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COURT OF JUSTICE OF THE EUROPEAN UNION

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(2018/C 455/01)

Last publication

OJ C 445, 10.12.2018

Past publications

OJ C 436, 3.12.2018

OJ C 427, 26.11.2018

OJ C 408, 12.11.2018

OJ C 399, 5.11.2018

OJ C 392, 29.10.2018

OJ C 381, 22.10.2018

These texts are available on:

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

COURT OF JUSTICE

Taking of the oath by the new Members of the Court

(2018/C 455/02)

Following their appointment as Judges at the Court of Justice for the period from 7 October 2018 to 6 October 2024 by decisions of the Representatives of the Governments of the Member States of the European Union of 28 February 2018, ([1]) 13 June 2018 ([2]) and 25 July 2018, ([3]) Ms Rossi, Mr Jarukaitis, Mr Xuereb and Mr Cardoso da Silva Piçarra took the oath before the Court of Justice on 8 October 2018.

Following their appointment as Advocates General at the Court of Justice for the period from 7 October 2018 to 6 October 2024 by decisions of the Representatives of the Governments of the Member States of the European Union of 28 February 2018[1] and 5 September 2018, ([4]) Mr Pitruzzella and Mr Hogan took the oath before the Court of Justice on 8 October 2018.

Election of the President of the Court

(2018/C 455/03)

At a meeting on 9 October 2018, the Judges of the Court of Justice elected, pursuant to Article 8(1) of the Rules of Procedure, Mr Lenaerts as President of the Court for the period from 9 October 2018 to 6 October 2021.

Election of the Vice-President of the Court

(2018/C 455/04)

At a meeting on 9 October 2018, the Judges of the Court of Justice elected, pursuant to Article 8(4) of the Rules of Procedure, Ms Silva de Lapuerta as Vice-President of the Court for the period from 9 October 2018 to 6 October 2021.

Election of the Presidents of the Chambers of five Judges

(2018/C 455/05)

At a meeting on 9 October 2018, the Judges of the Court of Justice elected, pursuant to Article 12(1) of the Rules of Procedure, Mr Bonichot as President of the First Chamber, Mr Arabadjiev as President of the Second Chamber, Ms Prechal as President of the Third Chamber, Mr Vilaras as President of the Fourth Chamber and Mr Regan as President of the Fifth Chamber for the period from 9 October 2018 to 6 October 2021.

([1]) OJ L 64, 7.3.2018, p. 1.
([2]) OJ L 155, 19.6.2018, p. 4.
([3]) OJ L 209, 20.8.2018, p. 1.
([4]) OJ L 228, 11.9.2018, p. 1.

Appointment of the First Advocate General

(2018/C 455/06)

At its General Meeting on 10 October 2018, the Court of Justice appointed Mr Szpunar as First Advocate General for the period from 10 October 2018 to 6 October 2019.

Election of the Presidents of the Chambers of three Judges

(2018/C 455/07)

At a meeting on 10 October 2018, the Judges of the Court of Justice elected, pursuant to Article 12(2) of the Rules of Procedure, Ms Toader as President of the Sixth Chamber, Mr von Danwitz as President of the Seventh Chamber, Mr Biltgen as President of the Eighth Chamber, Ms Jürimäe as President of the Ninth Chamber and Mr Lycourgos as President of the Tenth Chamber for the period from 10 October 2018 to 6 October 2019.

Designation of the Chamber responsible for cases of the kind referred to in Article 107 of the Rules of Procedure of the Court

(2018/C 455/08)

At its General Meeting on 10 October 2018, the Court designated the First and the Second Chambers as the Chambers that are, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 107 of those Rules, for the period from 10 October 2018 to 6 October 2019.

Designation of the Chamber responsible for cases of the kind referred to in Article 193 of the Rules of Procedure of the Court

(2018/C 455/09)

At its General Meeting on 10 October 2018, the Court designated the Third Chamber as the Chamber that is, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 193 of those Rules, for the period from 10 October 2018 to 6 October 2019.

Assignment of Judges to Chambers

(2018/C 455/10)

At its General Meeting on 10 October 2018, the Court decided to assign Judges to the Chambers of five Judges as follows:

First Chamber

Mr Bonichot, President,

Ms Toader, Mr Rosas, Mr Bay Larsen and Mr Safjan, Judges

Second Chamber

Mr Arabadjiev, President,

Mr von Danwitz, Mr Levits, Ms Berger, Mr Vajda and Mr Xuereb, Judges

Third Chamber

Ms Prechal, President,

Mr Biltgen, Mr Malenovský, Mr Fernlund and Ms Rossi, Judges

Fourth Chamber

Mr Vilaras, President,

Ms Jürimäe, Mr Šváby, Mr Rodin and Mr Piçarra, Judges

Fifth Chamber

Mr Regan, President,

Mr Lycourgos, Mr Juhász, Mr Ilešič and Mr Jarukaitis, Judges

At its General Meeting on 10 October 2018, the Court decided to assign Judges to the Chambers of three Judges as follows:

Sixth Chamber

Ms Toader, President,

Mr Rosas, Mr Bay Larsen and Mr Safjan, Judges

Seventh Chamber

Mr von Danwitz, President,

Mr Levits, Ms Berger, Mr Vajda and Mr Xuereb, Judges

Eighth Chamber

Mr Biltgen, President,

Mr Malenovský, Mr Fernlund and Ms Rossi, Judges

Ninth Chamber

Ms Jürimäe, President,

Mr Šváby, Mr Rodin and Mr Piçarra, Judges

Tenth Chamber

Mr Lycourgos, President,

Mr Juhász, Mr Ilešič and Mr Jarukaitis, Judges

Lists for the purposes of determining the composition of the formations of the Court

(2018/C 455/11)

At its General Meeting on 11 October 2018, the Court drew up the list for determining the composition of the Grand Chamber as follows:

Mr Rosas

Mr Jarukaitis

Mr Juhász

Ms Rossi

Mr Ilešič

Mr Piçarra

Mr Malenovský

Mr Xuereb

Mr Levits

Mr Lycourgos

Mr Bay Larsen

Ms Jürimäe

Mr von Danwitz

Mr Biltgen

Ms Toader

Mr Rodin

Mr Safjan

Mr Vajda

Mr Šváby

Mr Fernlund

Ms Berger

At its General Meeting on 11 October 2018, the Court drew up the list for determining the composition of the Chambers of five Judges as follows:

First Chamber

Mr Rosas

Mr Safjan

Mr Bay Larsen

Ms Toader

Second Chamber

Mr Levits

Mr Xuereb

Mr von Danwitz

Mr Vajda

Ms Berger

Third Chamber

Mr Malenovský

Ms Rossi

Mr Fernlund

Mr Biltgen

Fourth Chamber

Mr Šváby

Mr Piçarra

Mr Rodin

Ms Jürimäe

Fifth Chamber

Mr Juhász

Mr Jarukaitis

Mr Ilešič

Mr Lycourgos

At its General Meeting on 11 October 2018, the Court drew up the list for determining the composition of the Chambers of three Judges as follows:

Sixth Chamber

Mr Rosas

Mr Bay Larsen

Mr Safjan

Seventh Chamber

Mr Levits

Ms Berger

Mr Vajda

Mr Xuereb

Eighth Chamber

Mr Malenovský

Mr Fernlund

Ms Rossi

Ninth Chamber

Mr Šváby

Mr Rodin

Mr Piçarra

Tenth Chamber

Mr Juhász

Mr Ilešič

Mr Jarukaitis

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Sixth Chamber) of 18 October 2018 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-669/16) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 4(1) — Annexes II and III — Designation of special areas of conservation (SACs) — Harbour porpoise)

(2018/C 455/12)

Language of the case: English

Parties

Applicant: European Commission (represented by: J. Norris-Usher and C. Hermes, acting as Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: G. Brown, acting as Agent, and by R. Palmer and M. Armitage, Barristers.)

Operative part of the judgment

The Court:

1. *Declares that, by failing to propose and transmit, within the period prescribed, pursuant to Article 4(1) and Annexes II and III of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, a list indicating a sufficient number of sites hosting the harbour porpoise (Phocoena phocoena) and by failing, to that extent, to contribute, pursuant to Article 3(2) of that directive, to the creation of the Natura 2000 network in proportion to the representation within its territory of the habitats of that species, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under those provisions;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

([1]) OJ C 63, 27.2.2017.

Judgment of the Court (Fourth Chamber) of 18 October 2018 — Gul Ahmed Textile Mills Ltd v Council of the European Union, European Commission

(Case C-100/17 P) ([1])

(Appeal — Dumping — Regulation (EC) No 397/2004 — Imports of cotton-type bed linen originating in Pakistan — Continuing interest in bringing proceedings)

(2018/C 455/13)

Language of the case: English

Parties

Appellant: Gul Ahmed Textile Mills Ltd (represented by: L. Ruessmann, avocat, and J. Beck, Solicitor)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix, acting as Agent, and by R. Bierwagen and C. Hipp, Rechtsanwälte), European Commission (represented by: J.-F. Brakeland and N. Kuplewatzky, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Gul Ahmed Textile Mills Ltd to pay the costs.*

([1]) OJ C 168, 29.5.2017.

Judgment of the Court (First Chamber) of 18 October 2018 — Internacional de Productos Metálicos, SA v European Commission

(Case C-145/17 P) ([1])

(Appeal — Dumping — Imports of certain iron or steel fasteners originating in the People's Republic of China or consigned from Malaysia — Infringement of the Anti-Dumping Agreement concluded in the World Trade Organisation (WTO) — Repeal of definitive anti-dumping duties already collected — Non-retroactive effect — Fourth paragraph of Article 263 TFEU — Person individually concerned — Regulatory act that does not entail implementing measures)

(2018/C 455/14)

Language of the case: Spanish

Parties

Appellant: Internacional de Productos Metálicos, SA (represented by: C. Cañizares Pacheco, E. Tejedor de la Fuente and A. Monreal Lasheras, abogados)

Other party to the proceedings: European Commission (represented by: J.-F. Brakeland, M. França and G. Luengo, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Internacional de Productos Metálicos, SA to pay the costs.*

([1]) OJ C 195, 19.6.2017.

Judgment of the Court (Third Chamber) of 18 October 2018 (request for a preliminary ruling from the Landgericht München I — Germany) — Bastei Lübbe GmbH & Co. KG v Michael Strotzer

(Case C-149/17) ([1])

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Enforcement of intellectual property rights — Directive 2004/48/EC — Compensation in the event of file-sharing in breach of copyright — Internet connection accessible by members of the owner's family — Exemption from liability of the owner without the need to specify the nature of the use of the connection by the family member — Charter of Fundamental Rights of the European Union — Article 7)

(2018/C 455/15)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Bastei Lübbe GmbH & Co. KG

Defendant: Michael Strotzer

Operative part of the judgment

Article 8(1) and (2) of Directive 2001/29/EC, of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, read in conjunction with Article 3(1) thereof, and Article 3 (2) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, as interpreted by the relevant national courts, the owner of an internet connection used for copyright infringements through file-sharing cannot be held liable to pay damages if he can name at least one family member who might have had access to that connection, without providing further details as to when and how the internet was used by that family member.

([1]) OJ C 213, 3.7.2017.

Judgment of the Court (Sixth Chamber) of 18 October 2018 (request for a preliminary ruling from the Supreme Court of the United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v Volkswagen Financial Services (UK) Ltd

(Case C-153/17) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 168 and 173 — Deduction of input tax — Vehicle hire purchase transactions — Goods and services used for both taxable transactions and exempt transactions — Origin and scope of the right to deduct — Proportional deduction)

(2018/C 455/16)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: Volkswagen Financial Services (UK) Ltd

Operative part of the judgment

Article 168 and Article 173(2)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, first, even where the general costs relating to supplies of moveable goods by hire purchase, such as the supplies at issue in the main proceedings, are passed on not in the amount due by the customer in respect of the supply of the goods concerned, that is to say the taxable part of the transaction, but in the amount of the interest due in respect of the 'finance' part of the transaction, that is to say the exempt part thereof, those general costs must nonetheless be considered, for the purposes of value added tax (VAT), to be a component of the price of that supply and, second, Member States may not apply a method of apportionment which does not take account of the initial value of the goods concerned when they are supplied, since that method is not capable of ensuring a more precise apportionment than that which would arise from the application of the turnover-based allocation key.

(1) OJ C 178, 6.6.2017.

