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Information and Notices

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Contents

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

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2019/C 357/01)

Last publication

OJ C 348, 14.10.2019

Past publications

OJ C 337, 7.10.2019

OJ C 328, 30.9.2019

OJ C 319, 23.9.2019

OJ C 312, 16.9.2019

OJ C 305, 9.9.2019

OJ C 295, 2.9.2019

These texts are available on:

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

GENERAL COURT

Appointment of the Deputy Registrar

(2019/C 357/02)

At its plenum on 13 February 2019, the General Court decided to appoint Mr Thomas Henze as Deputy Registrar of the General Court, in accordance with Article 33 of the Rules of Procedure, read in conjunction with Article 32 of those Rules.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 22 February 2019 by Iceland Foods Ltd against the order of the General Court (Second Chamber) delivered on 14 December 2018 in Case T-267/18: Iceland Foods v EUIPO - Íslandsstofa (INSPIRED BY ICELAND)

(Case C-162/19 P)

(2019/C 357/03)

Language of the case: English

Parties

Appellant: Iceland Foods Ltd (represented by: S. Malynicz QC, S. Baran, Barrister, J. Hertzog, C. Hill and J. Warner, Solicitors)

Other party to the proceedings: European Union Intellectual Property Office

By order of 5 September 2019 the Court of Justice (Sixth Chamber) held that the appeal is dismissed as being manifestly unfounded and that Iceland Foods Ltd shall bear its own costs.

Appeal brought on 24 February 2019 by FV against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 14 December 2018 in Case T-750/16, FV v Council

(Case C-188/19 P)

(2019/C 357/04)

Language of the case: French

Parties

Appellant: FV (represented by: É. Boigelot, avocat)

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

By order of 3 September 2019, the Court (Sixth Chamber) dismissed the appeal.

Appeal brought on 14 March 2019 by Petr Fryč against the order of the General Court (Seventh Chamber) delivered on 15 January 2019 in Case T-513/18, Fryč v Commission

(Case C-230/19 P)

(2019/C 357/05)

Language of the case: Czech

Parties

Appellant: Petr Fryč (represented by: Š. Oharková, lawyer)

Other party to the proceedings: European Commission

By order of 5 September 2019, the Court of Justice (Eighth Chamber) held that this appeal is manifestly unfounded.

Appeal brought on 16 April 2019 by ND (*), OE (*) against the order of the General Court (Sixth Chamber) delivered on 27 February 2019 in Case T-581/18, ND (*) e OE (*) v Commission

(Case C-317/19 P)

(2019/C 357/06)

Language of the case: French

Parties

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

Other party to the proceedings: European Commission
By order of 3 September 2019, the Court (Sixth Chamber) dismissed the appeal.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 6 June 2019 — Ellmes Property Services Limited v SP

(Case C-433/19)

(2019/C 357/07)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Ellmes Property Services Limited

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

Defendant: SP

Questions referred

1. Is the first alternative in the first subparagraph of Article 24(1) 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 ([1])('Brussels Ia Regulation') to be interpreted as meaning that actions brought by a co-owner seeking to prohibit another co-owner from carrying out changes to his property subject to co-ownership, in particular to its designated use, arbitrarily and without the consent of the other co-owners, concern the assertion of a right *in rem*?

2. If the first question should be answered in the negative:

   Is Article 7(1)(a) of the Brussels Ia Regulation to be interpreted as meaning that the actions referred to in paragraph 1 concern contractual obligations to be performed at the location of the property?

([1]) OJ 2012 L 351, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 12 June 2019 — Stichting Brein v News-Service Europe BV

(Case C-442/19)

(2019/C 357/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Stichting Brein

Respondent: News-Service Europe BV

Questions referred

1. Has an operator of a platform for Usenet services (as NSE has been) […] made a communication to the public within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p.10; 'the Copyright Directive')?

2. If the answer to question 1 is in the affirmative (and there is thus a communication to the public):

   Does the finding that the operator of a platform for Usenet services has made a communication to the public within the meaning of Article 3(1) of the Copyright Directive preclude the application of Article 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1; 'Directive on electronic commerce')?

3. If the answer to question 1 or 2 is in the negative (and recourse to the exemption under Article 14(1) of the Directive on electronic commerce is therefore possible in principle):

   Has the operator of a platform for Usenet services, who provides services […], played an active role that would in some other way preclude reliance on Article 14(1) of the Directive on electronic commerce?

4. Can the operator of a platform for Usenet services who has made a communication to the public and who is entitled to rely on Article 14(1) of the Directive on electronic commerce be prohibited from continuing the infringement, or can an injunction be imposed on it that goes beyond what is stated in Article 14(3) of the Directive on electronic commerce, or is that contrary to Article 15(1) of the Directive on electronic commerce?

Request for a preliminary ruling from the Comisión Nacional de los Mercados y la Competencia (Spain) lodged on 13 June 2019 — Asociación Estatal de Empresas Operadoras Portuarias (ASOPORT)

(Case C-462/19)

(2019/C 357/09)

Language of the case: Spanish

Referring court

Comisión Nacional de los Mercados y la Competencia

Parties to the main proceedings

Interested party, in its status as person concerned: Asociación Estatal de Empresas Operadoras Portuarias (ASOPORT)

Other parties: Asociación Nacional de Empresas Estibadoras y Consignatarios de Buques (ANESCO), Comisiones Obreras, Coordinadora Estatal de Trabajadores del Mar (CETM), Confederación Intersindical Galega, Eusko Langileen Alkartasuna, Langile Abertzaleen Batzordeak, Unión General de Trabajadores (UGT)

Questions referred

1. Must Article 101 TFEU be interpreted as meaning that agreements between operators and employee representatives, even when termed collective agreements, are prohibited where they (i) stipulate that undertakings which leave a Sociedad Anónima de Gestión de Estibadores Portuarios [(Stevedore Management Company; 'SAGEP')] must accept the transfer of SAGEP workers and (ii) establish the method by which the transfer takes place?

2. If the answer to the previous question is in the affirmative, must Article 101 TFEU be interpreted as precluding provisions of national law such as those in Royal Decree-Law 9/2019 in so far as they provide the basis for the collective agreements that impose a particular means of transferring employees that extends beyond employment matters and produces a harmonisation of commercial conditions?

3. If the aforesaid legal provisions are held to be contrary to EU law, must the case-law of the Court of Justice on the primacy of EU law and its consequences, as established in the *Simmenthal* ([1]) and *Fratelli Costanzo* ([2]) judgments among others, be interpreted as requiring a public law body such as the Comisión Nacional de los Mercados y la Competencia [(National Commission on Markets and Competition; 'CNMC')] to disapply those provisions of national law contrary to Article 101 TFEU?

4. If the answer to the first question is in the affirmative, must Article 101 TFEU and 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, ([3]) and the duty to ensure the effectiveness of EU laws, be interpreted as requiring an administrative authority such as the CNMC to impose fines and periodic penalty payments on those entities that behave in the way described?

([1]) Judgment of 15 December 1976, *Simmenthal* (35/76, EU:C:1976:180).
([2]) Judgment of 22 June 1989, *Costanzo* (103/88, EU:C:1989:256).
([3]) OJ 2003 L 1, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 14 June 2019 — Latte Villafranca SCRL, in liquidation and Others v Agenzia per le Erogazioni in Agricoltura (the AGEA), Regione Veneto

(Case C-464/19)

(2019/C 357/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Latte Villafranca SCRL, in liquidation, Azienda Agricola Cordioli Cesarino e Noè società semplice, Cordioli Evaristo e Loredano società semplice, DZ, EA, FB

Respondents: Agenzia per le Erogazioni in Agricoltura (the AGEA), Regione Veneto

Questions referred

1. In a situation such as that described in the case in the main proceedings, must EU law be interpreted to the effect that the consequence of the conflict of a legislative provision of a Member State with the third paragraph of Article 2(2) of Regulation (EEC) No 3950/92 ([1]) is that producers are not obliged to pay the additional levy where the conditions laid down by that Regulation are met?

2. In a situation such as that described in the case in the main proceedings, must EU law and, in particular, the general principle of protection of legitimate expectations, be interpreted as meaning that the expectations of persons who have performed an obligation laid down by a Member State and have benefited from the effects associated with performance of that obligation may not be protected, if that obligation has proved to be in conflict with EU law?

3. In a situation such as that described in the case in the main proceedings, do Article 9 of Regulation (EC) No 1392/2001 ([2]) of 9 July 2001 and the EU concept of 'priority category' preclude a provision of a Member State, such as Article 2(3) of Decree-Law No 157/2004, adopted by the Republic of Italy, which lays down varying methods for refunding an additional levy that has been over-charged, drawing a distinction, in terms of timetables and methods of repayment, between producers that have relied upon due compliance with a national provision that has proved to be in conflict with EU law and producers who have not complied with such a provision?

