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Information and Notices

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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2018/C 294/01)

Last publication

OJ C 285, 13.8.2018.

Past publications

OJ C 276, 6.8.2018.

OJ C 268, 30.7.2018.

OJ C 259, 23.7.2018.

OJ C 249, 16.7.2018.

OJ C 240, 9.7.2018.

OJ C 231, 2.7.2018.

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 28 June 2018 — Dirk Andres, acting as liquidator in the insolvency of Heitkamp BauHolding GmbH v European Commission, Federal Republic of Germany

(Case C-203/16 P) ([1])

(Appeal — State aid — German tax legislation concerning the possibility of carrying certain losses forward to future tax years ('restructuring clause') — Decision declaring the aid scheme incompatible with the internal market — Actions for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Person individually concerned — Article 107(1) TFEU — Concept of 'State aid' — Condition relating to selectivity — Determination of the reference framework — Legal classification of the facts)

(2018/C 294/02)

Language of the case: German

Parties

Appellant: Dirk Andres, acting as liquidator in the insolvency of Heitkamp BauHolding GmbH (represented by: W. Niemann, S. Geringhoff and P. Dodos, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: R. Lyal, T. Maxian Rusche and K. Blanck-Putz, acting as Agents), Federal Republic of Germany (represented by: T. Henze and R. Kanitz, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the cross-appeal;*

2. *Annuls points 2 and 3 of the operative part of the judgment of the General Court of the European Union of 4 February 2016, Heitkamp BauHolding v Commission (T-287/11, EU:T:2016:60);*

3. *Annuls Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel);*

4. *Orders the European Commission to pay, in addition to its own costs, the costs incurred by Dirk Andres, acting as liquidator in the insolvency of Heitkamp BauHolding GmbH, relating both to the proceedings at first instance and on appeal;*

5. *Orders the Federal Republic of Germany to bear its own costs relating to the appeal proceedings.*

(1) OJ C 211, 13.6.2016.

Judgment of the Court (Second Chamber) of 28 June 2018 — Federal Republic of Germany v Dirk Andres (liquidator in the insolvency of Heitkamp BauHolding GmbH), European Commission

(Case C-208/16 P) (1)

Appeal — State aid — German tax legislation concerning the possibility of carrying certain losses forward to future tax years ('restructuring clause') — Decision declaring the aid scheme incompatible with the internal market — Actions for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Person individually concerned — Article 107(1) TFEU — Concept of 'State aid' — Condition relating to selectivity — Determination of the reference framework — Legal classification of the facts

(2018/C 294/03)

Language of the case: German

Parties

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

Other parties to the proceedings: Dirk Andres (liquidator in the insolvency of Heitkamp BauHolding GmbH) (represented by: W. Niemann, S. Geringhoff, and P. Dodos, Rechtsanwälte), European Commission (represented by: R. Lyal, T. Maxian Rusche and K. Blanck-Putz, acting as Agents)

Operative part of the judgment

The Court:

1. *dismisses the cross-appeal;*

2. *annuls paragraphs 2 and 3 of the operative part of the judgment of the General Court of the European Union of 4 February 2016, Heitkamp BauHolding v Commission (T-287/11, EU:T:2016:60);*

3. *annuls Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel);*

4. *orders the European Commission to pay, in addition to its own costs relating both to the proceedings at first instance and to the appeal proceedings, the costs incurred by the Federal Republic of Germany relating to appeal proceedings and the costs incurred by Mr Dirk Andres, acting as liquidator in the insolvency of Heitkamp BauHolding GmbH, relating to both the proceedings at first instance and to the appeal proceedings.*

(1) OJ C 211, 13.6.2016.

Judgment of the Court (Second Chamber) of 28 June 2018 — Federal Republic of Germany v Lowell Financial Services GmbH, formerly GFKL Financial Services AG, European Commission

(Case C-209/16 P) ([1])

(Appeal — State aid — German tax legislation concerning the possibility of carrying certain losses forward to future tax years ('restructuring clause') — Decision declaring the aid scheme incompatible with the internal market — Action for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Person individually concerned — Article 107(1) TFEU — Concept of 'State aid' — Condition relating to selectivity — Determination of the reference framework — Legal classification of the facts)

(2018/C 294/04)

Language of the case: German

Parties

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

Other parties to the proceedings: Lowell Financial Services GmbH, formerly GFKL Financial Services AG (represented by: M. Schweda, M. Knebelsberger and F. Loose, Rechtsanwälte), European Commission (represented by: R. Lyal, T. Maxian Rusche and K. Blanck-Putz, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the cross-appeal;*

2. *Sets aside points 2 and 3 of the operative part of the judgment of the General Court of the European Union of 4 February 2016, GFKL Financial Services v Commission (T-620/11, EU:T:2016:59);*

3. *Annuls Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel);*

4. *Orders the European Commission to bear its own costs in relation to the proceedings at first instance and on appeal, to pay the costs incurred by the Federal Republic of Germany in relation to the appeal proceedings, and to pay the costs incurred by Lowell Financial Services GmbH in relation to the proceedings at first instance;*

5. *Orders Lowell Financial Services GmbH to bear its own costs in relation to the appeal proceedings.*

([1]) OJ C 222, 20.6.2016.

Judgment of the Court (Second Chamber) of 28 June 2018 — Lowell Financial Services GmbH, formerly GFKL Financial Services AG v European Commission, Federal Republic of Germany

(Case C-219/16 P) ([1])

(Appeal — State aid — German tax legislation concerning the possibility of carrying certain losses forward to future tax years ('restructuring clause') — Decision declaring the aid scheme incompatible with the internal market — Action for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Person individually concerned — Article 107(1) TFEU — Concept of 'State aid' — Condition relating to selectivity — Determination of the reference framework — Legal classification of the facts)

(2018/C 294/05)

Language of the case: German

Parties

Appellant: Lowell Financial Services GmbH, formerly GFKL Financial Services AG (represented by: M. Schweda, J. Eggers, M. Knebelsberger and F. Loose, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: R. Lyal, T. Maxian Rusche and K. Blanck-Putz, acting as Agents), Federal Republic of Germany

Operative part of the judgment

The Court:

1. *Dismisses the cross-appeal;*

2. *Sets aside points 2 and 3 of the operative part of the judgment of the General Court of the European Union of 4 February 2016, GFKL Financial Services v Commission (T-620/11, EU:T:2016:59);*

3. *Annuls Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel);*

4. *Orders the European Commission to bear its own costs and to pay the costs incurred by Lowell Financial Services GmbH in relation to the proceedings both at first instance and on appeal.*

([1]) OJ C 222, 20.6.2016.

Judgment of the Court (Grand Chamber) of 26 June 2018 (request for a preliminary ruling from the Supreme Court of the United Kingdom — United Kingdom) — MB v Secretary of State for Work and Pensions

(Case C-451/16) ([1])

(Reference for a preliminary ruling — Directive 79/7/EEC — Equal treatment for men and women in matters of social security — National State pension scheme — Conditions for recognition of change of gender — National legislation under which such recognition is subject to the annulment of any marriage entered into before that change of gender — Refusal to grant a person who has changed gender a State retirement pension as from the pensionable age for persons of the gender acquired — Direct discrimination on grounds of sex)

(2018/C 294/06)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Appellant: MB

Respondent: Secretary of State for Work and Pensions

Operative part of the judgment

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, in particular the first indent of Article 4(1), read in conjunction with the third indent of Article 3(1)(a) and Article 7(1)(a) thereof, must be interpreted as precluding national legislation which requires a person who has changed gender not only to fulfil physical, social and psychological criteria but also to satisfy the condition of not being married to a person of the gender that he or she has acquired as a result of that change, in order to be able to claim a State retirement pension as from the statutory pensionable age applicable to persons of his or her acquired gender.

([1]) OJ C 383, 17.10.2016.

Judgment of the Court (Second Chamber) of 28 June 2018 — European Union Intellectual Property Office (EUIPO) v Puma SE

(Case C-564/16 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 8(5) — Article 76 — Opposition proceedings — Relative grounds for refusal — Regulation (EC) No 2868/95 — Rule 19 — Rule 50(1) — Earlier decisions of the European Union Intellectual Property Office (EUIPO) recognising the reputation of the earlier trade mark — Principle of sound administration — Taking account of those decisions in subsequent opposition proceedings — Obligation to state reasons — Procedural obligations of the Boards of Appeal of EUIPO)

(2018/C 294/07)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (EUIPO) (represented by: D. Botis and D. Hanf, acting as Agents)

Other party to the proceedings: Puma SE (represented by: P. González-Bueno Catalán de Ocón, abogado)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 86, 20.3.2017.

Judgment of the Court (Tenth Chamber) of 28 June 2018 — Spliethoff's Bevrachtingskantoor BV v European Commission

(Case C-635/16 P) ([1])

(Appeal — Actions for annulment — Admissibility — Determination of the subject-matter of the proceedings — Financial assistance in the field of Connecting Europe Facility (CEF) — Transport sector for the period 2014-2020 — Call for proposals — Innovation and Networks Executive Agency (INEA) — Email informing the appellant of the rejection of its proposal — Subsequent decision of the European Commission establishing the list of selected proposals — Effective judicial protection)

(2018/C 294/08)

Language of the case: English

Parties

Appellant: Spliethoff's Bevrachtingskantoor BV (represented by: Y. de Vries, advocaat)

Other party to the proceedings: European Commission (represented by: J. Samnadda and J. Hottiaux, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of 11 October 2016, Spliethoff's Bevrachtingskantoor v Commission (T-564/15, not published, EU:T:2016:611);*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 70, 6.3.2017.

Judgment of the Court (Tenth Chamber) of 28 June 2018 (request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia — Spain) — Instituto Nacional de la Seguridad Social v Jesús Crespo Rey

(Case C-2/17) ([1])

(Reference for a preliminary ruling — Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Social security for migrant workers — Regulation (EC) No 883/2004 — Paragraph 2 of the section 'Spain' in Annex XI — Retirement pension — Method of calculation — Theoretical amount — Relevant contribution basis — Special agreement — Choice of contribution basis — National legislation requiring the worker to make contributions in accordance with the minimum contribution basis)

(2018/C 294/09)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Instituto Nacional de la Seguridad Social

Respondent: Jesús Crespo Rey

Other party: Tesorería General de la Seguridad Social

Operative part of the judgment

The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999, must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which obligates a migrant worker who concludes a special agreement with the social security system of that Member State to make contributions in accordance with the minimum contribution basis, with the result that, when the theoretical amount of that worker's retirement pension is calculated, the competent body of that Member State treats the period covered by that agreement as a period completed in that Member State and will take into consideration, for the purposes of that calculation, only the contributions paid by the worker under that agreement, even though, before exercising his right to free movement, that worker made contributions in that Member State in accordance with contribution bases higher than the minimum, and a non-migrant worker who did not exercise his right to free movement and who concludes such an agreement has the option of making contributions in accordance with contribution bases higher than the minimum.

([1]) OJ C 104, 3.4.2017.

Judgment of the Court (Seventh Chamber) of 28 June 2018 (request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain) — Eva Soraya Checa Honrado v Fondo de Garantía Salarial

(Case C-57/17) ([1])

(Reference for a preliminary ruling — Social policy — Protection of employees in the event of the insolvency of their employer — Directive 2008/94/EC — Article 3, first paragraph — Payment guaranteed by the guarantee institution — Severance pay on termination of employment relationships — Transfer of workplace obliging the worker to change residence — Change to a fundamental element of the contract of employment — Termination of the contract of employment by the worker — Principle of equality and non-discrimination)

(2018/C 294/10)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Valenciana

Parties to the main proceedings

Applicant: Eva Soraya Checa Honrado

Defendant: Fondo de Garantía Salarial

Operative part of the judgment

The first paragraph of Article 3 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that, where, according to the national legislation in question, some forms of statutory compensation payable on termination of a contract of employment at the worker's request and those payable in the case of dismissals on objective grounds, such as those envisaged by the referring court, fall within the concept of 'severance pay on termination of employment relationships', within the meaning of that provision, statutory compensation payable on termination of a contract of employment at the worker's request on account of a transfer of workplace by the employer, obliging the worker to change residence, must also fall within that concept.

([1]) OJ C 121, 18.4.2017.

Judgment of the Court (First Chamber) of 27 June 2018 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — Turbogás Produtora Energética SA v Autoridade Tributária e Aduaneira

(Case C-90/17) ([1])

(Reference for a preliminary ruling — Directive 2003/96/EC — Taxation of energy products and electricity — Third subparagraph of Article 21(5) — Entity producing electricity for its own use — Small producers of electricity — Article 14(1)(a) — Energy products used for the production of electricity — Obligation to exempt)

(2018/C 294/11)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Turbogás Produtora Energética SA

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

The third subparagraph of Article 21(5) and Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity must be interpreted as meaning that an entity such as the one in question in the main proceedings, which generates electricity for its own use, regardless of its size and irrespective of its main economic activity, must be regarded as a 'distributor', within the meaning of the first of those provisions, whose consumption of electricity for the production of electricity, however, comes under the mandatory exemption provided for in Article 14(1)(a).

([1]) OJ C 144, 8.5.2017.

Judgment of the Court (Third Chamber) of 27 June 2018 (request for a preliminary ruling from the Østre Landsret — Denmark) — Erdem Deha Altiner, Isabel Hanna Ravn v Udlændingestyrelsen

(Case C-230/17) ([1])

(Reference for a preliminary ruling — Citizenship of the Union — Article 21(1) TFEU — Directive 2004/38/EC — Right to move and reside freely within the territory of the Member States — Right of residence of a third-country national who is a family member of a Union citizen in the Member State of which that citizen is a national — Entry by that family member into the territory of the Member State in question subsequent to the return of the Union citizen to that Member State)

(2018/C 294/12)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicants: Erdem Deha Altiner, Isabel Hanna Ravn

Defendant: Udlændingestyrelsen

Operative part of the judgment

In the light of all the foregoing considerations, the answer to the question referred is that Article 21(1) TFEU must be interpreted as not precluding legislation of a Member State which does not provide for the grant of a derived right of residence in another Member State, under Union law, to a third-country national family member of a Union citizen who is a national of that Member State and who returns there after having resided, pursuant to and in conformity with Union law, in another Member State, when the family member of the Union citizen concerned has not entered the territory of the Member State of origin of the Union citizen or has not applied for a residence permit as a 'natural consequence' of the return to that Member State of the Union citizen in question, provided that such rules require, in the context of an overall assessment, that other relevant factors also be taken into account, in particular factors capable of showing that, in spite of the time which elapsed between the return of the Union citizen to that Member State and the entry of the family member who is a third-country national, in the same Member State, the family life created and strengthened in the host Member State has not ended, so as to justify the granting to the family member in question of a derived right of residence; it is for the referring court to verify whether this is the case.

