Official Journal of the European Union

C 373

English edition

Information and Notices

Volume 61

15 October 2018

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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 373/01)

Last publication

OJ C 364, 8.10.2018

Past publications

OJ C 352, 1.10.2018

OJ C 341, 24.9.2018

OJ C 328, 17.9.2018

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OJ C 301, 27.8.2018

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 27 June 2018 — Südzucker AG v Hauptzollamt Karlsruhe

(Case C-423/18)

(2018/C 373/02)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Südzucker AG

Defendant: Hauptzollamt Karlsruhe

Questions referred

1. Should the first sentence of Article 3(2) of Regulation (EC) No 967/2006 ([1]) be interpreted to mean that the time-limit stated therein also applies to the amendment of a timely notification of the levy following an amended determination of the attributable quantity of surplus sugar after the passing of the time-limit based on a check under Article 10 of Regulation (EC) No 952/2006? ([2])

2. If the answer to Question 1 is in the affirmative,

   In that case, where a timely notification is amended on the basis of findings made during checks, do the conditions established by the judgment of the Court of Justice of the European Union of 10 January 2002 in *British Sugar*, C-101/99, EU:C:2002:7, for exceeding the notification time-limit stipulated in Article 3(2) of Regulation (EEC) No 2670/81, as amended by Regulation (EEC) No 3559/91, ([3]) also apply for exceeding a notification time-limit under Article 3(2) of Regulation (EC) No 967/2006?

3. If the first sentence of Article 3(2) of Regulation (EC) No 967/2006 does not apply to amending notifications based on checks (see Question 1) or if the conditions for exceeding the time-limit are fulfilled (see Question 2), should the time-limit by which the amendment to the levy must be notified be 1 May of the following year or should national law apply?

4. If the answer to Question 3 is that neither 1 May of the following year nor national law applies:

Is it compatible with the general principles of EU law, which include the principles of proportionality, legal certainty and the protection of legitimate expectations, if, in a case such as the present, the levy for the 2007/2008 sugar marketing year was notified on 20 October 2010 or 27 October 2011 due to the time needed for checks and the time needed for preparation and evaluation of the inspection report? Is objection by the sugar producer to the determination of the surplus quantities relevant in this context?

(1) Commission Regulation (EC) No 967/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards sugar production in excess of the quota (OJ 2006 L 176, p. 22).
(2) Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system (OJ 2006 L 178, p. 39).
(3) Commission Regulation (EEC) No 3559/91 of 6 December 1991 amending Regulation (EEC) No 2670/81 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1991 L 336, p. 26).

Request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo de Madrid (Spain) lodged on 28 June 2018 — Berta Fernández Álvarez, BMM, TGV, Natalia Fernández Olmos, María Claudia Téllez Barragán v Consejería de Sanidad de la Comunidad de Madrid

(Case C-429/18)

(2018/C 373/03)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo de Madrid

Parties to the main proceedings

Applicant: Berta Fernández Álvarez, BMM, TGV, Natalia Fernández Olmos, María Claudia Téllez Barragán

Defendant: Consejería de Sanidad de la Comunidad de Madrid

Questions referred

1. Is this court's interpretation of the Framework Agreement annexed to Directive 1999/70/EC (1) correct and is it correct to take the view that the employment of the applicants on temporary appointments constitutes abuse in so far as the public employer uses different contractual models, all of which are temporary, to ensure, on a permanent and stable basis, performance of the ordinary duties of permanent regulated staff and to cover structural defects and needs which are, in fact, not temporary but fixed and permanent? Is the type of temporary appointment described therefore not justified as an objective reason for the purposes of clause 5(1)(a) of the Framework Agreement, in that such use of fixed-term contracts conflicts directly with the second paragraph of the preamble of the Framework Agreement and with general considerations 6 and 8 of that agreement, since there are no circumstances which would justify the use of such fixed-term employment contracts?

2. Is this court's interpretation of the Framework Agreement annexed to Directive 1999/70/EC correct and is it correct to take the view that, in line with that interpretation, the holding of a conventional selection process, with the features described, is not an equivalent measure and cannot be regarded as a penalty, since it is not proportional to the abuse committed, the consequence of which is the termination of the temporary worker's appointment, in breach of the objectives of the directive, and the continued unfavourable situation of temporary regulated employees, nor can it be regarded as an effective measure in so far as it does not create any detriment to the employer, and nor does it fulfil any deterrent function, and therefore it is not compatible with the first paragraph of Article 2 of Directive 1999/70 in that it does not ensure that the Spanish State achieves the results imposed by the directive?

