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(2019/C 35/01)

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OJ C 25, 21.1.2019

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 29 November 2018 — National Iranian Tanker Company v Council of the European Union

(Case C-600/16 P) [1]

(Appeal — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran — Freezing of funds and economic resources — Annulment of a listing by the General Court — Re-listing — Evidence dating from before the first listing — Facts known before the first listing — Res judicata — Scope — Legal certainty — Protection of legitimate expectations — Effective judicial protection — Reasons for the listing relating to logistical support to the Government of Iran — Scope — Activity of transporting crude oil)

(2019/C 35/02)

Language of the case: English

Parties

Appellant: National Iranian Tanker Company (represented by: T. de la Mare QC, M. Lester QC, J. Pobjoy, Barrister, and by R. Chandrasekera, S. Ashley and C. Murphy, Solicitors)

Other party to the proceedings: Council of the European Union (represented by: A. Vitro and M. Bishop, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders National Iranian Tanker Company to bear its own costs and to pay those incurred by the Council of the European Union.*

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[1] OJ C 30, 30.1.2017.

Judgment of the Court (Fourth Chamber) of 29 November 2018 — Bank Tejarat v Council of the European Union

(Case C-248/17 P) ([1])

(Appeal — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran — Freezing of funds and economic resources — Annulment of a listing by the General Court — Re-listing — Reasons for the listing relating to financial support to the Government of Iran and the procurement of prohibited goods and technologies — Scope — Financing of oil and gas projects — Evidence dating from before the first listing — Facts known before the first listing — Article 266 TFEU — Res judicata — Scope — Effective judicial protection)

(2019/C 35/03)

Language of the case: English

Parties

Appellant: Bank Tejarat (represented by: S. Zaiwalla, P. Reddy and A. Meskarian, Solicitors, M. Brindle QC, T. Otty QC and R. Blakeley, Barrister)

Other party to the proceedings: Council of the European Union (represented by: J. Kneale and M. Bishop, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bank Tejarat to bear its own costs and to pay those incurred by the Council of the European Union.*

([1]) OJ C 249, 31.7.2017.

Judgment of the Court (First Chamber) of 28 November 2018 (requests for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia — Italy) — Solvay Chimica Italia SpA and Others (C-262/17), Whirlpool Europe Srl and Others (C-263/17), Sol Gas Primari Srl (C-273/17) v Autorità per l'energia elettrica, il gas e il sistema idrico

(Joined Cases C-262/17, C-263/17 and C-273/17) ([1])

(Reference for a preliminary ruling — Internal market in electricity — Directive 2009/72/EC — Distribution systems — Article 28 — Closed distribution systems — Definition — Exemptions — Limits — Article 32(1) — Third-party access — Article 15(7) and Article 37(6)(b) — Dispatching charges)

(2019/C 35/04)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Lombardia

Parties to the main proceedings

Applicants: Solvay Chimica Italia SpA, Solvay Specialty Polymers Italy SpA, Solvay Chimica Bussi SpA, Ferrari f.lli Lunelli SpA, Fenice — Qualità Per L'ambiente SpA, Erg Power Srl, Erg Power Generation SpA, Eni SpA, Enipower SpA (C-262/17), Whirlpool Europe Srl, Fenice — Qualità Per L'ambiente SpA, FCA Italy SpA, FCA Group Purchasing Srl, FCA Melfi SpA, Barilla G. e R. Fratelli SpA, Versalis SpA (C-263/17), Sol Gas Primari Srl (C-273/17)

Defendant: Autorità per l'energia elettrica, il gas e il sistema idrico

Interveners: Nuova Solmine SpA, American Husky III, Inovyn Produzione Italia SpA, Sasol Italy SpA, Radici Chimica SpA, La Vecchia Soc. cons. arl, Zignago Power Srl, Santa Margherita e Kettmeir e Cantine Torresella SpA, Zignago Vetro SpA, Chemisol Italia Srl, Vinavil SpA, Italgen SpA, Arkema Srl, Yara Italia SpA, Ineos Manufacturing Italia SpA, ENEL Distribuzione SpA, Terna SpA, CSEA — Cassa per i servizi energetici e ambientali, Ministero dello Sviluppo economico (C-262/17), Terna SpA, CSEA — Cassa per i servizi energetici e ambientali, Ministero dello Sviluppo economico, ENEL Distribuzione SpA (C-263/17), Terna SpA, Ministero dello Sviluppo economico (C-273/17)

Operative part of the judgment

1. *Article 2(5) and Article 28(1) of 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 must be interpreted as meaning that systems, such as those at issue in the main proceedings, put in place for the purposes of self-consumption before the entry into force of that directive and operated by a private person, to which a limited number of generation and consumption units are connected, and which in turn are connected to the public network, constitute distribution systems falling within the scope of that directive.*

2. *Article 28 of Directive 2009/72 must be interpreted as meaning that systems, such as those at issue in the main proceedings, which have been classified by a Member State as closed distribution systems within the meaning of paragraph 1 of that article, may, in that capacity, only be exempted by that Member State from the requirements laid down in paragraph 2 of that article, without prejudice to the fact that those systems are otherwise eligible for other exemptions provided for in that directive, in particular the exemption set out in Article 26(4) thereof, if they meet the conditions laid down therein, which it is for the referring court to ascertain. In any event, that Member State may not include those systems in a separate category of distribution systems in view of granting them exemptions not provided for in that directive.*

3. *Article 32(1) of Directive 2009/72 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that closed distribution systems within the meaning of Article 28(1) of that directive are not subject to the obligation to provide third-party access, but must provide access only to third parties falling within the category of users that may be connected to those systems, those users having a right of access to the public network.*

4. *Article 15(7) and Article 37(6)(b) of Directive 2009/72 must be interpreted as precluding, in the absence of any objective justification, national legislation such as that at issue in the main proceedings which provides that dispatching charges for the users of a closed distribution system are calculated on the basis of the electricity exchanged with that system by each of its users through their connection point to that system, should the users of a closed distribution system prove not to be in the same situation as the other users of the public network and should the provider of the dispatching service for the public network bear the limited costs with regard to those users of a closed distribution system, which it is for the referring court to ascertain.*

(1) OJ C 309, 18.9.2017.

Judgment of the Court (Fourth Chamber) of 29 November 2018 (request for a preliminary ruling from the Finanzgericht Münster — Germany) — Harry Mensing v Finanzamt Hamm

(Case C-264/17) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 314 — Article 316 — Article 322 — Special arrangements for works of art — Margin scheme — Taxable dealers — Supply of works of art by the creator or his successors in title — Intra-Community transactions — National tax authorities' refusal to grant a taxable person the right to opt for application of the margin scheme — Conditions under which applicable — Right to deduct input tax — Works of art, collectors' items and antiques)

(2019/C 35/05)

Language of the case: German

Referring court

Finanzgericht Münster

Parties to the main proceedings

Applicant: Harry Mensing

Defendant: Finanzamt Hamm

Operative part of the judgment

1. *Article 316(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a taxable dealer may opt for the application of the margin scheme to the input supply of works of art which were supplied in the context of an exempt intra-Community supply, by the creator or his successors in title, when those persons do not fall within the categories of persons listed in Article 314 of that directive.*

2. *A taxable dealer may not opt for the application of the margin scheme laid down in Article 316(1)(b) of the VAT Directive to an input supply of works of art that were supplied to him in the context of an exempt intra-Community supply and, at the same time, claim a right to deduct input VAT in the situations in which such a right is precluded under Article 322(b) of that directive, if that latter provision has not been transposed into national law.*

(1) OJ C 283, 28.8.2017.

