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(2018/C 399/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission

(Case C-57/16 P) ([1])

(Appeal — Access to documents of the EU institutions — Regulation (EC) No 1049/2001 — Regulation (EC) No 1367/2006 — Impact assessment report, draft impact assessment report and opinion of the Impact Assessment Board — Legislative initiatives in respect of environmental matters — Refusal to grant access — Disclosure of the documents requested in the course of the proceedings — Continuing interest in bringing proceedings — Exception relating to the protection of the ongoing decision-making process of an EU institution — General presumption)

(2018/C 399/02)

Language of the case: English

Parties

Appellant: ClientEarth (represented by: O.W. Brouwer, J. Wolfhagen and F. Heringa, advocaten)

Other party to the proceedings: European Commission (represented by: F. Clotuche-Duvieusart and M. Konstantinidis, acting as Agents)

Interveners in support of the appellant: Republic of Finland (represented by: H. Leppo and J. Heliskoski, acting as Agents), Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, U. Persson and N. Otte Widgren, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 13 November 2015, ClientEarth v Commission (T-424/14 and T-425/14, EU:T:2015:848);*

2. *Annuls the decision of the European Commission of 1 April 2014 refusing to grant access to an impact assessment report for a proposed binding instrument setting a strategic framework for risk-based inspection and surveillance in relation to EU environmental legislation and an opinion of the Impact Assessment Board;*

3. *Annuls the decision of the European Commission of 3 April 2014 refusing to grant access to a draft impact assessment report relating to access to justice in environmental matters at Member State level in the field of EU environmental policy and an opinion of the Impact Assessment Board;*

4. *Orders the European Commission to bear its own costs and to pay those incurred by ClientEarth at first instance and on appeal;*

5. *Orders the Republic of Finland and the Kingdom of Sweden to bear their own costs in relation to the appeal proceedings.*

(1) OJ C 191, 30.5.2016.

Judgment of the Court (Second Chamber) of 6 September 2018 — Bank Mellat v Council of the European Union, European Commission, United Kingdom of Great Britain and Northern Ireland

(Case C-430/16 P) (1)

(Appeal — Common Foreign and Security Policy (CFSP) — Combating of nuclear proliferation — Restrictive measures against the Islamic Republic of Iran — Sector-specific measures — Restrictions on transfers of funds involving Iranian financial institutions — Strengthening of restrictions — Regime at issue adopted under the provisions of Decision 2012/635/CFSP and of Regulation (EU) No 1263/2012 — Implementation of the Joint Comprehensive Plan of Action on the Iranian nuclear issue — Lifting of all restrictive measures of the European Union related to this issue — Repeal of regime at issue in the course of proceedings before the General Court of the European Union — Effect on interest in bringing proceedings before the General Court — No continuation of interest in bringing proceedings)

(2018/C 399/03)

Language of the case: English

Parties

Appellant: Bank Mellat (represented by: M. Brindle QC and T. Otty QC, J. MacLeod and R. Blakeley, Barristers, and S. Zaiwalla and Z. Burbeza, A. Meskarian and P. Reddy, Solicitors)

Other parties to the proceedings: Council of the European Union (represented by: M. Bishop and I. Rodios, acting as Agents), European Commission (represented by: D. Gauci and J. Norris-Usher and by M. Konstantinidis, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: S. Brandon, acting as Agent, and by M. Gray, Barrister)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 2 June 2016, Bank Mellat v Council (T-160/13, EU:T:2016:331);*

2. *Declares that there is no need to adjudicate on the action brought by Bank Mellat in Case T-160/13, seeking the annulment of Article 1, point 15, of Council Regulation (EU) No 1263/2012 of 21 December 2012 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran, or of that provision in so far as it does not provide for an exception applicable in respect of Bank Mellat, and its application for a declaration by the General Court of the European Union that Article 1, point 6, of Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran is not applicable to it;*

3. *Orders Bank Mellat and the Council of the European Union each to bear their own costs both in the appeal proceedings and in the proceedings at first instance;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.*

(1) OJ C 371, 10.10.2016.

Judgment of the Court (Fifth Chamber) of 6 September 2018 — Bundesverband Souvenir — Geschenke — Ehrenpreise eV v European Union Intellectual Property Office (EUIPO), Freistaat Bayern

(Case C-488/16 P) (1)

(Appeal — EU trade mark — Invalidity proceedings — Word mark NEUSCHWANSTEIN — Regulation (EC) No 207/2009 — Article 7(1)(b) and (c) — Absolute grounds for refusal — Descriptive character — Indication of geographical origin — Distinctive character — Article 52(1)(b) — Bad faith)

(2018/C 399/04)

Language of the case: German

Parties

Appellant: Bundesverband Souvenir — Geschenke — Ehrenpreise eV (represented by: B. Bittner, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Botis, A. Schifko and D. Walicka, acting as Agents), Freistaat Bayern (represented by: M. Müller, Rechtsanwalt)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bundesverband Souvenir — Geschenke — Ehrenpreise eV to pay the costs.*

(1) OJ C 6, 9.1.2017.

Judgment of the Court (First Chamber) of 6 September 2018 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Salzburger Gebietskrankenkasse, Bundesminister für Arbeit, Soziales und Konsumentenschutz

(Case C-527/16) (1)

(Reference for a preliminary ruling — Social security — Regulation (EC) No 987/2009 — Articles 5 and 19(2) — Workers posted in a Member State other than that in which the employer usually carries out its activities — Issue of the A1 attestations by the Member State of origin after recognition by the host Member State that the workers are subject to its social security scheme — Opinion of the Administrative Board — Incorrect issue of A1 certificates — Finding — Binding nature and retroactive effect of those certificates — Regulation (EC) No 883/2004 — Legislation applicable — Article 12(1) — Concept of a person 'sent to replace another person')

(2018/C 399/05)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Salzburger Gebietskrankenkasse, Bundesminister für Arbeit, Soziales und Konsumentenschutz

Interveners: Alpenrind GmbH, Martin-Meat Szolgáltató és Kereskedelmi Kft, Martimpex-Meat Kft, Pensionsversicherungsanstalt, Allgemeine Unfallversicherungsanstalt

Operative part of the judgment

1. *Article 5(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004, as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010, read together with Article 19(2) of Regulation No 987/2009, as amended by Regulation No 1244/2010, must be interpreted as meaning that an A1 certificate, issued by the competent institution of a Member State under Article 12(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation No 1244/2010, binds not only the institutions of the Member State in which the activity is carried out, but also the courts of that Member State.*

2. *Article 5(1) of Regulation No 987/2009, as amended by Regulation No 1244/2010, read together with Article 19(2) of Regulation No 987/2009, as amended by Regulation No 1244/2010, must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, as amended by Regulation No 1244/2010, is binding on both the social security institutions of the Member State in which the activity is carried out and the courts of that Member State so long as the certificate has not been withdrawn or declared invalid by the Member State in which was issued, even though the competent authorities of the latter Member State and the Member State in which the activity is carried out have brought the matter before the Administrative Commission for the Coordination of Social Security Systems which held that that certificate was incorrectly issued and should be withdrawn.*

   Article 5(1) of Regulation No 987/2009, as amended by Regulation No 1244/2010, read together with Article 19(2) thereof, as amended by Regulation No 1244/2010, must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, as amended by Regulation No 1244/2010, binds both social security institutions of the Member State in which the activity is carried out and the courts of that Member State, if appropriate with retroactive effect, even though that certificate was issued only after that Member State determined that the worker concerned was subject to compulsory insurance under its legislation.

3. *Article 12(1) of Regulation No 883/2004, as amended by Regulation No 1244/2010, must be interpreted as meaning that, if a worker who is posted by his employer to carry out work in another Member State is replaced by another worker posted by another employer, the latter employee must be regarded as being 'sent to replace another person', within the meaning of that provision, so that he cannot benefit from the special rules laid down in that provision in order to remain subject to the legislation of the Member State in which his employer normally carries out its activities.*

   The fact that the employers of the two workers concerned have their registered offices in the same Member State or that they may have personal or organisational links is irrelevant in that respect.

([1]) OJ C 14, 16.1.2017.

Judgment of the Court (Third Chamber) of 6 September 2018 — Czech Republic v European Commission

(Case C-4/17 P) ([1])

(Appeal — European Agricultural Guarantee Fund (EAGF) — Expenditure eligible for European Union financing — Expenditure by the Czech Republic — Regulation (EC) No 479/2008 — Article 11(3) — Concept of 'restructuring of vineyards')

(2018/C 399/06)

Language of the case: Czech

Parties

Appellant: Czech Republic (represented by: M. Smolek, J. Pavliš and J. Vláčil, acting as Agents)

Other party to the proceedings: European Commission (represented by: P. Ondrůšek and B. Eggers, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 20 October 2016, Czech Republic v Commission (T-141/15, not published, EU:T:2016:621);*

2. *Annuls Commission Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes expenditure by the Czech Republic under the EAGF on the measure to protect vineyards against damage caused by animals and birds for 2010 to 2012 in the total amount of EUR 2 123 199,04;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by the Czech Republic both in the proceedings at first instance and on the present appeal.*

([1]) OJ C 63, 27.2.2017.

Judgment of the Court (Fourth Chamber) of 6 September 2018 (request for a preliminary ruling from the Court of Appeal — United Kingdom) — Grenville Hampshire v The Board of the Pension Protection Fund

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

(Reference for a preliminary ruling — Protection of employees in the event of the insolvency of their employer — Directive 2008/94/EC — Article 8 — Supplementary pension schemes — Protection of entitlement to old-age benefits — Minimum level of protection guaranteed)

(2018/C 399/07)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Appellant: Grenville Hampshire

Respondent: The Board of the Pension Protection Fund

Interested party: Secretary of State for Work and Pensions

Operative part of the judgment

1. *Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that every individual employee must receive old-age benefits corresponding to at least 50 % of the value of his accrued entitlement under a supplementary occupational pension scheme in the event of his employer's insolvency.*

2. *In circumstances such as those in the main proceedings, Article 8 of Directive 2008/94 has direct effect and may, therefore, be invoked before a national court by an individual employee in order to challenge a decision of a body such as the Board of the Pension Protection Fund.*

([1]) OJ C 78, 13.3.2017.

Judgment of the Court (Fifth Chamber) of 6 September 2018 (request for a preliminary ruling from the Nejvyšší soud České republiky — Czech Republic) — Catlin Europe SE v O.K. Trans Praha spol. s r.o.

(Case C-21/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — European order for payment procedure — Regulation (EC) No 1896/2006 — Issue of an order for payment together with the application for the order — No translation of the application for the order — European order for payment declared enforceable — Application for review after expiry of the period for opposition — Service of judicial and extrajudicial documents — Regulation (EC) No 1393/2007 — Applicability — Article 8 and Annex II — Informing the addressee of the right to refuse to accept a document instituting proceedings that has not been translated — Lack of the standard form — Consequences)

(2018/C 399/08)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Appellant (defendant at first instance): Catlin Europe SE

Applicant at first instance: O.K. Trans Praha spol. s r.o.

Operative part of the judgment

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 must be interpreted as meaning that, where a European order for payment is served on the defendant without the application for the order, annexed to the order, being written in or accompanied by a translation into a language he is deemed to understand, as required by Article 8(1) of Regulation No 1393/2007, the defendant must be duly informed, by means of the standard form in Annex II to Regulation No 1393/2007, of his right to refuse to accept the document in question.

If that formal requirement is omitted, the procedure must be regularised in accordance with the provisions of Regulation No 1393/2007, by communicating to the addressee the standard form in Annex II to that regulation.

In that case, as a result of the procedural irregularity affecting the service of the European order for payment together with the application for the order, the order does not become enforceable and the period in which the defendant may lodge a statement of opposition cannot start to run, so that Article 20 of Regulation No 1896/2006 cannot apply.

([1]) OJ C 112, 10.4.2017.

