4]) ('the Privacy Shield Decision') constitute a finding of general application binding on data protection authorities and the courts of the member states to the effect that the US ensures an adequate level of protection within the meaning of Article 25(2) of the Directive by reason of its domestic law or of the international commitments it has entered into?

(2) If it does not, what relevance, if any, does the Privacy Shield Decision have in the assessment conducted into the adequacy of the safeguards provided to data transferred to the United States which is transferred pursuant to the SCC Decision?

10. Given the findings of the High Court in relation to US law, does the provision of the Privacy Shield ombudsperson under Annex A to Annex III of the Privacy Shield Decision when taken in conjunction with the existing regime in the United States ensure that the US provides a remedy to data subjects whose personal data is transferred to the US under the SCC Decision that is compatible with Article 47 of the Charter?

11. Does the SCC Decision violate Articles 7, 8 and/or 47 of the Charter?

([1]) Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (OJ 2010, L 39, p. 5).
([2]) Commission Implementing Decision (EU) 2016/2297 of 16 December 2016 amending Decisions 2001/497/EC and 2010/87/EU on standard contractual clauses for the transfer of personal data to third countries and to processors established in such countries, under Directive 95/46/EC of the European Parliament and of the Council (OJ 2016, L 344, p. 100).
([3]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995, L 281, p. 31).
([4]) Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield (OJ 2016, L 207, p. 1).

Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 14 May 2018 — Commissioners for Her Majesty's Revenue and Customs v The Chancellor, Masters and Scholars of the University of Cambridge

(Case C-316/18)

(2018/C 249/22)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicants: Commissioners for Her Majesty's Revenue and Customs

Defendants: The Chancellor, Masters and Scholars of the University of Cambridge

Questions referred

1. Is any distinction to be made between exempt and non-taxable transactions for the purpose of deciding whether VAT incurred for the purposes of such transactions is deductible?

2. Where management fees are incurred only in relation to a non-taxable investment activity, is it nonetheless possible to make the necessary link between those costs and the economic activities which are subsidised with the investment income which is produced as a result of the investments, so as to permit VAT deduction by reference to the nature and extent of downstream economic activity which carries an entitlement to deduct VAT? To what extent is it relevant to consider the purpose to which the income generated will be put?

3. Is any distinction to be drawn between VAT that is incurred for the purposes of providing capitalisation for a business and VAT that produces its own income stream, distinct from any income stream derived from downstream economic activity?

Reference for a preliminary ruling from the Court of Appeal (Ireland) made on 17 May 2018 — Hampshire County Council v C.E., N.E.

(Case C-325/18)

(2018/C 249/23)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: Hampshire County Council

Defendants: C.E., N.E.

Questions referred

1. Where it is alleged that children have been wrongfully taken from the country of their habitual residence by their parents and/or other family members in breach of a court order obtained by a public authority of that State, may that public authority apply to have any court order directing the return of the children to that jurisdiction enforced in the courts of another Member State pursuant to the provisions of Chapter III Council of Regulation (EC) No. 2201/2003 ([1]) or would this amount to a wrongful circumvention of Article 11 of that Regulation and the 1980 Hague Convention or otherwise amount to an abuse of rights or law on the part of the authority concerned?

2. In a case concerning the enforcement provisions of Council Regulation (EC) 2201/2003 is there a jurisdiction to extend time for the purposes of Article 33(5) where the delays are essentially de minimis and an extension of time would otherwise have been granted by reference to national procedural law?

3. Without prejudice to question (2) where a foreign public authority removes the children, the subject matter of the dispute, from the jurisdiction of a Member State pursuant to an enforcement order made ex parte in accordance with Art. 31 of Council Regulation (EC) 2201/2003 but before the service of such orderon the parents thereby depriving them of their rights to apply for a stay of such an order pending an appeal, does such conduct compromise the essence of 'parents' entitlement under Article 6 ECHR or Article 47 of the Charter such that an extension of time (for the purposes of Article 33(5) of that Regulation) should otherwise be granted?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003, L 338, p. 1).

Reference for a preliminary ruling from the High Court (Ireland) made on 18 May 2018 — Minister for Justice and Equality v R O

(Case C-327/18)

(2018/C 249/24)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Minister for Justice and Equality

Defendant: R O

Questions referred

Having regard to:

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

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

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

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

   (i) In all cases?

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

   (iii) In no cases?

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

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

   (i) in all cases?

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

   (iii) In no cases?