Judgment of the Court (Third Chamber) of 28 November 2018 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Liguria — Italy) — Amt Azienda Trasporti e Mobilità SpA and Others v Atpl Liguria — Agenzia regionale per il trasporto pubblico locale SpA, Regione Liguria

(Case C-328/17) (1)

(Reference for a preliminary ruling — Public procurement — Review procedures — Directive 89/665/EEC — Article 1(3) — Directive 92/13/EEC — Article 1(3) — Right to bring proceedings subject to the condition that a tender was submitted in a procurement procedure)

(2019/C 35/06)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Liguria

Parties to the main proceedings

Applicants: Amt Azienda Trasporti e Mobilità SpA, Atc Esercizio SpA, Atp Esercizio Srl, Riviera Trasporti SpA, Tpl Linea Srl

Defendants: Atpl Liguria — Agenzia regionale per il trasporto pubblico locale SpA, Regione Liguria

Operative part of the judgment

Both Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Diretive2007/66/EC of the European Parliament and of the Council of 11 December 2007, and Article 1(3) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66, must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which does not allow economic operators to bring an action against the decisions of a contracting authority relating to a tendering procedure in which they have decided not to participate on the ground that the legislation applicable to that procedure made the award to them of the contract concerned very unlikely.

However, it is for the competent national court to make a detailed assessment, taking account of all the relevant information characterising the context of the case brought before it, as to whether the application of that legislation in practice is liable to affect the right of the economic operators concerned to the right to effective judicial protection.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (Ninth Chamber) of 29 November 2018 — Alcohol Countermeasure Systems (International) Inc. v European Union Intellectual Property Office (EUIPO)

(Case C-340/17 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Invalidity proceedings — Declaration of invalidity on the basis of an earlier United Kingdom trade mark — Genuine use — Proof — Effects of the procedure for the withdrawal of the United Kingdom from the European Union on the proceedings before the General Court and the lawfulness of the decision at issue — None)

(2019/C 35/07)

Language of the case: English

Parties

Appellant: Alcohol Countermeasure Systems (International) Inc. (represented by: E. Baud and P. Marchiset, avocats)

Other party to the proceedings: European Union Intellectual Property Office (represented by: D. Botis and S. Hanne, acting as Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Brodie and Z. Lavery, acting as Agents, and by N. Saunders, Barrister)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*
2. *Orders Alcohol Countermeasure Systems (International) Inc. to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);*
3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 347, 16.10.2017.

Judgment of the Court (Sixth Chamber) of 28 November 2018 — European Commission v Slovenian Republic

(Case C-506/17) ([1])

(Failure of a Member State to fulfil obligations — Environment — Landfilling of waste — Directive 1999/31/EC — Article 14(b) and (c) — Operation permit — Closure of unauthorised sites — Authorisation of necessary work on the basis of the approved site-conditioning plan — Laying down transitional period for completion of the plan)

(2019/C 35/08)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented initially by E. Sanfrutos Cano and M. M. Žebre, and subsequently by E. Sanfrutos Cano, B. Rous Demiri and F. Thiran and, finally, by E. Sanfrutos Cano and B. Rous Demiri, F. Thiran and C. Hermes, acting as Agents)

Defendant: Republic of Slovenia (represented by: J. Morela and N. Pintar Gosenca, acting as Agents)

Operative part of the judgment

1. *By failing to adopt the measures necessary:*

— *to close, by 16 July 2009 at the latest, in accordance with Article 7(g) and Article 13 of Council Directive 1999/31/EC or 26 April 1999 on the landfill of waste, the landfill sites of Dragonja, Dvori, Rakek-Pretržje, Bukovžlak-Cinkarna, Suhadole, Lokovica, Mislinjska Dobrava, Izola, Mozelj, Dolga Poljana, Dolga vas, Jelšane, Volče, Stara gora, Stara vas, Dogoše, Mala gora, Tuncovec-Steklarna, Tuncovec-OKP and Bočna-Podhom, which have not obtained operation permits in accordance with Article 8 of that directive, and*

— *to ensure, by 16 July 2009 at the latest, that the Ostri vrh landfill site complies with the requirements of Directive 1999/31, with the exception of those set out in point 1 of Annex I thereto,*

the Republic of Slovenia has failed to fulfil its obligations under Article 14(b) and Article 14(c) of Directive 1999/31.

2. *The Republic of Slovenia is ordered to pay the costs.*

(1) OJ C 357, 23.10.2017.

Judgment of the Court (Sixth Chamber) of 29 November 2018 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Goslar v baumgarten sports & more GmbH

(Case C-548/17) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Taxation of professional football player agencies — Payment by instalments and subject to a condition — Chargeable event, chargeability and collection of the tax)

(2019/C 35/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Goslar

Defendant: baumgarten sports & more GmbH

Operative part of the judgment

Article 63 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 64(1) thereof, must be interpreted as precluding the chargeable event and chargeability of a tax on the supply of agency services for professional football players by an agent, such as that at issue in the main proceedings, paid in conditional instalments over several years further to the placement, from being regarded as occurring or taking effect when the player is placed.

(1) OJ C 437, 18.12.2017.

Request for a preliminary ruling from the Verwaltungsgericht Stuttgart (Germany) lodged on 18 October 2018 — Interseroh Dienstleistungs GmbH v SAA Sonderabfallagentur Baden-Württemberg GmbH

(Case C-654/18)

(2019/C 35/10)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Interseroh Dienstleistungs GmbH

Defendant: SAA Sonderabfallagentur Baden-Württemberg GmbH

Questions referred

1. Is Article 3(2) of Regulation (EC) No 1013/2006, ([1])

   according to which shipments of the following wastes destined for recovery are to be subject to the general information requirements laid down in Article 18, if the amount of waste shipped exceeds 20 kg:

   (a) waste listed in Annex III or IIIB;

   (b) mixtures, not classified under one single entry in Annex III, of two or more wastes listed in Annex III, provided that the composition of these mixtures does not impair their environmentally sound recovery and provided that such mixtures are listed in Annex IIIA, in accordance with Article 58,

   to be interpreted as meaning that mixtures of paper, paperboard and paper product wastes, which — being composed in such a way that the fractions of the waste considered individually — come within the first three indents of entry B3020 of Annex IX to the Basel Convention, and which also contain up to 10 % impurities, come under Basel Code B3020 and are accordingly subject to the general information requirements laid down in Article 18, and not to the notification requirement under Article 4?