Judgment of the Court (First Chamber) of 17 October 2018 (request for a preliminary ruling from the Supreme Court — Ireland) — Volkmar Klohn v An Bord Pleanála

(Case C-167/17) (1)

(Reference for a preliminary ruling — Environment — Assessment of the effects of certain projects on the environment — Right to challenge a development consent decision — Requirement for a procedure which is not prohibitively expensive — Concept — Temporal application — Direct effect — Effect on a national decision on the taxation of costs which has become final)

(2018/C 455/17)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Volkmar Klohn

Defendant: An Bord Pleanála

Interveners: Sligo County Council, Maloney and Matthews Animal Collections Ltd

Operative part of the judgment

1. *The fifth paragraph of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as meaning that the requirement that certain judicial proceedings in environmental matters must not be prohibitively expensive which it lays down does not have direct effect. Where that article has not been transposed by a Member State, the national courts of that Member State are nonetheless required to interpret national law to the fullest extent possible, once the time limit for transposing that article has expired, in such a way that persons should not be prevented from seeking, or pursuing a claim for, a review by the courts, which falls within the scope of that article, by reason of the financial burden that might arise as a result.*

2. *The fifth paragraph of Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that a Member State's courts are under an obligation to interpret national law in conformity with that directive, when deciding on the allocation of costs in judicial proceedings which were ongoing as at the date on which the time limit for transposing the requirement, laid down in the fifth paragraph of Article 10a, that certain judicial proceedings in environmental matters must not be prohibitively expensive expired, irrespective of the date on which those costs were incurred during the proceedings concerned.*

3. *The fifth paragraph of Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that, in a dispute such as that at issue in the main proceedings, the national court called upon to rule on the amount of costs is under an obligation to interpret national law in conformity with that directive, in so far as the force of res judicata attaching to the decision as to how the costs are to be borne, which has become final, does not preclude this, which it is for the national court to determine.*

([1]) OJ C 178, 6.6.2017.

Judgment of the Court (First Chamber) of 18 October 2018 (request for a preliminary ruling from the Commissione tributaria di primo grado di Bolzano — Italy) — Rotho Blaas Srl v Agenzia delle Dogane e dei Monopoli

(Case C-207/17) ([1])

(Reference for a preliminary ruling — Common commercial policy — Definitive anti-dumping duty on imports of certain goods originating in the People's Republic of China — Anti-dumping duty held to be incompatible with the General Agreement on Tariffs and Trade by the Dispute Settlement Body of the World Trade Organisation (WTO))

(2018/C 455/18)

Language of the case: Italian

Referring court

Commissione tributaria di primo grado di Bolzano

Parties to the main proceedings

Applicant: Rotho Blaas Srl

Defendant: Agenzia delle Dogane e dei Monopoli

Operative part of the judgment

Examination of the first question has disclosed no factor of such a kind as to affect the validity of Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, Council Implementing Regulation (EU) No 924/2012 of 4 October 2012, amending Regulation No 91/2009, and Commission Implementing Regulation (EU) 2015/519 of 26 March 2015 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

([1]) OJ C 277, 21.8.2017.

Judgment of the Court (First Chamber) of 17 October 2018 (request for a preliminary ruling from the Supreme Court — Ireland) — Ryanair Ltd v The Revenue Commissioners

(Case C-249/17) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Concept of taxable person — Holding company — Deduction of input tax — Expenditure for consultancy services received for the purpose of the acquisition of another company's shares — Acquiring company's intention to provide management services to the target company — Those services not provided — Right to deduct VAT charged on the services received)

(2018/C 455/19)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Ryanair Ltd

Defendant: The Revenue Commissioners

Operative part of the judgment

Articles 4 and 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as conferring on a company, such as that at issue in the main proceedings, which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to value added tax (VAT) to that other company, the right to deduct, in full, input VAT paid on expenditure relating to consultancy services provided in the context of a takeover bid, even if ultimately that economic activity was not carried out, provided that the exclusive reason for that expenditure is to be found in the intended economic activity.

([1]) OJ C 221, 10.7.2017.

Judgment of the Court (Sixth Chamber) of 18 October 2018 — European Commission v Romania

(Case C-301/17) ([1])

(Failure of a Member State to fulfil obligations — 2005 Act of Accession — Obligations of the accession States — Environment — Directive 1999/31/EC — Article 14(b) — Operation of landfill sites — Closure of sites which have not been granted a permit to operate a landfill — Closure and after-care procedures)

(2018/C 455/20)

Language of the case: Romanian

Parties

Applicant: European Commission (represented by: L. Nicolae and E. Sanfrutos Cano, acting as Agents)

Defendant: Romania (represented by: R.-H. Radu, E. Gane, L. Lițu, O.-C. Ichim and M. Chicu, and subsequently C.-R. Canțăr, E. Gane, L. Lițu, O.-C. Ichim and M. Chicu, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by having failed to comply, as regards the 68 landfill sites in question, with the obligation to adopt all necessary measures to close down as soon as possible, under Article 7(g) and Article 13 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, sites which have not been granted, in accordance with Article 8, a permit to continue to operate, Romania is in breach of its obligations under Article 14(b), in conjunction with Article 13, of that directive;*

2. *Orders Romania to pay the costs.*

(1) OJ C 239, 24.7.2017.

Judgment of the Court (Sixth Chamber) of 17 October 2018 (request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof — Germany) — Günter Hartmann Tabakvertrieb GmbH & Co. KG v Stadt Kempten,

(Case C-425/17) (1)

(Reference for a preliminary ruling — Approximation of laws — Manufacture, presentation and sale of tobacco products — Directive 2014/40/EU — Ban on placing tobacco for oral use on the market — Definitions of 'chewing tobacco' and 'tobacco for oral use' — Paste composed of finely ground tobacco (Thunder Chewing Tobacco) and porous cellulose sachet portions filled with finely ground tobacco (Thunder Frosted Chewing Bags))

(2018/C 455/21)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Günter Hartmann Tabakvertrieb GmbH & Co. KG

Defendant: Stadt Kempten

Intervener: Landesanwaltschaft Bayern

Operative part of the judgment

Article 2(8) of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, read in conjunction with Article 2(6) of that directive, must be interpreted as meaning that only tobacco products which can be consumed in the proper sense only by chewing constitute tobacco products intended to be chewed within the meaning of those provisions, which it is for the national court to determine on the basis of all the relevant objective characteristics of the products concerned, such as their composition, their consistency, their method of dispensation and, where appropriate, their actual use by consumers.

(1) OJ C 347, 16.10.2017.