([1]) OJ C 213, 3.7.2017.

Judgment of the Court (First Chamber) of 27 June 2018 (request for a preliminary ruling from the Conseil d'État — Belgium) — Ibrahima Diallo v État belge

(Case C-246/17) ([1])

(Reference for a preliminary ruling — Citizens of the European Union — Directive 2004/38/EC — Article 10(1) — Application for a residence card as a family member — Issuance — Time limit — Adoption and notification of the decision — Consequences of non-compliance with the period — Procedural autonomy of Member States — Principle of effectiveness)

(2018/C 294/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ibrahima Diallo

Defendant: État belge

Operative part of the judgment

1. *Article 10(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that the decision on the application for a residence card of a family member of a Union citizen must be adopted and notified within the period of six months laid down in that provision.*

2. *Directive 2004/38 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which requires competent national authorities to issue automatically a residence card of a family member of a European Union citizen to the person concerned, where the period of six months, referred to in Article 10(1) of Directive 2004/38, is exceeded, without finding, beforehand, that the person concerned actually meets the conditions for residing in the host Member State in accordance with EU law.*

3. *EU law must be interpreted as precluding national case-law, such as that at issue in the main proceedings, under which, following the judicial annulment of a decision refusing to issue a residence card of a family member of a Union citizen, the competent national authority automatically regains the full period of six months referred to in Article 10(1) of Directive 2004/38.*

(1) OJ C 231, 17.7.2017.

Judgment of the Court (Sixth Chamber) of 27 June 2018 (request for a preliminary ruling from the Administrativen sad — Varna — Bulgaria) — 'Varna Holideis' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika'– Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-364/17) (1)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Supply of immovable property effected prior to the accession of the Republic of Bulgaria to the European Union — Nullity of the contract of sale coming to light after the accession — Obligation to adjust the initial deduction — Interpretation — Jurisdiction of the Court)

(2018/C 294/14)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: 'Varna Holideis' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika'– Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Operative part of the judgment

The Court of Justice of the European Union has no jurisdiction to answer the questions referred by the Administrativen sad — Varna (Administrative Court, Varna, Bulgaria).

(1) OJ C 269, 14.8.2017.

Judgment of the Court (Sixth Chamber) of 27 June 2018 (requests for a preliminary ruling from the Conseil d'État — France) — SGI (C-459/17), Valériane SNC (C-460/17) v Ministre de l'Action et des Comptes publics

(Joined Cases C-459/17 and C-460/17) (1)

(References for a preliminary ruling — Common system of value added tax (VAT) — Right to deduct input tax — Material conditions governing the right to deduct — Actual delivery of the goods)

(2018/C 294/15)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellants: SGI (C-459/17), Valériane SNC (C-460/17)

Respondent: Ministre de l'Action et des Comptes publics

Operative part of the judgment

Article 17 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as meaning that, in order to deny a taxable person in receipt of an invoice the right to deduct the VAT appearing on that invoice, it is sufficient that the authorities establish that the transactions covered by that invoice have not actually been carried out.

([1]) OJ C 347, 16.10.2017.

Judgment of the Court (Fifth Chamber) of 28 June 2018 (request for a preliminary ruling from the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu — Poland) — proceedings brought by HR

(Case C-512/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 8(1) — Place of habitual residence of the child — Infant — Decisive circumstances for establishing that place of habitual residence)

(2018/C 294/16)

Language of the case: Polish

Referring court

Sąd Rejonowy Poznań-Stare Miasto w Poznaniu

Parties to the main proceedings

Applicant: HR

with the participation of: KO and Prokuratura Rejonowa Poznań Stare Miasto w Poznaniu

Operative part of the judgment

Article 8(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a child's place of habitual residence for the purpose of that regulation is the place which, in practice, is the centre of that child's life. It is for the national court to determine, on the basis of a consistent body of evidence, where that centre was located at the time the application concerning parental responsibility over the child was submitted. In that regard, in a case such as that in the main proceedings, having regard to the facts established by that court, the following, taken together, are decisive factors:

— *the fact that, from its birth until its parents' separation, the child generally lived with those parents in a specific place;*

— *the fact that the parent who, in practice, has had custody of the child since the couple's separation continues to stay in that place with the child on a daily basis and is employed there under an employment contract of indefinite duration; and*

— *the fact that the child has regular contact there with its other parent, who is still resident in that place.*

By contrast, in a case such as that in the main proceedings, the following cannot be regarded as decisive:

— *the stays which the parent who, in practice, has custody of the child has spent in the past with that child in the territory of that parent's Member State of origin in the context of leave periods or holidays;*

— *the origins of the parent in question, the cultural ties which the child has with that Member State as a result, and the parent's relationships with family residing in that Member State; and*

— *any intention the parent has of settling in that Member State with the child in the future.*

(1) OJ C 412, 4.12.2017.

Appeal brought on 23 December 2017 by Nap Innova Hoteles, S.L., against the order of the General Court (Eighth Chamber) delivered on 4 December 2017 in Case T-522/17 Nap Innova Hoteles v SRB

(Case C-731/17 P)

(2018/C 294/17)

Language of the case: Spanish

Parties

Appellant: Nap Innova Hoteles, S.L. (represented by: L. Hernández Cabeza, abogado)

Other party to the proceedings: Single Resolution Board

By order of 5 July 2018, the Court of Justice (Ninth Chamber) dismissed the appeal and ordered Nap Innova Hoteles, S.L., to pay its own costs.

Appeal brought on 14 February 2018 by Hochmann Marketing GmbH, formerly Bittorrent Marketing GmbH against the judgment of the General Court (Third Chamber) delivered on 12 December 2017 in Case T-771/15: Hochmann Marketing v EUIPO

(Case C-118/18 P)

(2018/C 294/18)

Language of the case: English

Parties

Appellant: Hochmann Marketing GmbH, formerly Bittorrent Marketing GmbH (represented by: C. Hoppe, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 28 June 2018 the Court of Justice (Ninth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Belgium) lodged on 11 May 2018 — Oracle Belgium BVBA v Belgische Staat

(Case C-318/18)

(2018/C 294/19)

Language of the case: Dutch

Referring court

Nederlandstalige rechtbank van eerste aanleg Brussel

Parties to the main proceedings

Applicant: Oracle Belgium BVBA

Defendant: Belgische Staat

Questions referred

1. Must Article 2(2) of the Decision of 11 January 2016 of the European Commission (SA.37667) according to which 'any sums (of the aid measure, deemed to be unlawful, of Belgium to Tekelec International BVBA, consisting of a tax exemption for so-called "excess profit" for the financial years 2009, 2010, 2011 and 2012, granted by the Ruling Commission of the Belgian tax administration by decision of 1 July 2008) that remain unrecoverable from the recipients of the aid, following the recovery described in the paragraph 1, shall be recovered from the corporate group to which the recipient belongs', be interpreted as meaning that, in the event of the acquisition of the recipient of the aid measure (Tekelec International BVBA) by a new corporate group (the Oracle Group) after the end of the aid measure (the aid measure applicable to the financial years 2009, 2010, 2011 and 2012, and the acquisition dated 10 June 2013) and before the start of the European Commission's investigation into the lawfulness of the aid measure (launched by letter of 19 December 2013), 'the corporate group to which the recipient belongs' becomes the corporate group of the buyer, or does it remain the corporate group of the seller?

2. If the answer to the first question, irrespective of the nature of the aid measure deemed to be unlawful (economic or tax-related), is dependent on whether or not the acquisition price is market-based, namely, that the corporate group of the seller remains the beneficiary if the acquisition price is market-based, more specifically, if the value of the aid measure concerned is included in the acquisition price, and that the corporate group of the buyer becomes the beneficiary if the acquisition price is below the market price, more specifically, if the value of the aid measure concerned is not or is not fully included in the acquisition price, who then bears the burden of proof, when the aid measure deemed unlawful is recovered from the corporate group of the buyer, or a member thereof: must the new corporate group or the member thereof being held liable, prove that the acquisition price is market-based or must the recovering body, the Belgian State, prove that the acquisition price is below the market price?

3. If, on the other hand, the answer to the first question, due to the tax nature of the contested aid measure, is not dependent on whether or not the acquisition price is market-based, what is the basis for determining which corporate group, as a result of the acquisition, is the 'the corporate group to which the recipient belongs'?

Request for a preliminary ruling from the Krajský sud v Prešove (Slovakia) lodged on 22 May 2018 — TE v Pohotovost' s.r.o.

(Case C-331/18)

(2018/C 294/20)

Language of the case: Slovak

Referring court

Krajský sud v Prešove

Parties to the main proceedings

Applicant: TE

Defendant: Pohotovost' s.r.o.

Questions referred

1. A. The Slovak legislature, in response to the judgment in Case C-42/15 ([1]) has deleted with effect as of 1 May 2018 the words 'capital, interest and other charges' from Paragraph 9, on credit repayments and contractual terms, of Zákon č. 129/2010 Z.z. o spotrebiteľských úveroch a o iných úveroch a pôžičkách pre spotrebiteľov a o zmene a doplnení niektorých zákonov (Law No 129/2010 on consumer credit and other credits and loans for consumers and amending and supplementing certain laws), thereby ending the legal right of consumers to any explanation in a consumer credit agreement (not just by means of an amortisation table) of the breakdown of payment of the credit in terms of the capital, interest and other charges, as well as the penalties for infringement of that law.

   B. Although, from 1 May 2018, the amendment of the law has enabled a better execution of the judgment of the Court of Justice, the fact remains that in disputes concerning consumer contracts concluded prior to 1 May 2018, the [Slovak] courts have also reacted in practice by, inter alia, seeking, by means of an interpretation 'in conformity with EU law' to achieve in essence the same result as that pursued by the legislature.

   C. In this connection, the question referred to the Court of Justice concerns the interpretation of EU law by application of the doctrine of the indirect effect of directives. Taking into account the huge amount of decisions in which the courts in the past have conceded that consumers were granted, under Law No 129/2010, the right to a breakdown of repayments in terms of the capital, interest and other charges, the following question is referred:

   In applying the doctrine of the indirect effect of a directive with regard to horizontal relationships between individuals with the aim of rendering the directive fully effective using all interpretative methods and the national legal order in its entirety, does the principle of legal certainty enable the court to adopt, in a dispute concerning a consumer credit contract concluded prior to 1 May 2018, a decision which is equivalent as to its effects to the amendments, effective as of 1 May 2018, made to the Law by the legislature for the purposes of executing the judgment in Case C-42/15?

The other questions are referred by the national court only if the answer to Question 1 C is that in applying the doctrine of the indirect effect of a directive with regard to horizontal relationships between individuals with the aim of rendering the directive fully effective, the principle of legal certainty enables a court to adopt a decision which is equivalent as to its effects to the amendments, effective as of 1 May 2018, made to the Law by the legislature for the purposes of executing the judgment in Case C-42/15. In such circumstances:

2. Must the judgment of 9 November 2016 delivered by the Court in Case C-42/15 *Home Credit Slovakia*, and Directive 2008/48/EC ([2]) of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([3]) be interpreted as meaning that the Court of Justice has held that Directive 2008/48 precludes national legislation concerning the breakdown of credit repayments not only in the form of an amortisation table, but also in any other legal expression of the amount, the number and the frequency of the repayments of the capital of consumer credit.

3. Must the abovementioned judgment of the Court be interpreted as meaning that it governs the issue of whether legislation of a Member State under which consumers have a right to terms in a consumer credit contract on the amount, the number and the deadlines for the payment of interest and charges, as opposed the capital, also goes beyond Directive 2008/48? If the judgment also concerns interest and charges, then does a legislative expression of the method of payment of interest and charges in a form other than an amortisation table also exceed Directive 2008/48/EC, in particular Article 10(2)(j) thereof.

([1]) Judgment of 9 November 2016, *Home Credit Slovakia* (EU:C:2016:842).
([2]) OJ 2008 L 133, p. 66.
([3]) Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 24 May 2018 — Staatssecretaris van Justitie en Veiligheid v J. and Others

(Case C-341/18)

(2018/C 294/21)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie en Veiligheid

Defendant: J. and Others

Other parties: C. and H. and Others

Question referred

Must Article 11(1) of Regulation 2016/399 ([1]) of the European Parliament and of the Council of 15 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) be interpreted as meaning that a third-country national who previously entered the Schengen area, for example through an international airport, exits within the meaning of the Schengen Borders Code as soon as he, as a seafarer, signs on with a seagoing vessel that is already berthed in a seaport which is an external border, irrespective of whether, and if so when, he will leave that seaport with that ship? Or, in order for there to be an exit, must it first be established that the seafarer will leave the seaport with the seagoing vessel concerned, and if so, does a deadline apply within which the departure must take place and at what time must the exit stamp then be applied? Or should a different time, whether or not under other conditions, be equated with 'exit'?

