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Information and Notices

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(2019/C 131/01)

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These texts are available on:

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

COURT OF JUSTICE

Taking of the oath by a new Member of the Court

(2019/C 131/02)

Following his appointment as Advocate General at the Court of Justice for the period from 5 February 2019 to 6 October 2024 by decision of the Representatives of the Governments of the Member States of the European Union of 1 February 2019 [1], Mr Pikamäe took the oath before the Court on 6 February 2019.

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[1] OJ L 32, 4.2.2019, p. 7.

Taking of the oath by a new Member of the Court

(2019/C 131/03)

Following his appointment as Judge at the Court of Justice for the period from 12 March 2019 to 6 October 2024 by decision of the Representatives of the Governments of the Member States of the European Union of 6 March 2019 [1], Mr Kumin took the oath before the Court of Justice on 20 March 2019.

[1] OJ L 70, 12.3.2019, p. 32.

GENERAL COURT

Taking of the oath by a new Member of the General Court

(2019/C 131/04)

Following her appointment as Judge at the General Court for the period from 11 March 2019 to 31 August 2019 by decision of the Representatives of the Governments of the Member States of the European Union of 6 March 2019 [1], Ms Frendo took the oath before the Court of Justice on 20 March 2019.

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[1] OJ L 69, 11.3.2019, p. 50.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 7 February 2019 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Eugen Bogatu v Minister for Social Protection

(Case C-322/17) ([1])

(Reference for a preliminary ruling — Social security — Regulation (EC) No 883/2004 — Article 67 — Application for family benefits submitted by a person who has ceased to pursue an activity as an employed person in the competent Member State but continues to reside there — Entitlement to family benefits for family members resident in another Member State — Eligibility conditions)

(2019/C 131/05)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Eugen Bogatu

Defendant: Minister for Social Protection

Operative part of the judgment

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and, in particular, Article 67, read in conjunction with Article 11(2) thereof, must be interpreted as meaning that, in a situation such as that in the main proceedings, in order to be eligible to receive family benefits in the competent Member State, it is not necessary for a person either to pursue an activity as an employed person in that Member State or to be in receipt of cash benefits from that Member State because or as a consequence of such activity.

([1]) OJ C 277, 21.8.2017.

Judgment of the Court (Second Chamber) of 14 February 2019 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — Proceedings brought by Sergejs Buivids

(Case C-345/17) ([1])

(Reference for a preliminary ruling — Processing of personal data — Directive 95/46/EC — Article 3 — Scope — Video recording of police officers carrying out procedural measures in a police station — Publication on a video website — Article 9 — Processing of personal data solely for journalistic purposes — Meaning — Freedom of expression — Protection of privacy)

(2019/C 131/06)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Sergejs Buivids

Other party: Datu valsts inspekcija

Operative part of the judgment

1. Article 3 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that the recording of a video of police officers in a police station, while a statement is being made, and the publication of that video on a video website, on which users can send, watch and share videos, are matters which come within the scope of that directive.

2. Article 9 of Directive 95/46 must be interpreted as meaning that factual circumstances such as those of the case in the main proceedings, that is to say, the video recording of police officers in a police station, while a statement is being made, and the publication of that recorded video on a video website, on which users can send, watch and share videos, may constitute a processing of personal data solely for journalistic purposes, within the meaning of that provision, in so far as it is apparent from that video that the sole object of that recording and publication thereof is the disclosure of information, opinions or ideas to the public, this being a matter which it is for the referring court to determine.

([1]) OJ C 277, 21.8.2017.

Judgment of the Court (Sixth Chamber) of 14 February 2019 (request for a preliminary ruling from the Gerechtshof Den Haag — Netherlands) — Staat der Nederlanden v Warner-Lambert Company LLC

(Case C-423/17) ([1])

(Reference for a preliminary ruling — Medicinal products for human use — Directive 2001/83/EC — Article 11 — Generic medicinal products — Summary of product characteristics — Exclusion of references referring to indications or dosage forms still covered by patent law at the time when the generic medicine was marketed)

(2019/C 131/07)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag

Parties to the main proceedings

Applicant: Staat der Nederlanden

Defendant: Warner-Lambert Company LLC

Operative part of the judgment

The second paragraph of Article 11 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2012/26/EU of the European Parliament and of the Council of 25 October 2012, must be interpreted as meaning that, in a marketing authorisation procedure such as that at issue in the main proceedings, communication to the competent national authority by the applicant or holder of a marketing authorisation for a generic medicinal product of the package leaflet or a summary of the product characteristics of that medicinal product which does not include any reference to indications or dosage forms which were still covered by patent law at the time that medicinal product was placed on the market constitutes a request to limit the scope of the marketing authorisation of the generic medicinal product in question.

([1]) OJ C 318, 25.9.2017.

Judgment of the Court (Tenth Chamber) of 13 February 2019 (request for a preliminary ruling from the Zalaegerszegi Közigazgatási és Munkaügyi Bíróság — Hungary) — Human Operator Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(C-434/17) ([1])

(Reference for a preliminary ruling — Harmonisation of fiscal legislation — Common system of value added tax (VAT) — Directive 2006/112/EC — Deduction of VAT — Determination of the taxable person liable for VAT — Retroactive application of a derogating measure — Principle of legal certainty)

(2019/C 131/08)

Language of the case: Hungarian

Referring court

Zalaegerszegi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Human Operator Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Operative part of the judgment

European Union law precludes national legislation which provides for the application of a measure derogating from Article 193 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2013/43/EU of 22 July 2013, before the EU act authorising that derogation has been notified to the Member State which requested it, despite the fact that that EU act does not mention the date of its entry into force or the date from which it applies, even if that Member State has expressed the wish for that derogation to apply with retroactive effect.

([1]) OJ C 318, 25.9.2017.

Judgment of the Court (Ninth Chamber) of 14 February 2019 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Vetsch Int. Transporte GmbH

(Case C-531/17) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 143(1)(d) — Exemptions from VAT on importation — Imports followed by an intra-Community transfer — Subsequent intra-Community supply — Tax evasion — Refusal of the exemption — Conditions)

(2019/C 131/09)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Vetsch Int. Transporte GmbH

Other party: Zollamt Feldkirch Wolfurt

Operative part of the judgment

Article 143(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 143(1)(d) of that directive, as amended by Council Directive 2009/69/EC of 25 June 2009, must be interpreted as meaning that the exemption from import value added tax laid down in those provisions may not be refused in respect of an importer designated or recognised as liable for payment of that tax, within the meaning of Article 201 of Directive 2006/112, in a situation, such as that in the main proceedings, in which, first, the recipient of the intra-Community transfer of goods effected after that import commits tax evasion in connection with a transaction which is subsequent to that transfer and is not linked to that transfer and, secondly, there is no evidence to support the conclusion that the importer knew or ought to have known that that subsequent transaction entailed tax evasion on the part of the recipient.

([1]) OJ C 412, 4.12.2017.

Judgment of the Court (First Chamber) of 6 February 2019 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — NK, liquidator in the bankruptcies of PI Gerechtsdeurwaarderskantoor BV and PI v BNP Paribas Fortis NV

(Case C-535/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 and Regulation (EC) No 1346/2000 — Scope of those regulations — Bankruptcy of a bailiff — Action brought by the liquidator in charge of administering and liquidating the bankruptcy)

(2019/C 131/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: NK, liquidator in the bankruptcies of PI Gerechtsdeurwaarderskantoor BV and PI

Defendant: BNP Paribas Fortis NV

Operative part of the judgment

Article 1(1) and (2)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action, such as that at issue in the main proceedings, concerning a claim for damages arising from liability for a wrongful act, brought by the liquidator in insolvency proceedings and the proceeds of which, if the claim succeeds, accrue to the general body of creditors, is covered by the concept of 'civil and commercial matters' within the meaning of Article 1(1), and therefore falls within the material scope of that regulation.

([1]) OJ C 412, 4.12.2017.

Judgment of the Court (Third Chamber) of 14 February 2019 (request for a preliminary ruling from the Svea hovrätt — Sweden) — Rebecka Jonsson v Société du Journal L'Est Républicain

(Case C-554/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — European small claims procedure — Regulation (EC) No 861/2007 — Article 16 — 'Unsuccessful party' — Costs of proceedings — Apportionment — Article 19 — Procedural law of the Member States)

(2019/C 131/11)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicant: Rebecka Jonsson

Defendant: Société du Journal L'Est Républicain

Operative part of the judgment

Article 16 of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure must be interpreted as not precluding national legislation under which, where a party succeeds only in part, the national court may order each of the parties to the proceedings to bear its own procedural costs or may apportion those costs between those parties. In such a situation, the national court remains, theoretically, free to apportion the amount of those costs, provided that the national procedural rules on the apportionment of procedural costs in small cross-border claims are not less favourable than the procedural rules governing similar situations subject to domestic law and that the procedural requirements relating to the apportionment of those procedural costs do not result in the persons concerned foregoing the use of that European small claims procedure by requiring an applicant, when he has been largely successful, nonetheless to bear his own procedural costs or a substantial portion of those costs.

([1]) OJ C 402, 27.11.2017.

Judgment of the Court (Ninth Chamber) of 14 February 2019 (request for a preliminary ruling from the Audiencia Nacional — Spain) — Nestrade SA v Agencia Estatal de la Administración Tributaria (AEAT), Tribunal Económico-Administrativo Central (TEAC)

(Case C-562/17) ([1])

(Reference for a preliminary ruling — Thirteenth Council Directive 86/560/EEC — Arrangements for the refund of value added tax (VAT) — Principles of equivalence and effectiveness — Company not established in the European Union — Preliminary and final decision refusing the refund of VAT — Incorrect VAT identification number)

(2019/C 131/12)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: Nestrade SA

Defendants: Agencia Estatal de la Administración Tributaria (AEAT), Tribunal Económico-Administrativo Central (TEAC)

Operative part of the judgment

The provisions of the Thirteenth Council Directive 86/560/EEC of 17 November 1986, on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory, must be interpreted as not precluding a Member State from imposing a time limit on the possibility of rectifying incorrect invoices, for example by the rectification of the VAT identification number originally shown on the invoice, for the purposes of the exercise of the right to a VAT refund, provided that the principles of equivalence and effectiveness are respected, which it is for the referring court to verify.

([1]) OJ C 437, 18.12.2017.

Judgment of the Court (Second Chamber) of 14 February 2019 (request for a preliminary ruling from the Općinski sud u Rijeci — Croatia) — Anica Milivojević v Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen

(Case C-630/17) ([1])

(Reference for a preliminary ruling — Articles 56 and 63 TFEU — Freedom to provide services — Free movement of capital — National legislation providing that credit agreements featuring international elements concluded with a non-authorised lender are invalid — Regulation (EU) No 1215/2012 — Article 17(1) — Credit agreement concluded by a natural person with a view to the provision of tourist accommodation services — Concept of 'consumer' — Article 24, point 1 — Exclusive jurisdiction in matters relating to rights in rem in immovable property — Action for invalidity of a credit agreement and seeking the removal from the land register of the entry of a security interest)

(2019/C 131/13)

Language of the case: Croatian

Referring court

Općinski sud u Rijeci

Parties to the main proceedings

Applicant: Anica Milivojević

Defendant: Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen

Operative part of the judgment

1. Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which has the effect, inter alia, that credit agreements and legal acts based on those agreements concluded in that Member State between debtors and creditors established in another Member State who do not hold an authorisation, issued by the competent authorities of the first Member State, to operate in that State, are invalid from the date on which they were concluded, even if they were concluded before the entry into force of that legislation.