Judgment of the Court (Grand Chamber) of 4 September 2018 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Fundo de Garantia Automóvel v Alina Antónia Destapado Pão Mole Juliana, Cristiana Micaela Caetano Juliana

(Case C-80/17) ([1])

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Second Directive 84/5/EEC — Article 1(4) — Obligation to take out a contract of insurance — Vehicle parked on private land — Right of the compensation body to bring an action against the owner of the uninsured vehicle)

(2018/C 399/09)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Appellant: Fundo de Garantia Automóvel

Respondents: Alina Antónia Destapado Pão Mole Juliana, Cristiana Micaela Caetano Juliana

Operative part of the judgment

1. *Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as meaning that the conclusion of a contract of insurance against civil liability relating to the use of a motor vehicle is obligatory when the vehicle concerned is still registered in a Member State and is capable of being driven but is parked on private land, solely by the choice of the owner, who no longer intends to drive it.*

2. *Article 1(4) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as not precluding national legislation which provides that the body referred to in that provision has the right to bring an action, in addition to an action against the person or persons responsible for the accident, against the person who was subject to the obligation to take out insurance against civil liability in respect of the use of the vehicle which caused the damage or injuries for which compensation was provided by that body, but who had not concluded a contract for that purpose, even if that person has no civil liability for the accident in which the damage or injuries occurred.*

([1]) OJ C 144, 8.5.2017.

Judgment of the Court (Grand Chamber) of 4 September 2018 — European Commission v Council of the European Union

(Case C-244/17) ([1])

(Action for annulment — Decision (EU) 2017/477 — Position to be adopted on behalf of the European Union within the Cooperation Council established under the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, as regards the working arrangements of the Cooperation Council, the Cooperation Committee, specialised subcommittees or any other bodies — Article 218(9) TFEU — Decision establishing the positions to be adopted on behalf of the European Union in a body set up by an international agreement — Agreement some of whose provisions may be linked with the common foreign and security policy (CFSP) — Voting rule)

(2018/C 399/10)

Language of the case: English

Parties

Applicant: European Commission (represented by: L. Havas, L. Gussetti and P. Aalto, acting as Agents, subsequently by L. Havas and L. Gussetti, acting as Agents)

Defendant: Council of the European Union (represented by: M. Bishop and P. Mahnič Bruni, acting as Agents)

Operative part of the judgment

The Court:

1. *Annuls Council Decision (EU) 2017/477 of 3 March 2017 on the position to be adopted on behalf of the European Union within the Cooperation Council established under the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part as regards the working arrangements of the Cooperation Council, the Cooperation Committee, specialised subcommittees or any other bodies;*

2. *Orders that the effects of Decision 2017/477 be maintained in force;*

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

([1]) OJ C 239, 24.7.2017.

Judgment of the Court (Third Chamber) of 6 September 2018 — Christoph Klein v European Commission, Federal Republic of Germany

(Case C-346/17 P) ([1])

(Appeal — Second paragraph of Article 340 TFEU — Non-contractual liability of the European Union — Directive 93/42/EEC — Medical devices — Article 8(1) and (2) — Safeguard clause procedure — Notification by a Member State of a decision prohibiting the placing on the market of a medical device — Absence of a decision by the European Commission — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Causal link between the conduct of the institution and the damage alleged — Evidence of the existence and extent of the damage)

(2018/C 399/11)

Language of the case: German

Parties

Appellant: Christoph Klein (represented by: H.-J. Ahlt, Rechtsanwalt)

Other parties to the proceedings: European Commission (represented by: G. von Rintelen, A. Sipos and A.C. Becker, acting as Agents), Federal Republic of Germany

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 28 September 2016, Klein v Commission (T-309/10 RENV, not published, EU:T:2016:570), in so far as it held that Mr Christoph Klein had not established the existence of a direct and sufficient causal link capable of engaging the European Union's liability;*

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

3. *Dismisses the action brought by Mr Christoph Klein seeking compensation for the damage allegedly sustained following a breach by the European Commission of its obligations under Article 8 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices;*

4. *Orders Mr Christoph Klein and the European Commission to bear their own costs in relation to both the proceedings at first instance and the appeal proceedings;*

5. *Orders the Federal Republic of Germany to bear its own costs in relation to the proceedings at first instance.*

(1) OJ C 300, 11.9.2017.

Judgment of the Court (Eighth Chamber) of 6 September 2018 — Vincent Piessevaux v Council of the European Union

(Case C-454/17 P) (1)

(Appeal — Civil Service — Staff Regulations of Officials of the European Union — Article 11(2) of Annex VIII — Pension rights acquired under a national scheme — Transfer of those rights to the EU pension scheme — Difference in treatment between officials who have had the capital representing their pension rights transferred to the EU scheme before and after the entry into force of new implementing provisions)

(2018/C 399/12)

Language of the case: French

Parties

Appellant: Vincent Piessevaux (represented by: L. Ponteville, avocat)

Other party: Council of the European Union (represented by: M. Bauer and R. Meyer, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

(1) OJ C 374, 6.11.2017.

Judgment of the Court (Tenth Chamber) of 6 September 2018 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Kreyenhop & Kluge GmbH & Co. KG v Hauptzollamt Hannover

(Case C-471/17) ([1])

(Reference for a preliminary ruling — Customs Union and Common Customs Tariff — Tariff and statistical nomenclature — Classification of goods — Fried instant noodles — Tariff subheading 1902 30 10)

(2018/C 399/13)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Kreyenhop & Kluge GmbH & Co. KG

Defendant: Hauptzollamt Hannover

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version resulting from Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that subheading 1902 30 10 thereof covers instant noodle dishes, such as those at issue in the main proceedings, which are, in essence, composed of a block of pre-cooked and fried noodles.

([1]) OJ C 374, 6.11.2017.

Judgment of the Court (Eighth Chamber) of 6 September 2018 — Basic Net SpA v European Union Intellectual Property Office (EUIPO)

(Case C-547/17 P) ([1])

(Appeal — EU trade mark — Figurative trade mark representing three vertical stripes — Proof of distinctive character acquired through use)

(2018/C 399/14)

Language of the case: Italian

Parties

Appellant: Basic Net SpA (represented by: D. Sindico, avvocato)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: L. Rampini, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Basic Net SpA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 13, 15.1.2018.

Order of the Court (Eighth Chamber) of 6 September 2018 (request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich — Austria) — Proceedings brought by Gmalieva s.r.o. and Others

(Case C-79/17) (1)

Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Freedom to provide services — Gambling services — Gambling monopoly in a Member State — National legislation prohibiting the operation of slot machines without prior authorisation from the administrative authorities

(2018/C 399/15)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicants: Gmalieva s.r.o., Celik KG, PBW GmbH, Antoaneta Claudia Gruber, Play For Me GmbH, Haydar Demir

Intervener: Landespolizeidirektion Oberösterreich

Operative part of the order

It is for the referring court to determine, in the light of the guidance given by the Court of Justice inter alia in the judgment of 30 April 2014, Pfleger and Others (C-390/12, EU:C:2014:281), whether a national statutory monopoly scheme in respect of games of chance, such as that at issue in the main proceedings, is to be regarded as coherent, in the light of Article 56 TFEU et seq., where national judicial proceedings have established that:

— *gambling addiction does not represent a societal problem justifying State intervention;*

— *the playing of prohibited games gives rise to police involvement in an administrative context and not to criminal offences;*

— *annual State income from games of chance exceeds EUR 500 million, being 0,4 % of the annual budget; and*

— *the advertising measures undertaken by licensees also seek principally to entice persons who have not previously played games of chance to do so.*

(1) OJ C 178, 6.6.2017.

Order of the Court (First Chamber) of 12 September 2018 — NF (C-208/17 P), NG (C-209/17 P), NM (C-210/17 P) v European Council

(Joined Cases C-208/17 P to C-210/17 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — EU-Turkey statement of the European Council of 18 March 2016 — Application for annulment)

(2018/C 399/16)

Language of the case: English

Parties

Appellants: NF (C-208/17 P), NG (C-209/17 P), NM (C-210/17 P) (represented by: P. O'Shea, Barrister-at-Law, I. Whelan, Barrister-at-Law, and B. Burns, Solicitor)

Other party to the proceedings: European Council (represented by: S. Boelaert, M. Chavrier and J.-P. Hix, acting as Agents)

Intervener in support of the defendant: Hellenic Republic (represented by: M. Michelogiannaki and G. Karipsiadis, acting as Agents)

Operative part of the order

1. *The appeals are dismissed as being manifestly inadmissible.*

2. *NF, NG and NM shall pay the costs.*

([1]) OJ C 231, 17.7.2017.

Order of the Court (First Chamber) of 6 September 2018 (Request for a preliminary ruling from the Giudice di pace di L'Aquila — Italy) — Gabriele Di Girolamo v Ministero della Giustizia

(Case C-472/17) ([1])

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Social policy — Fixed-term employment — Magistrates — Manifest inadmissibility)

(2018/C 399/17)

Language of the case: Italian

Referring court

Giudice di pace di L'Aquila

Parties to the main proceedings

Applicant: Gabriele Di Girolamo

Defendant: Ministero della Giustizia

Intervener: Unione Nazionale Giudici di Pace (Unagipa)

Operative part of the order

The request for a preliminary ruling from the Giudice di pace di L'Aquila (Magistrates Court, L'Aquila, Italy), by decision of 31 July 2017, is manifestly inadmissible.

(1) OJ C 347, 16.10.2017.

Order of the Court (Sixth Chamber) of 11 September 2018 — Allstate Insurance Company v European Union Intellectual Property Office (EUIPO)

(Case C-542/17 P) (1)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — EU trade mark — Application for registration of the word mark DRIVEWISE — Dismissal of the application — Regulation (EC) No 207/2009 — Article 7(1)(c) — Article 7(2) — Article 75 — Descriptive character — Neologism composed of elements each of which is descriptive of the characteristics of the goods or services concerned — Intended purpose of the goods or services — Distortion — Duty to state reasons)

(2018/C 399/18)

Language of the case: English

Parties

Appellant: Allstate Insurance Company (represented by: G. Würtenberger and R. Kunze, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: K. Markakis, acting as Agent)

Operative part of the order

1. *The appeal is dismissed as manifestly unfounded.*

2. *Allstate Insurance Company shall pay the costs.*

(1) OJ C 13, 15.1.2018.

Order of the Court (Eighth Chamber) of 6 September 2018 — Dominique Bilde v European Parliament, Council of the European Union

(Case C-67/18 P) (1)

(Appeal — Admissibility — European Parliament — Rules governing the [payment of] expenses and allowances of Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid)

(2018/C 399/19)

Language of the case: French

Parties

Appellant: Dominique Bilde (represented by: G. Sauveur, avocat)

Other parties to the proceedings: European Parliament (represented by: S. Seyr and G. Corstens, acting as Agents), Council of the European Union (represented by: A.F. Jensen, M. Bauer and R. Meyer, acting as Agents)

Operative part of the order

1. *The appeal is dismissed as being manifestly inadmissible in part and manifestly unfounded in part.*

2. *Ms Dominique Bilde shall pay the costs.*

(1) OJ C 161, 7.5.2018.

Order of the Court (Eighth Chamber) of 6 September 2018 — Sophie Montel v European Parliament, Council of the European Union

(Case C-84/18 P) (1)

(Appeal — Admissibility — European Parliament — Rules governing the [payment of] expenses and allowances of Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid)

(2018/C 399/20)

Language of the case: French

Parties

Appellant: Sophie Montel (represented by: G. Sauveur, avocat)

Other parties to the proceedings: European Parliament (represented by: S. Seyr and G. Corstens, acting as Agents), Council of the European Union (represented by: A.F. Jensen, M. Bauer and R. Meyer, acting as Agents)

Operative part of the order

1. *The appeal is dismissed as being manifestly inadmissible in part and manifestly unfounded in part.*

2. *Ms Sophie Montel shall pay the costs.*

(1) OJ C 161, 7.5.2018.

Order of the Court (Ninth Chamber) of 6 September 2018 (Request for a preliminary ruling from the Visoki upravni sud — Croatia) — Hrvatska banka za obnovu i razvitak (HBOR) v Povjerenik za informiranje Republike Hrvatske

(Case C-90/18) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court — Lack of sufficient information concerning the factual and regulatory context of the dispute in the main proceedings and the reasons justifying the need for a reply to the questions referred — Manifest inadmissibility)

(2018/C 399/21)

Language of the case: Croatian

Referring court

Visoki upravni sud

Parties to the main proceedings

Applicant: Hrvatska banka za obnovu i razvitak (HBOR)

Defendant: Povjerenik za informiranje Republike Hrvatske

Intervener: Hrvoje Šimić

Operative part of the order

The request for a preliminary ruling from the Visoki upravni sud (Administrative Court of Appeal, Croatia), by decision of 1 February 2018, is manifestly inadmissible.