3. Is this court's interpretation of the first paragraph of Article 2 of Directive 1999/70 and of the judgment of the Court of Justice of the European Union of 14 September 2016 in Case C-16/15 ([2]) correct and is it correct to take the view that, in line with that interpretation, the holding of a selection process that is open to external candidates is not an appropriate measure to penalise abuse arising from the use of successive temporary appointments, since Spanish legislation does not provide for an effective, dissuasive penalty mechanism which puts an end to the abuse arising from the appointment of temporary regulated staff and does not enable those permanent posts created to be filled by the staff who were the victims of the abuse, such that the precarious situation of those workers continues?

4. Is it correct to take the view, as this court does, that the conversion of a temporary worker who has been the victim of the misuse of temporary appointments into a worker having a appointment 'of indefinite duration but not permanent' is not an effective penalty, in so far as a worker classified in this way may have his appointment terminated either because his post has been filled in a selection process or because his post has been abolished, and therefore that penalty is incompatible with the Framework Agreement for the purposes of preventing misuse of fixed-term contracts, since it does not comply with the first paragraph of Article 2 of Directive 1999/70 in that it does not ensure that the Spanish State achieves the results imposed by the directive?

In the light of that situation, it is necessary in the circumstances described to repeat the following questions, included in the reference for a preliminary ruling made on 30 January 2018 in Expedited Proceedings 193/2017 before J[uzgado] C [ontencioso-]A[dministrativo] n.º 8 de Madrid (Administrative Court No 8, Madrid): ([3])

5. If the national courts find that there is abuse arising from the use of successive appointments of temporary regulated staff to cover vacancies in the Madrid Health Service and that they are being used to cover permanent structural needs in the provision of services by permanent regulated employees, given that domestic law contains no effective or deterrent measure to penalise such misuse and eliminate the consequences of the breach of EU legislation, must Clause 5 of the Framework Agreement annexed to Directive 1999/70/EC be interpreted as requiring the national courts to adopt effective deterrent measures to ensure the effectiveness of the Framework Agreement, and therefore to penalise that misuse and eliminate the consequences of the breach of that EU legislation, disapplying the rule of domestic law that prevents it from being effective?

If the answer should be affirmative, as held by the Court of Justice of the European Union in paragraph 41 of its judgment of 14 September 2016 in Cases C-184/15 and C-197/15: ([4])

As a measure to prevent and penalise the misuse of successive temporary appointments and to eliminate the consequence of the breach of EU law, would it be consistent with the objectives pursued by Directive 1999/70/EC to convert the temporary interim/occasional/replacement regulated relationship into a stable regulated relationship, the employee being classified as a permanent official or an official with an appointment of indefinite duration, with the same security of employment as comparable permanent regulated employees, on the basis that the national legislation prohibits absolutely, in the public sector, the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts, since no other effective measure exists to prevent and, where relevant, penalise the misuse of successive fixed-term employment contracts?

6. If there is abuse of successive temporary appointments, can the conversion of the temporary regulated relationship into an indefinite or permanent relationship be regarded as satisfying the objectives of Directive 1999/70/EC and its Framework Agreement only if the temporary regulated employee who has been the victim of this misuse enjoys exactly the same working conditions as permanent regulated employees (as regards social security, promotion, opportunities to cover vacant posts, training, leave of absence, determination of administrative status, sick leave and other permitted absences, pension rights, termination of employment and participation in selection competitions to fill vacancies and obtain promotion) in accordance with the principles of permanence and security of employment, with all associated rights and obligations, on equal terms with permanent regulated staff?

7. Taking into account the existence, if any, of improper use of temporary appointments to meet permanent staffing needs for no objective reason and in a manner inconsistent with the urgent and pressing need that warrants recourse to them, and for want of any effective penalties or limits in Spanish national law, would it be consistent with the objectives pursued by Directive 1999/70/EC to grant, as a means of preventing abuse and eliminating the consequence of infringing EU law, compensation comparable to that for unfair dismissal, that is to say, compensation that serves as an adequate, proportional, effective and dissuasive penalty, in circumstances where an employer does not offer a worker a permanent post?

(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).
(2) Judgment of 14 September 2016, *Pérez López* (C-16/15, EU:C:2016:679).
(3) Case C-103/18, *Sánchez Ruiz*.
(4) Judgment of 14 September 2016, *Martínez Andrés and Castrejana López* (C-184/15 and C-197/15, EU:C:2016:680).

