Official Journal of the European Union

C 408

English edition

Information and Notices

Volume 61

12 November 2018

Contents

EN

For reasons of protection of personal data and/or confidentiality, some information contained in this issue cannot be disclosed anymore and therefore a new authentic version has been published.

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2018/C 408/01)

Last publication

OJ C 399, 5.11.2018

Past publications

OJ C 392, 29.10.2018

OJ C 381, 22.10.2018

OJ C 373, 15.10.2018

OJ C 364, 8.10.2018

OJ C 352, 1.10.2018

OJ C 341, 24.9.2018

These texts are available on:

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

GENERAL COURT

Assignment of Judges to Chambers

(2018/C 408/02)

On 11 October 2018, the plenary meeting of the General Court decided, following the departure of Judge Xuereb, on a proposal from the President presented in accordance with Article 13(2) of the Rules of Procedure, to amend the decision assigning judges to Chambers of 21 September 2016, ([1]) as amended on 8 June 2017 ([2]) and on 4 October 2017, ([3]) for the period from 11 October 2018 to 31 August 2019 and to assign the judges to Chambers as follows:

First Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Valančius, Mr Nihoul, Mr Svenningsen and Mr Öberg, Judges.

First Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;

(a) Mr Nihoul and Mr Svenningsen, Judges;

(b) Mr Valančius and Mr Öberg, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Prek, President of the Chamber, Mr Buttigieg, Mr Schalin, Mr Berke and Ms Costeira, Judges.

Second Chamber, sitting with three Judges:

Mr Prek, President of the Chamber;

(a) Mr Schalin and Ms Costeira, Judges;

(b) Mr Buttigieg and Mr Berke, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Frimodt Nielsen, President of the Chamber, Mr Kreuschitz, Mr Forrester, Ms Półtorak and Mr Perillo, Judges.

Third Chamber, sitting with three Judges:

Mr Frimodt Nielsen, President of the Chamber;

(a) Mr Forrester and Mr Perillo, Judges;

(b) Mr Kreuschitz and Ms Półtorak, Judges.

([1]) OJ C 392, 24.10.2016, p. 2.
([2]) OJ C 213, 3.7.2017, p. 2.
([3]) OJ C 382, 13.11.2017, p. 2.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Mr Schwarcz, Mr Iliopoulos, Mr Calvo-Sotelo Ibáñez-Martín and Ms Reine, Judges.

Fourth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

(a) Mr Schwarcz and Mr Iliopoulos, Judges;

(b) Mr Calvo-Sotelo Ibáñez-Martín and Ms Reine, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Gratsias, President of the Chamber, Ms Labucka, Mr Papasavvas, Mr Dittrich and Mr Ulloa Rubio, Judges.

Fifth Chamber, sitting with three Judges:

Mr Gratsias, President of the Chamber;

(a) Ms Labucka and Mr Dittrich, Judges;

(b) Ms Labucka and Mr Ulloa Rubio, Judges;

(c) Mr Dittrich and Mr Ulloa Rubio, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Berardis, President of the Chamber, Mr Papasavvas, Mr Spielmann, Mr Csehi and Ms Spineanu-Matei, Judges.

Sixth Chamber, sitting with three Judges:

Mr Berardis, President of the Chamber;

(a) Mr Papasavvas and Ms Spineanu-Matei, Judges;

(b) Mr Spielmann and Mr Csehi, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Ms Tomljenović, President of the Chamber, Mr Bieliūnas, Ms Marcoulli, Mr Passer and Mr Kornezov, Judges.

Seventh Chamber, sitting with three Judges:

Ms Tomljenović, President of the Chamber;

(a) Mr Bieliūnas and Mr Kornezov, Judges;

(b) Mr Bieliūnas and Mr Marcoulli, Judges;

(c) Ms Marcoulli and Mr Kornezov, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Collins, President of the Chamber, Ms Kancheva, Mr Barents, Mr Passer and Mr De Baere, Judges.

Eighth Chamber, sitting with three Judges:

Mr Collins, President of the Chamber;

(a) Mr Barents and Mr Passer, Judges;

(b) Ms Kancheva and Mr De Baere, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Mr Gervasoni, President of the Chamber, Mr Madise, Mr da Silva Passos, Ms Kowalik-Bańczyk and Mr Mac Eochaidh, Judges.

Ninth Chamber, sitting with three Judges:

Mr Gervasoni, President of the Chamber;

(a) Mr Madise and Mr da Silva Passos, Judges;

(b) Ms Kowalik-Bańczyk et Mr Mac Eochaidh, Judges.EN

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 13 September 2018 (request for a preliminary ruling from the Cour administrative — Luxembourg) — UBS Europe SE, formerly UBS (Luxembourg) SA, Alain Hondequin and Others

(Case C-358/16) [1]

(Reference for a preliminary ruling — Approximation of laws — Directive 2004/39/EC — Article 54(1) and (3) — Scope of the obligation of professional secrecy on national financial supervisory authorities — Finding of the absence of good repute — Cases covered by criminal law — Charter of Fundamental Rights of the European Union — Articles 47 and 48 — Rights of the defence — Access to the file)

(2018/C 408/03)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Appellants: UBS Europe SE, formerly UBS (Luxembourg) SA, Alain Hondequin and Others

Other parties to the proceedings: DV, EU, Commission de surveillance du secteur financier (CSSF), Ordre des avocats du barreau de Luxembourg

Operative part of the judgment

Article 54 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning that

— *the phrase 'cases covered by criminal law' in paragraphs 1 and 3 of that article does not cover the situation in which the authorities established by the Member States for the purpose of fulfilling the functions set out in that directive adopt a measure, such as that at issue in the main proceedings, consisting in prohibiting a person from holding a post as director or any other post subject to accreditation in an undertaking supervised by that regulator and ordering him to resign from all related posts at the earliest opportunity, on the ground that that person no longer fulfils the requirement of good repute provided for in Article 9 of that directive, which is part of the measures that the competent authorities are required to take when exercising the powers attributed to them under Title II of that directive. That provision, in providing that the obligation of professional secrecy may exceptionally be disregarded in such cases, covers the communication or use of confidential information for the purpose of conducting proceedings or imposing sanctions in accordance with national criminal law;*

— *the obligation of professional secrecy provided for in paragraph 1 of that article, read in conjunction with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be guaranteed and implemented in such a way as to reconcile it with the rights of the defence. Accordingly, it is for the competent national court, when a competent authority invokes that obligation in order to refuse to disclose documents in its possession that are not in the file concerning the person who is the subject of a measure adversely affecting him, to ascertain whether that information is objectively connected to the complaints upheld against him and, if this should be the case, to weigh up the interest of the person in question in having access to the information necessary for him to be in a position to exercise fully his rights of defence and the interests in connection with maintaining the confidentiality of the information covered by the obligation of professional secrecy, before taking a decision whether to communicate each of the requested pieces of information.*

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Fifth Chamber) of 19 September 2018 — European Commission v French Republic, IFP Énergies nouvelles

(Case C-438/16 P) ([1])

(Appeal — State aid — State aid scheme implemented by France — Unlimited State guarantee conferred on the Institut français du pétrole (IFP) by the grant of the status of publicly owned industrial and commercial establishment (EPIC) — Decision declaring that measure as partially not constituting State aid and as partially constituting State aid compatible with the Internal market, subject to certain conditions — Concept of 'aid scheme' — Presumption of the existence of an advantage — Burden and standard of proof)

(2018/C 408/04)

Language of the case: French

Parties

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

Other parties to the proceedings: French Republic (represented by: D. Colas and J. Bousin, acting as Agents), IFP Énergies nouvelles (represented by: E. Morgan de Rivery and E. Lagathu, avocats)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 26 May 2016, France and IFP Énergies nouvelles v Commission (T-479/11 and T-157/12, EU:T:2016:320), in so far as, by that judgment, the General Court annulled Article 1(3), (4) and (5) and Articles 2 to 12 of Commission Decision 2012/26/EU of 29 June 2011 on State aid granted by France to the Institut Français du Pétrole (Case C 35/08 (ex NN 11/08));*

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

3. *Reserves the costs.*

([1]) OJ C 392, 24.10.2016.

Judgment of the Court (Fourth Chamber) of 20 September 2018 (request for a preliminary ruling from the Conseil d'État — France) — Carrefour Hypermarchés SAS and Others v Ministre des Finances et des Comptes publics

(Case C-510/16) ([1])

(Reference for a preliminary ruling — State aid — Article 108(3) TFEU — Regulation (EC) No 794/2004 — Notified aid schemes — Article 4 — Alteration to existing aid — Significant increase in revenue from taxes allocated to financing of aid schemes in comparison with the projections notified to the European Commission — 20 % threshold of the original budget)

(2018/C 408/05)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Carrefour Hypermarchés SAS, Fnac Paris, Fnac Direct, Relais Fnac, Codirep, FNAC Périphérie

Defendant: Ministre des Finances et des Comptes publics

Operative part of the judgment

An increase in the revenue from taxes financing several authorised aid schemes in comparison with the projections notified to the European Commission, such as that at issue in the main proceedings, constitutes an alteration to existing aid, within the meaning of Article 1(c) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] and of the first sentence of Article 4(1) of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation No 659/1999, read in the light of Article 108(3) TFEU, unless that increase remains below the 20 % threshold laid down in the second sentence of Article 4(1) of that latter regulation.

That threshold must be assessed, in a situation such as that at issue in the main proceedings, in relation to the revenue assigned to the aid schemes concerned and not in relation to the aid actually allocated.

([1]) OJ C 462, 12.12.2016.

Judgment of the Court (Fourth Chamber) of 20 September 2018 (request for a preliminary ruling from the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi — Spain) — Montte SL v Musikene

(Case C-546/16) ([1])

(Reference for a preliminary ruling — Article 267 TFEU — Jurisdiction of the Court — Whether the referring body qualifies as a court or tribunal — Directive 2014/24/EU — Public procurement procedures — Open procedure — Award criteria — Technical evaluation — Minimum score threshold — Price-based evaluation)

(2018/C 408/06)

Language of the case: Spanish

Referring court

Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi

Parties to the main proceedings

Appellant: Montte SL

Respondent: Musikene

Operative part of the judgment

1. *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent evaluation based on both technical criteria and price.*

2. *Article 66 of Directive 2014/24 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent stages of the procurement procedure, regardless of the number of tenderers remaining.*

(1) OJ C 22, 23.1.2017.

Judgment of the Court (Fifth Chamber) of 13 September 2018 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Enzo Buccioni v Banca d'Italia

(Case C-594/16) (1)

(Reference for a preliminary ruling — Approximation of laws — Directive 2013/36/EU — Article 53 (1) — Obligation of professional secrecy on national authorities charged with prudential supervision of credit institutions — Credit institution which is being compulsorily wound up — Disclosure of confidential information in civil or commercial proceedings)

(2018/C 408/07)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Enzo Buccioni

Defendant: Banca d'Italia

Intervener: Banca Network Investimenti SpA, in liquidation

Operative part of the judgment

Article 53(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, must be interpreted as not precluding the competent authorities of the Member States from disclosing confidential information to a person who so requests in order to be able to institute civil or commercial proceedings with a view to protecting proprietary interests which were prejudiced as a result of the compulsory liquidation of a credit institution. However, the request for disclosure must relate to information in respect of which the applicant puts forward precise and consistent evidence plausibly suggesting that it is relevant for the purposes of civil or commercial proceedings, the subject matter of which must be specifically identified by the applicant and without which the information in question cannot be used. It is for the competent authorities and courts to weigh up the interest of the applicant in having the information in question and the interests connected with maintaining the confidentiality of the information covered by the obligation of professional secrecy, before disclosing each piece of confidential information requested.

(1) OJ C 63, 27.2.2017.

Judgment of the Court (Fifth Chamber) of 13 September 2018 (request for a preliminary ruling from the Upper Tribunal (Administrative Appeals Chamber) — United Kingdom — Rafal Prefeta v Secretary of State for Work and Pensions

(Case C-618/16) ([1])

(Reference for a preliminary ruling — Freedom of movement for persons — Article 45 TFEU — 2003 Act of Accession — Chapter 2 of Annex XII — Whether a Member State may derogate from Article 7(2) of Regulation (EU) No 492/2011 and Article 7(3) of Directive 2004/38/EC — Polish national who has not completed a period of 12 months' registered work in the host Member State)

(2018/C 408/08)

Language of the case: English

Referring court

Upper Tribunal (Administrative Appeals Chamber)

Parties to the main proceedings

Appellant: Rafal Prefeta

Respondent: Secretary of State for Work and Pensions

Operative part of the judgment

Chapter 2 of Annex XII to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as permitting, during the transitional period provided for by that act, the United Kingdom of Great Britain and Northern Ireland to exclude a Polish national, such as Mr Rafal Prefeta, from the benefits of Article 7(3) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, when that person has not satisfied the requirement imposed by national law of having completed an uninterrupted 12-month period of registered work in the United Kingdom.

([1]) OJ C 38, 6.2.2017.