([1]) OJ C 134, 16.4.2018

Order of the Court (Seventh Chamber) of 6 September 2018 (Request for a preliminary ruling from the Tribunal Central Administrativo Sul — Portugal) — Fazenda Pública v Carlos Manuel Patrício Teixeira, Maria Madalena da Silva Moreira Patrício Teixeira

(Case C-184/18) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Direct taxation — Article 18 TFEU — Principle of non-discrimination — Articles 63, 64 and 65 TFEU — Free movement of capital — Higher tax burden on capital gains on immoveable property realised by non-residents — Restrictions on the free movement of capital to or from a third country)

(2018/C 399/22)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Sul

Parties to the main proceedings

Applicant: Fazenda Pública

Defendants: Carlos Manuel Patrício Teixeira, Maria Madalena da Silva Moreira Patrício Teixeira

Operative part of the order

Legislation of a Member State, such as that at issue in the main proceedings, which subjects capital gains resulting from the transfer, by a resident of a third country, of immovable property situated in that Member State to a tax burden greater than that which would be applicable for the same type of transaction to capital gains realised by a resident of that Member State constitutes a restriction on the free movement of capital which, subject to verification by the referring court, does not fall within the exception provided for in Article 64(1) TFEU and cannot be justified by the reasons referred to in Article 65(1) TFEU.

([1]) OJ C 182, 28.5.2018

Order of the Court (Third Chamber) of 18 July 2018 (request for a preliminary ruling from the Tribunal de première instance de Liège — Belgium) — Pauline Stiernon and Others v Etat belge, SPF Santé publique, Communauté française de Belgique

(Case C-237/18) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Freedom of movement for workers — Freedom to choose an occupation — Articles 20, 21 and 45 TFEU — Charter of Fundamental Rights of the European Union — Article 15 — Profession of psychomotor therapist not included in the national list of allied health professions)

(2018/C 399/23)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

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

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

Operative part of the order

Article 45 TFEU must be interpreted as not precluding, in circumstances such as those of the main proceedings, legislation of a Member State establishing a list of allied health professions that does not include the profession of psychomotor therapist in that list, even though an undergraduate degree in psychomotor therapy has been established in that Member State.

([1]) OJ C 190, 4.6.2018.

Appeal brought on 19 February 2018 by Robert Hansen against the judgment of the General Court (Ninth Chamber) delivered on 14 December 2017 in Case T-304/16: bet365 Group v EUIPO

(Case C-136/18 P)

(2018/C 399/24)

Language of the case: English

Parties

Appellant: Robert Hansen (represented by: M. Pütz-Poulalion, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 6 September 2018 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy) lodged on 28 June 2018 — Consorzio Nazionale Servizi Società Cooperativa (CNS) v Gruppo Torinese Trasporti Gtt SpA

(Case C-425/18)

(2018/C 399/25)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: Consorzio Nazionale Servizi Società Cooperativa (CNS)

Defendant: Gruppo Torinese Trasporti Gtt SpA

Question referred

Do Articles 53(3) and 54(4) of Directive 2004/17/EC, ([1]) in conjunction with Article 45(2)(d) of Directive 2004/18/EC, ([2]) preclude a provision such as Article 38(1)(f) of Legislative Decree No 163/2006 of the Italian Republic, as interpreted by national case-law, which excludes from the scope of 'grave professional misconduct' on the part of an economic operator conduct consisting in infringement of the competition rules, which has been established and penalised by the national competition authority by decision upheld by the courts, thereby precluding a priori the contracting authorities from assessing such infringements independently for the purposes of determining whether such an economic operator is to be excluded from a tender procedure for the award of a public contract, as a possible but not a mandatory outcome?

([1]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

([2]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Juzgado de lo Social de Gerona (Spain) lodged on 9 July 2018 — WA v Instituto Nacional de la Seguridad Social

(Case C-450/18)

(2018/C 399/26)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Gerona

Parties to the main proceedings

Applicant: WA

Defendant: Instituto Nacional de la Seguridad Social

Question referred

Does a national legislative provision (specifically, Article 60(1) of the Ley General de Seguridad Social (General Law on Social Security)) which grants the right to receive a pension supplement — in view of their contribution to social security in terms of demographics — to women who have had biological or adopted children and are in receipt of a contributory retirement, widow's or permanent incapacity pension under any scheme within the social security system, but, on the other hand, does not grant that right to men in an identical situation, infringe the principle of equal treatment which prohibits all discrimination on grounds of sex, enshrined in Article 157 of the Treaty on the Functioning of the European Union and in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 ([1]) and recast by Directive 2006/54/EC ([2]) 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?

([1]) Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 2002 L 269, p. 15).

([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).

Action brought on 13 July 2018 — Republic of Slovenia v Republic of Croatia

(Case C-457/18)

(2018/C 399/27)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: M. Menard)

Defendant: Republic of Croatia

Form of order sought

The applicant claims that the Court should declare that the defendant has infringed:

— Article 2 TEU and Article 4(3) TEU;

— Article 5(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, together with Annex I thereto, configuring the European Union system for controlling, verifying and implementing the rules of the Common Fisheries Policy, which was established by Regulation No 1224/2009 and by Implementing Regulation No 404/2011;

— Articles 4 and 17 of 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, together with Article 13 thereof; and

— Article 2(4) and Article 11(1) of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning.

The applicant also claims that the Court should:

— order the defendant to put an end to the infringements mentioned above without delay; and

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant raises the following pleas in law.

First plea in law:

By unilaterally falling short of the commitment, which it made during the EU accession process, to comply with the arbitration award and thus with the boundary delimited by that award and the other obligations imposed thereby, the Republic of Croatia refuses to respect the rule of law, which is a fundamental value of the European Union (Article 2 TEU).

Second plea in law:

By virtue of the fact that it unilaterally refuses to fulfil its obligations under the arbitration award, while at the same time preventing Slovenia from fully exercising its sovereignty over certain parts of its territory under the Treaty, the Republic of Croatia is in breach of its duty of sincere cooperation with the European Union and with the Republic of Slovenia as laid down in Article 4(3) TEU. The Republic of Croatia's conduct is jeopardising the attainment of the objectives of the European Union, peace-building and an ever closer union between nations, and the objectives of the Union rules relating to the territory of the Member States (first subparagraph of Article 4(3) TEU). In addition, the Republic of Croatia is making it impossible for the Republic of Slovenia to implement EU law throughout its mainland and marine territory and to act in accordance with that law, and in particular in compliance with the secondary Union rules relating to the territory of the Member States (first subparagraph of Article 4(3) TEU).

Third plea in law:

The Republic of Croatia is infringing Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, and in particular the mutual access regime laid down in Article 5 thereof and Annex I thereto. The regime, which applies to Croatia and Slovenia since 30 December 2017, grants 25 fishing vessels from each country free access to the other country's territorial sea, as determined according to international law, that is, under the arbitration award. The Republic of Croatia is not permitting the Republic of Slovenia to exercise its rights under that regime and is thus infringing Article 5 of that regulation due to the fact that: (i) it is refusing to implement the mutual access regime; (ii) it is refusing to recognise the validity of the legislation adopted by the Republic of Slovenia for that purpose; and (iii) by systematically applying fines, it is denying Slovenian fishing vessels free access to the marine waters which the arbitration award of 2017 has defined as Slovene, and, a fortiori, free access to Croatian waters falling within the scope of the mutual access regime.

Fourth plea in law:

The Republic of Croatia is infringing Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy and Implementing Regulation (EU) No 404/2011 of 8 April 2011. Croatian police patrol boats, without authorisation from the Republic of Slovenia, are accompanying Croatian fishing vessels when they fish in Slovenian waters, thereby preventing Slovenian fishing inspectors from carrying out controls. At the same time, the Croatian authorities are imposing fines on Slovenian fishing vessels for unlawful boundary crossing and illegal fishing when they fish in Slovenian waters which Croatia claims for itself. In addition, Croatia is not sending Slovenia the data regarding the activities of Croatian vessels in Slovenian waters, as is required by those two regulations. Thus, the Republic of Croatia is not permitting the Republic of Slovenia to carry out controls in waters under its sovereignty and jurisdiction and is not respecting Slovenia's exclusive jurisdiction as a coastal State in its territorial sea, thereby infringing Regulation (EC) No 1224/2009 and Regulation (EU) No 404/2011.

Fifth plea in law:

The Republic of Croatia has infringed and continues to infringe 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). Croatia does not recognise the boundaries established by the arbitration award as a common boundary with Slovenia, is not cooperating with Slovenia to protect that 'external border', and is not in a position to guarantee adequate protection of that border, so that it is infringing Articles 13 and 17 of that regulation, and Article 4 thereof, which requires borders to be established in accordance with international law.

Sixth plea in law:

The Republic of Croatia has infringed and continues to infringe Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, which is to apply to 'marine waters' of Member States, as defined in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea of 1982 ('Unclos') (Article 2(4) of the directive). The Republic of Croatia rejects the arbitration award which has established that delimitation of the boundaries and — on the contrary — includes Slovenian waters in its own maritime spatial planning: consequently, it does not allow for harmonisation with the geographical maps of the Republic of Slovenia, thereby infringing that directive, in particular Articles 8 and 11 thereof.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 16 July 2018 — AV, BU v Comune di Bernareggio

(Case C-465/18)

(2018/C 399/28)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: AV, BU

Respondent: Comune di Bernareggio

Question referred

Do the principles of freedom of establishment, non-discrimination, equal treatment, the protection of competition and freedom of movement for workers, referred to in Articles 45, 49 to 56 and 106 TFEU and in Articles 15 and 16 of the Charter of Fundamental Rights of the European Union, and the requirements of proportionality and reasonableness inherent in those principles, preclude a provision of national law, such as Article 12(2) of Law No 362/1991, which, in the event of the transfer of ownership of a municipal pharmacy, confers a right of pre-emption on the employees of the pharmacy in question?

Appeal brought on 18 July 2018 by the Federal Republic of Germany against the judgment of the General Court (Fifth Chamber) of 8 May 2018 in Case T-283/15, Esso Raffinage v European Chemicals Agency

(Case C-471/18 P)

(2018/C 399/29)

Language of the case: English

Parties

Appellant: Federal Republic of Germany (represented by: P. Klappich and C. Schmidt, Rechtsanwälte)

Other parties to the proceedings: Esso Raffinage, European Chemicals Agency, French Republic, Kingdom of the Netherlands

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 8 May 2018 in Case T-283/15;

— dismiss the action;

— order the applicant to pay the costs incurred before the Court of Justice and the General Court.

Grounds of appeal and main arguments

The appellant bases its appeal on the following grounds:

First, the appellant claims that the General Court erred in law in attributing legal significance to the letter entitled 'Statement of Non-Compliance following a Dossier Evaluation Decision under Regulation (EC) No 1907/2006' which ECHA addressed to the French Ministry of Ecology, Sustainable Development, Transport and Housing on 1 April 2015 ('the letter') and classifying it as an act which could be the subject of an action for annulment under Article 263 TFEU.

Secondly, the appellant claims that the General Court erred in law in applying Article 42(1) of Regulation (EC) No 1907/2006 ([1]) and disregarding Article 22(2) of the REACH Regulation.

Thirdly, the appellant does not share the General Court's view on the general division of areas of competence between Member States and ECHA, according to which ECHA alone is competent to decide whether registration information complies with the REACH requirements.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 20 July 2018 — SATI — Società Autocooperative Trasporti Italiani SpA v Azienda di Trasporti Molisana — A.T.M. SpA

(Case C-475/18)

(2018/C 399/30)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: SATI — Società Autocooperative Trasporti Italiani SpA

Respondent: Azienda di Trasporti Molisana — A.T.M. SpA

Question referred

Must Article 5(4) of Regulation (EC) No 1370/2007 ([1]) of 23 October 2007 be interpreted as meaning that national legislation contains a prohibition on directly awarding local public transport services, precluding such direct award even in circumstances in which it would be permitted by EU legislation, where it establishes a general rule that the abovementioned services must be awarded by means of a public call for tenders, or is that the case only if there is a specific prohibition on directly awarding such contracts that also refers to the circumstances in which it is permitted by EU law?

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

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 27 July 2018 — ZW v Deutsche Lufthansa AG

(Case C-498/18)

(2018/C 399/31)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: ZW

Respondent: Deutsche Lufthansa AG

Questions referred

1. Can the period of two years in which to bring an action, laid down in Article 35(1) of the Montreal Convention, be interrupted or suspended?