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

GENERAL COURT

Judgment of the General Court of 5 June 2018 — Prada v EUIPO — The Rich Prada International (THE RICH PRADA)

(Case T-111/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark THE RICH PRADA — Earlier national and international word and figurative marks PRADA — Relative grounds for refusal — Article 8(5) of Regulation(EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001) — Taking unfair advantage of the distinctive character or repute of the earlier mark — Detriment to the distinctive character or repute — Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001) — Likelihood of confusion)

(2018/C 249/25)

Language of the case: English

Parties

Applicant: Prada SA (Luxembourg, Luxembourg) (represented by: F. Jacobacci, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: The Rich Prada International PT (Surabaya, Indonesia) (represented by: Y. Zhou, Solicitor)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 13 January 2016 (Joined Cases R 3076/2014-2 and R 3186/2014-2), as rectified on 14 March 2017, relating to opposition proceedings between Prada and The Rich Prada International.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Prada SA to pay the costs.*

([1]) OJ C 175, 17.5.2016.

Judgment of the General Court of 31 May 2018 — Groningen Seaports and Others v Commission

(Case T-160/16) ([1])

(State aid — Corporate tax exemption granted by the Netherlands to six Dutch public seaports — Decision declaring the aid scheme incompatible with the internal market — Obligation to state reasons — Equal treatment)

(2018/C 249/26)

Language of the case: Dutch

Parties

Applicants: Groningen Seaports NV (Delfzijl, Netherlands) and the 5 other applicants whose names appear in the annex to the judgment (represented initially by E. Pijnacker Hordijk and I. Kieft, and subsequently by A. Kleinhout and C. Zois, lawyers)

Defendant: European Commission (represented by: initially by S. Noë, B. Stromsky and J.-F. Brakeland, and subsequently by S. Noë and B. Stromsky, acting as Agents)

Intervener in support of the applicants: Kingdom of the Netherlands (represented by: J. Langer and M. Bulterman, acting as Agents)

Re:

APPLICATION under Article 263 TFEU for annulment of Commission Decision (EU) 2016/634 of 21 January 2016 on aid measure SA.25338 (2014/C) (ex E 3/2008 and ex CP 115/2004) implemented by the Netherlands — Corporate tax exemption for public undertakings (OJ 2016 L 113, p. 148).

Operative part of the judgment

The Court:

1. *Grants Havenbedrijf Moerdijk NV leave to replace Havenschap Moerdijk as applicant;*

2. *Dismisses the action;*

3. *Orders Groningen Seaports NV and the other applicants whose names appear in the annex to bear their own costs and to pay the costs incurred by the European Commission;*

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

([1]) OJ C 200, 6.6.2016.

Judgment of the General Court of 6 June 2018 — Lukash v Council

(Case T-210/16) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Obligation to state reasons — Failure to fulfil criteria for listing — Error of fact — Error of assessment — Rights of the defence — Right to an effective remedy — Right to property)

(2018/C 249/27)

Language of the case: French

Parties

Applicant: Olena Lukash (Kiev, Ukraine) (represented by: M. Cessieux, lawyer)

Defendant: Council of the European Union (represented by: F. Naert and J.-P. Hix, acting as Agents)

Re:

APPLICATION pursuant to Article 263 TFEU seeking annulment of (i) Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), (ii) Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119 (OJ 2015 L 62, p. 25) and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 (JO 2015 L 62, p. 1) (iii) Council Decision (CFSP) 2015/876 of 5 June 2015 amending Decision 2014/119 (JO 2015 L 142, p. 30) and Council Implementing Regulation (EU) 2015/869 of 5 June 2015 implementing Regulation No 208/2014 (OJ 2015 L 142, p. 1) (iv) Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119 (OJ 2016 L 60, p. 76) and Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation No 208/2014 (OJ 2016 L 60, p. 1), and (v) Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119 (OJ 2017 L 58, p. 34), and Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation No 208/2014 (OJ 2017 L 58, p. 1), in so far as the applicant's name was included or maintained in the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Olena Lukash to bear the costs.*

([1]) OJ C 243, 4.7.2016.

Judgment of the General Court of 31 May 2018 — Flatworld Solutions v EUIPO — Outsource Professional Services (Outsource 2 India)

(Case T-340/16) ([1])

(EU trade mark — Invalidity proceedings — European Union figurative mark Outsource 2 India — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009) (now Article 59(1)(b) of Regulation (EU) 2017/1001)

(2018/C 249/28)

Language of the case: English

Parties

Applicant: Flatworld Solutions Pvt Ltd (Bangalore, India) (represented by: S.O. Gillert, K. Vanden Bossche, B. Köhn-Gerdes and J. Schumacher, lawyers)

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

Intervener: Outsource Professional Services Ltd (Friedrichshafen, Germany), given leave to replace the other party to the proceedings before the Board of Appeal of EUIPO (represented by: A. Kempter, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 15 April 2016 (Case R 611/2015-4), relating to invalidity proceedings between Flatworld Solutions and Outsource2India.

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 15 April 2016 (Case R 611/2015-4);*

2. *Orders EUIPO to bear its own costs and to pay the costs incurred by Flatworld Solutions Pvt Ltd;*

3. *Orders Outsource Professional Services Ltd to bear its own costs.*

(1) OJ C 305, 22.8.2016.