Judgment of the Court (Fifth Chamber) of 20 September 2018 (request for a preliminary ruling from the Finanzgericht Münster — Germany) — EV v Finanzamt Lippstadt

(Case C-685/16) ([1])

(Reference for a preliminary ruling — Articles 63 to 65 TFEU — Free movement of capital — Deduction of taxable profits — Shareholdings of a parent company in a capital company whose management and registered office are located in a non-member State — Dividends distributed to the parent company — Tax deductibility subject to stricter conditions than deduction of profits from shareholdings in a non-tax-exempt capital company governed by national law)

(2018/C 408/09)

Language of the case: German

Referring court

Finanzgericht Münster

Parties to the main proceedings

Applicant: EV

Defendant: Finanzamt Lippstadt

Operative part of the judgment

Articles 63 to 65 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which subjects a deduction of profits from shareholdings in a capital company with its management and head office in a non-member State to stricter conditions than a deduction of profits from shareholdings in a non-exempt capital company governed by national law.

(1) OJ C 144, 8.5.2017.

Judgment of the Court (Tenth Chamber) of 13 September 2018 — Birkenstock Sales GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-26/17 P) (1)

(Appeal — EU trade mark — International registration designating the European Union — Figurative mark representing a pattern of wavy, crisscrossing lines — Regulation (EC) No 207/2009 — Article 7(1) (b) — Absolute ground for refusal — Distinctive character — Surface pattern)

(2018/C 408/10)

Language of the case: German

Parties

Appellant: Birkenstock Sales GmbH (represented by: C. Menebröcker and V. Töbelmann, Rechtsanwälte)

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

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Birkenstock Sales GmbH to pay the costs.*

(1) OJ C 151, 15.5.2017.

Judgment of the Court (Fifth Chamber) of 19 September 2018 (request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia — Spain) — Isabel González Castro v Mutua Umivale, Prosegur España SL, Instituto Nacional de la Seguridad Social (INSS)

(Case C-41/17) (1)

(Reference for a preliminary ruling — Directive 92/85/EEC — Articles 4, 5 and 7 — Protection of the safety and health of workers — Worker who is breastfeeding — Night work — Shift work performed in part at night — Risk assessment of her work — Prevention measures — Challenge by the worker concerned — Directive 2006/54/EC — Article 19 — Equal treatment — Discrimination on grounds of sex — Burden of proof)

(2018/C 408/11)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Applicant: Isabel González Castro

Defendants: Mutua Umivale, Prosegur España SL, Instituto Nacional de la Seguridad Social (INSS)

Operative part of the judgment

1. *Article 7 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding must be interpreted as applying to a situation, such as that at issue in the main proceedings, where the worker concerned does shift work during which only part of her duties are performed at night.*

2. *Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) must be interpreted as applying to a situation, such as that at issue in the main proceeding, in which a worker, who has been refused a medical certificate indicating the existence of a risk to breastfeeding posed by her work and, consequently, an allowance in respect of risk during breastfeeding, challenges, before a court or other competent authority of the Member State concerned, the risk assessment of her work, provided that that worker adduces factual evidence to suggest that that evaluation did not include a specific assessment taking into account her individual situation and thus permitting the presumption that there is direct discrimination on the grounds of sex, within the meaning of Directive 2006/54, which it is for the referring court to ascertain. It is then for the respondent to prove that that risk assessment did actually include such a specific assessment and that, accordingly, the principle of non-discrimination was not infringed.*

(1) OJ C 121, 18.4.2017.

Judgment of the Court (Second Chamber) of 20 September 2018 (request for a preliminary ruling from the Fővárosi Ítélőtábla — Hungary) — OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt v Teréz Ilyés, Emil Kiss

(Case C-51/17) (1)

(Reference for a preliminary ruling — Consumer protection — Unfair terms — Directive 93/13/EEC — Scope — Article 1(2) — Mandatory statutory or regulatory provisions — Article 3(1) — Concept of 'contractual term which has not been individually negotiated' — Term incorporated in the contract after its conclusion following the intervention of the national legislature — Article 4(2) — Plain and intelligible drafting of a term — Article 6(1) — Examination by the national court of its own motion as to whether a term is unfair — Loan contract denominated in a foreign currency concluded between a seller or supplier and a consumer)

(2018/C 408/12)

Language of the case: Hungarian

Referring court

Fővárosi Ítélőtábla

Parties to the main proceedings

Applicants: OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt

Defendants: Teréz Ilyés, Emil Kiss

Operative part of the judgment

1. *The concept of 'term which has not been individually negotiated' in Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it covers inter alia a contractual term amended by a mandatory national statutory provision adopted after the conclusion of a contract with a consumer, for the purpose of removing a term which is null and void from that contract.*

2. *Article 1(2) of Directive 93/13 must be interpreted as meaning that the scope of that directive does not cover terms which reflect mandatory provisions of national law, inserted after the conclusion of a loan contract concluded with a consumer and intended to remove a term which is null and void from that contract, by imposing an exchange rate set by the National Bank. However, a term relating to the foreign exchange risk, such as that at issue in the main proceedings, is not excluded from that scope under that provision.*

3. *Article 4(2) of Directive 93/13 must be interpreted as meaning that the requirement for a contractual term to be drafted in plain intelligible language requires financial institutions to provide borrowers with adequate information to enable them to take well-informed and prudent decisions. In that regard, that requirement means that a term relating to the foreign exchange risk must be understood by the consumer both at the formal and grammatical level and also in terms of its actual effects, so that the average consumer, who is reasonably well informed and reasonably observant and circumspect, would not only be aware of the possibility of a depreciation of the national currency in relation to the foreign currency in which the loan was denominated, but would also be able to assess the potentially significant economic consequences of such a term with regard to his financial obligations.*

4. *Article 4 of Directive 93/13 must be interpreted as requiring that the plainness and intelligibility of the contractual terms be assessed by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract, notwithstanding that some of those terms have been declared or presumed to be unfair and, accordingly, annulled at a later time by the national legislature.*

5. *Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that it is for the national court to identify of its own motion, in the place of the consumer in his capacity as an applicant, any unfairness of a contractual term, provided that it has available to it the legal and factual elements necessary for that task.*

([1]) OJ C 144, 8.5.2017.

Judgment of the Court (Second Chamber) of 13 September 2018 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — Autorità Garante della Concorrenza e del Mercato v Wind Tre SpA, formerly Wind Telecomunicazioni SpA (C-54/17), Vodafone Italia SpA, formerly Vodafone Omnitel NV (C-55/17)

(Joined Cases C-54/17 and C-55/17) ([1])

(References for a preliminary ruling — Consumer protection — Directive 2005/29/EC — Unfair commercial practices — Article 3(4) — Scope — Articles 5, 8 and 9 — Aggressive commercial practices — Annexe I, point 29 — Commercial practices which are aggressive in all circumstances — Inertia selling — Directive 2002/21/EC — Directive 2002/22/EC — Telecommunication services — Sale of SIM (Subscriber Identity Module) cards containing certain pre-installed and pre-activated services — Failure to give prior information to consumers)

(2018/C 408/13)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità Garante della Concorrenza e del Mercato

Respondents: Wind Tre SpA, formerly Wind Telecomunicazioni SpA (C-54/17), Vodafone Italia SpA, formerly Vodafone Omnitel NV (C-55/17)

Interveners: Autorità per le Garanzie nelle Communicazioni (C-54/17), Altroconsumo, Vito Rizzo (C-54/17), Telecom Italia SpA

Operative part of the judgment

1. *The concept of 'inertia selling' within the meaning of Annex I, point 29 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) must be interpreted as including, subject to verifications by the referring court, conduct, such as that at issue in the main proceedings, whereby a telecommunications operator sells SIM (Subscriber Identity Module) cards on which services such as internet browsing services and voicemail services are pre-loaded and pre-activated without first sufficiently informing the consumer of that pre-loading and pre-activation, nor the cost of those services.*

2. *Article 3(4) of Directive 2005/29 must be interpreted as not precluding national rules under which conduct constituting inertia selling, within the meaning of Annex I, point 29 of Directive 2005/29, such as that at issue in the main proceedings, must be assessed in the light of the provisions of that directive, with the result that, according to that legislation, the ARN, within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, is not competent to penalise such conduct.*

(1) OJ C 239, 24.7.2017.

Judgment of the Court (Grand Chamber) of 11 September 2018 (request for a preliminary ruling from the Bundesarbeitsgericht — Germany) — IR v JQ

(Case C-68/17) (1)

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment — Occupational activities within churches and other organisations the ethos of which is based on religion or belief — Occupational requirements — Acting in good faith and with loyalty to the ethos of the church or organisation — Definition — Difference of treatment on the basis of religion or belief — Dismissal of an employee of the Catholic faith performing managerial duties due to a second, civil marriage entered into after a divorce)

(2018/C 408/14)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: IR

Defendant: JQ

Operative part of the judgment

1. *The second subparagraph of Article 4(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning:*

— *first, that a church or other organisation the ethos of which is based on religion or belief and which manages a hospital in the form of a private limited company cannot decide to subject its employees performing managerial duties to a requirement to act in good faith and with loyalty to that ethos that differs according to the faith or lack of faith of such employees, without that decision being subject, where appropriate, to effective judicial review to ensure that it fulfils the criteria laid down in Article 4(2) of that directive; and*

— *second, that a difference of treatment, as regards a requirement to act in good faith and with loyalty to that ethos, between employees in managerial positions according to the faith or lack of faith of those employees is consistent with that directive only if, bearing in mind the nature of the occupational activities concerned or the context in which they are carried out, the religion or belief constitutes an occupational requirement that is genuine, legitimate and justified in the light of the ethos of the church or organisation concerned and is consistent with the principle of proportionality, which is a matter to be determined by the national courts.*

2. *A national court hearing a dispute between two individuals is obliged, where it is not possible for it to interpret the applicable national law in a manner that is consistent with Article 4(2) of Directive 2000/78, to provide, within the limits of its jurisdiction, the legal protection which individuals derive from the general principles of EU law, such as the principle prohibiting discrimination on grounds of religion or belief, now enshrined in Article 21 of the Charter of Fundamental Rights of the European Union, and to guarantee the full effectiveness of the rights that flow from those principles, by disapplying, if need be, any contrary provision of national law.*

(1) OJ C 144, 8.5.2017.

Judgment of the Court (Seventh Chamber) of 12 September 2018 (request for a preliminary ruling from the Curtea de Apel Bucureşti — Romania) — Siemens Gamesa Renewable Energy România SRL, formerly Gamesa Wind România SRL v Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

(Case C-69/17) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Right of deduction — Acquisitions made by a taxpayer declared 'inactive' by the tax authorities — Refusal of the right of deduction — Principles of proportionality and neutrality of VAT)

(2018/C 408/15)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Appellant: Siemens Gamesa Renewable Energy România SRL, formerly Gamesa Wind România SRL

Respondents: Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, in particular Articles 213, 214 and 273 thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which it is permissible for the tax authorities to refuse, on account of a failure to submit tax returns, a taxable person which has made acquisitions in the period during which its value added tax identification number was revoked the right to deduct value added tax on those acquisitions using value added tax returns filed — or invoices issued — after the reactivation of its identification number, on the sole ground that those acquisitions took place in the period during which its value added tax identification number was de-activated and where the substantive requirements have been satisfied and the right of deduction is not being invoked fraudulently or abusively.

(1) OJ C 144, 8.5.2017.

Judgment of the Court (Fourth Chamber) of 26 September 2018 — Koninklijke Philips NV, Philips France SAS v European Commission

(Case C-98/17 P) (1)

(Appeal — Agreements, decisions and concerted practices — European market for smart card chips — Network of bilateral contacts — Exchanges of commercially sensitive information — Restriction of competition 'by object' — Single and continuous infringement — Participation in the infringement and awareness, by a participant in some of the bilateral contacts, of the other bilateral contacts — Judicial review)

(2018/C 408/16)

Language of the case: English

Parties

Appellants: Koninklijke Philips NV, Philips France SAS (represented by: J.K. de Pree, A.M. ter Haar and T.M. Snoep, advocaten)

Other party to the proceedings: European Commission (represented by: A. Biolan, A. Dawes and J. Norris-Usher, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Koninklijke Philips NV and Philips France SAS to pay the costs.*

(1) OJ C 121, 18.4.2017.

Judgment of the Court (Fourth Chamber) of 26 September 2018 — Infineon Technologies AG v European Commission

(Case C-99/17 P) (1)

(Appeal — Agreements, decisions and concerted practices — European market for smart card chips — Network of bilateral contacts — Exchanges of commercially sensitive information — Challenge of the authenticity of the evidence — Rights of the defence — Restriction of competition 'by object' — Single and continuous infringement — Judicial review — Unlimited jurisdiction — Scope — Calculation of the amount of the fine)

(2018/C 408/17)

Language of the case: English

Parties

Appellant: Infineon Technologies AG (represented by: M. Dreher, T. Lübbig and M. Klusmann, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: A. Biolan, A. Dawes and J. Norris-Usher, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 15 December 2016, Infineon Technologies v Commission (T-758/14, not published, EU:T:2016:737), inasmuch as the General Court rejected the appellant's claim in the alternative for a reduction of the amount of the fine that the European Commission imposed on it;*

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

3. *Refers the case back to the General Court for it to give judgment on the claim for a reduction of the amount of the fine imposed on Infineon Technologies AG in the light of the sixth plea;*

4. *Reserves the costs.*

(1) OJ C 168, 29.5.2017.