2. Does the provision contained in Article 35(2) of the Montreal Convention, […] [according to which] … '[t]he method for calculating that period shall be determined by the law of the court seised of the case', allow it to be considered that a national legal provision on when the limitation period begins to run can prevail over the general provision contained in Article 35(1) whereby the limitation period begins with the arrival at the destination?

Request for a preliminary ruling from the Tribunalul Ilfov (Romania) lodged on 13 August 2018 — EP v FO

(Case C-530/18)

(2018/C 399/32)

Language of the case: Romanian

Referring court

Tribunalul Ilfov

Parties to the main proceedings

Applicant at first instance: EP

Respondent at first instance: FO

Questions referred

1. Must Article 15 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 ([1]) be interpreted as establishing an exception to the rule that the national courts of the place where the child is actually resident are to have jurisdiction?

2. Must Article 15 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 be interpreted as meaning that the facts set out by a party to proceedings (namely: the child was born in France, her father is a French citizen, her blood relations in France include two sisters and a brother, a niece (her sister's daughter), her paternal grandfather, her father's current partner and their minor daughter, whereas she has no family ties on her mother's side in Romania, she attends French school, her upbringing and mentality have always been French, the language spoken at home between the parents and by the parents to the child has always been French) are factors indicating that the child has a particular connection with France, and must the national court therefore declare that the French courts are better placed to hear the case?

3. Must Article 15 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 be interpreted as meaning that the procedural differences between the legislation of the two States, such as hearings held *in camera* by specialised judges, are subject to the best interests of the child for the purposes of that provision [of EU law]?

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

Action brought on 12 September 2018 — European Commission v Italian Republic

(Case C-576/18)

(2018/C 399/33)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B. Stromsky and D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by having failed to adopt all the measures necessary to ensure compliance with the judgment of the Court of 29 March 2012 in Case C-243/10, concerning the recovery from beneficiaries of the aid held to be unlawful and incompatible with the common market within the meaning of Commission Decision 2008/854/EC ([1]) of 2 July 2008, the Italian Republic has failed to fulfil its obligations under that decision and Article 260 TFEU;

— order the Italian Republic to pay to the Commission a lump sum, the amount of which is calculated by multiplying a *per diem* amount of EUR 13 892 by the number of days over which the failure to fulfil obligations persists, and representing a minimum of EUR 8 715 000, from the date of delivery of the judgment in Case C-243/10 until the date of judgment in the present case;

— order the Italian Republic to pay to the Commission a penalty on a half yearly basis, fixed by the Commission as from the semester following the date of judgment in the present case and equivalent to EUR 126 840 per day;

— order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

By Decision 2008/854/EC of 2 July 2008, concerning an aid scheme for the hotel industry in Sardinia (Regional Law No 9 of 1998 — misuse of aid measure No 272/98), published in the *Official Journal of the European Union* L 302 of 13 November 2008, the Commission declared that the State aid in question granted by Italy was unlawful and incompatible with the internal market and ordered its recovery.

By judgment of 29 March 2012 in Case C-243/10, *Commission* v *Italy*, the Court declared that Italy had failed in its obligations under that decision by failing to adopt, within the prescribed period, all of the measures necessary to ensure recovery from the beneficiaries of the aid granted in the context of the scheme set out under that decision.

After a period of more than six years since that judgment, despite the numerous requests made by the Commission to the Italian Government, a large part of the aid in question has not yet been recovered. The arguments put forward in that respect by the Italian Government, in particular in relation to pending national proceedings, do not amount to valid justifications for such a failure. It therefore follows that, as at the date of filing of the present action, Italy has not yet recovered all of the aid and has thus not complied in full with the judgment of the Court in Case C-243/10.

The Commission accordingly requests the Court to declare that Italy has infringed Article 260 TFEU and to order it to pay a lump sum and a half-yearly penalty for as long as there is not full compliance with the judgment in Case C-243/10.

([1]) Commission Decision 2008/854/EC of 2 July 2008 on State aid scheme 'Regional Law No 9 of 1998 — misuse of aid measure No 272/98' C 1/04 (ex NN 158/03 and CP 15/2003) (OJ 2008 L 302, p. 9).

Appeal brought on 19 September 2018 by Buonotourist Srl against the judgment of the General Court (Second Chamber) delivered on 11 July 2018 in Case T-185/15, Buonotourist v Commission

(Case C-586/18 P)

(2018/C 399/34)

Language of the case: Italian

Parties

Appellant: Buonotourist Srl (represented by: M. D'Alberti and L. Visone, avvocati)

Other parties to the proceedings: European Commission and Associazione Nazionale Autotrasporto Viaggiatori (ANAV)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— declare, pursuant to Articles 263 and 264 TFEU, that the decision of the European Commission of 19 January 2015 in State aid proceedings SA.35843 (2014/C) (ex 2012/NN) (in respect of EUR 1 111 572,00) is entirely null and void in so far as it finds that the sums awarded by way of compensation in respect of public service obligations within the meaning of Regulation (EEC) No 1191/69 (award of compensation under Article 11 in respect of tariff obligations in the Local Public Transport sector ([1])) are to be held to be a non-notified measure constituting State aid within the meaning of Article 107(1) of the Treaty which is incompatible with the internal market;

— declare, pursuant to Articles 263 and 264 TFEU, that the decision of the European Commission of 19 January 2015 in State aid proceedings SA.35843 (2014/C) (ex 2012/NN) (in respect of EUR 1 111 572,00) is entirely void in so far as it imposes operational measures for the recovery of the aid by the Italian State;

— order the Commission to pay the costs incurred by Buonotourist Srl.

Grounds of appeal and main arguments

The appellant relies on five grounds in support of its appeal, according to which the judgment should be set aside:

I. **First ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the classification of the compensation in question as 'new aid'**

The compensation was awarded to the appellant following a declaratory judgment by the Consiglio di Stato (Council of State, Italy) in 2009 confirming the existence of the right thereto, on the basis of Regulation No 1191/69, in respect of public service tariff obligations. That judgment, given its scope, could never be construed as establishing a compensation measure, having merely served to confirm the existence of that right.

II. **Second ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the statement that the Altmark conditions were not satisfied**

The classification of an economic outlay by the public authorities as compensation automatically precludes the application of the rules regarding State aid. Given the nature of compensation for public service tariff obligations, a company that has discharged those obligations cannot be considered to have gained any advantage. The appellant also analyses the Altmark judgment point by point, in order to demonstrate that the principles set out therein have all been observed.

III. **Third ground of appeal, alleging that the judgment is vitiated by an error of law regarding the assessment that the economic measure is incompatible with the EU rules regarding State aid, and asserting that the measure is not capable of '[distorting] competition'**

The General Court failed to take account of the fact that the Local Public Transport market in Campania during the period relevant to the case (1996 — 2002) was, as it still is today, closed to competition, and that the concessions gave rise to an exclusive right. Accordingly, there could be no competition either 'for the market' or 'in the market'.

IV. **Fourth ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding its confirmation that the decision of the Commission prevails over the judgment of the national court and alleging misapplication of the procedural guarantees provided for by Regulation No 659/1999** ([2]) **(Regulation 2015/1589** ([3])**) and the principle of legitimate expectations**

The General Court failed to take account of the fact that the judgment of the national court had been delivered more than five years before the Commission's decision. Therefore, the case-law relied on by the General Court was not relevant, there being no precedents to the present case. Instead, by applying Regulation No 1191/69, the Council of State had exercised a power reserved for that court. The Commission also cannot claim any exclusive decision-making power in the present case. The long period that had elapsed between the judgment [of the national court], which had applied EU law, and the Commission's decision had established a legitimate expectation. It cannot be claimed that the Council of State was not aware of the rules applied, but merely that the Commission interpreted them differently.

V. **Fifth ground of appeal, alleging that the judgment is vitiated by an improper application of Regulation (EC) No 1370/2007** ([4]) **for the purpose of assessing the compatibility of the aid with EU law and alleging a failure to state reasons**

The Commission made its decision on an incorrect legal basis as Regulation No 1370/2007 was not applicable because it entered into force after the declaratory judgment confirming the right to compensation delivered by the Council of State on the basis of Regulation No 1191/69.

([1]) Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1).

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

([3]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

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

Appeal brought on 19 September 2018 by CSTP Azienda della Mobilità SpA against the judgment of the General Court (Second Chamber) delivered on 11 July 2018 in Case T-186/15, CSTP Azienda della Mobilità v Commission

(Case C-587/18 P)

(2018/C 399/35)

Language of the case: Italian

Parties

Appellant: CSTP Azienda della Mobilità SpA (represented by: G. Capo and L. Visone, avvocati)

Other parties to the proceedings: European Commission and Asstra Associazione Trasporti

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— declare, pursuant to Articles 263 and 264 TFEU, that the decision of the European Commission of 19 January 2015 in State aid proceedings SA.35842 (2014/C) (ex 2012/NN) (in respect of EUR 4 951 838,25) is entirely null and void in so far as it finds that the sums awarded by way of compensation in respect of public service obligations within the meaning of Regulation (EEC) No 1191/69 (award of compensation under Article 11 in respect of tariff obligations in the Local Public Transport sector ([1])) are to be held to be a non-notified measure constituting State aid within the meaning of Article 107(1) of the Treaty which is incompatible with the internal market;

— declare, pursuant to Articles 263 and 264 TFEU, that the decision of the European Commission of 19 January 2015 in State aid proceedings SA.35842 (2014/C) (ex 2012/NN) (in respect of EUR 4 951 838,25) is entirely void in so far as it imposes operational measures for the recovery of the aid by the Italian State;

— order the Commission to pay the costs incurred by CSTP Azienda della Mobilità SpA, under extraordinary administration.

Grounds of appeal and main arguments

The appellant relies on five grounds in support of its appeal, according to which the judgment should be set aside:

I. **First ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the classification of the compensation in question as 'new aid'**

The compensation was awarded to the appellant following a declaratory judgment by the Consiglio di Stato (Council of State, Italy) in 2009 confirming the existence of the right thereto, on the basis of Regulation No 1191/69, in respect of public service tariff obligations. That judgment, given its scope, could never be construed as establishing a compensation measure, having merely served to confirm the existence of that right.

II. **Second ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the statement that the Altmark conditions were not satisfied**

The classification of an economic outlay by public authorities as compensation automatically precludes the application of the rules regarding State aid. Given the nature of compensation for public service tariff obligations, a company that has discharged those obligations cannot be considered to have gained any advantage. The appellant also analyses the Altmark judgment point by point, in order to demonstrate that the principles set out therein have all been observed.

III. **Third ground of appeal, alleging that the judgment is vitiated by an error of law regarding the assessment that the economic measure is incompatible with the EU rules regarding State aid, and asserting that the measure is not capable of '[distorting] competition'**

The General Court failed to take account of the fact that the Local Public Transport market in Campania during the period relevant to the case (1996 — 2002) was, as it still is today, closed to competition, and that the concessions gave rise to an exclusive right. Accordingly, there could be no competition either 'for the market' or 'in the market'.

IV. **Fourth ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding its confirmation that the decision of the Commission prevails over the judgment of the national court and alleging misapplication of the procedural guarantees provided for by Regulation No 659/1999** ([2]) **(Regulation 2015/1589** ([3])**) and the principle of legitimate expectations**

The General Court failed to take account of the fact that the judgment of the national court had been delivered more than five years before the Commission's decision. Therefore, the case-law relied on by the General Court was not relevant, there being no precedents to the present case. Instead, by applying Regulation No 1191/69, the Council of State had exercised a power reserved for that court. The Commission also cannot claim any exclusive decision-making power in the present case. The long period that had elapsed between the judgment [of the national court], which had applied EU law, and the Commission's decision had established a legitimate expectation. It cannot be claimed that the Council of State was not aware of the rules applied, but merely that the Commission interpreted them differently.

V. **Fifth ground of appeal, alleging that the judgment is vitiated by an improper application of Regulation (EC) No 1370/2007** ([4]) **for the purpose of assessing the compatibility of the aid with EU law and alleging a failure to state reasons**

The Commission made its decision on an incorrect legal basis as Regulation No 1370/2007 was not applicable because it entered into force after the declaratory judgment confirming the right to compensation delivered by the Council of State on the basis of Regulation No 1191/69.