   If Question 1 is answered in the negative:

2. Is Article 3(2) of Regulation (EC) No 1013/2006,

   according to which shipments of the following wastes destined for recovery are to be subject to the general information requirements laid down in Article 18, if the amount of waste shipped exceeds 20 kg:

   (a) waste listed in Annex III or IIIB;

   (b) mixtures, not classified under one single entry in Annex III, of two or more wastes listed in Annex III, provided that the composition of these mixtures does not impair their environmentally sound recovery and provided that such mixtures are listed in Annex IIIA, in accordance with Article 58,

to be interpreted as meaning that mixtures of paper, paperboard and paper product wastes, which — being composed in such a way that the fractions of the waste considered individually — come within the first three indents of entry B3020 of Annex IX to the Basel Convention, and which also contain up to 10 % impurities, are not covered by point 3(g) of Annex IIIA and accordingly are subject, not to the general information requirements laid down in Article 18, but instead to the notification requirement under Article 4?

([1]) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).

Request for a preliminary ruling from the Juzgado de Instrucción de Badalona (Spain) lodged on 22 October 2018 — Criminal proceedings against VW

(Case C-659/18)

(2019/C 35/11)

Language of the case: Spanish

Referring court

Juzgado de Instrucción de Badalona

Party to the main proceedings

VW

Question referred

Must Article 47 of the Charter of Fundamental Rights of the European Union and, in particular, Article 3(2) of Directive 2013/48/EU ([1]) be interpreted as meaning that the right of access to a lawyer may justifiably be delayed where the suspect or accused fails to appear when first summoned by the court and a national, European or international arrest warrant is issued, and that the assistance of a lawyer and the entering of an appearance by the lawyer in the proceedings may be delayed until the warrant is executed and the suspect is brought to court by the police?

([1]) Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294 p. 1).

Request for a preliminary ruling from the Tribunale ordinario di Brescia (Italy) lodged on 31 October 2018 — JH v KG

(Case C-681/18)

(2019/C 35/12)

Language of the case: Italian

Referring court

Tribunale ordinario di Brescia

Parties to the main proceedings

Applicant: JH

Defendant: KG

Question referred

Must Article 5(5) of Directive 2008/104/EC [1] of 19 November 2008 be interpreted as precluding the application of Legislative Decree No 276/2003, as amended by Decree Law 34/2014, which: (a) does not place limits on successive assignments of the same worker to the same user undertaking; (b) does not require that, in order for the use of fixed-term supply work to be lawful, there must be technical, production, organisational or replacement reasons for having recourse to such supply work; (c) does not provide that, in order for the use of such a form of employment contract to be lawful, the production requirement of the user undertaking must be temporary in nature?

[1] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 5 November 2018 — OC and Others v Banca d'Italia and Others

(Case C-686/18)

(2019/C 35/13)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: OC and Others, Adusbef, Federconsumatori, PB and Others, QA and Others

Defendants: Banca d'Italia, Presidenza del Consiglio dei Ministri, Ministero dell'Economia e delle Finanze

Questions referred

1. Do Article 29 of Regulation (EU) No 575/2013 [, on prudential requirements for credit institutions and investment firms], [1] Article 10 of Delegated Regulation (EU) No 241/2014, [2] and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, with reference to Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013, [3] preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015, converted, with amendments, by Law No 33/2015 (and currently also Article 1(15) of Legislative Decree No 72/2015, which has replaced Article 28(2-ter), [Consolidated Banking Law], substantially reproducing the text of Article 1(1)(a) of Decree-Law No 3/2015, as converted, with amendments that are not relevant to the present case), which imposes an asset threshold above which a people's bank must be converted into a company limited by shares, setting that limit at EUR 8 billion of assets? Furthermore, do the abovementioned unified European parameters preclude a national provision which, if a people's bank is converted into a company limited by shares, makes it possible for that company to defer or limit, including for an indefinite period, redemption of the shares held by the withdrawing shareholder?

2. Do Articles 3 and 63 et seq. TFEU, on competition in the internal market and free movement of capital, preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015 (converted, with amendments, by Law No 33/2015), which limits the exercise of cooperative banking activities within a given asset limit, requiring the bank concerned to be converted into a company limited by shares if it should exceed that limit?

3. Do Article 107 et seq. TFEU on State aid preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015, converted, with amendments, by Law No 33/2015 (and currently also Article 1(15) of Legislative Decree No 72/2015, which has replaced Article 28(2-ter), [Consolidated Banking Law], substantially reproducing the text of Article 1(1)(a) of Decree-Law No 3/2015, as converted, with amendments that are not relevant to the present case), which requires a people's bank to be converted into a company limited by shares if it exceeds a certain asset threshold (set at EUR 8 billion), establishing restrictions on the redemption of the shares held by the shareholder in the event of withdrawal, to avoid the possible liquidation of the converted bank?

4. Do the combined provisions of Article 29 of Regulation (EU) No 575/2013 and Article 10 of Delegated Regulation (EU) No 241/2014 preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015 (converted, with amendments, by Law No 33/2015), as interpreted by the Corte costituzionale (Constitutional Court) in Judgment No 99/2018, which permits a people's bank to defer redemption for an unlimited period and to limit the associated amount in full or in part?

5. Where, in its interpretation, the Court of Justice holds that the European legislation is compatible with the interpretation asserted by the opposing parties, can the Court of Justice assess the lawfulness, in European terms, of Article 10 of Commission Delegated Regulation (EU) No 241/2014, in the light of Articles 16 and 17 of the Charter of Fundamental Rights of the European Union (whereby: 'Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest'), supplemented, also in the light of Article 52(3) of that Charter (whereby: 'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection') and the case-law of the European Court of Human Rights on Article 1 of the First Additional Protocol to the European Convention on Human Rights?

(1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1).
(2) Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ 2014 L 74, p. 8).
(3) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

Request for a preliminary ruling from the Raad voor Vreemdelingenbetwistingen (Belgium) lodged on 14 November 2018 — X v Belgische Staat

(Case C-706/18)

(2019/C 35/14)

Language of the case: Dutch

Referring court

Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicant: X

Defendant: Belgische Staat

Question referred

Does Directive 2003/86/EC [1] — having regard to Article 3(5), as well as the objective thereof, in particular, the determination of the conditions for the exercise of the right to family reunification — preclude national legislation which requires that Article 5(4) of Directive 2003/86/EC be interpreted as meaning that the consequence of no decision having been taken by the expiry of the prescribed period is that national authorities are under an obligation to grant, of their own motion, a residence permit to the person concerned, without first establishing that that person in fact satisfies the conditions for residence in Belgium in conformity with EU law?

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

Request for a preliminary ruling from the Hof van Beroep te Gent (Belgium) lodged on 15 November 2018 — Procureur General, other party: X

(Case C-717/18)

(2019/C 35/15)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Applicant: Procureur-General

Other party: X

Questions referred

1. Does Article 2(2) EAWFD, ([1]) as transposed into Belgian law by the Wet EAB, permit, for the purposes of the executing Member State's assessment of the minimum maximum three year threshold imposed therein, recourse to be had to the criminal legislation that was applicable in the issuing Member State at the point in time at which the European arrest warrant was issued?