Judgment of the Court (Fifth Chamber) of 19 September 2018 (request for a preliminary ruling from the Juzgado de Primera Instancia nº 5 de Cartagena — Spain) — Bankia SA v Juan Carlos Marí Merino, Juan Pérez Gavilán, María Concepción Marí Merino

(Case C-109/17) (1)

(Reference for a preliminary ruling — Directive 2005/29/EC — Unfair business-to-consumer commercial practices — Loan agreement secured by a mortgage — Mortgage enforcement proceedings — Revaluation of immovable property prior to its sale by auction — Validity of the enforceable instrument — Article 11 — Adequate and effective means to combat unfair commercial practices — National court prohibited from assessing the existence of unfair commercial practices — Impossibility of staying the mortgage enforcement proceedings — Articles 2 and 10 — Code of good conduct — Non-legally binding nature of that code)

(2018/C 408/18)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia nº 5 de Cartagena

Parties to the main proceedings

Applicant: Bankia SA

Defendants: Juan Carlos Marí Merino, Juan Pérez Gavilán, María Concepción Marí Merino

Operative part of the judgment

1. *Article 11 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which prohibits the court hearing mortgage enforcement proceedings from reviewing, of its own motion or at the request of the parties, the validity of the enforceable instrument in light of the existence of unfair commercial practices and, in any event, prohibits the court having jurisdiction to rule on the substance regarding the existence of those practices from adopting any interim measures, such as staying the mortgage enforcement proceedings.*

2. *Article 11 of Directive 2005/29 must be interpreted as not precluding national legislation which does not confer a legally binding nature on a code of conduct such as those referred to in Article 10 of that directive.*

(1) OJ C 161, 22.5.2017.

Judgment of the Court (Fourth Chamber) of 20 September 2018 — Kingdom of Spain v European Commission

(Case C-114/17 P) (1)

(Appeal — State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less urbanised areas of the Comunidad Autónoma de Castilla-La Mancha (Autonomous Community of Castilla-La Mancha, Spain) — Subsidies granted to operators of digital terrestrial television platforms — Decision declaring the aid incompatible in part with the internal market — Concept of 'State aid' — Advantage — Service of general economic interest — Delimitation — Discretion of the Member States)

(2018/C 408/19)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: M. J. García-Valdecasas Dorrego, acting as Agent)

Other party to the proceedings: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

(1) OJ C 129, 24.4.2017.

Judgment of the Court (Fifth Chamber) of 26 September 2018 (request for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen — Belgium) — Van Gennip BVBA, Antonius Johannes Maria ten Velde, Original BVBA, Antonius Cornelius Ignatius Maria van der Schoot

(Case C-137/17) (1)

(Reference for a preliminary ruling — Directives 2006/123/EC, 2007/23/EC and 2013/29/EU — Placing on the market of pyrotechnic articles — Free movement of pyrotechnic articles compliant with the requirements of those directives — National legislation laying down restrictions on the storage and sale of those articles — Criminal penalties — Twofold authorisation scheme — Directive 98/34/EC — Concept of 'technical regulation')

(2018/C 408/20)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Van Gennip BVBA, Antonius Johannes Maria ten Velde, Original BVBA, Antonius Cornelius Ignatius Maria van der Schoot

Operative part of the judgment

1. *The principle of free movement of pyrotechnic articles, as provided for, inter alia, in Article 6(2) of Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles, does not preclude national legislation which restricts the possession or use by consumers and the sale to consumers of fireworks of which the pyrotechnic composition exceeds 1 kg, to the extent that such legislation is appropriate to guarantee public order and security and does not go beyond what is necessary to protect those fundamental interests, which it is for the referring court to ascertain.*

2. *Article 10 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as meaning that it does not preclude national legislation which makes the storage of pyrotechnic articles compliant with Directive 2007/23 and intended for the retail trade subject to dual authorisation, namely a federal authorisation and a regional environmental permit, provided that all the conditions set out in Article 10(2) of that directive are satisfied, which it is for the referring court to ascertain.*

3. *Article 20 of Directive 2007/23 and Article 1(5) of Directive 2006/123 must be interpreted as meaning that Member States can adopt criminal law penalties provided that, as regards Directive 2007/23, those penalties are effective, proportionate and dissuasive and, as regards Directive 2006/123, the national rules of criminal law do not have the effect of circumventing the rules contained in that directive.*

([1]) OJ C 178, 6.6.2017.

Judgment of the Court (Tenth Chamber) of 13 September 2018 — ANKO AE Antiprosopeion, Emporiou kai Viomichanias v European Commission

(Case C-172/17 P) ([1])

(Appeal — Arbitration clauses — Pocemon Agreement concluded under the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration 2007-2013 — Eligible costs — European Commission decision — Obligation to reimburse sums paid — Counter-claim)

(2018/C 408/21)

Language of the case: Greek

Parties

Appellant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (represented by: S. Paliou, dikigoros)

Other party to the proceedings: European Commission (represented by: R. Lyal and A. Kyratsou, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders ANKO AE Antiprosopeion, Emporiou kai Viomichanias to pay the costs.*

([1]) OJ C 168, 29.5.2017.

Judgment of the Court (Tenth Chamber) of 13 September 2018 — ANKO AE Antiprosopeion, Emporiou kai Viomichanias v European Commission

(Case C-173/17 P) ([1])

(Appeal — Arbitration clauses — Doc@Hand Agreement concluded under the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration 2007-2013 — Eligible costs — European Commission decision — Obligation to reimburse sums paid — Counter-claim)

(2018/C 408/22)

Language of the case: Greek

Parties

Appellant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (represented by: S. Paliou, dikigoros)

Other party to the proceedings: European Commission (represented by: R. Lyal and A. Kyratsou, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders ANKO AE Antiprosopeion, Emporiou kai Viomichanias to pay the costs.*

([1]) OJ C 168, 29.5.2017.

Judgment of the Court (Fourth Chamber) of 26 September 2018 (request for a preliminary ruling from the Raad van State — Netherlands) — X v Belastingdienst/Toeslagen

(Case C-175/17) ([1])

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Directive 2005/85/EC — Article 39 — Directive 2008/115/EC — Article 13 — Charter of Fundamental Rights of the European Union — Article 18, Article 19(2) and Article 47 — Right to an effective remedy — Principle of non-refoulement — Decision rejecting an application for asylum and imposing an obligation to return — National legislation providing for a second level of jurisdiction — Automatic suspensory effect limited to the action at first instance)

(2018/C 408/23)

Language of the case: Dutch

Referring court

Raad van State — Netherlands

Parties to the main proceedings

Applicant: X

Defendant: Belastingdienst/Toeslagen

Operative part of the judgment

Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

([1]) OJ C 178, 6.6.2017.

Judgment of the Court (Second Chamber) of 13 September 2018 (request for a preliminary ruling from the Sąd Rejonowy w Siemianowicach Śląskich — Poland) — Profi Credit Polska S.A. w Bielsku Białej v Mariusz Wawrzosek

(Case C-176/17) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Directive 2008/48/EC — Order for payment procedure founded on a promissory note that secures the obligations arising from a consumer credit agreement)

(2018/C 408/24)

Language of the case: Polish

Referring court

Sąd Rejonowy w Siemianowicach Śląskich

Parties to the main proceedings

Applicant: Profi Credit Polska S.A. w Bielsku Białej

Defendant: Mariusz Wawrzosek

Operative part of the judgment

Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits issue of an order for payment founded on a valid promissory note that secures a claim arising from a consumer credit agreement, where the court dealing with an application for an order for payment does not have the power to examine whether the terms of that agreement are unfair, if the detailed rules for exercising the right to lodge an objection against such an order do not enable observance of the rights which the consumer derives from that directive to be ensured.

([1]) OJ C 300, 11.9.2017.

Judgment of the Court (Fourth Chamber) of 26 September 2018 (request for a preliminary ruling from the Raad van State — Netherlands) — X, Y v Staatssecretaris van Veiligheid en Justitie

(Case C-180/17) ([1])

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Directive 2013/32/EU — Article 46 — Directive 2008/115/EC — Article 13 — Charter of Fundamental Rights of the European Union — Article 18, Article 19(2) and Article 47 — Right to an effective remedy — Principle of non-refoulement — Decision rejecting an application for international protection and imposing an obligation to return — National legislation providing for a second level of jurisdiction — Automatic suspensory effect limited to the action at first instance)

(2018/C 408/25)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: X, Y

Defendant: Staatssecretaris van Veiligheid en Justitie

Operative part of the judgment

Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection and Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

([1]) OJ C 202, 26.6.2017.

Judgment of the Court (Sixth Chamber) of 20 September 2018 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Alexander Mölk v Valentina Mölk

(Case C-214/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Hague Protocol on the law applicable to maintenance obligations — Article 4(3) — Application for maintenance lodged by the maintenance creditor with the competent authority of the State where the debtor has his habitual residence — Decision which has acquired the force of res judicata — Subsequent application, lodged with the same authority by the debtor, seeking a reduction in the amount of maintenance awarded — Appearance entered by the creditor — Determination of the applicable law)

(2018/C 408/26)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: Alexander Mölk

Respondent: Valentina Mölk

Operative part of the judgment

1. *On a proper construction of Article 4(3) of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009, the result of a situation such as that at issue in the main proceedings, where the maintenance to be paid was set by a decision, which has acquired the force of res judicata, in response to an application by the creditor and, pursuant to Article 4(3) of that protocol, on the basis of the law of the forum designated under that provision, is not that that law governs a subsequent application for a reduction in the amount of maintenance lodged by the debtor against the creditor with the courts of the State where that debtor is habitually resident.*

2. *Article 4(3) of the Hague Protocol of 23 November 2007 must be interpreted as meaning that a creditor does not 'seise', for the purposes of that article, the competent authority of the State where the debtor has his habitual residence when that creditor, in the context of proceedings initiated by the debtor before that authority, enters an appearance, for the purposes of Article 5 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, contending that the application should be dismissed on the merits.*

([1]) OJ C 283, 28.8.2017.

Judgment of the Court (Ninth Chamber) of 13 September 2018 (request for a preliminary ruling from the Okresní soud v Českých Budějovicích — Czech Republic) — Česká pojišťovna a.s. v WCZ, spol. s r.o.

(Case C-287/17) ([1])

(Reference for a preliminary ruling — Company law — Combating late payments in commercial transactions — Directive 2011/7/EU — Article 6(1) and (3) — Reimbursement of debt recovery costs — Costs resulting from reminders sent on account of late payment by a debtor)

(2018/C 408/27)

Language of the case: Czech

Referring court

Okresní soud v Českých Budějovicích

Parties to the main proceedings

Applicant: Česká pojišťovna a.s.

Defendant: WCZ, spol. s r.o.

Operative part of the judgment

Article 6 of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions must be interpreted as recognising that a creditor claiming compensation for the costs associated with sending reminders to a debtor due to the latter's late payment is entitled to obtain reasonable compensation, on that basis and in addition to the fixed amount of EUR 40 laid down in Article 6(1) of that directive, for the purposes of Article 6(3) thereof, in respect of the part of those costs which exceeds that fixed amount.

([1]) OJ C 269, 14.8.2017.

Judgment of the Court (First Chamber) of 12 September 2018 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Helga Löber v Barclays Bank plc

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

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — Special jurisdiction — Article 5(3) — Jurisdiction in tort, delict or quasi-delict — Place where the harmful event occurred or may occur — Consumer, domiciled in a Member State, who bought, through a bank established in that Member State, securities issued by a bank established in another Member State — Jurisdiction to hear and determine the tort action brought by that consumer against the bank concerned)

(2018/C 408/28)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Helga Löber

Defendant: Barclays Bank plc

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted to the effect that in a situation, such as that in the main proceedings, in which an investor brings, on the basis of the prospectus relating to a certificate in which he or she invested, a tort action against the bank which issued that certificate, the courts of that investor's domicile, as the courts for the place where the harmful event occurred within the meaning of that provision, have jurisdiction to hear and determine that action, where the damage the investor claims to have suffered consists in financial loss which occurred directly in that investor's bank account with a bank established within the jurisdiction of those courts and the other specific circumstances of that situation also contribute to attributing jurisdiction to those courts.

([1]) OJ C 269, 14.8.2017.

Judgment of the Court (Third Chamber) of 19 September 2018 (request for a preliminary ruling from the Landesarbeitsgericht Hamm — Germany) — Surjit Singh Bedi v Bundesrepublik Deutschland, Bundesrepublik Deutschland in Prozessstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland

(Case C-312/17) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(2) — Prohibition of any discrimination on grounds of disability — Collective agreement on social security — Bridging assistance paid to former civilian employees of the Allied forces in Germany — Termination of the payment of that assistance when the recipient becomes entitled to early payment of a retirement pension for disabled persons under the statutory pension scheme)

(2018/C 408/29)

Language of the case: German

Referring court

Landesarbeitsgericht Hamm

Parties to the main proceedings

Applicant: Surjit Singh Bedi

Defendants: Bundesrepublik Deutschland, Bundesrepublik Deutschland in Prozessstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland

Operative part of the judgment

Article 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted, in a case such as that in the main proceedings, as precluding a provision in a collective agreement under which the payment of bridging assistance — granted with the aim of ensuring a reasonable means of subsistence to a worker who has lost his job until he is entitled to a retirement pension under the statutory pension scheme — must cease once that worker is entitled to early payment of a retirement pension for severely disabled persons under that scheme.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (Eighth Chamber) of 13 September 2018 (request for a preliminary ruling from the Riigikohus — Estonia) — Starman AS v Tarbijakaitseamet

(Case C-332/17) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Article 21 — Consumer contracts — Telephone communications — Practice of a telecommunication services provider consisting in offering its customers who have already concluded a contract a speed dial number at a rate higher than the basic rate)

(2018/C 408/30)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: Starman AS

Defendant: Tarbijakaitseamet

Operative part of the judgment

The first subparagraph of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council must be interpreted as precluding a situation in which, if a trader has made available to all its customers one or more speed dial numbers at a rate higher than the basic rate, consumers who have concluded a contract with the trader in question pay more than the basic rate when contacting that trader by telephone in relation to that contract.