([1]) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

Request for a preliminary ruling from the Arbeidshof te Gent (Belgium) lodged on 25 May 2018 — ISS Facility Services NV v Sonia Govaerts, Euroclean NV

(Case C-344/18)

(2018/C 294/22)

Language of the case: Dutch

Referring court

Arbeidshof te Gent

Parties to the main proceedings

Appellant: ISS Facility Services NV

Respondents: Sonia Govaerts, Euroclean NV

Question referred

Must Article 3(1) of Council Directive 2001/23/EC ([1]) of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, be interpreted as meaning that, in the case where there is a simultaneous transfer of various parts of an undertaking within the meaning of Article 1(1) of that directive, which parts are transferred to various transferees, the rights and obligations arising from the employment contract, as it existed at the time of the transfer, of a worker who was employed in each of the transferred parts, will be transferred to each of the transferees, albeit in proportion to the extent of the employment of the aforementioned worker in the part of the undertaking acquired by each transferee,

or must that provision be interpreted as meaning that the aforementioned rights and obligations are transferred in their entirety to the transferee of the part of the undertaking in which the aforementioned worker was principally employed,

or as meaning that, if the provisions of the Directive cannot be interpreted in any of the aforementioned ways, there is no transfer to any transferee of the rights and obligations arising from the employment contract of the aforementioned worker, which is also the case if it is not possible to determine separately the extent of the worker's employment in each of the transferred parts of the undertaking?

([1]) OJ 2001 L 82, p. 16.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 29 May 2018 — Azienda Agricola Barausse Antonio e Gabriele — Società semplice v Agenzia per le Erogazioni in Agricoltura (AGEA)

(Case C-348/18)

(2018/C 294/23)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Azienda Agricola Barausse Antonio e Gabriele — Società semplice

Respondent: Agenzia per le Erogazioni in Agricoltura (AGEA)

Question referred

Must Article 2(1) of Council Regulation (EEC) No 3950/92 ([1]) be interpreted — also in the light of the grounds already set out by the Court of Justice of the European Union in its judgment of 5 May 2011 in Joined Cases C-230/09 and C-231/09 in relation to Article 10(3) of Regulation (EC) No 17[8]8/2003 ([2]) — as meaning that any unused portion of the national reference quantity allocated to deliveries can be re-allocated according to objective priority criteria determined by the Member States, or must that provision be interpreted as meaning that the equalling-out stage must be governed exclusively by the criterion of proportionality?

([1]) Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

([2]) Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector (OJ 2003 L 270, p. 123).

Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 30 May 2018 — Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Mbutuku Kanyeba

(Case C-349/18)

(2018/C 294/24)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Nationale Maatschappij der Belgische Spoorwegen (NMBS)

Defendant: Mbutuku Kanyeba

Questions referred

1. Must Article 9(4) of [Regulation (EC) No 1371/2007] ([1]) of 23 October 2007 on rail passengers' rights and obligations, read in conjunction with Article 2(a) and Article 3 of Directive 93/13, ([2]) be interpreted as meaning that a contractual legal relationship is always created between the transport company and the passenger, even when the latter makes use of the services provided by the transport company without purchasing a ticket?

2. If the answer to the previous question is in the negative, does the protection offered by the doctrine of unfair terms also extend to a passenger who makes use of public transport without having acquired a ticket and who, by that action, under the general terms and conditions of the transport company, which are considered to be generally binding on the basis of their regulatory nature or, alternatively, by virtue of their publication in an official State publication, is obliged to pay a surcharge in addition to the fare?

3. Does Article 6 of Directive 93/13 on unfair terms in consumer contracts, which provides that 'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms', preclude a court in all cases from moderating the term deemed to be unfair or from applying ordinary law instead?

4. If the answer to the previous question is in the negative, what then are the circumstances in which a national court may proceed to moderate the term found to be unfair or to replace it by the ordinary law?

5. If the aforementioned questions cannot be answered *in abstracto*, the question then arises as to whether, if the national railway company, having apprehended a fare-dodger, imposes a civil penalty in the form of a surcharge, whether or not in addition to the fare, and the court were to find that the surcharge imposed is unfair within the meaning of Article 2(a), read in conjunction with Article 3, of Directive 93/13, Article 6 of Directive 93/13 precludes the court from declaring the term void and applying ordinary liability law to compensate the national railway company for the damage suffered.

([1]) OJ 2007 L 315, p. 14.
([2]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 30 May 2018 — Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Larissa Nijs

(Case C-350/18)

(2018/C 294/25)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Nationale Maatschappij der Belgische Spoorwegen (NMBS)

Defendant: Larissa Nijs

Questions referred

1. Must Article 9(4) of [Regulation No 1371/2007] ([1]) of 23 October 2007 on rail passengers' rights and obligations, read in conjunction with Article 2(a) and Article 3 of Directive 93/13, ([2]) be interpreted as meaning that a contractual legal relationship is always created between the transport company and the passenger, even when the latter makes use of the services provided by the transport company without purchasing a ticket?

2. If the answer to the previous question is in the negative, does the protection offered by the doctrine of unfair terms also extend to a passenger who makes use of public transport without having acquired a ticket and who, by that action, under the general terms and conditions of the transport company, which are considered to be generally binding on the basis of their regulatory nature or, alternatively, by virtue of their publication in an official State publication, is obliged to pay a surcharge in addition to the fare?

3. Does Article 6 of Directive 93/13 on unfair terms in consumer contracts, which provides that 'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms', preclude a court in all cases from moderating the term deemed to be unfair or from applying ordinary law instead?

4. If the answer to the previous question is in the negative, what then are the circumstances in which a national court may proceed to moderate the term found to be unfair or to replace it by the ordinary law?

5. If the aforementioned questions cannot be answered *in abstracto*, the question then arises as to whether, if the national railway company, having apprehended a fare-dodger, imposes a civil penalty in the form of a surcharge, whether or not in addition to the fare, and the court were to find that the surcharge imposed is unfair within the meaning of Article 2(a), read in conjunction with Article 3, of Directive 93/13, Article 6 of Directive 93/13 precludes the court from declaring the term void and applying ordinary liability law to compensate the national railway company for the damage suffered.

([1]) OJ 2007 L 315, p. 14.
([2]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 30 May 2018 — Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Jean-Louis Anita Dedroog

(Case C-351/18)

(2018/C 294/26)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Nationale Maatschappij der Belgische Spoorwegen (NMBS)

Defendant: Jean-Louis Anita Dedroog

Questions referred

1. Must Article 9(4) of [Regulation No 1371/2007] ([1]) of 23 October 2007 on rail passengers' rights and obligations, read in conjunction with Article 2(a) and Article 3 of Directive 93/13, ([2]) be interpreted as meaning that a contractual legal relationship is always created between the transport company and the passenger, even when the latter makes use of the services provided by the transport company without purchasing a ticket?

2. If the answer to the previous question is in the negative, does the protection offered by the doctrine of unfair terms also extend to a passenger who makes use of public transport without having acquired a ticket and who, by that action, under the general terms and conditions of the transport company, which are considered to be generally binding on the basis of their regulatory nature or, alternatively, by virtue of their publication in an official State publication, is obliged to pay a surcharge in addition to the fare?

3. Does Article 6 of Directive 93/13 on unfair terms in consumer contracts, which provides that 'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms', preclude a court in all cases from moderating the term deemed to be unfair or from applying ordinary law instead?

1. If the answer to the previous question is in the negative, what then are the circumstances in which a national court may proceed to moderate the term found to be unfair or to replace it by the ordinary law?

2. If the aforementioned questions cannot be answered *in abstracto*, the question then arises as to whether, if the national railway company, having apprehended a fare-dodger, imposes a civil penalty in the form of a surcharge, whether or not in addition to the fare, and the court were to find that the surcharge imposed is unfair within the meaning of Article 2(a), read in conjunction with Article 3, of Directive 93/13, Article 6 of Directive 93/13 precludes the court from declaring the term void and applying ordinary liability law to compensate the national railway company for the damage suffered.

([1]) OJ 2007 L 315, p. 14.
([2]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Tribunalul Bacău (Romania) lodged on 30 May 2018 — Radu-Lucian Rusu and Oana-Maria Rusu v SC Blue Air — Airline Management Solutions SRL

(Case C-354/18)

(2018/C 294/27)

Language of the case: Romanian

Referring court

Tribunalul Bacău

Parties to the main proceedings

Appellants, applicants at first instance: Radu-Lucian Rusu and Oana-Maria Rusu

Appellant, defendant at first instance: SC Blue Air — Airline Management Solutions SRL

Questions referred

1. Is the amount of EUR 400 provided for in Article 7(1)(b) of Regulation No 261/2004 ([1]) intended to compensate primarily for the material damage, with the non-material damage being assessed pursuant to Article 12 thereof, or does Article 7(1)(b) of that regulation primarily cover the non-material damage, with the material damage being subject to Article 12 thereof?

2. Does an amount corresponding to a loss of salary which exceeds the amount of EUR 400 established by Article 7(1)(b) of that regulation fall within the concept of further compensation referred to in Article 12 thereof?

3. Under the second sentence of Article 12(1) of Regulation No 261/2004, 'the compensation granted under this Regulation may be deducted from such compensation'. Should that provision be interpreted as leaving it to the national court's discretion to deduct the amount awarded under Article 7(1)(b) of that regulation from the further compensation, or is that deduction compulsory?

4. In the event that the deduction of that amount is not compulsory, what are the elements on the basis of which the national court is to decide whether to deduct the amount referred to in Article 7(1)(b) from the further compensation?

5. Should the damage caused as a result of the non-payment of salary, owing to the fact that an employee was unable to be present at work by reason of his delayed arrival at his destination as a result of re-routing, be analysed from the perspective of fulfilment of the obligations provided for in Article 8 [of Regulation No 261/2004], or Article 12 [of that regulation], read in conjunction with Article 4 [thereof]?

6. Does an airline operator's fulfilment of the obligation to provide assistance under Article 4(3) and Article 8 of Regulation No 261/2004 mean presenting a passenger with comprehensive information regarding all that passenger's re-routing options as provided for in Article 8(1)(a), (b) and (c) of that regulation?

7. With whom does the burden of proving that passengers were re-routed at the earliest opportunity under Article 8 of Regulation No 261/2004 rest?

8. Does [Regulation No 261/2004] impose an obligation on passengers to make inquiries in order to identify other routes to their destination and to ask a company to find seats on those routes, or is the airline obliged to look, of its own motion, for the most advantageous option whereby a passenger may be transported to his destination?

9. Is the fact that passengers accepted an airline's proposal offering them a flight on 11 September 2016, although they could assume that they would not be paid for the period during which they were absent from work, relevant for determining the damage suffered by those passengers?

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

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 31 May 2018 — Barbara Rust-Hackner v Nürnberger Versicherung Aktiengesellschaft Österreich

(Case C-355/18)

(2018/C 294/28)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: Barbara Rust-Hackner

Defendant: Nürnberger Versicherung Aktiengesellschaft Österreich

Questions referred

1. Must Article 15(1) of Directive 90/619/EEC (Second Life Assurance Directive), ([1]) as amended by Directive 92/96/EEC (Third Life Assurance Directive), ([2]) in conjunction with Article 31 of Directive 92/96/EEC, be interpreted as meaning that information regarding the right of cancellation must also contain the notice that the cancellation does not have to be communicated in any specific form?

2. In the event that the information issued to the policy-holder regarding the right of cancellation was incorrect, is it still possible for the life assurance contract to be cancelled after it has been terminated by the policy-holder by giving notice of termination (and repurchase)?

([1]) Second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50).

([2]) Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 31 May 2018 — Christian Gmoser v Nürnberger Versicherung Aktiengesellschaft Österreich

(Case C-356/18)

(2018/C 294/29)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: Christian Gmoser

Defendant: Nürnberger Versicherung Aktiengesellschaft Österreich

Questions referred

1. Must Article 15(1) of Directive 90/619/EEC (Second Life Assurance Directive), ([1]) as amended by Directive 92/96/EEC (Third Life Assurance Directive), ([2]) in conjunction with Article 31 of Directive 92/96/EEC, be interpreted as meaning that information regarding the right of cancellation must also contain a notice that the cancellation does not have to be communicated in any specific form?

2. In the event that the information issued to the policy-holder regarding the right of cancellation was incorrect, is it still possible for the life assurance contract to be cancelled after it has been terminated by the policy-holder by giving notice of termination (and repurchase)?

([1]) Second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50).

([2]) Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 31 May 2018 — Bettina Plackner v Nürnberger Versicherung Aktiengesellschaft Österreich

(Case C-357/18)

(2018/C 294/30)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: Bettina Plackner

Defendant: Nürnberger Versicherung Aktiengesellschaft Österreich

Question referred

Must Article 15(1) of Directive 90/619/EEC (Second Life Assurance Directive), ([1]) as amended by Directive 92/96/EEC (Third Life Assurance Directive), ([2]) in conjunction with Article 31 of Directive 92/96/EEC, be interpreted as meaning that information regarding the right of cancellation must also contain the notice that the cancellation does not have to be communicated in any specific form?

([1]) Second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50).

([2]) Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).

Appeal brought on 1 June 2018 by European Medicines Agency against the judgment of the General Court (Seventh Chamber) delivered on 22 March 2018 in Case T-80/16: Shire Pharmaceuticals Ireland v EMA

(Case C-359/18 P)

(2018/C 294/31)

Language of the case: English

Parties

Appellant: European Medicines Agency (represented by: S. Marino, A. Spina, S. Drosos, T. Jabłoński, Agents)

Other part to the proceedings: Shire Pharmaceuticals Ireland Ltd,

European Commission

Form of order sought

The appellant claims that the Court should:

— grant EMA's appeal and set aside the judgment of the General Court in Case T-80/16;

— reject the application of annulment as unfounded; and

— order the applicant at first instance to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

EMA submits two grounds of appeal.

1) The first ground of appeal comprises two limbs. Under the first limb of this first ground of appeal, EMA submits that the General Court erred in law when holding, at paragraph 50 of the judgment under appeal, that Article 5(1) of the Orphan Regulation ([1]) should be read separately from Article 5(2). Such interpretation stands in violation of Article 5(1), as it undermines the effectiveness of the provision.

   Under the second limb of the first ground of appeal, EMA submits that the General Court erred in law when holding, at paragraph 64 of the judgment under appeal, that the notion of medicinal product should be relied upon by the EMA when it establishes for the purpose of Article 5(1) whether an application for orphan designation and a previously submitted application for marketing authorisation overlap.