Judgment of the General Court of 31 May 2018 — Kaddour v Council

(Case T-461/16) (1)

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Misuse of powers — Principle of sound administration — Principle of the force of res judicata — Infringement of Article 266 TFEU — Manifest error of assessment — Fundamental rights — Proportionality — Principle of non-discrimination)

(2018/C 249/29)

Language of the case: English

Parties

Applicant: Khaled Kaddour (Damascus, Syria) (represented by: V. Davies and V. Wilkinson, Solicitors, and by R. Blakeley, Barrister)

Defendant: Council of the European Union (represented by: J. Bauerschmidt and G. Étienne, and subsequently by J. Bauerschmidt and by S. Kyriakopoulou, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking the annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision (CFSP) 2013/255 concerning restrictive measures against Syria (OJ 2016 L 141, p. 125) and of Council Implementing Regulation (EU) 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 141, p. 30), in so far as those measures apply to the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Khaled Kaddour to bear his own costs and to pay those incurred by the Council of the European Union.*

(1) OJ C 383, 17.10.2016.

Judgment of the General Court of 31 May 2018 — Korwin-Mikke v Parliament

(Case T-770/16) ([1])

(Law governing the institutions — European Parliament — Rules of Procedure of the Parliament — Conduct adversely affecting the dignity of the Parliament and the smooth running of parliamentary business — Disciplinary sanctions of forfeiture of entitlement to the subsistence allowance and temporary suspension from participation in all activities of the Parliament — Freedom of expression — Obligation to state reasons — Error of law)

(2018/C 249/30)

Language of the case: French

Parties

Applicant: Janusz Korwin-Mikke (Józefów, Poland) (represented by: M. Cherchi and A. Daoût, lawyers)

Defendant: European Parliament (represented by: S. Alonso de León and S. Seyr, acting as Agents)

Re:

First, action brought under Article 263 TFEU and seeking annulment of the decision of the President of the Parliament of 5 July 2016 and of the decision of the Bureau of the Parliament of 1 August 2016 imposing on the applicant the penalty of forfeiture of entitlement to the subsistence allowance for a period of ten days and temporary suspension from participation in all activities of the Parliament for a period of five consecutive days and, second, action brought under Article 268 TFEU and seeking damages for the harm allegedly suffered by the applicant as a result of those decisions.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Bureau of the European Parliament of 1 August 2016;*

2. *Dismisses the claim for damages;*

3. *Orders Mr Janusz Korwin-Mikke and the Parliament each to bear their own respective costs.*

([1]) OJ C 6, 9.1.2017.

Judgment of the General Court of 6 June 2018 — Glaxo Group v EUIPO — Celon Pharma (SALMEX)

(Case T-803/16) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark SALMEX — Earlier three-dimensional national mark — Competence of the Board of Appeal to examine of its own motion whether the earlier mark had been put to genuine use — Article 64(1) and Article 76(1) of Regulation (EC) No 207/2009 (now Article 71(1) and Article 95(1) of Regulation (EU) 2017/1001))

(2018/C 249/31)

Language of the case: English

Parties

Applicant: Glaxo Group Ltd (Brentford, United Kingdom) (represented by: S. Baran, T. St Quintin, S. Wickenden, Barristers, E. Morris and R. Jacob, Solicitors)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Celon Pharma S. A. (Łomianki, Poland) (represented by: M. Krasiński, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 31 August 2016 (Case R 2108/2015-4) relating to invalidity proceedings between Glaxo Group Ltd and Celon Pharma.

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 31 August 2016 (Case R 2108/2015-4);*

2. *Orders EUIPO to bear its own costs and those incurred by Glaxo Group Ltd during the proceedings before the General Court;*

3. *Orders Celon Pharma S.A. to bear its own costs relating to the proceedings before the General Court.*

([1]) OJ C 22, 23.1.2017.

Judgment of the General Court of 1 June 2018 — Casual Dreams v EUIPO — López Fernández (Dayaday)

(Case T-900/16) ([1])

(European Union trade mark — Opposition proceedings — Application for EU figurative mark Dayaday — Earlier national figurative marks DAYADAY and dayaday — Relative ground for refusal — Article 8(5) of Regulation (EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001) — Reputation — Advantage unfairly taken of the distinctive character or the repute of the earlier trade mark)

(2018/C 249/32)

Language of the case: Spanish

Parties

Applicant: Casual Dreams, SLU (Manresa, Spain) (represented by: A. Tarí Lázaro, lawyer)

Defendant: European Union Intellectual Property Office (represented by: initially by S. Palmero Cabezas, and subsequently by J. Crespo Carillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Miguel Ángel López Fernández (Fuensalida, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 6 October 2016 (Case R 375/2016-2), relating to opposition proceedings between Casual Dreams and Mr López Fernández.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 6 October 2016 (Case R 375/2016-2);*

2. *Orders EUIPO to bear its own costs and to pay the costs incurred by Casual Dreams, SLU, including those incurred in the proceedings before the Board of Appeal.*

(1) OJ C 95, 27.3.2017.