([1]) Council Regulation (EEC) No 3950/92, of 28 December 1992, establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

([2]) Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products (OJ 2001 L 187, p. 19).

Request for a preliminary ruling from the Commissione tributaria regionale del Veneto (Italy) lodged on 17 June 2019 — Regione Veneto v HD

(Case C-468/19)

(2019/C 357/11)

Language of the case: Italian

Referring court

Commissione tributaria regionale del Veneto

Parties to the main proceedings

Appellant: Regione Veneto

Respondent: HD

Questions referred

1. In order to identify the 'cultural objects' covered by Article 36 TFEU, is it necessary to use the criterion laid down in Article 2(1) of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014, ([1]) pursuant to which the definition of such objects provided by the national legislation is decisive?

2. Does the protection afforded to 'cultural objects' by Article 36 TFEU also include the 'vintage vehicles' referred to in Directive 2000/53/EC? ([2])

3. Consequently, does the Community law recalled above, for the purposes of the protection pursued by that law, also take account of vehicles classified by the Italian legal order as 'of interest to historians and collectors' because of the duty to preserve them in their original state?

4. Can the function of protecting 'cultural objects', including 'vintage vehicles' envisaged by Article 36 TFEU and evoked in Article 2(1) of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 and the tenth recital of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, in the light of the content of Point 26 of the Road Safety Programme of the European Commission, approved on 29 September 2005, be interpreted as permitting the Member States to grant a tax exemption which is discriminatory inasmuch as it is limited only to vehicles 'of particular interest to historians and collectors', even where there is a more extensive tax exemption which is granted in respect of all vehicles 'of interest to historians and collectors' in some areas of the national territory as the result of regional and provincial laws that apply only in those regions and provinces?

5. If the previous question is answered in the negative, does the EU legislation cited nonetheless permit detrimental and discriminatory tax treatment laid down by the law of a Member State in respect of 'vehicles of interest to historians and collectors' precisely because of their age and which increases the tax burden because of their more polluting emissions, thereby reducing the protection, preventing the valorisation, and discouraging the preservation of those vehicles?

6. Does the principle of free movement of goods enshrined in Article 52(2) TEU and Article 30 TFEU and the corresponding prohibition on measures equivalent to duties, in the light of the criteria developed in that regard by the case-law [of the] Court of Justice, permit a Member State to make vehicles which are recognised as being of 'interest to historians and collectors' subject to discriminatory and non-homogeneous tax treatment throughout the national territory, which affects transfers of ownership of the same vehicle from a person resident in [a part of] the State territory which is exempt from the tax to a person resident in [a part of] the State territory in which the tax is required?

7. Do Articles 18, 19, 20, 21, 45 and 49 TFEU, which protect the fundamental freedoms guaranteed in the common European area, and the prohibition on direct and indirect discrimination laid down in Council Directive 2000/43/EC of 29 June 2000 ([3]) preclude detrimental and discriminatory tax treatment within a Member State which differentiates and penalises owners of vehicles of interest to historians and collectors solely according to their place of residence?

8. Do the principles of the freedom, autonomy and independence of the courts, enshrined and protected by Article 2 TEU in the common European area in order to guarantee a 'fair trial', permit a Member State to prevent courts by law from autonomously recognising a motor vehicle as being of 'particular interest to historians and collectors' in order to establish whether or not that vehicle is exempt from taxation, obliging those courts to take account only of the decisions adopted in that respect by a private entity which has exclusive responsibility for doing so?

([1]) Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) (OJ 2014 L 159, p. 1).

([2]) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles — Commission Statements (OJ 2000 L 269, p. 34).

([3]) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 19 June 2019 — UBS Real Estate Kapitalanlagegesellschaft mbH v Agenzia delle Entrate

(Case C-478/19)

(2019/C 357/12)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: UBS Real Estate Kapitalanlagegesellschaft mbH

Respondent: Agenzia delle Entrate

Question referred

Does EU law — in particular the provisions of the Treaty concerning freedom of establishment and free movement of capital, as interpreted by the Court — preclude the application of a provision of national law, such as Article 35(10-ter) of Decree Law No 223/2006 (in so far as it grants relief on mortgage registration tax and the Land Registry fee only in respect of closed-end real estate investment funds)?

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 19 June 2019 — UBS Real Estate Kapitalanlagegesellschaft mbH v Agenzia delle Entrate

(Case C-479/19)

(2019/C 357/13)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: UBS Real Estate Kapitalanlagegesellschaft mbH

Respondent: Agenzia delle Entrate

Question referred

Does EU law — in particular the provisions of the Treaty concerning freedom of establishment and free movement of capital, as interpreted by the Court — preclude the application of a provision of national law, such as Article 35(10-ter) of Decree Law No 223/2006 (in so far as it grants relief on mortgage registration tax and the Land Registry fee only in respect of closed-end real estate investment funds)?

Request for a preliminary ruling from the Corte costituzionale (Italy) lodged on 21 June 2019 — DB v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-481/19)

(2019/C 357/14)

Language of the case: Italian

Referring court

Corte costituzionale

Parties to the main proceedings

Appellant on a point of law: DB

Respondent on a point of law: Commissione Nazionale per le Società e la Borsa (Consob)

Questions referred

1. Are Article 14(3) of Directive 2003/6/EC, ([1]) in so far as it continues to apply *ratione temporis*, and Article 30(1)(b) of Regulation (EU) No 596/2014 ([2]) to be interpreted as permitting Member States to refrain from penalising individuals who refuse to answer questions put to them by the competent authorities and which might establish their liability for an offence that is punishable by administrative sanctions of a 'punitive' nature?

2. If the answer to the first question is in the negative, are Article 14(3) of Directive 2003/6/EC, in so far as it continues to apply *ratione temporis*, and Article 30(1)(b) of Regulation (EU) No 596/2014 compatible with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union — including in the light of the case-law of the European Court of Human Rights on Article 6 ECHR and the constitutional traditions common to the Member States — in so far as they require sanctions to be applied even to individuals who refuse to answer questions put to them by the competent authorities and which might establish their liability for an offence that is punishable by administrative sanctions of a 'punitive' nature?

([1]) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

([2]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014 L 173, p. 1).

Request for a preliminary ruling from the Commissione tributaria regionale della Campania (Italy) lodged on 25 June 2019 — Antonio Capaldo SpA v Agenzia delle dogane e dei monopoli — Ufficio delle dogane di Salerno

(Case C-496/19)

(2019/C 357/15)

Language of the case: Italian

Referring court

Commissione tributaria regionale della Campania

Parties to the main proceedings

Applicant and appellant: Antonio Capaldo SpA

Defendant and respondent: Agenzia delle dogane e dei monopoli — Ufficio delle dogane di Salerno

Question referred

Where goods have been physically inspected upon importation, does this preclude initiating the procedure for the review of assessments referred to in Article 78 of Regulation (EEC) No 2913/92 ([1]) establishing the Community Customs Code?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Request for a preliminary ruling from the Audiencia Provincial de Zaragoza (Spain) lodged on 26 June 2019 — Ibercaja Banco, S.A. v SO and TP

(Case C-497/19)

(2019/C 357/16)

Language of the case: Spanish

Referring court

Audiencia Provincial de Zaragoza

Parties to the main proceedings

Appellant: Ibercaja Banco, S.A.

Respondents: SO and TP

Questions referred for a preliminary ruling

(1) Is national legislation compatible with EU law where it may be inferred from that legislation that, if a particular unfair term withstood an initial review conducted by a court of its own motion when making an enforcement order, that review prevents the same court from subsequently assessing that term of its own motion where the factual and legal elements existed from the outset, even if that initial review did not express, in the operative part or in the grounds, any considerations on the validity of the terms?

(2) Where factual and legal elements exist which determine the unfairness of a term in a consumer contract and the party against whom enforcement is sought fails to rely on that unfairness in the application objecting to enforcement laid down for that purpose by the Law, can that party, following the resolution of that application, make a further preliminary application aimed at determining whether one or more other terms is/are unfair when that party could have relied on those terms at the outset in the ordinary procedural step provided for in the Law? In short, is a time-barring effect created which prevents the consumer from raising again the issue of unfairness of another term in the same enforcement proceedings, and even in subsequent declaratory proceedings?

(3) If the conclusion that the party is not entitled to make a second or subsequent application objecting to the enforcement proceedings, in order to allege the unfairness of a term which that party could have raised earlier because the necessary factual and legal elements had already been determined, is held to be compatible with EU law, can this serve as a basis for use as a means whereby the court, having been alerted to the unfairness of that term, is able to exercise its power of review of its own motion?