2) Under the second ground of appeal, EMA submits that the General Court relied on an incorrect reading of the notion of medicinal products as set out in Article 1(2) of Directive ([2]) 2001/83/EC, insofar as it held that a difference in excipients and routes of administration between two products would render them different for the purpose of Article 5(1) of the Orphan Regulation.

([1]) Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000, L 18, p. 1)

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001, L 311, p. 67)

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 4 June 2018 — Eni SpA v Ministero dello Sviluppo Economico, Ministero dell'Economia e delle Finanze

(Case C-364/18)

(2018/C 294/32)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Eni SpA

Defendants: Ministero dello Sviluppo Economico, Ministero dell'Economia e delle Finanze

Question referred

Do Article 6(1) and the sixth recital of Directive 94/22/EC ([1]) preclude national legislation, in particular Article 19(5-*bis*) of Legislative Decree No 625 of 1996, which, by reason of the interpretation provided by the Consiglio di Stato in judgment No 290/2018, allows the imposition, in the context of the payment of royalties, of the QE (energy share) parameter, based on the listed prices of oil and other fuels, rather than on the basis of the PFOR index, which is pegged to the price of gas on the short-term market?

([1]) Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ 1994 L 164, p. 3).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 4 June 2018 — Shell Italia E & P SpA v Ministero dello Sviluppo Economico and Others

(Case C-365/18)

(2018/C 294/33)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Shell Italia E & P SpA

Defendants: Ministero dello Sviluppo Economico, Ministero dell'Economia e delle Finanze, Autorità per l'energia elettrica, il Gas e il Sistema idrico

Question referred

Do Article 6(1) and the sixth recital of Directive 94/22/EC ([1]) preclude national legislation, in particular Article 19(5-*bis*) of Legislative Decree No 625 of 1996, which, by reason of the interpretation provided by the Consiglio di Stato in judgment No 290/2018, allows the imposition, in the context of the payment of royalties, of the QE (energy share) parameter, based on the listed prices of oil and other fuels, rather than on the basis of the PFOR index, which is pegged to the price of gas on the short-term market?

([1]) Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ 1994 L 164, p. 3).

Request for a preliminary ruling from the Juzgado de lo Social de Madrid (Spain) lodged on 5 June 2018 — José Manuel Ortiz Mesonero v Unión Temporal de Empresas Luz Madrid Centro (comprising the commercial companies SICE, S.A., URBALUX, S.A., IMES.A.PI, S.A., EXTRALUX, S.A., and CITELUM IBÉRICA, S.A.)

(Case C-366/18)

(2018/C 294/34)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Madrid

Parties to the main proceedings

Applicant: José Manuel Ortiz Mesonero

Defendant: Unión Temporal de Empresas Luz Madrid Centro (comprising the commercial companies SICE, S.A., URBALUX, S.A., IMES.A.PI, S.A., EXTRALUX, S.A., and CITELUM IBÉRICA, S.A.)

Question referred

Do Articles 8, 10 and 157 of the Treaty on the Functioning of the European Union, Article 3 of the Treaty on European Union, Article 23 and Article 33(2) of the Charter of Fundamental Rights, and Article 1 and Article 14(1) of Directive 2006/54, ([1]) all taken in conjunction with Directive 2010/18 ([2]) implementing the Framework Agreement on parental leave, preclude a rule of national law such as Article 37(6) of the Workers' Statute, which makes it a requirement that in order to exercise the right to reconcile family life and working life so as to be able to care directly for children or family members for whom they are responsible, workers must in all cases reduce their ordinary working hours, with a consequent proportional reduction in salary?

([1]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

([2]) Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ 2010 L 68, p. 13).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 4 June 2018 — María Teresa Aragón Carrasco, María Eugenia Cotano Montero, María Gloria Ferratges Castellanos, Raquel García Ferratges, Elena Muñoz Mora, Ángela Navas Chillón, Mercedes Noriega Bosch, Susana Rizo Santaella, Desamparados Sánchez Ramos, Lucía Santana Ruiz and Luis Salas Fernández (heir of Lucía Sánchez de la Peña) v Administración del Estado

(Case C-367/18)

(2018/C 294/35)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: María Teresa Aragón Carrasco, María Eugenia Cotano Montero, María Gloria Ferratges Castellanos, Raquel García Ferratges, Elena Muñoz Mora, Ángela Navas Chillón, Mercedes Noriega Bosch, Susana Rizo Santaella, Desamparados Sánchez Ramos, Lucía Santana Ruiz and Luis Salas Fernández (heir of Lucía Sánchez de la Peña),

Defendant: Administración del Estado

Questions referred

1. Must Clause 4 of the Framework Agreement on fixed-term work, set out in the Annex to Directive 1999/70, ([1]) be interpreted as meaning that it precludes the Spanish legislation which, in Article 12(3) of the Texto refundido del Estatuto [Básico] del Empleado Público (Real Decreto Legislativo [5]/2015, de 30 de octubre) (Consolidated text of the [Basic] Regulations governing public employees (Royal Legislative Decree [5]/2015 of 30 October)), provides for termination of appointment, at the discretion of the employer, without compensation and, conversely, in Article 49(1)(c) of the Texto refundido del Estatuto los Trabajadores (Real Decreto Legislativo 2/2015, de 23 de octubre) (Consolidated text of the Workers' Statute (Royal Legislative Decree 2/2015 of 23 October)), provides for compensation when a contract of employment is terminated on account of certain legally specified reason(s)?

2. If the answer to Question 1 is in the negative, does Clause 5 of the Framework Agreement cover a measure such as that introduced by the Spanish legislature, consisting in fixing compensation of 12 days' salary for every year of service, to be received by the worker at the end of a temporary contract even if the temporary employment has been limited to a single contract?

3. If the answer to the second question is in the affirmative, is it contrary to Clause 5 of the Framework Agreement where a legal provision grants fixed-term workers compensation of 12 days' salary for every year of service at the end of the contract, but excludes from that compensation […] certain non-permanent staff ('personal eventual') upon the termination of their appointment at the employer's discretion?

(1) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Penafiel (Portugal) lodged on 7 June 2018 — Prosa — Produtos e Serviços Agrícolas v Autoridade Tributária e Aduaneira

(Case C-373/18)

(2018/C 294/36)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Penafiel

Parties to the main proceedings

Appellant: Prosa — Produtos e Serviços Agrícolas

Respondent: Autoridade Tributária e Aduaneira

Question referred

Is paragraph 26.1 of the General Schedule of Stamp Duties, in the version resulting from Article 3 of Decree-Law No 322-B/2001 of 14 December 2001, pursuant to which stamp duty is to be levied on the incorporation of a capital company (in particular, a public limited company) whose share capital is paid entirely in cash, contrary to Article 7(1) of Council Directive 69/335/EEC (1) of 17 July 1969, as amended by Council Directive 85/303/EEC (2) of 10 June 1985?

(1) Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ 1969 L 249, p. 25).
(2) OJ 1985 L 156, p. 23.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 8 June 2018 — Criminal proceedings against AH, PB, CX, KM, PH

(Case C-377/18)

(2018/C 294/37)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Accused persons

AH, PB, CX, KM, PH

Question referred

Is national case-law which requires that, in the text of an agreement (entered into in the context of criminal proceedings), not only the accused person who has admitted that he is guilty of a criminal offence and has entered into that agreement, but also other accused persons, the joint perpetrators of the offence, who have not entered into that agreement, who have not admitted that they are guilty and against whom the case continues in accordance with ordinary criminal procedure, but who have agreed to the first accused person entering into that agreement, be identified as perpetrators of the criminal offence in question, compatible with the first sentence of Article 4(1), read in conjunction with the first sentence of recital 16 and with recital 17, of Directive 2016/343? ([1])

([1]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 11 June 2018 — Staatssecretaris van Justitie en Veiligheid, other party: E.P.

(Case C-380/18)

(2018/C 294/38)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie en Veiligheid

Other party: E.P.

Questions referred

1. Must Article 6(1)(e) of Regulation (EU) No 2016/399 ([1]) … be interpreted as meaning that, when establishing that a legal stay of no more than 90 days within a period of 180 days has been terminated because a foreign national is considered to be a threat to public policy, reasons must be given as to why the personal conduct of the foreign national concerned poses a genuine, present and sufficiently serious threat to one of the fundamental interests of society?

2. If question 1 is to be answered in the negative, what are the requirements which, pursuant to Article 6(1)(e) of Regulation (EU) No 2016/399 … apply to the reasons as to why the foreign national is considered to be a threat to public policy?

   Must Article 6(1)(e) of Regulation (EU) No 2016/399 … be interpreted as precluding a national practice according to which a foreign national is considered to be a threat to public order on the sole ground that it has been established that the foreign national concerned is suspected of having committed a criminal offence?

([1]) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 11 June 2018 — G.S., other party: Staatssecretaris van Justitie en Veiligheid

(Case C-381/18)

(2018/C 294/39)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: G.S.

Other party: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Must Article 6(2) of Directive 2003/86/EC ([1]) … be interpreted as meaning that the withdrawal or the refusal to renew the residence permit of a family member on grounds of public policy require that reasons be stated as to why the personal conduct of the family member concerned poses a genuine, present and sufficiently serious threat to one of the fundamental interests of society?

2. If question 1 is to be answered in the negative, what are the requirements under Article 6(2) of Directive 2003/86/EC … that apply to the reasons for the withdrawal or the refusal to renew the residence permit of a family member on grounds of public policy?

   Must Article 6(2) of Directive 2003/86/EC … therefore be interpreted as precluding a national practice according to which the residence permit of a family member can be withdrawn or the renewal thereof can be refused on grounds of public policy if the penalty or measure to which the family member concerned has been sentenced is sufficiently high in relation to the duration of the lawful stay in the Netherlands (the 'sliding scale'), so that, based on the criteria laid down in the judgments of the European Court of Human Rights (the ECtHR) of 2 August 2001, *Boultif* v *Switzerland*, CE:ECHR:2001:0802JUD005427300, and 18 October 2006, *Üner* v *The Netherlands*, CE:ECHR:2006:1018-JUD004641099, a balance is struck between the interest of the family member concerned to exercise the right to family reunification in the Netherlands, on the one hand, and the interests of the Netherlands State to protect public order, on the other hand?

([1]) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 11 June 2018 — V.G., other party: Staatssecretaris van Justitie en Veiligheid

(Case C-382/18)

(2018/C 294/40)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: V.G.

Other party: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Does the Court of Justice, having regard to Article 3(3) of Directive 2003/86/EC ([1]) … and the *Nolan* judgment (ECLI:EU:C:2012:638), have the jurisdiction to answer questions referred for a preliminary ruling by a Netherlands court on the interpretation of certain provisions of that Directive in a dispute concerning an application for entry and residence of a family member of a sponsor who has Netherlands nationality, if that Directive was declared to apply directly and unconditionally to such family members in Netherlands law?

2. Must Article 6(1) of Directive 2003/86/EC … be interpreted as meaning that the rejection of an application for entry and residence of a family member on the grounds of public policy requires that reasons be stated as to why the personal conduct of the family member concerned poses a genuine, present and sufficiently serious threat to one of the fundamental interests of society?

3. If question 2 is to be answered in the negative, what are the requirements under Article 6(2) of Directive 2003/86/EC … that apply to the reasons for rejecting an application for entry and residence of a family member on the grounds of public policy?

Must Article 6(2) of Directive 2003/86/EC … therefore be interpreted as precluding a national practice according to which an application for entry and residence of a family member can be rejected on grounds of public policy on the basis of convictions during an earlier stay in the Member State concerned, so that, based on the criteria laid down in the judgments of the European Court of Human Rights (the ECtHR) of 2 August 2001, *Boultif* v *Switzerland*, CE:ECHR:2001:0802JUD005427300, and of 18 October 2006, *Üner* v *The Netherlands*, CE:ECHR:2006:1018-JUD004641099, a balance is struck between the interest of the family member concerned and the sponsor concerned to exercise the right to family reunification in the Netherlands, on the one hand, and the interests of the Netherlands State to protect public order, on the other hand?

([1]) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Request for a preliminary ruling from the Sąd Rejonowy Lublin-Wschód w Lublinie z siedzibą w Świdniku (Poland) lodged on 11 June 2018 — Lexitor Sp. z o.o. v Spółdzielcza Kasa Oszczędnościowo-Kredytowa im. Franciszka Stefczyka, having its registered office in Gdynia, Santander Consumer Bank S.A., having its registered office in Wrocław, mBank S.A., having its registered office in Warsaw

(Case C-383/18)

(2018/C 294/41)

Language of the case: Polish

Referring court

Sąd Rejonowy Lublin-Wschód w Lublinie z siedzibą w Świdniku

Parties to the main proceedings

Applicant: Lexitor Sp. z o.o.

Defendants: Spółdzielcza Kasa Oszczędnościowo — Kredytowa im. Franciszka Stefczyka, having its registered office in Gdynia, Santander Consumer Bank S.A., having its registered office in Wrocław, mBank S.A., having its registered office in Warsaw

Question referred

Is Article 16(1), in conjunction with Article 3(g), of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([1]) to be interpreted as meaning that a consumer, in the event of early repayment of his obligations under a credit agreement, is entitled to a reduction in the total costs of the credit, including those costs the amount of which does not depend on the duration of that credit agreement?

([1]) OJ 2008 L 133, p. 660.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 June 2018 — Arriva Italia Srl and Others v Ministero delle Infrastrutture e dei Trasporti

(Case C-385/18)

(2018/C 294/42)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Arriva Italia Srl, Ferrotramviairia SpA, Consorzio Trasporti Aziende Pugliesi (CO.TRA.P)

Defendant: Ministero delle Infrastrutture e dei Trasporti

Questions referred

In the factual and legal circumstances set out above, does a measure involving the statutory allocation of EUR 70 million for the benefit of an operator in the rail transport sector, in accordance with the conditions laid down by Law No 208 of 28 December 2015 (Article 1(867)), as amended by Decree-Law No 50 of 24 April 2017, and the subsequent transfer of that operator to another economic operator, without a competitive tender procedure and for no consideration, constitute State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union?