Judgment of the General Court of 31 May 2018 — Consorzio di garanzia dell'olio extra vergine di oliva di qualità v Commission

(Case T-163/17) (1)

(Non-contractual liability — Simultaneous promotion campaigns in third countries for olive oil, one financed by the EAGF and intended to promote olive oil of European origin, and the other financed by the ERDF and intended to promote olive oil of Spanish origin — Lack of coordination between the Commission's staff responsible for managing the two programmes — Material damage — Market loss and loss of revenue — Non-material damage — Damage to commercial reputation)

(2018/C 249/33)

Language of the case: Italian

Parties

Applicant: Consorzio di garanzia dell'olio extra vergine di oliva di qualità (Rome, Italy) (represented by: initially by A. Fratini and G. Pandolfi, and subsequently by A. Fratini, lawyers)

Defendant: European Commission (represented by: A. Lewis, D. Bianchi and F. Moro, acting as Agents)

Re:

APPLICATION under Article 268 TFEU for compensation for the damage which the applicant claims to have suffered as a result, in essence, of (i) a lack of coordination between the Commission's staff responsible for managing promotion campaigns for European and Spanish olive oils in third countries (India, Russia and China), co-financed by European funds, and (ii) a failure to eliminate the distortions of competition and adverse effects resulting therefrom.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Consorzio di garanzia dell'olio extra vergine di oliva di qualità to bear its own costs;*

3. *Orders the European Commission to bear its own costs.*

(1) OJ C 129, 24.4.2017.

Judgment of the General Court of 6 June 2018 — Arbuzov v Council

(Case T-258/17) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Obligation to state reasons — Manifest error of assessment)

(2018/C 249/34)

Language of the case: Czech

Parties

Applicant: Sergej Arbuzov (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by: R. Pekař and J.-P. Hix, acint as Agents)

Re:

APPLICATION pursuant to Article 263 TFEU seeking annulment of Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (JO 2017 L 58, p. 34), in so far as the applicant's name was included or maintained in the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. *Annuls Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine in so far as Sergej Arbuzov's name was maintained in the list of persons, entities and bodies subject to those restrictive measures;*

2. *Orders the Council of the European Union to pay the costs.*

([1]) OJ C 213, 3.7.2017.

Judgment of the General Court of 6 June 2018 — Uponor Innovation v EUIPO — Swep International (SMATRIX)

(Case T-264/17) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark SMATRIX — Prior EU figurative mark AsyMatrix — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 76 of Regulation No 207/2009 (now Article 95 of Regulation 2017/1001) — Extent of the examination to be carried out by the Board of Appeal — Failure to assess an item of evidence produced before the Opposition Division)

(2018/C 249/35)

Language of the case: English

Parties

Applicant: Uponor Innovation AB (Borås, Sweden) (represented by: A. Kylhammar, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Swep International AB (Landskrona, Sweden) (represented by: J. Norderyd and C. Sundén, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 1 March 2017 (Case R 236/2016-2), relating to opposition proceedings between Swep International and Uponor Innovation.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 1 March 2017 (Case R 236/2016-2);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Uponor Innovation in the proceedings before the General Court;*

3. *Orders Swep International AB to bear its own costs and to pay those incurred by Uponor Innovation in the proceedings before the Board of Appeal of EUIPO.*

([1]) OJ C 221, 10.7.2017.

Judgment of the General Court of 29 May 2018 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (6000)

(Case T-302/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 6000 — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and (b) of Regulation (EC) No 207/2009 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Equal treatment — Principle of sound administration — Obligation to state reasons)

(2018/C 249/36)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China) (represented by: S. Fröhlich and M. Hartmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 (Case R 656/2016-4), relating to invalidity proceedings between Zhejiang Rongpeng Air Tools and Sata.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sata GmbH & Co. KG to pay the costs.*

(1) OJ C 231, 17.7.2017.

Judgment of the General Court of 29 May 2018 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (4000)

(Case T-303/17) (1)

(EU trade mark — Invalidity proceedings — EU word mark 4000 — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and (b) of Regulation (EC) No 207/2009 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Equal treatment — Principle of sound administration — Obligation to state reasons)

(2018/C 249/37)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China) (represented by: S. Fröhlich and M. Hartmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 (Case R 654/2016-4), relating to invalidity proceedings between Zhejiang Rongpeng Air Tools and Sata.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sata GmbH & Co. KG to pay the costs.*

(1) OJ C 231, 17.7.2017.