Appeal brought on 28 June 2019 by Victor Lupu against the judgment of the General Court (Third Chamber) delivered on 30 April 2019 in Case T-558/18: Lupu v EUIPO - Et Djili Soy Dzhihangir Ibryam (Djili DS)

(Case C-499/19 P)

(2019/C 357/17)

Language of the case: English

Parties

Appellant: Victor Lupu (represented by: P.A. Acsinte, avocat)

Other parties to the proceedings: European Union Intellectual Property Office, Et Djili Soy Dzhihangir Ibryam

By order of 5 September 2019 the Court of Justice (Sixth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 3 July 2019 — WS v Federal Republic of Germany

(Case C-505/19)

(2019/C 357/18)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: WS

Defendant: Federal Republic of Germany

Questions referred

1. Is Article 54 of the Convention implementing the Schengen Agreement ('the CISA') ([1]) in conjunction with Article 50 of the Charter of Fundamental Rights ('the CFR') to be interpreted as meaning that even the initiation of criminal proceedings for the same act is prohibited in all the Contracting States to the Schengen Agreement if a German public prosecutor's office discontinues initiated criminal proceedings once the accused has fulfilled certain obligations and, in particular, paid a certain sum of money determined by the public prosecutor's office?

2. Does Article 21(1) of the Treaty on the Functioning of the European Union ('the TFEU') result in a prohibition on the Member States implementing arrest requests by third States in the scope of an international organisation such as the International Criminal Police Organisation — Interpol — if the person concerned by the arrest request is a Union citizen and the Member State of which he is a national has communicated concerns regarding the compatibility of the arrest request with the prohibition of double jeopardy to the international organisation and therefore also to the remaining Member States?

3. Does Article 21(1) TFEU preclude even the initiation of criminal proceedings and temporary detention in the Member States of which the person concerned is not a national if this is contrary to the prohibition of double jeopardy?

4. Are Article 4(1)(a) and Article 8(1) of Directive (EU) 2016/680 ([2]) in conjunction with Article 54 of the CISA and Article 50 of the CFR to be interpreted as meaning that the Member States are obliged to introduce legislation ensuring that, in the event of proceedings whereby further prosecution is barred in all the Contracting States to the Schengen Agreement, further processing of red notices of the International Criminal Police Organisation — Interpol — intended to lead to further criminal proceedings is prohibited?

5. Does an international organisation such as the International Criminal Police Organisation — Interpol — have an adequate data protection level if there is no adequacy decision under Article 36 of Directive 2016/680 and/or there are no appropriate safeguards under Article 37 of that Directive?

6. Are the Member States only allowed to further process data filed at the International Criminal Police Organisation — Interpol — in a red notice by third States when a third State has used the red notice to disseminate an arrest and extradition request and applied for an arrest which is not in breach of European law, in particular the prohibition of double jeopardy?

([1]) Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19).

([2]) Directive of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 3 July 2019 — Go Sun Srl, Malby Energy 4 Srl v Ministero dello Sviluppo Economico and Others

(Case C-512/19)

(2019/C 357/19)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Go Sun Srl, Malby Energy 4 Srl

Defendants: Ministero dello Sviluppo Economico, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei Ministri, Autorità di Regolazione per l'Energia, Reti e Ambiente, Gestore dei Servizi Energetici SpA — GSE

Questions referred

Does EU law preclude the application of a provision of national law, such as that in Article 26(3) of Decree-Law No 91/2014, as converted by Law No 116/2014, which significantly reduces the payment of incentives already granted by law and defined on the basis of corresponding agreements concluded by undertakings generating electrical energy by means of photovoltaic conversion with Gestore dei servizi energetici s.p.a, a public company responsible for that process?

In particular, is that provision of national law compatible with the general principles of EU law relating to legitimate expectation, legal certainty, sincere cooperation and effectiveness, with Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, with Directive 2009/28/EC ([1]) and with the rules governing support schemes laid down in that directive, and with Article 216(2) TFEU, in particular in relation to the European Energy Charter Treaty?

([1]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Appeal brought on 8 July 2019 by Maria Alvarez y Bejarano and Others against the judgment of the General Court (Eighth Chamber) delivered on 30 April 2019 in Joined Cases T-516/16 and T-536/16, Alvarez y Bejarano and Others v Commission

(Case C-517/19 P)

(2019/C 357/20)

Language of the case: French

Parties

Appellants: Maria Alvarez y Bejarano, Ana-Maria Enescu, Lucian Micu, Angelica Livia Salanta, Svetla Shulga, Soldimar Urena de Poznanski, Angela Vakalis, Luz Anamaria Chu, Marli Bertolete, Maria Castro Capcha, Hassan Orfe El, Evelyne Vandevoorde (represented by: S. Orlandi, T. Martin, lawyers)

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

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— annul the decision no longer to allow the appellants, as of 2014, travelling time or reimbursement of annual travel expenses;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellants claim that the judgment under appeal is vitiated by a number of errors of law.

Firstly, the General Court erred in law in paragraphs 67 and 75 of the judgment in limiting the extent of the judicial review it is required to carry out to 'manifest' cases.

Secondly, the General Court erred in law in paragraphs 70 to 73 of the judgment in finding that the appellants were not in a comparable situation to staff members who retained the benefit of travelling time and reimbursement of their annual travel expenses.

Thirdly, the General Court erred in law in finding, in paragraphs 69 and 80 to 86 of the judgment, that the regulations at issue do not infringe the principle of proportionality.

Appeal brought on 8 July 2019 by Jakov Ardalic and others against the judgment of the General Court (Eighth Chamber) delivered on 30 April 2019 in Joined Cases T-523/16 and T-542/16, Ardalic and Others v Council

(Case C-518/19 P)

(2019/C 357/21)

Language of the case: French

Parties

Appellants: Jakov Ardalic, Liliana Bicanova, Monica Brunetto, Claudia Istoc, Sylvie Jamet, Despina Kanellou, Christian Stouraitis, Abdelhamid Azbair, Abdel Bouzanih, Bob Kitenge Ya Musenga, El Miloud Sadiki, Cam Tran Thi (represented by: S. Orlandi, T. Martin, lawyers)

Other parties to the proceedings: Council of the European Union, European Parliament

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— annul the decision no longer to allow the appellants, as of 2014, travelling time or reimbursement of annual travel expenses;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellants claim that the judgment under appeal is vitiated by a number of errors of law.

Firstly, the General Court erred in law in paragraphs 65 and 73 of the judgment in limiting the extent of the judicial review it is required to carry out to 'manifest' cases.

Secondly, the General Court erred in law in paragraphs 68 to 71 of the judgment in finding that the appellants were not in a comparable situation to staff members who retained the benefit of travelling time and reimbursement of their annual travel expenses.

Thirdly, the General Court erred in law in finding, in paragraphs 67 and 78 to 84 of the judgment, that the regulations at issue do not infringe the principle of proportionality.

Request for a preliminary ruling from the Curtea de Apel Constanța (Romania) lodged on 10 July 2019 — TS, UT, VU v Casa Națională de Asigurări de Sănătate, Casa de Asigurări de Sănătate Constanța

(Case C-538/19)

(2019/C 357/22)

Language of the case: Romanian

Referring court

Curtea de Apel Constanța

Parties to the main proceedings

Applicants/appellants: TS, UT, VU

Defendants/respondents: Casa Națională de Asigurări de Sănătate, Casa de Asigurări de Sănătate Constanța

Questions referred

1. May the situation be treated as an emergency, as described in paragraph 45 of the judgment in Case C-173/09 (*Elchinov*), or does it constitute a case in which it is objectively impossible to seek the authorisation required under Article 20(1) and (2) of Regulation (EC) No 883/2004, ([1]) which may justify a claim for full reimbursement of the expenses incurred in obtaining appropriate medical treatment (hospital treatment) in a Member State other than that in which the insured person resides, where the therapeutic treatment to which the latter consented was prescribed only by a doctor of a Member State other than the State in which the insured person resides, given that the diagnosis and the need to administer the treatment as a matter of urgency were confirmed by a doctor belonging to the health insurance scheme of the Member State of residence but who recommended a different therapeutic treatment from that to which the insured person consented, for reasons which may be deemed appropriate on the part of the latter, and which has at least the same degree of effectiveness but the advantage of not creating a disability?

2. If the answer to the first question is in the affirmative, where the insured person, having been given a diagnosis and recommended a therapeutic treatment by a doctor within the health insurance scheme of the Member State of residence, which, for reasons which may be deemed appropriate, that person does not accept, goes to another Member State to seek a second medical opinion, that opinion being that a different therapeutic treatment should be administered, which has at least the same degree of effectiveness but the advantage of not creating a disability, and the insured person accepts that treatment, which satisfies the requirements laid down in the second sentence of Article 20(2) of Regulation (EC) No 883/2004, is that person also required, in order to be eligible for reimbursement of the costs incurred as a result of the latter therapeutic treatment, to seek the authorisation referred to in Article 20(1) of that regulation?