([1]) OJ C 256, 7.8.2017.

Judgment of the Court (Fourth Chamber) of 20 September 2018 (request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel — Belgium) — Fremoluc NV v Agentschap voor Grond- en Woonbeleid voor Vlaams-Brabant (Vlabinvest APB) and Others

(Case C-343/17) ([1])

(Reference for a preliminary ruling — Fundamental freedoms — Articles 21, 45, 49 and 63 TFEU — Directive 2004/38/EC — Articles 22 and 24 — Right of pre-emption of a government body on land located in its operating area with a view to developing social housing — Housing allocated on a priority basis to private individuals who 'have strong social, economic or socio-cultural ties' with the area in which that body operates — Situation which is confined in all respects within a single Member State — Inadmissibility of the request for a preliminary ruling)

(2018/C 408/31)

Language of the case: Dutch

Referring court

Nederlandstalige rechtbank van eerste aanleg Brussel

Parties to the main proceedings

Applicant: Fremoluc NV

Defendants: Agentschap voor Grond- en Woonbeleid voor Vlaams-Brabant (Vlabinvest APB), Vlaams Financieringsfonds voor Grond- en Woonbeleid voor Vlaams-Brabant, Vlaamse Maatschappij voor Sociaal Wonen NV (VMSW), Christof De Knop and Others

Operative part of the judgment

The request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Dutch-language Court of First Instance, Brussels, Belgium), made by decision of 19 May 2017, is inadmissible.

([1]) OJ C 300, 11.9.2017.

Judgment of the Court (Second Chamber) of 13 September 2018 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal

(Case C-369/17) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Borders, asylum and immigration — Refugee status or subsidiary protection status — Directive 2011/95/EU — Article 17 — Exclusion from subsidiary protection status — Grounds — Conviction for a serious crime — Determination of seriousness on the basis of the penalty provided for under national law — Whether permissible — Need for an individual assessment)

(2018/C 408/32)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Shajin Ahmed

Defendant: Bevándorlási és Menekültügyi Hivatal

Operative part of the judgment

Article 17(1)(b) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as precluding legislation of a Member State pursuant to which the applicant for subsidiary protection is deemed to have 'committed a serious crime' within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that Member State. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned.

(1) OJ C 293, 4.9.2017.

Judgment of the Court (Ninth Chamber) of 13 September 2018 (request for a preliminary ruling from the rechtbank Noord-Holland — Netherlands) — Vision Research Europe BV v Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond

(Case C-372/17) (1)

(Reference for a preliminary ruling — Common Customs Tariff — Tariff headings — Classification of goods — Volatile-memory camera, meaning that recorded images are deleted when the camera is switched off or when new images are captured — Combined Nomenclature — Subheadings 8525 80 19 and 8525 80 30 — Explanatory Notes — Interpretation — Implementing Regulation (EU) No 113/2014 — Interpretation — Validity)

(2018/C 408/33)

Language of the case: Dutch

Referring court

Rechtbank Noord-Holland

Parties to the main proceedings

Applicant: Vision Research Europe BV

Defendant: Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond

Operative part of the judgment

Subheading 8525 80 30 of 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 1001/2013 of 4 October 2013, must be interpreted as covering a camera, such as the camera at issue in the main proceedings, that is capable of capturing a large number of photographic images per second and of storing them in its volatile internal memory — images that are deleted from that memory when the camera is switched off — and that Commission Implementing Regulation (EU) No 113/2014 of 4 February 2014 concerning the classification of certain goods in the Combined Nomenclature, in so far as it is applicable by analogy to goods that have the characteristics of that camera, is invalid.

(1) OJ C 300, 11.9.2017.

Judgment of the Court (Ninth Chamber) of 20 September 2018 — Agria Polska sp. z o.o., Agria Chemicals Poland sp. z o.o., Agria Beteiligungsgesellschaft mbH, Star Agro Analyse und Handels GmbH v European Commission

(Case C-373/17 P) ([1])

(Appeal — Competition — Rejection of a complaint by the European Commission — Lack of Union interest)

(2018/C 408/34)

Language of the case: Polish

Parties

Appellants: Agria Polska sp. z o.o., Agria Chemicals Poland sp. z o.o., Agria Beteiligungsgesellschaft mbH, Star Agro Analyse und Handels GmbH (represented by: P. Graczyk, adwokat, and W. Rocławski, radca prawny)

Other party to the proceedings: European Commission (represented by: J. Szczodrowski and A. Dawes, Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Agria Polska sp. z o.o., Agria Chemicals Poland sp. z o.o. and Agria Beteiligungsgesellschaft mbH to bear their own costs and to pay those incurred by the European Commission;*

3. *Orders Star Agro Analyse und Handels GmbH to bear its own costs.*

([1]) OJ C 347, 16.10.2017.

Judgment of the Court (Eighth Chamber) of 20 September 2018 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — EOS KSI Slovensko s. r. o. v Ján Danko, Margita Danková

(Case C-448/17) ([1])

(Reference for a preliminary ruling — Consumer credit agreement — Directive 93/13/EEC — Unfair terms — Article 4(2) and Article 5 — Obligation to draft terms in plain intelligible language — Article 7 — Actions brought before the courts by persons or organisations having a legitimate interest in protecting consumers against the use of unfair terms — National law making the possibility for a consumer protection association to intervene in the proceedings subject to the consumer's consent — Consumer credit — Directive 87/102/EEC — Article 4(2) — Obligation to indicate the annual percentage rate in the written agreement — Agreement containing only a mathematical formula for calculating the annual percentage rate without the information necessary to make that calculation)

(2018/C 408/35)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: EOS KSI Slovensko s. r. o.

Defendants: Ján Danko, Margita Danková

Intervener: Združenie na ochranu občana spotrebiteľa HOOS

Operative part of the judgment

1. *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read together with the principle of equivalence, must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which prevents a consumer protection organisation from intervening, in the interests of the consumer, in proceedings seeking an order for payment concerning an individual consumer and to lodge an objection in the absence of a challenge to that order by the consumer if that legislation in fact subjects intervention by consumer associations in disputes falling within the scope of Union law to less favourable conditions than those applicable to disputes exclusively within the scope of national law, which is for the referring court to ascertain.*

2. *Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that in the main proceedings, which, although providing, at the stage at which the order for payment is made against the consumer, for an assessment of the unfair nature of the terms in a contract concluded between a seller or supplier and a consumer, first, entrusts the power to grant that order to an administrative officer of a court who is not a magistrate and, second, provides for a period of 15 days within which to lodge a statement of opposition and requires that the latter contain reasons on the substance, where there is no provision for such an assessment by the court of its own motion at the stage of enforcement of that order, which is for the referring court to ascertain.*

3. *Article 4(2) of Directive 93/13 must be interpreted as meaning that, first, where a consumer credit agreement does not mention the annual percentage rate of charge and contains only a mathematical formula for the calculation of the annual percentage rate of charge without the information necessary to make that calculation and, second, does not mention the rate of interest, such a fact is decisive evidence in the assessment undertaken by the national court concerned as to whether the term of that agreement relating to the total cost of the credit is drafted in plain intelligible language, within the meaning of that provision.*

([1]) OJ C 382, 13.11.2017.

Judgment of the Court (Sixth Chamber) of 20 September 2018 (request for a preliminary ruling from the Tribunale di Trento — Italy) — Chiara Motter v Provincia autonoma di Trento

(Case C-466/17) ([1])

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Public sector — Secondary school teachers — Employment of fixed-term workers as career civil servants through recruitment based on qualification — Determination of the period of service deemed accrued — Account taken only in part of periods of service completed under fixed-term contracts)

(2018/C 408/36)

Language of the case: Italian

Referring court

Tribunale di Trento

Parties to the main proceedings

Applicant: Chiara Motter

Defendant: Provincia autonoma di Trento

Operative part of the judgment

Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, which for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account only of the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service being taken into consideration.

(1) OJ C 347, 16.10.2017.

Judgment of the Court (Seventh Chamber) of 26 September 2018 (request for a preliminary ruling from the Amtsgericht Köln — Germany) — Proceedings brought by Josef Baumgartner

(Case C-513/17) (1)

(Reference for a preliminary ruling — Transport — Road transport — Regulation (EC) No 561/2006 — Article 19(2), first subparagraph — Administrative penalty for an infringement committed in the Member State of the seat of an undertaking imposed by the competent authorities of another Member State in which the infringement was detected)

(2018/C 408/37)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: Josef Baumgartner

Other parties: Bundesamt für Güterverkehr, Staatsanwaltschaft Köln

Operative part of the judgment

The first subparagraph of Article 19(2) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 must be interpreted as directly authorising the competent authorities of a Member State to impose a penalty on an undertaking or a manager of the undertaking for an infringement of that regulation detected in its territory for which no penalty has already been imposed, even if the infringement was committed in the territory of another Member State in which the undertaking has its seat.

(1) OJ C 382, 13.11.2017.

Judgment of the Court (Ninth Chamber) of 20 September 2018 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Stefan Rudigier

(Case C-518/17) [1]

(Reference for a preliminary ruling — Public procurement — Public passenger transport services by rail and by road — Regulation (EC) No 1370/2007 — Article 5(1) — Award of public service contracts — Article 7(2) — Obligation to publish certain information in the Official Journal of the European Union at least one year before the launch of the procedure — Consequences of non-publication — Annulment of the call for tenders — Directive 2014/24/EU — Article 27(1) — Article 47(1) — Directive 2014/25/EU — Article 45(1) — Article 66(1) — Contract notice)

(2018/C 408/38)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Stefan Rudigier

Other party: Salzburger Verkehrsverbund GmbH

Operative part of the judgment

Article 7(2) of 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 must be interpreted as meaning that

— *the obligation to provide prior information laid down in that provision applies to contracts for public transport services by bus which are in principle awarded in accordance with the procedures provided for by Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC or by Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;*

— *an infringement of that obligation to provide prior information does not entail the annulment of the call for tenders concerned, provided that the principles of equivalence, effectiveness and equal treatment are complied with, which is for the referring court to ascertain.*

[1] OJ C 392, 20.11.2017.

Judgment of the Court (Tenth Chamber) of 20 September 2018 (request for a preliminary ruling from the Østre Landsret — Denmark) — 2M-Locatel A/S v Skatteministeriet

(Case C-555/17) [1]

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs Union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheadings 8528 71 13 and 8528 71 90 — Apparatus capable of receiving, decoding and processing live TV signals transmitted using internet technology)

(2018/C 408/39)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: 2M-Locatel A/S

Defendant: Skatteministeriet

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, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006, must be interpreted as meaning that apparatus capable of receiving, decoding and processing live TV signals transmitted using internet technology, such as the apparatus at issue in the main proceedings, must be classified under subheading 8528 71 90 thereof, provided that they do not incorporate a video tuner or a 'television tuner', this being a matter for the referring court to ascertain.

(1) OJ C 402, 27.11.2017.

Judgment of the Court (Eighth Chamber) of 12 September 2018 (request for a preliminary ruling from the Amtsgericht Hamburg — Germany) — Dirk Harms and Others v Vueling Airlines SA

(Case C-601/17) (1)

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 8(1) — Reimbursement of the price of a ticket in the event of cancellation of a flight — Commission collected by a person acting as an intermediary between the passenger and the air carrier when the ticket was bought — Included)

(2018/C 408/40)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: Dirk Harms, Ann-Kathrin Harms, Nick-Julius Harms, Tom-Lukas Harms, Lilly-Karlotta Harms, Emma-Matilda Harms

Defendant: Vueling Airlines SA

Operative part of the judgment

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, and in particular Article 8(1)(a) thereof, must be interpreted as meaning that the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by the air carrier, which corresponds to a commission collected by a person acting as an intermediary between those two parties, unless that commission was set without the knowledge of the air carrier, which it is for the referring court to ascertain.

(1) OJ C 22, 22.1.2018.

Judgment of the Court (First Chamber) of 19 September 2018 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — criminal proceedings against Emil Milev

(Case C-310/18 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Presumption of innocence — Public references to guilt — Remedies — Procedure for reviewing the lawfulness of pre-trial detention)

(2018/C 408/41)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

Emil Milev

Operative part of the judgment

Article 3 and Article 4(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings must be interpreted as not precluding the adoption of preliminary decisions of a procedural nature, such as a decision taken by a judicial authority that pre-trial detention should continue, which are based on suspicion or on incriminating evidence, provided that such decisions do not refer to the person in custody as being guilty. However, that directive does not govern the circumstances in which decisions on pre-trial detention may be adopted.

([1]) OJ C 268, 30.7.2018.

Judgment of the Court (First Chamber) of 19 September 2018 (requests for a preliminary ruling from the Court of Appeal — Ireland) — Hampshire County Council v C.E., N.E.