([1]) Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1).
([2]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).
([3]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).
([4]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Appeal brought on 21 September 2018 by Brugg Kabel AG and Kabelwerke Brugg AG Holding against the judgment of the General Court (Eighth Chamber) delivered on 12 July 2018 in Case T-441/14 Brugg Kabel AG and Kabelwerke Brugg AG Holding v European Commission

(Case C-591/18 P)

(2018/C 399/36)

Language of the case: German

Parties

Appellants: Brugg Kabel AG and Kabelwerke Brugg AG Holding (represented by: A. Rinne and M. Lichtenegger, Rechtsanwälte)

Other party: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of 12 July 2018 in Case T-441/14 and annul the decision of the respondent of 2 April 2014 (Case AT.39610 — Power Cables) insofar as it relates to the appellants;

— in the alternative, set aside the judgment of the General Court referred to in first point and annul the decision of the respondent referred to in the first point insofar as:

  — the fine against the appellants is set at EUR 8 490 000, and

  — the appellants are ordered to pay the costs

  and reduce the fine in accordance with the submissions made by the appellant at first instance as the General Court sees fit;

— in the further alternative, set aside the judgment of the General Court referred to in the first point and refer the case back to the General Court;

— order the respondent to pay the costs.

Pleas in law and main arguments

In support if its appeal, the appellants rely on six grounds of appeal.

First ground of appeal: infringement of the rights of the defence through communication in English of the request for information and the objections

With regard to the language versions of the request for information and of the statement of objections made available to the appellants, the General Court wrongfully concluded that an excessively low degree of comprehension was sufficient. The proper choice of a language version that is understood by the relevant addressee should allow him to comprehend the claims made against him so that he is fully able to put together a comprehensive defence. It is not enough merely 'sufficiently' to be able to understand the nature and extent of the claims, in order 'usefully to adopt a position'.

Further, the General Court failed to recognise that, in that respect, the usefulness of the replies for the Commission is irrelevant; what is relevant is only whether the affected undertaking was in a position, despite the Commission's refusal to make another language version available, fully to defend itself against those claims.

Second ground of appeal: infringement of the rights of the defence by refusing access to the observations of other undertakings in respect of the objections

The General Court set excessively strict standards as to the requirements for the granting to an affected undertaking of access to the non-confidential replies of other addressees to the statement of objections. An addressee of the statement of objections should be granted access when the affected undertaking shows that, with respect to those claims, there are plausible circumstances in the overall proceedings that therefore make it appear entirely possible that there are exculpatory passages or annexes among the non-confidential replies of another addressee of the statement of objections.

The General Court failed to recognise that it was an infringement of the principles of the rule of law to allow only the Commission to review the replies of other addressees of the statement of objections for (potentially) exculpatory passages or annexes. In that respect, the Commission was acting simultaneously as an investigative/enforcement body, a decision-making body and also as a defence body in the same action, without having the ability to recognise the necessary factual connections.

Third ground of appeal: infringement of the principle of the presumption of innocence by the establishment of the date of commencement of participation in the infringement as 14 December 2001

The General Court applied an insufficiently low standard of proof with regard to the evidence for the commencement of participation in a single and lasting infringement. The Commission should have provided precise, convincing and unanimous evidence justifying its firm belief that the date chosen was the start-date for the participation in the infringement of the competition rules. If the General Court had still had doubts, the benefit of those doubts should have been given to the affected undertaking, in accordance with the principle of *in dubio pro reo*.

The General Court failed to recognise that, for the purposes of rebutting circumstantial evidence, it is sufficient to undermine such evidence with contrary circumstantial evidence. In the interests of the equality of arms, an affected party cannot be required to produce entirely exculpatory evidence in administrative proceedings for the imposition of penalties.

Fourth ground of appeal: distortion of evidence and infringement of the presumption of innocence by the acceptance of uninterrupted participation in the infringement between 12 May 2005 and 8 December 2005

The General Court distorted the evidence relating to the establishment of the uninterrupted participation by the appellants in the infringement when, despite the range of circumstantial evidence provided being contradictory and inconsistent, it arrived at the certain and doubtless conviction that the infringement was continued and uninterrupted.

In that regard, the General Court also failed to recognise the appropriate standard for the rebuttal of circumstantial evidence.

Fifth ground of appeal: Distortion of evidence, infringement of the presumption of innocence and infringement of the principle of proportionality by the establishment of liability on the basis of agreements relating to submarine power cables, home markets and high-volume projects

The General Court applied an insufficiently low standard of proof and distorted the evidence with regard to the appellants' liability for independent and separable parts of the infringement — such as, for example, submarine cables, home markets and high-volume projects — in which the appellants neither participated nor had an interest.

The General Court ignored the disproportionate and inappropriate risks associated with such a broad interpretation of the legal concept of a single and continuing infringement for undertakings that have not taken part in all parts, but that may nonetheless be jointly liable under national law for the harm caused.

Given the current status of the harmonisation of the law of compensation at an EU-level, the recourse to parties who are also jointly liable on a national level is not an appropriate tool sufficiently to compensate the broad liability to third parties.

Sixth ground of appeal: infringement of Article 23(2) and (3) of Regulation 1/2003 ([1]) and the principles of legality, proportionality and *ne bis in idem* when setting the fine

The General Court wrongly established 2004 as a reference year for the value of sales which was neither representative of the appellants, nor illustrative of their genuine size or economic power.

Further, the General Court failed to recognise that, first, the Commission could not rely, for the purposes of justifying liability, on a single and continuing infringement — that is to say, a single cartel — that covered both the A/R configuration and the R-configuration and, second, for the purposes of setting the fine, it was unable artificially to divide again the numerous and supposedly indivisible parts of the infringement.

([1]) OJ L 1, 4.1.2003, p. 1.

Order of the President of the Third Chamber of the Court of 2 August 2018 (request for a preliminary ruling from the Landgericht Berlin — Germany) — flightright GmbH v Iberia Express SA

(Case C-186/17) ([1])

(2018/C 399/37)

Language of the case: German

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

([1]) OJ C 221, 10.7.2017.

Order of the President of the Court of 21 August 2018 (request for a preliminary decision from the Tribunal Superior de Justicia de Galicia — Spain) — Simón Rodríguez Otero v Televisión de Galicia SA, Ministerio Fiscal

(Case C-212/17) ([1])

(2018/C 399/38)

Language of the case: Spanish

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

([1]) OJ C 231, 17.7.2017.

Order of the President of the Court of 2 August 2018 — European Commission v Republic of Slovenia, supported by: Kingdom of Belgium, Federal Republic of Germany, Republic of Estonia, Kingdom of Spain, French Republic, Italian Republic

(Case C-594/17) ([1])

(2018/C 399/39)

Language of the case: Slovene

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

([1]) OJ C 412, 4.12.2017.

Order of the President of the Court of 27 July 2018 — European Commission v Hellenic Republic

(Case C-36/18) ([1])

(2018/C 399/40)

Language of the case: Greek

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

([1]) OJ C 94, 12.3.2018.

Order of the President of the Court of 21 August 2018 — European Commission v Grand-Duchy of Luxembourg

(Case C-86/18) ([1])

(2018/C 399/41)

Language of the case: French

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

([1]) OJ C 161, 7.5.2018.

Order of the President of the Court of 9 August 2018 (request for a preliminary decision from the Corte suprema di cassazione — Italy) — Equitalia centro SpA v Poste Italiane SpA

(Case C-284/18) ([1])

(2018/C 399/42)

Language of the case: Italian

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

([1]) OJ C 249, 16.7.2018.

GENERAL COURT

Judgment of the General Court of 19 September 2018 — HD v Parliament

(Case T-604/16) ([1])

(Civil service — Officials — Remuneration — Family allowances — Household allowance — Education allowance — Dependent child allowance — Conditions for granting — Deduction of an allowance of like nature received from another source — Recovery of undue payments — Decisions to end entitlement to certain allowances — Error of law — Manifest error of assessment)

(2018/C 399/43)

Language of the case: French

Parties

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

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

Re:

Application under Article 270 TFEU seeking annulment, first, of the decisions of the Parliament of 21 September, 5 October, 27 November and 15 December 2015 recovering the amounts alleged to have been unduly received by the applicant in respect of the education allowance, secondly, of the decisions of the Parliament of 5, 13, 23 October, of the 5, 11 and 12 November 2015 recovering the amounts alleged to have been unduly received by her in respect of education allowance and dependent child allowance and depriving her of her right to household allowance and, thirdly, 'in so far as necessary', of the decision of 21 April 2016 rejecting her complaint.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders HD to pay the costs.*

([1]) OJ C 326, 5.9.2016 (case initially registered before the European Union Civil Service Tribunal under Case No F-34/16 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 19 September 2018 — Volkswagen v EUIPO — Paalupaikka (MAIN AUTO WHEELS)

(Case T-623/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark MAIN AUTO WHEELS — Earlier EU figurative marks VW — Absolute ground for refusal — No similarity of the signs — Article 8(1)(b) and (5) of Regulation (EC) No 207/2009 (now Article 8(1)(b) and (5) of Regulation (EU) 2017/1001) — Obligation to state reasons — First sentence of Article 75 of Regulation No 207/2009 (now first sentence of Article 94(1) of Regulation 2017/1001))

(2018/C 399/44)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: H.-P. Schrammek, C. Drzymalla, S. Risthaus and J. Engberding, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Paalupaikka Oy (Iisalmi, Finland)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 1 July 2016 (Case R 2189/2015-4) concerning opposition proceedings between Volkswagen and Paalupaikka.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 383, 17.10.2016.

Judgment of the General Court of 19 September 2018 — Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission

(Case T-39/17) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to preliminary investigations concerning schemes for State aid in the ports sector of all the Member States — Refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Regulation (EC) No 45/2001 — Concept of privacy — Exception concerning the protection of the purpose of inspections, investigations and audits — Application of a general presumption — Overriding public interest)

(2018/C 399/45)

Language of the case: French

Parties

Applicant: Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) (Brest, France) (represented by: J. Vanden Eynde and E. Wauters, lawyers)

Defendant: European Commission (represented by: A. Buchet, B. Stromsky and C. Georgieva- Kecsmar, acting as Agents)

Re:

Application based on Article 263 TFEU, seeking annulment of Commission Decision C(2016) 7755 final of 23 November 2016 refusing to grant the applicant, first, full access to the questionnaire sent to all the Member States, secondly, access to the Member States' replies to that questionnaire, referred to in a letter sent on 8 July 2016 to the French Republic in the context of State aid procedure SA.38398 (2016/C) (ex 2015/E) –Tax treatment of ports in France.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) to pay the costs.*

([1]) OJ C 104, 3.4.2017.

Judgment of the General Court of 20 September 2018 — Kwizda Holding v EUIPO — Dermapharm (UROAKUT)

(Case T-266/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark UROAKUT — Earlier national and international figurative marks UroCys — Relative ground for refusal — Lack of likelihood of confusion — Power to amend decisions — Article 8(1)(b) of Regulation No (EC) 207/2009 (now Article 8 (1)(b) of Regulation (EU) 2017/1001))

(2018/C 399/46)

Language of the case: German

Parties

Applicant: Kwizda Holding GmbH (Vienna, Austria) (represented by: L. Wiltschek, D. Plasser and K. Majchrzak, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Dermapharm GmbH (Vienna) (represented by: H. Kunz-Hallstein and R. Kunz-Hallstein, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 7 March 2017 (Case R 1221/2016-4) concerning opposition proceedings between Dermapharm and Kwizda Holding.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of European Union Intellectual Property Office (EUIPO) of 7 March 2017 (Case R 1221/2016-4);*

2. *Rejects the opposition brought by Dermapharm GmbH;*

3. *Orders EUIPO to bear its own costs and the costs incurred by Kwizda Holding GmbH, including the costs incurred before the Board of Appeal;*

4. *Orders Dermapharm to bear its own costs.*

(1) OJ C 202, 26.6.2017.

Order of the President of the General Court of 12 July 2018 — TE v Commission

(Case T-392/17 R)

(Interim measures — Dismissal of the action in the main proceedings — No need to adjudicate)

(2018/C 399/47)

Language of the case: Czech

Parties

Applicant: TE (represented by J. Bartončík, lawyer)

Defendant: European Commission (represented by J. Baquero Cruz and Z. Malůšková, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU for suspension of the decision to open an external investigation, carried out by the European Anti-Fraud Office (OLAF), [*confidential*], (1) concerning the applicant as a person concerned and relating to [*confidential*]

Operative part of the order

1. *There is no need to adjudicate on the application for interim measures.*

2. *TE shall pay the costs.*

(1) Confidential information omitted.