2. Does Article 2(2) EAWFD, as transposed into Belgian law by the Wet EAB, permit, for the purposes of the executing Member State's assessment of the minimum maximum three year threshold imposed therein, recourse to be had to criminal legislation, applicable at the point in time of the issue of the European arrest warrant, allowing for a more severe penalty, as compared to the criminal legislation that was applicable in the issuing Member State at the point in time the offences were committed?

([1]) 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 21 November 2018 — Cali Apartments SCI v Procureur général at the Cour d'appel de Paris, Ville de Paris

(Case C-724/18)

(2019/C 35/16)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant in cassation: Cali Apartments SCI

Respondents in cassation: Procureur général at the Cour d'appel de Paris, Ville de Paris

Questions referred

1. Having regard to the definition of the purpose and scope of application of Directive 2006/123/EC of 12 December 2006, ([1]) as set out in Articles 1 and 2 thereof, does that directive apply to the repeated letting for short periods, against consideration, including on a non-professional basis, of furnished accommodation for residential use, not constituting the lessor's main residence, to a transient clientele which does not take up residence there, particularly in the light of the concepts of 'providers' and 'services'?

2. If the above question is answered in the affirmative, does national legislation such as that provided for in Article L. 631-7 of the Code de la construction et de l'habitation (Construction and Housing Code) constitute an authorisation scheme for the abovementioned activity for the purposes of Articles 9 to 13 of Directive 2006/123 of 12 December 2006, or solely a requirement subject to the provisions of Articles 14 and 15?

   In the event that Articles 9 to 13 of Directive 2006/123/EC of 12 December 2006 are applicable:

3. Should Article 9(b) of that directive be interpreted as meaning that the objective of tackling the shortage of rental housing constitutes an overriding reason relating to the public interest capable of justifying a national measure which requires authorisation to be obtained, in certain geographical areas, for the repeated letting of furnished accommodation for residential use for short periods to a transient clientele which does not take up residence there?

4. If so, is such a measure proportionate to the objective pursued?

5. Does Article 10(2)(d) and (e) of the Directive preclude a national measure which requires authorisation to be obtained for the 'repeated' letting of furnished accommodation for residential use for 'short periods' to a 'transient clientele which does not take up residence there'?

6. Does Article 10(2)(d) to (g) of the Directive preclude an authorisation scheme whereby the conditions for granting authorisation are set, by decision of the municipal council, in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage?

([1]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 22 November 2018 — HX v Procureur général at the Cour d'appel de Paris, Ville de Paris

(Case C-727/18)

(2019/C 35/17)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant in cassation: HX

Respondents in cassation: Procureur général at the Cour d'appel de Paris, Ville de Paris

Questions referred

1. Having regard to the definition of the purpose and scope of application of Directive 2006/123/EC of 12 December 2006, ([1]) as set out in Articles 1 and 2 thereof, does that directive apply to the repeated letting for short periods, against consideration, including on a non-professional basis, of furnished accommodation for residential use, not constituting the lessor's main residence, to a transient clientele which does not take up residence there, particularly in the light of the concepts of 'providers' and 'services'?

2. If the above question is answered in the affirmative, does national legislation such as that provided for in Article L. 631-7 of the Code de la construction et de l'habitation (Construction and Housing Code) constitute an authorisation scheme for the abovementioned activity for the purposes of Articles 9 to 13 of Directive 2006/123 of 12 December 2006, or solely a requirement subject to the provisions of Articles 14 and 15?

In the event that Articles 9 to 13 of Directive 2006/123/EC of 12 December 2006 are applicable:

3. Should Article 9(b) of that directive be interpreted as meaning that the objective of tackling the shortage of rental housing constitutes an overriding reason relating to the public interest capable of justifying a national measure which requires authorisation to be obtained, in certain geographical areas, for the repeated letting of furnished accommodation for residential use for short periods to a transient clientele which does not take up residence there?

4. If so, is such a measure proportionate to the objective pursued?

5. Does Article 10(2)(d) and (e) of the Directive preclude a national measure which requires authorisation to be obtained for the 'repeated' letting of furnished accommodation for residential use for 'short periods' to a 'transient clientele which does not take up residence there'?

6. Does Article 10(2)(d) to (g) of the Directive preclude an authorisation scheme whereby the conditions for granting authorisation are set, by decision of the municipal council, in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage?

([1]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Appeal brought on 27 November 2018 by the Portuguese Republic against the judgment delivered by the General Court (Fourth Chamber) on 26 September 2018 in Case T-463/16 Portugal v Commission

(Case C-737/18 P)

(2019/C 35/18)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Ines Fernandes, P. Barros da Costa, P. Estêvão and J. Saraiva de Almeida, Agents)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. Set aside the judgment under appeal, in so far as, by that judgment, the General Court dismissed the action for annulment of European Commission (EC) Decision C(2016) 3753 ([1]) of 20 June 2016;

2. Annul European Commission (EC) Decision C(2016) 3753 of 20 June 2016, given that the Court of Justice is in a position to ascertain the validity of the claims made by the Portuguese Republic;

3. Order the European Commission to pay the costs.

Grounds of appeal and main arguments

The Portuguese Republic requests that the judgment under appeal be set aside and, accordingly, that the decision at issue be annulled, on the following grounds:

1) **Error of law and infringement of the principle of legal certainty —** Infringement of Article 24 of Regulation (EC) No 73/2009 ([2]), and the provisions of the second subparagraph of Article 54(1)(c), and Article 71(1) of Regulation (EC) No 1122/2009; ([3]) and clear contradiction, arising from an error of law, with the findings in paragraphs 43 and 44 of the judgment under appeal, in that, in finding that the Commission's second ground was unfounded, the General Court presupposed that Portugal's cross-compliance control system was an effective control system, and, thus, in rejecting the ground while failing to annul the decision at issue, the General Court committed a manifest error of law and contradicted its own findings, thereby also infringing the principle of legal certainty.

2) **Error of law, inconsistency, and infringement of the principle of proportionality,** in so far as the judgment under appeal allows, in paragraph 41, the unequivocal distinction between eligibility and the cross-compliance control system, and, in paragraphs 46 and 47, it affirms, in a contradictory manner, that the total amount of the aid paid to farmers had to be corrected. Thus, in paragraph 43 of the judgment under appeal, the General Court erred in finding that the risk for the fund cannot be limited to the control sample, and in upholding the Commission's financial correction applied to the entirety of the costs, which is neither appropriate nor necessary for the aim pursued, and is, as such, disproportionate. The General Court's conclusion infringes the provisions of Article 5 TEU, Article 31(2) of Regulation No 1290/2005 ([4]) and Article 50(1) of Regulation No 1122/2009, from which it is apparent that the correction rate applies solely to that part of the costs exposed to the risk, that is, 1 %. Thus, the judgment under appeal contained a manifest error of law and was inconsistent in its reasoning, thereby infringing general principles and the rules laid down in the first and sixth paragraphs of point 2 of Commission Working Document, AGRI-2005-64043, through their incorrect application, and also infringed Commission Working Document DS/2010/29 REV and the principle of proportionality.

([1]) Commission Implementing Decision (EU) 2016/1059 of 20 June 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) (notified under document C(2016) 3753) (OJ 2016 L 173, p. 59).

([2]) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

([3]) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65).

([4]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2009 L 209, p. 1).