(Joined Cases C-325/18 PPU and C-375/18 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in matters of parental responsibility — International child abduction — Regulation (EC) No 2201/2003 — Article 11 — Application for return — Hague Convention of 25 October 1980 — Application for a declaration of enforceability — Appeal — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Time limit for bringing the appeal — Order authorising enforcement — Enforcement prior to service of the order)

(2018/C 408/42)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: Hampshire County Council

Defendants: C.E., N.E.

other parties: Child and Family Agency, Attorney General

Operative part of the judgment

1. *The general provisions of Chapter III of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, where it is alleged that children have been wrongfully removed, the decision of a court of the Member State in which those children were habitually resident, directing that those children be returned and which is entailed by a decision dealing with parental responsibility, may be declared enforceable in the host Member State in accordance with those general provisions.*

2. *Article 33(1) of Regulation No 2201/2003, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in a situation such as that at issue in the main proceedings, enforcement of a decision of a court of a Member State which directs that children be made wards of court and that they be returned and which is declared enforceable in the requested Member State, prior to service of the declaration of enforceability of that decision on the parents concerned. Article 33(5) of Regulation No 2201/2003 must be interpreted as meaning that the period for lodging an appeal laid down in that provision may not be extended by the court seised.*

3. *Regulation No 2201/2003 must be interpreted as not precluding, in a situation such as that at issue in the main proceedings, a court of one Member State from adopting protective measures in the form of an injunction directed at a public body of another Member State, preventing that body from commencing or continuing, before the courts of that other Member State, proceedings for the adoption of children who are residing there.*

([1]) OJ C 249, 16.7.2018.
OJ C 268, 30.7.2018.

Judgment of the Court (First Chamber) of 19 September 2018 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Execution of European arrest warrants issued with respect to R O

(Case C-327/18 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Grounds for non-execution — Article 50 TEU — Warrant issued by the judicial authorities of a Member State that has initiated the procedure for withdrawal from the European Union — Uncertainty as to the law applicable to the relationship between that State and the Union following withdrawal)

(2018/C 408/43)

Language of the case: English

Referring court

High Court (Ireland)

Party to the main proceedings

R O

Operative part of the judgment

Article 50 TEU must be interpreted as meaning that mere notification by a Member State of its intention to withdraw from the European Union in accordance with that article does not have the consequence that, in the event that that Member State issues a European arrest warrant with respect to an individual, the executing Member State must refuse to execute that European arrest warrant or postpone its execution pending clarification of the law that will be applicable in the issuing Member State after its withdrawal from the European Union. In the absence of substantial grounds to believe that the person who is the subject of that European arrest warrant is at risk of being deprived of rights recognised by the Charter of Fundamental Rights of the European Union and Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, following the withdrawal from the European Union of the issuing Member State, the executing Member State cannot refuse to execute that European arrest warrant while the issuing Member State remains a member of the European Union.

(1) OJ C 349, 16.7.2018.

Order of the Court (Tenth Chamber) of 12 September 2018 — Holistic Innovation Institute, SLU v Research Executive Agency

(Case C-241/17 P) (1)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Projects financed by the European Union in the area of research — Seventh Framework programme for research and technological development (2007-2013) — Inachus and ZONeSEC projects — Decision not to allow the appellant to take part — Action for annulment and declaration of liability)

(2018/C 408/44)

Language of the case: Spanish

Parties

Appellant: Holistic Innovation Institute, SLU (represented by: J.J. Marín López, abogado)

Other party to the proceedings: Research Executive Agency (represented by: S. Payan-Lagrou, V. Canetti, acting as Agents, and J. Rivas Andrés, abogado)

Operative part of the order

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

2. *Holistic Innovation Institute SLU shall pay the costs.*

(1) OJ C 221, 10.7.2017.

Order of the Court (Tenth Chamber) of 13 September 2018 — Talanton AE — Simvouleftiki-Ekapideftiki Etaireia Dianomon, Parochis Ipiresion Marketing kai Dioikisis Epicheiriseon v European Commission

(Case C-539/17 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration 2007-2013 — Grant agreement — Non-eligible costs — European Commission decision on recovery — Action brought by the recipient before the General Court of the European Union on the basis of Article 272 TFEU — Appeal manifestly unfounded)

(2018/C 408/45)

Language of the case: Greek

Parties

Appellant: Talanton AE — Simvouleftiki-Ekapideftiki Etaireia Dianomon, Parochis Ipiresion Marketing kai Dioikisis Epicheiriseon (represented by: K. Damis, dikigoros)

Other party to the proceedings: European Commission (represented by: A. Kyratsou and R. Lyal, acting as Agents)

Operative part of the order

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

2. *Talanton AE — Simvouleftiki-Ekapideftiki Etaireia Dianomon, Parochis Ipiresion Marketing kai Dioikisis Epicheiriseon shall pay the costs.*

([1]) OJ C 374, 6.11.2017.

Appeal brought on 10 January 2018 by Ccc Event Management GmbH against the order of the General Court (Sixth Chamber) made on 7 November 2017 in Case T-363/17, *Ccc Event Management GmbH* v *Court of Justice of the European Union*

(Case C-23/18 P)

(2018/C 408/46)

Language of the case: German

Parties

Appellant: Ccc Event Management GmbH (represented by: A. Schuster, Rechtsanwalt)

Other party to the proceedings: Court of Justice of the European Union

By order of 13 September 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal as being in part manifestly inadmissible and in part manifestly unfounded and ordered the appellant to bear its own costs.

Appeal brought on 21 June 2018 by Romantik Hotels & Restaurants AG against the judgment of the General Court (Fourth Chamber) delivered on 25 April 2018 in Case T-213/17, *Romantik Hotels & Restaurants AG* v *European Union Intellectual Property Office*

(Case C-411/18 P)

(2018/C 408/47)

Language of the case: German

Parties

Appellant: Romantik Hotels & Restaurants AG (represented by: S. Hofmann, W. Göpfert, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Hotel Preidlhof GmbH

By order of 3 October 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal as being in part manifestly inadmissible and in part manifestly unfounded and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Landgericht München I (Germany) lodged on 9 July 2018 — WA v Münchener Hypothekenbank eG

(Case C-448/18)

(2018/C 408/48)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: WA

Defendant: Münchener Hypothekenbank eG

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

Request for a preliminary ruling from the Landesgericht Linz (Austria) lodged on 17 July 2018 — DS v Porsche Inter Auto GmbH & Co KG

(Case C-466/18)

(2018/C 408/49)

Language of the case: German

Referring court

Landesgericht Linz

Parties to the main proceedings

Applicant: DS

Defendant: Porsche Inter Auto GmbH & Co KG

Questions referred

1. Must Article 5(1) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ([1]) be interpreted as meaning that the equipment of a vehicle, within the meaning of Article 1(1) of Regulation No 715/2007, is inadmissible if the exhaust gas recirculation valve (i.e. a component that is likely to affect emissions performance) is designed in such a way that the exhaust gas recirculation rate (i.e. the portion of the exhaust gas being recirculated) is regulated in such a way that the valve ensures a low-emission mode only between 15 and 33 degrees Celsius and only below an altitude of 1,000 m, and, outside this temperature window, per 10 degrees Celsius, and above an altitude of 1,000 m, per 250 metres of altitude, the rate decreases in a linear way down to zero, meaning that NOx emissions increase beyond the limits of Regulation No 715/2007?

2. Is it relevant to the assessment of Question 1 whether the equipment referred to in Question 1 is necessary to protect the engine against damage?

3. Furthermore, is it relevant to the assessment of Question 2 whether the part of the engine which is to be protected against damage is the exhaust gas recirculation valve?

4. Is it relevant to the assessment of Question 1 whether the equipment of the vehicle referred to in Question 1 was already installed when the vehicle was produced or whether the regulation of the exhaust gas recirculation valve described in Question 1 is to be installed in the vehicle by way of a repair within the meaning of Article 3(2) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees? ([2])

5. Must Article 3(6) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees be interpreted as meaning that, when a contract for the purchase of a vehicle has been concluded under which a vehicle is to be supplied which must comply with statutory (EU-law) provisions and such vehicle has been installed with a 'switch logic' (i.e. is regulated in such a way that when the vehicle is started it is in mode 1, and if the software detects a test situation — i.e. the operation of the vehicle in the framework of the New European Drive Cycle (NEDC) — the vehicle remains in mode 1 (NEDC), but if the software detects the movement of the vehicle outside the tolerance levels of the NEDC (deviations from the speed profile of +/- 2 km/h or +/- 1s), the vehicle switches to mode 0 (drive mode), in which the exhaust gas recirculation valve is regulated in such a way that the limits of Regulation No 715/2007 can no longer be met, whereby this method of regulation occurs so promptly that as a result the vehicle is essentially operated only in mode 0), this does not constitute a minor breach of contract?

([1]) OJ 2007 L 171, p. 1.
([2]) OJ 1999 L 171, p. 12.

Appeal brought on 6 August 2018 by the Landeskammer für Land- und Forstwirtschaft in Steiermark against the judgment of the General Court (Ninth Chamber) of 7 June 2018 in Case T-72/17, Gabriele Schmid v European Union Intellectual Property Office (EUIPO)

(Case C-514/18 P)

(2018/C 408/50)

Language of the case: German

Parties

Appellant: Landeskammer für Land- und Forstwirtschaft in Steiermark (represented by: I. Hödl and S. Schoeller, Rechtsanwälte)

Other parties to the proceedings: Gabriele Schmid, European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court should:

(a) set aside the judgment under appeal delivered by the General Court (Ninth Chamber) on 7 June 2018 in Case T-72/17, in so far as the General Court upheld the action in respect of the principal plea in law and annulled the decision of the Fourth Board of Appeal of EUIPO of 7 December 2016 (Case R 1768/2015-4), and itself give judgment in the matter; in the alternative

(b) set aside the judgment under appeal delivered by the General Court (Ninth Chamber) on 7 June 2018 in Case T-72/17, in so far as the General Court upheld the action in respect of the principal plea in law and annulled the decision of the Fourth Board of Appeal of EUIPO of 7 December 2016 (Case R 1768/2015-4), and refer the case back to the General Court for a fresh decision;

(c) order the applicant at first instance, Ms Gabriele Schmid, to pay the costs of the proceedings.

Grounds of appeal and main arguments

This appeal is brought by the appellant against the judgment of the General Court (Ninth Chamber) of 7 June 2018 in Case T-72/17, EU:T:2018:335, concerning an action brought against the decision of the Fourth Board of Appeal of EUIPO of 7 December 2016 (Case R 1768/2015-4), concerning revocation proceedings between Ms Schmid and the Landeskammer für Land- und Forstwirtschaft in Steiermark, on the ground that that judgment infringes Article 15(1) of Regulation No 207/2009 ([1]) (now Article 18(1) of Regulation 2017/1001).

The appeal is based on two grounds: infringement of Article 15(1) of Regulation No 207/2009 (now Article 18(1) of Regulation 2017/1001) and of Article 15(2) of Regulation No 207/2009 (now Article 18(2) of Regulation 2017/1001).

By its first ground of appeal, which is divided into four parts, the appellant claims specifically that the General Court erred in law in assessing the use of a protected geographical indication registered as an individual trade mark in accordance with its essential function, in requiring the trade mark to identify the producer and in omitting the case-law on the function of individual trade marks as indications of quality which contain a protected geographical indication and on the use of the trade mark by the members of the licensee.

By its second ground of appeal, the appellant claims that the General Court erred in law in applying Article 15(2) of Regulation No 207/2009 (now Article 18(2) of Regulation 2017/1001), in particular in assessing the lawful use made of the EU trade mark by third parties, namely the association consisting of its members, and attributing that use to the proprietor of the mark.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version), OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Amtsgericht Nürnberg (Germany) lodged on 6 August 2018 — QE v Sun Express Germany GmbH

(Case C-516/18)

(2018/C 408/51)

Language of the case: German

Referring court

Amtsgericht Nürnberg

Parties to the main proceedings

Applicant: QE

Defendant: Sun Express Germany GmbH

The case was removed from the Register of the Court of Justice by order of the Court of 22 August 2018.

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 2 August 2018 — Ordre des barreaux francophones et germanophone, Académie Fiscale ASBL, UA, Liga voor Mensenrechten ASBL, Ligue des Droits de l'Homme ASBL, VZ, WY, XX v Conseil des ministres

(Case C-520/18)

(2018/C 408/52)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Ordre des barreaux francophones et germanophone, Académie Fiscale ASBL, UA, Liga voor Mensenrechten ASBL, Ligue des Droits de l'Homme ASBL, VZ, WY, XX

Defendant: Conseil des ministres

Questions referred

1. Must Article 15(1) of Directive 2002/58/EC, ([1]) read in conjunction with the right to security, guaranteed by Article 6 of the Charter of Fundamental Rights of the European Union, and the right to respect for personal data, as guaranteed by Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, be interpreted as precluding national legislation such as that at issue, which lays down a general obligation for operators and providers of electronic communications services to retain the traffic and location data within the meaning of Directive 2002/58/EC, generated or processed by them in the context of the supply of those services, national legislation whose objective is not only the investigation, detection and prosecution of serious criminal offences but also the safeguarding of national security, the defence of the territory and of public security, the investigation, detection and prosecution of offences other than serious crime or the prevention of the prohibited use of electronic communication systems, or the attainment of another objective identified by Article 23(1) of Regulation (EU) 2016/679 ([2]) and which, furthermore, is subject to specific guarantees in that legislation in terms of data retention and access to those data?