Judgment of the General Court of 29 May 2018 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (5000)

(Case T-304/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 5000 — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and (b) of Regulation (EC) No 207/2009 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Equal treatment — Principle of sound administration — Obligation to state reasons)

(2018/C 249/38)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China) (represented by: S. Fröhlich and M. Hartmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 (Case R 655/2016-4), relating to invalidity proceedings between Zhejiang Rongpeng Air Tools and Sata.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sata GmbH & Co. KG to pay the costs.*

([1]) OJ C 231, 17.7.2017.

Judgment of the General Court of 31 May 2018 — Nosio v EUIPO (MEZZA)

(Case T-314/17) ([1])

(EU trade mark — Application for EU word mark MEZZA — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Descriptive character — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Restriction of goods — Article 43(1) of Regulation No 207/2009 (now Article 49(1) of Regulation 2017/1001) — Obligation to state reasons — Right to be heard — Article 75 of Regulation No 207/2009 (now Article 94(1) of Regulation 2017/1001))

(2018/C 249/39)

Language of the case: Italian

Parties

Applicant: Nosio SpA (Mezzocorona, Italy) (represented by: A. Perani and J. Graffer, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 1 March 2017 (Case R 1518/2016-5) concerning an application for registration of the word sign MEZZA as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nosio SpA to pay the costs.*

([1]) OJ C 231, 17.7.2017.

Judgment of the General Court of 31 May 2018 — Korwin-Mikke v Parliament

(Case T-352/17) ([1])

(Law governing the institutions — European Parliament — Rules of Procedure of the Parliament — Statement adversely affecting the dignity of the Parliament and the smooth conduct of parliamentary business — Disciplinary sanctions of forfeiture of entitlement to the subsistence allowance and temporary suspension from participation in all activities of the Parliament — Freedom of expression — Obligation to state reasons — Error of law)

(2018/C 249/40)

Language of the case: French

Parties

Applicant: Janusz Korwin-Mikke (Józefów, Poland) (represented by: M. Cherchi, A. Daoût and M. Dekleermaker, lawyers)

Defendant: European Parliament (represented by: N. Görlitz, S. Seyr and S. Alonso de León, acting as Agents)

Re:

First, action brought under Article 263 TFEU and seeking annulment of the decision of the President of the Parliament of 14 March 2017 and of the decision of the Bureau of the Parliament of 3 April 2017 imposing on the applicant the penalty of forfeiture of entitlement to the subsistence allowance for a period of 30 days, temporary suspension from participation in all activities of the Parliament for a period of 10 consecutive days and prohibition of representing the Parliament for a period of one year and, second, action brought under Article 268 TEU and seeking compensation for the harm allegedly suffered by the applicant as a result of those decisions.

Operative part of the judgment

The Court:

1. *Annuls the Decision of the Bureau of the European Parliament of 3 April 2017;*

2. *Dismisses the claim for damages;*

3. *Orders Mr Janusz Korwin-Mikke and the Parliament each to bear their own respective costs.*

(1) OJ C 239, 24.7.2017.

Order of the General Court of 17 May 2018 — Westfälische Drahtindustrie and Others v Commission

(Case T-393/10 INTP) (1)

(Proceedings — Interpretation of a judgment — Rectification — Failure to adjudicate)

(2018/C 249/41)

Language of the case: German

Parties

Applicants: Westfälische Drahtindustrie GmbH (Hamm, Germany), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG (Hamm), Pampus Industriebeteiligungen GmbH & Co. KG (Iserlohn, Germany) (represented by: C. Stadler, lawyer)

Defendant: European Commission (represented by: V. Bottka, H. Leupold and G. Meessen, acting as Agents)

Re:

Request for interpretation of the judgment of 15 July 2015, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10, EU:T:2015:515) and, in the alternative, application for rectification of and compensation for the failure to adjudicate in respect of that judgment.

Operative part of the order

1. *The action is dismissed.*

2. *Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG are ordered to pay the costs.*

(1) OJ C 301, 6.11.2010.

Order of the General Court of 17 April 2018 — Westbrae Natural v EUIPO — Kaufland Warenhandel (COCONUT DREAM)

(Case T-65/17) (1)

(European Union trade mark — Opposition proceedings — Application for EU word mark COCONUT DREAM — Withdrawal of the opposition — Action which has become devoid of purpose — No need to adjudicate)

(2018/C 249/42)

Language of the case: English

Parties

Applicant: Westbrae Natural, Inc. (New York, New York, United States) (represented by: D. McFarland, Barrister)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Kaufland Warenhandel GmbH & Co. KG (Neckarsulm, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 November 2016 (Case R 182/2016-2), relating to opposition proceedings between Kaufland Warenhandel and Westbrae Natural.

Operative part of the order

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

2. *Westbrae Natural, Inc. shall bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 86, 20.3.2017.