If so, is it necessary to establish whether the aid in question is, in any event, compatible with EU law, and what are the consequences of failure to give notification of the aid for the purposes of Article 10[8](3) TFEU?

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 11 June 2018 — Coöperatieve Producentenorganisatie en Beheersgroep Texel UA v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-386/18)

(2018/C 294/43)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicant: Coöperatieve Producentenorganisatie en Beheersgroep Texel UA

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Questions referred

1(a) Does Article 66(1) of Regulation (EU) No 508/2014 ([1]) of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council ('Regulation 508/2014'), given that it provides that the EMFF 'shall' support the preparation and implementation of production and marketing plans referred to in Article 28 of Regulation (EU) No 1379/2013 ([2]) of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 ('Regulation 1379/2013'), preclude a Member State from responding to a producer organisation which has submitted an application for such a grant, by arguing that the Member State concerned had not made available, either in its operational programme approved by the European Commission, or in the national rules for determining the eligibility of expenditure, the possibility of making such an application at the time of the submission of the application for a certain category of expenditure (in the present case: the costs of the preparation and implementation of production and marketing plans) or for a certain period (in the present case: the year 2014)?

1(b) Is it relevant to the answer to question 1(a) that the producer organisation is obliged, under Article 28(1) of Regulation No 1379/2013, to draw up a production and marketing plan and, after approval of the production and marketing plan by the Member State, to implement that production and marketing plan?

2. If the answer to question 1(a) is that Article 66(1) of Regulation 508/2014 precludes a Member State from responding to a producer organisation which has submitted an application for a grant for the preparation and implementation of production and marketing plans by arguing that the Member State concerned had not made available the possibility of making such an application at the time of the submission of the application, can the grant applicant concerned then rely directly on Article 66(1) of Regulation 508/2014 as the legal basis for a claim against his Member State on the provision of the grant in question?

3. If the answer to question 2 is that, in the case referred to in question 2, the grant applicant concerned can rely directly on Article 66(1) of Regulation 508/2014 as the legal basis for a claim against his Member State on the provision of the grant in question, does Article 65(6) of Regulation (EU) No 1303/2013 ([3]) of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ('Regulation 1303/2013') then preclude the provision of a grant for the preparation and implementation of a production and implementation plan in a situation where the grant application is submitted after the production and marketing plan has been prepared and implemented?

([1]) OJ 2014 L 149, p. 1.
([2]) OJ 2013 L 354, p. 1.
([3]) OJ 2013 L 347, p. 320.

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie (Poland) lodged on 12 June 2018 — Delfarma Sp. z o.o. v Prezes Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych

(Case C-387/18)

(2018/C 294/44)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Warszawie

Parties to the main proceedings

Applicant: Delfarma Sp. z o.o.

Defendant: Prezes Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych

Question referred

Does EU law, including without limitation Article 34 and Article 36 of the Treaty on the Functioning of the European Union, preclude national legislation whereby the marketing authorisation in a Member State for a medicinal product imported in parallel cannot be granted quite simply because the medicinal product imported in parallel has been authorised in the Member State of export as a generic medicinal product, namely on the basis of an abridged dossier, whereas in the Member State of import this medicinal product has been authorised as a reference medicinal product, namely on the basis of a full dossier, and the authorisation is refused without examining whether both products are essentially therapeutically identical and without the national authority applying — despite this being possible — for documentation to the appropriate authority in the Member State of export?

Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles (Belgium) lodged on 13 June 2018 — Brussels Securities SA v Belgian State

(Case C-389/18)

(2018/C 294/45)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicant: Brussels Securities SA

Defendant: Belgian State

Question referred

Must Article 4 of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States ([1]) (replaced, as from 18 January 2012, by Council Directive 2011/96/EU of November on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States ([2])), combined with other sources of Community law,

be interpreted as precluding that regulations of a national authority, such as the 1992 Income Tax Code and the Royal Decree implementing the 1992 Income Tax Code, in the versions applicable in respect of tax year 2011,

having opted for a system of exemption (refraining from taxing the distributed profits received by a parent company by virtue of its association with its subsidiary) under which, first, the dividend distributed by the subsidiary is included in the basis of assessment of the parent company and, secondly, 95 % of that dividend is deducted from that basis of assessment as definitively taxed income,

by reason of the combined application, in order to determine the basis for assessing the corporation tax of the parent company, of that Belgian system of deducting definitively taxed income and of (1) rules relating to another deduction constituting a tax advantage provided for by those regulations (deduction for risk capital), (2) entitlement to deduct the balance of previous recoverable losses, (3) entitlement to carry forward to following tax years, where the relevant amount in respect of a tax year is higher than that of the taxable profits, imputation of the surplus definitively taxed income, of the deduction for risk capital and of the balance of the previous recoverable losses, and (4) the imputation order stipulating that, during those following tax years, imputation must cover, until the taxable profits are used up, first, the definitively taxed income carried forward, then the deduction for risk capital carried forward (which may only be carried forward for the 'following seven tax periods'), and then the balance of the previous recoverable losses,

lead to the reduction, in respect of part or all of the amounts of the dividends received from the subsidiary, of the losses that the parent company would have been able to deduct if the dividends had been simply excluded from the profits for the tax year during which they were received (with the effect of reducing the taxable result for that tax year and increasing, where appropriate, the tax losses that may be carried forward) rather than being retained within those profits and subsequently coming under rules for exemption and for carrying forward the exempt amount where there are insufficient profits,

that is to say, reduction of the balance of the parent company's previous recoverable losses that may occur during tax years following a tax year in respect of which the definitively taxed income, the deduction for risk capital and the balance of the previous recoverable losses exceed the amount of the taxable profits?

([1]) OJ 1990 L 225, p. 6.
([2]) OJ 2011 L 345, p. 8.

Request for a preliminary ruling from the Juzgado de lo Social de Barcelona (Spain) lodged on 15 June 2018 — Ana María Páez Juárez v Nobel Plastiques Ibérica SA

(Case C-397/18)

(2018/C 294/46)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Barcelona

Parties to the main proceedings

Applicant: Ana María Páez Juárez

Defendant: Nobel Plastiques Ibérica SA

Other parties: Fondo de Garantía Salarial (FOGASA), Ministerio Fiscal

Questions referred

1. Must workers who are categorised as 'particularly susceptible to certain risks' be regarded as persons with a disability for the purposes of the application of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, ([1]) as interpreted by the case-law of the Court of Justice of the European Union, where, owing to their own personal characteristics or known biological condition, those workers are particularly susceptible to occupational risks and, for that reason, are unable to perform certain jobs on the ground that such jobs would entail a risk to their own health or to other individuals?

   If the answer to the first question is in the affirmative, the following questions are referred:

2. Does the decision to dismiss a worker on economic, technical, organisational and production grounds constitute an act of direct or indirect discrimination, within the meaning of Article 2(2)(b) of Directive 2000/78, if the person concerned has a recognised disability, in that she is particularly susceptible when it comes to performing certain jobs on account of her physical impairments, and therefore has difficulties achieving the productivity levels required in order to avoid being put forward for dismissal?

3. Does the decision to dismiss a worker on economic, technical, organisational and production grounds constitute an act of direct or indirect discrimination, within the meaning of Article 2(2)(b) of Directive 2000/78, if the person concerned has a recognised disability, in that she has been recognised as being particularly susceptible when it comes to performing certain jobs on account of her physical impairments, and the decision is taken, among other selection criteria, on the basis of multi-skilling in all jobs, including those which the disabled person is unable to perform?

4. Does the decision to dismiss a worker on economic, technical, organisational and production grounds constitute an act of indirect discrimination, as defined in Article 2(2)(b) of Directive 2000/78, if the person concerned has a recognised disability and has therefore been recognised as being particularly susceptible when it comes to performing certain jobs on account of her physical impairments, which have resulted in long periods of absence or sick leave prior to the dismissal, and the decision is taken, among other selection criteria, on the basis of that worker's absenteeism?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 15 June 2018 — Antonio Bocero Torrico v Instituto Nacional de la Seguridad Social and Tesorería General de la Seguridad Social

(Case C-398/18)

(2018/C 294/47)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Antonio Bocero Torrico

Respondents: Instituto Nacional de la Seguridad Social and Tesorería General de la Seguridad Social

Question referred

Must Article 48 TFEU be interpreted as meaning that it precludes national legislation which requires as a condition for access to an early retirement pension that the amount of the pension to be received must be higher than the minimum pension which would be due to the person concerned under that same national legislation, the term 'pension to be received' being interpreted as the actual pension from the competent Member State (in this case, Spain) alone, without also taking into account the actual pension which that person may receive through another benefit of the same kind from one or more other Member States?

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 18 June 2018 — Vereniging Gasopslag Nederland, TAQA Onshore BV, TAQA Piek Gas BV v Autoriteit Consument en Markt

(Case C-399/18)

(2018/C 294/48)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellants: Vereniging Gasopslag Nederland, TAQA Onshore BV, TAQA Piek Gas BV

Respondent: Autoriteit Consument en Markt

Question referred

Is a uniform capacity tariff which is not differentiated according to the type of network user but is, rather, differentiated according to the contracted capacity, compatible with Article 13(1) of Regulation (EC) No 715/2009 ([1]) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (the Gas Regulation)?

([1]) OJ 2009 L 211, p. 36.

Request for a preliminary ruling from the Krajský soud v Praze (Czech Republic) lodged on 18 June 2018 — Herst, s.r.o. v Odvolací finanční ředitelství

(Case C-401/18)

(2018/C 294/49)

Language of the case: Czech

Referring court

Krajský soud v Praze

Parties to the main proceedings

Applicant: Herst, s.r.o.

Defendant: Odvolací finanční ředitelství

Questions referred

1. Must any taxable person be regarded as a taxable person within the meaning of Article 138(2)(b) of Council Directive 2006/112/EC ([1]) on the common system of value added tax ('the VAT Directive')? If not, to which taxable persons does that provision apply?

2. If the Court of Justice's answer is that Article 138(2)(b) of the VAT Directive applies to a situation such as that in the main proceedings (that is, the acquirer of the products is a taxable person registered for tax), must that provision be interpreted as meaning that, where the dispatch or transport of those products takes place in accordance with the relevant provisions of Council Directive 2008/118/EC ([2]) concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ('the Excise Duty Directive'), a supply connected with a procedure under the Excise Duty Directive must be regarded as a supply entitled to exemption under that provision, even though the conditions for exemption under Article 138(1) of the VAT Directive are not otherwise satisfied, having regard to the assignment of the transport of goods to another transaction?

3. If the Court of Justice's answer is that Article 138(2)(b) of the VAT Directive does not apply to a situation such as that in the main proceedings, is the fact that the goods are transported under an excise duty suspension arrangement decisive for deciding the question of which of several successive supplies a transport is to be ascribed to for the purposes of the right to exemption from VAT under Article 138(1) of the VAT Directive?

4. Is 'the right to dispose of the goods as owner' within the meaning of the VAT Directive acquired by a taxable person who buys goods from another taxable person directly for a specific customer in order to fulfil an already existing order (identifying the type of goods, the quantity, place of origin and time of delivery) where he does not physically handle the goods himself since, in the context of concluding the contract of sale, his buyer agrees to arrange transport of the goods from their point of origin, so that he will only provide access to the requested goods via his suppliers and communicate the information necessary for acceptance of the goods (on his own behalf or on behalf of his sub-suppliers in the chain), and his profit from the transaction is the difference between the buying-in price and the selling price of such goods without the cost of transporting the goods being invoiced in the chain?

5. Does the Excise Duty Directive establish (for example, in Article 4(1), Article 17 or Article 19), either directly or indirectly through a limit on the effective handling of such goods, sufficient conditions for the transfer of the 'right to dispose of the goods (that are subject to excise duty) as the owner' within the meaning of the VAT Directive, with the result that the taking over of the goods under an excise duty suspension arrangement by an authorised warehousekeeper or registered consignee in accordance with the conditions arising from the Excise Duty Directive should be treated as a supply of goods for VAT purposes?

6. In this context, when considering the determination of a supply which is linked to transport within a chain of supply of goods under an excise duty suspension arrangement with a single transport, is it necessary to regard a transport in the sense of the VAT Directive as commencing and closing in accordance with Article 20 of the Excise Duty Directive?

7. Does the principle of VAT neutrality or any other principle of EU law prevent application of the constitutional principle of *in dubio mitius* in national law, which obliges the public authorities, where legal rules are ambiguous and objectively offer a number of possible interpretations, to choose the interpretation that benefits the person subject to the legal rule (here the taxable person for VAT)? Would the application of this principle be compatible with EU law at least if it were limited to situations where the relevant facts of the case preceded a binding interpretation of a disputed legal question by the Court of Justice of the European Union, which has determined that another interpretation less favourable to the taxable entity is correct?

If it is possible to apply the principle of *in dubio mitius*:

8. Was it possible, in terms of the limits set by EU law at the time when the taxable transactions took place in this case (November 2010 to May 2013), to consider the question whether the legal concept of supply of goods or transport of goods has (or does not have) the same content both for the purposes of the VAT Directive and for the purposes of the Excise Duty Directive objectively as legally uncertain and offering two interpretations?

([1]) OJ 2006 L 347, p. 1.
([2]) OJ 2009 L 9, p. 12.

Appeal brought on 14 June 2018 by Alcogroup and Alcodis against the judgment delivered on 10 April 2018 in Case T-274/15 Alcogroup and Alcodis v Commission

(Case C-403/18P)

(2018/C 294/50)

Language of the case: French

Parties

Appellants: Alcogroup, Alcodis (represented by: P. de Bandt, J. Dewispelaere, J. Probst, avocats)

Other parties to the proceedings: European Commission, Orde van Vlaamse Balies, Ordre des barreaux francophones et germanophone, Ordre français des avocats du barreau de Bruxelles

Form of order sought

— set aside the judgment of the General Court of 10 April 2018 in Case T-274/15;

— declare the action against the two contested decisions to be admissible;

— refer the case back to the General Court for a decision on the merits concerning the action for annulment;

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

Pleas in law and main arguments

— First ground of appeal: the General Court erred in law and infringed the obligation to state reasons;

— Second ground of appeal: the General Court infringed the appellants' right to effective legal protection.