Judgment of the Court (Eighth Chamber) of 17 October 2018 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-503/17) ([1])

(Failure of a Member State to fulfil obligations — Directive 95/60/EC — Fiscal marking of gas oils and kerosene — Refuelling of private pleasure craft)

(2018/C 455/22)

Language of the case: English

Parties

Applicant: European Commission (represented by: F. Tomat and J. Tomkin, acting as Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Brandon, acting as Agent, and by M. Gray, Barrister)

Operative part of the judgment

The Court:

1. *Declares that by allowing the use of marked fuel for the purposes of propelling private pleasure craft, even where that fuel is not subject to any exemption from or reduction in excise duty, the United Kingdom has failed to fulfil its obligations under Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

([1]) OJ C 347, 16.10.2017.

Judgment of the Court (Eighth Chamber) of 17 October 2018 — European Commission v Ireland

(Case C-504/17) ([1])

(Failure of a Member State to fulfil obligations — Taxation of energy products and electricity — Directive 2003/96/EC — Articles 4 and 7 — Application of the minimum levels of taxation applicable to motor fuels — Directive 95/60/EC — Fiscal marking of gas oils and kerosene — Refuelling of private pleasure craft)

(2018/C 455/23)

Language of the case: English

Parties

Applicant: European Commission (represented by: F. Tomat and J. Tomkin, acting as Agents)

Defendant: Ireland (represented by: M. Browne, G. Hodge, J. Quaney and A. Joyce, acting as Agents, and by F. Callanan, Senior Counsel, and B. Doherty, Barrister-at-Law)

Operative part of the judgment

The Court:

1. *Declares that, by not ensuring that the minimum levels of taxation applicable to motor fuels laid down by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity were applied to gas oil used as fuel for propelling private pleasure craft, and by permitting the use of marked fuel for propelling private pleasure craft, even where that fuel is not subject to any exemption from, or reduction in, excise duty, Ireland has failed to fulfil its obligations under Articles 4 and 7 of Directive 2003/96 and Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene respectively;*

2. *Orders Ireland to pay the costs.*

(1) OJ C 347, 16.10.2017.

Judgment of the Court (Eighth Chamber) of 18 October 2018 (request for a preliminary ruling from the Consiglio di Stato — Italy) — IBA Molecular Italy Srl v Azienda ULSS No 3 and Others

(Case C-606/17) (1)

(Reference for a preliminary ruling — Public supply contracts — Directive 2004/18/EC — Article 1(2)(a) — Contract awarded outside a public procurement procedure — Definition of 'contracts for pecuniary interest' — Definition of 'public entity')

(2018/C 455/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: IBA Molecular Italy Srl

Defendant: Azienda ULSS No 3, Regione Veneto, Ministero della Salute, Ospedale dell'Angelo di Mestre

Intervening parties: Istituto Sacro Cuore Don Calabria di Negrar, Azienda ULSS No 22

Operative part of the judgment

1. *Articles 1(2)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that the concept of 'contract for pecuniary interest' includes a decision by which a contracting authority directly awards, to a specific economic operator, and therefore without organising a public tendering procedure, specific-purpose funding for the manufacture of products to be supplied free of charge by that economic operator to various authorities which are exempt from payment of any consideration to the supplier, except for the payment of a fixed sum of EUR 180 per delivery, for transport costs.*

2. *Article 1(2)(a) and Article 2 of Directive 2004/18 must be interpreted as precluding national rules, such as those at issue in the main proceedings which, by treating private 'classified' hospitals as equivalent to public hospitals on account of their integration into the system of national public healthcare planning governed by special agreements that are distinct from ordinary accreditation relationships with other private parties that participate in the system of provision of healthcare services, take them outside the scope of national and EU rules on public contracts, including in cases where such classified hospitals are entrusted with the manufacture and supply, free of charge, to public healthcare establishments of specific products which are necessary for the provision of healthcare services and where, at the same time, they receive public funding specifically for the manufacture and supply of those products.*

(1) OJ C 22, 22.1.2018.

Judgment of the Court (Seventh Chamber) of 18 October 2018 (request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije — Slovenia) — E.G. v Republic of Slovenia

(Case C-662/17) ([1])

(Reference for a preliminary ruling — Asylum policy — Directive 2013/32/EU — Article 46(2) — Appeal against a decision refusing to grant refugee status but granting subsidiary protection status — Admissibility — Lack of a sufficient interest where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law — Relevance of the applicant's particular circumstances for the purposes of examining whether the rights and benefits are identical)

(2018/C 455/25)

Language of the case: Slovene

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: E.G.

Defendant: Republic of Slovenia

Operative part of the judgment

The second paragraph of Article 46(2) 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 must be interpreted as meaning that subsidiary protection status, granted under legislation of a Member State such as that at issue in the main proceedings, does not offer the 'same rights and benefits as those offered by the refugee status under Union and national law', within the meaning of that provision, so that a court of that Member State may not dismiss an appeal brought against a decision considering an application unfounded in relation to refugee status but granting subsidiary protection status as inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings where it is found that, under the applicable national legislation, those rights and benefits afforded by each international protection status are not genuinely identical.

Such an appeal may not be dismissed as inadmissible, even if it is found that, having regard to the applicant's particular circumstances, granting refugee status could not confer on him more rights and benefits than granting subsidiary protection status, in so far as the applicant does not, or has not yet, relied on rights which are granted by virtue of refugee status, but which are not granted, or are granted only to a limited extent, by virtue of subsidiary protection status.

([1]) OJ C 32, 29.1.2018.

Judgment of the Court (First Chamber) of 17 October 2018 (request for a preliminary ruling from the High Court of Justice, Family Division (England and Wales) — United Kingdom) — UD v XB

(Case C-393/18 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Article 8(1) — Jurisdiction in matters of parental responsibility — Concept of 'habitual residence of the child' — Requirement of physical presence — Detention of the mother and child in a third country against the will of the mother — Infringement of the fundamental rights of the mother and child)

(2018/C 455/26)

Language of the case: English

Referring court

High Court of Justice, Family Division (England and Wales)

Parties to the main proceedings

Applicant: UD

Defendant: XB

Operative part of the judgment

Article 8(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that a child must have been physically present in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that provision. Circumstances such as those in the main proceedings, assuming that they are proven, that is to say, first, the fact that the father's coercion of the mother had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and, secondly, the breach of the mother's or the child's rights, do not have any bearing in that regard.

([1]) OJ C 276, 6.8.2018.