3. Do Articles 56 TFEU and 20(1) and (2) of Regulation (EC) No 883/2004 preclude national legislation which, first, makes authorisation by the competent institution to receive appropriate medical treatment (hospital treatment) in a Member State other than that of residence conditional on the drawing up of a medical report only by a doctor who practises within the health insurance scheme of the Member State of residence, on the recommendation of the head physician of the competent institution of that State, also where the therapeutic treatment to which the insured person consented, for reasons which may be deemed appropriate, given that it has the advantage of not creating a disability, is prescribed only by a doctor of another Member State, by way of a second medical opinion, and, second, does not guarantee, under accessible and predictable procedure, actual analysis, from a medical perspective, within the health insurance scheme of the Member State of residence, of the possibility of applying the second medical opinion given in another Member State?

4. If the answer to the first and third questions is in the affirmative, is the insured person, or his heirs respectively, entitled, subject to fulfilment of the two requirements laid down in the second sentence of Article 20(2) of Regulation (EC) 883/2004, to obtain from the competent institution of the State in which the insured person resides full reimbursement of the expenses incurred as a result of therapeutic treatment received in another Member State?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Administrative Court of Blagoevgrad (Bulgaria) lodged on 17 July 2019 — ECOTEX BULGARIA EOOD v Teritorialna direktsia na Natsionalnata agentsia za prihodite

(Case C-544/19)

(2019/C 357/23)

Language of the case: Bulgarian

Referring court

Administrative Court of Blagoevgrad

Parties to the main proceedings

Applicant: ECOTEX BULGARIA EOOD

Defendant: Teritorialna direktsia na Natsionalnata agentsia za prihodite

Questions referred

Question 1:

Must Article 63 TFEU be interpreted as precluding national legislation such as that in question in the main proceedings, under which domestic payments amounting to 10 000 leva (BGN) or more are only to be made by transfer or deposit into a payment account and which restricts the cash payment of dividends from undistributed profits of BGN 10 000 or more? If Article 63 TFEU does not preclude that regulation, is such a restriction justified by the aims of Directive (EU) 2015/849? ([1])

Question 2:

Must Article 2(1) of Directive (EU) 2015/849, in consideration of Recital 6 and Articles 4 and 5 thereof, be interpreted as not precluding a general national legislative provision such as that in question in the main proceedings, under which domestic payments of BGN 10 000 or more are only to be made by transfer or deposit into a payment account and which has no interest in the person and in the reason for the cash payment and at the same time covers all cash payments among natural and legal persons?

(1) If that question is answered in the affirmative, does Article 2(1)(3)(e) of Directive (EU) 2015/849, in consideration of Recital 6 and Articles 4 and 5 thereof, allow the Member States to provide for additional general restrictions of domestic cash payments in a national legislative provision such as that in question in the main proceedings, under which domestic cash payments of BGN 10 000 or more are only to be made by transfer or deposit into a payment account, if the reason for the cash payment is 'undistributed profits' (dividends)?

(2) If that question is answered in the affirmative, does Article 2(1)(3)(e) of Directive (EU) 2015/849, in consideration of Recital 6 and Article 5 thereof, allow the Member States to provide for restrictions of cash payments in a national legislative provision such as that in question in the main proceedings, under which domestic payments of BGN 10 000 or more are only to be made by transfer or deposit into a payment account, where the threshold value is below EUR 10 000?

Question 3:

Must Article 58(1) and Article 60(4) of Directive (EU) 2015/849, with regard to Article 49(3) of the Charter of Fundamental Rights of the European Union, be interpreted as precluding a national legislative provision such as that in question in the main proceedings, which stipulates a fixed level of administrative penalties for infringements of the cash payment restrictions and does not allow any differentiating assessment taking account of the specific relevant circumstances?

(1) If the answer is that the provisions of Article 58(1) and Article 60(4) of Directive (EU) 2015/849, with regard to Article 49(3) of the Charter of Fundamental Rights of the European Union, allow a national legislative provision such as that in question in the main proceedings, which stipulates a fixed level of administrative penalties for infringements of the cash payment restrictions, must the provisions of Article 58 and Article 60(4) of Directive (EU) 2015/849, in consideration of the principle of effectiveness and the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as precluding a national legislative provision such as that in question in the main proceedings, which restricts judicial review, if that provision does not allow the court to determine an administrative penalty for infringements of the cash payment restrictions, in the event of an appeal, below the amount that has been set, taking account of the specific relevant circumstances?

([1]) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) (OJ 2015 L 141, p. 73).

Appeal brought on 18 July 2019 by International Tax Stamp Association Ltd (ITSA) against the order of the General Court (Second Chamber) delivered on 16 May 2019 in Case T-396/18, ITSA v Commission

(Case C-553/19 P)

(2019/C 357/24)

Language of the case: French

Parties

Appellant: International Tax Stamp Association Ltd (ITSA) (represented by: F. Scanvic, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the order of the General Court of the European Union of 16 May 2019 in the Case T-396/18, *ITSA* v *Commission*, and recognise that the appellant has a legal interest in bringing proceedings;

— annul Commission Delegated Regulation (EU) 2018/573 of 15 December 2017 on key elements of data storage contracts to be concluded as part of a traceability system for tobacco products, ([1]) Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products, ([2]) and Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products. ([3])

Grounds of appeal and main arguments

The appellant maintains, in essence, that the General Court failed to recognise its legal interest in bringing proceedings against Delegated Regulation 2018/573, Implementing Regulation 2018/574 and Implementing Decision 2018/576. On that basis, the General Court was wrong to dismiss as inadmissible the action for annulment brought by the appellant against the Commission's three measures.

The appellant argues that the two contested regulations affect both it and its members directly. The other criteria in Article 263 TFEU are also fully satisfied. Further, although the main aspects of the contested decision require implementing measures on the part of Member States, the same cannot be said for Article 3(2) of that decision, which limits the use of an independent third-party to one of the five security elements to be placed on tobacco products. The latter provision is sufficient in itself.

With regard to the substance, the appellant maintains that the contested measures infringe Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products. ([4]) That provision prohibits the activities relating to the marking of tobacco products from being entrusted to the tobacco industry, whereas the Commission's three measures at issue do exactly that. The appellant adds that, although the protocol referred to above has not yet entered into force, it was signed and entered into by the European Union, which means that it prohibits the European Union from taking measures that run counter to that protocol.

The fact that Directive 2014/40/EU ([5]) does not expressly prohibit the activities at issue from being entrusted to the tobacco industry is irrelevant as, first, that directive can and must be interpreted in accordance with that protocol and, second, even if such an interpretation were impossible, it would be the directive itself which would be contrary to the protocol and, accordingly, to the EU treaties.

([1]) OJ 2018 L 96, p. 1.
([2]) OJ 2018 L 96, p. 7.
([3]) OJ 2018 L 96, p. 57.
([4]) First protocol to the World Health Organisation's Framework Convention on Tobacco Control adopted in Seoul on 12 November 2012.
([5]) Directive of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

Reference for a preliminary ruling from the Amtsgericht Kehl (Germany) lodged on 18 July 2019 – Criminal proceedings against FU

(Case C-554/19)

(2019/C 357/25)

Language of the case: German

Referring court

Amtsgericht Kehl

Party to the main proceedings

Staatsanwaltschaft Offenburg

Accused:

FU

Questions referred

1. Are Article 67(2) TFEU and Articles 22 and 23 of Regulation (EC) 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) ([1]) to be interpreted as precluding a national legislative provision which confers on the police authorities of the Member State in question the power to check the identity of any person, within an area of 30 kilometres from that Member State's land border with other States that are party to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, with a view to preventing or

terminating unlawful entry into or **[Or. 2]** residence in the territory of that Member State or preventing certain criminal offences which undermine the security of the border, irrespective of the conduct of the person concerned or the existence of specific circumstances, and which is supplemented as follows by ministerial decree:

(a) Cross-border crime takes place dynamically (in terms of time and location, and using various means of transport) and flexible police powers are therefore required to combat it. The exercise of the aforementioned power ultimately aims to prevent or eliminate cross-border crime;

(b) The control measures must be executed within the strictly defined framework of the abovementioned criteria of Article 21(a) of the Schengen Borders Code. They must be devised in such a way that they are clearly distinct from systematic checks on persons at the external borders and do not have an effect equivalent to border checks. The implementation of these control measures must in turn be subject to a framework so that it is ensured that they are not equivalent to border checks in terms of intensity and frequency.

(c) This framework is structured as follows:

The control measures shall not be implemented on a permanent basis, but rather executed in an irregular manner, at different times, in different places and on a random basis, taking into account the volume of traffic.

The control measures shall not be executed solely in response to the crossing of borders. They shall be carried out on the basis of continuously updated situational intelligence and/or (border) police experience, which the Federal police services are to develop on the basis of their own situational information or that of other authorities. General or specific police information and/or experience relating to cross-border crime, for example relating to frequently used transport means or routes or certain patterns of behaviour, and analysis of the available information on cross-border crime obtained from the police services' own sources or from other authorities shall be the starting point for the exercise of police measures and for the intensity and frequency of those measures.