Request for a preliminary ruling from the Višje sodišče v Mariboru (Slovenia) lodged on 21 June 2018 — Aleš Kuhar, Jožef Kuhar v Addiko Bank d.d.

(Case C-407/18)

(2018/C 294/51)

Language of the case: Slovenian

Referring court

Višje sodišče v Mariboru

Parties to the main proceedings

Applicants: Aleš Kuhar, Jožef Kuhar

Defendant: Addiko Bank d.d.

Question referred

In the light of the principle of effectiveness of EU law, should Council Directive 93/13/EEC ([1]) be interpreted as meaning that, in enforcement proceedings, the court responsible for enforcement is required of its own motion to refuse enforcement on the ground that a directly enforceable notarial instrument (enforceable measure) contains an unfair clause, in a case such as that under consideration, in which the procedural rules of the Member State do not allow the court responsible for enforcement to suspend or stay enforcement (upon application by the debtor or of its own motion) until a final substantive decision on whether the term is unfair is given at the end of proceedings for declaratory relief brought by the debtor as consumer?

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

Appeal brought on 4 July 2018 by Verein Deutsche Sprache e.V. against the judgment of the General Court (Second Chamber) delivered on 23 April 2018 in Case T-468/16, Verein Deutsche Sprache e. V. v European Commission

(Case C-440/18 P)

(2018/C 294/52)

Language of the case: German

Parties

Appellant: Verein Deutsche Sprache e.V. (represented by: W. Ehrhardt, Rechtsanwalt)

Other party: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 23 April 2018 in Case T-468/16 and annul the decision of the Secretary-General, on behalf of the Commission, pursuant to Article 4 of the rules for the implementation of Regulation (EC) No 1049/2001 ([1]) of 10 June 2016.

Grounds of appeal and main arguments

The appellant raises the following grounds of appeal:

Improper conduct of proceedings by the General Court: The appellant regards as deficient the fact that the General Court did not make use of its information tools pursuant to Article 24 of the Statute and Articles 88 and 89 of the Rules of Procedure. It should also have examined the Commission's factual submissions in greater detail independently of the appellant's request for the production of evidence. Contradictions in the Commission's factual submissions provided sufficient grounds in this regard.

Incorrect treatment of the offer of evidence of 20 February 2017: The appellant submits that the General Court erred in failing to examine in greater detail the letter submitted as evidence by a member of the university scientific staff containing insider knowledge, despite having expressly admitted that letter as evidence.

The appellant complains that the General Court refused to hear the Commission's spokesperson as a witness, even though the abovementioned document furnished sufficient justification for that person to be heard.

Presumption of legality not applicable: The appellant is of the view that, contrary to the findings of the General Court, the presumption of legality developed by the European Court of Justice is not applicable to submissions of an EU institution, which, if correct, would amount to a breach of the principles of sound administration.

The case-law cited by the General Court as regards the application of the presumption of legality relates to different case scenarios and cannot therefore be applied to the present case.

Failure to take account of indications as to the existence of further documents: The appellant, setting out once more the facts, disputes the finding of the General Court that it had not submitted any conclusive indications as to the existence of further documents.

Erroneous non-assessment of the appellant's submissions regarding the obligation of transparency: The appellant notes that the General Court erroneously assumed the Commission's assertion regarding the existence of further documents to be correct and therefore wrongly disregarded the appellant's submissions on the obligation of transparency.

(1) OJ 2001 L 145, p. 43.

Action brought on 4 July 2018 — European Commission v Italian Republic

(Case C-443/18)

(2018/C 294/53)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B. Eggers, D. Bianchi, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

(1) find that the Italian Republic

— by failing to ensure, in the containment area, the immediate removal of at least all the plants which have been found to be infected by Xylella fastidiosa if situated in the infected zone within a distance of 20 km of the border of that infected zone with the rest of the territory of the Union, has failed to meet its obligations under Article 7(2)(c) of Implementing Decision (EU) 2015/789; (1)

— by failing to ensure, in the containment area, the monitoring of the presence of Xylella fastidiosa by annual surveys at appropriate times of the year, has failed to meets its obligations under Article 7(7) of Implementing Decision (EU) 2015/789;

— by also continuously failing to intervene immediately to prevent the spread of Xylella fastidiosa, by successive infringement of the specific obligations referred to in Decision (EU) 2015/789 concerning the respective affected areas, which allowed the further spread of the disease, has failed to meet its obligations under Article 6(2), (7) and (9) and Article 7(2)(c) and (7) of Implementing Decision (EU) 2015/789, its obligations under Article 16(1) of Directive 200/29/EC (2) and the obligation of sincere cooperation as set out in Article 4(3) of the Treaty on European Union;

(2) order the Italian Republic to pay the costs.

Pleas in law and main arguments

The evidence in the Commission's possession, which is based on the information provided by the Italian Republic, the audits carried out by the Commission and the scientific opinions of EFSA and of other bodies, reveal late inspections, considerable delays and deficiencies in the removal of the plants found to be infected, not only up to the date the reasoned opinion was delivered but even up to the date on which the present action was brought. The Commission therefore considers that Italy's persistent and general non-compliance with the obligation to prevent the spread of the disease under the articles mentioned above has been established.

([1]) Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Wells et al.) (notified under document C(2015) 3415) (OJ 2015 L 125, p. 36)

([2]) Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 2000 L 169, p. 1)

GENERAL COURT

Judgment of the General Court of 3 July 2018 — Keramag Keramische Werke and Others v Commission

(Joined Cases T-379/10 RENV and T-381/10 RENV) ([1])

(Competition — Agreements, decisions and concerted practices — French bathroom fittings and fixtures market — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Participation of certain entities in a cartel — Reassessment of the evidence)

(2018/C 294/54)

Language of the case: English

Parties

Applicants in Case T-379/10 RENV: Keramag Keramische Werke GmbH, formerly Keramag Keramische Werke AG (Ratingen, Germany) and five other applicants whose names are set out in the annex. *Applicant in Case T-381/10 RENV:* Sanitec Europe Oy (Helsinki, Finland) (represented by: P. Lindfelt and K. Struckmann, lawyers, and J. Killick, Barrister)

Defendant: European Commission (represented by: F. Castillo de la Torre, F. Ronkes Agerbeek and J. Norris-Usher, acting as Agents)

Re:

Application under Article 263 TFEU for, first, annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom Fittings and Fixtures), and, secondly, reduction of the fine imposed on the applicants in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Keramag Keramische Werke GmbH and the other applicants whose names are set out in the annex to bear their own costs and to pay those incurred by the European Commission in Cases C-613/13 P, T-379/10 RENV and T-381/10 RENV.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 4 July 2018 — Deluxe Entertainment Services Group v EUIPO (deluxe)

(Case T-222/14 RENV) ([1])

(EU trade mark — Application for EU figurative mark deluxe — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Obligation to state reasons — Article 75 of Regulation No 207/2009 (now Article 94 of Regulation 2017/1001))

(2018/C 294/55)

Language of the case: Spanish

Parties

Applicant: Deluxe Entertainment Services Group Inc. (Burbank, California, United States) (represented by: L. Gellman, Solicitor, and M. Esteve Sanz, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 January 2014 (Case R 1250/2013-2), concerning an application for registration of the figurative sign deluxe as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deluxe Entertainment Services Group Inc. to pay the costs.*

([1]) OJ C 175, 10.6.2014.

Judgment of the General Court of 3 July 2018 — Transtec v Commission

(Case T-616/15) ([1])

(EDF — ACP countries — The Cotonou Agreement — Support programme for cultural initiatives in Portuguese-speaking African countries — Sums paid by the Commission to the body entrusted with the financial implementation of the programme in Guinea-Bissau — Recovery following a financial audit — Offsetting of debts — Proportionality — Unjust enrichment — Non-contractual liability)

(2018/C 294/56)

Language of the case: French

Parties

Applicant: Transtec (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Commission (represented by: initially A. Aresu and S. Bartelt, and subsequently A. Aresu, acting as Agents)

Re:

First, application based on Article 263 TFEU and seeking annulment of the set-off decisions contained in the Commission's letters of 27 August and 7, 16, 23 and 25 September 2015, seeking to recover the sum of EUR 624 388,73, corresponding to the amount of part of the advance paid to the applicant in the context of a support programme for cultural initiatives in Guinea-Bissau, financed by the ninth European Development Fund (EDF), plus late-payment interest, and, second, application based on Article 268 TFEU seeking recovery of sums allegedly linked to unjust enrichment, as well as compensation for damage allegedly suffered by the applicant as a result of the Commission's conduct.

Operative part of the judgment

The Court:

1. *Annuls, in part, the set-off decisions contained in the Commission's letters of 27 August and 7, 16, 23 and 25 September 2015, seeking to recover the sum of EUR 624 388,73, corresponding to the amount of part of the advance paid to the applicant in the context of a support programme for cultural initiatives in Guinea-Bissau, financed by the ninth European Development Fund (EDF), plus late-payment interest, to the extent that they seek to recover the amount of EUR 312 265,42, corresponding to the amount of ineligible expenses identified by financial finding No 2 of EDF's audit report 2007/20859 concerning the operational programme estimate and the closure programme estimate reference FED/2010/249-005;*

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

3. *Orders the Commission and Transtec to each bear their own costs.*

([1]) OJ C 27, 25.1.2016.

Judgment of the General Court of 5 July 2018 — Spain v Commission

(Case T-88/17) ([1])

(EAFRD — Last execution year of 2007-2013 programming period — Clearance of accounts of Member States' paying agencies — Decision declaring a certain amount non-reusable in the Rural development programme of the Autonomous Community of Estremadura — Calculation method — Article 69(6b) of Regulation (EC) No 1698/2005 — Legitimate expectations)

(2018/C 294/57)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M.A. Sampol Pucurull and M.J. García-Valdecasas Dorrego, acting as Agents)

Defendant: European Commission (represented by: J. Aquilina and M. Morales Puerta, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment in part of Commission Implementing Decision (EU) 2016/2113 of 30 November 2016 on the clearance of accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Fund for Rural Development (EAFRD) in the last execution year of EAFRD 2007-2013 programming period (16 October 2014-31 December 2015) (OJ 2016 L 327, p. 79), by which the Commission classified the sum of EUR 5 364 682,52 as a 'non-reusable amount' in the clearance of the accounts of the Estremadura paying agency.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 95, 27.3.2017.

Judgment of the General Court of 30 May 2018 — RT v Parliament

(Case T-98/17) (1)

(Civil service — Officials — Sick leave — Article 59(1) of the Staff Regulations — Internal rules on medical examinations in connection with absence from work on medical grounds and periodic medical examinations of persons claiming the invalidity allowance — Medical certificate — No doctor's stamp or signature — Long-distance medical consultation via the internet — Refusal to accept)

(2018/C 294/58)

Language of the case: English

Parties

Applicant: RT (represented by: C. Bernard-Glanz, lawyer)

Defendant: European Parliament (represented by: J. Steele and E. Taneva, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of the decision of the Parliament of 30 June 2016 rejecting a document submitted by the applicant on 27 June 2016 as inadmissible as a medical certificate prescribing sick leave

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Parliament of 30 June 2016 rejecting the document submitted by RT on 27 June 2016 as inadmissible as a medical certificate prescribing sick leave;*

2. *Orders the Parliament to pay the costs.*

(1) OJ C 129, 24.4.2017.

Judgment of the General Court of 29 June 2018 — HF v Parliament

(Case T-218/17) ([1])

(Civil Service — Contractual staff — Article 24 of the Staff Regulations — Request for assistance — Article 12a of the Staff Regulations — Psychological harassment — Advisory Committee dealing with harassment complaints — Decision rejecting the request for assistance — Right to be heard — Audi alteram partem rule — Refusal to disclose the opinion of the Advisory Committee and the minutes of the hearing of witnesses — Length of the administrative procedure — Reasonable time)

(2018/C 294/59)

Language of the case: French

Parties

Applicant: HF (represented by: A. Tymen, lawyer)

Defendant: European Parliament (represented by: E. Taneva and M. Ecker, acting as Agents)

Re:

Application on the basis of Article 270 TFEU seeking, firstly, the annulment of the decision of the Parliament of 3 June 2016 by which that institution's authority empowered to conclude contracts of employment rejected the applicant's request for assistance made on 11 December 2014 and, secondly, compensation for the loss which she allegedly suffered as a result of the illegalities in the handling of that request for assistance by the authority.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Parliament to pay its own costs and to bear a quarter of the costs incurred by HF;*

3. *Order HF to bear three-quarters of her own costs.*

([1]) OJ C 178, 6.6.2017.

Judgment of the General Court of 3 July 2018 — Vienna International Hotelmanagement v EUIPO (Vienna House and VIENNA HOUSE)

(Cases T-402/17 and T-403/17) ([1])

(EU trade mark — Applications for EU word mark Vienna House and figurative mark VIENNA HOUSE — Absolute ground for refusal — Descriptive character — Not distinctive — Article 7(1(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1(b) and (c) of Regulation 2017/1001))

(2018/C 294/60)

Language of the case: German

Parties

Applicant: Vienna International Hotelmanagement AG (Vienna, Austria) (represented by: E. Zrzavy, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 April 2017 (Cases R 333/2016-4 and R 332/2016-4) concerning applications for registration of, on the one hand, the word sign Vienna House and, on the other, the figurative sign VIENNA HOUSE as EU trade marks.