Order of the General Court of 18 May 2018 — VKR Holding v EUIPO (VELUX)

(Case T-465/17) ([1])

(EU trade mark — Application for EU word mark VELUX — Claiming the seniority of the earlier national word mark VELUX — Revocation of the decision of the Board of Appeal — Article 103 of Regulation (EU) 2017/1001 — Action which has become devoid of purpose — No need to adjudicate)

(2018/C 249/43)

Language of the case: English

Parties

Applicant: VKR Holding A/S (Søborg, Denmark) (represented by: J. Heebøll, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 23 May 2017 (Case R 1927/2016-2) relating to an application claiming seniority of the identical national (Estonian) trade mark for the word mark VELUX, registered as an EU trade mark.

Operative part of the order

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

2. *The European Union Intellectual Property Office (EUIPO) shall pay the costs.*

([1]) OJ C 309, 18.9.2017.

Order of the President of the General Court of 17 May 2018 — Transtec v Commission

(Case T-228/18 R)

(Interim measures — Public procurement — Framework contract for the provision of services to third countries benefiting from external aid — Application for interim measures — No urgency)

(2018/C 249/44)

Language of the case: French

Parties

Applicant: Transtec (Brussels, Belgium) (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Commission (represented by: A. Aresu and J. Estrada de Solà, acting as Agents)

Re:

Application on the basis of Articles 278 TFEU and 279 TFEU seeking, on the one hand, a suspension of the application of the decision of the European Commission of 26 March 2018 rejecting the tender of the applicant and awarding ten tenderers the contract relating to Lot No 3 of the 'Framework contract for the implementation of external aid 2018 (FWC SIEA 2018) 2017/S 128-260026', with reference EuropeAid/138778/DH/SER/Multi and, on the other, an order that the Commission provisionally include the applicant among the selected tenderers.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Action brought on 30 April 2018 — Klymenko v Council

(Case T-274/18)

(2018/C 249/45)

Language of the case: French

Parties

Applicant: Oleksandr Viktorovych Klymenko (Moscow, Russia) (represented by: M. Phelippeau, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— uphold Mr Oleksandr Viktorovych Klymenko's action;

— annul 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;

— annul 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;

— order the Council of the European Union to pay the costs of the proceedings pursuant to Articles 87 and 91 of the Rules of Procedure of the Court.

Pleas in law and main arguments

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

1. Failure to state the reasons for the contested measures.

2. Infringement of the rights of the defence and the right to effective judicial protection as enshrined in the fundamental principles of EU law, in particular Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention on Human Rights and Fundamental Freedoms.

3. Absence of a legal basis, since Article 29 of the Treaty on European Union cannot provide a legal basis for the restrictive measures adopted against Mr Klymenko.

4. Factual errors in that Mr Klymenko has provided evidence proving the lack of a sufficient factual basis for bringing criminal proceedings.

5. Breach of the fundamental right to property, which is a fundamental principle of EU law enshrined in Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Action brought on 3 May 2018 — Arbuzov v Council

(Case T-284/18)

(2018/C 249/46)

Language of the case: Czech

Parties

Applicant: Sergej Arbuzov (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

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 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine in so far as it relates to Sergej Arbuzov.

— Declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by Sergej Arbuzov.

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 infringement of the right to sound administration.

   The applicant claims in support of his action, inter alia, that the Council of the European Union did not exercise due care and attention in the adoption of Decision (CFSP) 2018/333 of 5 March 2018, since before the adoption of the contested decision it did not address the applicant's arguments and the evidence he had adduced, which supports his case, and it primarily based that decision on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigations in the Ukraine.

2. Second plea in law, alleging an infringement of the applicant's right to property.

   The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

Action brought on 4 May 2018 — Pšonka v Council

(Case T-285/18)

(2018/C 249/47)

Language of the case: Czech

Parties

Applicant: Viktor Pavlovič Pšonka (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

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 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2018/326 of 5 March 2018, in so far as that Decision and that Regulation relate to the applicant.

— Declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant.

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 an infringement of the right to sound administration.

   — The applicant claims in support of his action, inter alia, that the Council of the European Union did not exercise due care and attention in the adoption of Decision (CFSP) 2018/333 of 5 March 2018, since before the adoption of the contested decision it did not address the applicant's arguments and the evidence he had adduced, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigations in the Ukraine.

2. Second plea in law, alleging an infringement of the applicant's right to property.

— The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging an infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms

— The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as was his right to the protection of private property.

Action brought on 4 May 2018 — Pšonka v Council

(Case T-289/18)

(2018/C 249/48)

Language of the case: Czech

Parties

Applicant: Artem Viktorovič Psonka (Kramatorsk, Ukraine) (represented by: M. Mleziva, lawyer)

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 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2018/326 of 5 March 2018, in so far as that Decision and that Regulation relate to the applicant.

— Declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant.

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 an infringement of the right to sound administration.

— The applicant claims in support of his action, inter alia, that the Council of the European Union did not exercise due care and attention in the adoption of Decision (CFSP) 2018/333 of 5 March 2018, since before the adoption of the contested decision it did not address the applicant's arguments and the evidence he had adduced, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigations in the Ukraine.