2. Article 4(1) and Article 25 of 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 preclude legislation of a Member State, such as that at issue in the main proceedings, which, in the context of disputes concerning credit agreements featuring international elements which fall within the scope of that regulation, allows debtors to bring an action against non-authorised lenders either before the courts of the State in which they have their registered office or before the courts of the place where the debtors have their domicile or head office and restricts jurisdiction to hear actions brought by creditors against their debtors only to courts of the State on the territory of which those debtors have their domicile, whether they are consumers or professionals.

3. Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a debtor who has entered into a credit agreement in order to have renovation work carried out in an immovable property which is his domicile with the intention, in particular, of providing tourist accommodation services cannot be regarded as a 'consumer' within the meaning of that provision, unless, in the light of the context of the transaction, regarded as a whole, for which the contract has been concluded, that contract has such a tenuous link to that professional activity that it appears clear that the contract is essentially for private purposes, which is a matter for the referring court to ascertain.

4. The first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 must be interpreted as meaning that an action 'relating to rights in rem in immovable property' within the meaning of that provision, constitutes an action for the removal from the land register of the mortgage on a building, but that an action for a declaration of the invalidity of a credit agreement and of the notarised deed relating to the creation of a mortgage taken out as a guarantee for the debt arising out of that agreement does not fall within that concept.

(1) OJ C 22, 22.1.2018.

Judgment of the Court (Ninth Chamber) of 14 February 2019 (request for a preliminary ruling from the Consiglio di Stato, Italy) — CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa v Comune di Tarvisio

(Case C-710/17) (1)

(Reference for a preliminary ruling — Public works contracts — Directive 2004/18/EC — Article 48(3) — Assessment and verification of the technical capacities of economic operators — National provision which cannot be regarded as a transposition of Directive 2004/18 — No direct and unconditional reference to EU law — No request based on the existence of a certain cross-border interest — Inadmissibility of the request for a preliminary ruling)

(2019/C 131/14)

Language of the case: Italian

Referring court

Consiglio di Stato, Italy

Parties to the main proceedings

Applicant: CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa

Defendant: Comune di Tarvisio

Interveners: Incos Srl, RTI — Idrotermica F.lli Solera, Gabriele Indovina

Operative part of the judgment

The request for a preliminary ruling made by the Consiglio di Stato (Council of State, Italy), by decision of 28 September 2017, is inadmissible.

(1) OJ C 112, 26.3.2018.

Judgment of the Court (Second Chamber) of 7 February 2019 (request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña — Spain) — Carlos Escribano Vindel v Ministerio de Justicia

(Case C-49/18) ([1])

(Reference for a preliminary ruling — Budgetary austerity measures — Reduction of remuneration in the national civil service — Method — Differential impact — Social policy — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(1) and (2)(b) — Charter of Fundamental Rights of the European Union — Article 21 — Judicial independence — Second subparagraph of Article 19(1) TEU)

(2019/C 131/15)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Applicant: Carlos Escribano Vindel

Defendant: Ministerio de Justicia

Operative part of the judgment

1. Article 21 of the Charter of Fundamental Rights of the European Union and Article 2(1) and (2)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted, subject to the verifications to be made by the referring court, as not precluding national legislation, such as that at issue in the main proceedings, which established, in the context of general salary-reduction measures linked to the requirements of eliminating an excessive budget deficit, different percentage reductions for the basic salary and additional remuneration of members of the judiciary, which, according to the referring court has entailed greater percentage reductions for those members of the judiciary on two lower pay grades than those members of the judiciary on a higher pay grade, when the former receive a lower salary, are generally younger and generally have a shorter length of service than the latter.

2. The second subparagraph of Article 19(1) TEU must be interpreted as meaning that the principle of judicial independence does not preclude the application to the applicant in the main proceedings of national legislation, such as that at issue in the main proceedings, which established, without regard to the nature of the duties performed, length of service or the importance of the tasks performed, in the context of general salary-reduction measures linked to the requirements of eliminating an excessive budget deficit, different percentage reductions for the basic salary and additional remuneration of members of the judiciary, which, according to the referring court has entailed greater percentage salary reductions for those members of the judiciary on two lower pay grades than those members of the judiciary on a higher pay grade, when the former are paid less than the latter, provided that the level of remuneration received by the applicant in the main proceedings after application of the salary reduction at issue is commensurate with the importance of the duties he performs and, accordingly, guarantees his independent judgment, which is a matter for the referring court to ascertain.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Second Chamber) of 14 February 2019 (request for a preliminary ruling from the Labour Court — Ireland) — Tomás Horgan, Claire Keegan v Minister for Education & Skills, Minister for Finance, Minister for Public Expenditure & Reform, Ireland, Attorney General

(Case C-154/18) ([1])

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(2)(b) — Indirect discrimination on grounds of age — Newly recruited teachers — Date of recruitment — Salary scale and classification on that scale upon recruitment less advantageous than that applicable to teachers already employed as such)

(2019/C 131/16)

Language of the case: English

Referring court

Labour Court, Ireland

Parties to the main proceedings

Applicants: Tomás Horgan, Claire Keegan

Defendants: Minister for Education & Skills, Minister for Finance, Minister for Public Expenditure & Reform, Ireland, Attorney General

Operative part of the judgment

Article 2(2)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date does not constitute indirect discrimination on the grounds of age within the meaning of that provision.

([1]) OJ C 166, 14.5.2018.

Judgment of the Court (Tenth Chamber) of 13 February 2019 (request for a preliminary ruling from the Arbeidsrechtbank Gent — Belgium) — Ronny Rohart v Federale Pensioendienst

(Case C-179/18) ([1])

(Reference for a preliminary ruling — Social security — Pension rights under the national pension scheme for employed persons — Refusal to take into account the period of compulsory military service completed by an official of the European Union after taking up his post — Principle of sincere cooperation)

(2019/C 131/17)

Language of the case: Dutch

Referring court

Arbeidsrechtbank Gent

Parties to the main proceedings

Applicant: Ronny Rohart

Defendant: Federale Pensioendienst

Operative part of the judgment

Article 4(3) TEU, in conjunction with the Staff Regulations of Officials of the European Union, established by Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, must be interpreted as precluding the legislation of a Member State, such as that at issue in the main proceedings, under which, when determining the pension entitlement of a worker who occupied a position as an employed person in that Member State before becoming an EU official and completed, after becoming an EU official, his compulsory military service in that Member State, that worker is not entitled to have his period of military service treated as equivalent to a period of actual work as an employed person — treatment to which he would have been entitled if, at the time he was called up for military service or for at least one year during the three years following the end of his military service, he had been employed in a position covered by the national pension scheme.

([1]) OJ C 182, 28.5.2018.

Judgment of the Court (Eighth Chamber) of 7 February 2019 (request for a preliminary ruling from the Oberlandesgericht Oldenburg — Germany) — NK

(Case C-231/18) ([1])

(Reference for a preliminary ruling — Transport — Road transport — Regulation (EC) No 561/2006 — Regulation (EU) No 165/2014 — Obligation to use a tachograph — Exception for vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses)

(2019/C 131/18)

Language of the case: German

Referring court

Oberlandesgericht Oldenburg

Parties to the main proceedings

NK

Other parties to the proceedings: Staatsanwaltschaft Oldenburg, Staatliches Gewerbeaufsichtsamt Oldenburg

Operative part of the judgment

The term 'local markets' in Article 13(1)(p) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as amended by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014, must be interpreted as referring neither to the transaction

carried out between a livestock wholesaler and a farmer nor to the livestock wholesaler himself, so that the exception provided for in that provision cannot be extended to include vehicles transporting live animals directly from farms to local slaughterhouses.

(1) OJ C 221, 25.6.2018.

Judgment of the Court (First Chamber) of 12 February 2019 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of the European arrest warrant issued in respect of TC

(Case C-492/18 PPU) (1)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 12 — Keeping a person in detention — Article 17 — Time limits for adoption of the decision to execute the European arrest warrant — National legislation providing for automatic suspension of detention 90 days after arrest — Interpretation in conformity with EU law — Suspension of time limits — Charter of Fundamental Rights of the European Union — Article 6 — Right to liberty and security — Differing interpretations of national legislation — Clarity and predictability)

(2019/C 131/19)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Party in the main proceedings

TC

Operative part of the judgment

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which lays down a general and unconditional obligation to release a requested person arrested pursuant to a European arrest warrant as soon as a period of 90 days from that person's arrest has elapsed, where there is a very serious risk of that person absconding and that risk cannot be reduced to an acceptable level by the imposition of appropriate measures.

Article 6 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national case-law which allows the requested person to be kept in detention beyond that 90-day period, on the basis of an interpretation of that national provision according to which that period is suspended when the executing judicial authority decides to refer a question to the Court of Justice of the European Union for a preliminary ruling, or to await the reply to a request for a preliminary ruling made by another executing judicial authority, or to postpone the decision on surrender on the ground that there could be, in the issuing Member State, a real risk of inhuman or degrading detention conditions, in so far as that case-law does not ensure that that national provision is interpreted in conformity with Framework Decision 2002/584 and entails variations that could result in different periods of continued detention.

(1) OJ C 381, 22.10.2018.

Appeal brought on 11 September 2018 by Felismino Pereira against the judgment of the General Court (Fifth Chamber) delivered on 13 July 2018 in Case T-606/16 Pereira v Commission

(Case C-571/18 P)

(2019/C 131/20)

Language of the case: French

Parties

Appellant: Felismino Pereira (represented by: N. de Montigny, lawyer)

Other party to the proceedings: European Commission

By order of 14 February 2019, the Court (Seventh Chamber) dismissed the appeal as manifestly inadmissible.

Appeal brought on 11 September 2018 by Petrus Kerstens against the order of the General Court (First Chamber) delivered on 26 June 2018 in Case T-757/17 Kerstens v Commission

(Case C-577/18 P)

(2019/C 131/21)

Language of the case: French

Parties

Appellant: Petrus Kerstens (represented by: C. Mourato, lawyer)

Other party to the proceedings: European Commission

By order of 22 January 2019, the Court (Sixth Chamber) dismissed the appeal.

Appeal brought on 27 October 2018 by Adis Higiene, S.L. against the order of the General Court (Fourth Chamber) delivered on 10 August 2018 in Case T-309/18 Adis Higiene v EUIPO — Farecla Products (G3 Extra Plus)

(Case C-669/18 P)

(2019/C 131/22)

Language of the case: Spanish

Parties

Appellant: Adis Higiene, S.L. (represented by: M.J. Sanmartín Sanmartín, lawyer)

Other party to the proceedings: European Union Intellectual Property Office

By order of 27 February 2019, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Adis Higiene, S.L. to pay its own costs.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 November 2018 — Ascopiave SpA and Others v Ministero dello Sviluppo Economico and Others

(Case C-711/18)

(2019/C 131/23)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Ascopiave SpA, Bim Belluno Infrastrutture SpA, Centria Srl, Retipiù Srl, Pasubio Distribuizione Gas Srl — Unipersonale, Pasubio Group SpA, Unigas Distribuzione Srl

Respondents: Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri, Ministero per gli Affari Regionali e le Autonomie

Questions referred

Does EU law and, in particular, the common rules governing the internal market in electrical energy and natural gas and the principles of legal certainty and protection of legitimate expectations allow retroactive application of the criteria for determining the amount of the reimbursements payable to former concession holders, thereby affecting previous contractual relationships, or can such application be justified, also in the light of the principle of proportionality, by the need to protect other public interests of European importance, relating to the necessity of improving protection for competition within the market in question and of affording greater protection to service users, who might indirectly bear the burden of an increase in the sums payable to former concession holders?