Order of the Court (First Chamber) of 27 September 2018 (request for a preliminary ruling from the Tribunale di Milano — Italy) — FR v Ministero dell'interno — Commissione Territoriale per il riconoscimento della Protezione Internazionale presso la Prefettura U.T.G. di Milano

(Case C-422/18 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Article 99 of the Rules of Procedure of the Court — Area of freedom, security and justice — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 46 — Charter of Fundamental Rights of the European Union — Article 18, Article 19(2) and Article 47 — Right to an effective remedy — Decision rejecting an application for international protection — National legislation providing for a second level of jurisdiction — Automatic suspensory effect limited to the action at first instance)

(2018/C 455/27)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicant: FR

Defendant: Ministero dell'interno — Commissione Territoriale per il riconoscimento della Protezione Internazionale presso la Prefettura U.T.G. di Milano

Intervening party: Pubblico Ministero

Operative part of the order

European Union law, in particular the provisions 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, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides for an appeal procedure against a first-instance judgment confirming a decision of the competent administrative authority which rejects an application for international protection, without granting it automatic suspensory effect, but which allows the court which has handed down that judgment to order, upon application by the person concerned, the suspension of its enforcement, after having assessed whether or not the grounds raised in the appeal brought against that judgment are well founded but not whether or not there is a risk of serious and irreparable damage for that applicant as a result of the enforcement of that judgment.

([1]) OJ C 311, 3.9.2018.

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 7 September 2018 — Austrian Airlines AG v MG, NF

(Case C-566/18)

(2018/C 455/28)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Defendant and appellant: Austrian Airlines AG

Applicants and respondents: MG, NF

Questions referred

1. Are Articles 5 and 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 ([1]) to be interpreted as meaning that airline passengers may be entitled to compensation under the regulation more than once on the basis of the same reservation if the flight on which the operating air carrier has rebooked the passengers is cancelled or delayed by more than three hours, with the result that the compensation under Article 7 of the regulation is not fixed but rather is contingent on the number of cancellations or on the scope of the cancellations and the associated delay?

2. If the first question is answered in the affirmative: how is this to be reconciled with the principle laid down in the EU Court of Justice's judgment of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, ([2]) according to which Article 5 of the regulation is to be interpreted as meaning that passengers whose flights are delayed are to be treated as passengers whose flights are cancelled under the rules on compensation, when the Court of Justice held in its judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, ([3]) that a delay in excess of three hours is not taken into account in the calculation of the fixed compensation?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).
([2]) EU:C:2009:716.
([3]) EU:C:2012:657.

Appeal brought on 10 September 2018 by HF against the judgment of the General Court (First Chamber, Extended Composition) delivered on 29 June 2018 in Case T-218/17, HF v Parliament

(Case C-570/18 P)

(2018/C 455/29)

Language of the case: French

Parties

Appellant: HF (represented by: A. Tymen, avocate)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 29 June 2018 in Case T-218/17,

Consequently,

— uphold the form of order sought by the appellant at first instance and, thus,

— annul the decision of the European Parliament of 30 June 2016 rejecting the appellant's request for assistance,

— order the Parliament to pay compensation in respect of non-financial harm estimated *ex aequo et bono* at EUR 90 000,

— order the European Parliament to pay all of the costs incurred at first instance and on appeal.

Grounds of appeal and main arguments

— Breach of the right to be heard — Breach of Article 41[(2)](a) of the Charter;

— Breach of Article 41(1) of the Charter — Distortion of the arguments of the appellant — Breach by the General Court of its obligation to state reasons;

— Breach of Article 31(1) of the Charter — Infringement of Article 12a(1), (3) and (24) of the Staff Regulations.

Furthermore, the appellant disputes the decision of the General Court to reject her claim for damages on the ground that the contested decision has not been set aside.

Request for a preliminary ruling from the Oberlandesgericht Frankfurt am Main (Germany) lodged on 20 September 2018 — Verbraucherzentrale Berlin eV v DB Vertrieb GmbH

(Case C-583/18)

(2018/C 455/30)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Verbraucherzentrale Berlin eV

Defendant: DB Vertrieb GmbH

Questions referred

1. Is Article 2(6) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights ([1]) to be interpreted to mean that it also covers contracts by means of which the trader is not directly obliged to supply a service, but rather the consumer acquires the right to receive a discount for services ordered in the future?

   If Question 1 is answered in the affirmative:

2. Is the exception for 'contracts … for passenger transport services' in Article 3(3)(k) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights to be interpreted to mean that it also applies to situations in which the consumer does not directly receive a passenger transport service as consideration, but rather acquires the right to receive a discount for contracts for transport services to be concluded in the future?

([1]) 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 (OJ 2011 L 304, p. 64).

Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) lodged on 25 September 2018 — AFMB Ltd and Others v Raad van bestuur van de Sociale verzekeringsbank

(Case C-610/18)

(2018/C 455/31)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Appellants: AFMB Ltd and Others

Respondent: Raad van bestuur van de Sociale verzekeringsbank

Questions referred

1. A. Must Article 14(2)(a) of Regulation (EEC) No 1408/71 ([1]) be interpreted as meaning that, in circumstances such as those of the cases in the main proceedings, an international truck driver in paid employment is to be regarded as being a member of the driving staff of:

   (a) the transport company which has recruited the person concerned, to which the person concerned is de facto fully available for an indefinite period, which exercises effective control over the person concerned and which actually bears the wage costs; or

   (b) the company which has formally concluded an employment contract with the truck driver and which, by agreement with the transport company referred to under (a), paid the worker a salary and paid contributions in respect thereof in the Member State where that company has its registered office and not in the Member State where the transport company referred to in (a) has its registered office;

   (c) both the company under (a) and the company under (b)?

B. Must Article 13(1)(b) of Regulation (EC) No 883/2004 ([2]) be interpreted as meaning that, in circumstances such as those of the cases in the main proceedings, the employer of an international truck driver in paid employment is considered to be:

(a) the transport company which has recruited the person concerned, to which the person concerned is de facto fully available for an indefinite period, which exercises effective control over the person concerned and which actually bears the wage costs; or

(b) the company which has formally concluded an employment contract with the truck driver and which, by agreement with the transport company referred to under (a), paid the worker a salary and paid contributions in respect thereof in the Member State where that company has its registered office and not in the Member State where the transport company referred to in (a) has its registered office;

(c) both the company under (a) and the company under (b)?

2. In the event that, in circumstances such as those of the cases in the main proceedings, the employer is regarded as being the undertaking referred to in Question 1A(b) and in Question 1B(b):

Do the specific conditions under which employers, such as temporary employment agencies and other intermediaries, can invoke the exceptions to the country-of-employment principle set out in Article 14(1)(a) of Regulation (EEC) No 1408/71 and in Article 12 of Regulation (EC) No 883/2004 also apply by analogy, wholly or in part, to the cases in the main proceedings for the purposes of Article 14(2)(a) of Regulation (EEC) No 1408/71 and of Article 13(1)(b) of Regulation (EC) No 883/2004?