Order of the President of the General Court of 24 August 2018 — Laboratoire Pareva and Biotech3D v Commission

(Case T-337/18 R and T-347/18 R)

(Interim relief — Regulation (EU) No 528/2012 — Biocidal products — Active substance PHMB (1415; 4.7) — Approval refused — Application for interim measures — Prima facie case — Weighing up of competing interests)

(2018/C 399/48)

Language of the case: English

Parties

Applicant in case T-337/18 R: Laboratoire Pareva (Saint-Martin-de-Crau, France) (represented by: K. Van Maldegem and S. Englebert, lawyers)

Applicants in case T-347/18 R: Laboratoire Pareva (Saint-Martin-de-Crau, France) and Biotech3D Ltd & Co. KG (Gampern, Austria) (represented by: K. Van Maldegem and S. Englebert, lawyers)

Defendant: European Commission (represented by: R. Lindenthal and K. Mifsud-Bonnici, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking suspension of operation of Commission Implementing Decision (EU) 2018/619 of 20 April 2018 not approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 1, 5 and 6 (OJ 2018 L 102, p. 21) and Commission Implementing Regulation (EU) 2018/613 of 20 April 2018 approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 2 and 4 (OJ 2018 L 102, p. 1), and the adoption of any other appropriate interim measures.

Operative part of the order

1. *Cases T-337/18 R and T-347/18 R are joined for the purpose of the present order.*

2. *The applications for interim measures are dismissed.*

3. *The costs are reserved.*

Order of the President of the General Court of 7 September 2018 — Robert v Conseil national de l'ordre des pharmaciens

(Case T-362/18 R)

(Interim measures — Dismissal of the main action — No need to adjudicate)

(2018/C 399/49)

Language of the case: French

Parties

Applicant: Alain Robert (Le Mans, France) (represented by: J.-M. Viala, lawyer)

Defendant: Conseil national de l'ordre des pharmaciens

Re:

Application based on Articles 278 and 279 TFEU, seeking suspension of the operation of the decision of the French Conseil national de l'ordre des pharmaciens of 3 October 2017, upheld by the French Conseil d'État by judgment of 7 February 2018, prohibiting the applicant from practicing as a pharmacist for one year.

Operative part of the order

1. *There is no need to adjudicate on the application for interim measures.*

2. *Mr. Alain Robert shall bear his own costs.*

Order of the President of the General Court of 27 August 2018 — Boyer v Wallis and Futuna

(Case T-475/18 R)

(Interim measures — Public contracts — Application for interim measures — Inadmissibility)

(2018/C 399/50)

Language of the case: French

Parties

Applicant: Boyer (Papeete, France) (represented by T. Dal Farra, lawyer)

Defendant: Territory of the Wallis and Futuna Islands (France)

Re:

Application based on Articles 278 TFEU and 279 TFEU seeking, first, suspension of the operation of the decision of the Territory of the Wallis and Futuna Islands by which it rejected the applicant's tender and awarded the works contract for construction of a commercial marine dock in Leava (France) to another tenderer, and, second, to suspend the signature of the relevant contract.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 11 September 2018 — XG v Commission

(Case T-504/18 R)

(Interim measures — Refusal to grant access to the Commission's premises — Application for interim measures — No interest in obtaining the interim measures sought)

(2018/C 399/51)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: P. Van Nuffel and T. Bohr, acting as Agents)

Re:

Application on the basis of Articles 278 and 279 TFEU seeking, first, suspension of the operation of the Commission's decision of 2 July 2018 confirming its refusal to allow access to its premises and, secondly, an order that the Commission provisionally grant access to its premises.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 16 August 2018 — Neda Industrial Group/Council

(Case T-490/18)

(2018/C 399/52)

Language of the case: English

Parties

Applicant: Neda Industrial Group (Tehran, Iran) (represented by: L. Vidal, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— cancel the decision taken by the Council of the European Union on 6 June 2018 to maintain the sanctions against the applicant; and

— order the Council to pay all of the costs.

Pleas in law and main arguments

The present action seeks the annulment of the Council's decision of 6 June 2018 to maintain the applicant on the list of persons and entities set out in Annex II to Decision 2010/413/CFSP ([1]) and Annex IX to Regulation No 267/2012 ([2]).

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

1. First plea in law, alleging that the contested decision is unlawful due to an error of law.

   — In this regard, the applicant submits that the Council fails to demonstrate that the applicant provides an intentional support for Iran's proliferation-sensitive nuclear activities, which allegedly is the legal ground for the applicant's enlisting in Annex IX of Regulation No 267/2012.

   — The applicant further claims that the lack of communication of any supporting evidence by the Council to the applicant constitutes a violation of the principle of effective judicial protection.

2. Second plea in law, alleging that the contested decision is unlawful due to an error of fact.

   — In this regard, the applicant submits that considering its activities and the services it provides, it is unrelated to sanctioned entities or to any nuclear activities whatsoever.

3. Third plea in law, alleging that the contested decision is unlawful because it infringes the general principle of proportionality.

   — In this regard, the applicant claims that its inclusion in the list of entities subject to restrictive measures and the refusal to withdraw the applicant from that list are neither appropriate nor necessary to reach the objectives pursued by Regulation No 267/2012, and have caused disproportionate damages to the applicant.

([1]) Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 27.7.2010, p. 39).

([2]) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1).

Action brought on 24 August 2018 — Hungary v Commission

(Case T-505/18)

(2018/C 399/53)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér, M.M. Tátrai and A. Pokoraczki, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in the part concerning Hungary which excludes from EU financing the aid granted to producer groups which have qualified recognition;

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested exclusion to which the contested decision refers is unlawful, since the aid given to the producer groups affected was granted in accordance with EU law.

   The applicant relies on the nature of the recognition of producer groups. It takes the view that, in deciding on the reimbursement of the national financial aid granted to those producer groups, the Commission failed to take into account the fact that the producer groups that have been given qualified recognition meet the requirements under Regulation (EC) No 1698/2005.

2. Second plea in law, alleging that the contested exclusion to which the contested decision refers is unlawful since, by virtue of the principles of sincere cooperation, proportionality, legal certainty and the protection of legitimate expectations, the exclusion ought to have been reduced or omitted.

   According to the applicant, the contested exclusion is unlawful since, by virtue of the principles of sincere cooperation, proportionality, legal certainty and the protection of legitimate expectations, the exclusion ought to have been attenuated or omitted, since the rules of EU law applicable in relation to the assessment of the contested national law and practice are not absolutely clear — thereby making the interpretation put forward by Hungary possible — and given that the Commission was already aware of that national law and practice and failed to raise any objection in that respect.

Action brought on 24 August 2018 — Czech Republic v European Commission

(Case T-509/18)

(2018/C 399/54)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek, J. Pavliš, O. Serdula and J. Vláčil, acting as Agents)

Defendant: European Commission

Form of order sought

— annul Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as it excludes expenditure of a total of EUR 151 116,65 incurred by the Czech Republic, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of Article 52(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy ('Regulation No 1306/2013'). The Commission incorrectly considers that the time between visits of the control bodies to an agricultural undertaking may not exceed the time laid down in Article 25 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation No 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance ('Regulation No 809/2014').

2. Second plea in law: infringement of the principle of the protection of legitimate expectations. Even if there was an infringement of Regulation No 809/2014 in this case (*quod non*), the Czech Republic was entitled to have the legitimate expectation that its system of checks was consistent with EU law on the basis of the Commission's conclusion from the previous audit accepting that on-the-spot checks in the Czech Republic were carried out in accordance with EU law.

3. Third plea in law: infringement of Article 52(1) and (2) of Regulation No 1306/2013. Even if there was an infringement of Regulation No 809/2014 on the part of the Czech Republic in this case (*quod non*), the Commission also included in the calculation of the financial correction the resources paid to agricultural undertakings for which there was demonstrably no infringement of Regulation No 809/2014 in the on-the-spot checks. The Commission thus also imposed a financial correction with respect to expenditure which could not be regarded as unjustifiably incurred and from which there was no risk to the EU funds.

Action brought on 30 August 2018 — Luxembourg v Commission

(Case T-516/18)

(2018/C 399/55)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: D. Holderer, acting as Agent, and D. Waelbroeck, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

— primarily, annul the Commission decision of 20 June 2018 concerning the alleged State aid SA.44888 which, it is claimed, was implemented by the Grand Duchy of Luxembourg in favour of Engie;

— in the alternative, annul the Commission decision of 20 June 2018 concerning the alleged State aid SA.44888 which, it is claimed, was implemented by the Grand Duchy of Luxembourg in favour of Engie in so far as that decision orders the recovery of the aid;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 107 of the Treaty on the Functioning of the European Union (TFEU), in that the Commission has not demonstrated that the measures in question are selective.

2. Second plea in law, alleging infringement of Article 107 TFEU, in that the Commission has not demonstrated the existence of any advantage in favour of Engie.

3. Third plea in law, alleging infringement of Articles 4 and 5 of the Treaty on European Union (TEU), in so far as the Commission is in fact implementing disguised tax harmonisation.

4. Fourth plea in law, alleging infringement of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU (OJ 2015 L 248, p. 9) and of the rights of the defence.

5. Fifth plea in law, raised in the alternative and alleging infringement of Article 16 of the abovementioned Regulation 2015/1589, in so far as the Commission has ordered recovery of the aid in breach of fundamental principles of EU law.

Action brought on 31 August 2018 — YG v Commission

(Case T-518/18)

(2018/C 399/56)

Language of the case: English

Parties

Applicant: YG (represented by: S. Rodrigues and A. Champetier, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, first, the defendant's decision dated 13 November 2017 not to include the applicant in the list of promoted officials;

— annul, subsequently, the defendant's decision dated 17 May 2018 rejecting his complaint against the decision dated 13 November 2017;

— order the defendant to reimburse the applicant's incurred legal 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 defendant violated Article 45 of the Staff Regulations of Officials of the European Union. The contested decision was based on certain manifest errors of assessment; furthermore, it failed to provide sufficient reasons and did not prove that an examination of the applicant's merits was carried out in accordance with the principle of equal treatment.

2. Second plea in law, alleging that the defendant violated the principle of good administration as protected by Article 41 of the Charter of Fundamental Rights of the European Union, by virtue of its lack of diligence in the drafting and substantiation of the contested decision.

Action brought on 3 September 2018 — Global Silicones Council and Others v ECHA

(Case T-519/18)

(2018/C 399/57)

Language of the case: English

Parties

Applicants: Global Silicones Council (Washington, D.C., United States) and 6 others (represented by: R. Cana, F. Mattioli, G. David, lawyers, and D. Abrahams, Barrister)

Defendant: European Chemicals Agency

Form of order sought

The applicants claim that the Court should:

— declare the application admissible and well-founded;

— annul the contested decision, ([1]) in so far as it includes all three of the substances Octamethylcyclotetrasiloxane ('D4'), Decamethylcyclopentasiloxane ('D5') and Dodecamethylcyclohexasiloxane ('D6') in the candidate list of substances of very high concern;

— alternatively, annul the contested decision with regard to one or more of those inclusions in the candidate list;

— order the defendant to pay the costs of these proceedings; and

— take such other or further measures as justice may require.

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 defendant manifestly erred in its assessment of the Bioaccumulative ('B') properties of D4, D5 and D6, and in its assessment of the Toxic ('T') properties of D5 and D6 and exceeded its competence as well as breached Article 59 of Regulation 1907/2006:

   — by relying on the MSC and RAC opinions without making its own assessment of the information at hand and thereby importing the vitiating errors in those opinions;

   — by concluding that D4, D5 and D6 meet the vPvB criteria in Annex XIII although persistence (P) and bioaccumulation (B) were not established for the same compartment;

   — by not taking into consideration the specific nature of D4, D5 and D6 (their 'hybrid' nature) when applying the criteria laid down in Annex XIII for bioaccumulation;

   — by reaching conclusions on the bioaccumulation (B/vB) of D4 and D5 which the evidence relied upon is not capable of sustaining;

   — by failing to assess the new evidence on bioaccumulation (B/vB) for D4 and D5 available to it after the MSC and RAC opinions;

   — by failing to take into account all relevant information in concluding on the bioaccumulation (vB) of D6;

   — by failing to consider the information on the toxicity of D5 itself and instead identifying D5 as PBT based on the presence of D4 as an impurity, and by identifying D5 as PBT without the specific limits on the content of D4 agreed upon by the MSC;

— by failing to consider the information on the toxicity of D6 itself and instead identifying D6 as PBT based on the presence of D4 as an impurity, and by identifying D6 as PBT without the specific limits on the content of D4 agreed upon by the MSC.