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 3 December 2018 — Ryanair Designated Activity Company v Országos Rendőr-főkapitányság

(Case C-754/18)

(2019/C 131/24)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Ryanair Designated Activity Company

Defendant: Országos Rendőr-főkapitányság

Questions referred

1. Must Article 5(2), on right of entry, of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [1] be interpreted as meaning that, for the purposes of that directive, both the holding of a valid residence card, as referred to in Article 10 thereof, and the holding of a permanent residence card, as referred to in Article 20 thereof, exempt a family member from the requirement to be in possession of a visa at the time of entry to the territory of a Member State?

2. If the answer to question 1 is in the affirmative, must Article 5 of Directive 2004/38, and paragraph 2 thereof, be interpreted in the same way where the person who is a family member of an EU citizen and is not a national of another Member State has acquired the right of permanent residence in the United Kingdom and that is the State which issued the permanent residence card to that person? In other words, does the holding of the permanent residence card provided for in Article 20 of that directive, issued by the United Kingdom, exempt the holder of that card from the requirement to obtain a visa, regardless of the fact that neither Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, to which Article 5(2) of Directive 2004/38 refers, nor Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) is applicable to that Member State?

3. If the answers to questions 1 and 2 are in the affirmative, is the holding of a residence card issued in accordance with Article 20 of Directive 2004/38 to be regarded by itself as sufficient proof that the holder of the card is a family member of an EU citizen and is, without the need for any further checking or certification, permitted — as a family member — to enter the territory of another Member State and is exempt from the requirement to obtain a visa pursuant to Article 5(2) of that directive?

4. If the Court of Justice should answer question 3 in the negative, must Article 26(1)(b) and (2) of the Convention implementing the Schengen Agreement be interpreted as meaning that an air carrier, in addition to checking travel documents, is required to check that a traveller who intends to travel with the permanent residence card referred to in Article 20 of Directive 2004/38 is in fact genuinely a family member of an EU citizen at the time of entry?

5. If the Court of Justice should answer question 4 in the affirmative,

   (i) where an air carrier is unable to establish that a traveller who intends to travel with the permanent residence card referred to in Article 20 of Directive 2004/38 is actually a family member of an EU citizen at the time of entry, is that carrier required to deny boarding onto the aircraft and to refuse to transport that person to another Member State?

   (ii) where an air carrier does not check that circumstance or does not refuse to transport a traveller who is unable to provide evidence that he is a family member — and who, moreover, holds a permanent residence card — is it possible to impose a fine on that carrier on that ground pursuant to Article 26(2) of the Convention implementing the Schengen Agreement?

[1] OJ 2004 L 158, p. 77.

Appeal brought on 5 December 2018 by Wallapop, S.L. against the judgment of the General Court (Sixth Chamber) delivered on 3 October 2018 in Case T-186/17, Unipreus v EUIPO — Wallapop (wallapop)

(Case C-763/18 P)

(2019/C 131/25)

Language of the case: Spanish

Parties

Appellant: Wallapop, S.L. (represented by: D. Sarmiento Ramírez-Escudero and N. Porxas Roig, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office and Unipreus, S.L.

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal, for the reasons set out in the single ground of appeal, finding that the services at issue are not similar;

— order Unipreus to pay the costs incurred by Wallapop, both in the proceedings at first instance and in the present proceedings before the Court of Justice.

Grounds of appeal and main arguments

Wallapop, S.L. is bringing an appeal against the judgment of the General Court (Sixth Chamber) of 3 October 2018, delivered in Case T-186/17, ([1]) relating to opposition proceedings brought by the company Unipreus, S.L. in respect of Wallapop, S.L.'s application for EU figurative mark No 13268941.

The appeal is based on a single ground of appeal, alleging infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark ([2]) (now Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark) and the case-law that interprets the assessment of similarity between services.

In particular, the ground of appeal is based on the General Court's erroneous application of the criteria established in the case-law for determining the similarity in terms of application as between trade marks; in essence, the General Court disregarded the concept of marketing and the services that an online market ordinarily provides, according to the meaning attributed to it by legislation and case-law; that is to say, intermediary services rather than marketing or similar services.

The General Court's incorrect assessment carries forward to the analysis in its judgment of the similarity of the services at issue, applying the criteria established in the case-law to that effect (such as nature, distribution channels, intended purpose and perception or competitiveness and complementarity between services).

([1]) Judgment of 3 October 2018, *Unipreus* v *EUIPO — Wallapop (wallapop)* (T-186/17, not published, EU:T:2018:640).

([2]) OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Oberverwaltungsgericht Rheinland-Pfalz (Germany) lodged on 28 December 2018 — PF and Others v Landkreis Südliche Weinstraße

(Case C-830/18)

(2019/C 131/26)

Language of the case: German

Referring court

Oberverwaltungsgericht Rheinland-Pfalz

Parties to the main proceedings

Appellant: Landkreis Südliche Weinstraße

Respondents: PF and Others

Other party: Vertreter des öffentlichen Interesses

Questions referred

1. Is Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union ([1]) to be interpreted as meaning that a provision of national law limiting the obligation of national local authorities (districts) regarding school transport to the residents of the wider constituent state (Land) has an indirectly discriminatory effect, even if it is established, on the basis of the factual circumstances, that the residence requirement quite predominantly excludes residents of the rest of the territory of the Member State from the benefit?

If Question 1 is to be answered in the affirmative:

2. Does the effective organisation of the school system constitute an imperative requirement of public interest which is capable of justifying indirect discrimination?

([1]) OJ 2011 L 141, p. 1.

Request for a preliminary ruling from the Curtea de Apel Timișoara (Romania) lodged on 24 December 2018 — SC Terracult SRL v Direcția Generală Regională a Finanțelor Publice Timișoara — Administrația Județeană a Finanțelor Publice Arad — Serviciul Inspecție Fiscală Persoane Juridice 5 and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Timișoara — Serviciul de Soluționare a Contestațiilor

(Case C-835/18)

(2019/C 131/27)

Language of the case: Romanian

Referring court

Curtea de Apel Timișoara

Parties to the main proceedings

Appellant: SC Terracult SRL

Respondents: Direcția Generală Regională a Finanțelor Publice Timișoara — Administrația Județeană a Finanțelor Publice Arad — Serviciul Inspecție Fiscală Persoane Juridice 5 and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Timișoara — Serviciul de Soluționare a Contestațiilor

Question referred

Do the VAT Directive ([1]) and the principles of *fiscal neutrality*, *effectiveness and proportionality* preclude, in circumstances such as those in the main proceedings, an administrative practice and/or an interpretation of provisions of national legislation which prevents the correction of certain invoices and, consequently, the entry of the corrected invoices in the VAT return for the period in which the correction was made, in respect of transactions carried out during a period which was the subject of a tax inspection, following which the tax authorities issued a tax assessment which has become final, when, after the issue of the tax assessment, additional data and information have been discovered which would entail the application of a different tax regime?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 3 January 2019 — SC Mitliv Exim SRL v Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

(Case C-9/19)

(2019/C 131/28)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: SC Mitliv Exim SRL

Defendants: Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

Questions referred

1. Do Articles 2 and 273 of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax, ([1]) Article 50 of the Charter of Fundamental Rights of the European Union and Article 325 TFEU, in circumstances such as those in the main proceedings, preclude national legislation, such as that at issue in the main proceedings, which enables the following combination of events to take place:

   — the payment of criminal damages, imposed during the pre-trial investigation phase on the basis of something other than a tax claim;

— the subsequent conducting of a tax inspection, in parallel with the criminal proceedings in which the accused taxpayer has been brought to trial to respond to a charge of tax evasion, which imposes on that taxpayer ancillary tax liabilities for both the period and the amount already made available to the State authorities during the pre-trial investigation phase, while the decision regarding the administrative complaint lodged against the administrative and tax measures issued at the time of the inspection has been stayed pending the final decision in the criminal proceedings;

— the closing of the criminal proceedings at first instance with the accused being sentenced, inter alia, jointly to pay the entirety of the amount imposed during the pre-trial investigation phase as being owed by all the accused parties, although only a part of that amount, which has already been paid by the taxpayer concerned, has been ascribed to that taxpayer; and to what extent are all of those events, taken together, excessive with regard to that same taxpayer?

2. In circumstances such as those in the main proceedings, is the State authorities' approach of refusing to take into consideration, from a tax perspective, a payment made before the administrative and criminal penalties have become final, in circumstances where the payment covers part of the tax liability imposed on a taxpayer, even in order to guarantee the objective of collecting tax liabilities owed to the State and to combat fraud, compatible with the principles of EU law in general and with the principle of *non bis in idem* in particular?

3. In the light of the answers to Questions [1] and [2] above, should EU law be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not regard as a levying of tax contrary to EU law. a situation where a taxpayer pays criminal damages during the pre-trial investigation phase in order to have the term of the penalty reduced by half, where there is no tax claim from the competent authority, or where no final decision has been handed down by a criminal court, but the tax authorities impose, at the time of the tax inspection, ancillary tax liabilities for both the period and the amount already made available to the State authorities, the fee being levied, without grounds, from the time of the payment until such time as the tax liabilities are imposed on the basis of either a tax claim or a final decision in criminal proceedings?

([1]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 18 January 2019 — AT v Pensionsversicherungsanstalt

(Case C-32/19)

(2019/C 131/29)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: AT

Defendant: Pensionsversicherungsanstalt

Questions referred

1. Is Article 17(1)(a) of Directive 2004/38/EC [1] of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC to be interpreted as meaning that workers who, at the time when they stop working, have reached the age laid down by the law of the State of employment for entitlement to an old age pension must have been working in the State of employment for at least the preceding 12 months and must have resided in the State of employment continuously for at least three years in order to acquire the right of permanent residence before completion of a five-year residence period?

2. If Question 1 is answered in the negative:

   Do workers have the right of permanent residence pursuant to the first alternative in Article 17(1)(a) of Directive 2004/38/EC if they take up employment in another Member State at a point in time at which it is foreseeable that they will be able to engage in their employment for only a relatively short period of time before they reach the statutory retirement age and, because of low income, will in any event be dependent on the host Member State's social assistance after they stop working?

[1] OJ 2004 L 158, p. 77.

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 25 January 2019 — HA v Finanzamt Hamburg-Barmbek-Uhlenhorst

(Case C-47/19)

(2019/C 131/30)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: HA

Defendant: Finanzamt Hamburg-Barmbek-Uhlenhorst

Questions referred

1. Does the concept of school and university education in Article 132(1)(i) and (j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] ('Directive 2006/112') also include surfing and sailing tuition? Is it sufficient if such tuition is offered in at least one school or university in the Member State?

2. In order to find that there is school or university education within the meaning of Article 132(1)(i) and (j) of Directive 2006/112, is it necessary for the tuition to be included as part of the students' grades, or is it sufficient if the surfing or sailing course takes place in the context of organised school or university activities, such as a class trip?

3. Is it possible for a surfing and sailing school to be recognised as an organisation with a similar object, within the meaning of Article 132(1)(i) of Directive 2006/112, on the basis of the regulations regarding school or university law, whereby even external surfing and sailing courses form part of physical education or the university education of physical education teachers where a grade or some other certificate of achievement is awarded, and/or on the basis of a public interest in sporting activities? Is a direct or indirect absorption of the costs of the courses by the school or university necessary for such recognition?

4. Do surfing or sailing courses in the context of a class trip represent the supply of a service closely linked to the protection of children and young persons within the meaning of Article 132(1)(h) of Directive 2006/112? If so, is it necessary for that protection to last for a specific period of time?

5. Does the wording 'tuition given privately by teachers and covering school or university education' in Article 132(1)(j) of Directive 2006/112 require that the taxable person give the tuition himself?