3. In the event that, in circumstances such as those of the cases in the main proceedings, the employer is regarded as being the company referred to in Question 1A(b) and in Question 1B(b), and Question 2 is answered in the negative:

Do the facts and circumstances set out in this request constitute a situation that is to be interpreted as an abuse of EU law and/or an abuse of EFTA law? If so, what is the consequence thereof?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971(II), p. 416).
([2]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Juzgado de Primera Instancia n.º 3 bis de Albacete (Spain) lodged on 2 October 2018 — The borrowers v Globalcaja, S.A.

(Case C-617/18)

(2018/C 455/32)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia n.º 3 bis de Albacete

Parties to the main proceedings

Applicants: The borrowers

Defendant: Globalcaja, S.A.

Questions referred

1. Does the effect of 'shall… not be binding' in Article 6(1) of Directive 93/13 ([1]) mean that a trader and a consumer, by means of a private agreement, cannot modify, by moderating it, a term that does not meet the requirement under Article 4(2) that it must be drafted in plain intelligible language, whether by reducing the amount under that term or by replacing it with a different term that is less detrimental to the consumer?

Would the answer to that question be different if the modification at issue were contained in an agreement concluded between the consumer and the trader that is intended precisely to settle a dispute relating to the possible lack of transparency of a term not individually negotiated contained in an earlier agreement between those parties, without resorting to the courts?

2. Must Article 4(2) of Directive 93/13 be interpreted as meaning that the concepts 'the main subject matter of the contract' and 'adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other' encompass two terms contained in an agreement not individually negotiated between a trader and a consumer, whereby, in the first place, a modification is made to a clause contained in an earlier agreement between those parties — replacing it with a different term that is less detrimental to the consumer — and whereby, in the second place, the consumer waives his right to make a claim through judicial or extrajudicial channels relating to the possible lack of transparency of that term and the effects inherent in that lack of transparency?

3. If the answer to the previous question is in the affirmative, must Article 4 of Directive 93/13 be interpreted as meaning that 'the nature of the goods or services for which the contract was concluded' and 'all the circumstances attending the conclusion of the contract [at the time of conclusion of the contract]' can be taken into account only for the purpose of assessing the fairness of terms that do not relate to the definition of the main subject matter of the contract? Or, on the contrary, can those criteria be taken into account for the purpose of assessing the transparency of terms relating to the main subject matter of the contract, to which Article 4(2) refers?

4. If the answer to the second question is in the affirmative, is national case-law compatible with Article 4(2) of the Directive — specifically with the requirements arising under that article that terms must be drafted in plain intelligible language and must be transparent — where that case-law establishes, in respect of an agreement not individually negotiated between a trader and a consumer whereby the application of a term contained in an earlier agreement between those parties is modified, that the trader is not required to inform the consumer that the term in question may lack transparency, on the ground that the factors giving rise to that lack of transparency are well known?

5. If the answer to the second question is in the affirmative, must Article 4(2) of the Directive be interpreted as meaning that a waiver by a consumer of the right to make claims relating to the possible lack of transparency of a term not negotiated individually, through judicial or extrajudicial channels, only meets the requirement of being 'in plain intelligible language' if the trader has previously informed the consumer of the specific rights he is waiving and, in particular, of the actual amount he is waiving the right to claim?

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

Request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Coimbra (Portugal) lodged on 5 October 2018 — Nelson Antunes da Cunha, Lda v Instituto de Financiamento da Agricultura e Pescas IP (IFAP)

(Case C-627/18)

(2018/C 455/33)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Coimbra

Parties to the main proceedings

Applicant: Nelson Antunes da Cunha, Lda

Defendant: Instituto de Financiamento da Agricultura e Pescas IP (IFAP)

Questions referred

1. Does the limitation period for the exercise of the powers to recover aid, provided for in Article 17(1) of Council Regulation (EU) 2015/1589 ([1]) of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, apply only to relations between the European Union and the Member State to which the decision to recover aid is addressed, or does it apply also to relations between that Member State and the opponent, as the beneficiary of the aid considered incompatible with the Single Market?

2. Should it be found that that limitation period is applicable to relations between the Member State to which the decision to recover aid is addressed and the beneficiary of the aid considered incompatible with the Single Market, must it be understood that that period is applicable only at the procedural stage, or also to the enforcement of the recovery decision?

3. Should it be found that that limitation period is applicable to relations between the Member State to which the decision to recover aid and the beneficiary of the aid considered incompatible with the Single Market, must it be understood that that period may be interrupted by any measure concerning illegal aid adopted by the Commission or by the Member State, even where such measures have not been notified to the beneficiary of the aid to be recovered?

4. Does Article 16(2) of Council Regulation (EU) 2015/1589 of 13 July 2015, together with the principles of EU law, namely the principles of effectiveness and of the incompatibility of State aid with the Single Market, preclude the application of a limitation period of a lesser duration than that laid down in Article 17 of the regulation, such as that provided for in Article 310(1)(d) of the Civil Code, to the interest accruing on the aid to be recovered?

(1) OJ 2015 L 248, p. 9.

Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 8 October 2018 — EN, FM, GL v Ryanair Designated Activity Company

(Case C-629/18)

(2018/C 455/34)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicants: EN, FM, GL

Defendant: Ryanair Designated Activity Company

Question referred

Does Article 25 of Regulation (EU) No 1215/2012 ([1]) of the European Parliament and of the Council allow jurisdiction to be established on the basis of an agreement, concluded before a dispute arises, with regard to the examination of claims based on Regulation (EC) No 261/2004 ([2]) of the European Parliament and of the Council 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?

(1) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ.2012 L 351, p. 1).