Appeal brought on 27 November 2018 by Duferco Long Products SA against the judgment delivered on 18 September 2018 in Case T-93/17 Duferco Long Products v Commission

(Case C-738/18 PP)

(2019/C 35/19)

Language of the case: French

Parties

Appellant: Duferco Long Products SA (represented by: J.-F. Bellis, R. Luff, M. Favart, Q. Declève, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice of the European Union should:

1. Set aside the judgment under appeal (T-93/17, EU:T:2018:558);

2. Annul Article 1(f), and Article 2 of the Commission Decision of 20 January 2016 on State aid SA.33926 2013/C (ex 2013/NN, 2011/CP) implemented by Belgium in favour of Duferco;

3. Order the defendant to pay the costs of these proceedings and the costs of the proceedings before the General Court.

Pleas in law and main arguments

By its appeal, the appellant submits that the General Court erred in law by refusing to examine two errors of calculation made by the Commission in the context of the assessment of the pari passu nature of the sixth measure referred to in the Commission Decision of 20 January 2016 on State aid SA.33926 2013/C (ex 2013/NN, 2011/CP) and in the application of the private investor in a market economy test.

In particular, the applicant submits that:

— The General Court did not carry out an adequate judicial review of the manner in which the Commission applied the private investor in a market economy test

— The General Court should have examined, as a matter of priority, the plea alleging errors made by the Commission in assessing the pari passu nature of that sixth measure rather than favouring analysis of the documents provided by Belgium.

GENERAL COURT

Judgment of the General Court of 21 November 2018 — Stichting Greenpeace Nederland and PAN Europe v Commission

(Case T-545/11 RENV) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the first authorisation of the placing on the market of the active substance 'glyphosate' — Partial refusal of access — Exception relating to the protection of the commercial interests of a third party — Article 4(5) of Regulation No 1049/2001 — Overriding public interest — Regulation (EC) No 1367/2006 — Article 6(1) of Regulation No 1367/2006 — Directive 91/414/EEC)

(2019/C 35/20)

Language of the case: English

Parties

Applicants: Stichting Greenpeace Nederland (Amsterdam, Netherlands), Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) (represented by: B. Kloostra and A. van den Biesen, lawyers)

Defendant: European Commission (represented by: A. Buchet, P. Ondrůšek and L. Pignataro-Nolin, acting as Agents)

Intervener in support of the applicants: Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, H. Shev, L. Swedenborg and F. Bergius, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: T. Henze and D. Klebs, acting as Agents), European Chemical Industry Council (Cefic) (Brussels) and Association européenne pour la protection des cultures (ECPA) (Brussels) (represented by: I. Antypas and D. Waelbroeck, lawyers), CropLife International AISBL (CLI) (Brussels) (represented by: R. Cana, E. Mullier, lawyers, and D. Abrahams, Barrister), CropLife America Inc. (Washington, DC, United States), National Association of Manufacturers of the United States of America (NAM) (Washington) and America Chemistry Council Inc. (ACC) (Washington) (represented initially by: M. Abenhaïm and K. Nordlander, lawyers, subsequently by K. Nordlander, lawyer, and M. Zdzieborska, Solicitor, and finally by K. Nordlander and Y.-A. Benizri, lawyers, and M. Zdzieborska, Solicitor), and European Crop Care Association (ECCA) (Brussels) (represented by: S. Pappas, lawyer)

Re:

Application under Article 263 TFEU seeking annulment of the Commission decision of 10 August 2011 refusing access to volume 4 of the Draft Assessment Report issued by the Federal Republic of Germany, as rapporteur Member State for the active substance 'glyphosate', under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) to pay the costs;*

3. *Orders the Kingdom of Sweden and the Federal Republic of Germany to bear their own costs.*

([1]) OJ C 355, 3.12.2011.

Judgment of the General Court of 22 November 2018 — Lithuania v Commission

(Case T-508/15) ([1])

(EAGGF, EAGF and EAFRD — Expenditure excluded from financing — Expenditure by Lithuania — Aid for early retirement — Article 11(1) of Regulation (EC) No 1257/1999 — Article 23 of Regulation (EC) No 1698/2005 — Concept of carrying out a commercial farming activity — Connection with the concept of semi-subsistence farming)

(2019/C 35/21)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, M. Palionis, T. Lozoraitis, R. Krasuckaitė and A. Petrauskaitė, acting as Agents)

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

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39), in that that decision imposed on the Republic of Lithuania a flat-rate financial correction of 5 %, thereby excluding the sum of EUR 1 938 300,08 from financing under the 'Early retirement' measure during the period from 16 October 2010 to 15 October 2013.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 371, 9.11.2015.

Judgment of the General Court of 21 November 2018 — HM v Commission

(Case T-587/16) ([1])

(Civil service — Officials — Recruitment — Competition notice EPSO/AST-SC/03/15 — Refusal to allow participation in the assessment tests — Request for review — Refusal to forward that request to the selection board for the open competition on the grounds that it was out of time — Division of competences between EPSO and the competition selection board)

(2019/C 35/22)

Language of the case: German

Parties

Applicant: HM (represented by: H. Tettenborn, lawyer)

Defendant: European Commission (represented by: T. Bohr and G. Gattinara, agents)

Re:

Application on the basis of Article 270 TFEU seeking the annulment, first, of the decision of the European Personnel Selection Office (EPSO) dated 17 August 2015 not to take into account the request for review of the decision of the selection board not to allow the applicant to participate in the next stage of Competition EPSO/AST-SC/03/15-3 and, secondly, of the 'implied decision' of the selection board not to grant that request.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Personnel Selection Office (EPSO) dated 17 August 2015 not to take into account the request for review of the decision of the selection board not to allow HM to participate in the next stage of Competition EPSO/AST-SC/03/15-3;*

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

3. *Orders the European Commission to pay the costs.*

(1) OJ C 191, 30.5.2016 (Case initially registered before the European Union Civil Service Tribunal under number F-17/16 and transferred to the General Court of the European Union on 1 September 2016).

Judgment of the General Court of 22 November 2018 — Brahma v Court of Justice of the European Union

(Case T-603/16) (1)

(Civil service — Probationary officials — Probationary period — Extension of the probationary period — Dismissal at the end of the probationary period — Article 34 of the Staff Regulations — Misuse of powers — Obligation to state reasons — Article 25(2) of the Staff Regulations — Right to be heard — Article 90(2) of the Staff Regulations — Liability — Formal requirements — Rule of correspondence between the application and the complaint — Admissibility — Material damage — Non-material damage — Causal link)

(2019/C 35/23)

Language of the case: French

Parties

Applicant: Zoher Brahma (Thionville, France) (represented by: A. Tymen, lawyer)

Defendant: Court of Justice of the European Union (represented by: initially, J. Inghelram and L. Tonini Alabiso and, subsequently, J. Inghelram and Á. Almendros Manzano, acting as Agents)

Re:

Action brought under Article 270 TFEU seeking, first, annulment of the decision of 17 July 2015 by which the Court of Justice of the European Union decided not to establish the applicant [as an official] and to dismiss him with effect from 31 July 2015 and of the decision of the Complaints Committee of 16 March 2016 rejecting the complaint brought by the applicant against the decision of 17 July 2015 and, second, compensation in respect of the material and non-material harm allegedly suffered by the applicant as a result of those decisions.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Registrar of the Court of Justice of the European Union, in his capacity as Appointing Authority, of 17 July 2015, dismissing Mr Zoher Brahma at the end of his probationary period, with effect from 31 July 2015;*

2. *Annuls the decision of the Complaints Committee of 16 March 2016 rejecting the complaint against the decision of the Registrar of the Court of Justice of the European Union, in his capacity as Appointing Authority, of 17 July 2015, dismissing Mr Zoher Brahma at the end of his probationary period, with effect from 31 July 2015;*

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

4. *Orders the Court of Justice of the European Union to pay the costs.*

([1]) OJ C 296 of 16.8.2016 (case initially registered before the European Union Civil Service Tribunal under Case No F-33/16 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 21 November 2018 — PepsiCo v EUIPO — Intersnack Group (Exxtra Deep)

(Case T-82/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Exxtra Deep — 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))

(2019/C 35/24)

Language of the case: English

Parties

Applicant: PepsiCo, Inc. (New York, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Intersnack Group GmbH & Co. KG (Düsseldorf, Germany) (represented by: T. Lampel and M. Pfaff, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 November 2016 (Case R 482/2016-4), concerning invalidity proceedings between PepsiCo and Intersnack Group.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 November 2016 (Case R 482/2016-4);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by PepsiCo, Inc.;*

3. *Orders Intersnack Group GmbH & Co. KG to bear its own costs.*

([1]) OJ C 121, 18.4.2017.

Judgment of the General Court of 22 November 2018 — Buck-Chemie v EUIPO — Henkel (Cleansing block for toilets)

(Case T-296/17) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a cleansing block for toilets — Ground for invalidity — Individual character — Article 25 of Regulation (EC) No 6/2002)

(2019/C 35/25)

Language of the case: German

Parties

Applicant: Buck-Chemie GmbH (Herrenberg, Germany) (represented by: C. Schultze, J. Ossing, R.-D. Härer, C. Weber, H. Ranzinger, C. Brockmann and C. Gehweiler, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Henkel AG & Co. KGaA (Düsseldorf, Germany) (represented by: J. Schmidt, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 8 March 2017 (Case R 2113/2015-3), relating to invalidity proceedings between Buck-Chemie and Henkel.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Buck-Chemie GmbH to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Henkel AG & Co. KGaA, including the costs necessarily incurred before the Board of Appeal of EUIPO.*

([1]) OJ C 239, 24.7.2017.

Judgment of the General Court of 21 November 2018 — Shenzhen Jiayz Photo Industrial v EUIPO — Seven (SEVENOAK)

(Case T-339/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark SEVENOAK — Earlier international figurative mark 7seven — 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))

(2019/C 35/26)

Language of the case: English

Parties

Applicant: Shenzhen Jiayz Photo Industrial Ltd (Shenzhen, China) (represented by: M. de Arpe Tejero, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Seven SpA (Leinì, Italy) (represented by: L. Trevisan, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 23 March 2017 (Case R 1326/2016-1), relating to opposition proceedings between Seven and Shenzhen Jiayz Photo Industrial.

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 23 March 2017 (Case R 1326/2016-1);*
2. *Dismisses the action as to the remainder;*
3. *Orders EUIPO to bear, in addition to its own costs, eight tenths of the costs incurred by Shenzhen Jiayz Photo Industrial Ltd;*
4. *Orders Seven SpA to bear, in addition to its own costs, a tenth of the costs incurred by Shenzhen Jiayz Photo Industrial;*
5. *Orders Shenzhen Jiayz Photo Industrial to bear a tenth of its own costs.*

(1) OJ C 239, 24.7.2017.

Judgment of the General Court of 22 November 2018 — Fruit of the Loom v EUIPO — Takko (FRUIT)

(Case T-424/17) (1)

(EU trade mark — Revocation proceedings — EU word mark FRUIT — Genuine use of the mark — Article 15(1)(a) of Regulation (EC) No 207/2009 (now Article 18(1)(a) of Regulation (EU) 2017/1001) — Res judicata — Article 65(6) of Regulation No 207/2009 (now Article 72(6) of Regulation 2017/1001))

(2019/C 35/27)

Language of the case: English

Parties

Applicant: Fruit of the Loom, Inc. (Bowling Green, Kentucky, United States) (represented by: S. Malynicz QC and V. Marsland, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Takko Holding GmbH (Telgte, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 April 2017 (Case R 2119/2016-4), relating to revocation proceedings between Takko Holding and Fruit of the Loom.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Fruit of the Loom, Inc. to pay the costs.*

(1) OJ C 318, 25.9.2017.

Judgment of the General Court of 21 November 2018 — Bopp v EUIPO (Representation of an equilateral octagon)

(Case T-460/17) [1]

(EU trade mark — Application for an EU figurative mark representing a blue octagonal frame — Absolute ground for refusal — Distinctive character — Article 7(1)(b) and Article 75 of Regulation (EC) No 207/2009 (now Article 7(1)(b) and Article 94 of Regulation (EU) 2017/1001)

(2019/C 35/28)

Language of the case: German

Parties

Applicant: Carsten Bopp (Glashütten, Germany) (represented by: F. Pröckl, lawyer)

Defendant: European Union Intellectual Property Office (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 8 May 2017 (Case R 1954/2016-4) concerning an application for registration of a figurative sign representing a blue octagonal frame as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Carsten Bopp to pay the costs.*

(1) OJ C 300, 11.9.2017.

Action brought on 19 November 2018 — Galletas Gullón v EUIPO — Intercontinental Great Brands (gullón TWINS COOKIE SANDWICH)

(Case T-677/18)

(2019/C 35/29)

Language in which the application was lodged: Spanish

Parties

Applicant: Galletas Gullón, SA (Aguilar de Campoo, Spain) (represented by: S. Martínez-Almeida y Alejos-Pita, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Intercontinental Great Brands LLC (East Hanover, New Jersey, United States of America)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU figurative mark gullón TWINS COOKIE SANDWICH — Application for registration No 13 877 543

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 5 September 2018 in Case R 2378/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant and, if appropriate, the intervener, to pay the costs of the proceedings before the General Court, along with the costs incurred in the appeal proceedings before the Board of Appeal.

Plea in law

Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 November 2018 — ZV v Commission

(Case T-684/18)

(2019/C 35/30)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the Commission, notified by letter of 12 February 2018, rejecting the applicant's candidacy for the post of deputy mediator and filling the position by appointing another candidate;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging misuse of powers and of procedure. In this regard, the applicant claims that the vacancy notice COM/2017/1739 did not make it possible to ensure that the candidate chosen genuinely possessed the qualifications and experience necessary for that vacant position. Moreover, the applicant submits that the candidate whose application was selected did not have all the required qualifications, in particular experience in mediation and in-depth legal knowledge of the Staff Regulations of Officials of the European Union.

2. Second plea in law, alleging infringement of Commission Decision C(2002/601) of 4 March 2002 on the reinforced Mediation Service, in that Article 6(3) provides that the President of the Commission is to appoint the deputy mediators on a proposal by the Mediator, but does not provide for a pre-selection procedure or for the drawing-up of a list of selected candidates. However, in the present case, the consultative committee for appointments organised a pre-selection procedure and submitted to the Mediator the three applications which it had selected. According to the applicant, it follows that the Mediator did not examine all the applications and therefore infringed the provision referred to above when he proposed that the President of the Commission appoint the selected candidate.

3. Third plea in law, alleging a breach of the duty to state reasons vitiating the contested decisions.

4. Fourth plea in law, alleging infringement of the vacancy notice COM/2017/1739 and manifest error of assessment. In that regard, the applicant submits that, unlike her, the selected candidate does not meet the requirements set out in the notice referred to above in order to fill the position at issue, that is, inter alia, good knowledge of the Staff Regulations and of the rules applicable to officials and other members of staff, together with experience in conflict resolution.

Action brought on 22 November 2018 — Sony Interactive Entertainment Europe v EUIPO — Vieta Audio (Vita)

(Case T-690/18)

(2019/C 35/31)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vieta Audio, SA (Barcelona, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark Vita — European Union trade mark No 9 993 361

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 10 September 2018 in Case R 695/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Pleas in law

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

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 22 November 2018 — KPN v Commission

(Case T-691/18)

(2019/C 35/32)

Language of the case: English

Parties

Applicant: KPN BV (Rotterdam, Netherlands) (represented by: P. van Ginneken and G. Béquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision C(2018) 3569 final of 30 May 2018 declaring the concentration involving the acquisition by Liberty Global plc of sole control over Ziggo NV to be compatible with the internal market and the EEA agreement (Case M.7000 — Liberty Global/Ziggo);

— revert the case to the Commission for further investigation pursuant to Article 10(5) of the Merger Regulation, ([1]) and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed a manifest error in the market definition regarding premium pay TV sports and film channels

   — In this regard, the applicant submits that, during the administrative procedure, it put forward that Ziggo Sport Totaal ('ZST') is 'must-have' for providers of retail TV, broadband and mobile services, and bundles including one or more of these services, in order to be able to compete on the retail market. Allegedly, this was confirmed by the market investigation conducted by the Commission. As a consequence, the two premium pay TV sports channels ZST and FOX Sports would not be substitutable.

   — The applicant further claims that the Commission nonetheless concluded that there was one market for the wholesale supply and acquisition of premium pay TV sports channels, comprising ZST and FOX Sports, and that no further market segmentation was needed.

   — Pursuant to the applicant, these errors in the market definition would affect the Commission's further assessment and ultimately the conclusion to allow the merger.

2. Second plea in law, alleging that the Commission insufficiently motivated the market definition regarding premium pay TV sports and film channels

   — In this regard, the applicant submits that the Commission's assumption that FOX Sports and ZST are part of the same market would have required an extensive explanation because this assumption is contrary to the Commission's market investigation which pointed out that ZST is 'must-have' and the Commission's earlier decisions.

   — The applicant further claims that the Commission did not motivate the market definition for premium pay TV film channels.

   — Pursuant to the applicant, this lack of motivation of the market definition would affect the Commission's further assessment and ultimately the conclusion to allow the merger.

3. Third plea in law, alleging that the Commission made a manifest error of assessment of the ability to foreclose ZST and of the impact thereof on the market for the wholesale supply and acquisition of ZST

   — In this regard, the applicant submits that the merger extended the power of the merging parties on the market for ZST to the entire Dutch territory.

   — The applicant further claims that by refusing to provide access to ZST to a third party (on economically viable terms), the merging parties have the ability to foreclose ZST from their downstream competitors.

4. Fourth plea in law, alleging that the Commission insufficiently motivated the assessment of the ability to foreclose ZST and of the impact thereof on the market for the wholesale supply and acquisition of ZST

   — In this regard, the applicant submits that the Commission dismisses the argument that ZST is 'must-have', and therefore can be foreclosed, based on its market definition in section 5.1.2.1 of the contested decision. Based on the applicant's submission that the contested decision does not provide a market definition, or provides an erroneous market definition, it argues that the Commission's assessment would depart from a wrong starting point.

   — The applicant further claims that the Commission insufficiently motivated its assessment of the lack of ability of the merging parties to foreclose ZST and of the impact thereof.

5. Fifth plea in law, alleging that the Commission made a manifest error of assessment of the ability to foreclose HBO content

   In this regard, the applicant submits that the Commission incorrectly assessed that the merged parties have no significant market power, based on lacking market definition and wrong assumptions.

6. Sixth plea in law, alleging that the Commission insufficiently motivated the assessment of the ability to foreclose HBO content

   In this regard, the applicant submits that without reliable market definition regarding film content, the Commission's assessment of the effects of the merger on the said market is automatically insufficiently motivated.

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

Action brought on 23 November 2018 — Montanari v EEAS

(Case T-692/18)

(2019/C 35/33)

Language of the case: French

Parties

Applicant: Marco Montanari (Reggio Emilia, Italy) (represented by: A. Champetier and S. Rodrigues, lawyers)

Defendant: European External Action Service

Form of order sought

The applicant claims that the Court should:

— declare this action admissible and well founded;

— annul the contested decision refusing the applicant access wholly or in part to the document referred to [below]; and

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

Pleas in law and main arguments

The action has been brought against the decision of 24 October 2018 of the European External Action Service refusing to grant the applicant access to the report of 29 July 2017 drawn up following the mediation mission carried out by the Head of the 'Mission Support' Division.

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

1. First plea in law, alleging infringement of Regulation No 1049/2001, Article 15(3) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union. More specifically, the applicant submits that public access to the documents of the institutions is, in principle, the legal rule and the possibility of refusal is the exception. However, the exceptions provided for by Article 4 of Regulation No 1049/2001 and relied on by the European External Action Service cannot justify refusal of access to the documents, on the ground that the conditions set out in that article are not met.

2. Second plea in law, alleging infringement of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union, in that the contested decisions are vitiated by a failure to state reasons or by an inadequate statement of reasons.

3. Third plea in law, alleging breach of the principle of proportionality.

Action brought on 27 November 2018 — ZY v European Commission

(Case T-693/18)

(2019/C 35/34)

Language of the case: German

Parties

Applicant: ZY (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety Commission Decision C(2018) 3166 final SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 in respect of the years 2012 and 2013;

— in the alternative, annul Commission Decision C(2018) 3166 final SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018, in so far as it orders, with respect to baseload consumers with at least 7 000 user hours per year, the repayment of 20 %, with respect to baseload consumers with at least 7 500 user hours per year, the repayment of 15 %, and with respect to baseload consumers with at least 8 000 user hours per year, the repayment of 10 % of the published network charges;

— order the defendant to pay the costs of the proceedings, including legal and travel 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 a wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU;

   In the context of the first plea in law, it is claimed that the defendant erred in law during its examination of the contested exemption from network charges by presuming the use of State resources.

   In addition, during the examination of the ‘selectivity’ criterion, the reference system was incorrectly and incompletely identified.

2. Second plea in law, alleging an infringement of the principle of equal treatment;

   In the context of the second plea in law, it is alleged that, the defendant's decision only provided for the obligation to make repayments for baseload consumers who were entirely exempted from network charges in the years 2012 and 2013. As a result, those baseload consumers were unequally treated and unfairly disadvantaged vis-à-vis baseload consumers, who, over the same period, enjoyed flat-rate network charge reductions and in respect of which there were no obligations to make repayments.

3. Third plea in law, alleging an infringement of the general principle of the protection of legitimate expectations;

   In the context of the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could rely on its right to retain the awarded special network charges.

Action brought on 17 November 2018 — DEI v Commission

(Case T-694/18)

(2019/C 35/35)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: E. Bourtzalas, A. Iliadou and C. Synodinos, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of 30 July 2018 of the European Commission (C(2018) 4947 final in Case SA.50152) to the extent that the Commission decides not to raise objections to the aid scheme under the new Transitory Flexibility Remuneration Mechanism ('the new TFRM') which was notified by Greece, based on the conclusion that that scheme is compatible with the internal market pursuant to Article 107(3)(c) TFEU, and

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

Pleas in law and main arguments

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

1. According to the first plea in law, the Contested Decision is vitiated by a manifest error of assessment of the law and of the facts and a failure to comply with essential procedural requirements with respect to the interpretation and application of Article 108(2) TFEU, to the extent that the Commission did not initiate the formal investigation procedure.

2. According to the second plea in law, the Contested Decision is vitiated by a manifest error of assessment of the law and of the facts, with respect to the judgment that the new Transitory Flexibility Remuneration Mechanism satisfies the criteria of the Guidelines on State aid for environmental protection and energy (2014-2020) for the assessment of the compatibility of the aid with the internal market pursuant to Article 107(3)(c) TFEU and in particular the criteria of necessity, proportionality, appropriateness, incentive effect and avoidance of undue negative effects on competition.

Action brought on 26 November 2018 — C.R.D.O.P. 'Jamón de Teruel/Paleta de Teruel' v EUIPO — Airesano Foods (AIRESANO BLACK El ibérico de Teruel)

(Case T-696/18)

(2019/C 35/36)

Language in which the application was lodged: Spanish

Parties

Applicant: Consejo Regulador de la Denominación de Origen Protegida 'Jamón de Teruel/Paleta de Teruel' (Teruel, Spain) (represented by: F. Pérez Álvarez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Airesano Foods, SL (La Puebla de Valverde, Spain)

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: Application for EU figurative mark AIRESANO BLACK El ibérico de Teruel — Application for registration No 15 240 005

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 September 2018 in Case R 88/2018-4

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— order EUIPO and the parties to the proceedings to pay the costs.

Pleas in law

— Infringement of Article 13(1)(b) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council;

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

Action brought on 28 November 2018 — Wacker Chemie v Commission

(Case T-704/18)

(2019/C 35/37)

Language of the case: German

Parties

Applicant: Wacker Chemie AG (Munich, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 relating to Ref. C(2018) 3166 insofar as it orders that, in respect of the years 2012 and 2013, baseload consumers with at least 7 000 hours of full use per year repay more than 20 % of published network charges, baseload consumers with at least 7 500 hours of full use per year repay more than 15 % of published network charges and baseload consumers with at least 8 000 hours of full use per year repay more than 10 % of published network charges;

— in the alternative, annul in full the defendant's Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 relating to Ref. C(2018) 3166 in respect of the years 2012 and 2013;

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, either identical or similar to the pleas in law relied on in Case T-693/18, *ZY* v *Commission*.

Action brought on 28 November 2018 — Air Liquide Industriegase v Commission

(Case T-705/18)

(2019/C 35/38)

Language of the case: German

Parties

Applicant: Air Liquide Industriegase GmbH & Co. KG (Düsseldorf, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in full the defendant's Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 relating to Ref. C(2018) 3166 in respect of the years 2012 and 2013;

— in the alternative, annul the defendant's Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 relating to Ref. C(2018) 3166 insofar as it orders that, in respect of the years 2012 and 2013, baseload consumers with at least 7 000 hours of full use per year repay more than 20 % of published network charges, baseload consumers with at least 7 500 hours of full use per year repay more than 15 % of published network charges and baseload consumers with at least 8 000 hours of full use per year repay more than 10 % of published network charges;

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, either identical or similar to the pleas in law relied on in Case T-693/18, *ZY* v *Commission*.

Action brought on 28 November 2018 — Air Liquide Deutschland v Commission

(Case T-706/18)

(2019/C 35/39)

Language of the case: German

Parties

Applicant: Air Liquide Deutschland GmbH (Düsseldorf, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in full the defendant's Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 relating to Ref. C(2018) 3166 in respect of the years 2012 and 2013;

— in the alternative, annul the defendant's Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 relating to Ref. C(2018) 3166 insofar as it orders that, in respect of the years 2012 and 2013, baseload consumers with at least 7 000 hours of full use per year repay more than 20 % of published network charges, baseload consumers with at least 7 500 hours of full use per year repay more than 15 % of published network charges and baseload consumers with at least 8 000 hours of full use per year repay more than 10 % of published network charges;

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, either identical or similar to the pleas in law relied on in Case T-693/18, *ZY* v *Commission*.

Action brought on 27 November 2018 — Wyld v EUIPO — Kaufland Warenhandel (wyld)

(Case T-711/18)

(2019/C 35/40)

Language in which the application was lodged: German

Parties

Applicant: Wyld GmbH (Munich, Germany) (represented by: M. Douglas, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Kaufland Warenhandel GmbH & Co. KG

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: European Union word mark 'wyld' — Application for registration No 14 525 562

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 24 September 2018 in Case R 2621/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and to allow the application for registration of the European Union trade mark No 14 525 562 'wyld', which has so far been refused;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 47(2) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council.

CORRIGENDA

Corrigendum to the communication to the Official Journal in relation to Case T-603/18

(Official Journal of the European Union C 436 of 3 December 2018)

(2019/C 35/41)

The communication published concerning Case T-603/18, *ZE* v *Parliament* is replaced with the following text:

'Action brought on 9 October 2018 — ZE v European Parliament

(Case T-603/18)

Language of the case: Greek

Parties

Applicant: ZE (represented by: P. Giatagantzidis, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Secretary General of the European Parliament of 25 September 2018 ordering that he be suspended from his duties until 31 October 2018, and any other connected measure,

— Order the defendant 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 breach of his right to be heard before the contested decision was taken against him;
2. Second plea in law, alleging that the contested decision was adopted on the basis of information collected by a method which infringes the right to good administration enshrined in Art 41 of the Charter of Fundamental Rights of the European Union;
3. Third plea in law, alleging infringement of the principle of impartiality by the Secretary General, in so far as he ordered the opening of an administrative investigation against the applicant and also adopted the contested decision;
4. Fourth plea in law, alleging a manifest breach of his right to privacy due to being prohibited from having access to his workplace and to his personal files;
5. Fifth plea in law, alleging infringement of the presumption of innocence and of the confidential nature of proceedings, having regard to statements made to the press by senior officials of the European Parliament.'

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