Operative part of the judgment

The Court:

1. *Orders the joinder of Cases T-402/17 and T-403/17 for the purposes of the present judgment;*

2. *Dismisses the actions;*

3. *Orders Vienna International Hotelmanagement AG to pay the costs.*

([1]) OJ C 277, 21.8.2017.

Action brought on 23 May 2018 — García Ruiz v Parliament

(Case T-322/18)

(2018/C 294/61)

Language of the case: Spanish

Parties

Applicant: Faustino-Francisco García Ruiz (Alcorcón, Spain) (represented by: C. Manzano Ledesma, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— Find that the decision of the Committee on Petitions is contested by way of this action and, after declaring the action admissible, find that there has been an infringement of rights, thus guaranteeing the interests of the applicant before this Court.

— Make an order as to costs, if appropriate.

Pleas in law and main arguments

In support of its action, the applicant claims that:

This action is brought pursuant to the third paragraph of Article 232 TEC and the third paragraph of Article 265 TFEU on the ground that the Committee on Petitions of the European Parliament did not address to the applicant any act other than a recommendation or an opinion, thus failing to protect the applicant's right, in breach of the Treaty.

The decisions adopted by the Administración Pública de la Comunidad de Madrid (public authorities of the Community of Madrid) and the courts cause the applicant damage as regards his rights and financial interests, on account of a breach of the right to receive an additional allowance of public pension granted by the Comunidad de Madrid.

The administrative decision of the Comunidad de Madrid and the judgments delivered by the courts cause unequal treatment and discrimination as regards the benefits received as between pensioners who have taken voluntary retirement and pensioners who have reached compulsory retirement age.

The European Union has competence in pension matters and it is therefore for the General Court to safeguard the applicant's right once the public authorities and the national courts have rejected the right conferred by settled case-law of the courts of the European Union and by the equal pay directives, in the absence of an objective difference in fact and in law as regards the receipt of benefits by the two categories of pensioners mentioned above.

Action brought on 31 May 2018 — NEC Corporation/Commission

(Case T-341/18)

(2018/C 294/62)

Language of the case: English

Parties

Applicant: NEC Corporation (Tokyo, Japan) (represented by: R. Bachour, Solicitor, O. Brouwer and A. Pliego Selie, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors) insofar it finds that the applicant infringed Article 101 TFEU/Article 53 of the EEA Agreement,

— in subsidiary order, annul the contested decision insofar as it imposes a fine on the applicant, and/or

— in more subsidiary order, exercise its full jurisdiction to adjust the fine — in light of the arguments set out in grounds 1 and 2 — to a level which is in accordance with the law, the rationale of the legal concept of recidivism as an aggravating circumstance justifying an uplift of a fine and which is proportionate, and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision contains manifest errors in law and assessment, and lacks reasoning, when applying recidivism as an aggravating circumstance in fining NEC Corporation and that the fine imposed on NEC Corporation violates the principle of proportionality.

2. Second plea in law, alleging that the contested decision violates the rights of defence of the applicant when suggesting in Article 1 that the applicant itself participated in the identified infringement whilst this was not set out or even suggested in the statement of objections. Moreover, this finding would be wrong in law and fact, and would contain an inconsistent finding and reasoning as it allegedly acknowledges at the same time (but qualifies as irrelevant) that NEC Corporation was not aware of the infringement and holds NEC Corporation explicitly liable as parent undertaking for (allegedly) having had control over Tokin Corporation during a certain period.

3. Third plea in law, alleging that the Commission omitted to apply the same reduction to the basic amount of the fine it imposed on Tokin Corporation as the reduction applied to the basic amount it used for the fine imposed on NEC Corporation, and should moreover have applied an average sales value for setting the fine instead of relying on a non-representative sales value of the last year of the identified infringement. These shortcomings would amount to errors in the fine calculation and/or lead to a disproportionate fine (and a lack of reasoning for the first item as it is not set out in the reasoning in the contested decision why the same reduction was apparently not applied to the basic amount used for the fine imposed on NEC Corporation).

Action brought on 30 May 2018 — Nichicon Corporation/Commission

(Case T-342/18)

(2018/C 294/63)

Language of the case: English

Parties

Applicant: Nichicon Corporation (Kyoto, Japan) (represented by: A. Ablasser-Neuhuber, F. Neumayr, G. Fussenegger and H. Kühnert, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors) in its entirety in so far as it applies to the applicant;

— in the alternative, partially annul:

a. Article 1(f) of the contested decision, finding that the applicant participated in a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement in the electrolytic capacitors sector covering the whole EEA, which consisted of agreements and/or concerted practices that had as their object the coordination of pricing behaviour from 26 June 1998 to 31 May 2010,

b. Article 2(i) of the contested decision, imposing a fine of EUR 72 901 000 on the applicant, and

— reduce the fine imposed on the applicant under Article 261 TFEU and Article 31 of Council Regulation (EC) No 1/2003 ([1]);

— in any event, substitute its own appraisal for the Commission's as regards the amount of the fine and reduce the fine imposed on the applicant under Article 261 TFEU and Article 31 of Council Regulation (EC) No 1/2003; and

— order the Commission to pay the costs pursuant to Article 134 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging material errors of fact

The alleged material errors of fact relate in particular to three time periods of contacts. The applicant claims that the Commission erroneously made findings of fact which are not sufficiently established. In consequence, the Commission would have wrongly assumed an infringement of Article 101 TFEU.

2. Second plea in law, alleging errors of law regarding the qualification as a single and continuous infringement, and assumption of the applicant's liability for participation

The second plea concerns alleged errors made by the Commission both as regards the qualification of the contacts identified as a single and continuous infringement and as regards the applicant's liability for such infringement. First, the Commission would have failed to establish to the requisite legal standard the scope of a single and continuous infringement. Secondly, the Commission would have erred in holding the applicant liable for contacts which it did not participate in. Thirdly, the Commission would have erroneously concluded that the infringement continued without interruption before 7 November 2003. Fourthly, the Commission would have erred in holding the applicant liable for continued participation in a single and continuous infringement after 10 November 2008. As a consequence, the Commission would be time-barred from imposing penalties on the applicant. Fifthly, the Commission would have erroneously considered that the applicant's participation in a single and continuous infringement continued in spite of its explicit distancing.

3. Third plea in law, alleging a lack of jurisdiction

4. Fourth plea in law, alleging a manifest error of assessment in setting the fine

In its fourth plea, the applicant puts forward alleged manifest errors of assessment in setting the fine. First, the Commission would have violated the principle of proportionality and its guidelines on the method of setting fines by incorrectly taking the entire value of EEA sales as the basis for calculation of the fine. Secondly and thirdly, by erroneously determining both the gravity multiplier and the additional amount the Commission would have violated the principle of proportionality, the obligation to state reasons as well as the principle of ne bis in idem. Fourthly, the Commission would have breached the principle of proportionality, its obligation to state reasons and the principle of equal treatment, by allegedly failing to duly reflect in the fine the applicant's limited participation. Further, the Commission would have violated the principle of proportionality and the guidelines on the method of setting fines by not taking into account as mitigating circumstances the applicant's, if any, negligence and its substantially limited role and competitive conduct.

5. Fifth plea in law, alleging an infringement of essential procedural requirements

The fifth plea concerns the Commission's alleged infringement of essential procedural requirements within the meaning of Article 263 TFEU by failing to provide Nichicon with a supplementary statement of objections, and by setting a too short period to defend itself.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 03 June 2018 — Tokin Corporation/Commission

(Case T-343/18)

(2018/C 294/64)

Language of the case: English

Parties

Applicant: Tokin Corporation (Sendai City, Japan) (represented by: C. Thomas, T. Yuen and M. Perez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 2(f) of Commission Decision C(2018) 1768 of 21 March 2018 in so far as it imposes a fine of EUR 5 036 000 on TOKIN Corporation, jointly and severally with NEC Corporation;

— set the amount of the fine imposed on TOKIN Corporation in Article 2(f) of that decision, jointly and severally with NEC Corporation, at a lower figure;

— annul Article 2(g) of that decision in so far as it imposes a fine of EUR 8 814 000 on TOKIN Corporation;

— set the amount of the fine imposed on TOKIN Corporation in Article 2(g) of that decision at a lower figure; and

— order the Commission to pay the Applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 23(3) of Regulation No 1/2003 ([1]) and the principle of equal treatment by relying on 2011/12 as the reference period for the determination of its value of sales.

2. Second plea in law, alleging that the Commission infringed Article 23(3) of Regulation No 1/2003 and the principle of personal liability by applying a reduction for mitigating circumstances to the basic amount of the fine, instead of reducing the gravity percentage used to calculate the basic amount, in relation to an aspect of the infringement for which the applicant was held liable.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 04 June 2018 — Rubycon and Rubycon Holdings/Commission

(Case T-344/18)

(2018/C 294/65)

Language of the case: English

Parties

Applicants: Rubycon Corp. (Ina City, Japan) and Rubycon Holdings Co. Ltd (Ina City) (represented by: J. Rivas Andrés, A. Federle and M. Relange, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 of the TFEU and Article 53 of the EEA Agreement in Case AT.40136 — Capacitors — as far as it relates to Rubycon, in particular Article 1(h), Article 2(k), Article 2(l) and Article 4;

— order a substantial reduction in the fine imposed on Rubycon under Article 2 of the contested decision to a level that it is not discriminatory and Rubycon's exceptional level of cooperation is rewarded;

— order the Commission to pay the costs incurred by the applicants.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is vitiated by an error of law as regards the Commission's refusal to grant Rubycon the benefit of 'partial immunity' under point 26 of the Commission Notice on Immunity from fines and reduction of fines in cartel cases ([1]) for the increased gravity of the infringement.

2. Second plea in law, alleging that the contested decision is insufficiently motivated and vitiated by an error of law as regards the Commission's conclusion not to depart from the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 ([2]) and not to grant Rubycon an additional fine reduction, in breach of the EU law principles of proportionality and equal treatment, and the principle that penalties must be specific to the offender and the offence.

([1]) Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17).
([2]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

Action brought on 5 June 2018 — Ukrselhosprom PCF and Versobank v ECB

(Case T-351/18)

(2018/C 294/66)

Language of the case: English

Parties

Applicants: Ukrselhosprom PCF LLC (Solone, Ukraine) and Versobank AS (Talinn, Estonia) (represented by: O. Behrends, L. Feddern and M. Kirchner, lawyers)

Defendant: European Central Bank (ECB)

Form of order sought

— annul the decision of the European Central Bank ECB/SSM/2018–EE-1 WHD-2017-0012 of 26 March 2018 withdrawing the banking licence of Versobank AS;

— order the defendant to pay all the costs,

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB lacks the competence for a decision with respect to the liquidation of Versobank AS.

2. Second plea in law, alleging that the ECB failed to make its own assessment as regards the underlying anti-money laundering (AML) counter-terrorism financing (CFT) issues.

3. Third plea in law, alleging that the ECB failed to investigate and to appraise carefully and impartially all relevant aspects of the case, in particular as regards AML/CFT risks and compliance with the precepts.

4. Fourth plea in law, alleging that the ECB illegitimately denied other options, in particular to sell Versobank or to grant the opportunity for Versobank to opt for self-liquidation.

5. Fifth plea in law, alleging that the ECB violated the principle of equal treatment.

6. Sixth plea in law, alleging that the ECB violated the principle of proportionality.

7. Seventh plea in law, alleging that the ECB violated the principle of legitimate expectations and legal certainty.

8. Eighth plea in law, alleging that the ECB committed a *détournement de pouvoir*.

9. Ninth plea in law, alleging that the ECB violated the right to be heard.

10. Tenth plea in law, alleging that the ECB violated the right to defence.

11. Eleventh plea in law, alleging that the ECB failed to provide an adequately reasoned decision.

Action brought on 05 June 2018 — Nippon Chemi-Con Corporation/Commission

(Case T-363/18)

(2018/C 294/67)

Language of the case: English

Parties

Applicant: Nippon Chemi-Con Corporation (Tokyo, Japan) (represented by: H. Niemeyer, M. Röhrig, D. Schlichting and I. Stoicescu, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety or in part the European Commission's decision of 21 March 2018 relating to a proceeding under Article 101 of the TFEU and Article 53 of the EEA Agreement (AT.40136 — Capacitors);

— in the alternative, annul Article 2(g) of the European Commission's decision of 21 March 2018;

— in the alternative, reduce the fine imposed on the applicant in Article 2(g) of the European Commission's decision of 21 March 2018 by exercising its unlimited jurisdiction pursuant to Article 261 TFEU and Article 31 of Regulation 1/2003;

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

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of the right to be heard and of Article 41 of the Charter of Fundamental Rights

   The applicant claims that the Commission infringed its right to be heard by not granting access to all the case file documents to which it referred to in the contested decision, by not providing all potentially exculpatory evidence, by failing to issue a supplementary statement of objections to remedy the shortcomings of the initial statement of objections, instead of a letter of facts and by failing to provide adequate access to minutes of meetings with the other parties.

2. Second plea in law, alleging that the Commission failed to provide precise and consistent evidence of an infringement with impact on the EEA for the entire duration of the alleged infringement

   The Commission would have further failed to provide precise and consistent evidence of an infringement with impact on the EEA for the entire duration of the alleged infringement, in particular for the ECC meetings (1998-2003) and for the tri- and multilateral meetings and their impact on the EEA between 2009 and 2012.

3. Third plea in law, alleging that there was no sufficient proof of a single continuous infringement

   Pursuant to the applicant, the Commission would have failed to prove the existence of a single continuous infringement comprising all types of alleged meetings with regard to all aluminium electrolytic capacitors and all tantalum electrolytic capacitors for a period of fourteen years and with an impact on the EEA, as it neither defined an overall plan pursuing a single anticompetitive economic aim to the required standard, nor proved that a complementary link existed between the different meetings.

4. Fourth plea in law, alleging that there was no infringement by object

   The Commission allegedly also failed to establish that the anti-competitive conduct was an infringement by object as the supposed exchanges about future price and supply information during the meetings and contacts with a relevance to EEA sales were sporadic and very limited in scope.