(2) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Okrazhen sad Vidin (Bulgaria) lodged on 17 October 2018 — Korporativna targovska banka AD in insolvency v Elit Petrol AD

(Case C-647/18)

(2018/C 455/35)

Language of the case: Bulgarian

Referring court

Okrazhen sad Vidin

Parties to the main proceedings

Applicant in the main proceedings: Korporativna targovska banka AD

Defendant in the main proceedings: Elit Petrol AD

Questions referred

1. i) Should the value of 'the rule of law' protected under Article 2 TEU be interpreted to mean that, when legal provisions are adopted in a Member State, the national legislature is obliged to comply with the legal principles and criteria that characterise 'the rule of law', as developed and cited in the case-law of the Court of Justice of the European Union and in the Communication from the Commission to the European Parliament and the Council of 11 March 2014 entitled 'A new EU Framework to strengthen the Rule of Law'?

   ii) Should the value of 'the rule of law' enshrined in Article 2 TEU and its basic principles — legality, legal certainty, and independent and effective judicial review including respect for fundamental rights and equality before the law — be interpreted to mean that they prevent the adoption of a provision of national law, such as that enacted in Paragraph 5 of the transitional and final provisions of the Zakon za izmenenie i dopalnenie na Zakona za bankovata nesastoyatelnost (Bulgarian Law Amending and Supplementing the Law on the Insolvency of Banks, 'ZIDZBN'), which reregulates the social relations associated with the registration of security interests in public registers exceptionally for the benefit of a particular individual? In this particular case, the national provision retroactively annuls the deletions in the registers of security interests established for the benefit of the insolvent KTB AD and gives rise to legal uncertainty, as it stipulates that the insolvent KTB AD can cite the security interests deemed to have been deleted towards third parties *ex lege*, even though the liabilities for which the security interests were registered have been discharged.

   iii) Can the court directly invoke and directly apply Article 2 TEU if it finds that the way in which the provision of national law in Paragraph 5 of the transitional and final provisions of the ZIDZBN retroactively reregulates the legal effects of the security interests recorded in public registers for the benefit of the insolvent KTB AD infringes the value of 'the rule of law' and its aforementioned basic principles?

   iv) What criteria and conditions must the national court apply when considering if the value of 'the rule of law' within the meaning of Article 2 TEU permits the adoption of a provision of national law such as that in Paragraph 5 of the transitional and final provisions of the ZIDZBN?

   v) Should Article 67(1) TFEU, which states that the Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States, be interpreted to mean that it prevents provisions of national law which give rise to uncertainty in civil and commercial transactions or anticipate the outcome of pending litigation?

2. i) Can the applicable provisions of Article 7(2)(h) and Article 8 of Regulation (EU) 2015/848 ([1]) of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, read in combination with Article 2 TEU, systematically be interpreted in conjunction with the fundamental rights enshrined in Article 17(1), Article 20 and the second paragraph of Article 47 of the Charter?

   ii) If the said provisions of EU law should be interpreted in conjunction with the rights enshrined in the Charter, is it admissible to apply those rights in insolvency proceedings in a Member State and should the protection afforded by those rights be interpreted to mean that it prevents a national legal rule which retroactively reregulates social relations exceptionally in favour of an creditor in insolvency specifically named by the legislature?

   iii) Do Article 7(2)(h) and Article 8 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, interpreted in conjunction with the rights enshrined in Article 17(1), Article 20 and the second paragraph of Article 47 of the Charter, prevent the application of a national legal rule which retroactively annuls deletions in the registers of the security interests held by KTB AD and states that the 'resurrected' security interests for the benefit of the insolvent KTB AD can be cited against third parties ex lege, thereby infringing the rights of other creditors and changing the order of satisfaction of claims in insolvency proceedings?

   iv) Can Article 7(2)(h) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, in conjunction with the rights enshrined in Article 17(1), Article 20 and the second paragraph of Article 47 of the Charter, be interpreted to mean that it prevents the conditional admission in insolvency proceedings of the claims of a creditor specifically named by the legislature (KTB AD), where that creditor's claims had been extinguished in full by set-off when the claims were lodged and litigation seeking annulment of the set-off is pending and has not yet been completed? If the claims of the creditor in insolvency are lodged under the condition that the national court finds the set-offs by which the claims were extinguished to be unenforceable, does the right to a fair hearing in accordance with the second paragraph of Article 47 of the Charter permit a national provision of law which retroactively amends the conditions under which set-off may be invoked and thus anticipates the outcome of the pending litigation seeking annulment of the set-off or admission of the claim in insolvency proceedings?

   v) Can the court rely upon and directly apply the provisions of Article 7(2)(h) and Article 8 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, read in combination with Article 17(1), Article 20 and the second paragraph of Article 47 of the Charter, if it finds that the national provisions of law on which the conditional admission of the claim of KTB AD is based and/or which bring about the condition on which the claim is lodged conflict with EU law?

3. Should Article 77 of Directive 2014/59/EU ([2]) be interpreted to mean that it prevents the application of a national law which retroactively amends the conditions of set-off of reciprocal claims and liabilities with a credit institution in recovery or resolution, thereby anticipating the outcome of pending litigation seeking annulment of the set-off declared to the credit institution?

([1]) OJ 2015 L 141, p. 19.

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

GENERAL COURT

Action brought on 8 October 2018 — ZF v Commission

(Case T-605/18)

(2018/C 455/36)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision of 30 November 2017 fixing the applicant's pension rights with retroactive effect from 6 March 2015 and Commission Decision of 31 January 2018 to recover an alleged overpayment;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the unlawfulness of the withdrawal of a measure conferring subjective rights, in that the applicant's rights were fixed when he entered the service of the EEAS on 1 October 2011 in accordance with Article 15 (1) of the Conditions of Employment of Other Servants of the European Union. The applicant submits therefore that either that decision was lawful and could not be withdrawn, or it was unlawful and so the withdrawal could take effect only within a reasonable period.

2. Second plea in law, alleging an error of law in that the decision to recruit the applicant as a temporary agent of grade AD 12, step 8 with seniority in step from 1 November 2007 was a lawful decision and in line with the contract binding the parties, and could not be lawfully withdrawn and replaced by a decision applying a corrective coefficient resulting in a marked reduction in the applicant's remuneration.

3. Third plea in law, alleging a manifest error of assessment on the part of the Commission when it decided that the applicant performed duties at the level of head of sector.

4. Fourth plea in law, alleging infringement of the duty to state reasons in that the contested decisions are vitiated by a failure to state any relevant reasons.

5. Fifth plea in law, alleging infringement of Article 85 of the Staff Regulations of Officials of the European Union, on the ground that the applicant could not be informed of a possible irregularity in the decision fixing his rights when he entered the service of the EEAS.