The form taken by the control measures shall be the subject of regular administrative and technical supervision. Fundamental rules are set out in the fourth sentence of Paragraph 3(1) of the Gemeinsame Geschäftsordnung der Bundesministerien (Common Rules of Procedure of the Federal Ministries; 'the GGO') and in the Grundsätze zur Ausübung der Fachaufsicht der Bundesministerien über den Geschäftsbereich (Principles governing the exercise of technical supervision by the Federal Ministries over their areas of activity). Regarding the Federal Police, these rules are given concrete form by the 'Ergänzende Bestimmungen zur Ausübung der Dienst- und Fachaufsicht des BMI über die Bundespolizei' (Supplementary provisions for the exercise of administrative and technical supervision by the BMI [Federal Ministry of the Interior] over the Federal Police). The Federal Police Headquarters and the bodies and agencies subordinated thereto have made provision for the execution **[Or. 3]** of administrative and technical supervision in their task allocation plans and implemented it via their own concepts.

(d) In order to avoid a proliferation of controls, the control measures should be coordinated with other authorities to the greatest extent possible or should be executed within the framework of joint operation/cooperation schemes.?

2. Is the law of the European Union, in particular the second subparagraph of Article 4(3) … TEU, Article 197(1) TFEU and Article 291(1) TFEU, to be interpreted as precluding, automatically or after weighing up prosecution interests and those of the accused party, the use of intelligence or evidence in criminal proceedings if it was obtained from a police check on the accused party that is contrary to Article 67(2) TFEU or to Articles 22 and 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)?

(1) OJ 2016 L 77, p. 1.

Request for a preliminary ruling from the Landgericht Stuttgart (Germany) lodged on 19 July 2019 — Fussl Modestraße Mayr GmbH v SevenOne Media GmbH

(Case C-555/19)

(2019/C 357/26)

Language of the case: German

Referring court

Landgericht Stuttgart

Parties to the main proceedings

Applicant: Fussl Modestraße Mayr GmbH

Defendant: SevenOne Media GmbH

Questions referred

Are

1. a) Article 4(1) of Directive 2010/13/EU, ([1])

   b) the principle of equal treatment under EU law and

   c) the rules under Article 56 TFEU on freedom to provide services

   to be interpreted as meaning that they preclude a provision in national law that prohibits the regional broadcasting of advertising on broadcasting programmes authorised for the entire Member State?

2. Is Question 1 to be assessed differently if the national law allows statutory rules pursuant to which the regional broadcasting of advertising can be permitted by law and, in that case, is permitted with an — additionally required — official permit?

3. Is Question 1 to be assessed differently if no use is actually made of the possibility of permitting regional advertising as described in Question 2 and regional advertising is therefore prohibited in its entirety?

4. Having regard to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights, is Article 11 of the Charter of Fundamental Rights of the European Union, particularly the principle of pluralism of the media, to be interpreted as meaning that it precludes a national provision such as that described in Questions 1, 2 and 3?

([1]) Directive of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 23 July 2019 — Consorzio Italian Management, Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA

(Case C-561/19)

(2019/C 357/27)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Consorzio Italian Management, Catania Multiservizi SpA

Respondent: Rete Ferroviaria Italiana SpA

Questions referred

1. In accordance with Article 267 TFEU, is a national court whose decisions are not amenable to appeal required, in principle, to make a reference for a preliminary ruling on a question concerning the interpretation of EU law even where the question is submitted to it by one of the parties to the proceedings after that party has lodged its initial pleading, or even after the case has been set down for judgment for the first time, or indeed even after a reference has already been made to the Court of Justice of the European Union for a preliminary ruling?

2. … are Articles 115, 206 and 217 of Legislative Decree No 163/2006, as interpreted by national administrative case-law, in so far as they exclude price review in the case of contracts relating to 'special sectors' and, in particular, in the case of contracts that have a different object from those to which Directive 2004/17/EC [1] refers but are functionally linked to one of those objects, consistent with EU law (in particular, Articles 4(2), 9, 101(1)(e), 106, 151, 152, 153 and 156 TFUE, the European Social Charter signed at Turin on 18 October 1961 and the 1989 Community Charter of the Fundamental Social Rights of Workers, referred to in Article 151 TFEU, Articles 2 and 3 TEU and Article 28 of the Charter of Fundamental Rights of the European Union)?

3. … are Articles 115, 206 and 217 of Legislative Decree No 163/2006, as interpreted by national administrative case-law, in so far as they exclude price review in the case of contracts relating to 'special sectors' and, in particular, in the case of contracts that have a different object from those to which Directive 2004/17/EC refers but are functionally linked to one of those objects, consistent with EU law (in particular, Article 28 of the Charter of Fundamental Rights of the European Union, the principle of equal treatment enshrined in Articles 26 and 34 TFEU, and the principle of freedom to conduct a business enshrined in Article 16 of the Charter of Fundamental Rights of the European Union)?

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

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 23 July 2019 — Fototre Srl v Ministero dello Sviluppo Economico and Others

(Case C-595/19)

(2019/C 357/28)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Fototre Srl

Defendants: Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri, Gestore dei servizi energetici (GSE) SpA

Questions referred

Does EU law preclude the application of a provision of national law, such as that in Article 26(2) and (3) of Decree-Law No 91/2014, as converted by Law No 116/2014, which significantly reduces or delays the payment of incentives already granted by law and defined on the basis of corresponding agreements concluded by undertakings generating electrical energy by means of photovoltaic conversion with Gestore dei servizi energetici s.p.a, a public company responsible for that process?

In particular, is that provision of national law compatible with the general principles of EU law relating to legitimate expectation, legal certainty, sincere cooperation and effectiveness, with Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, with Directive 2009/28/EC [1] and with the rules governing support schemes laid down in that directive, and with Article 216(2) TFEU, in particular in relation to the European Energy Charter Treaty?

[1] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Request for a preliminary ruling from the Audiencia Provincial de Zaragoza (Spain) lodged on 6 August 2019 — MA v Ibercaja Banco, S.A.

(Case C-600/19)

(2019/C 357/29)

Language of the case: Spanish

Referring court

Audiencia Provincial de Zaragoza

Parties to the main proceedings

Applicant: MA

Defendant: Ibercaja Banco, S.A.

Other party: PO

Questions referred

(1) Is national legislation compatible with the principle of effectiveness provided for in Article 6(1) of Council Directive 93/13/EEC, ([1]) as that directive has been interpreted by the Court of Justice, where it may be inferred from that national legislation that, if a particular unfair term withstood an initial review conducted by a court of its own motion when making an enforcement order [negative review of the validity of the terms' content], that review prevents the same court from subsequently assessing that term of its own motion where the factual and legal elements existed from the outset, even if that initial review did not express, in the operative part or in the grounds, any considerations on the validity of the terms?

(2) Where factual and legal elements exist which determine the unfairness of a term in a consumer contract and the party against whom enforcement is sought fails to rely on that unfairness in the application objecting to enforcement laid down for that purpose by the Law, can that party, following the resolution of that application, make a further preliminary application aimed at determining whether one or more other terms is/are unfair when that party could have relied on those terms at the outset in the ordinary procedural step provided for in the Law? In short, is a time-barring effect created which prevents the consumer from raising again the issue of unfairness of another term in the same enforcement proceedings, and even in subsequent declaratory proceedings?

(3) If the conclusion that the party is not entitled to make a second or subsequent application objecting to the enforcement proceedings, in order to allege the unfairness of a term which that party could have raised earlier because the necessary factual and legal elements had already been determined, is held to be compatible with Directive 93/13, can this serve as a basis for use as a means whereby the court, having been alerted to the unfairness of that term, is able to exercise its power of review of its own motion?

(4) Once the sale at auction has been approved and the property awarded, possibly to the same creditor, and the ownership of the property provided as security, already realised, has even been transferred, is it compatible with EU law to apply an interpretation according to which (i) after the proceedings have concluded and the objective of such proceedings has been fulfilled, that is to say, the security has been realised, a debtor may make further applications for a declaration that an unfair term is invalid, entailing an effect on the enforcement proceedings or (ii) after the transfer has been completed, possibly in favour of the same creditor, and entered in the Land Registry, a court may of its own motion carry out a review which results in the entire enforcement proceedings being annulled or ultimately affects the amounts covered by the mortgage, potentially affecting the terms under which the bids were made?

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

Request for a preliminary ruling from the Verwaltungsgericht Köln (Germany) lodged on 9 August 2019 — Kohlpharma GmbH v Bundesrepublik Deutschland

(Case C-602/19)

(2019/C 357/30)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: Kohlpharma GmbH

Defendant: Bundesrepublik Deutschland

Questions referred

1. Do the principle of the free movement of goods laid down in Article 34 TFEU and the principles, developed on that basis, of the parallel import of medicinal products require the national authorising authority to consent to an amendment to the indications regarding the dosage of a parallel-imported medicinal product even if the reference authorisation has expired and the amendment is substantiated with an adoption of the indications regarding a domestically produced medicinal product with essentially the same active ingredient and different form of administration in combination with the indications approved in the exporting State for the parallel-imported medicinal product?