Request for a preliminary ruling from the Audiencia Provincial de Zaragoza (Spain) lodged on 29 June 2018 — María Pilar Bueno Ruiz, Zurich Insurance PL, Sucursal de España v Irene Conte Sánchez

(Case C-431/18)

(2018/C 373/04)

Language of the case: Spanish

Referring court

Audiencia Provincial de Zaragoza

Parties to the main proceedings

Applicants: María Pilar Bueno Ruiz, Zurich Insurance PL, Sucursal de España

Defendant: Irene Conte Sánchez

Question referred

Does Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, (1) preclude an interpretation whereby the compulsory insurance cover includes the loss or injury caused by the dangerous situation created by the leakage of fluid from a vehicle onto the parking space in which it is parked or while the vehicle is being parked, in a private parking space situated in a housing complex, in respect of third party users of that complex?

(1) OJ 2009 L 263, p. 11.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 2 July 2018 — OH v Agencia Estatal de la Administración Tributaria

(Case C-439/18)

(2018/C 373/05)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: OH

Respondent: Agencia Estatal de la Administración Tributaria

Question referred

Are a provision in a collective agreement and an employer's practice, pursuant to which, for the purposes of remuneration and promotion, the length of service of a part-time female employee whose working hours are 'distributed vertically' over the whole year is to be calculated solely on the basis of time actually worked, contrary to Clause 4(1) and (2) of the Framework Agreement on part-time work [annexed to] Council Directive 97/81/EC of 15 December 1997, [1] and to Articles 2(1)(b) and 14(1) of 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 (recast)? [2]

[1] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).

[2] 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).

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 9 July 2018 — Vaselife International BV, Chrysal International BV v College voor de toelating van gewasbeschermingsmiddelen en biociden

(Case C-445/18)

(2018/C 373/06)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellants: Vaselife International BV, Chrysal International BV

Respondent: College voor de toelating van gewasbeschermingsmiddelen en biociden

Questions referred

1. Is the competent authority, the College voor de toelating van gewasbeschermingsmiddelen en biociden (Netherlands Board for the Authorisation of Plant Protection Products and Biocides; 'the Ctgb'), authorised, after having taken a decision to re-register the reference product, whether or not of its own motion, to change the period of validity of a parallel trade permit as referred to in Article 52 of Regulation (EC) No 1107/2009, [1] where that permit was granted before the re-registration decision, in accordance with the — later — date of the period of validity applying to the decision to re-register the reference product?

2. If Question 1 is answered in the affirmative, is the change to the period of validity of a parallel trade permit an automatic consequence of a decision to re-register the reference product resulting from Regulation (EC) No 1107/2009 itself? Is the entry of the new date of the period of validity of the parallel permit into the database of the competent authority thus a purely administrative act, or does it require a decision taken by that authority of its own motion or in response to a request?

3. If the answer to Question 2 is that a decision must be taken, does Article 52 of Regulation (EC) No 1107/2009, and, in particular, the third paragraph of that article, apply to that decision?

4. If Question 3 is answered in the negative, which provision(s) is/are then applicable?

5. Can a plant protection product already be considered not to be identical within the meaning of Article 52 of Regulation (EC) No 1107/2009 if the reference product does not (any longer) originate from the same undertaking? The Court of Justice is requested, in answering that question, also to consider whether the notion of an associated undertaking or of an undertaking operating under licence can also include an undertaking which produces the product according to the same recipe, with the consent of the right-holder. Is it relevant here whether the production process according to which the reference product and the parallel product which is to be introduced are manufactured is carried out by the same undertaking as far as the active substances are concerned?

6. Is the mere changing of the location for the production of the reference product relevant to the assessment of whether the product is identical?

7. If Questions 5 and/or 6 are/is answered in the affirmative, can the conclusion to be drawn therefrom ('not identical') be undermined by the fact that the competent authority has already established that, as regards its composition, the product has not undergone any change or has undergone only a slight change?

8. On whom and to what extent does the burden of proof lie to show that Article 52(3) of Regulation (EC) No 1107/2009 has been satisfied if the holders of the authorisation for the parallel product and for the reference product have a difference of opinion in that regard?

([1]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1).

Request for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 16 July 2018 — Argenta Spaarbank NV v Belgische Staat

(Case C-459/18)

(2018/C 373/07)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Argenta Spaarbank NV

Defendant: Belgische Staat

Question referred

Does Article 49 of the Treaty on the Functioning of the European Union preclude national tax legislation pursuant to which, for the purpose of calculating the taxable profits of a company subject to full tax liability in Belgium which has a permanent establishment in another Member State, the profits of which are wholly exempt in Belgium by virtue of the application of a double taxation convention between Belgium and the other Member State:

— the deduction for risk capital is reduced by an amount in respect of deduction for risk capital calculated with reference to the positive difference between, on the one hand, the net book value of the assets of the permanent establishment, and, on the other hand, the total liabilities that do not form part of the company's equity capital and that are attributable to the permanent establishment and

— the aforementioned reduction is not applied in so far as the amount of the reduction is lower than the profits of that permanent establishment,

whereas no reduction of the deduction for risk capital is applied if that positive difference can be attributed to a permanent establishment located in Belgium?