([1]) OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 1 February 2019 — Kaplan International colleges UK Ltd v The Commissioners for Her Majesty's Revenue and Customs

(Case C-77/19)

(2019/C 131/31)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Kaplan International colleges UK Ltd

Defendant: The Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. What is the territorial scope of the exemption contained in Article 132(1)(f) of Council Directive 2006/112/EC ([1])? In particular (i) does it extend to a Costs Sharing Group (CSG) which is established in a Member State other than the Member State or Member States of the members of the CSG? And if so, (ii) does it also extend to a CSG which is established outside of the EU?

2. If the CSG exemption is in principle available to an entity established in a different Member State from one or more members of the CSG and also to a CSG established outside the EU, how should the criterion that the exemption should not be likely to cause distortion of competition be applied? In particular,

   a) Does it apply to potential distortion which affects other recipients of similar services which are not members of the CSG or does it only apply to potential distortion which affects potential alternative providers of services to the CSG's members?

b) If it applies only to other recipients, can there be a real possibility of distortion if other recipients who are not members of the CSG are able either to apply to join the CSG in question, or to set up their own CSG to obtain similar services, or to obtain equivalent VAT savings by other methods (such as by setting up a branch in the Member State or third stat in question).

c) If it applies only to other providers, is the real possibility of distortion to be assessed by determining whether the CSG is assured of keeping its member's custom, irrespective of the availability of the VAT exemption — and therefore to be assessed by reference to the access of alternative providers to the national market in which the members of the CSG are established? If so, does it matter whether the CSG is assured of keeping its members' custom because they are part of the same corporate group.

d) Should potential distortion be assessed at a national level in relation to alternative providers in the third state where the CSG is established?

e) Does the tax authority in the EU which administers the VAT Directive bear an evidential burden to establish the likelihood of distortion?

f) Is it necessary for the tax authority in the EU to commission specific expert evaluation of the market of the third state where the CSG is established?

g) Can the presence of a real possibility of distortion be established by the identification of a commercial market in the third state?

3. Can the CSG exemption apply in the circumstances of this case where the members of the CSG are linked to one another by economic, financial or organisational relationships?

4. Can the CSG exemption apply in circumstances where the members have formed a VAT group, which is a single taxable person? Does it make a difference if, KIC, the representative member to whom (as a matter of national law) the services are supplied, is not a member of the CSG? And, if it does make a difference, is this difference eliminated by national law stipulating that the representative member possesses the characteristics and status of the members of the CSG for the purpose of applying the CSG exemption?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax OJ 2006, L 347, p. 1

Appeal brought on 1 February 2019 by the Republic of Lithuania against the judgment of the General Court (Fourth Chamber) delivered on 22 November 2018 in Case T-508/15 Republic of Lithuania v European Commission

(Case C-79/19 P)

(2019/C 131/32)

Language of the case: Lithuanian

Parties

Appellant: Republic of Lithuania (represented by: R. Krasuckaitė)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court in Case T-508/15 ([1]) ('the judgment under appeal') in so far as, in that judgment, the General Court dismissed the action for annulment of European Commission Implementing Decision (EU) 2015/1119 of 22 June 2015;

— annul European Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 ([2]) or refer the judgment under appeal back to the General Court for review;

— order the European Commission to pay the costs.

Grounds of appeal and main arguments

The Republic of Lithuania seeks annulment of the judgment of the General Court in Case T-508/15 on the following legal basis:

(1) The General Court erred in law in finding, in paragraph 83 of the judgment under appeal, that the derogation provided for in Article 33m(1) of Regulation No 1257/1999 ([3]) relates only to the age of the persons transferring the farm, since that provision is clearly related to the milk quota as evidence of commercial agricultural production.

(2) The General Court also distorted the facts in paragraphs 74 to 79 of the judgment under appeal by concluding that the Government of the Republic of Lithuania had failed to demonstrate that holding a milk quota meant that the applicant was engaged in commercial agricultural production, which in essence did not correspond to the documents of the case submitted to it.

([1]) Judgment of the General Court (Fourth Chamber) of 22 November 2018, *Republic of Lithuania* v *European Commission*, T-508/15 (EU:T:2018:828).

([2]) (OJ 2015 L 182, p. 39)

([3]) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80).

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 8 February 2019 — Viasat UK Ltd, Viasat Inc. v Institut belge des services postaux et des télécommunications (IBPT)

(Case C-100/19)

(2019/C 131/33)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicants: Viasat UK Ltd, Viasat Inc.

Defendant: Institut belge des services postaux et des télécommunications (IBPT)

Interveners: Inmarsat Ventures Ltd, Eutelsat SA

Questions referred

1. Are Article 4(1)(c)(ii), Article 7(1) and Article 8(1) of Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) ([1]) to be interpreted as meaning that, where it is established that the operator selected in accordance with Title II of that decision has not provided mobile satellite services through a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of the decision, the competent authorities of the Member States referred to in Article 8(1) of the decision **must** refuse to grant authorisations allowing that operator to deploy complementary ground components on the ground that that operator has failed to honour the commitment given in its application?

2. If the answer to the first question is in the negative, are those same provisions to be interpreted as meaning that, in the context given, the competent authorities of the Member States referred to in Article 8(1) of the decision **may** refuse to grant authorisations allowing that operator to deploy complementary ground components on the ground that it has not honoured the commitment to provide certain coverage by 13 June 2016?

(1) OJ 2008 L 172, p. 15.

Request for a preliminary ruling from the Obvodní soud pro Prahu 9 (Czech Republic) lodged on 12 February 2019 — XR v Dopravní podnik hl. m. Prahy, akciová společnost

(Case C-107/19)

(2019/C 131/34)

Language of the case: Czech

Referring court

Obvodní soud pro Prahu 9

Parties to the main proceedings

Applicant: XR

Defendant: Dopravní podnik hl. m. Prahy, akciová společnost

Questions referred

1. Is a break period in which an employee must be available to his employer within two minutes, in case there is an emergency call out, to be considered 'working time' within the meaning of Article 2 of Directive 2003/88/EC (1) of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time?

2. Is the assessment to be made in relation to the question above influenced by the fact that such interruption [of the break] in the event of an emergency call out occurs only at random and unpredictably or, as the case may be, by how often such interruption occurs?

3. Can a court of first instance, ruling after its decision has been set aside by a higher court and the case referred back to it for further proceedings, fail to comply with a legal opinion pronounced by the higher court and which is binding on the court of first instance, if that opinion conflicts with EU law ?

(1) OJ 2003 L 299, p. 9.

Appeal brought on 14 February 2019 by the European Commission against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 4 December 2018 in Case T-518/16, Carreras Sequeros and Others v Commission

(Case C-119/19 P)

(2019/C 131/35)

Language of the case: French

Parties

Appellant: European Commission (represented by: T.S. Bohr, G. Gattinara and L. Vernier, acting as Agents)

Other parties to the proceedings: Francisco Carreras Sequeros, Mariola de las Heras Ojeda, Olivier Maes, Gabrio Marinozzi, Giacomo Miserocchi, Marc Thieme Groen, European Parliament and Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of 4 December 2018, *Carreras Sequeros and Others* v *Commission*, T-518/16;

— refer the case back to the General Court for a ruling on the second, third and fourth pleas in law put forward at first instance;

— reserve the costs.

Grounds of appeal and main arguments

The Commission relies on two grounds of appeal.

1. By its first ground of appeal, the Commission claims that the General Court erred in law in its interpretation of Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

   The first part of that ground alleges an error of law in the interpretation of the content of Article 31(2) of the Charter. The content of the right to an annual period of paid leave, which is enshrined under Article 31(2), is specified in Article 7 of Directive 2003/88. [1] Thus, the General Court erred in law by taking into account other provisions of Directive 2033/88, such as Articles 14 and 23, and considering them to be applicable to the legislature.

   By the second part of that ground, the Commission alleges an error of law in the interpretation of Article 31(2) of the Charter in so far as the General Court considered that the reduction provided for under Article 6 of Annex X to the Staff Regulations was not compatible with a purported principle of improving the living and working conditions of those concerned. Such a principle has no legal basis.

   The third part of that ground alleges, in the alternative, an error of law in the interpretation of the other statutory provisions relating to the context of Article 6 of Annex X to the Staff Regulations. The General Court erred in excluding other statutory provisions from its assessment solely on the ground that they existed before the amendment to Article 6 of Annex X to the Staff Regulations. The legislature has broad discretion in the choice of measures to be amended or maintained.

2. By its second ground of appeal, the Commission alleges an error of law in the interpretation of Article 52(1) of the Charter. The General Court disregarded the case-law to the effect that the legislature has broad discretion when amending the Staff Regulations and that a breach of the principle of proportionality may be found only where the legislature has manifestly exceeded the limits of that discretion.

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[1] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Appeal brought on 14 February 2019 by Hamas against the judgment of the General Court (First Chamber, Extended Composition) delivered on 14 December 2018 in Case T-400/10 RENV, Hamas v Council

(Case C-122/19 P)

(2019/C 131/36)

Language of the case: French

Parties

Appellant: Hamas (represented by: L. Glock, avocat)

Other parties to the proceedings: Council of the European Union, French Republic, European Commission

Form of order sought

The appellant claims the Court should:

— Set aside the judgment of 14 December 2018, *Hamas* v *Council*, T-400/10 RENV, in so far as it dismisses the application to annul the following measures:

— Council Decision 2011/430/CFSP of 18 July 2011 (OJ 2011 L 188, p. 47), updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, Council Decisions 2011/872/CFSP of 22 December 2011 (OJ 2011 L 343, p. 54), 2012/333/CFSP of 25 June 2012 (OJ 2012 L 165, p. 72), 2012/765/CFSP of 10 December 2012 (OJ 2012 L 337, p. 50), 2013/395/CFSP of 25 July 2013 (OJ 2013 L 201, p. 57), 2014/72/CFSP of 10 February 2014 (OJ 2014 L 40, p. 56) and 2014/483/CFSP of 22 July 2014 (OJ 2014 L 217, p. 35) updating and, where appropriate, amending, the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing, respectively, Decisions 2011/430, 2011/872, 2012/333, 2012/765, 2013/395 and 2014/72,

and

— Council Implementing Regulations (EU) No 687/2011 of 18 July 2011 (OJ 2011 L 188, p. 2), No 1375/2011 of 22 December 2011 (OJ 2011 L 343, p. 10), No 542/2012 of 25 June 2012 (OJ 2012 L 165, p. 12), No 1169/2012 of 10 December 2012 (OJ 2012 L 337, p. 2), No 714/2013 of 25 July 2013 (OJ 2013 L 201, p. 10), No 125/2014 of 10 February 2014 (OJ 2014 L 40, p. 9) and No 790/2014 of 22 July 2014 (OJ 2014 L 217, p. 1), implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing, respectively, Implementing Regulations (EU) No 83/2011, 687/2011, 1375/2011, 542/2012, 1169/2012, 714/2013 and 125/2014,

in so far as those measures concern Hamas, including Hamas-Izz al-Din al-Qassem.

— Give final judgment in the matters that are the subject of this appeal;

— Order the Council to bear all the costs in Cases T-400/10, T-400/10 RENV, C-79/15 P and in the present case.

Pleas in law and main arguments

1. First plea in law, alleging infringement of the principles governing the shifting of the burden of proof as to the accuracy of the facts:

— The General Court infringed the principles on the shifting of the burden of proof as laid down in the judgment *Council* v *Hamas*, C-79/15 P, and placed an extremely difficult, indeed impossible, burden of proof on Hamas;

— In the alternative, the General Court infringed the principles on the shifting of the burden of proof in holding that Hamas had not made a specific and detailed challenge to the facts established by the Council;

— The General Court failed to fulfil its obligation to respond, to the requisite legal standard, to all the arguments raised by the appellant concerning the possibility of attributing terrorist acts to it.