2. Must Article 15(1) of Directive 2002/58/EC, in conjunction with Articles 4, 7, 8, 11 and 52(1) of the Charter of Fundamental Rights of the European Union, be interpreted as precluding national legislation such as that at issue, which lays down a general obligation for operators and providers of electronic communications services to retain the traffic and location data within the meaning of Directive 2002/58/EC, generated or processed by them in the context of the supply of those services, if the object of that legislation is, in particular, to comply with the positive obligations borne by the authority under Articles 4 and 8 of the Charter, consisting in providing for a legal framework which allows the effective criminal investigation and the effective punishment of sexual abuse of minors and which permits the effective identification of the perpetrator of the offence, even where electronic communications systems are used?

3. If, on the basis of the answers to the first or the second question, the Cour constitutionnelle (Constitutional Court) should conclude that the contested law fails to fulfil one or more obligations arising under the provisions referred to in these questions, might it maintain on a temporary basis the effects of the Law of 29 May 2016 on the collection and retention of data in the electronic communications sector in order to avoid legal uncertainty and to enable the data previously collected and retained to continue to be used for the objectives pursued by the law?

([1]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

([2]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 8 August 2018 — Engie Cartagena, S.L. v Ministerio para la Transición Ecológica (formerly, Ministerio de Industria, Energía y Turismo)

(Case C-523/18)

(2018/C 408/53)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: Engie Cartagena, S.L.

Defendant: Ministerio para la Transición Ecológica (formerly, Ministerio de Industria, Energía y Turismo)

Questions referred

1. Does the statutory provision laid down in the third additional provision of Real Decreto-Ley 14/2010 Financiación de planes de ahorro y eficiencia energética para los años 2011, 2012 y 2013 (Royal Decree-Law 14/2010 on the funding of savings and efficiency plans for the years 2011, 2012 and 2013) constitute a public service obligation for the purposes of Article 3(2) of Directives 2003/54/EC ([1]) and 2009/72/EC ([2]):

'1. *The amounts payable from the electricity system for the purpose of funding the 2008-2012 Action Plan, approved [by] Acuerdo de Consejo de Ministros de 8 de julio de 2005, por el que se concretan las medidas del documento de "Estrategia de ahorro y eficiencia energética en España 2004-2012" aprobado por Acuerdo de Consejo de Ministros de 28 de noviembre de 2003 (Decision of the Council of Ministers of 8 July 2005 giving concrete expression to the measures referred to in the document entitled "Savings and Energy Efficiency Strategy in Spain, 2004-2012", approved by Decision of the Council of Ministers of 28 November 2003), forecast for the years 2011 and 2012 as EUR 270 million and EUR 250 million respectively, shall be financed through a contribution from each generating undertaking in the proportions set out in the following table:*

Undertaking	*Percentage*
Endesa Generación, S.A.	*34,66*
Iberdrola Generación, S.A.	*32,71*
GAS Natural S.D.G, S.A.	*16,37*
Hidroeléctrica del Cantábrico, S.A.	*4,38*
E.ON Generación, S.L.	*2,96*
AES Cartagena, S.R.L.	*2.07*
Bizkaia Energía, S.L.	*1,42*
Castelnou Energía, S.L.	*1,58*
Nueva Generadora del Sur, S.A.	*1,62*
Bahía de Bizkaia Electricidad, S.L.	*1,42*
Tarragona Power, S.L.	*0,81*
Total	*100,00*'

2. If that provision does actually constitute a public service obligation, is that obligation clearly defined, transparent, non-discriminatory and verifiable?

([1]) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC — Statements made with regard to decommissioning and waste management activities (OJ 2003 L 176, p. 37).

([2]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Appeal brought on 17 August 2018 by HX against the judgment of the General Court delivered on 19 June 2018 in Case T-408/16 HX v Council of the European Union

(Case C-540/18 P)

(2018/C 408/54)

Language of the case: Bulgarian

Parties

Appellant: HX (represented by S. Koev)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

— Declare the present appeal to be admissible and well founded in its entirety and declare all the grounds of appeal set out in support of the present appeal to be well founded;

— Declare that the contested decision of the General Court under appeal may be annulled in its entirety;

— Set aside the entirety of judgment of the General Court of the European Union (Fifth Chamber) of 19 June 2018, *HX* v *Council*, T-408/16;

— Partially annul Council Decision (CFSP) 2016/850 amending Decision 2013/255, Council Implementing Regulation (EU) 2016/840 implementing Regulation (EU) No 36/2012 (OJ 2016, L 141, p. 30), Council Decision (CFSP) 2017/917 amending Decision 2013/255 (OJ 2017, L 139, p. 62) and Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 (OJ 2017, L 139, p. 15) in so far as they concern HX;

— Order the Council to pay all the appellant's costs, expenses, fees and other expenditure linked to his defence.

Grounds of appeal and main arguments

1. Error in the application of the law by the General Court, resulting in an infringement of EU law, in so far as it found that the Council correctly applied the presumption that the appellant was a prominent businessman carrying out his business in Syria, given that that presumption has no legal basis and is disproportionate in relation to the legal objective pursued.

2. Error in the application of the law, resulting in an infringement of the rules on evidence, on account of the lack of evidence for the purposes of applying the presumption and the refusal to apply Articles 27(3) and 28(3) of Decision 2013/255 amended by Decision 2015/1836.

3. Error in the application of the law, resulting in an infringement of procedural rules which adversely affect the interests of the appellant, on account of the refusal to admit new evidence produced in accordance with Article 85(3) of the Rules of Procedure of the General Court.

Request for a preliminary ruling from the Tribunal d'Instance de Sens (France) lodged on 30 August 2018 — X

(Case C-562/18)

(2018/C 408/55)

Language of the case: French

Referring court

Tribunal d'Instance de Sens

Parties to the main proceedings

Applicant: X

Other party: Procureur de la République

Questions referred

1. Do (i) Article 21 of the Charter of Fundamental Rights of the European Union, interpreted in the light of the United Nations Convention on the Rights of Persons with *Disabilities,* and (ii) Article 39(2) of the Charter of Fundamental Rights of the European Union allow the right to vote in European Parliamentary elections to be withdrawn because a guardianship measure has been adopted for a person due to his or her mental disability?

2. If the answer is in the affirmative, does European Union law require there to be specific conditions for this withdrawal and, if so, what are they?

Appeal brought on 13 September 2018 by the Czech Republic against the order of the General Court (Seventh Chamber) made on 28 June 2018 in Case T-147/15 Czech Republic v Commission

(Case C-575/18 P)

(2018/C 408/56)

Language of the case: Czech

Parties

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

Other party to the proceedings: European Commission

Form of order sought

— set aside the order under appeal;

— reject the plea of inadmissibility raised by the European Commission;

— refer the case back to the General Court for it to rule on the form of order sought by the Czech Republic in the application; and

— order the European Commission to pay the costs.

Grounds of appeal and main arguments

In support of its appeal, the appellant puts forward a single ground of appeal, alleging infringement of Article 263 of the Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

In the order under appeal the General Court incorrectly concluded that the contested act, having regard in particular to the Commission's lack of power to adopt a decision in the field of traditional own resources, was not an act against which an action could be brought under Article 263 TFEU, which according to the General Court did not conflict with the Czech Republic's right to effective judicial protection within the meaning of Article 47 of the Charter, in so far as it was possible for the Czech Republic to pay the disputed amount conditionally, express objections to the soundness of the Commission's legal view, and wait for the Commission to make an application under Article 258 TFEU.

The General Court's conclusions are contrary to Article 263 TFU in conjunction with Article 47 of the Charter, as conditional payment does not ensure that the dispute will in future be judged on the merits by the Court of Justice. That follows from the settled case-law of the Court of Justice on the Commission's discretion in connection with proceedings for failure to fulfil obligations, from the absence of any provision on the concept of conditional payment, and in particular from the previous practice of the Commission in this field.

Appeal brought on 21 September 2018 by Pirelli & C. SpA against the judgment of the General Court (Eighth Chamber) delivered on 12 July 2018 in Case T-455/14 Pirelli & C. v Commission

(Case C-611/18P)

(2018/C 408/57)

Language of the case: Italian

Parties

Appellant: Pirelli & C. SpA (represented by: M. Siragusa, G. Rizza, lawyers)

Other parties to the proceedings: European Commission, Prysmian Cavi e Sistemi Srl

Form of order sought

Pirelli claims that the Court should:

In accordance with Article 169(1) of the Rules of Procedure, set aside the decision of the General Court contained in the operative part of the judgment of 12 July 2018 in Case T-455/14, *Pirelli & C. S.p.A.* v *Commission*, notified to the appellant on that day by means of e-Curia;

and

in accordance with Article 170(1) of the Rules of Procedure, uphold, without referring the case back to the General Court, the claims put forward by Pirelli at first instance, *mutatis mutandis*, and accordingly:

as a principal claim

— annul the Decision ([1]) in so far as it concerns the appellant, specifically Articles 1(5)(d), 2(g) and 4 thereof, only as regards the inclusion of Pirelli in the list of persons to whom the measure is addressed;

in the alternative

— Allow *beneficium ordinis seu excussionis* in favour of Pirelli, in the exercise of its unlimited jurisdiction under Article 31 of Council Regulation (EC) No 1/2003 ([2]) and Article 261 TFEU;

in the event that Prysmian bring s an appeal before the Court against the decision of the General Court of 12 July 2018 in Case T-475/14 and the Court upholds that appeal:

— annul the Decision or amend Article 2(g) thereof, by reducing the fine imposed jointly and severally on Prysmian and Pirelli;

— in any event, order the European Commission to pay the costs of the proceedings;

in the event that the decision of the General Court contained in the operative part of the judgment of 12 July 2018 in Case T 455/14, *Pirelli & C. S.p.A.* v *Commission*, is not set aside, allow in any event *beneficium ordinis seu excussionis* in favour of Pirelli, in the exercise of its unlimited jurisdiction under Article 31 of Regulation (EC) No 1/2003 and Article 261 TFEU.

Pleas in law and main arguments

First ground of appeal, alleging infringement by the General Court of its duty to state reasons regarding: the General Court's finding that Pirelli's claim alleging failure to state reasons was unfounded; the rejection by the Commission of its detailed arguments concerning the inapplicability in the present case of the presumption of decisive influence, and unequal treatment by the Commission in that it applied the 'dual basis' method to Goldman Sachs alone

The General Court erred in its determination of the purpose and scope of the Commission's duty to state reasons, by failing to recognise and declare that the statement of reasons in the Decision does not meet the requirements established by the EU judicature. The General Court should have annulled the Decision in so far as it concerns the appellant, since the measure in question does not contain a detailed statement setting out precise, clear and concrete grounds to substantiate the presumption that Pirelli is liable for the infringement, even though Pirelli had adduced evidence that its economic, organisational and legal links with Prysmian did not have the effect of precluding or limiting the degree of autonomy enjoyed by its subsidiary. Furthermore, in the judgment under appeal, Pirelli's arguments relating to the unequal treatment it suffered were completely disregarded, since the Commission applied only the presumption of the exercise of decisive influence to Pirelli, rather than the attribution method, which involves a dual basis, and which was, however, applied to Prysmian's other parent company, Goldman Sachs.

Second ground of appeal, alleging infringement of Articles 48 and 49 of the Nice Charter and inadequate and illogical grounds in the judgment under appeal as regards the breach of the fundamental rights of Pirelli, a legal person, and the Commission's infringement of the principle of proportionality

The General Court's position — according to which Pirelli's liability established by way of presumption is not strict criminal liability based on the acts of another person, but rather represents the personal liability of the 'undertaking' which it constituted with its subsidiary Prysmian, the direct perpetrator of the infringement — is based on the erroneous overlap of two analytical approaches which cannot, however, be overlapped: the application of the rules of competition to undertakings and the protection of the fundamental rights of legal persons against whom legal proceedings are brought. Furthermore, the judgment under appeal did not give any consideration to Pirelli's argument that the presumption of decisive influence was a dual presumption. In the Decision, in fact, the Commission assumed that Pirelli exercised decisive influence not only over Prysmian's commercial policies but also, without the applicant being given the opportunity to prove otherwise, over the specific anti-competitive behaviour of the subsidiary. Pirelli complains that the judgment under appeal also fails to state adequate reasons in respect of the argument that the Commission did not weigh up the interests at stake in particular as regards the presumption of decisive influence, taking into account the specific circumstances of the individual case and respect for the rights of the defence, as is required, however, by the case-law of the European Court of Human Rights (ECtHR). Finally, as regards Pirelli's claim that the presumption of decisive influence was not applied to it in the Decision in a manner proportionate, for the purpose of Article 5(4) TEU, to the achievement of the objectives of ensuring the actual payment of fines and enabling the imposition of more substantial fines as a deterrent, the General Court addressed that claim by referring to irrelevant case-law.

Third ground, alleging infringement of the principles of joint and several liability, proportionality and equal treatment, and illogical reasoning as regards the substantive error of assessment of the application to Pirelli of the principle of joint and several liability with Prysmian for the purpose of the payment of the fine and failure to state reasons in the judgment under appeal in respect of the failure to apply beneficium ordinis seu excussionis in favour of Pirelli

Although Pirelli was ordered, like Prysmian, to pay the fine imposed on them by the Decision in full, the appellant's situation was completely different to that of its former subsidiary, which the Decision clearly identified as the direct perpetrator of the infringement. As the judgment under appeal acknowledges — while providing contradictory reasons — purely secondary and vicarious liability was attributed to Pirelli; that liability is therefore entirely dependent on Prysmian's liability. The Commission should have mitigated the unreasonable and disproportionate effects, when imposing the fines, of its distorted view of the powers that Pirelli enjoys as a parent company holding all the share capital of its subsidiary, by refraining from applying to it the constraint of joint liability for the fine, or by applying it only to part of the fine imposed on Prysmian, or at least by allowing *beneficium ordinis seu excussionis* in favour of Pirelli. In addition to failing to provide any reasons in relation Pirelli's complaint that that benefit was not granted, the General Court infringed the principles of joint and several liability, proportionality and equal treatment.