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 19 July 2018 — ER v Agencia Estatal de la Administración Tributaria

(Case C-472/18)

(2018/C 373/08)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: ER

Respondent: Agencia Estatal de la Administración Tributaria

Question referred

Are a provision in a collective agreement and an employer's practice, pursuant to which, for the purposes of remuneration and promotion, the length of service of a part-time female employee whose working hours are 'distributed vertically' over the whole year is to be calculated solely on the basis of time actually worked, contrary to Clause 4(1) and (2) of the Framework Agreement on part-time work [annexed to] Council Directive 97/81/EC of 15 December 1997, (1) and to Articles 2(1)(b) and 14(1) of 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 (recast)? (2)

(1) Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).
(2) 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).

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 23 July 2018 — Exportslachterij J. Gosschalk en Zn. B.V. v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-477/18)

(2018/C 373/09)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellant: Exportslachterij J. Gosschalk en Zn. B.V.

Respondent: Minister van Landbouw, Natuur en Voedselkwaliteit

Questions referred

1. Should the phrases 'the staff involved in the official controls' in point 1 of Annex VI to Regulation (EC) No 882/2004 (1) of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ('Regulation No 882/2004') and 'the staff involved in the official controls' in point 2 of Annex VI to Regulation No 882/2004 be interpreted as meaning that the (salary) costs that may be taken into account when calculating the fees for official controls, may only be the (salary) costs of official veterinarians and official auxiliaries who perform the official inspections, or can they also include the (salary) costs of other staff employed by the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority; 'NVWA') or by the private company Kwaliteitskeuring Dierlijke Sector ('KDS')?

2. If the answer to question 1 is that the phrases 'the staff involved in the official controls' in point 1 of Annex VI to Regulation No 882/2004 and 'the staff involved in the official controls' in point 2 of Annex VI to Regulation No 882/2004 may also include the (salary) costs of other staff employed by the NVWA or KDS, under what circumstances and within which limits is there then still such a relationship between the costs incurred for that other staff and the official controls, that the reimbursement of those (salary) costs can be based on Article 27(4) and Annex VI, points 1 and 2, of Regulation No 882/2004?

3. a. Should the provisions of Article 27(4)(a) and of Annex VI, points 1 and 2, of Regulation No 882/2004 be interpreted as meaning that the aforementioned Article 27(4)(a) and Annex VI, points 1 and 2, of Regulation No 882/2004 preclude slaughterhouses from being charged fees in relation to official controls for quarter-hours requested by those slaughterhouses from the competent authorities but not actually worked for the purposes of official controls?

   b. Does the answer to question 3a also apply in the case of official veterinarians contracted by the competent authority who do not receive a salary for quarter-hours which the slaughterhouse has requested from the competent authority but in which no activities related to official controls are actually carried out, whereas the amount which the slaughterhouse is charged for quarter-hours applied for but not worked is for the benefit of the general overhead cost structure of the competent authority?

4. Should the provisions of Article 27(4)(a) and of Annex VI, points 1 and 2, of Regulation No 882/2004 be interpreted as meaning that the aforementioned Article 27(4) precludes the slaughterhouses from being charged an average rate for the activities for the purposes of official inspections performed by veterinarians employed by the NVWA and by (lower-salaried) contracted veterinary surgeons, so that slaughterhouses are charged a higher rate than is paid to the contracted veterinarians?

5. Should the provisions of Article 26 and Article 27(4)(a), and of Annex VI, points 1 and 2, of Regulation No 882/2004 be interpreted as meaning that, when calculating the fees for official controls, costs may be taken into account for the purposes of building the buffer reserves of a private company (KDS) from which the competent authority contracts official auxiliaries, reserves which, in the event of a crisis, can be used to pay the salary and training costs of staff who actually perform the official controls as well as of staff who make it possible to perform the official controls?

6. If the answer to the question formulated under [5] is in the affirmative: what is the maximum amount that can be accumulated in such buffer reserves and what is the length of the period which may be covered by such reserves?

([1]) OJ 2004 L 165, p. 1.