2. Second plea in law, alleging infringement of the right to effective judicial review:

— The General Court deprived the appellant of the right to effective judicial review by failing to find that the Council had not demonstrated the accuracy of the facts set out in its statements of reasons;

— The General Court persisted in the infringement of the right to effective judicial review, despite the fact that a measure of organisation of procedure had confirmed that the contested measures were not taken on a sufficiently solid factual basis;

— The General Court rejected the plea alleging an error on the part of the Council as to the accuracy of the facts resulting from unbalanced proceedings, to the detriment of the appellant.

3. Third plea in law, alleging that the General Court infringed Article 1(4) of the Common Position by holding that the United Kingdom decision on which the Council relied was a conviction:

— The classification as a conviction proposed by the General Court does not comply with the criteria laid down in Common Position 2001/931 and deprives the requirement to give reasons of any substance;

— On the basis of that incorrect classification, the General Court also made impossible the judicial review of the classification of facts taken from the national decisions.

4. Fourth plea in law: the General Court was not entitled to reject the plea that the Council had not taken sufficient account of the development of the situation owing to the passage of time other than at the price of infringement of the second paragraph of Article 61 of the Statute of the Court of Justice, an unlawful substitution of grounds and on the basis of an incorrect assumption.

5. Fifth plea in law: the General Court erred in law in the interpretation of Article 296 TFEU in holding that the facts established independently by the Council and their classification are set out with sufficient precision and detail in the grounds to be challenged by the appellant and reviewed by the court.

Appeal brought on 15 February 2019 by the Council of the European Union against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 4 December 2018 in Case T-518/16, Carreras Sequeros and Others v Commission

(Case C-126/19 P)

(2019/C 131/37)

Language of the case: French

Parties

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

Other parties to the proceedings: Francisco Carreras Sequeros, Mariola de las Heras Ojeda, Olivier Maes, Gabrio Marinozzi, Giacomo Miserocchi, Marc Thieme Groen, European Commission and European Parliament

Form of order sought

The appellant claims that the Court should:

— uphold the appeal;

— dispose of the case and dismiss the action brought at first instance as unfounded;

— order the applicants at first instance to pay the costs incurred by the Council in the course of the present proceedings.

Grounds of appeal and main arguments

1. The first ground of appeal alleges that the General Court erred in law with regard to its jurisdiction. That ground is divided into two parts.

   — The first part regards the subject-matter of the action. The Council claims that by annulling, in the operative part of the judgment, 'the decisions reducing in 2014 the amount of annual leave [of the applicants]', the General Court implicitly ordered the Commission to reinstate, in order to comply with the judgment, the number of leave days the applicants were entitled to before the amendment of the Staff Regulations. By proceeding in that manner and failing to rectify the subject-matter of the action, the General Court exceeded its jurisdiction. Alternatively, if such a rectification was not possible, the action should have been declared inadmissible.

   — In the second part, the Council claims that in permitting the applicants to contest, by means of objection, the lawfulness of the entire regime of annual leave set out in Article 6 of Annex X to the Staff Regulations, in particular as applicable from 2016, rather than solely the lawfulness of the provision implemented by the Commission in the decision determining the applicants' leave for 2014, the General Court has exceeded the scope of its jurisdiction, in contradiction of settled case-law to the effect that the scope of a plea of illegality must be limited to what is necessary for the outcome of the proceedings and that there must be a direct legal connection between the contested individual decision and the act of general application in question.

2. The second ground of appeal alleges that the General Court erred in law in finding that the reduction in the number of annual leave days under the new Article 6 of Annex X to the Staff Regulations affects the applicants' right to annual leave.

   In the first place, in holding that, in certain circumstances, a directive (in the present case Directive 2003/88) [1] may be invoked against the institutions, the General Court disregarded settled case-law to the effect that directives are addressed to the Member States and not to EU institutions or bodies, with the effect that the provisions of a directive may not be treated as imposing any obligations on the EU institutions in their relations with their staff.

   In the second place, the General Court erred in law in holding that the legislature is bound by the contents of Directive 2003/88 referred to in the explanations of the Praesidium regarding Article 31(2) of the Charter of Fundamental Rights.

   In the third place, the General Court misconstrued the scope of Article 31(2) of the Charter of Fundamental Rights, which, contrary to the findings of the General Court, is not intended to improve living and working conditions, but rather to ensure an adequate level of protection for all workers in the European Union.

   In the fourth place, the General Court erred in law in holding that Article 6 of Annex X to the Staff Regulations infringes the right to annual leave enshrined under Article 31(2) of the Charter of Fundamental Rights, in so far as the number of annual leave days of officials posted to a third country is significantly higher than the minimum of 20 days provided for in Directive 2003/88.

3. The third ground of appeal, raised in the alternative, alleges an error of law as regards the justification for an alleged infringement of the right to annual leave. The General Court erred in law by holding that the justifications for the contested measure did not constitute an overriding public interest and by failing to assess whether the restriction on the right to leave constituted, in view of the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed.

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[1] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Appeal brought on 15 February 2019 by Groupe Canal + against the judgment of the General Court (Fifth Chamber) delivered on 12 December 2018 in Case T-873/16 Groupe Canal + v Commission

(Case C-132/19 P)

(2019/C 131/38)

Language of the case: French

Parties

Appellants: Groupe Canal + (represented by P. Wilhelm, P. Gassenbach and O. de Juvigny, avocats)

Other parties to the proceedings: European Commission, French Republic, Union des producteurs de cinéma (UPC), C More Entertainment AB, European Film Agency Directors — EFADs, Bureau européen des unions de consommateurs (BEUC)

Form of order sought

— Set aside the judgment delivered by the General Court on 12 December 2018 in Case T-873/16 in so far as it dismissed the action brought by Groupe Canal + for annulment of Commission Decision of 26 July 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40023 — Cross-border access to pay-TV), and in so far as it ordered the appellant to pay the costs;

— Annul the Commission Decision of 26 July 2016 in the abovementioned Case AT.40023;

— Order the European Commission to pay the costs in their entirety.

Pleas in law and main arguments

By its first ground of appeal, GCP maintains that the General Court was not entitled to rule out the existence of misuse of powers, consisting for the Commission of putting an end to geo-blocking, by means of commitments, when Regulation (EU) 2018/302 [1] expressly provides that audiovisual content may be the subject of geographical restrictions.

By its ground of appeal, GCP claims that the General Court committed a procedural error and infringed the *audi alteram partem* principle, since none of the arguments relating to the applicability of Article 101(3) TFEU was discussed by the parties to the proceedings. Consequently, the General Court did not observe GCP's rights of defence.

By its third ground of appeal, GCP submits that the General Court committed an error of law relating to infringement of its obligation to state reasons by failing to address the plea in law alleging that the Commission failed to take into account the French economic and legal context to which the clauses at issue belonged. The judgment is based on an inaccurate premiss and disregards the specific economic and legal context of the film industry and is contrary to the case-law of the Court of Justice which has expressly held that the clauses at issue may be perfectly valid in the film industry.

By its fourth ground of appeal, GCP argues that the General Court erred in law concerning the interpretation of Article 9 of Regulation No 1/2003 [2] and point 128 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, leading to infringement of the principles of proportionality and respect for the rights of third parties. The competition concerns expressed in the Commission's preliminary assessment related only to the territories of the United Kingdom and Ireland and the competition situation concerning France was not even examined. Furthermore, the General Court erred in law in finding, first, that the Commission decision did not constitute an interference in the contractual freedom of GCP and, second, that it did not affect GCP's ability to bring an action before a national court in order to establish the compatibility of the relevant clauses with Article 101(1) TFEU, when it follows from the case-law of the Court of Justice that a national court may not disregard a decision taken on the basis of Article 9 of Regulation (EC) No 1/2003 and the accompanying preliminary assessment.

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[1] Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ 2018 L 601, p. 1).

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

Appeal brought on 22 February 2019 by the Comune di Milano against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 13 December 2018 in Case T-167/13 Comune di Milano v European Commission

(Case C-160/19P)

(2019/C 131/39)

Language of the case: Italian

Parties

Appellant: Comune di Milano (represented by: A. Mandarano, E. Barbagiovanni, S. Grassani, lawyers)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of the General Court of 13 December 2018 in Case T-167/13, *Comune di Milano* v *Commission*;

— annul Commission Decision (EU) 2015/1225 of 19 December 2012 regarding injections of capital by SEA SpA into SEA Handling SpA (Case SA.21420 (C 14/10) (ex NN 25/10));

— order the Commission to pay the costs of the proceedings, including those relating to the proceedings for interim measures in Case T-167/13 R.

Pleas in law and main arguments

By the judgment under appeal, the General Court dismissed the action for annulment brought by the Comune di Milano against the aforementioned decision.

In support of its appeal, the Comune di Milano relies on four grounds of appeal, which all relate to infringement by the General Court of Article 107 TFEU and the absence, in the present case, of measures which may be classified as State aid.

By its first ground, the Comune di Milano, first, disputes that the alleged State aid measures made use of 'state resources' and, second, complains that the imputability 'test' developed by the General Court is incompatible with the principles established in Community case-law.

By its second ground of appeal, the Comune di Milano claims that the General Court infringed the principles concerning evidence of imputability, both from the perspective of unequal treatment as regards evidence and lack of evidence over an extended period of time.

By its third ground of appeal, the Comune di Milano alleges distortion of the facts and evidence by the General Court in the assessment of the evidence relied on by the Commission in support of its claim that the measures in question were imputable to the Comune di Milano.

By its fourth ground of appeal, the Comune di Milano disputes, on various grounds, all the assessments made by the General Court relating to the application, by the Commission, of the private investor in a market economy test (known as the Market Economy Investor Principle 'MEIP') and the findings set out in the judgment in that regard.

Appeal brought on 22 February 2019 by the European Commission against the judgment of the General Court (Fourth Chamber) of 12 December 2018 in Case T-683/15, Freistaat Bayern v European Commission

(Case C-167/19 P)

(2019/C 131/40)

Language of the case: German

Parties

Appellant: European Commission (represented by: K. Herrmann, T. Maxian Rusche and P. Němečková, acting as Agents)

Other party to the proceedings: Freistaat Bayern

Form of order sought

The Commission claims that the Court should:

— set aside the judgment under appeal;

— declare unfounded the first plea in law of the action before the General Court;

— refer the case back to the General Court in respect of the remaining pleas in law;

— order the applicant in the proceedings at first instance to pay the costs of those proceedings and of the appeal, or, alternatively, in the event that the case is referred back to the General Court, reserve the decision on the costs of the proceedings at first instance and of the appeal for the final judgment.

Grounds of appeal and main arguments

First ground of appeal:

In paragraphs 60 to 67 of the judgment under appeal, when defining the requirements for the content of an opening decision, the General Court erred in law in its interpretation and application of Article 108(2) TFEU and Article 6(1) of Regulation No 659/1999 ([1]) and the case-law of the EU judicature relating to those provisions: the source of financing of aid is stated in the opening decision only exceptionally and in specific circumstances.

Second ground of appeal:

In paragraphs 53 to 58 and 62 of the judgment under appeal, the General Court misinterpreted the opening decision and thereby failed to state reasons and respond to the Commission's arguments; the opening decision in fact includes budgetary funding.