Fourth ground, alleging infringement of Article 261 TFEU and Article 31 of Regulation No 1/2003 in relation to the rejection of Pirelli's claim that it should be allowed beneficium ordinis seu excussionis set out in the heads of claim of its action before the General Court

In accordance with the provisions referred to above, both the power to vary the amount of the fines imposed by the Commission and the power to vary the methods of payment and enforcement of fines fall within the powers of General Court. The case-law referred to in the judgment under appeal — according to which the Commission's power to impose penalties does not include the ability to set the respective share of the fines of joint and several debtors in their relations with each other — is not relevant for the purpose of the assessment of the different question raised by Pirelli, which the General Court has thus essentially failed to address, relating to the Commission's power, and the General Court's power, when carrying out judicial review of the Commission's decisions, to allow *beneficium ordinis seu excussionis* in favour of the parent company holding all the share capital of its subsidiary and which has been found jointly and severally liable for payment of the fine. That benefit does not relate to the internal relationship between those jointly and severally debtors but to the obligations owed by each of them, separately, to the Commission (namely, 'external relationships').

([1]) Decision C(2014) 2139 final of the European Commission of 2 April 2014 (Case AT.39610 — Power cables)

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

GENERAL COURT

Judgment of the General Court of 25 September 2018 — GABO:mi v Commission

(Case T-10/16) ([1])

(Arbitration clause — Sixth and seventh framework programmes for research, technological development and demonstration activities (2002-2006 and 2007-2013) — Letters requesting reimbursement of part of the grants awarded — Debit note — Setting off of claims — Amendment of application — Admissibility — Eligibility of expenses — Funds held in trust — Duty to record costs in contractor's accounts — Compliance with accounting rules in the State in which the contractor is established — Legal certainty — Legitimate expectations — Good governance — Transparency — Right to be heard — Proportionality)

(2018/C 408/58)

Language of the case: English

Parties

Applicant: GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG (Munich, Germany) (represented by: M. Ahlhaus and C. Mayer, lawyers)

Defendant: European Commission (represented initially by: S. Delaude, S. Lejeune and M. Siekierzyńska, subsequently by S. Delaude and M. Siekierzyńska, acting as Agents)

Re:

Application, first, under Article 272 TFEU for a declaration that a claim mentioned in two information letters dated 2 December 2015 and in a debit note dated 2 December 2015 relating to a claim of EUR 1 770 417,29 does not exist and, second, under Article 263 TFEU for annulment of set-off decisions contained in seven letters dated 16 and 21 December 2015, 14 January, 26 April and 3 May 2016 seeking to offset each payment concerned against the applicant's alleged debt and of that debit note and those information letters.

Operative part of the judgment

The Court:

1. *Declares unfounded the claim of the European Commission against GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG mentioned in debit note No 3241514917 dated 2 December 2015 and in the two information letters dated 2 December 2015 so far as concerns the declared expenses relating to the 'central travel/meeting budget' and the liquidated damages relating to it;*

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

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

([1]) OJ C 111, 29.3.2016.

Judgment of the General Court of 25 September 2018 — Sweden v Commission

(Case T-260/16) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Decoupled direct aids — On-the-spot checks — Remote sensing — Assessment of risk factors — Corrective action to be taken by the Member State concerned — Assessment of the financial loss — Proportionality)

(2018/C 408/59)

Language of the case: Swedish

Parties

Applicant: Kingdom of Sweden (represented by: initially, L. Swedenborg, A. Falk, N. Otte Widgren, C. Meyer-Seitz and U. Persson, and subsequently L. Swedenborg, A. Falk and C. Meyer-Seitz, acting as Agents)

Defendant: European Commission (represented by: D. Triantafyllou and K. Simonsson, acting as Agents)

Intervener in support of the applicant: Czech Republic (represented by: M. Smolek and J. Vláčil, acting as Agents)

Re:

Application based on Article 263 TFEU seeking, primarily, annulment of Commission Implementing Decision (EU) 2016/417 of 17 March 2016 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) (OJ 2016 L 75, p. 16), in so far as it concerns decoupled direct aids paid to the Kingdom of Sweden totalling EUR 8 811 286,44 for the claim year 2013 and, in the alternative, the reduction of the amount of those decoupled direct aids excluded from financing in the amount of EUR 1 022 259,46.

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision (EU) 2016/417 of 17 March 2016 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 concerns decoupled direct aids paid to the Kingdom of Sweden totalling EUR 8 811 286,44 for the claim year 2013;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by the Kingdom of Sweden;*

3. *Orders the Czech Republic to bear its own costs.*

([1]) OJ C 305, 22.8.2016.

Judgment of the General Court of 25 September 2018 — Amicus Therapeutics UK and Amicus Therapeutics v EMA

(Case T-33/17) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA and submitted as part of the request for authorisation to place the medicinal product Galafold on the market — Decision to grant a third party access to a document — Exception relating to the protection of commercial interests — No general presumption of confidentiality)

(2018/C 408/60)

Language of the case: English

Parties

Applicants: Amicus Therapeutics UK Ltd (Gerrards Cross, United Kingdom) and Amicus Therapeutics, Inc. (Cranbury, New Jersey, United States) (represented by: L. Tsang, J. Mulryne, Solicitors, and F. Campbell, Barrister)

Defendant: European Medicines Agency (EMA) (represented by N. Rampal Olmedo, S. Marino, A. Spina, A. Rusanov and T. Jabłoński, acting as Agents)

Re:

Action under Article 263 TFEU for the annulment of EMA Decision ASK-22072 of 14 December 2016, granting to a third party, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to a document containing information submitted in the context of a request for marketing authorisation for the medicinal product Galafold.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Amicus Therapeutics UK Ltd and Amicus Therapeutics, Inc. to pay the costs.*

[1] OJ C 104, 3.4.2017.

Judgment of the General Court of 20 September 2018 — Exaa Abwicklungsstelle für Energieprodukte v ACER

(Case T-123/17) [1]

(Energy — Decision of the Board of Appeal of ACER — Rejection of the application to intervene — Direct and existing interest at the end of the procedure — Obligation to state reasons — Right to be heard)

(2018/C 408/61)

Language of the case: German

Parties

Applicant: Exaa Abwicklungsstelle für Energieprodukte AG (Vienna, Austria) (represented by: B. Rajal, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators (represented by: P. Martinet and E. Tremmel, acting as Agents)

Intervener in support of the defendant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Re:

Application based on Article 263 TFEU seeking annulment of the decision of the Board of Appeal of ACER of 17 February 2017 rejecting the applicant's application to intervene in Case A-001-2017 (consolidated).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Exaa Abwicklungsstelle für Energieprodukte AG to bear its own costs and to pay those incurred by the Agency for the Cooperation of Energy Regulators (ACER), including those relating to the interlocutory proceedings;*

3. *Orders the Republic of Poland to bear its own costs.*

(1) OJ C 129, 24.4.2017.

Judgment of the General Court of 20 September 2018 — Mondi v ACER

(Case T-146/17) (1)

(Energy — Decision of the Board of Appeal of ACER — Rejection of the application to intervene — Direct and existing interest at the end of the procedure — Right to be heard)

(2018/C 408/62)

Language of the case: German

Parties

Applicant: Mondi AG (Vienna, Austria) (represented by: B. Rajal, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators (represented by: P. Martinet and E. Tremmel, acting as Agents)

Intervener in support of the defendant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Re:

Application based on Article 263 TFEU seeking annulment of the decision of the Board of Appeal of ACER of 17 February 2017 rejecting the applicant's application to intervene in Case A-001-2017 (consolidated).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mondi AG to bear its own costs and to pay those incurred by the Agency for the Cooperation of Energy Regulators (ACER);*

3. *Orders the Republic of Poland to bear its own costs.*

(1) OJ C 129, 24.4.2017.

Judgment of the General Court of 25 September 2018 — EM Research Organization v EUIPO — Christoph Fischer and Others (EM)

(Case T-180/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 'EM' — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Evidence produced for the first time before the General Court)

(2018/C 408/63)

Language of the case: English

Parties

Applicant: EM Research Organization, Inc. (Okinawa, Japan) (represented by: J. Liesegang, M. Jost and N. Lang, lawyers)

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

Other parties to the proceedings before the Board of Appeal of EUIPO, interveners before the General Court: Christoph Fischer GmbH (Stephanskirchen, Germany), Ole Weinkath (Hünxe-Drevenack, Germany), Multikraft Produktions- und Handels GmbH (Pichl/Wels, Austria), Phytodor AG (Buochs, Switzerland) (represented by: M. Kinkeldey, J. Rosenhäger, K. Lochner and M. Peters, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 January 2017 (Case R 2442/2015-1), relating to invalidity proceedings between Christoph Fischer, Ole Weinkath, Multikraft Produktions- und Handel and Phytodor, on one hand, and, on the other, EM Research Organization.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders EM Research Organization, Inc. to pay the costs.*

([1]) OJ C 161, 22.5.2017.

Judgment of the General Court of 25 September 2018 — Novartis v EUIPO — Chiesi Farmaceutici (AKANTO)

(Case T-182/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark AKANTO — Earlier EU word mark KANTOS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2018/C 408/64)

Language of the case: English

Parties

Applicant: Novartis AG (Basel, Switzerland) (represented by: L. Junquera Lara, lawyer)

Defendant: European Union Intellectual Property Office (represented initially by: P. Duarte Guimarães and J. Ivanauskas, and subsequently by J. Ivanauskas and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Chiesi Farmaceutici SpA (Parma, Italy) (represented by: T. de Haan, P. Péters, and F. Folmer, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 January 2017 (Case R 531/2016-1) relating to opposition proceedings between Chiesi Farmaceutici and Novartis.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 161, 22.5.2017.

Judgment of the General Court of 25 September 2018 — Portugal v Commission

(Case T-233/17) (1)

(EAGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Portugal — Direct payments — POSEI programme — Exceeding of ceilings — Payment delays — First subparagraph of Article 11(1) of Regulation No 885/2006 — Double financial correction — Rights of the defence — Proportionality)

(2018/C 408/65)

Language of the case: Portuguese

Parties

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

Defendant: European Commission (represented by: D. Triantafyllou, D. Bianchi and B. Rechena, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Decision C(2017) 766 final of 14 February 2017 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes from European Union financing certain expenditure declared by the Portuguese Republic under the 'POSEI — specific supply arrangements' programme and 'direct payments pertaining to the 2010 marketing year'.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Portuguese Republic to pay the costs.*

(1) OJ C 213, 3.7.2017.

Judgment of the General Court of 25 September 2018 — Gugler v EUIPO — Gugler France (GUGLER)

(Case T-238/17) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark GUGLER — Earlier national company name Gugler France — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Likelihood of confusion)

(2018/C 408/66)

Language of the case: English

Parties

Applicant: Alexander Gugler (Maxdorf, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (represented by: initially P. Sipos, and subsequently by A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Gugler France (Besançon, France) (represented by: A. Grolée, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 31 January 2017 (Case R 1008/2016-1), relating to invalidity proceedings between Gugler France and Mr Gugler.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 31 January 2017 (Case R 1008/2016-1);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Mr Alexander Gugler;*

3. *Orders Gugler France to bear its own costs.*

([1]) OJ C 195, 19.6.2017.

Judgment of the General Court of 25 September 2018 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — M. J. Dairies (BBQLOUMI)

(Case T-328/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark BBQLOUMI — Prior EU collective word mark HALLOUMI — Relative ground for refusal — No likelihood of confusion — Rejection of the opposition — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 408/67)

Language of the case: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: S. Malynicz QC, V. Marsland, Solicitor, and S. Baran, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, D. Walicka and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: M. J. Dairies EOOD (Sofia, Bulgaria) (represented by: D. Dimitrova, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 16 March 2017 (Case R 497/2016-4), concerning opposition proceedings between the Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi and M. J. Dairies.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi to pay the costs.*

(1) OJ C 239, 24.7.2017.

Judgment of the General Court of 25 September 2018 — Cyprus v EUIPO — M. J. Dairies (BBQLOUMI)

(Case T-384/17) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark BBQLOUMI — Prior United Kingdom word certification mark HALLOUMI — Relative ground for refusal — No likelihood of confusion — Rejection of the opposition — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 408/68)

Language of the case: English

Parties

Applicant: Republic of Cyprus (represented by: S. Malynicz, QC, V. Marsland, Solicitor, and S. Baran, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, D. Walicka and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: M. J. Dairies EOOD (Sofia, Bulgaria)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 10 April 2017 (Case R 496/2016-4), concerning opposition proceedings between the Republic of Cyprus and M. J. Dairies.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Cyprus to pay the costs.*

(1) OJ C 269, 14.8.2017.