2. Against the background of Articles 34 and 36 TFEU, can the national authority refuse to consent to such an amendment by noting that parallel importers are exempt from the obligation to submit periodic safety reports and, due to the lack of a domestic reference authorisation, there is no current data on the risk-benefit assessment, the existing domestic authorisation concerns a different form of administration and relates to a different active ingredient concentration from the authorisation for the same form of administration in the exporting State, and the combination of two forms of administration in the information texts is moreover inconceivable?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 12 August 2019 — Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL) v Zennaro Giuseppe Legnami Sas di Zennaro Mauro & C.

(Case C-608/19)

(2019/C 357/31)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL)

Respondent: Zennaro Giuseppe Legnami Sas di Zennaro Mauro & C.

Question referred

Must the rules on the grant of aid laid down in Articles 3 and 6 of Regulation No 1407/2013 ([1]) be interpreted as meaning that it is possible for an applicant undertaking, which finds itself exceeding the maximum permissible ceiling on account of the cumulation with previous financial assistance, to opt — up to the actual payment of the financial assistance applied for — to reduce the funding (by amending or varying the project) or to forgo (in full or in part) previous financial assistance, possibly already received, in order to fall below the maximum limit payable; and must those provisions be interpreted as meaning that the various options proposed (variation or forgoing) apply even if they are not expressly provided for in the national legislation and/or in the public notice relating to the grant of aid?

([1]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ 2013 L 352, p. 1).

Reference for a preliminary ruling from the High Court (Ireland) made on 16 August 2019 – M.S., M.W., G.S. v Minister for Justice and Equality

(Case C-616/19)

(2019/C 357/32)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: M.S., M.W., G.S.

Defendant: Minister for Justice and Equality

Questions referred

1. Does the reference to 'the Member State concerned' in art. 25(2)(d) and (e) of directive 2005/85 ([1]) mean (a) a first member state which has granted protection equivalent to asylum to an applicant for international protection or (b) a second member state to which a subsequent application for international protection is made or (c) either of those member states?

2. Where a third country national has been granted international protection in the form of subsidiary protection in a first member state, and moves to the territory of a second member state, does the making of a further application for international protection in the second member state constitute an abuse of rights such that the second member state is permitted to adopt a measure providing that such a subsequent application is inadmissible?

3. Is art. 25 of directive 2005/85 to be interpreted so as to preclude a member state which is not bound by directive 2011/95 ([2]) but is bound by regulation 604/2013 ([3]), from adopting legislation such as that at issue in the present case which deems inadmissible an application for asylum by a third country national who has previously been granted subsidiary protection by another member state?

([1]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005, L 326, p. 13).

([2]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011, L 337, p. 9).

([3]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013, L 180, p. 31).

Reference for a preliminary ruling from Watford Employment Tribunal (United Kingdom) made on 22 August 2019 – K and Others v Tesco Stores Ltd

(Case C-624/19)

(2019/C 357/33)

Language of the case: English

Referring court

Watford Employment Tribunal (United Kingdom)

Parties to the main proceedings

Applicants: K and Others

Defendant: Tesco Stores Ltd

Questions referred

1. Is Article 157 of the Treaty on the Functioning of the European Union (TFEU) directly effective in claims made on the basis that claimants are performing work of equal value to their comparators?

2. If the answer to question 1 is no, is the single source test for comparability in Article 157 distinct from the question of equal value, and if so, does that test have direct effect?

Action brought on 4 September 2019 — European Commission v Kingdom of Spain

(Case C-658/19)

(2019/C 357/34)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by D. Nardi, G. von Rintelen and S. Pardo Quintillán, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— Declare that, by failing to adopt, by 6 May 2018, the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on [the protection of natural persons with regard] to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, [1] or, in any event, by failing to notify those measures to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 63(1) of that directive;

— Impose on the Kingdom of Spain, in accordance with Article 260(3) TFEU, a daily penalty payment of EUR 89 548,20, with effect from the date of delivery of the judgment declaring the failure to fulfil the obligation to adopt or, in any event, the failure to notify to the Commission, the measures necessary to comply with Directive (EU) 2016/680, to be paid into an account to be indicated by the Commission;

— Impose on the Kingdom of Spain, in accordance with Article 260(3) TFEU, a lump-sum payment, the amount of which corresponds to the daily amount of EUR 21 321,00 multiplied by the number of days on which the infringement continues, provided that that amount exceeds the minimum lump-sum payment of EUR 5 290 000, to be paid into an account to be indicated by the Commission;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

In accordance with Article 63(1) of Directive (EU) 2016/680, the Member States were to adopt and publish, by 6 May 2018, the laws, regulations and administrative provisions necessary to comply with that directive, and forthwith notify to the Commission the text of those provisions.

The Commission has not been informed of the adoption and entry into force of any of the required transposition measures, and is not aware of any other information indicating that the directive has been transposed.

The Kingdom of Spain has, therefore, failed to transpose Directive (EU) 2016/680, more than a year after the expiry of the period for transposition.

([1]) OJ 2016 L 119, p. 89

GENERAL COURT

Judgment of the General Court of 4 September 2019 — Lithuania v Commission

(Affaire T-603/17) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Regulation (EC) No 1698/2005 — Axis 4 'Leader' — Regulation (EU) No 65/2011 — Administrative checks — Obligation to implement a suitable system for evaluating the reasonableness of the costs — Contribution in kind in the form of unpaid voluntary work — Contribution in kind in the form of a contribution of immovable property — On-the-spot checks — Presence of documents supporting payment claims — Implementation of operations financed in accordance with the rules on public procurement)

(2019/C 357/35)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented: initially by D. Kriaučiūnas, R. Krasuckaitė, R. Dzikovič and M. Palionis, then by R. Krasuckaitė, R. Dzikovič, M. Palionis, I. Javičienė and T. Lozoraitis and lastly R. Dzikovič, M. Palionis, I. Javičienė and T. Lozoraitis, acting as Agents)

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

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

Re:

Application under Article 263 TFEU for annulment of Commission Implementing Decision (EU) 2017/1144 of 26 June 2017 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2017 L 165, p. 37), in so far as it excludes certain expenditure incurred by the Republic of Lithuania.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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

([1]) OJ C 357, 23.10.2017.

Judgment of the General Court of 10 September 2019 — DK v EEAS

(Case T-217/18) ([1])

(Civil service — Disciplinary proceedings — Criminal conviction — Penalty of withholding an amount from the pension — Manifest error of assessment — Proportionality — Obligation to state reasons — Mitigating circumstances — Liability)

(2019/C 357/36)

Language of the case: French

Parties

Applicant: DK (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European External Action Service (represented by: S. Marquardt and R. Spac, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of the EEAS of 23 May 2017 to impose on the applicant a disciplinary penalty and, secondly, compensation for the harm allegedly suffered by the applicant as a result of the EEAS' infringement of his rights of defence in the criminal proceedings brought against him before the Belgian courts.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders DK to pay the costs.*

([1]) OJ C 211, 18.6.2018.

Judgment of the General Court of 4 September 2019 — Hamas v Council

(Case T-308/18) ([1])

(Common foreign and security policy — Restrictive measures taken against persons, groups and entities with a view to combating terrorism — Freezing of funds — Whether an authority of a third State can be classified as a competent authority within the meaning of Common Position 2001/931/CFSP — Factual basis of the decisions to freeze funds — Obligation to state reasons — Error of assessment — Principle of non-interference — Rights of the defence — Right to effective judicial protection — Authentication of Council acts)

(2019/C 357/37)

Language of the case: French

Parties

Applicant: Hamas (Doha, Qatar) (represented by L. Glock, lawyer)

Defendant: Council of the European Union (represented initially by B. Driessen and A. Sikora-Kalėda, then by B. Driessen and S. Van Overmeire, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2018/475 of 21 March 2018 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, and repealing Decision (CFSP) 2017/1426 (OJ 2018 L 79, p. 26) and of Council Implementing Regulation (EU) 2018/486 of 21 March 2018 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 Implementing Regulation (EU) 2017/1420 (OJ 2018 L 79, p. 7); and, second, of Council Decision (CFSP) 2018/1084 of 30 July 2018 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, and repealing Decision (CFSP) 2018/475 (OJ 2018 L 194, p. 144) and of Council Implementing Regulation (EU) 2018/1071 of 30 July 2018 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 Implementing Regulation (EU) 2018/468 (OJ 2018 L 194, p. 23).

Operative part of the judgment

The Court:

1. *Annuls Council Decision (CFSP) 2018/475 of 21 March 2018 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, and repealing Decision (CFSP) 2017/1426, Council Implementing Regulation (EU) 2018/486 of 21 March 2018 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 Implementing Regulation (EU) 2017/1420, Council Decision (CFSP) 2018/1084 of 30 July 2018 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 and repealing Decision (CFSP) 2018/475 and Council Implementing Regulation (EU) 2018/1071 of 30 July 2018 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 Implementing Regulation (EU) 2018/468 in so far as they concern 'Hamas', including 'Hamas-Izz al-Din al-Qassem';*

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

([1]) OJ C 259, 23.7.2018.