5. Fifth plea in law, alleging a lack of jurisdiction of the Commission

   The Commission would further have wrongly claimed jurisdiction over the alleged infringement, because it did not provide sufficient evidence linking the alleged infringement to the EEA. The Commission would have ignored proof that, in essence, none of the bi- and trilateral contacts had any effect on sales to the EEA as the contacts focused on non-European customers. The Commission would not have proven its allegations that the Japanese capacitor manufacturers attended the meetings with the purpose to reduce competition in the EEA.

6. Sixth plea in law, alleging an infringement of Article 23(2) and (3) of Regulation No 1/2003 ([1]), the Commission's Fining Guidelines ([2]) and fundamental principles of the setting of fines, in particular the principles of equal treatment and proportionality

Finally, the applicant claims that the Commission infringed Article 23(2) and (3) of Regulation No 1/2003, the Commission's Fining Guidelines and fundamental principles of the setting of fines, in particular the principles of equal treatment and proportionality by considering a disproportionate value of sales and by disregarding the alleged infringement's limited links to the EEA.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

(2) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

Action brought on 25 June 2018 — Intas Pharmaceuticals v EUIPO — Laboratorios Indas (INTAS)

(Case T-380/18)

(2018/C 294/68)

Language of the case: English

Parties

Applicant: Intas Pharmaceuticals Ltd (Ahmedabad, India) (represented by: M. Edenborough, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Laboratorios Indas, SA (Pozuelo de Alarcón, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark INTAS — Application for registration No 14 153 811

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 16 April 2018 in Case R 815/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, alter the contested decision to the state that the opposition shall be remitted to the Opposition Division for it to reconsider the opposition;

— order EUIPO to pay the applicant's costs of and occasioned by this application and the costs before the Board;

— in the alternative, if the other party before the Board intervenes, then order EUIPO and the intervener jointly and severally to pay the applicant's costs of and occasioned by this application and the costs before the Board.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 26 June 2018 — Sta*Ware EDV Beratung v EUIPO — Accelerate IT Consulting (businessNavi)

(Case T-383/18)

(2018/C 294/69)

Language in which the application was lodged: German

Parties

Applicant: Sta*Ware EDV Beratung GmbH (Starnberg, Germany) (represented by: M. Bölling and M. Graf, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Accelerate IT Consulting GmbH (Ahlen, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark businessNavi — EU trade mark No 9 155 698

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 2 May 2018 in Case R 434/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, in so far as it annulled the decision of the Cancellation Division of 16 February 2017 (Cancellation No 12 336 C) and declared that EU trade mark No 9 155 698 businessNavi (figurative mark) should remain registered for the following services in Class 42:

Updating of computer software, consultancy in the field of computer hardware, computer software consultancy, computer systems analyses, computer systems design, data management on servers, computer programming services, computer consultancy (information technology services), computer programming, hardware and software consultancy, implementation of computer programs on networks, installation and maintenance of software for internet access, installation of computer programs, configuration of computer networks using software, performance monitoring and analysis of network operations, server administration, technical project management in the field of computer processing;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Articles 58(1)(a) and 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Rule 22(3) and (4) and Rule 40(5) of Commission Regulation (EC) No 2868/95.

Action brought on 27 June 2018 — Iccrea Banca v Commission and SRB

(Case T-386/18)

(2018/C 294/70)

Language of the case: Italian

Parties

Applicant: Iccrea Banca SpA Istituto Centrale del Credito Cooperativo (Rome, Italy) (represented by: P. Messina, F. Isgrò and A. Dentoni Litta, lawyers)

Defendants: European Commission, Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul, under Article 263 TFEU, Single Resolution Board Decision No SRB/ES/SRF/2018/03 of 12 April 2018 and, as appropriate, the annexes thereto, as well as any subsequent decisions of the Single Resolution Board, even those of which the applicant is not aware, on the basis of which the Banca d'Italia adopted measures No 0517765/18 of 27 April 2018 and No 0646641/18 of 28 May 2018;

— order the payment of compensation under Article 268 TFEU to ICCREA Banca for the damage caused to it, consisting of the higher rates paid, by the Single Resolution Board when determining the contributions owed by the applicant;

— in the alternative, and in the event that the above claims are rejected, declare Article 5(1)(a) and (f) (or, as the case may be, the Regulation in its entirety) invalid, as being contrary to the basic principles of equality, non-discrimination and proportionality;

— in any event, order the Single Resolution Board to pay the costs occasioned by the present proceedings.

Pleas in law and main arguments

The present action is brought against Single Resolution Board Decision No SRB/ES/SRF/2018/03 of 12 April 2018 and the annexes thereto, as well as any subsequent decisions of the Single Resolution Board, even those of which the applicant is not aware, on the basis of which the contributions under Delegated Regulation (EU) 2015/63 ([1]) were determined in regard to the applicant.

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

1. First plea in law, alleging (i) failure to carry out a proper enquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](a) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](a) of Regulation 2015/63 when determining the amount of the contributions owed by the applicant by not having taken intragroup liabilities into consideration.

2. Second plea in law, alleging (i) failure to carry out a proper enquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](f) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](f) of Regulation 2015/63, thereby resulting in double counting.

3. Third plea in law, alleging the unlawful conduct of an EU body giving rise to non-contractual liability under Article 268 TFEU.

   — The applicant claims in this regard that the conduct of the Single Resolution Board meets all the relevant conditions for non-contractual liability under EU case-law, namely unlawfulness of the alleged conduct of the institutions, the actual existence of damage, and the presence of a causal link between the adopted conduct and the alleged damage.

4. Fourth plea in law, in the alternative and incidentally, alleging that Regulation 2015/63 is in breach of the principles of effectiveness, equivalence and equal treatment and is consequently inapplicable.

   — The applicant claims in this regard that a possible contradiction between Regulation 2015/63 and the situation of the applicant would be in breach of the aforementioned principles to the extent that persons in the same factual situation as ICCREA would be subject to reductions of contributions, leading to an unlawful deterioration of the applicant's situation, with the consequence that similar situations would be treated differently.

([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).

Action brought on 28 June 2018 — Mellifera v Commission

(Case T-393/18)

(2018/C 294/71)

Language of the case: German

Parties

Applicant: Mellifera e. V., Vereinigung für wesensgemäße Bienenhaltung (Rosenfeld, Germany) (represented by: A. Willand, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision Ares (2018) 2087165 of the Commission, dated 19 April 2018 and notified to the applicant on 19 April 2018;

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

Pleas in law and main arguments

The action is based on the following plea:

Infringement of Article 10(1), in conjunction with Article 2(1)(g), of Regulation (EC) No 1367/2006 ([1]) and the Aarhus Convention ([2])

— The applicant submits that the renewal of the approval for the active substance glyphosate is an administrative act which may be reviewed in accordance with the procedure laid down in Article 10(1) of Regulation No 1367/2006.

— In addition, it is argued, in particular, that the renewal of the approval is a 'measure of individual scope' since a decision is taken vis-à-vis the applicant within the framework of the approval procedure.

— It is also submitted that the approval of the active substance glyphosate should have been issued only in accordance with the appropriate restrictions and conditions for the preservation of biodiversity.

— Finally, the applicant criticises errors in the procedure for the renewal of the approval of the active substance glyphosate.

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

(2) United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

Action brought on 27 June 2018 — TrekStor v EUIPO (Theatre)

(Case T-399/18)

(2018/C 294/72)

Language in which the application was lodged: German

Parties

Applicant: TrekStor Ltd (Hongkong, China) (represented by: O. Spieker, A. Schönfleisch, M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark Theatre — Application No 16 374 886

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 April 2018 in Case R 2238/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) and (c) and 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 2 July 2018 — Zhadanov v EUIPO (PDF Expert)

(Case T-404/18)

(2018/C 294/73)

Language of the case: English

Parties

Applicant: Igor Zhadanov (Odessa, Ukraine) (represented by: P. Olson, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark PDF Expert — Application for registration No 16 257 735

Contested decision: Decision of the Second Board of Appeal of EUIPO of 18 April 2018 in Case R 1813/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— register European Union trade mark application No 16 257 735 for 'Computer application software for personal computers, mobile phones and portable electronic devices, namely, software for viewing, editing and managing pdf documents';

— order EUIPO to pay the costs.

Pleas in law

— The Board of Appeal erred in not recognizing the special nature of the applied for goods;

— The Board of Appeal erred in the evaluation of the submitted evidence when it concluded that the applied for mark does not enjoy acquired distinctiveness through use.

Action brought on 3 July 2018 — Holmer Dahl v SRB

(Case T-405/18)

(2018/C 294/74)

Language of the case: Spanish

Parties

Applicant: Helene Holmer Dahl (Madrid, Spain) (represented by: R. Vallina Hoset, A. Sellés Marco, C. Iglesias Megías and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the damage suffered by the applicant as a result of both its actions and omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. shares she owned;

— Order the Board to pay the following amounts to the applicant as compensation for the pecuniary and non-pecuniary damage suffered ('the amount due'):

  — As compensation for pecuniary damage, the total sum of EUR 160 558,41 in respect of the redemption of shares in Banco Popular; and

  — As compensation for non-pecuniary damage, a sum of up to EUR 160 558,41 or such amount as the General Court shall see fit to award.

— Increase the amount due with corresponding compensatory interest, as of 7 July 2017 until the date of delivery of judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment in the present case until its payment in full of the amount due, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points;

— Order the Board to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied upon in Case T-659/17, *Vallina Fonseca* v *Single Resolution Board* (OJ 2017 C 424, p. 42).

Action brought on 2 July 2018 — mobile.de v EUIPO — Droujestvo S Ogranichena Otgovornost 'Rezon' (mobile.ro)

(Case T-412/18)

(2018/C 294/75)

Language in which the application was lodged: German

Parties

Applicant: mobile.de GmbH (Dreilinden, Germany) (represented by: T. Lührig, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Droujestvo S Ogranichena Otgovornost 'Rezon' (Sofia, Bulgaria)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark mobile.ro — EU trade mark No 8 838 542

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 29 March 2018 in Case R 111/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 18(1)(a), in conjunction with Article 64(2) and (3), of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 19(2) and Article 10(3) of Commission Delegated Regulation (EU) 2018/625, in conjunction with Article 64(2) and (3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 60(1)(a), in conjunction with Article 8(1)(b) and 8(2)(a)(ii), of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 4(3) TEU, in conjunction with the legal principle laid down in Article 59(1)(b) of Council Regulation (EC) No 207/2009 and Article 61(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 July 2018 — Portigon v SRB

(Case T-413/18)

(2018/C 294/76)

Language of the case: German

Parties

Applicant: Portigon AG (Düsseldorf, Germany) (represented by: D. Bliesener and V. Jungkind, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 12 April 2018 concerning the calculation of the ex-ante contributions to the Single Resolution Fund for 2018 (SRB/ES/SRF/2018/03) in so far as the decision concerns the applicant;

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

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are, in essence, identical or similar to the pleas in law relied on in Case T-420/17, *Portigon* v *SRB*. ([1])

([1]) OJ 2017 C 277, p. 56.

Action brought on 4 July 2018 — Silgan Closures and Silgan Holdings v Commission

(Case T-415/18)

(2018/C 294/77)

Language of the case: German

Parties

Applicants: Silgan Closures GmbH (Munich, Germany) and Silgan Holdings Inc. (Stamford, Connecticut, United States) (represented by: D. Seeliger, Y. Gürer, R. Grafunder and V. Weiss, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul inspection decision C(2018) 2173 final of 6 April 2018, notified on 24 April 2018;

— annul all measures taken on the basis of the inspection, which was conducted on the basis of that unlawful decision;

— in particular order the Commission to return all copies of documents made and taken away during that inspection, on pain of annulment of the future Commission decision by the General Court; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The action is based on the following pleas in law.

1. Infringement of fundamental rights of defence and principles of procedural law

   In the context of the first plea, the applicants claim in particular that the Bundeskartellamt (German Federal Competition Authority) disclosed information to the Commission which the applicants had made available to the Bundeskartellamt in the national proceedings ongoing since 2014 in the context of their cooperation and which should therefore not have been disclosed in the course of the exchange of information under Article 12 of Council Regulation (EC) No 1/2003. ([1])

2. Failure to state adequate reasons in the inspection decision and an unreasonably wide and non-specific description of the subject matter of the inspection ('fishing expedition'), as well as a lack of sufficient evidence

3. Infringement of the principle of proportionality

   In this regard, the applicants claim that the ordering of the inspection on the basis of the investigations and state of proceedings before the Bundeskartellamt was neither necessary nor appropriate.

4. Misuse of powers

   In the context of the fourth plea, the applicants argue that the ordering of the inspection is based on irrelevant considerations. The case involves improper cooperation of the Bundeskartellamt and the Commission in order to enable the Commission to impose penalties on companies which might not have been possible at a national level as a result of legislative lacunae.

5. Lack of competence of the Commission and infringement of the principle of subsidiarity

In this regard, the applicants submit that it is not apparent either that it would have been inappropriate for the Bundeskartellamt to bring to a proper end the proceedings pending before it or why the proceedings, on account of their scope or effects, would be better conducted at EU level at such a late point in time.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 10 July 2018 — Bauer Radio v EUIPO — Weinstein (MUSIKISS)

(Case T-421/18)

(2018/C 294/78)

Language of the case: English

Parties

Applicant: Bauer Radio Ltd (Peterborough, United Kingdom) (represented by: G. Messenger, Barrister)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Simon Weinstein (Wien, Austria)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark MUSIKISS — Application for registration No 12 317 616

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 March 2018 in Case R 510/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 6 July 2018 — Fissler v EUIPO (vita)

(Case T-423/18)

(2018/C 294/79)

Language in which the application was lodged: German

Parties

Applicant: Fissler GmbH (Idar-Oberstein, Germany) (represented by: G. Hasselblatt and K. Middelhoff, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark 'vita' — Application for registration No 15 857 188

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 28 March 2018 in Case R 1326/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

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