2. Second plea in law, alleging that the contested decision breaches the principle of proportionality, since the inclusion in the candidate list would have exceeded the limits of what is appropriate and necessary to attain the objective pursued and is not the least onerous measure to which the defendant could have had recourse.

(1) Decision published on 27 June 2018 of the European Chemicals Agency 'Inclusion of substances of very high concern in the Candidate List for eventual inclusion in Annex XIV', in so far as it includes three substances Octamethylcyclotetrasiloxane (D4), Decamethylcyclopentasiloxane ('D5') and Dodecamethylcyclohexasiloxane ('D6') in the Candidate List of substances of very high concern pursuant to Article 59 of the Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 30.12.2006 L 396, p 1)

Action brought on 29 August 2018 — Billa v EUIPO — Boardriders IP Holdings (Billa)

(Case T-524/18)

(2018/C 399/58)

Language of the case: English

Parties

Applicant: Billa AG (Wiener Neudorf, Austria) (represented by: J. Rether, M. Kinkeldey, J. Rosenhäger, S. Brandstätter, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Boardriders IP Holdings LLC (Huntington Beach, California, United States)

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 Billa — Application for registration No 11 592 623

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 June 2018 in Case R 2235/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Articles 8(1)(b), 46 and 71 of Regulation No 2017/1001 of the European Parliament and of the Council in connection with Articles 2(2)(i) and 27(2) of Commission Delegated Regulation No 2017/1430.

Action brought on 4 September 2018 — ENGIE Global LNG Holding and Others v Commission

(Case T-525/18)

(2018/C 399/59)

Language of the case: French

Parties

Applicants: ENGIE Global LNG Holding Sàrl (Luxembourg, Luxembourg), Engie Invest International SA (Luxembourg), ENGIE (Courbevoie, France) (represented by: B. Le Bret and M. Struys, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded;

— principally, annul the contested decision;

— in the alternative, annul Article 2 of that decision in so far as it orders recovery of the aid;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action brought against the Commission decision of 20 June 2018 on State aid SA.44888 (2016/C) (ex 2016/NN) implemented by Luxembourg in favour of ENGIE, the applicants rely on nine pleas in law.

1. First plea in law, alleging that the Commission erred in law in the application of the first criterion of the concept of State aid concerning the existence of State intervention.

2. Second plea in law, alleging infringement by the Commission of the notion of advantage, in that it mistakes the concept of advantage for that of selectivity, finds that there is an economic advantage on the basis of the combined effect of measures which individually comply with general law, and analyses that effect on the basis of a distortion of the facts and several errors in law and assessment.

3. Third plea in law, based on errors in law and assessment allegedly made by the Commission when defining the two reference frameworks relied on alternatively (general and narrow) to demonstrate the existence of a discriminatory derogation in favour of, first, the holding companies (LNG Holding and CEF) and, second, the ENGIE group.

4. Fourth plea in law, based on errors in law and appraisal that the Commission allegedly made in its assessment of the existence of derogations and discriminatory treatment in favour of, first, the holding companies and, second, the ENGIE group.

5. Fifth plea in law, based on errors in law and appraisal allegedly made by the Commission in its classification of a selective advantage resulting from the non-application of the Luxembourg rule relating to abuse of rights.

6. Sixth plea in law, alleging that the Commission erred in law in its classification of the measures at issue as individual aid.

7. Seventh plea in law, alleging infringement by the Commission of the distribution of powers between Member States and the European Union, as well as misuse of the power conferred upon it in respect of State aid for the purpose of intervening in measures of a general nature which come within the scope of national policies in the field of direct taxation.

8. Eighth plea in law, alleging infringement by the Commission of the procedural rights of the applicants and its failure to comply with the duty to state reasons under Article 296 TFEU.

9. Ninth plea in law, relied on in the alternative and alleging infringement of Article 16 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9) inasmuch as the Commission ordered recovery of the alleged aid at issue in breach of general principles of EU law.

Action brought on 26 June 2018 — LL-Carpenter v Commission

(Case T-531/18)

(2018/C 399/60)

Language of the case: Czech

Parties

Applicant: LL-Carpenter s.r.o. (Prague, Czech Republic) (represented by: J. Buřil, lawyer)

Defendant: European Commission

Form of order sought

— annul Decision C(2018) 4138 final of the European Commission of 26 June 2018 in Case AT.40037 — Carpenter/Subaru rejecting, in accordance with Article 13 of 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 ('Regulation No 1/2003') and Article 7(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty ('Regulation No 773/2004'), the applicant's complaint pursuant to Article 7 of Regulation No 1/2003 dated 6 September 2012 alleging infringement of Article 101 of the Treaty on the Functioning of the European Union, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is vitiated by an error consisting in incorrect legal assessment and manifestly incorrect assessment of the facts.

   — The European Commission assessed the facts incorrectly in reaching the conclusion that the anti-competitive conduct of which the applicant was accused (as far as the Czech Republic was concerned) had been dealt with by the national economic competition authority in the Czech Republic, and made an incorrect legal assessment of the case to the effect that the conditions for the application of Article 13 of Regulation No 1/2003 were satisfied (as far as the Czech Republic was concerned).

   — The European Commission did not examine thoroughly all the factual and legal circumstances communicated to it by the applicant, and for that reason assessed the facts incorrectly in reaching the conclusion that the applicant's written observations did not lead to a different evaluation of the complaint and that the probability that the occurrence of an infringement of Article 101 TFEU would be ascertained appeared to be low, and made an incorrect legal assessment of the case to the effect that the conditions for the application of Article 7(2) of Regulation No 773/2004 were satisfied.

2. Second plea in law, alleging that the contested decision is vitiated by procedural error consisting in the fact that the European Commission does not set out appropriate reasoning in the decision.

   — The European Commission did not state what priorities it proceeded from in deciding that it would not carry out further investigations in the case, merely referring to the anticipated high cost of further investigations.

— The European Commission did not explain how it assessed the evidence or for what reason it did not take into consideration the factual and legal circumstances communicated to it by the applicant, or why it based its decision to reject the complaint solely on assertions taken from the written observations of the company against which the complaint was directed.

Action brought on 6 September 2018 — Wanda Films and Wanda Visión v EUIPO — Dalian Wanda Group Co. (WANDA FILMS)

(Case T-533/18)

(2018/C 399/61)

Language of the case: English

Parties

Applicants: Wanda Films, SL (Pozuelo de Alarcón, Spain) ans Wanda Visión, SA (Pozuelo de Alarcón) (represented by: C. Planas Silva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dalian Wanda Group Co. Ltd (Dalian, China)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Wanda Films, SL

Trade mark at issue: Application for European Union word mark WANDA FILMS — Application for registration No 13 912 829

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 June 2018 in Case R 401/2017-5

Form of order sought

The applicant claims that the Court should:

— admit the present application, the arguments and documents (including the ones presented with this application and the ones presented by the applicant during the opposition and appeal proceedings);

— override the contested decision;

— issue a decision that admits the registration of the trade mark defended by the applicant with the present application.

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 11 September 2018 — Société des produits Nestlé v EUIPO — European Food (fitness)

(Case T-536/18)

(2018/C 399/62)

Language of the case: English

Parties

Applicant: Société des produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz, A. Lambrecht, C. Elkemann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: European Food SA (Pântășești, Romania)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark fitness — European Union trade mark No 2 470 326

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 June 2018 in Case R 755/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— dismiss the appeal against the Cancellation Division's decision 5802 C of 18 October 2013;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 72(6) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 95(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(c) in conjunction with Article 59(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(b) in conjunction with Article 59(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 14 September 2018 — Dickmanns v EUIPO

(Case T-538/18)

(2018/C 399/63)

Language of the case: German

Parties

Applicant: Sigrid Dickmanns (Gran Alacant, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Form of order sought

The applicant claims that the Court should:

— annul EUIPO's determination communicated by its letter of 14 December 2017 that the applicant's contract for temporary employment would end on 30 June 2018 and, to the extent necessary for the annulment of the determination referred to above, also annul the determinations communicated in EUIPO's letters of 23 November 2013 and 4 June 2014;

— order EUIPO to pay to the applicant compensation of a reasonable amount, at the Court's discretion, in respect of the non-pecuniary and immaterial loss caused to the applicant by EUIPO's decision referred to in the first point; and

— order EUIPO to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law:

1. Manifest error of assessment, failure to exercise the Office's discretion, infringement of the principles of non-discrimination and equal treatment, infringement of the principle of non-arbitrariness

   The applicant complains that EUIPO unlawfully failed to exercise its discretion to renew for a second time the applicant's employment contract in accordance with Article 2(f) of the Conditions of Employment of Other Servants of the European Union ('CEOS'), or, in the alternative, failed to act a reasonable period of time prior to the end of the employment contract.

2. Infringement of the Guidelines for the renewal of temporary agent contracts ('the Guidelines'), the principle of sound administration, the principles of non-discrimination and equal treatment and the principle that the ending of the contract of a temporary agent under Article 2(a) or 2(f) CEOS requires a justifying ground (a '*iusta causa*') and infringement of Article 30 of the Charter of Fundamental Rights of the European Union ('the Charter'), Council Directive 1999/70/EC, ([1]) the Framework Agreement (in particular Articles 1(b) and 5.1 thereof) and Article 4 of ILO Convention 158

   The applicant takes the view that it should no longer have been permissible to exercise the 'Termination Clause' in her contract following the adoption of the Guidelines, as, once they have been introduced, they represent the applicable procedural methods of EUIPO with regard to the renewal of temporary agent contracts, and therefore prohibit the exercise of the 'Termination Clause'.

   Further, the applicant claims that a justifying ground for the termination of the contract must correspond to the budgetary nature of the relevant position.

3. Infringement of the Guidelines, which also constitutes a significant procedural defect, infringement of the principles of non-discrimination and equal treatment, of the principle of sound administration and sound financial management, of the right of every person to be heard, before any individual measure which would affect him or her adversely is taken (Article 41(2)(a) of the Charter), of the Office's duty to have regard for the welfare of its staff and of the duty to take into account the legitimate interests of the applicant, manifest error of assessment in its balancing of the applicant's interests with those of the service, infringement of the principle of non-arbitrariness

4. Infringement of the second and third sentences of the first paragraph of Article 8 CEOS and of the prohibition on repeated fixed-term employment

   In this regard the applicant claims that, in a flagrant effort to avoid the legal consequences of the third sentence of the first paragraph of Article 8 CEOS, EUIPO repeatedly entered into contracts for the applicant's fixed-term employment pursuant to Article 2(b) and 2(a) CEOS, despite the fact that the applicant's activities remained unchanged during that time. Consequently, the applicant's first contract remains valid for an unlimited period of time without a termination clause.

5. Unlawful retention of a termination clause in the context of the Reinstatement Protocol and infringement of legitimate expectations, the applicant's legitimate interests and the duty to have regard for the welfare of its staff when exercising the clause

   By its fifth plea in law, the applicant complains that EUIPO should no longer have been able to exercise the termination clause after the long period of time that had elapsed since the signing of the contract in 2005.

6. Infringement of the applicant's legitimate expectations, of the duty of the Office to have regard for the applicant's welfare and failure to take into account her legitimate interests, manifest error of assessment in the assessment of the interests of the service

   In the sixth plea in law, the applicant complains that EUIPO's decision not to renew her employment contract infringes her legitimate expectations, the Office's duty to have regard for the applicant's welfare and the applicant's legitimate interests. At the same time, taking account of the applicant's very good performance, it also represents a manifest error of assessment with regard to the interests of the service.

7. Infringement of the terms of the termination clause in Article 5 of the applicant's employment contract

   In the seventh plea in law, the applicant complains that, when EUIPO exercised the termination clause, it wrongly applied Article 47(b)(ii) CEOS, instead of Article 47(c)(i), as is laid down in the termination clause, and that the notice period should have been 10 months, instead of the 6 month period established by EUIPO.

(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 L 175, 10.7.1999, p. 43).