Action brought on 9 October 2018 — ZR v EUIPO

(Case T-610/18)

(2018/C 455/37)

Language of the case: English

Parties

Applicant: ZR (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Form of order sought

The applicant claims that the Court should:

— annul the selection board's decision of 1 December 2017 not to place the applicant on the 'reserve list', that is, the database of successful candidates, of open competition EUIPO/AD/01/17 — AD 6 — Administrators in the field of intellectual property;

— in so far as necessary, annul the selection board's decision of 7 March 2018 rejecting the applicant's request for review;

— in so far as necessary, annul the decision of the EUIPO Executive Director of 27 June 2018 and notified on 29 June 2018, rejecting the applicant's complaint;

— 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 violation of Articles 27 and 29 of the Staff Regulations and Article 1(a) and (c) of Annex III to those Regulations.

2. Second plea in law, alleging violation of Article 30 of the Staff Regulations and Article 3 of Annex III to those Regulations and of Article 3 of Annex III to the Notice of Competition ('General Rules Governing Open Competitions').

   — The applicant relies in that regard on the allegedly irregular designation of the members of the selection board.

   — The applicant further refers to a lack of publication of the decisions appointing the selection board and of the names of all the members of the Selection Board.

   — The applicant cites non-equal representation with regard to staff committee/appointing authority representation on the selection board.

   — The applicant also cites non-equal representation on that board from a gender balance perspective.

   — Finally, in regard to that plea, the applicant alleges violation of the principle of stability and continuity of the selection board.

3. Third plea in law, alleging violation of the principle of equal treatment.

4. Fourth plea in law, alleging manifest errors of appreciation, violation of the duty to state reasons and a lack of transparency.

— The applicant claims that certain facts were omitted by the selection board, referring in that regard to the board's evaluation of competencies as described in the notice of competition.

— The applicant claims that certain results specified in the competency passport failed to comply with the notice of competition and complains about a lack of transparency in that respect.

— The applicant also complains that the competency passport contained contradictory statements.

Action brought on 9 October 2018 — Pharmaceutical Works Polpharma v EMA

(Case T-611/18)

(2018/C 455/38)

Language of the case: English

Parties

Applicant: Pharmaceutical Works Polpharma S.A. (Starogard Gdański, Poland) (represented by: M. Martens, N. Carbonnelle, lawyers and S. Faircliffe, Solicitor)

Defendant: European Medicines Agency (EMA)

Form of order sought

The applicant claims that the Court should:

— annul the EMA's decision of 30 July 2018 not to validate the applicant's marketing authorisation application for Dimethyl Fumarate Polpharma, a generic version of Tecfidera;

— order the EMA to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law.

The contested decision refuses to validate the applicant's marketing authorisation application for Dimethyl Fumarate Polpharma in consideration of the fact that the reference product allegedly benefits from regulatory data protection.

An exception of illegality based on Article 277 TFEU is directed against the decision granting marketing authorisation to the reference medicinal product insofar as it expresses a manifestly erroneous conclusion regarding that product's difference from Fumaderm for 'global marketing authorisation' purposes. Under a single plea in law, the applicant submits that, the exception of illegality being admissible and well-founded, the statement of reasons of the contested decision not to validate the applicant's application for marketing authorisation is not legally admissible under Article 296 TFEU.

Action brought on 8 October 2018 — Diesel v EUIPO — Sprinter megacentrosdel deporte (D)

(Case T-615/18)

(2018/C 455/39)

Language of the case: English

Parties

Applicant: Diesel SpA (Breganze, Italy) (represented by: A. Parassina, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sprinter megacentros del deporte, SL (Elche, Spain)

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 D — Application for registration No 11 404 019

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 3 August 2018 in Case R 2657/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceeding.

Pleas in law

— Infringement of Rule 22(3) of Commission Regulation (EC) No 2868/95;

— Infringement of Article 47(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 15 October 2018 — ZI v Commission

(Case T-618/18)

(2018/C 455/40)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the Commission's decision refusing to grant the applicant's husband affiliation to the JSIS;

— 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 the unlawfulness of Article 13 of the Joint Rules on Sickness Insurance for officials of the European Union, in so far as that article breaches Article 72 of the Staff Regulations of Officials of the European Union, since it restricts the scope thereof.

Action brought on 22 October 2018 — E.J. Papadopoulos v EUIPO — Europastry (fripan VIENNOISERIE CAPRICE Pur Beurre)

(Case T-628/18)

(2018/C 455/41)

Language of the case: English

Parties

Applicant: Viomichania mpiskoton kai eidon diatrofis E.J. Papadopoulos S.A. (Moschato-Tavros, Greece) (represented by: C. Chrysanthis, P.–V. Chardalia and A. Vasilogamvrou, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Europastry, SA (Sant Cugat del Vallès, Spain)

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 fripan VIENNOISERIE CAPRICE Pur Beurre — Application for registration No 13 125 265

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 8 August 2018 in Case R 493/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Europastry, SA, if it becomes intervener, to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009.

Action brought on 23 October 2018 — ZM and Others v Council

(Case T-632/18)

(2018/C 455/42)

Language of the case: French

Parties

Applicants: ZM, ZN and ZO (represented by: N. de Montigny, lawyer)

Defendant: European Council

Form of order sought

The applicants claim that the Court should:

— annul the decisions adversely affecting the applicants individually, consisting of the decisions of the appointing authority not to reimburse them for their school fees for the year 2017/2018 which came about in a number of ways depending on the individual circumstances of each of the applicants;

  — either through an individual decision (more specifically an e-mail) specifying in detail the refusal of the reimbursement;

  — or by the use of the word 'processed' in their Sysper and considered by the applicant to be a rejection decision, given that the subsequent wage slip for the following month (at the earliest on the 10th, since that is the date when the pay slips are issued) contains no reimbursement or only a reimbursement for transport costs;

— 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 the general implementing provisions for the reimbursement of medical expenses, in that the defendant's change of interpretation infringed acquired rights, legitimate expectations, legal certainty and the principle of sound 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 of non-discrimination;

— Fourth plea in law, alleging that there was no effective weighing-up of the applicants' interests and that there was a failure to observe the principle of proportionality which vitiated the contested decision.

Action brought on 22 October 2018 — Rose Gesellschaft v EUIPO — Iviton (TON JONES)

(Case T-633/18)

(2018/C 455/43)

Language in which the application was lodged: German

Parties

Applicant: Rose Gesellschaft mbH (Vienna, Austria) (represented by: R. Kornfeld, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'TON JONES' — Application for registration No 15 109 614

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 12 July 2018 in Case R 2136/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to continue the opposition proceedings without applying the ground for dismissal used previously;

— order EUIPO to pay the costs;

— in any event, not award the trade mark applicant any costs in respect of the proceedings.

Plea in law

— Infringement of Article 15 of Council Regulation (EC) No 207/2009.

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