Third ground of appeal:

In paragraphs 70 and 71 of the judgment under appeal, the General Court erred in law in its interpretation of the second paragraph of Article 263 TFEU and the case-law of the EU judicature relating to that provision, in so far as it holds that the rights of participation of third parties are essential procedural requirements within the meaning of the second paragraph of Article 263 TFEU.

Fourth ground of appeal:

In paragraphs 72 to 75 of the judgment under appeal, the General Court incorrectly interpreted the right of participation under Article 108(2) and (3) TFEU and Article 6(1) of Regulation No 659/1999 together with the case-law of the EU judicature on the consequences of infringing a right of participation, in so far as it finds that an observation of the parties involved on the question whether budgetary funding constitutes State resources could have had an effect on the outcome of the proceedings. In that regard, the General Court also misinterprets the concept of State resources under Article 107(1) TFEU and the concept of existing aid under Article 108(1) TFEU and distorts the facts set out in the decision at issue and adduced before it and fails to deal with the arguments put forward before it by the Commission.

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

Appeal brought on 22 February 2019 by the European Commission against the judgment of the General Court (Fourth Chamber) of 12 December 2018 in Joined Cases T-722/15, T-723/15 and T-724/15, Interessengemeinschaft privater Milchverarbeiter Bayerns e.V. and Others v European Commission

(Case C-171/19 P)

(2019/C 131/41)

Language of the case: German

Parties

Appellant: European Commission (represented by: K. Herrmann, T. Maxian Rusche and P. Němečková, acting as Agents)

Other parties to the proceedings: Interessengemeinschaft privater Milchverarbeiter Bayerns e.V., Genossenschaftsverband Bayern e.V. and Verband der Bayerischen Privaten Milchwirtschaft e.V.

Form of order sought

The Commission claims that the Court should:

— set aside the judgment under appeal;

— declare unfounded the first plea in law of the action before the General Court;

— refer the case back to the General Court in respect of the remaining pleas in law;

— order the applicants in the proceedings at first instance to pay the costs of those proceedings and of the appeal, or, alternatively, in the event that the case is referred back to the General Court, reserve the decision on the costs of the proceedings at first instance and of the appeal for the final judgment.

Grounds of appeal and main arguments

First ground of appeal:

In paragraphs 56 to 64 of the judgment under appeal, when defining the requirements for the content of an opening decision, the General Court erred in law in its interpretation and application of Article 108(2) TFEU and Article 6(1) of Regulation No 659/1999 ([1]) and the case-law of the EU judicature relating to those provisions: the source of financing of aid is stated in the opening decision only exceptionally and in specific circumstances.

Second ground of appeal:

In paragraphs 47 to 53 and 56 of the judgment under appeal, the General Court misinterpreted the opening decision and thereby failed to state reasons and respond to the Commission's arguments; the opening decision in fact includes budgetary funding.

Third ground of appeal:

In paragraphs 66 to 68 of the judgment under appeal, the General Court erred in law in its interpretation of the second paragraph of Article 263 TFEU and the case-law of the EU judicature relating to that provision, in so far as it holds that the rights of participation of third parties are essential procedural requirements within the meaning of the second paragraph of Article 263 TFEU.

Fourth ground of appeal:

In paragraphs 70 to 72 of the judgment under appeal, the General Court incorrectly interpreted the right of participation under Article 108(2) and (3) TFEU and Article 6(1) of Regulation No 659/1999 together with the case-law of the EU judicature on the consequences of infringing a right of participation, in so far as it finds that an observation of the parties involved on the question whether budgetary funding constitutes State resources could have had an effect on the outcome of the proceedings. In that regard, the General Court also misinterprets the concept of State resources under Article 107(1) TFEU and distorts the facts set out in the decision at issue and adduced before it and fails to deal with the arguments put forward before it by the Commission.

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

GENERAL COURT

Judgment of the General Court of 12 February 2019 — Vakakis kai Synergates v Commission

(Case T-292/15) ([1])

(Non-contractual liability — Public supply contracts — Tender procedure — Conflict of interests — Duty of diligence — Loss of opportunity — Compensation)

(2019/C 131/42)

Language of the case: English

Parties

Applicant: Vakakis kai Synergates — Symvouloi gia Agrotiki Anaptixi AE Meleton, formerly Vakakis International — Symvouloi gia Agrotiki Anaptixi AE (Athens, Greece) (represented by: B. O'Connor, Solicitor, S. Gubel and E. Bertolotto, lawyers)

Defendant: European Commission (represented by: F. Erlbacher, E. Georgieva and L. Baumgart, acting as Agents)

Re:

Action brought under Article 268 TFEU, seeking compensation in respect of the loss which the applicant allegedly suffered as a result of irregularities committed by the Commission in the context of the tendering procedure 'Consolidation of the Food Safety System in Albania' (EuropeAid/129820/C/SER/AL).

Operative part of the judgment

The Court:

1. *Fixes the amount of compensation to be paid by the European Commission to Vakakis kai Synergates — Symvouloi gia Agrotiki Anaptixi AE Meleton in accordance with the judgment of 28 February 2018, Vakakis kai Synergates v Commission (T-292/15), at EUR 234 353, together with default interest with effect from 28 February 2018 until full payment, at the rate set by the European Central Bank (ECB) for its principal refinancing operations, increased by two percentage points;*

2. *Orders the Commission to pay the costs incurred with respect to the proceedings giving rise to the judgment of 28 February 2018, Vakakis kai Synergates v Commission (T-292/15);*

3. *Orders each party to bear its own costs incurred with respect to the proceedings subsequent to the judgment of 28 February 2018, Vakakis kai Synergates v Commission (T-292/15).*

([1]) OJ C 294, 7.9.2015.

Judgment of the General Court of 14 February 2019 — Belgium and Magnetrol International v Commission

(Joined Cases T-131/16 and T-263/16) ([1])

(State aid — Aid scheme implemented by Belgium — Decision declaring the aid scheme incompatible with the internal market and unlawful and ordering recovery of the aid granted — Tax ruling — Excess profit exemption — Fiscal autonomy of the Member States — Concept of an aid scheme — Further implementing measures)

(2019/C 131/43)

Language of the case: English

Parties

Applicant in Case T-131/16: Kingdom of Belgium (represented initially by: C. Pochet, M. Jacobs and J.-C. Halleux, and subsequently by C. Pochet and J.-C. Halleux, acting as Agents, and by M. Segura Catalán and M. Clayton, lawyers)

Applicant in Case T-263/16: Magnetrol International (Zele, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission (represented initially by: P.-J. Loewenthal and B. Stromsky, and subsequently by P.-J. Loewenthal and F. Tomat, acting as Agents)

Intervener in Case T-131/16: Ireland (represented initially by: E. Creedon, G. Hodge and A. Joyce, subsequently by K. Duggan, M. Browne and A. Joyce and lastly by A. Joyce and J. Quaney, acting as Agents, and by P. Gallagher, M. Collins, Senior Counsel, B. Doherty and S. Kingston, Barristers)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (OJ 2016 L 260, p. 61).

Operative part of the judgment

The Court:

1. *Joins Cases T-131/16 and T-263/16 for the purposes of the present judgment;*

2. *Annuls Commission Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium;*

3. *Orders the European Commission to pay, in addition to its own costs, those incurred by the Kingdom of Belgium, including those relating to the proceedings for interim measures, and by Magnetrol International;*

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

([1]) OJ C 191, 30.5.2016.

Judgment of the General Court of 26 February 2019 — Athletic Club v Commission

(Case T-679/16) ([1])

(State aid — Aid granted by the Spanish authorities to certain professional football clubs — Preferential tax rate on the income of the clubs authorised to operate as non-profit organisations — Decision declaring that the aid is incompatible with the internal market — Action for annulment — Interest in bringing proceedings — Admissibility — Infra-State measure — Selective nature — Distortion of competition — Effect on trade between Member States — Alteration to existing aid — Duty to state reasons)

(2019/C 131/44)

Language of the case: Spanish

Parties

Applicant: Athletic Club (Bilbao, Spain) (represented by: E. Lucas Murillo de la Cueva and J.M. Luís Carrasco, lawyers)

Defendant: European Commission (represented by: G. Luengo, B. Stromsky and P. Němečková, Agents)

Re:

Action under Article 263 TFEU for annulment of Articles 1, 4 and 5 of Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs (OJ 2016 L 357, p.1), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Athletic Club to pay the costs.*

([1]) OJ C 419, 14.11.2016.

Judgment of the General Court of 14 February 2019 — RE v Commission

(Case T-903/16) ([1])

(Personal data — Protection of natural persons with respect to the processing of their data — Right of access to those data — Regulation (EC) No 45/2001 — Refusal to grant access — Actions for annulment — Email referring to an earlier partial refusal of access without carrying out a re-examination — Concept of a challengeable act within the meaning of Article 263 TFEU — Concept of a purely confirmatory act — Applicability to access to personal data — Substantial new facts — Interest in bringing proceedings — Admissibility — Obligation to state reasons)

(2019/C 131/45)

Language of the case: English

Parties

Applicant: RE (represented by: S. Pappas, lawyer)

Defendant: European Commission (represented by: H. Kranenborg and D. Nardi, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of the note of the Director of the Security Directorate of the Directorate-General for Human Resources of the Commission of 12 October 2016 in so far as it rejects the applicant's request for access to some of his personal data.

Operative part of the judgment

The Court:

1. *Annuls the note of 12 October 2016 of the director of the Security Directorate of the Directorate-General for Human Resources of the Commission, in so far as it rejects the request of 21 September 2016 of RE for access to some of his personal data;*

2. *Orders the Commission to pay the costs.*

([1]) OJ C 53, 20.2.2017.

Judgment of the General Court of 14 February 2019 — L v Parliament

(Case T-91/17) ([1])

(Civil service — Accredited parliamentary assistants — Sick leave — Sick leave spent elsewhere than at the place of employment — Unauthorised absence — Article 60 of the Staff Regulations — Duty of care — Principle of good administration)

(2019/C 131/46)

Language of the case: English

Parties

Applicant: L (represented by: I. Coutant Peyre, lawyer)

Defendant: European Parliament (represented by: M. Windisch and Í. Ní Riagáin Düro, acting as Agents)

Re:

Application based on Article 270 TFEU and seeking annulment of the decision of the European Parliament of 31 August 2016 concerning unauthorised absences of the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders L to pay the costs.*

([1]) OJ C 32, 29.1.2018.

Judgment of the General Court of 14 February 2019 — Poland v Commission

(Case T-366/17) ([1])

(ERDF — Refusal to confirm a financial contribution to a major project — Article 41(1) of Regulation (EC) No 1083/2006 — Assessment of whether a major project is consistent with the priorities of the operational programme — Article 41(2) of Regulation (EC) No 1083/2006 — Time limit exceeded)

(2019/C 131/47)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, Agent)

Defendant: European Commission (represented by: B.-R. Killmann, A. Kyratsou and M. Siekierzyńska, Agents)

Re:

Action under Article 263 TFEU for annulment of Commission Decision C(2017) 1904 final of 24 March 2017 refusing to confirm to the Republic of Poland a financial contribution from the European Regional Development Fund (ERDF) to the major project 'Starting production of a next-generation diesel engine by Volkswagen Motor Polska' in the context of the Priority Axis IV of operational programme 'Innovative Economy'.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 249, 31.7.2017.