Action brought on 11 September 2018 — ASL Aviation Holdings and ASL Airlines (Ireland)/ Commission

(Case T-540/18)

(2018/C 399/64)

Language of the case: English

Parties

Applicants: ASL Aviation Holdings DAC (Swords, Ireland) and ASL Airlines (Ireland) Ltd (Swords) (represented by: N. Travers, Senior Counsel, H. Kelly, K. McKenna and R. Scanlan, Solicitors)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— hold the defendant liable on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU for the damages incurred by the applicants in the sum of approximately EUR 263,6 million, or such other sum as the Court may rule to be appropriate, arising from the unlawfulness of Commission Decision C(2013) 431, Case COMP/M.6570 UPS/TNT Express, of 30 January 2013 prohibiting a concentration between UPS and TNT Express NV and consequently the Commission's breach of ASL's entitlement to sound administration;

— hold the defendant liable to pay default interest, starting from the date of delivery of the Court's judgment determining this action until full payment, at the rate set by the European Central Bank for its main refinancing operations, increased by two percentage points, on the sum of EUR 263,6 million or on such other sum as the Court may rule to be appropriate; and

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

Pleas in law and main arguments

The applicants seek compensation for the loss allegedly suffered as a consequence of Commission Decision C(2013) 431, Case COMP/M.6570 UPS/TNT Express ('the Decision') which was annulled by the judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144.

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

1. First plea in law, alleging that the Decision is tainted with serious breaches of rules of law that are intended to confer protection on individuals, including the applicants, as a direct consequence of which the applicants were precluded from realising the benefits associated with agreements they had entered into in November 2012.

2. Second plea in law, alleging that the defendant's conduct in significantly failing to follow proper procedures in its merger-control review assessment of the notified concentration, which resulted in the annulment of the Decision, so departed from an approach commensurate with the applicants' rights to good administration and due diligence by the defendant in the exercise of that assessment, as guaranteed by Article 18(3) of Council Regulation (EC) No 139/2004 ([1]), Article 41 of the Charter of Fundamental Rights of the European Union and by the general principles of EU law, that it breached rules of law that are intended to confer protection on all individuals directly affected by the Decision, including the applicants.

3. Third plea in law, alleging that the Decision is further tainted with manifest and serious defects affecting the defendant's assessment therein of the notified concentration, as claimed by UPS in the action for non-contractual liability brought by it against the Commission in Case T-834/17 — upon which, in the interest of the sound and efficient administration of justice, the applicants rely, insofar as is necessary to sustain their damages claim — with regard to: the price concentration analysis, the efficiencies analysis, the assessment of FedEx's competitiveness and the assessment of the closeness of competition made by the defendant in the Decision.

4. Fourth plea in law, alleging that the applicants are entitled to damages for the non-contractual liability of the defendant resulting from its having, in unlawfully making the Decision and preventing the notified concentration, infringed the applicants' freedom to conduct a business and their right to property as protected by Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, as well as by the general principles of EU law.

5. Fifth plea in law, alleging that these breaches in turn caused the applicants' losses, because, had they not occurred, the applicants would have been in a position to realise the benefits of the agreements they had entered into in November 2012, with the result that the applicants should now be put, by way of reparatory compensation, in the position they would have been in but for the unlawfulness of the Decision, and this action is the sole means of ensuring that they can be so compensated.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

Action brought on 17 September 2018 — Wanda Films and Wanda Visión v EUIPO — Dalian Wanda Group Co. (wanda films)

(Case T-542/18)

(2018/C 399/65)

Language of the case: English

Parties

Applicants: Wanda Films, SL (Pozuelo de Alarcón, Spain) and Wanda Visión, SA (Pozuelo de Alarcón) (represented by: C. Planas Silva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dalian Wanda Group Co. Ltd (Dalian, China)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Wanda Films, SL

Trade mark at issue: Application for European Union figurative mark wanda films — Application for registration No 13 902 994

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 July 2018 in Case R 829/2017-5

Form of order sought

The applicant claims that the Court should:

— admit the present application, the arguments and documents (including the ones presented with this application and the ones presented by the applicant during the opposition and appeal proceedings);

— override the contested decision;

— issue a decision that admits the registration of the figurative trademark defended by the applicant with the present application.

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 17 September 2018 — XK v Commission

(Case T-543/18)

(2018/C 399/66)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare and order that the individual decision to cease to grant reimbursement of the education costs connected with the applicant's children as from the 2017/18 school year, put into effect for the first time via the applicant's salary statement of November 2017, with reasons given in an email of 7 November 2017, is annulled;

— Order the defendant 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 infringement of Article 3(1) of Annex VII to the Staff Regulations of Officials of the European Union and of the general implementing provisions for the reimbursement of medical expenses, in so far as the defendant's changed interpretation infringed acquired rights, legitimate expectations, legal certainty and the principle of sound administration.

2. Second plea in law, alleging infringement of the rights of the child, the right to family life and the right to education.

3. Third plea in law, alleging infringement of the principles of equal treatment and non-discrimination.

4. Fourth plea in law, alleging failure effectively to weigh up interests and failure to comply with the principle of proportionality, by which the contested decision is vitiated.

Action brought on 13 September 2018 — ArcelorMittal Bremen v Commission

(Case T-544/18)

(2018/C 399/67)

Language of the case: German

Parties

Applicant: ArcelorMittal Bremen GmbH (Bremen, Deutschland) (represented by: S. Altenschmidt und D. Jacob, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare, pursuant to Article 265 TFEU, that the Commission infringed Article 52(2) of Commission Regulation (EU) No 389/2013 ([1]) by failing to instruct the central administrator to take into consideration the change to the national allocation table in the EUTL in respect of the applicant's installation with EU-ID DE000000000000060;

— alternatively, annul the decision adopted by the Commission on 31 August 2018 on the applicant's request of 14 May 2018;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea in law:

Infringement of EU law

The applicant submits that the Commission is obliged to adopt the decision, pursuant to Article 52(2) of Regulation No 389/2013, since the change to the national allocation table is consistent with the requirements of EU law.

Further, the applicant submits that, in accordance with the rules laid down in Commission Decision 2011/278/EU, ([2]) the product-related historical activity level for sintered ore is to be determined on the basis of the quantities of sintered ore which are weighed when leaving the sinter installation.

Finally, the applicant takes the view that sintered ore which, after its production in the context of burden preparation in a blast furnace, is rescreened and again placed in a sinter installation as recycling material, should not be deducted when determining the activity level of the sinter installation.

([1]) Commission Regulation (EU) No 359/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ 2013, L 122, p. 1).

([2]) Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011, L 130, p. 1).

Action brought on 17 September 2018 — XM and Others v Commission

(Case T-546/18)

(2018/C 399/68)

Language of the case: French

Parties

Applicants: XM and 26 other applicants (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul the decisions adversely affecting the various applicants consisting of the decisions of the appointing authority not to grant them reimbursement of school fees for the year 2017/2018, which were made in various ways according to the specific circumstances of each of the applicants:

— either by means of an individual decision (and more specifically an email) specifically indicating the refusal of the reimbursement;

— or by the reference to 'processed' in their Sysper account and considered as a rejection decision by the applicant since the subsequent salary slip, in the following month (at the earliest on the 10th with regard to the date of transmission of the salary slips) does not include any reimbursement or only a reimbursement of transport costs;

— or by a total failure to process the application which is considered, after four months from the date of its submission, to be implicitly rejected;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

— First plea in law, alleging infringement of Article 3(1) of Annex VII to the Staff Regulations of the European Union and of the general implementing provisions for the reimbursement of medical expenses, in so far as the amended interpretation by the defendant was in breach of acquired rights, legitimate expectations, legal certainty and the principle of good administration.

— Second plea in law, alleging infringement of the rights of the child, and of the right to family life and the right to education.

— Third plea in law, alleging breach of the principles of equal treatment and non-discrimination,

— Fourth plea in law, alleging that the contested decision is vitiated by a failure to effectively weigh up the interests of the applicants and a failure to comply with the principle of proportionality.

Action brought on 19 September 2018 — Sensient Colors Europe v Commission

(Case T-556/18)

(2018/C 399/69)

Language of the case: German

Parties

Applicant: Sensient Colors Europe GmbH (Geesthacht, Germany) (represented by: M. Hagenmeyer, D. Zechmeister und W. Berlit, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare as null and void the defendant's decision of 31 July 2018 (DG Sante/E2/RP/amf(2018)4523972) to classify as invalid the request to place a novel food on the Union market as well as the update of the Union list provided for in Article 9 of Regulation (EU) 2015/2283 of the European Parliament and of the Council ([1]) with document number NF 2018/0355, and end the application procedure; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, namely infringement of Article 6(1) and 6(5) of Commission Implementing Regulation (EU) 2017/2469, ([2]) and Article 10(1) in conjunction with Article 10(3) and Article 11(1) or in conjunction with Article 12(2) of Regulation 2015/2283.

It submits, inter alia, that the defendant incorrectly assumed that the colouring extract based on dried butterfly pea flowers, on which the application is based, did not fall within the scope of Regulation 2015/2283 and was a food additive within the meaning of Article 3(2)(a) of Regulation No 1333/2008.

(1) Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (OJ 2015, L 327, p. 1).

(2) Commission Implementing Regulation (EU) 2017/2469 of 20 December 2017 laying down administrative and scientific requirements for applications referred to in Article 10 of Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel food (OJ 2017, L 351, p. 64).

Action brought on 20 September 2018 — LG Electronics v EUIPO — Beko (BECON)

(Case T-557/18)

(2018/C 399/70)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, South Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Beko plc (Watford, United Kingdom)

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 BECON — Application for registration No 13 142 336

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 11 July 2018 in Case R 41/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision as far as the appeal against the decision of the Opposition Division was dismissed;

— order EUIPO to pay the costs.

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 13 September 2018 — Atos Medical v EUIPO — Andreas Fahl Medizintechnik-Vertrieb (medical plasters)

(Case T-559/18)

(2018/C 399/71)

Language in which the application was lodged: German

Parties

Applicant: Atos Medical GmbH (Troisdorf, Germany) (represented by: K. Middelhoff, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Andreas Fahl Medizintechnik-Vertrieb GmbH (Cologne, Germany)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1339246-0009

Contested decision: Decision of the Third Board of Appeal of EUIPO of 29 June 2018 in Case R 2215/2016-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs,

Should the other party intervene in the proceedings, the applicant further claims that the Court should:

— order the other party to bear its own costs.

Pleas in law

— Infringement of Article 4(1) of Council Regulation (EC) No 6/2002;

— Infringement of Articles 5 and 6 of Council Regulation (EC) No 6/2002;

— Infringement of Article 25(1) of Council Regulation (EC) No 6/2002.

Action brought on 13 September 2018 — Atos Medical v EUIPO — Andreas Fahl Medizintechnik-Vertrieb (medical plasters)

(Case T-560/18)

(2018/C 399/72)

Language in which the application was lodged: German

Parties

Applicant: Atos Medical GmbH (Troisdorf, Germany) (represented by: K. Middelhoff, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Andreas Fahl Medizintechnik-Vertrieb GmbH (Cologne, Germany)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1339246-0004

Contested decision: Decision of the Third Board of Appeal of EUIPO of 29 June 2018 in Case R 2216/2016-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs,

Should the other party intervene in the proceedings, the applicant further claims that the Court should:

— order the other party to bear its own costs.

Pleas in law

— Infringement of Article 4(1) of Council Regulation (EC) No 6/2002;

— Infringement of Articles 5 and 6 of Council Regulation (EC) No 6/2002;

— Infringement of Article 25(1) of Council Regulation (EC) No 6/2002.

Action brought on 21 September 2018 — YP v Commission

(Case T-562/18)

(2018/C 399/73)

Language of the case: French

Parties

Applicant: YP (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Form of order sought

Declare and rule,

— that the decision of the Commission of 18 September 2017 to impose the penalty of a reprimand on the applicant is annulled;

— that the defendant is ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging a manifest error of assessment committed by the defendant in considering that the applicant had failed to fulfil his obligations flowing from Article 12 of the Staff Regulations of Officials of the European Union.

Order of the General Court of 11 September 2018 — Medora Therapeutics v EUIPO — Biohealth Italia (LITHOREN)

(Case T-776/17) ([1])

(2018/C 399/74)

Language of the case: English

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

([1]) OJ C 63, 19.2.2018.

Order of the General Court of 11 September 2018 — Reiner Stemme Utility Air Systems v AESA

(Case T-371/18) ([1])

(2018/C 399/75)

Language of the case: English

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

([1]) OJ C 276, 6.8.2016.

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