2. Second plea in law, alleging an infringement of the applicant's right to property.

— The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging an infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms

— The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as was his right to the protection of private property.

Action brought on 7 May 2018 — Portugal v Commission

(Case T-292/18)

(2018/C 249/49)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, P. Estevão and J. Saraiva de Almeida, acting as Agents)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Decision C(2018) 955 of 27 February 2018, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes from EU financing expenditure declared by Portugal in the sum of EUR 1 052 101,05 on the ground that it comes under 'Debts wrongly reported in the Annex III tables, having escaped the application of the 50/50 rule';

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on an infringement of Articles 32 and 33 of Regulation (EC) No 1290/2005 ([1]) and of Article 54 of Regulation (EC) No 1306/2013. ([2])

([1]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

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

Action brought on 7 June 2018 — Greece v Commission

(Case T-295/18)

(2018/C 249/50)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, I. Pachi, A.-Ev. Vasilopoulou and Eug. Chroni)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it excludes from European Union financing expenditure by the Hellenic Republic amounting in total to EUR 17 869 131,75 (gross) (budgetary impact EUR 14 857 076,98) incurred and declared within the framework of the EAFRD concerning measures 125A, 321 and 322 (gross amount EUR 15 631 043,52 and budgetary impact EUR 12 618 988,75) and measure 123A (in the amount of EUR 2 238 088,23) as well as an amount of EUR 588 103,59 which was incurred under the EAGF following the control of transactions measure for the budgetary years 2011-2014 and

— order the defendant to pay the costs of the Hellenic Republic.

Pleas in law and main arguments

In support of the action for annulment, the applicant puts forward eight pleas in law. The first six concern the correction imposed under the EAFRD for measures 125A, 321, 322 and 123A, while the last two concern the correction imposed for weaknesses in the control of transactions under Title V Chapter III of Regulation (EU) No 1306/2013. ([1])

1. The first plea alleges an incorrect interpretation and application of the case referred to in Article 52(4)(c) of Regulation (EU) No 1306/2013, exceeding the Commission's competence ratione temporis to impose the financial corrections at issue and an error of fact on the part of the Commission in determining the basis for calculation of the correction at issue.

2. The second plea alleges, in the alternative, infringement of the principles of ne bis in idem, legal certainty, sound administration, legitimate expectation on the part of a Member State and proportionality.

3. The third plea for annulment is based on an infringement of Articles 71(2) and 75(1) of Regulation (EC) No 1698/2005, ([2]) Article 43 of Regulation (EC) No 1974/2006, ([3]) the provisions of the Rural Development Programme approved by the Commission (RDP 2007-2013) and Article 24(2)(b) of Regulation (EU) No 65/2011 ([4]), the lack of a legal basis and of a statement of reasons and on an error of assessment of the facts as regards the flat-rate financial correction of 10 % that was imposed, in light of the fact that the managing authority fully exercised its powers in accordance with the law.

4. The fourth plea for annulment alleges, in the alternative to the third plea, infringement of the principles of proportionality, of the legitimate expectations of the Member State and of the guidelines set out in documents VI/5339/1997 and C(2015) 3675 of 8 June 2015, as well as an inadequate statement of reasons concerning the flat-rate correction of 10 % imposed.

5. The fifth plea for annulment alleges infringement of the provisions of Article 24(2) of Regulation (EC) No 65/2011, an error of assessment of the facts and an inadequate statement of reasons concerning the alleged failure of the managing authority to assess the aid applications and the alleged absence of management control over the assessment work, as well as infringement of the principle of proportionality.

6. The sixth plea for annulment alleges infringement of the provisions of Article 24(1) and (2) of Regulation (EC) No 65/2011, of the principle of proportionality, an error in the assessment of the facts and an inadequate statement of reasons concerning the alleged failure to assess the reasonableness of the expenditure.

7. According to the seventh plea for annulment, the financial correction imposed for the financial years 2011 to 2013 must be annulled in so far as it lacks a legal basis and a statement of reasons; in respect of 2013 in particular, it is contrary to the principle of sound administration.

8. In the eighth plea for annulment, which is divided into five separate parts, it is alleged that the correction at issue was imposed following an error of assessment of the facts by the Commission, with a total failure to state reasons and in breach of the Hellenic Republic's rights of defence.

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

([2]) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).

([3]) Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 368, p. 15).

([4]) Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2011 L 25, p. 8).