Judgment of the General Court of 14 February 2019 — Giove Gas v EUIPO — Primagaz (KALON AL CENTRO DELLA FAMIGLIA)

(Case T-34/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark KALON AL CENTRO DELLA FAMIGLIA — Earlier EU word mark CALOON — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 131/48)

Language of the case: English

Parties

Applicant: Giove Gas Srl (Tarquinia, Italy) (represented by: A. Bergonzini and F. Dinelli, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Compagnie des gaz de pétrole Primagaz (Paris, France) (represented by: D. Régnier, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 27 November 2017 (Case R 1271/2017-2), relating to opposition proceedings between Compagnie des gaz de pétrole Primagaz and Giove Gas.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Giove Gas Srl to pay the costs.*

([1]) OJ C 182, 28.5.2018.

Judgment of the General Court of 14 February 2019 — Torro Entertainment v EUIPO — Grupo Osborne (TORRO Grande MEAT IN STYLE)

(Case T-63/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark TORRO Grande MEAT IN STYLE — Earlier EU word marks TORO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons — First sentence of Article 94(1) of Regulation 2017/1001 — Duty of care — Article 95(1) of Regulation 2017/1001)

(2019/C 131/49)

Language of the case: English

Parties

Applicant: Torro Entertainment (Plovdiv, Bulgaria) (represented by: A. Kostov, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Grupo Osborne, SA (El Puerto de Santa María, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 20 December 2017 (Case R 1776/2017-2) relating to opposition proceedings between Grupo Osborne and Torro Entertainment.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Torro Entertainment Ltd to pay the costs.*

([1]) OJ C 134, 16.4.2018.

Judgment of the General Court of 14 February 2019 — Bayer Intellectual Property v EUIPO (Representation of a heart)

(Case T-123/18) ([1])

(EU trade mark — Application for an EU figurative mark representing a heart — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 131/50)

Language of the case: German

Parties

Applicant: Bayer Intellectual Property GmbH (Monheim am Rhein, Germany) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 7 December 2017 (Case R 145/2017-1) concerning an application for registration of a figurative sign representing a heart as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bayer Intellectual Property GmbH to pay the costs.*

([1]) OJ C 142, 23.4.2018.

Judgment of the General Court of 14 February 2019 — Beko v EUIPO — Acer (ALTUS)

(Case T-162/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark ALTUS — Earlier national word marks ALTOS — Revocation proceedings in respect of earlier marks initiated before national authorities — Likelihood of confusion — Suspension of the administrative proceedings — Rule 20(7)(c) of Regulation (EC) No 2868/95 (now Article 71(1) of Delegated Regulation (EU) 2018/625))

(2019/C 131/51)

Language of the case: English

Parties

Applicant: Beko plc (Watford, United Kingdom) (represented by: G. Tritton, Barrister)

Defendant: European Union Intellectual Property Office (represented by: J. Ivanauskas and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Acer, Inc. (Taipei, Taiwan)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 13 December 2017 (Case R 1991/2016-5) relating to opposition proceedings between Acer and Beko.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 13 December 2017 (Case R 1991/2016-5);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Beko plc.*

([1]) OJ C 152, 30.4.2018.

Order of the Vice-President of the General Court of 15 February 2019 — Aresu v Commission

(Case T-524/16 R)

(Interim measures — Civil Service — Officials — Reform of the Staff Regulations of 1 January 2014 — Reduced number of days of annual leave — Replacement of travelling time by home leave — Application for interim measures — No urgency)

(2019/C 131/52)

Language of the case: French

Parties

Applicant: Antonio Aresu (Brussels, Belgium) (represented by: M. Velardo, lawyer)

Defendant: European Commission (represented by: G. Gattinara and F. Simonetti, agents)

Interveners in support of the defendant: European Parliament (represented by: E. Taneva and M. Ecker, acting as Agents); and Council of the European Union (represented by: M. Bauer and R. Meyer, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking, first, the suspension of operation of the decision reducing the number of the applicant's additional leave days from five to two and a half days, on the basis of Article 7 of Annex V to the Staff Regulations of Officials of the European Union, as amended by Regulation (EU, Euratom) No 1023/2013 of the Parliament and of the Council of 22 October 2013 (OJ 2013 L 287, p. 15), and, secondly, the adoption of interim measures to enable the applicant to continue to benefit, on a provisional basis, from the same number of additional leave days that he enjoyed, in the form of travelling time, before 1 January 2014, with retroactive effect from 1 January 2014 until the decision in the main proceedings is delivered or, if prior to the delivery of that decision, until the retirement date of the applicant.

Operative part of the order

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

2. *The costs are reserved.*

Order of the General Court of 14 February 2019 — Comprojecto Projectos e Construções and Others v ECB

(Case T-768/17) ([1])

(Action for failure to act, for annulment and for damages — Economic and monetary policy — Supervision of credit institutions — Unlawful acts allegedly committed by certain Portuguese credit institutions — Implied rejection of the request to take action made to the ECB — Manifest inadmissibility in part — Manifest lack of jurisdiction in part — Action in part manifestly unfounded in law)

(2019/C 131/53)

Language of the case: Portuguese

Parties

Applicants: Comprojecto-Projectos e Construções, Lda (Lisbon, Portugal), Paulo Eduardo Matos Gomes de Azevedo (Lisbon), Julião Maria Gomes de Azevedo (Lisbon), Isabel Maria Matos Gomes de Azevedo (Lisbon) (represented by: M. Ribeiro, lawyer)

Defendant: European Central Bank (represented by: C. Hernández Saseta and P. Ferreira Jorge, acting as Agents)

Re:

First, application under Article 265 TFEU for a declaration that the ECB unlawfully failed to take action against a Portuguese credit institution in the context of preventing the use of the financial system for the purposes of money laundering, secondly, application under Article 263 TFEU seeking annulment of the ECB's decision not to take action and, thirdly, application for compensation under Article 268 TFEU in respect of the loss and harm which the applicants allegedly sustained as a result of that failure to take action.

Operative part of the order

1. *The action is dismissed.*

2. *Comprojecto-Projectos e Construções, Lda, Mr Paulo Eduardo Matos Gomes de Azevedo, Mr Julião Maria Gomes de Azevedo and Ms Isabel Maria Matos Gomes de Azevedo are ordered to pay the costs.*

(1) OJ C 52, 12.2.2018.

Order of the General Court of 8 February 2019 — Schokker v EASA

(Case T-817/17) (1)

(Civil service — Contract staff — AESA - Recruitment — Selection procedure - Inclusion of the applicant on the reserve list — Withdrawal of the offer of employment made to the applicant — Liability — No unlawful conduct by the EASA — Action manifestly lacking any foundation in law)

(2019/C 131/54)

Language of the case: French

Parties

Applicant: Boudewijn Schokker (Hoofddorp, Netherlands) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Aviation Safety Agency (represented by: S. Rostren and F. Pavesi, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application under Article 270 TFUE for compensation for damage which the applicant claims to have suffered by reason of the blameworthy conduct of the EASA during the selection procedure for the recruitment of a member of the contract agent.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Boudewijn Schokker is ordered to pay the costs.*

(1) OJ C 63, 19.2.2018.

Order of the General Court of 14 February 2019 — Associazione Granosalus v Commission

(Case T-125/18) ([1])

(Actions for annulment — Plant-protection products — Substance active 'glyphosate' — Renewal of inclusion in the annex to Implementing Regulation (EU) No 540/2011 — Act not of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

(2019/C 131/55)

Language of the case: Italian

Parties

Applicant: Associazione Nazionale Granosalus — Liberi Cerealicoltori & Consumatori (Associazione GranoSalus) (Foggia, Italy) (represented by: G. Dalfino, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre, D. Bianchi, G. Koleva and I. Naglis, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2017 L 333, p. 10).

Operative part of the order

1. *The action is to be dismissed as inadmissible.*

2. *There is no longer any need to give a ruling on the applications for leave to intervene by Helm AG, Monsanto Europe NV/SA, Monsanto Company, Nufarm GmbH & Co., Nufarm, Albaugh Europe Sàrl, Albaugh UK Ltd, Albaugh TKI d.o.o. and Barclay Chemicals Manfuacturing Ltd.*

3. *Associazione Nazionale GranoSalus — Liberi Cerealicoltori & Consumatori (Associazione GranoSalus) is to bear its own costs and to pay those incurred by the European Commission.*

4. *Helm, Monsanto Europe, Monsanto, Nufarm GmbH & Co. KG, Nufarm, Albaugh Europe, Albaugh UK, Albaugh TKI and Barclay Chemicals Manufacturing are each to bear their own costs relating to the applications for leave to intervene.*

([1]) OJ C 152, 30.4.2018.

Order of the General Court of 14 February 2019 — Chrome Hearts v EUIPO — Shenzhen Van St. Lonh Jewelry (Representation of a cross)

(Case T-137/18) ([1])

(EU trade mark — Opposition proceedings — Application for an EU figurative mark representing a cross — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2019/C 131/56)

Language of the case: English

Parties

Applicant: Chrome Hearts LLC (Hollywood, California, United States) (represented by: M. de Justo Bailey, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Shenzhen Van St. Lonh Jewelry Co. Ltd (Shenzhen, China)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 19 December 2017 (Case R 766/2017-5), relating to opposition proceedings between Chrome Hearts and Shenzhen Van St. Lonh Jewelry Co.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Union Intellectual Property Office (EUIPO) shall pay the costs.*

([1]) OJ C 166, 14.5.2018.

Order of the President of the General Court of 14 February 2019 — PV v Commission

(Case T-224/18 RII)

(Interim measures — Civil Service — Disciplinary proceedings — Setting the salary at 'zero' — Change of circumstances — Inadmissibility — No new facts)

(2019/C 131/57)

Language of the case: French

Parties

Applicants: PV (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Commission (represented by: G. Berscheid, B. Mongin and R. Striani, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking suspension of operation, first, of the disciplinary proceedings CMS 17/025 and, secondly, of the decision to set the applicant's salary at zero.

Operative part of the order

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

2. *The costs are reserved.*

Order of the General Court of 14 February 2019 — Brunke v Commission

(Case T-258/18) ([1])

(Action for failure to act — Deadline for bringing an action — Starting point — No invitation to act — Second invitation to act — Manifest inadmissibility — Application of a declaratory nature — Application for interim measures — Manifest lack of jurisdiction)

(2019/C 131/58)

Language of the case: German

Parties

Applicant: Lothar Brunke (Berlin, Germany) (represented by: A. Schniebel, lawyer)

Defendant: European Commission (represented by: G. Braun and H. Støvlbæk, acting as Agents)

Re:

Principally, an application for a declaration establishing 'the discriminatory effect' of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) and, in the alternative, first, an application, in essence, for an interim measure to be directed against the Commission and, secondly, an application under Article 265 TFEU for a declaration that the Commission unlawfully failed to follow up on the applicant's letters of 6 June and 27 December 2017.

Operative part of the order

1. *The action is dismissed in part due to the Court's manifest lack of jurisdiction to hear the action and in part because it is manifestly inadmissible.*

2. *There is no longer any need to rule on the applications for leave to intervene submitted by the Council of the European Union and the European Parliament.*

3. *Mr Lothar Brunke shall bear his own costs and pay those incurred by the European Commission.*

4. *The Council shall bear its own costs relating to its application to intervene.*

5. *The Parliament shall bear its own costs relating to its application to intervene.*

([1]) OJ CC 276, 6.8.2018.