Judgment of the General Court of 9 September 2019 — SLL Service v EUIPO — Elfa International (LUMIN8)

(Case T-680/18) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark LUMIN8 — Earlier EU word mark LUMI — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 357/38)

Language of the case: English

Parties

Applicant: SLL Service GmbH (Cologne, Germany) (represented by: C. Schmitt, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Elfa International AB (Västervik, Sweden)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 28 August 2018 (Case R 2752/2017-2), relating to opposition proceedings between Elfa International and SLL Service

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders SLL Service GmbH to pay the costs.*

([1]) OJ C 25, 21.1.2019.

Judgment of the General Court of 9 September 2019 — Executive Selling v EUIPO (EXECUTIVE SELLING)

(Case T-689/18) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark EXECUTIVE SELLING — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2019/C 357/39)

Language of the case: French

Parties

Applicant: Executive Selling (Paris, France) (represented by: V. Bouchara and A. Maier, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 14 September 2018 (Case R 313/2018-1), concerning an international registration designating the European Union of figurative sign EXECUTIVE SELLING.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Executive Selling to bear the costs.*

([1]) OJ C 25, 21.1.2019.

Judgment of the General Court of 10 September 2019 — Oakley v EUIPO — Xuebo Ye (Representation of a discontinuous ellipse)

(Case T-744/18) ([1])

(EU trade mark — Opposition proceedings — Application for an EU figurative mark representing a discontinuous ellipse — Earlier EU figurative mark representing an ellipse — Relative ground for refusal — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 357/40)

Language of the case: Spanish

Parties

Applicant: Oakley, Inc. (Foothill Ranch, California, United States) (represented by: E. Ochoa Santamaría and I. Aparicio Martínez, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Xuebo Ye (Wenzhou, China)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 22 October 2018 (Case R 692/2018-1), relating to opposition proceedings between Oakley and Xuebo Ye.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 October 2018 (Case R 692/2018-1);*

2. *Orders EUIPO to pay the costs, including those incurred by Oakley, Inc.*

([1]) OJ C 65, 18.2.2019.

Judgment of the General Court of 5 September 2019 — C&A v EUIPO (#BESTDEAL)

(Case T-753/18) ([1])

(EU trade mark — Application for the EU figurative mark #BESTDEAL — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 357/41)

Language of the case: French

Parties

Applicant: C&A AG (Zug, Switzerland) (represented by P. Koch Moreno, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 26 October 2018 (Case R 1234/2018-2) concerning an application for registration of the figurative sign #BESTDEAL as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders C&A AG to bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 65, 18.2.2019.

Order of the General Court of 22 July 2019 — Younique v EUIPO — Jafer Enterprises R&D (younique products)

(Case T-434/17) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2019/C 357/42)

Language of the case: Spanish

Parties

Applicant: Younique LLC (Alpine, Utah, United States) (represented by: M. Edenborough QC)

Defendant: European Union Intellectual Property Office (represented by: J. García Murillo and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Jafer Enterprises R&D, SLU (Granollers, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 25 April 2017 (Case R 1564/2016-2), relating to opposition proceedings between Jafer Enterprises R&D and Younique.

Operative part of the order

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

2. *Younique LLC shall bear its own costs and the costs incurred by the European Union Intellectual Property Office (EUIPO).*

3. *Jafer Enterprises R&D, SLU shall bear its own costs.*

([1]) OJ C 318, 25.9.2017.

Action brought on 17 July 2019 – Staciwa v Commission

(Case T-511/19)

(2019/C 357/43)

Language of the case: English

Parties

Applicant: Katarzyna Staciwa (Częstochowa, Poland) (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 7 November 2018 not to allocate the applicant the severance grant provided for under Article 12(2) of Annex VIII to the Staff Regulations;

— annul the Commission's decision of 17 April 2019 rejecting the applicant's complaint of 21 December 2018 against the above-mentioned decision;

— compensate the applicant for the material damage suffered;

— compensate the applicant for the non-material damage suffered:

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, a plea of illegality with regard to the Paymaster Office's note of 15 December 2017.

2. Second plea in law, a further plea of illegality with regard to Article 12(2) of Annex VIII to the Staff Regulations.

3. Third plea in law, alleging violation of Article 12(2) of Annex VIII to the Staff Regulations.

4. Fourth plea in law, alleging violation of the principle of equal treatment and of non-discrimination.

5. Fifth plea in law, alleging violation of the principle of legitimate expectations.

6. Sixth plea in law, alleging violation of the principle of good administration and of the duty of care.

Action brought on 22 July 2019 – Adeso v Commission

(Case T-529/19)

(2019/C 357/44)

Language of the case: English

Parties

Applicant: African Development Solutions (Adeso) (Nairobi, Kenya) (represented by: R. Martens, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul, in its entirety, the contested decision, i.e. the Commission's decision of 10 May 2019, and thus to declare that the claims for recovery in respect of Grant Agreements FED/2013/313-770 and FED/2013/316-291 in the amount of respectively EUR 3 298 703,59 and EUR 11 919,40 have no basis;

— order the defendant to pay all costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of Article 41 of the Charter of Fundamental Rights of the European Union, in which the principle of good administration is embedded: the right to be heard is manifestly disregarded, as well as the principle of legal certainty, because, despite the numerous and serious concerns raised by the applicant regarding the contested Audit report and the several meetings requested in order to clarify these important outstanding issues, the Commission refused to set up such meeting, whereas, in accordance with settled case-law, observance of the right to be heard is of general application and a condition of legality of any decision taken by the EU institutions, and must therefore be respected at all times and in all sort of procedures.

2. Second plea in law, alleging breach of the principle of proportionality, fairness and contractual good faith, as enshrined in Article 5(4) TEU, because, by immediately issuing a recovery order without giving the applicant the chance to give an adequate explanation of the contested Audit findings by means of an extensively elaborated management response and the proposed meetings, the defendant did not act in good faith and exceeded the limits of what is appropriate and necessary, whereas, an adequate amicable settlement could have been sufficient in first instance, as prescribed by the General Conditions of the Grant Agreement. It was thus not necessary nor essential for the defendant's statement of the reasons for its decision to neglect the applicant's request to pursue an amicable settlement in the first place. This is fully contrary to the principle of proportionality which implies that, if there are several appropriate measures, as is the case in the current matter, those that are the least invasive and burdensome must be chosen (quod non).

Action brought on 27 July 2019 – Militos Symvouleftiki v Commission

(Case T-536/19)

(2019/C 357/45)

Language of the case: Greek

Parties

Applicant: Militos Symvouleftiki AE (Athens, Greece) (represented by: K. Farmakidis-Markou, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General court should:

— annul the decision communicated on 29 May 2019 to cancel the procurement procedure PR/2018-16/ATH for the award of a framework-contract for the provision of services in the field of organisation of communication activities, published OJ 2019/S 110-267174.

Pleas in law and main arguments

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

1. The first plea in support of annulment, whereby the applicant challenges the false and unfounded reasons stated in the contested decision and alleges a manifest error of assessment. Contrary to the reasons stated in the contested decision, the budget for the work is not exceeded by the applicant's tender and it is not expressly stated that all the tenders exceeded the budget.

2. The second plea in support of annulment, whereby the applicant challenges the misapplication of the provision in the invitation to tender which defines the method for comparative assessment of the tenders as a ground for the exclusion of tenders, or as a formal requirement for the submission of a tender. The total of reference prices, which according to the contested decision exceeds the budget for the framework-contract, constitutes only a means of identifying the most advantageous tender and does not accurately reflect the needs of the market in services at the time of performance of the contract.

3. The third plea in support of annulment, whereby the applicant challenges the improper recourse to the option provided for by Article 171 of the Financial Regulation. The reasons stated for the cancellation of the procurement procedure reveal both contradictions, in that there is evidence of over-estimation of the needs of the contracting authority, consequently a reasonable probability of reduced final costs for the contract when it is to be performed, and lacunae, in that it is not expressly stated that the tenders of all the participating companies deviated from the budget by exceeding it, which factors looked at objectively suggest that the decision was made for reasons other than those relied on.