Action brought on 7 May 2018 — Banco Comercial Português and Others v Commission

(Case T-298/18)

(2018/C 249/51)

Language of the case: English

Parties

Applicants: Banco Comercial Português (Porto, Portugal), Banco ActivoBank S.A. (Lisbon) and Banco de Investimento Imobiliário S.A. (Lisbon) (represented by: C. Botelho Moniz, L. do Nascimento Ferreira, F.-C. Laprévote, A. Champsaur and D. Oda, lawyers)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2017/N) of 11 October 2017 (State aid SA.49275) insofar as it considered the contingent capital agreement ('CCA') agreed and entered into between the Portuguese Resolution Fund ('Resolution Fund') and the Lone Star group ('Lone Star') in the context of the sale of Novo Banco, S.A. ('Novo Banco') by the former to the latter, as State aid compatible with the internal market, and

— order the Commission to pay the costs in relation to this procedure, including those of the applicants.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in law in considering that the 2014 resolution of Banco Espírito Santo, S.A. ('BES') was taken solely under Portuguese law and prior to the entry into force of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014, L 173, p. 190) ('BRRD');

2. Second plea in law, alleging that the Commission erred in law in considering that the BRRD applied only from 1 January 2015;

3. Third plea in law, alleging that the Commission erred in law in considering that, in order to preserve the unity and implementation of the initial resolution process of BES, the sale of Novo Banco should be governed by national law in force prior to the implementation of the BRRD;

4. Fourth plea in law, alleging that the Commission erred in law when it wrongfully considered that there are no indissolubly linked provisions of the BRRD relevant for the assessment of the CCA;

5. Fifth plea in law, alleging that the Commission infringed Articles 101 and 44 BRRD; and

6. Sixth plea in law, alleging that the Commission infringed Article 108(2) TFEU and Article 4(4) of the Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU ('Procedural Regulation', OJ 2015, L 248, p. 9), by failing to open the formal procedure notwithstanding the serious doubts raised as to the compatibility of the CCA mechanism with EU law thereby depriving the applicants of their procedural rights.

Action brought on 28 May 2018 — Herrero Torres v EUIPO — DZ Licores (CARAJILLO LICOR 43 CUARENTA Y TRES)

(Case T-326/18)

(2018/C 249/52)

Language in which the application was lodged: Spanish

Parties

Applicant: José-Ramón Herrero Torres (Castellón de la Plana, Spain) (represented by: J.V. Gil Martí, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DZ Licores, SLU. (Cartagena, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU figurative mark CARAJILLO LICOR 43 CUARENTA Y TRES — Application for registration No 14 444 855

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 13 March 2018 in Case R 2104/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision on the ground that it is unlawful and order EUIPO to pay the costs.

Pleas in law

— Infringement of Articles 8(1)(b), 8(5) and 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 31 May 2018 — Bodegas Altun v EUIPO — Codorníu (ANA DE ALTUN)

(Case T-334/18)

(2018/C 249/53)

Language in which the application was lodged: Spanish

Parties

Applicant: Bodegas Altun, SL (Baños de Ebro, Spain) (represented by: J. Oria Sousa-Montes, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Codorníu, SA (Esplugues de Llobregat, Spain)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant to the proceedings before the General Court

Trade mark at issue: Application for registration of the European Union figurative trade mark ANA DE ALTUN — Application No 11 860 913

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14/03/2018 in Case R 173/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 31 May 2018 — Gibson Brands v EUIPO — Wilfer

(Shape of a guitar)

(Case T-340/18)

(2018/C 249/54)

Language of the case: English

Parties

Applicant: Gibson Brands, Inc. (Nashville, Tennessee, United States) (represented by: K. Hughes, Solicitor, A. Renck and C. Stöber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Hans-Peter Wilfer (Markeneukirchen, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: European Union tridimensional mark (Shape of a guitar) — European Union trade mark No 9 179 953

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 8 March 2018 in Case R 415/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order that the costs of the proceedings be borne by the Defendant and the Other Party before the Board of Appeal in the event that it intervenes in the proceedings.

Pleas in law

— Infringement of Article 52(1)(a) in conjunction with Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 52(2) in conjunction with Article 7(3) of Regulation No 207/2009.

Order of the General Court of 29 May 2018 — Sowaer v Commission

(Case T-474/16) ([1])

(2018/C 249/55)

Language of the case: French

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

([1]) OJ C 371, 10.10.2016.

Order of the General Court of 31 May 2018 — QD v EUIPO

(Case T-787/16) ([1])

(2018/C 249/56)

Language of the case: English

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

([1]) OJ C 22, 23.1.2017.

Order of the General Court of 31 May 2018 — QD v EUIPO

(Case T-199/17) ([1])

(2018/C 249/57)

Language of the case: English

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

([1]) OJ C 161, 22.5.2017.

Order of the General Court of 30 May 2018 — António Conde & Companhia v Commission

(Case T-443/17) ([1])

(2018/C 249/58)

Language of the case: English

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

([1]) OJ C 293, 4.9.2017.

Order of the General Court of 29 May 2018 — Nova Brands v EUIPO — Natamil (Natamil)

(Case T-23/18) ([1])

(2018/C 249/59)

Language of the case: English

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

([1]) OJ C 94, 12.3.2018.

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