Order of the General Court of 8 February 2019 — Front Polisario v Council

(Case T-376/18) ([1])

(Action for annulment — International agreements — Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco — Decision authorising the opening of negotiations between the European Union and Morocco for the purpose of amending the partnership agreement — Lack of direct concern — Inadmissibility)

(2019/C 131/59)

Language of the case: French

Parties

Applicant: Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario) (represented by: G. Devers, lawyer)

Defendant: Council of the European Union (represented by: A. de Elera-San Miguel Hurtado and F. Naert, Agents)

Re:

Action under Article 263 for annulment of the Council's decision of 16 April 2018, authorising the opening of negotiations with the Kingdom of Morocco for the purpose of amending the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and concluding a protocol implementing that agreement.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the applications for leave to intervene submitted by the French Republic and the European Commission.*

3. *The Front populaire pour la libération de la Saguia-el-Hamra et du Rio de Oro (Front Polisario) shall bear its own costs and pay those incurred by the Council of the European Union.*

4. *The Commission and the French Republic shall bear their own respective costs relating to the applications for leave to intervene.*

([1]) OJ C 319, 10.9.2018.

Order of the President of the General Court of 13 February 2019 — BRF and SHB Comercio e Industria de Alimentos v Commission

(Case T-429/18 R)

(Application for interim measures — Public health — Implementing Regulation (EU) 2018/700 — Amendment of the lists of third-country establishments from which imports of specified products of animal origin are permitted, regarding certain establishments in Brazil — No urgency — Weighing-up of competing interests)

(2019/C 131/60)

Language of the case: English

Parties

Applicants: BRF SA (Itajaí, Brazil), SHB Comercio e Industria de Alimentos SA (Itajaí) (represented by: D. Arts and G. van Thuyne, lawyers)

Defendant: European Commission (represented by: X. Lewis, B. Eggers and B. Hofstötter, Agents)

Re:

Application under Articles 278 and 279 TFEU seeking, principally, suspension of the application of Commission Implementing Regulation (EU) 2018/700 of 8 May 2018 amending the lists of third-country establishments from which imports of specified products of animal origin are permitted, regarding certain establishments from Brazil (OJ 2018 L 118, p. 1), either until a definitive ruling has been given on the action brought by the applicants under Article 263 TFEU, or until such date as determined by the President of the General Court, and, in the alternative, suspension of the application of that regulation in so far as it concerns the applicants' establishments included in (i) the list of establishments authorised to import meat from poultry and lagomorphs from Brazil (Section II), (ii) the list of establishments authorised to import minced meat, meat preparations and mechanically separated meat from Brazil (Section V) which have generated no more than two notifications via the rapid alert system for food and feed between 1 March 2017 and 19 April 2018 or (iii) the list of establishments authorised to import meat products from Brazil (Section VI), or an order for any other or additional measure which the President of the Court may consider necessary or appropriate

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 4 February 2019 — XH v Commission

(Case T-511/18)

(2019/C 131/61)

Language of the case: English

Parties

Applicant: XH (represented by: E. Auleytner, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 13 November 2017 (IA nº 25-2017) concerning non-inclusion of the applicant's name in the list of the promoted officials in 2017;

— annul the decision of 7 June 2018 of the Appointing Authority in response to the complaint filed by the applicant;

— order the defendant to pay the applicant compensation of EUR 20 000 for non-material loss and EUR 45 000 for material loss;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, disputing the content of her career development reports (CDRs) as a basis of the promotion exercise at issue and alleging irregularity of the closed promotion procedure in question, impossibility and illegality of *a posteriori* regularisation after the closure of the promotion exercise.

   — The applicant complains that it was impossible to demonstrate that the value judgments could have been differently realised, if the irregular mid-term report had not been taken into account at different stages of the promotion procedure.

   — The applicant invokes an error of law and the irregularity of the contested promotion procedure: the violation of the terms of Commission Decision C(2013) 8968 final of 16 December 2013 laying down general provisions for implementing Article 45 of the Staff Regulations, the violation of Article 45(1) of the Staff Regulations in the light of Article 7 of the Charter of Fundamental Rights of the European Union, and the absence of actual comparison of the merits.

— The applicant further invokes a manifest error of assessment in applying the promotion criteria provided for in Article 45 of the Staff Regulations, in the light of Article 7 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging the impact of irregularity on the contested promotion exercise, taking into account the applicant's promotion file and her CDRs. This irregularity allegedly led to the exclusion of promotion that could have been otherwise expected, if a correct comparison of merits had been duly performed.

Action brought on 5 February 2019 — AI v ECDC

(Case T-65/19)

(2019/C 131/62)

Language of the case: English

Parties

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

Defendant: European Centre for Disease Prevention and Control (ECDC)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the ECDC of 18 May 2018 rejecting the applicant's request for assistance of 20 June 2017,

— annul the ECDC's decision of 20 June 2018 rejecting the applicant's request of 30 May 2018 for access to the enquiry report;

— annul, if need be, the ECDC's decision of 26 October 2018 rejecting the applicant's complaint of 2 July 2018;

— order the ECDC to pay financial compensation evaluated, *ex aequo et bono*, at EUR 40 000, in respect of the non-material harm allegedly suffered by the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law in respect of the contested decision of 18 May 2018 and a single plea in law in respect of the contested decision of 20 June 2018.

1. First plea in law, in respect of the contested decision of 18 May 2018, alleging violation of the right to be heard.

2. Second plea in law, in respect of the contested decision of 18 May 2018, alleging violation of the duty to state reasons.

3. Third plea in law, in respect of the contested decision of 18 May 2018, alleging a manifest error of assessment and of facts and the violation of Article 86 of the Staff Regulations.

4. Single plea in law, in respect of the contested decision of 20 June 2018, alleging the breach of Article 41 of the Charter of Fundamental Rights of the European Union and of Article 13 of Regulation No 45/2001. ([1])

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

Action brought on 9 February 2019 — Alcar Aktiebolag v EUIPO — Alcar Holding (alcar.se)

(Case T-77/19)

(2019/C 131/63)

Language of the case: English

Parties

Applicant: Alcar Aktiebolag (Bromma, Sweden) (represented by: M. Ateva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Alcar Holding GmbH (Wien, Austria)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative word mark alcar.se in colours white and blue — Application for registration No 15 508 583

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 November 2018 in Case R 378/2018-1

Form of order sought

The applicant claims that the Court should:

— stay the proceedings before the General Court until the revocation proceedings against the trade mark of Alcar Holding GmbH have been concluded, and the real scope of protection of the trade mark of Alcar Holding GmbH has been determined;

— annul the decision of the Board Appeal in its entirety;

— uphold the Opposition Division's decision in its entirety;

— order Alcar Holding GmbH to pay the Applicant's costs of the proceedings before the Opposition Division, the Board of Appeal, as well as the General Court.

Pleas in law

— The Board of Appeal erroneously extended the scope of protection of the trade mark of Alcar Holding GmbH;

— The Board of Appeal made an error in the assessment of the likelihood of confusion between the trade marks.

Action brought on 12 February 2019 — Lantmännen and Lantmännen Agroetanol/Commission

(Case T-79/19)

(2019/C 131/64)

Language of the case: English

Parties

Applicants: Lantmännen ek för (Stockholm, Sweden), Lantmännen Agroetanol AB (Norrköping, Sweden) (represented by: S. Perván Lindeborg, A. Johansson, lawyers, and R. Bachour, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1 of Commission Decision C(2019) 743 final of 28 January 2019 on an objection to disclosure submitted by applicants pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p. 29) (Case AT.40054 — Ethanol Benchmarks); and

— order the defendant to pay costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision infringes the rules of law governing the settlement procedure

   The applicants submit that the legal instruments which govern the settlement procedure should prevent disclosure of the concerned documents. In particular, Articles 10a, 15(1)b and 16a(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004, ([1]) read together, should be interpreted as limiting disclosure of records from settlement discussions to the settlement submission itself, which may only be accessed under strict conditions.

2. Second plea in law, alleging that the contested decision infringes the principle of protection of legitimate expectations.

   The applicants submit that the defendant, through its consistent practice of excluding non-papers submitted in the context of settlement discussions from other parties' access to the file, and through specific assurances to this effect in the context of the settlement discussions, would have made the applicants to entertain justified expectations with regard to the confidential treatment of the documents at issue.

3. Third plea in law, alleging that the contested decision infringes the principles of equal treatment and equality of arms.

   The applicants submit that by disclosing the records of the applicants' settlement discussions with the defendant to other parties, the defendant would have infringed the principle of equal treatment, by placing settling parties in a worse position than parties that have abandoned settlement discussion. The unwarranted expansion of the non-settling parties' access to the file would also infringe the principle of equality of arms, by giving them an advantage in the inherently adversarial relationship between suspected co-infringers with regard to future contribution claims.

4. Fourth plea in law, alleging that the contested decision infringes the principle of good administration.

   The applicants further submit that by permitting the disclosure of the contested information, the decision would allow the defendant to adopt a wholly inconsistent policy, in which the applicants are subjected to considerably less favourable treatment than the addressees of all prior defendants' decisions. In doing so, the contested decision should be considered in breach of the applicants' right to have their affairs handled 'impartially, fairly and within a reasonable time' by institutions of the European Union such as the defendant, and thus in violation of Article 41(1) of the Charter of Fundamental Rights of the European Union.

5. Fifth plea in law, alleging that, in the alternative, an incorrect legal categorisation in the statement of reasons was committed.

   By their fifth plea, which is alternative to the other pleas, the applicants submit that, even if the Court would ultimately agree with the defendant that the contested materials should be disclosed to other undertakings, the contested decision should still be annulled by virtue of errors in the statement of reasons.

   The defendant has applied Paragraph 35 of the settlement notice to give access to the contested materials. Paragraph 35 only refers to settlement submissions, and not settlement documents, which is the term used in the contested decision. In order to render the statement of reasons internally consistent, the contested decision should be redrafted so as to designate these materials as forming part of the settlement submission.

([1]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

Action brought on 18 February 2019 — Rezon v EUIPO (imot.bg)

(Case T-101/19)

(2019/C 131/65)

Language of the case: Bulgarian

Parties

Applicant: Rezon OOD (Sofia, Bulgaria) (represented by M. Yordanova-Harizanova, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: application for the EU figurative mark imot.bg — application for registration No 17 203 316

Contested decision: Decision of the Second Board of Appeal of EUIPO of 9 November 2018 in Case R 999/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and order registration of the mark at issue;

— order EUIPO to pay the costs of the present proceedings and the costs incurred before the Board of Appeal.

Pleas in law

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

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

— Infringement of Article 7(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 February 2019 — Abarca v EUIPO — Abanca Corporación Bancaria (ABARCA SEGUROS)

(Case T-106/19)

(2019/C 131/66)

Language of the case: English

Parties

Applicant: Abarca — Companhia de Seguros SA (Lisbon, Portugal) (represented by: J. Pimenta and Á. Pinho, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Abanca Corporación Bancaria, SA (Betanzos, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark ABARCA SEGUROS in colours pink, light blue, light green and black — Application for registration No 16 041 519

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 November 2018 in Case R 1370/2018-2

Form of order sought

The applicant claims that the Court should:

— totally alter the contested decision;

— as a consequence, grant EUTM registration No 16 041 519 in its entirety;

— order the other parties to bear the costs of the present proceedings, as well as those of the opposition and appeal proceedings before EUIPO.

Plea in law

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

Order of the General Court of 14 February 2019 — VFP v Commission

(Case T-726/16) ([1])

(2019/C 131/67)

Language of the case: English

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

([1]) OJ C 462, 12.12.2016.

Order of the General Court of 12 February 2019 — Hangzhou Lezoo traveling equipment v EUIPO — Promotional Traders

(GREEN HERMIT)

(Case T-60/18) ([1])

(2019/C 131/68)

Language of the case: English

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

([1]) OJ C 104, 19.3.2018.

Order of the General Court of 15 February 2019 — Intercontinental Exchange Holdings v EUIPO (BRENT)

(Case T-725/18) ([1])

(2019/C 131/69)

Language of the case: English

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

([1]) OJ C 65, 18.2.2019.

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