4. The fourth plea in support of annulment, whereby the applicant alleges that insufficient reasons were stated in relation to the failure to apply Article 169(2) of Regulation 2018/1046 EU. ([1])

([1]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1)

Action brought on 16 August 2019 — DS and Others v Commission and EEAS

(Case T-573/19)

(2019/C 357/46)

Language of the case: French

Parties

Applicants: DS and 718 other applicants (represented by: S. Orlandi and T. Martin, lawyers)

Defendants: European Commission and European External Action Service

Form of order sought

The applicants claim that the Court should:

— annul the decisions fixing the applicants' number of days of paid annual leave for 2019;

— in any event, order the Commission and the EEAS to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants put forward a single plea in law, based on an objection of illegality directed against Article 6 of Annex X to the Staff Regulations of Officials of the European Union on the same grounds as those adopted by the Court in the judgment of 4 December 2018, *Carreras Sequeros and Others* v *Commission*, (T-518/16, EU:T:2018:873). According to the applicants, the defendant institutions refused to apply that judgment even though its effects are not suspended, which is akin to an unlawful suspension of operation of a judgment of the Court.

Action brought on 19 August 2019 — EI v Commission

(Case T-575/19)

(2019/C 357/47)

Language of the case: French

Parties

Applicant: EI (represented by: R. Mbonyumutwa, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the European Commission to pay compensation:

— first, on account of the non-material damage she suffered as a result of discrimination because of her skin colour, and in that regard award her EUR 123 600 (one hundred and twenty three thousand six hundred euros) and,

— second, on account of the material damage she suffered as a result of lack of promotion and increases deriving from discrimination, and in that regard award her EUR 48 670,56 (forty eight thousand six hundred and seventy euros and fifty six cents);

— require the European Commission to reevaluate the applicant's merits in an impartial and objective manner, and, if appropriate, to promote her;

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of her action against the decision of the appointing authority of 23 May 2019 rejecting her complaint against the decision not to promote her and establishing the final promotion list for 2018, the applicant relies on two pleas in law.

1. First plea in law, alleging manifest errors of assessment in the promotion procedure. That plea in law is divided into four parts.

   — First part, alleging inaccuracy and subjectivity of the assessment reports concerning officials. In that regard, the applicant considers that three errors were committed. The first error concerns the fact that the reports on the applicant were drafted by a single person, the second relates to the inaccuracy of the content of the assessment reports and the third arises from the failure to take into account the applicant's self-assessment.

   — Second part, alleging that there is no objective test for evaluating language skills. In that regard, the applicant considers that three errors were committed. The first error concerns the fact that the applicant's reports were drafted by a single person, the second relates to failure to use the objective tests available on the market and the third arises from the fact that the assessment does not reflect reality.

   — Third part alleging that the assessment of the level of responsabilities exercised was subjective.

   — Fourth part, alleging that the choice of factual evidence to be taken into account was subjective.

2. Second plea in law, alleging infringement of the principles of equal treatment and non-discrimination. In that regard, the applicant puts forward two arguments.

   — The first argument is that the subjectivity arising from the promotion procedure is solely to the detriment of the applicant.

   — The second argument is that, in reply to her questions concerning the reasons for her lack of promotion, her immediate superior replied via email which proves that the promotion procedure is neither objective nor impartial.

Action brought on 19 August 2019 — DV and Others v Commission

(Case T-576/19)

(2019/C 357/48)

Language of the case: French

Parties

Applicants: DV and 10 other applicants (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decisions determining the number of paid annual leave days for the applicants for 2019;

— in any event, order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, raising an objection of illegality directed against Article 6 of Annex X to the Staff Regulations of Officials of the European Union for the same reasons as stated by the Court in the judgment of 4 December 2018, *Carreras Sequeros and Others* v *Commission*, (T-518/16, EU:T:2018:873). According to the applicant, the defendant institution refused to apply that judgment while its effects are not suspended, which amounts to an unlawful failure to comply with a judgment of the General Court.

Action brought on 20 August 2019 – Borborudi v Council

(Case T-580/19)

(2019/C 357/49)

Language of the case: English

Parties

Applicant: Sayed Shamsuddin Borborudi (Tehran, Iran) (represented by: L. Vidal, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— cancel the decision taken by the Council on 27 May 2019, pursuant to Council Implementing Regulation (EU) 2019/855, to maintain the applicant on the Annex IX to Regulation (EU) No. 267/2012;

— order the Council to remove the applicant from the Annex IX to Regulation (EU) No. 267/2012;

— order the Council to pay all of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council has not respected the standard of proof to sanction persons and entities in adopting and maintaining the applicant on the EU sanctions lists as the contested measures are not supported by any legitimate ground.

2. Second plea in law, alleging that the Council has committed an error of fact as Mr. Borborudi does not work for the Atomic Energy Organisation of Iran anymore (the 'AEOI'), as the AEOI is not a UN sanctioned entity anymore and that the AMAD plan was halted in 2003.

3. Third plea in law, alleging that the Council has committed an error in law as it has not qualified the quantitative or qualitative significance of the alleged support of Mr. Borborudi to the Iranian nuclear program.

4. Fourth plea in law, alleging that the Council has violated its obligation to substantiate the restrictive measure it has adopted against the applicant as it has not communicated the elements that would prove the ground on which he has been sanctioned.

5. Fifth plea in law, alleging that the Council has violated its obligation to communicate the documents supporting the motive, even after the applicant had asked for them.

6. Sixth plea in law, alleging that the Council has infringed the principle of proportionality, which is one of the general principles the European Union must abide to.

Action brought on 22 August 2019 – thyssenkrupp v Commission

(Case T-584/19)

(2019/C 357/50)

Language of the case: English

Parties

Applicant: thyssenkrupp AG (Duisburg und Essen, Germany) (represented by: M. Klusmann, J. Ziebarth, and M. Dästner, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision in its entirety;

— order the defendant to pay the costs of the present proceedings, including those related to any intervener.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant erred in defining novel relevant product markets for hot-dip galvanized steel for automotive applications (Auto HDG) and for certain types of Packaging Steel and that this led to a misguided analysis of post-merger market power, in particular due to the Decision's failure to acknowledge significant elements of demand and supply side substitutability. Therefore the applicant considers that the defendant did wrongfully not include electrogalvanized steel in its market definition and missed out on the interchangeability of galvanized industrial and automotive products.

2. Second plea in law, alleging that the defendant erred in defining EEA-wide instead of worldwide markets for both Auto HDG and Packaging Steel. The defendant therefore misconstrued the results of its market investigation and assessment of internal documents provided by the Parties, and did not adhere to proper procedure and the principles of due process by failing to engage in a sufficient economic analysis. Moreover, the Commission allegedly relied on inconclusive and unpersuasive evidence to conclude that import flows do not influence EEA pricing for Auto HDG and Packaging Steel.

3. Third plea in law, alleging that the Commission infringed essential procedural requirements and erred in substance by allegedly finding a significant impediment to effective competition in relation to a separate product market for Auto HDG.

4. Fourth plea in law, asserting that with regard to the alleged separate product markets for Tinplate (TP), electrolytic chromium coated steel (ECCS) and Laminated Steel, the Commission's competitive assessment is based on an incorrect interpretation and application of the SIEC test which unlawfully combines incompatible elements of an SIEC resulting from single dominance and from horizontal non-coordinated (oligopolistic) effects. The applicant also claims a manifest error of assessment regarding imports which is based on selectively picked quotes from the market investigation and a few misinterpreted internal documents which lead to the defendant unduly ignoring the relevance of high levels of imports for TP and ECCS and the potential of re-rollers entering the market as they have done in other parts of the world.

5. Fifth plea in law, alleging that the remedies offered for Auto HDG and Packaging Steel were unduly dismissed by the defendant. The applicant also claims that the Commission failed to perform a proper market test of the remedies offered.

6. Sixth plea in law, alleging that the Commission infringed its obligation to provide a sufficient reasoning with regard to its discontinuation of preliminary concerns as they were expressed in the SO with regard to Grain Oriented Electrical Steel (GOES).

7. Seventh plea in law, alleging that the defendant committed a procedural error by not enforcing replies to numerous requests for information sent out to market participants in its Phase I and Phase II investigation which in many cases were not answered. The applicant submits that this resulted to a procedural error and to the distortion of evidence.

Action brought on 30 August 2019 – Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO – Fontana Food (GRILLOUMI BURGER)

(Case T-595/19)

(2019/C 357/51)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fontana Food AB (Tyresö, Sweden)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark GRILLOUMI BURGER – Application for registration No 15 963 283

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 June 2019 in Case R 1356/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to bear its own costs and pay those of the applicant for annulment.

Pleas in law

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

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

Order of the General Court of 18 July 2019 — Taminco and Arysta LifeScience Great Britain v EFSA

(Case T-621/17) ([1])

(2019/C 357/52)

Language of the case: English

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

([1]) OJ C 374, 6.11.2017.

Order of the General Court of 23 July 2019 — AMVAC Netherlands v EFSA

(Case T-720/18) ([1])

(2019/C 357/53)

Language of the case: English

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

([1]) OJ C 65, 18.2.2019.

Order of the General Court of 23 August 2019 — Cantieri del Mediterraneo v Commission

(Case T-335/19) ([1])

(2019/C 357/54)

Language of the case: Italian

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

([1]) OJ C 246, 22.7.2019.

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