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 23 July 2018 — Compaxo Vlees Zevenaar B.V., Ekro B.V., Vion Apeldoorn B.V., Vitelco B. V. v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-478/18)

(2018/C 373/10)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellants: Compaxo Vlees Zevenaar B.V., Ekro B.V., Vion Apeldoorn B.V., Vitelco B.V.

Respondent: Minister van Landbouw, Natuur en Voedselkwaliteit

Questions referred

1. Should the phrases 'the staff involved in the official controls' in point 1 of Annex VI to Regulation (EC) No 882/2004 ([1]) of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ('Regulation No 882/2004') and 'the staff involved in the official controls' in point 2 of Annex VI to Regulation No 882/2004 be interpreted as meaning that the (salary) costs that may be taken into account when calculating the fees for official controls, may only be the (salary) costs of official veterinarians and official auxiliaries who perform the official inspections, or can they also include the (salary) costs of other staff employed by the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority; 'NVWA') or by the private company Kwaliteitskeuring Dierlijke Sector ('KDS')?

2. If the answer to question 1 is that the phrases ‘the staff involved in the official controls’ in point 1 of Annex VI to Regulation No 882/2004 and ‘the staff involved in the official controls’ in point 2 of Annex VI to Regulation No 882/2004 may also include the (salary) costs of other staff employed by the NVWA or KDS, under what circumstances and within which limits is there then still such a relationship between the costs incurred for that other staff and the official controls, that the reimbursement of those (salary) costs can be based on Article 27(4) and Annex VI, points 1 and 2, of Regulation No 882/2004?

3. Should the provisions of Article 27(4)(a) and of Annex VI, points 1 and 2, of Regulation No 882/2004 be interpreted as meaning that the aforementioned Article 27(4)(a) and Annex VI, points 1 and 2, preclude slaughterhouses from being charged fees in relation to official controls for quarter-hours requested by those slaughterhouses from the competent authorities but not actually worked for the purposes of official controls?

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(1) OJ 2004 L 165, p. 1.

GENERAL COURT

Judgment of the General Court of 5 September 2018 — Villeneuve v Commission

(Case T-671/16) [1]

(Civil Service — Recruitment — Open competition — Competition notice EPSO/AD/303/15 (AD 7) — Verification by EPSO of the conditions for admission to the competition — Professional experience of a period shorter than the minimum period required — Nature of the check of the condition for admission relating to professional experience — Obligation to state reasons — Manifest error of assessment by the selection board of the competition — Equal treatment)

(2018/C 373/11)

Language of the case: French

Parties

Applicant: Vincent Villeneuve (Montpellier, France) (represented by: C. Mourato, lawyer)

Defendant: European Commission (represented by: G. Gattinara and L. Radu Bouyon, acting as Agents)

Re:

Application on the basis of Article 270 TFEU seeking the annulment of the decision of 5 November 2015 of the selection board rejecting the applicant's application for open competition, based on qualifications and tests, EPSO/AD/303/15 — Development cooperation and management of aid to non-EU countries (AD 7).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Vincent Villeneuve to pay the costs.*

[1] OJ C 419, 14.11.2016.

Action brought on 6 July 2018 — PT v European Investment Bank (EIB)

(Case T-418/18)

(2018/C 373/12)

Language of the case: Swedish

Parties

Applicant: PT (represented by: E. Nordh, lawyer)

Defendant: European Investment Bank (EIB)

Form of order sought

— Annul the decision of the EIB of 4 April 2018 dismissing the applicant;

— Order the defendant to compensate the applicant for material harm amounting at present to EUR 2 240,31 and non-material harm evaluated at EUR 50 000, and

— Order the defendant to pay the costs of the action.

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 disregard of the rights of the defence

   — The applicant claims that the defendant did not give the applicant the opportunity of defending himself against its allegations under the best possible conditions. The applicant is of the opinion that his right to sound administration was thereby breached.

2. Second plea in law, alleging manifest errors of assessment

   — The applicant claims that, in connection with the defendant's disregard of his rights of the defence, it also committed a number of manifest errors of assessment.

Action brought on 18 July 2018 — Triantafyllopoulos and Others v ECB

(Case T-451/18)

(2018/C 373/13)

Language of the case: Greek

Parties

Applicants: Panagiotis Triantafyllopoulos and 487 other applicants (Patras, Greece) (represented by: N. Ioannou, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the General Court should:

— order the European Central Bank to provide compensation for their actual harm, as that is specified for each of them in the pleadings, amounting to EUR 83,77 per share in the company, multiplied by the number of shares of which each applicant, natural person or legal person, is the holder;

— order the European Central Bank to pay the costs.

Pleas in law and main arguments

The subject-matter of this action concerns the application for reparation for harm which it is claimed was caused to the applicants as shareholders of the 'Achaiki Syneteristiki Trapeza Syn. PE' (the Achaiki Cooperative Bank) by its special liquidation, and which consists of the current actual loss, that is the value of the shares held by each of the applicants. The harm is claimed to have been caused by the inadequate auditing and supervision of the Trapeza tis Ellados (National Bank of Greece; 'the NBG') with respect to Achaiki Syneteristiki Trapeza in the period from 1999 until 2012, but also by the inadequate auditing and supervision of the European Central Bank with respect to the NBG, and, through the latter but also directly, with respect to the Achaiki Synetiristiki Trapeza.

In support of the action, the applicants rely on the following pleas in law:

1. First plea in law: based on the facts, the criminal prosecutions that have been initiated, and national law.

   — From the year 1999 and until the revocation of the licence of the Achaiki Synetiristiki Trapeza by the NBG, the various administrations pillaged the bank's assets, and diverted them to criminal purposes, wholly distinct from the lawful purposes. This took place without any ostensible adherence to the lawful procedures for the operation of a bank. The NBG is under national law the sole competent supervisory authority, with power to take all measures, for prevention, auditing and enforcement, to ensure that all that happened did not happen and did not lead to the dissipation of the bank's assets.

2. Second plea in law: based on Article 340 TFEU.

   — Under Article 340(3) TFEU the ECB, in that it has a separate legal personality, is obliged to make good, in accordance with the gneral principles common to the laws of the Member States, any damage caused by it or by its servants in the performance of their duties.

3. Third plea in law: based on the case-law of the Court.

— The case-law of the Court requires that there be demonstated a sufficiently serious infringement of a rule of law intended to confer rights on individuals. With respect to the requirement that the infringment must be sufficiently serious, the criterion laid down in the case-law for holding that that condition is satisifed is that the Community body concerned has manifestly and seriously exceeded the limits of the discretion conferred on it. The scale and degree of the harm that has been caused, together with the number of those harmed, can be used as a criterion in relation to whether the body involved has manifestly and seriously exceeded the limits of its discretion. It should also be pointed out that there is a sufficiently serious breach of EU law if the body has committed the fault when not exhibiting the normal degree of prudence and diligence. The ECB failed to fulfil its obligations under the Treaties and under its Statute to impose penalties on the NBG, because of its inadequate supervision of the Achaiki Synetiristiki Trapeza. The ECB for its part is responsible for checking whether the national banks of the Member States are operating in accordance with the provisions in the Treaties and in its Statute. In the event that it has not undertaken such a check we can speak of administrative inadequacies — infringement of the principle of sound managment — which could be covered if the ECB had taken the appropriate measures to 'remind' the NBG of its duties under the Treaties and to make it known it that it is not permissible to leave credit institutions without supervision, becaues that jeopardises the monetary stability of the European Union, which is the basic *raison d'etre* of the ECB. The ECB had an obligation to review whether the NBG fulfilled its obligations as a member of the European System of Central Banks, and in the event that it found that those obligations were not fulfilled, the ECB should have adopted the appropriate measures, rather than do nothing.

Action brought on 6 August 2018 — Bezouaoui and HB Consultant v Commission

(Case T-478/18)

(2018/C 373/14)

Language of the case: French

Parties

Applicants: Hacène Bezouaoui (Avanne, France) and HB Consultant (Beure, France) (represented by: J.-F. Henrotte and N. Neyrinck, lawyers)

Defendant: European Commission

Form of order sought

— Declare the present action admissible and well founded. Consequently,

— Annul Commission Decision C(2018) 2075 final of 10 April 2018 on Case SA.46897 (2018/NN) — France presumed aid — CACES [(Handling Equipment Safe Operation Certificate)];

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the concept of 'causality assessment' referred to in Article 107 TFEU, in that the reimbursement of costs of construction plant driving safety training by State-authorised collecting bodies (Organismes paritaires de collecte agréés, OPCAs) means a use of State resources, the result of a measure attributable to the State. Thus, the applicants argue that the decision of which they seek the annulment disregards the case-law in *Pearle* (judgment of 15 July 2004, *Pearle and Others*, C-345/02, EU:C:2004:448).

2. Second plea in law, alleging infringement of the concept of 'advantage' referred to in Article 107 TFEU, since the measures taken by the French State in the present case give an advantage to undertakings which provides training called 'CACES®' (Handling Equipment Safe Operation Certificate), as opposed to those providing training called 'PCE®' (Machinery Driving Licence).

3. Third plea in law, alleging infringement of the concept of 'selectivity' referred to in Article 107 TFEU, since the measures taken are selective in nature. This plea in law is divided into three parts:

   — first part, alleging that the OPCAs are not entitled to discriminate between the various training courses which answer the same need and which have all been recognised by the French State;

   — second part, alleging that the interventions made by the French State have the effect of deceiving the OPCAs as to the training arrangements which meet the legal requirements and which may be reimbursed;

   — third part, alleging that the difference in treatment of the two training systems (CACES® and PCE®) is not justified by the nature or general scheme of a reference system.

Action brought on 14 August 2018 — XB v ECB

(Case T-484/18)

(2018/C 373/15)

Language of the case: English

Parties

Applicant: XB (represented by: L. Levi and A. Champetier, lawyers)

Defendant: European Central Bank (ECB)

Form of order sought

— annul the decisions of 6 November 2017 and 4 December 2017 informing the applicant that he was not entitled to certain allowances (household allowance, child allowances, education allowances and pre-school allowance);

— accordingly, order the payment of the respective amounts from the requested dates onwards, increased by late interest (ECB rate + 2 points). It should be considered that corrective payments not related to the month during which they were paid should be subject to the tax to which they would have been subject had they been made at the proper time, in accordance with Regulation (EEC, EURATOM, ECSC) No 260/68; ([1])

— if need be, annul the decision of 5 June 2018 rejecting the applicant's grievance procedure, lodged on 29 March 2018;

— if need be, annul the decisions of 2 February 2018 rejecting the applicant's request for administrative review of 15 December 2017;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB's conditions of short-term employment and its rules for short-term employment are illegal (plea of illegality).

   — The ECB's conditions of short-term employment and its rules for short-term employment infringe, first, the rights of the child and the principles of family protection and non-discrimination laid down in the Charter of Fundamental Rights of the European Union, second, the principle of non-discrimination between temporary and permanent workers, and, third, the principle of non-discrimination and of equality of taxpayers.

2. Second plea in law, alleging a violation of collective rights, as a result of lack of proper consultation of the ECB Staff Committee in the adoption of the ECB's conditions and rules for short-term employment.

([1]) Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (OJ, English Special Edition 1968 (I), p. 37).

Action brought on 20 August 2018 — Puma v EUIPO — Destilerias MG (MG PUMA)

(Case T-500/18)

(2018/C 373/16)

Language of the case: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: P. Trieb and M. Schunke, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Destilerias MG SL (Vilanova i la Geltru, 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 trade mark MG PUMA — Application for registration No 15 108 848

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 June 2018 in Case R 2019/2017-2.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those incurred before the Board of Appeal.

Plea in law

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

Action brought on 22 August 2018 — Pharmadom v EUIPO — IRF (MediWell)

(Case T-502/18)

(2018/C 373/17)

Language of the case: English

Parties

Applicant: Pharmadom (Boulogne-Billancourt, France) (represented by: M-P. Dauquaire, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: IRF s. r. o. (Bratislava, Slovakia).

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 figurative mark MediWell — Application for registration No 15 078 645

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 8 June 2018 in Case R 6/2018-5.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division;

— refuse the mark applied for;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 22 August 2018 — Haba Trading v EUIPO — Vida (vidaXL)

(Case T-503/18)

(2018/C 373/18)

Language of the case: English

Parties

Applicant: Haba Trading BV (Utrecht, Netherlands) (represented by: B. Schneiders and A. Brittner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vida AB (Alvesta, Sweden)

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 figurative mark vidaXL — Application for registration No 11 603 024

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 June 2018 in Case R 190/2016-5

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 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

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Action brought on 24 August 2018 — XG v Commission

(Case T-504/18)

(2018/C 373/19)

Language of the case: French

Parties

Applicant: XG (represented by: S. Kaisergruber and A. Brughelle-Vernet, lawyers)

Defendant: European Commission

Form of order sought

— Declare the application admissible and well founded;

Consequently:

— Annul the decision of 3 July 2018 adopted by *[confidential]* ([1]) the European Commission to maintain the refusal of access to the applicant to Commission premises;

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the author of the contested act did not have the power to adopt it.

2. Second plea in law, alleging infringement of Article 3 of Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ 2015 L 72, p. 41; 'Decision 2015/443') and the absence of legal basis of the contested act.

3. Third plea in law, alleging infringement of the fundamental rights of the applicant, in particular breach of Article 67 TFEU, Article 6 TEU, Article 3 of Decision 2015/443 and Articles 6, 7, 8, 15, 27, 31, 41, 42, 47, 48 and 49 of the Charter of Fundamental Rights. This plea is divided into three parts:

   — first part, alleging infringement of the rights to freedom, privacy, protection of personal data and the right freely to exercise a profession;

   — second part, alleging infringement of the right to sound administration, transparency, access to documents and an effective remedy and infringement of the presumption of innocence and the rights of the defence;

   — third part, alleging infringement of the principle of proportionality and of Article 49 of the Charter of Fundamental Rights.

4. Fourth plea in law, raised in the alternative, alleging infringement of Article 296 TFEU, Article 41(2) of the Charter of Fundamental Rights and of the principles of the formal and material statement of reasons of unilateral acts. This plea is divided into two parts:

   — first part, alleging a lack of formal reasoning of the contested act;

   — second part, alleging a lack of substantive reasoning of the contested act.

(1) Confidential data redacted.

Action brought on 24 August 2018 — OLX v EUIPO — Stra (STRADIA)

(Case T-508/18)

(2018/C 373/20)

Language of the case: English

Parties

Applicant: OLX BV (Hoofddorp, Netherlands) (represented by: G. Lodge, K. Gilbert, Solicitors and V. Jones, Barrister)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Stra Lda (Coimbra, Portugal)

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 STRADIA — Application for registration No 14 841 985

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 June 2018 in joined Cases R 2228/2017-4 and R 2229/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, alter the contested decision to state that the Opposition should 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 EUIPO and the intervener jointly and severally 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 the Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 22 August 2018 — Kaddour v Council

(Case T-510/18)

(2018/C 373/21)

Language of the case: English

Parties

Applicant: Khaled Kaddour (Damas, Syria) (represented by: V. Davies and V. Wilkinson, Solicitors)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the 2018 Measures insofar as they apply to Dr Kaddour; and

— order the Council to pay Dr Kaddour's costs of this application.

Pleas in law and main arguments

The application is directed against Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP ([1]) concerning restrictive measures against Syria (OJ 2018 L 131, p. 16) and Council Implementing Regulation (EU) 2018/774 of 28 May 2018 implementing Regulation (EU) No 36/2012 ([2]) concerning restrictive measures in view of the situation in Syria (OJ 2018 L 131, p. 1), insofar as those measures apply to the applicant ('the 2018 Measures').

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

1. First plea in law, alleging that the 2018 Measures are vitiated by a manifest error of assessment.

2. Second plea in law, alleging that the applicant is entitled to the benefit of Articles 27 and 28(2) of Council Decision 2013/255/CFSP as amended by Council Decision (CFSP) 2015/1836 ([3]) and Article 15(1b) of Council Regulation (EU) No 36/2012 as amended by Council Regulation (EU) 2015/1828 ([4]).

3. Third plea in law, alleging that the 2018 Measures amount to a breach of the applicant's fundamental rights as protected by the EU Charter of Fundamental Rights and/or the European Convention of Human Rights in regard to the applicant's rights to respect for his reputation and peaceful enjoyment of his property and the principle of proportionality.

([1]) Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14).
([2]) Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1).
([3]) Council Decision (CFSP) 2015/1836 of 12 October 2015 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2015 L 266, p. 75).
([4]) Council Regulation (EU) 2015/1828 of 12 October 2015 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2015 L 266, p. 1).

Action brought on 3 September 2018 — Zott v EUIPO — TSC Food Products (Baked products)

(Case T-517/18)

(2018/C 373/22)

Language in which the application was lodged: German

Parties

Applicant: Zott SE & Co. KG (Mertingen, Germany) (represented by: E. Schalast, R. Lange and C. Böhler, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: TSC Food Products GmbH (Wels, Austria)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design No 2487983-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 27 June 2018 in Case R 1341/2017-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 4, in conjunction with Article 6(1) and Article 7, of Council Regulation (EC) No 6/2002.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-445/16

(Official Journal of the European Union C 364 of 3 October 2016)

(2018/C 373/23)

The notice in the Official Journal in Case T-445/16 —Schniga v CPVO (Gala Schnico), should read as follows:

‘Action brought on 5 August 2016 — Schniga v CPVO (Gala Schnico)

(Case T-445/16)

(2016/C 364/25)

Language of the case: German

Parties

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

Defendant: Community Plant Variety Office (CPVO)

Details of the proceedings before CPVO

Community plant variety right at issue: Gala Schnico — Community plant variety right application No 2009/1807

Contested decision: Decision of the Board of Appeal of CPVO of 22 April 2016 in Case A005/2014.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order CPVO to pay the costs.

Plea in law

— Infringement of Articles 76, 8, 57(3) and 75 of Regulation No 2100/94.’

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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