Judgment of the General Court of 25 September 2018 — Medisana v EUIPO (happy life)

(Case T-457/17) ([1])

(EU trade mark — Application for the EU word mark happy life — No distinctive character — Article 7(1)(b) and Article 7(2) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and Article 7(2) of Regulation (EU) 2017/1001))

(2018/C 408/69)

Language of the case: German

Parties

Applicant: Medisana AG (Neuss, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 3 May 2017 (Case R 1965/2016-4) concerning an application for registration of the word sign happy life as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 300, 11.9.2017.

Judgment of the General Court of 20 September 2018 — Ghost — Corporate Management v EUIPO (Dry Zone)

(Case T-488/17) ([1])

(EU trade mark — Application for the EU word mark Dry Zone — Period for bringing an action — Lateness — Inadmissibility of the appeal brought before the Board of Appeal — Article 60 of Regulation (EC) No 207/2009 (now Article 68 of Regulation (EU) 2017/1001) — No force majeure or unforeseeable circumstances — Obligations of care and diligence — Legitimate expectations)

(2018/C 408/70)

Language of the case: Portuguese

Parties

Applicant: Ghost — Corporate Management SA (Lisbon, Portugal) (represented by: S. de Barros Araújo, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 5 June 2017 (Case R 683/2017-2) concerning an application for registration of the word sign Dry Zone as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ghost — Corporate Management SA to pay the costs.*

(1) OJ C 309, 18.9.2017.

Judgment of the General Court of 20 September 2018 — Maico Holding v EUIPO — Eico (Eico)

(Case T-668/17) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark Eico — Earlier EU word mark MAICO — Relative ground for refusal — No likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 408/71)

Language of the case: English

Parties

Applicant: Maico Holding GmbH (Villingen-Schwenningen, Germany) (represented by: T. Krüger and D. Deckers, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Eico A/S (Brønderslev, Denmark) (represented by: A. Skov, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 27 July 2017 (Case R 2089/2016-4), relating to opposition proceedings between Maico Holding and Eico.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Maico Holding GmbH to pay the costs.*

(1) OJ C 382, 13.11.2017.

Action brought on 4 September 2018 — XI v Commission

(Case T-528/18)

(2018/C 408/72)

Language of the case: French

Parties

Applicant: XI (represented by: N. Lhöest, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 25 May 2018 rejecting the applicant's complaint in so far as that decision contains medical data;

— order the Commission to pay damages and interest, assessed *ex aequo et bono* at EUR 5 000 in compensation for the non-material harm suffered; and

— order the Commission 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 breach of Article 8 of the European Convention of Human Rights, together with a breach of the duty of good administration and the duty of care, in so far as the decision refusing the applicant's claim disclosed medical data which were, moreover, manifestly incorrect.

Action brought on 7 September 2018 — Romania v Commission

(Case T-530/18)

(2018/C 408/73)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: C. Canțăr, E. Gane, C. Florescu and O. Ichim, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in part 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 concerns (a) sub-measure 1a in its entirety (the sum of EUR 13 184 846,61 for the years 2015 and 2016) and (b) sub-measures 3a, 5a, 3b and 4b in their entirety (the sum of EUR 45 532 000,96 for the years 2014, 2015 and 2016) or, in the alternative, in part, in respect of the period prior to 19 September 2015 (the sum of EUR 21 315 857,50);

— 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 a misuse by the European Commission of its powers to exclude sums from European Union financing

   — By applying the corrections established by Decision 2018/873, the Commission misused its powers, thereby infringing Article 52 of Regulation No 1306/2013 and the principles of the protection of legitimate expectations and legal certainty.

   — The contested decision infringes Article 52 of Regulation No 1306/2013 in so far as the Commission, following discussions held with the Romanian authorities, decided to approve the revision of National Rural Development Programme (NRDP) 2007-2013, expressing its consent with regard to the measures set out in that NRDP, including the methodologies relating to payments concerning sub-measures 1a, 3a, 5a, 3b and 4b in the context of measure 215 — Animal welfare payments. The decision approving the revision of the NRDP is a legal commitment and entails making payments from the EU budget.

   — The Romanian authorities made payments in accordance with the approval given by the Commission. Against that background, the decision to apply the corrections is unlawful.

— Romania considers that the contested decision infringes the principle of the protection of legitimate expectations, in so far as the Commission's decision to approve the revision of the NRDP gave rise to a legitimate expectation on the part of the Romanian authorities and the beneficiaries with regard to the regularity of the methods of calculation approved by the Commission. That principle requires that, with regard to sub-measures 3a, 5a, 3b and 4b, the Commission apply the corrections as from 19 September 2015, as it did with regard to the corrections concerning sub-measure 1a.

— Similarly, Romania considers that that EU institution should also have observed that principle with regard to the payments made after 19 September 2015, given that, at that point, further revision of the NRDP was no longer possible.

— Romania considers that the contested decision infringes the principle of legal certainty as a result of the Commission taking a different position with regard to the regularity of the methods of calculation used. Thus, by the contested decision, the Commission found that the payments made according to the methods of calculation which it had previously approved were irregular. Moreover, although the Romanian authorities requested clarification from that EU institution with regard to the possibility of correcting errors regarding compensatory payments, given that the NRDP could not be revised after 19 September 2015, the Commission did not set out its position with regard to that issue.

2. Second plea in law, alleging a failure to fulfil the obligation to state reasons as laid down in the second paragraph of Article 296 of the Treaty on the Functioning of the European Union

— Romania considers that the Commission failed to fulfil its obligation to state reasons as laid down in the second paragraph of Article 296 of the Treaty on the Functioning of the European Union, in so far as, in the case of sub-measure 1a, that EU institution did not provide sufficient and appropriate reasons for: (i) its changing position as regards the irregularities found and the type of correction applied; (ii) its rejection of the arguments and explanations put forward by the Romanian authorities as regards the alleged overcompensation; and (iii) its choice to apply a flat rate in respect of the irregularities found, instead of a calculated rate.

Action brought on 12 September 2018 — Changmao Biochemical Engineering v Commission

(Case T-541/18)

(2018/C 408/74)

Language of the case: English

Parties

Applicant: Changmao Biochemical Engineering Co. Ltd (Changzhou, China) (represented by: K. Adamantopoulos and P. Billiet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested regulation in so far as the applicant is concerned;

— or, in the alterative, annul the contested regulation in its entirety; and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

The present action seeks the annulment of Commission Implementing Regulation (EU) 2018/921 ([1])

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

1. First plea in law, alleging that the Commission failed to provide adequate reasoning and committed a manifest error of assessment of the law and the facts in having recourse to the analogue country methodology.

2. Second plea in law, alleging that the Commission committed a manifest error of the law and the facts, infringed the principle of good administration and failed to provide adequate reasoning in concluding that the Union industry remained during the reference period vulnerable to the injurious effects of dumped exports of tartaric acid originating in the People's Republic of China, as the Commission failed to consider the performance of the by far largest EU producer of tartaric acid, in breach of Articles 11(2) and 3(2) of the Regulation (EU) 2016/1036 ([2]) and Articles 11(3) and 3(1) of the WTO Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade ('the WTO Antidumping Agreement').

3. Third plea in law, alleging that the Commission committed a manifest error of assessment of the law and of the facts by concluding that injury of the EU industry would likely recur if the EU antidumping measures against tartaric acid originating in the People's Republic of China were terminated, since the applied methodology is, firstly, not based on positive evidence but rather unsubstantiated mechanistic assumptions and conjecture and, secondly, entirely fails to take into account the behaviour of Hangzhou Bioking, a major People's Republic of China producer and the largest People's Republic of China exporter of tartaric acid to the EU, that has not been subject to any EU antidumping duties since 20 April 2012. Moreover, the applicant submits that the impact of climatic changes on natural tartaric acid production is not taken into account, in breach of Articles 11(2) and 3(2) of Regulation (EU) 2016/1036 and Articles 11(3) and 3(1) of the WTO Antidumping Agreement.

4. Fourth plea in law, alleging that the Commission infringed an essential procedural requirement relating to the rights of defence of the applicant in breach of Articles 3(2), 11(2), 16(1), 19(2), 19(4), 20(2), 20(4), 21(5) and 21(7) of Regulation (EU) 2016/1036 as well as Articles 3(1), 5(3), 6(1), 6(1)(2), 9(2), 6(4), 6(5)(1), 6(6), 6(9) and 11(3) of the WTO Antidumping Agreement and of the principle of good administration.

([1]) Regulation (EU) 2018/921 of the European Commission of 28 June 2018 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2018, L 164, 29.6.2018, p. 14).

([2]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

Action brought on 21 September 2018 — Lupu v EUIPO — Et Djili Soy Dzhihangir Ibryam (Djili DS)

(Case T-558/18)

(2018/C 408/75)

Language of the case: English

Parties

Applicant: Victor Lupu (Bucharest, Romania) (represented by: P. A. Acsinte, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Et Djili Soy Dzhihangir Ibryam (Dulovo, Bulgaria)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark Djili DS — Application for registration No 8 404 551

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 5 June 2018 in Case R 2391/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the opposition against the registration of the mark applied for (EUTM application 8 404 551) and/or cancel/declare the registration invalid.

Pleas in law

— Infringement of Article 1 of the First Protocol of the European Convention on Human Rights and of Article 6 of the European Convention on Human Rights;

— Infringement of Rule 20(7)(a) and (c) of the Commission Regulation (EC) no. 2868/95 of 13 December 1995 implementing Council Regulation (EC) no. 40/94 on the Community trade mark;

— Infringement of Article 53(2)(c) and (d) of Regulation (EC) no. 207/2009 in respect of Applicant's copyright for the picture of the package 'Djili' written in red letters on a blue package with the figure of a parrot and in respect of Applicant's rights to use a trade name for products in the sense of the Judgment of the European Court of Justice in the Case C-17/06 'Celine'.

Action brought on 21 September 2018 — YP v Commission

(Case T-563/18)

(2018/C 408/76)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 13 November 2017 not to promote her to grade AD 14;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 45 of the Staff Regulations of Officials of the European Union and of the presumption of innocence.

2. Second plea in law, alleging infringement of Article 9(3) of Annex IX to the Staff Regulations of Officials of the European Union.

3. Third plea in law, alleging infringement of the obligation to state reasons.

Action brought on 25 September 2018 — YQ v Commission

(Case T-570/18)

(2018/C 408/77)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare and adjudge that the individual decision no longer to grant the applicant the reimbursement of the school fees in connection with her child as of the 2017/2018 school year, processed on 15 November 2017 and reflected for the first time in her pay slip for December 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 general implementing provisions on the reimbursement of medical fees, in so far as the defendant's amended interpretation infringed acquired rights, legitimate expectations, legal certainty and the principle of good 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 the failure properly to balance the applicant's interests and to comply with the principle of proportionality, which failures vitiate the contested decision.

Action brought on 25 September 2018 — YR v Commission

(Case T-571/18)

(2018/C 408/78)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare and adjudge that the individual decision no longer to grant the applicant the reimbursement of the school fees in connection with her child as of the 2017/2018 school year, processed on 13 November 2017 and reflected for the first time in her pay slip for December 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.

— 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 general implementing provisions on the reimbursement of medical fees, in so far as the defendant's amended interpretation infringed acquired rights, legitimate expectations, legal certainty and the principle of good administration.

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

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

— Fourth plea in law, alleging the failure properly to balance the applicant's interests and to comply with the principle of proportionality, which failures vitiate the contested decision.

Action brought on 25 September 2018 — YS v Commission

(Case T-572/18)

(2018/C 408/79)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare and adjudge that the individual decision no longer to grant the applicant the reimbursement of the school fees in connection with her child as of the 2017/2018 school year, processed on 14 November 2017 and reflected for the first time in her pay slip for December 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 general implementing provisions on the reimbursement of medical fees, in so far as the defendant's amended interpretation infringed acquired rights, legitimate expectations, legal certainty and the principle of good 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 the failure properly to balance the applicant's interests and to comply with the principle of proportionality, which failures vitiate the contested decision.

Action brought on 25 September 2018 — Hickies v EUIPO (Shape of a shoe lace)

(Case T-573/18)

(2018/C 408/80)

Language of the case: English

Parties

Applicant: Hickies, Inc. (New York, New York, United States) (represented by: I. Fowler, Solicitor and J. Schmitt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union three-dimensional mark (Shape of a shoe lace) — Application for registration No 16 952 962

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 28 June 2018 in Case R 2693/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it dismissed the applicant's appeal in relation to 'shoe laces; shoe ornaments made of plastic; shoe trimmings; accessories for apparel, sewing articles and decorative textile articles; shoe buckles; shoe fasteners';

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 27 September 2018 — ND (*) and OE (*) v Commission

(Case T-581/18)

(2018/C 408/81)

Language of the case: French

Parties

Applicants: ND (*), OE (*) (represented by: A. Bove, lawyer)

Defendant: European Commission

Form of order sought

— Admit the present application for annulment;

— On the substance, declare the action well-founded in its pleas, in consequence annul the decision of the European Commission served on 30 July 2018, on the basis of Regulation No 260/68 of the Council of 29 February 1968, and/or of Article 9 of the Treaty on European Union, by way of the action provided for in Article 263 TFEU, and refer the file back to the competent authority;

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

— Order all acts required by the law in the matter;

— Order the defendant to pay the costs of the instance;

— Reserve to the applicant all other rights, pleas and actions.

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 infringement of Regulation No 260/68 of the Council of 29 February 1968.

2. Second plea in law, alleging infringement of Article 9 of the Treaty on European Union, instituting equality between all EU citizens, which was not complied with in the present case.

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

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN