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Contents

EN

V *Announcements*

COURT PROCEEDINGS

Court of Justice

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2019/C 383/01)

Last publication

OJ C 372, 4.11.2019

Past publications

OJ C 363, 28.10.2019

OJ C 357, 21.10.2019

OJ C 348, 14.10.2019

OJ C 337, 7.10.2019

OJ C 328, 30.9.2019

OJ C 319, 23.9.2019

These texts are available on:

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

COURT OF JUSTICE

DECISION OF THE COURT OF JUSTICE

of 1 October 2019

establishing an internal supervision mechanism regarding the processing of personal data by the Court of Justice when acting in its judicial capacity

(2019/C 383/02)

THE COURT OF JUSTICE,

Having regard to the Treaty on European Union, in particular Article 19 thereof,

Whereas, under Article 8(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), '[e]veryone has the right to the protection of personal data concerning him or her',

Whereas, under Article 8(3) of the Charter, '[c]ompliance with [the] rules [governing the protection of personal data] shall be subject to control by an independent authority',

Whereas Article 57(1)(a) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, provides that the supervisory tasks of the European Data Protection Supervisor are not to include the processing of personal data by the Court of Justice when acting in its judicial capacity,

Whereas, with regard to the supervision of such processing operations, the EU legislature, referring to Article 8(3) of the Charter, suggested, in recital 74 of Regulation (EU) 2018/1725, that independent supervision should be established, for example through an internal mechanism,

HAS ADOPTED THE PRESENT DECISION:

Article 1

1. If a natural person submits an application to the Registrar of the Court of Justice requesting the Registrar to adopt a decision in his capacity as person responsible for the processing of personal data by the Court of Justice when acting in its judicial capacity, the Registrar shall notify the person concerned of his decision within two months from the date on which the application was submitted. Upon expiry of that period, failure to reply shall be deemed to constitute an implied decision rejecting the application.

2. A complaint may be made in respect of a decision taken by the Registrar of the Court of Justice in his capacity as person responsible for the processing of personal data by the Court of Justice when acting in its judicial capacity in response to an application under paragraph 1, or of his own initiative, to the committee referred to in Article 2 ('the committee'), in accordance with the conditions laid down in Article 3.

Article 2

1. The committee shall consist of a chairperson and two members, chosen from among the Judges and Advocates General of the Court of Justice.

2. The chairperson and members of the committee shall be appointed by the Court of Justice on a proposal by the President of the Court for the duration of the President's term of office.

3. On a proposal by the President, the Court of Justice shall also appoint alternate members, who will be called upon to sit if one or more members of the committee are unable to sit. The alternate members shall replace the members who are unable to sit, in accordance with the order established by protocol.

4. If the chairperson of the committee is unable to sit, the committee shall be chaired by one of its full or alternate members, in accordance with the order established by protocol.

5. The committee shall meet when convened by its chairperson. The chairperson shall draw up the agenda for the meeting as well as the minutes of the meeting.

6. The committee shall be assisted in its functions by the Legal Adviser on Administrative Matters of the Court of Justice of the European Union.

Article 3

1. The complaint shall be lodged by the natural person concerned by the decision referred to in Article 1(2), or by his representative, within a period of two months from notification of that decision or, where relevant, from the date on which that person became aware of the decision.

2. The complaint shall be made in one of the official languages of the European Union.

Article 4

1. If the complaint satisfies the conditions laid down in Article 3, the committee shall carry out a review of the facts and points of law which gave rise to the adoption of the decision referred to in Article 1(2).

2. The committee may hear any person whose oral evidence it considers may be relevant.

3. The committee may annul and, in that case, also vary, or uphold the decision referred to in Article 1(2). The committee's decision shall, with regard to the complainant, replace the decision referred to in Article 1(2).

4. The committee shall notify the complainant of its decision, which shall be taken within a period of four months from the date on which the complaint was lodged. If the committee fails to give an express decision within that period, it shall be deemed to have confirmed the decision referred to in Article 1(2).

5. The bringing of judicial proceedings by the complainant against the decision referred to in Article 1(2) shall bring to an end the committee's competence to deal with the complaint before it.

Article 5

This decision shall enter into force on the date of its adoption.

Fait à Luxembourg, le 8 octobre 2019.

Registrar	*President*
A. CALOT ESCOBAR	K. LENAERTS

GENERAL COURT

DECISION OF THE GENERAL COURT

of 16 October 2019

establishing an internal supervision mechanism regarding the processing of personal data by the General Court when acting in its judicial capacity

(2019/C 383/03)

THE GENERAL COURT,

Having regard to the Treaty on European Union, in particular Article 19 thereof,

Whereas, under Article 8(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), '[e]veryone has the right to the protection of personal data concerning him or her',

Whereas, under Article 8(3) of the Charter, '[c]ompliance with [the] rules [governing the protection of personal data] shall be subject to control by an independent authority',

Whereas Article 57(1)(a) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, provides that the supervisory tasks of the European Data Protection Supervisor are not to include the processing of personal data by the General Court when acting in its judicial capacity,

Whereas, with regard to the supervision of such processing operations, the EU legislature, referring to Article 8(3) of the Charter, suggested, in recital 74 of Regulation (EU) 2018/1725, that independent supervision should be established, for example through an internal mechanism,

HAS ADOPTED THE PRESENT DECISION:

Article 1

1. If a natural person submits an application to the Registrar of the General Court requesting the Registrar to adopt a decision in his capacity as person responsible for the processing of personal data by the General Court when acting in its judicial capacity, the Registrar shall notify the person concerned of his decision within two months from the date on which the application was submitted. Upon expiry of that period, failure to reply shall be deemed to constitute an implied decision rejecting the application.

2. A complaint may be made in respect of a decision taken by the Registrar of the General Court in his capacity as person responsible for the processing of personal data by the General Court when acting in its judicial capacity in response to an application under paragraph 1, or of his own initiative, to the committee referred to in Article 2 ('the committee'), in accordance with the conditions laid down in Article 3.

Article 2

1. The committee shall consist of a chairperson and two members, chosen from among the Judges of the General Court.

2. The chairperson and members of the committee shall be appointed by the General Court on a proposal by the President of the General Court for the duration of the President's term of office.

3. On a proposal by the President, the General Court shall also appoint alternate members, who will be called upon to sit if one or more members of the committee are unable to sit. The alternate members shall replace the members who are unable to sit, in accordance with the order established by protocol.

4. If the chairperson of the committee is unable to sit, the committee shall be chaired by one of its full members or alternate members, in accordance with the order established by protocol.

5. The committee shall meet when convened by its chairperson. The chairperson shall draw up the agenda for the meeting as well as the minutes of the meeting.

6. The committee shall be assisted in its functions by the Legal Adviser on Administrative Matters of the Court of Justice of the European Union.

Article 3

1. The complaint shall be lodged by the natural person concerned by the decision referred to in Article 1(2), or by his representative, within a period of two months from notification of that decision or, where relevant, from the date on which that person became aware of the decision.

2. The complaint shall be made in one of the official languages of the European Union.

Article 4

1. If the complaint satisfies the conditions laid down in Article 3, the committee shall carry out a review of the facts and points of law which gave rise to the adoption of the decision referred to in Article 1(2).

2. The committee may hear any person whose oral evidence it considers may be relevant.

3. The committee may annul and, in that case, also vary, or uphold the decision referred to in Article 1(2). The committee's decision shall, with regard to the complainant, replace the decision referred to in Article 1(2).

4. The committee shall notify the complainant of its decision, which shall be taken within a period of four months from the date on which the complaint was lodged. If the committee fails to give an express decision within that period, it shall be deemed to have confirmed the decision referred to in Article 1(2).

5. The bringing of judicial proceedings by the complainant against the decision referred to in Article 1(2) shall bring to an end the committee's competence to deal with the complaint before it.

Article 5

This decision shall enter into force on the date of its adoption.

Done in Luxembourg, 16 October 2019.

Registrar	*President*
E. COULON	M. VAN DER WOUDE

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 12 September 2019 — TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV, Sambucus eV v European Commission, Monsanto Europe, Monsanto Company, United Kingdom of Great Britain and Northern Ireland, European Food Safety Authority (EFSA)

(Case C-82/17 P) ([1])

(Appeal — Environment — Genetically modified products — Commission decision authorising the placing on the market of products containing genetically modified soybean MON 87701 x MON 89788 — Regulation (EC) No 1367/2006 — Article 10(1) — Request for internal review of the decision, submitted under the provisions relating to public participation in environmental decision-making — Rejection of the request)

(2019/C 383/04)

Language of the case: English

Parties

Appellants: TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV, Sambucus eV (represented by: K. Smith QC and J. Stevenson, Barrister)

Other parties to the proceedings: European Commission (represented by: L. Flynn, G. Gattinara and C. Valero, Agents), Monsanto Europe, Monsanto Company (represented initially by M. Pittie, and subsequently by P. Honoré and A. Helfer, avocats), United Kingdom of Great Britain and Northern Ireland, European Food Safety Authority (EFSA)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV and Sambucus eV to bear their own costs and to pay those incurred by the European Commission;

3. Orders Monsanto Europe and Monsanto Company to bear their own costs.

([1]) OJ C 129, 24.4.2017.

Judgment of the Court (Fourth Chamber) of 12 September 2019 (request for a preliminary ruling from the Landgericht Berlin — Germany) — VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen mbH v Google LLC, successor in law to Google Inc.

(Case C-299/17) ([1])

(Reference for a preliminary ruling — Industrial policy — Approximation of laws — Directive 98/34/EC — Procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services — Article 1(11) — Concept of 'technical regulation')

(2019/C 383/05)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen mbH

Defendant: Google LLC, successor in law to Google Inc.

Operative part of the judgment

Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998), must be interpreted as meaning that a provision of national law, such as that at issue in the main proceedings, which prohibits only commercial operators of search engines and commercial service providers that similarly publish content from making newspapers or magazines or parts thereof (excluding individual words and very short text excerpts) available to the public, constitutes a 'technical regulation' within the meaning of that provision, the draft of which is subject to prior notification to the Commission pursuant to the first subparagraph of Article 8(1) of Directive 98/34, as amended by Directive 98/48.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (Third Chamber) of 12 September 2019 (request for a preliminary ruling from the Rechtbank Rotterdam — Netherlands) — A, B, C, D, E, F, G v Staatssecretaris van Economische Zaken

(Case C-347/17) ([1])

(Reference for a preliminary ruling — Protection of health — Hygiene Package — Regulation (EC) No 853/2004 — Regulation (EC) No 854/2004 — Hygiene of food of animal origin — Poultry meat — Post-mortem inspection of carcasses — Visible contamination of a carcass — Zero-tolerance approach)

(2019/C 383/06)

Language of the case: Dutch

Referring court

Rechtbank Rotterdam

Parties to the main proceedings

Applicants: A, B, C, D, E, F, G

Defendant: Staatssecretaris van Economische Zaken

Operative part of the judgment

1. Annex III, Section II, Chapter IV, points 5 and 8, to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin must be interpreted as meaning that the concept of 'contamination' includes not only contamination by faeces, but also contamination by crop contents and by bile.

2. Annex III, Section II, Chapter IV, points 5 and 8, to Regulation No 853/2004 must be interpreted as meaning that a poultry carcass must no longer contain any visible contamination after the cleaning stage and before the chilling stage.

3. Annex I, Section I, Chapter II, Part D, point 1, to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, as amended by Commission Implementing Regulation (EU) No 739/2011 of 27 July 2011, must be interpreted as not precluding the competent authority, for the purposes of inspecting poultry carcasses, from removing them from the slaughter line and carrying out both an external and internal examination of those carcasses, if necessary by lifting their fat tissue, provided that that examination does not go beyond what is necessary in order to ensure the effectiveness of that control, which it is for the referring court to verify.

([1]) OJ C 300, 11.9.2017.

Judgment of the Court (First Chamber) of 5 September 2019 — European Union, represented by the Court of Justice of the European Union v Guardian Europe Sàrl and European Union, represented by the European Commission (C-447/17 P) and Guardian Europe Sàrl v European Union, represented by the Court of Justice of the European Union, and European Union, represented by the European Commission (C-479/17 P)

(Joined Cases C-447/17 P and C-479/17 P) ([1])

(Appeals — Actions for damages — Second paragraph of Article 340 TFEU — Excessive length of the proceedings in a case before the General Court of the European Union — Compensation for the damage allegedly sustained by the applicant — Concept of a 'single undertaking' not applied — Material damage — Bank guarantee costs — Causal link — Loss of profit — Non-pecuniary damage — Liability of the European Union for damage caused by infringements of EU law arising from a decision of the General Court — No incurring of liability)

(2019/C 383/07)

Language of the case: English

Parties

Case C-447/17 P

Appellant: European Union, represented by the Court of Justice of the European Union (represented initially by J. Inghelram and K. Sawyer, and subsequently by J. Inghelram, acting as Agents)

Other parties to the proceedings: Guardian Europe Sàrl (represented by C. O'Daly, Solicitor, and F. Louis, avocat), European Union, represented by the European Commission (represented by N. Khan, A. Dawes and C. Urraca Caviedes, acting as Agents)

Case C-479/17 P

Appellant: Guardian Europe Sàrl (represented by C. O'Daly, Solicitor, and F. Louis, avocat)

Other parties to the proceedings: European Union, represented by the Court of Justice of the European Union (represented initially by J. Inghelram and K. Sawyer, and subsequently by J. Inghelram, acting as Agents), European Union, represented by the European Commission (represented by N. Khan, A. Dawes and C. Urraca Caviedes, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 7 June 2017, Guardian Europe v European Union (T-673/15, EU:T:2017:377);

2. Dismisses the main appeal, brought by Guardian Europe Sàrl, in Case C-479/17 P;

3. Dismisses the cross-appeal, brought by the European Union, represented by the Court of Justice of the European Union, in Case C-479/17 P;

4. Dismisses the action for damages brought by Guardian Europe Sàrl in so far as it is designed to obtain compensation in the sum of EUR 936 000 for the alleged material damage consisting in the payment of bank guarantee costs after the reasonable period for adjudicating in the case which gave rise to the judgment of 27 September 2012, Guardian Industries and Guardian Europe v Commission (T-82/08, EU:T:2012:494);

5. Orders Guardian Europe Sàrl to bear, in addition to its own costs, all the costs incurred by the European Union, represented both by the Court of Justice of the European Union and by the European Commission, both at first instance and in the appeal in Case C-447/17 P and the main appeal in Case C-479/17 P;

6. Orders the European Union, represented by the Court of Justice of the European Union, to bear, in addition to its own costs, all the costs incurred by Guardian Europe Sàrl in the cross-appeal in Case C-479/17 P.

([1]) OJ C 369, 30.10.2017.

Judgment of the Court (Second Chamber) of 11 September 2019 (request for a preliminary ruling from the Corte dei Conti, Italy) — Federazione Italiana Golf (FIG) v Istituto Nazionale di Statistica — ISTAT, Ministero dell'Economia e delle Finanze (C-612/17), Federazione Italiana Sport Equestri (FISE) v Istituto Nazionale di Statistica (ISTAT) (C-613/17)

(Joined Cases C-613/17 and C-613/17) ([1])

(Reference for a preliminary ruling — Regulation (EU) No 549/2013 — European System of national and regional accounts in the European Union — Annex A, paragraph 20.15 — Control exercised by a National Olympic Committee over national sporting federations constituted in the form of non-profit institutions (NPIs) — Annex A, Paragraph 20.15, second sentence — Concept of 'public intervention in the form of general regulations applicable to all units working in the same activity' — Scope — Annex A, paragraph 20.15, first sentence — Concept of 'ability to determine the general policy or programme' of an NPI — Scope — Annex A, paragraph 2.39(d), paragraph 20.15(d), and paragraph 20.309(i), last sentence — Taking into account of contributions paid by members to the NPI)

(2019/C 383/08)

Language of the case: Italian

Referring court

Corte dei Conti

Parties to the main proceedings

Applicants: Federazione Italiana Golf (FIG) (C-612/17), Federazione Italiana Sport Equestri (FISE) (C-613/17)

Defendants: Istituto Nazionale di Statistica — ISTAT, Ministero dell'Economia e delle Finanze (C-612/17), Istituto Nazionale di Statistica (ISTAT) (C-613/17)

Operative part of the judgment

1. The concept of 'public intervention in the form of general regulations applicable to all units working in the same activity' referred to in the second sentence of paragraph 20.15 of Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, must be understood as covering any intervention by a public sector unit which lays down or applies regulations designed to make all units in the field of activity concerned indiscriminately and uniformly subject to global, broad and abstract rules or general guidelines, and such regulations are not likely, by their nature or character, to be 'excessive' within the meaning of Annex A, paragraph 20.309(h) of Regulation No 549/2013, to dictate, in practice, the general policy or programme of the units in the field of activity concerned.

2. The concept of 'ability to determine the general policy or programme' of a non-profit institution (NPI), within the meaning of the first sentence of Paragraph 20.15 of Annex A to Regulation No 549/2013, must be understood as the ability of a public administration to exercise a real and substantial influence, on a lasting and permanent basis, on the very definition and achievement of the NPI's objectives, activities and operational aspects, as well as the strategic orientations and guidelines that the NPI intends to pursue in the exercise of those activities. In cases such as those at issue in the main proceedings, it is for the national court, in the light of the indicators of control referred to in paragraphs 2.39(a) to (e) and 20.15(a) to (e) of Annex A to Regulation No 549/2013 and the corresponding indicators of control applicable to NPIs, referred to in paragraph 20 309 of Annex A to that regulation, to verify whether a public administration, such as the National Olympic Committee at issue in the main proceedings, exercises public control over national sports federations constituted in the form of NPIs, such as those at issue in the main proceedings, by carrying out, for that purpose, an overall assessment involving, by its nature, some judgment, in accordance with the last sentence of paragraph 2.39, the fifth to eighth sentences of paragraph 20.15 and paragraph 20 310 of Annex A to that regulation.

3. Paragraph 2.39(d), paragraph 20.15(d) and the last sentence of paragraph 20.309(i) of Annex A to Regulation No 549/2013 must be interpreted as meaning that the contributions paid by members to a private law NPI, such as the national sports federations at issue in the main proceedings, must be taken into account for the purposes of verifying whether or not there is public control. Such contributions may, notwithstanding the private status of their debtors and their legal definition under national law, be considered as being, within the framework of the indicator of control relating to the degree of financing, referred to in paragraphs 2.39(d) and 20.15(d) of Annex A to that regulation, as public in nature in the case of compulsory contributions which, without necessarily constituting the consideration for actual use of the services provided, are collected in the public interest for the benefit of national sports federations which hold a monopoly in the sports discipline for which they are responsible, in the sense that the practice of sport in its public dimension is subject to their exclusive authority, unless those federations retain the organisational and budgetary control of those contributions, which it is for the national court to verify.

(1) OJ C 22, 22.1.2018.

Judgment of the Court (Fourth Chamber) of 11 September 2019 (request for a preliminary ruling from the Curtea de Apel Ploiești — Romania) — Oana Mădălina Călin v Direcția Regională a Finanțelor Publice Ploiești — Administrația Județeană a Finanțelor Publice Dâmbovița, Statul Român — Ministerul Finanțelor Publice, Administrația Fondului pentru Mediu

(Case C-676/17) ([1])

(Reference for a preliminary ruling — Principles of EU law — Procedural autonomy — Principles of equivalence and effectiveness — Principle of legal certainty — Res judicata — Recovery of taxes levied by a Member State in breach of EU law — Final decision of a court or tribunal imposing payment of a tax which is incompatible with EU law — Application for revision of such a decision — Time limit within which that application must be submitted)

(2019/C 383/09)

Language of the case: Romanian

Referring court

Curtea de Apel Ploiești

Parties to the main proceedings

Appellant: Oana Mădălina Călin

Respondents: Direcția Regională a Finanțelor Publice Ploiești — Administrația Județeană a Finanțelor Publice Dâmbovița, Statul Român — Ministerul Finanțelor Publice, Administrația Fondului pentru Mediu

Operative part of the judgment

1. EU law, in particular the principles of equivalence and effectiveness, must be interpreted as not precluding, in principle, a national provision, as interpreted by a judgment of a national court, providing for a one-month limitation period for the submission of a request for revision of a final judicial decision handed down in breach of EU law, running from the date of communication of the decision of which revision is sought.

2. However, the principle of effectiveness, in conjunction with the principle of legal certainty, must be interpreted as precluding, in circumstances such as those as issue in the main proceedings, application by a national court of a one-month limitation period for the submission of a request for revision of a final judicial decision when, at the time that request for revision is made, the judgment introducing that limitation period has not yet been published in the Monitorul Oficial al României.

([1]) OJ C 63, 19.2.2018.

Judgment of the Court (Third Chamber) of 12 September 2019 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Cofemel — Sociedade de Vestuário, SA v G-Star Raw CV

(Case C-683/17) ([1])

(Reference for a preliminary ruling — Intellectual and industrial property — Copyright and related rights — Directive 2001/29/EC — Article 2(a) — Concept of 'work' — Protection of works by copyright — Conditions — Connection with the protection of designs — Directive 98/71/EC — Regulation (EC) No 6/2002 — Clothing designs)

(2019/C 383/10)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Appellant: Cofemel — Sociedade de Vestuário, SA

Respondent: G-Star Raw CV

Operative part of the judgment

Article 2(a) 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 must be interpreted as precluding national legislation from conferring protection, under copyright, to designs such as the clothing designs at issue in the main proceedings, on the ground that, over and above their practical purpose, they generate a specific, aesthetically significant visual effect.

([1]) OJ C 52, 12.2.2018.

Judgment of the Court (First Chamber) of 4 September 2019 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV v Prime Champ Deutschland Pilzkulturen GmbH

(Case C-686/17) ([1])

(Reference for a preliminary ruling — Common organisation of the markets in agricultural products — Fruit and vegetables — Marketing rules — Concept of 'country of origin' — Regulation (EC) No 1260/2001 — Article 113 a(1) — Regulation (EU) No 1308/2013 — Article 76(1) — Definitions concerning the non-preferential origin of goods — Regulation (EEC) No 2913/92 — Article 23(1) and 23(2)(b) — Regulation (EU) No 952/2013 — Article 60()1 — Delegated Regulation (EU)2015/2446 — Article 31(b) — Production steps carried out in another Member States — Labelling of foodstuffs — Prohibition on labelling which may mislead the consumer — Directive 2000/13/EC — Article 2(1)(a)(i) — Regulation (EU) No 1169/2011 — Article 7(1)(a) — Article 1(4) — Article 2(3) — Explanatory notes)

(2019/C 383/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV

Defendant: Prime Champ Deutschland Pilzkulturen GmbH

Operative part of the judgment

1. Article 113a(1) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, as amended by Council Regulation (EEC) No 361/2008 of 14 April 2008 and Article 76(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and No 1234/2007, must be interpreted as meaning that, for the purposes of defining the concept of 'country of origin', as referred to in those provisions, it is appropriate to refer to customs regulations relating to the determination of the non-preferential origin of goods, namely Article 23 et seq. (EEC) No 2913/92 of the Council of 12 October 1992 establishing the Community Customs Code and Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code;

2. Article 23(1) and 23(2)(b) of Regulation No 2913/92 and Article 60(1) of Regulation No 952/2013, read in conjunction with Article 31(b) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code, must be interpreted as meaning that the country of origin of cultivated fungi is the country in which they were harvested, within the meaning of those provisions, notwithstanding that substantial production steps take place in other Member States of the European Union and that cultivated fungi are transported to the territory of harvest only three days or less before the first harvest;

3. The general prohibition on misleading the consumer as regards the country of origin of foodstuffs, laid down in Article 2(1)(a)(i) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs and Article 7(1)(a) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13, Commission Directives 2002/67/EC and 2008/5/EC of the Commission and Regulation (EC) No 608/2004 of the Commission, does not apply, in so far as concerns fresh fruit and vegetables, to the indication of origin required under Article 113a(1) of Regulation No 1234/2007, as amended by Regulation (EC) No 361/2008 and Article 76(1) of Regulation No 1308/2013;

4. Union law must be interpreted as meaning that explanatory notes may not be imposed in addition to the indication of the country of origin required under Article 113a(1) of Regulation No 1234/2007, as amended by Regulation No 361/2008, and Article 76(1) of Regulation No 1308/2013, in order to avoid misleading the consumer in accordance with the prohibition laid down in Article 2(1)(a)(i) of Directive 2000/13 and Article 7(1)(a) of Regulation No 1169/2011.

(1) OJ C 104, 19.3.2018.

Judgment of the Court (Third Chamber) of 12 September 2019 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Bayer Pharma AG v Richter Gedeon Vegyészeti Gyár Nyrt., Exeltis Magyarország Gyógyszerkereskedelmi Kft.

(Case C-688/17) ([1])

(Reference for a preliminary ruling — Intellectual property — Patents — Directive 2004/48/EC — Article 9(7) — Placing on the market of products infringing a patent right — Provisional measures — Patent subsequently declared invalid — Consequences — Right to appropriate compensation for losses caused by the provisional measures)

(2019/C 383/12)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Bayer Pharma AG
Defendants: Richter Gedeon Vegyészeti Gyár Nyrt., Exeltis Magyarország Gyógyszerkereskedelmi Kft.

Operative part of the judgment

Article 9(7) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, in particular, the concept of 'appropriate compensation' referred to in that provision, must be interpreted as not precluding national legislation which provides that a party shall not be compensated for losses which he has suffered due to his not having acted as may generally be expected in order to avoid or mitigate his loss and which, in circumstances such as those in the main proceedings, results in the court not making an order for provisional measures against the applicant obliging him to provide compensation for losses caused by those measures even though the patent on the basis of which those had been requested and granted has subsequently been found to be invalid, to the extent that that legislation permits the court to take due account of all the objective circumstances of the case, including the conduct of the parties, in order, inter alia, to determine that the applicant has not abused those measures.

([1]) OJ C 112, 26.3.2018.

Judgment of the Court (Fourth Chamber) of 12 September 2019 — European Commission v Kolachi Raj Industrial (Private) Ltd, European Bicycle Manufacturers Association

(Case C-709/17 P) ([1])

(Appeal — Dumping — Implementing regulation (EU) 2015/776 — Import of bicycles consigned from Cambodia, Pakistan and the Philippines — Extension to those imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Regulation (EC) No 1225/2009 — Article 13 — Circumvention — Assembly operations — Provenance and origin of bicycle parts — Parts consigned from China to Sri Lanka, worked in Sri Lanka and then consigned from Sri Lanka to Pakistan for assembly)

(2019/C 383/13)

Language of the case: English

Parties

Appellant: European Commission (represented by: M. França, J.-F. Brakeland and A. Demeneix, Agents)

Other parties to the proceedings: Kolachi Raj Industrial (Private) Ltd (represented by: P. Bentley QC), European Bicycle Manufacturers Association, (represented by: J. Beck, Solicitor, and by L. Ruessmann, avocat)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 10 October 2017, Kolachi Raj Industrial v Commission (T-435/15, EU:T:2017:712);

2. Dismisses the action for annulment brought by Kolachi Raj Industrial (Private) Ltd;

3. Orders Kolachi Raj Industrial (Private) Ltd to bear its own costs and to pay the costs incurred by the European Commission and the European Bicycle Manufacturers Association (EBMA) in relation to both the proceedings at first instance and the appeal proceedings.

([1]) OJ C 112, 26.3.2018.

Judgment of the Court (Fifth Chamber) of 5 September 2019 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Verein für Konsumenteninformation v Deutsche Bahn AG

(Case C-28/18) ([1])

(Reference for a preliminary ruling — Technical and business requirements for credit transfers and direct debits in euro — Regulation (EU) No 260/2012 — Single euro payments area (SEPA) — Payment by direct debit — Article 9(2) — Accessibility of payments — Residence condition)

(2019/C 383/14)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: Verein für Konsumenteninformation

Respondent: Deutsche Bahn AG

Operative part of the judgment

Article 9(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by direct debit in euros under the European Union-wide direct debit scheme (SEPA direct debit) where the payer does not have his place of residence in the same Member State as that in which the payee has established his place of business.

([1]) OJ C 104, 19.3.2018.

Judgment of the Court (Second Chamber) of 11 September 2019 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Caseificio Sociale San Rocco Soc. coop. arl and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-46/18) ([1])

(Reference for a preliminary ruling — Milk and milk products sector — Quotas — Additional levy — Regulation (EEC) No 3950/92 — Article 2 — Collection of the levy by the purchaser — Deliveries exceeding the reference quantity available to producers — Amount from the price of the milk — Compulsory application of a deduction — Reimbursement of the amount of excess levy — Regulation (EC) No 1392/2001 — Article 9 — Buyer — Failure to comply with obligation to collect additional levy — Producers — Failure to comply with the monthly payment obligation — Protection of legitimate expectations)

(2019/C 383/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Caseificio Sociale San Rocco Soc. coop. arl, S.s. Franco and Maurizio Artuso, Claudio Matteazzi, Roberto Tellatin, Sebastiano Bolzon

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

Operative part of the judgment

1. Article 2 of Council Regulation (EEC) No 3950/92, of 28 December 1992, establishing an additional levy in the milk and milk products sector, as amended by Council Regulation (EC) No 1256/1999, of 17 May 1999, must be interpreted as meaning that a finding that the national legislation governing the arrangements for the buyer to collect the additional levy from producers is incompatible with that provision does not mean that producers subject to that legislation are no longer liable to pay that levy.

2. Article 2(4) of Regulation No 3950/92, as amended by Regulation No 1256/1999, read in conjunction with Article 9 of Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 must be interpreted as precluding national legislation such as that at issue in the main proceedings, which provides that the reimbursement of the overpayment of the additional levy must benefit, as a priority, producers who, pursuant to a provision of national law incompatible with Article 2(2) of Regulation No 3950/92, as amended by Regulation No 1256/1999, have fulfilled their monthly payment obligation.

3. The principle of the protection of legitimate expectations must be interpreted as not precluding, in a situation such as that at issue in the main proceedings, recalculation of the amount of the additional levy due by producers who have not fulfilled the obligation, provided for by the applicable national legislation, to pay that levy on a monthly basis.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (Sixth Chamber) of 12 September 2019 (requests for a preliminary ruling from the Landesverwaltungsgericht Steiermark — Austria) — Zoran Maksimovic (C-64/18), Humbert Jörg Köfler (C-140/18, C-146/18 and C-148/18), Wolfgang Leitner (C-140/18 and C-148/18), Joachim Schönbeck (C-140/18 and C-148/18), Wolfgang Semper (C-140/18 and C-148/18) v Bezirkshauptmannschaft Murtal

(Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18) ([1])

(References for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Posting of workers — Retention and translation of records of wages — Work permit — Penalties — Proportionality — Fines of a minimum predefined amount — Cumulative — No upper limit — Court costs — Custodial sentence in lieu of a fine)

(2019/C 383/16)

Language of the case: German

Referring court

Landesverwaltungsgericht Steiermark

Parties to the main proceedings

Applicants: Zoran Maksimovic (C-64/18), Humbert Jörg Köfler (C-140/18, C-146/18 and C-148/18), Wolfgang Leitner (C-140/18 and C-148/18), Joachim Schönbeck (C-140/18 and C-148/18), Wolfgang Semper (C-140/18 and C-148/18)

Defendant: Bezirkshauptmannschaft Murtal

Intervener: Finanzpolizei

Operative part of the judgment

Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides, in respect of non-compliance with labour law obligations in relation to obtaining administrative permits and keeping records on wages, for fines to be imposed:

— which may not be lower than a predefined minimum amount;

— which apply cumulatively in respect of each worker concerned and without an upper limit;

— to which is added a contribution to court costs of 20 % of the amount of the fines if the appeal against the decision imposing those fines is dismissed, and

— which are replaced by custodial sentences in the event of non-payment.

([1]) OJ C 259, 23.7.2018.

Judgment of the Court (First Chamber) of 4 September 2019 (request for a preliminary ruling from the Vestre Landsret — Denmark) — Skatteministeriet v KPC Herning

(Case C-71/18) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Sale of land on which a building is located at the time of supply — Classification — Articles 12 and 135 — Concept of 'building land' — Concept of 'building' — Assessment of the economic and commercial reality — Evaluation of objective evidence — Intention of the parties)

(2019/C 383/17)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: KPC Herning

Operative part of the judgment

Article 12(1)(a) and (b), (2) and (3) and Article 135(1)(j) and (k) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a supply of land supporting a building at the date of that supply cannot be classified as a supply of 'building land' where that transaction is economically independent of other services and does not form a single transaction with them, even if the parties' intention was that the building should be wholly or partly demolished to make room for a new building.

([1]) OJ C 134, 16.4.2018.

Judgment of the Court (Grand Chamber) of 10 September 2019 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Nalini Chenchooliah v Minister for Justice and Equality

(Case C-94/18) ([1])

(Reference for a preliminary ruling — Citizenship of the Union — Article 21 TFEU — Right of Union citizens and their family members to move and reside freely in the territory of a Member State — Directive 2004/38/EC — Article 3(1) and Articles 15, 27, 28, 30 and 31 — Definition of 'beneficiary' — Third-country national, the spouse of a Union citizen who has exercised his right to freedom of movement — Return of the Union citizen to the Member State of which he is a national, where he is serving a prison sentence — Requirements imposed on the host Member State under Directive 2004/38/EC when making a decision to remove such a third-country national)

(2019/C 383/18)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Nalini Chenchooliah

Defendant: Minister for Justice and Equality

Operative part of the judgment

Article 15 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, is to be interpreted as being applicable to a decision to expel a third-country national on the ground that that person no longer has a right of residence under the directive in a situation, such as that at issue in the main proceedings, where the third-country national concerned married a Union citizen at a time when that citizen was exercising his right to freedom of movement by moving to and residing with that third-country national in the host Member State and, subsequently, the Union citizen returned to the Member State of which he is a national. It follows that the relevant safeguards laid down in Articles 30 and 31 of Directive 2004/38 are applicable when such an expulsion decision is adopted and it is not possible, under any circumstances, for such a decision to impose a ban on entry into the territory.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Fifth Chamber) of 12 September 2019 — Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ v European Union Intellectual Property Office (EUIPO), Joaquín Nadal Esteban

(Case C-104/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Absolute grounds for invalidity — Article 52(1)(b) — Bad faith at the time that an application for a trade mark is filed)

(2019/C 383/19)

Language of the case: English

Parties

Appellant: Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ (represented by: J. Güell Serra and E. Stoyanov Edissonov, abogados)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: J. Crespo Carrillo, acting as Agent), Joaquín Nadal Esteban (represented by: J.L. Donoso Romero, abogado)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 30 November 2017, Koton Mağazacilik Tekstil Sanayi ve Ticaret v EUIPO — Nadal Esteban (STYLO & KOTON) (T-687/16, EU:T:2017:853).

2. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 14 June 2016 (Case R 1779/2015-2).

3. Rejects the claim that the contested mark should be declared invalid.

4. Orders Mr Joaquín Nadal Esteban and the European Union Intellectual Property Office (EUIPO) to pay, in equal parts, the costs incurred by Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ both of the proceedings at first instance in Case T-687/16 and of the appeal.

(1) OJ C 152, 30.4.2018.

Judgment of the Court (Grand Chamber) of 10 September 2019 — HTTS Hanseatic Trade Trust & Shipping GmbH v Council of the European Union, European Commission

(Case C-123/18 P) (1)

(Appeal — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran — Compensation for the damage allegedly suffered by the appellant following its inclusion in the list of persons and entities subject to the freezing of funds and economic resources — Action for damages — Conditions which must be met in order for the European Union to incur non-contractual liability — Concept of 'sufficiently serious breach of a rule of EU law' — Assessment — Concept of 'company owned or controlled' — Obligation to state reasons)

(2019/C 383/20)

Language of the case: German

Parties

Appellant: HTTS Hanseatic Trade Trust & Shipping GmbH (represented by M. Schlingmann, Rechtsanwalt)

Other parties to the proceedings: Council of the European Union (represented by J.-P. Hix and M. Bishop, acting as Agents), European Commission (represented initially by R. Tricot, M. Kellerbauer and C. Zadra, and subsequently by R. Tricot, C. Hödlmayr and C. Zadra, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 13 December 2017, HTTS v Council (T-692/15, EU:T:2017:890);

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

3. Reserves the costs.

(1) OJ C 161, 7.5.2018.

Judgment of the Court (First Chamber) of 11 September 2019 (request for a preliminary ruling from the Landgericht Bonn — Germany) — Antonio Romano, Lidia Romano v DSL Bank — eine Niederlassung der DB Privat- und Firmenkundenbank AG, formerly DSL Bank — a business division of Deutsche Postbank AG

(Case C-143/18) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2002/65/EC — Distance consumer loan contract — Right of withdrawal — Exercising the right of withdrawal after the contract has been performed in full at the consumer's express request — Communication to the consumer of information regarding the right of withdrawal)

(2019/C 383/21)

Language of the case: German

Referring court

Landgericht Bonn

Parties to the main proceedings

Applicants: Antonio Romano, Lidia Romano

Defendant: DSL Bank — eine Niederlassung der DB Privat- und Firmenkundenbank AG, formerly DSL Bank — a business division of Deutsche Postbank AG

Operative part of the judgment

1. Article 6(2)(c) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC, read in conjunction with Article 1(1) thereof and in the light of recital 13 of that Directive, must be interpreted as precluding national legislation, as interpreted by national case-law, which, as regards a contract for financial services concluded at a distance between a trader and a consumer, does not exclude the consumer's right of withdrawal where the contract has been performed in full by both parties at the express request of the consumer, before the consumer exercises his right of withdrawal. It is for the national court to take into account all national law and to apply methods of interpretation recognised by that law in order to achieve an outcome consistent with that provision by amending, where necessary, established national case-law based on an interpretation of national law that is incompatible with that provision;

2. Article 5(1) of Directive 2002/65, read in conjunction with Article 3(1)(3)(a) and Article 6(2)(c) of that directive, must be interpreted as meaning that the obligation of a trader, who concludes a contract for financial services with a consumer at a distance, to communicate in a manner that would be clear and comprehensible to an average consumer who is reasonably well informed and reasonably observant and circumspect, in accordance with the requirements of EU law, before that consumer is bound by a distance contract or offer, the information regarding the existence of the right of withdrawal, is not infringed where that trader informs the consumer that the right of withdrawal does not apply to a contract that had been performed in full by both parties at the express request of the consumer before the consumer exercised his right of withdrawal, even if that information does not accord with national rules, as interpreted by national case-law, which provide that in such a case, the right of withdrawal applies.

([1]) OJ C 182, 28.5.2018.

Judgment of the Court (Second Chamber) of 5 September 2019 (request for a preliminary ruling from the Conseil d'État — France) — Regards Photographiques SARL v Ministre de l'Action et des Comptes publics

(Case C-145/18) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 103(2)(a) — Article 311(1), point 2 — Annex IX, Part A, point 7 — Reduced rate of VAT — Works of art — Concept — Photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies — National legislation restricting the application of the reduced rate of VAT only to photographs that have artistic character)

(2019/C 383/22)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Regards Photographiques SARL

Defendant: Ministre de l'Action et des Comptes publics

Operative part of the judgment

1. In order to be regarded as works of art eligible for the reduced rate of value added tax (VAT) under Article 103(1) and (2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, photographs must meet the criteria set out in that point 7, in that they have been taken by their creator, printed by him or under his supervision, signed and numbered and limited to 30 copies, to the exclusion of all other criteria, in particular the assessment by the competent national tax authority of their artistic character;

2. Article 103(1) and (2)(a) of Directive 2006/112, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which restricts the application of the reduced rate of VAT only to photographs that have artistic character, in so far as the existence of such artistic character is subject to an assessment by the competent national tax authority which is not made within the confines of objective, clear and precise criteria set by that national legislation, making it possible to determine precisely the photographs to which that legislation reserves the application of the reduced rate of VAT, in such a way as to avoid infringing the principle of fiscal neutrality.

([1]) OJ C 161, 7.5.2018.

Judgment of the Court (Fifth Chamber) of 5 September 2019 (request for a preliminary ruling from the Court of Appeal — United Kingdom) — AMS Neve Ltd, Barnett Waddingham Trustees, Mark Crabtree v Heritage Audio SL, Pedro Rodríguez Arribas

(Case C-172/18) ([1])

(Reference for a preliminary ruling — EU trade mark — Regulation (EC) No 207/2009 — Article 97(5) — Jurisdiction — Infringement proceedings — Jurisdiction of the courts of the Member State in which 'the act of infringement has been committed' — Advertising and offers for sale displayed on a website and on social media platforms)

(2019/C 383/23)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicants: AMS Neve Ltd, Barnett Waddingham Trustees, Mark Crabtree

Defendants: Heritage Audio SL, Pedro Rodríguez Arribas,

Operative part of the judgment

Article 97(5) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark must be interpreted as meaning that the proprietor of a European Union trade mark who considers that his rights have been infringed by the use without his consent, by a third party, of a sign identical to that mark in advertising and offers for sale displayed electronically in relation to products that are identical or similar to the goods for which that mark is registered, may bring an infringement action against that third party before a European Union trade mark court of the Member State within which the consumers or traders to whom that advertising and those offers for sale are directed are located, notwithstanding that that third party took decisions and steps in another Member State to bring about that electronic display.

([1]) OJ C 190, 4.6.2018.

Judgment of the Court (Ninth Chamber) of 12 September 2019 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — Pollo del Campo S.c.a., Avi Coop Società Cooperativa Agricola (C-199/18), C.A.F.A.R. — Società Agricola Cooperativa, Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta (C-200/18) v Regione Emilia-Romagna, Azienda Unità Sanitaria Locale 104 di Modena, A.U.S.L. Romagna (C-199/18 and C-200/18) and SAIGI Società Cooperativa Agricola a r.l., MA.GE.MA. Società Agricola Cooperativa v Regione Emilia-Romagna, A.U.S.L. Romagna (C-343/18)

(Joined Cases C-199/18, C-200/18 and C-343/18) ([1])

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 882/2004 — Article 27 — Official controls of feed and food — Financing — Fees or charges payable for official controls — Possibility for the Member States to exempt certain categories of operators — Minimum rates for fees)

(2019/C 383/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Pollo del Campo S.c.a., Avi Coop Società Cooperativa Agricola (C-199/18), C.A.F.A.R. — Società Agricola Cooperativa, Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta (C-200/18) and SAIGI Società Cooperativa Agricola a r.l., MA.GE.MA. Società Agricola Cooperativa (C-343/18)

Respondents: Regione Emilia-Romagna, Azienda Unità Sanitaria Locale 104 di Modena, A.U.S.L. Romagna (C-199/18 and C-200/18) and Regione Emilia-Romagna, A.U.S.L. Romagna (C-343/18)

Operative part of the judgment

1. Article 27 of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules must be interpreted as meaning that Member States are obliged to require the payment of fees relating to official controls on the activities referred to in Annex IV, section A and Annex V, section A to that regulation also from food and feed business operators which carry out the slaughtering and cutting of meat as ancillary activities to their main activity of rearing.

2. Article 27 of Regulation No 882/2004 must be interpreted as meaning that it does not allow a Member State to apply rates for fees which are lower than the minimum rates specified in Annex IV, section B and Annex V, section B to Regulation No 882/2004.

([1]) OJ C 240, 9.7.2018.
OJ C 268, 30.7.2018.

Judgment of the Court (Ninth Chamber) of 5 September 2019 — European Commission v Portuguese Republic

(Case C-290/18) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Wild fauna and flora — Conservation of natural habitats as well as wild fauna and flora — Article 4(4) — Annexes I and II — Sites of Community importance — Non-designation — Special areas of conservation — Necessary measures — Failure to adopt)

(2019/C 383/25)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by P. Costa de Oliveira and C. Hermes, Agents, acting as Agents)

Defendant: Portuguese Republic (represented by L. Ines Fernandes, M. Figueiredo, J. Reis Silva, H. Almeida, A. Pimenta and P. Barros da Costa, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by having failed to designate as special areas of conservation 61 sites of Community importance, which were selected by the European Commission in Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region, and in Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region, as soon as possible and within a period of six years at most from the date on which those decisions were adopted, and, by having failed to adopt the necessary conservation measures which satisfy the ecological requirements of the types of natural habitat referred to in Annex I to Council Directive 92/43/EEC

of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and of the species referred to in Annex II to that directive present on those sites of Community importance, the Portuguese Republic has failed to fulfil its obligations under Article 4(4) and Article 6(1) of that directive;

2. Orders the Portuguese Republic to pay the costs.

([1]) OJ C 249, 16.7.2018.

Judgment of the Court (Sixth Chamber) of 5 September 2019 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — TE v Pohotovosť s.r.o.

(Case C-331/18) ([1])

(Reference for a preliminary ruling — Directive 2008/48/EC — Consumer protection — Consumer credit — Article 10(2)(h) and (i) and Article 10(3) — Information to be included in the agreement — National legislation laying down an obligation to specify for each payment the distribution between the repayment of capital, interest and charges)

(2019/C 383/26)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Appellant: TE

Respondent: Pohotovosť s.r.o.

Operative part of the judgment

1. Article 10(2)(h) to (j) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, in conjunction with Article 22(1) of that directive, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a credit agreement must specify the breakdown of each repayment showing, where applicable, capital amortisation, interest and other charges.

2. Articles 10(2) and 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, Home Credit Slovakia (C-42/15, EU:C:2016:842), are applicable to a credit agreement, such as the one at issue in the main proceedings, which was entered into before that judgment was handed down and before the national legislation was amended in order to comply with the interpretation adopted in that judgment.

([1]) OJ C 294, 20.8.2018.

Judgment of the Court (Tenth Chamber) of 5 September 2019 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Lombardi Srl v Comune di Auletta, Delta Lavori SpA, Msm Ingegneria Srl

(Case C-333/18) ([1])

(Reference for a preliminary ruling — Review procedures on the award of public supply and public works contracts — Directive 89/665/EEC — Action for annulment of the decision awarding a public contract by a tenderer whose bid was unsuccessful — Counterclaim brought by the successful tenderer — Admissibility of the main action in the event that the counterclaim is well founded)

(2019/C 383/27)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Lombardi Srl

Respondents: Comune di Auletta, Delta Lavori SpA, Msm Ingegneria Srl

Intervener: Robertazzi Costruzioni Srl

Operative part of the judgment

The third subparagraph of Article 1(1) and (3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as precluding a main action for review brought by a tenderer with an interest in obtaining a particular contract who has been or could be adversely affected by an alleged breach of EU public procurement law or rules transposing that law, and seeking the exclusion of another tenderer, from being declared inadmissible in application of national jurisprudential procedural rules or which concern the treatment of reciprocal 'excluding' actions brought by the parties, irrespective of the number of tenderers having participated in the procurement procedure or the number of those having brought actions for review.

([1]) OJ C 285, 13.8.2018.

Judgment of the Court (First Chamber) of 4 September 2019 (request for a preliminary ruling from the Tribunale di Milano — Italy) — Avv. Alessandro Salvoni v Anna Maria Fiermonte

(Case C-347/18) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 53 — Certificate relating to a judgment in civil and commercial matters in Annex I — Powers of the court of origin — Automatic verification whether there have been breaches of the rules on jurisdiction concerning consumer contracts)

(2019/C 383/28)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicant: Avv. Alessandro Salvoni

Defendant: Anna Maria Fiermonte

Operative part of the judgment

Article 53 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, as amended by Commission Delegated Regulation (EU) 2015/281 of 26 November 2014 read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding the court of origin which has been requested to issue the certificate provided for in Article 53 of that regulation in respect of a judgment which has acquired the force of res judicata from being able to ascertain of its own motion whether there has been a breach of the rules set out in Chapter II, Section 4 of that regulation, so that it may inform the consumer of any breach that is established and enable him to assess, in full knowledge of the facts, the possibility of availing himself of the remedy provided for in Article 45 of that regulation.

([1]) OJ C 285, 13.8.2018.

Judgment of the Court (Second Chamber) of 5 September 2019 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against AH, PB, CX, KM, PH

(Case C-377/18) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Article 4(1) — Presumption of innocence — Public references to guilt — Agreement concluded between the prosecutor and the perpetrator of an offence — National case-law providing for the identification of accused persons who have not concluded such an agreement — Charter of Fundamental Rights — Article 48)

(2019/C 383/29)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties to the criminal proceedings against

AH, PB, CX, KM, PH

Operative part of the judgment

Article 4(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings must be interpreted as meaning that it does not preclude that an agreement in which the accused person recognises his guilt in exchange for a reduction in sentencing, which must be approved by a national court, expressly mentions as joint perpetrators of the criminal offence in

question not only that person but also other accused persons, who have not recognised their guilt and are being prosecuted in separate criminal proceedings, on the condition that that reference is necessary for the categorisation of the legal liability of the person who entered into the agreement and, second, that that same agreement makes it clear that those other persons are being prosecuted in separate criminal proceedings and that their guilt has not been legally established.

(1) OJ C 294, 20.8.2018.

Judgment of the Court (First Chamber) of 11 September 2019 (request for a preliminary ruling from the Sąd Rejonowy Lublin-Wschód w Lublinie z siedzibą w Świdniku — Poland) — Lexitor sp. z o.o. v Spółdzielcza Kasa Oszczędnościowo — Kredytowa im. Franciszka Stefczyka, Santander Consumer Bank S.A. and mBank S.A.

(Case C-383/18) (1)

(Reference for a preliminary ruling — Consumer protection — Credit agreements for consumers — Directive 2008/48/EC — Article 16(1) — Early repayment — Right of the consumer to a reduction in the total cost of the credit, consisting of the interest and the costs for the remaining duration of the contract)

(2019/C 383/30)

Language of the case: Polish

Referring court

Sąd Rejonowy Lublin-Wschód w Lublinie z siedzibą w Świdniku

Parties to the main proceedings

Applicant: Lexitor sp. z o.o.

Defendants: Spółdzielcza Kasa Oszczędnościowo — Kredytowa im. Franciszka Stefczyka, Santander Consumer Bank S.A. and mBank S.A.

Operative part of the judgment

Article 16(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer.

(1) OJ C 294, 20.8.2018.

Judgment of the Court (First Chamber) of 11 September 2019 (request for a preliminary ruling from the Juzgado de lo Social No 3 de Barcelona — Spain) — DW v Nobel Plastiques Ibérica SA

(Case C-397/18) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(2)(b)(ii) and Article 5 — Prohibition of any discrimination based on a disability — Worker particularly susceptible to occupational risks within the meaning of national law — Existence of a 'disability' — Dismissal for objective reasons based on criteria of productivity, multi-skilling in the undertaking's posts and absenteeism — Particular disadvantage for disabled persons — Indirect discrimination — Reasonable accommodation — Individual who is not competent, capable and available to perform the essential functions of the post concerned)

(2019/C 383/31)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 3 de Barcelona

Parties to the main proceedings

Applicant: DW

Defendant: Nobel Plastiques Ibérica SA

Interveners: Fondo de Garantía Salarial (Fogasa), Ministerio Fiscal

Operative part of the judgment

1. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the state of health of a worker categorised as being particularly susceptible to occupational risks, within the meaning of national law, which prevents that worker from carrying out certain jobs on the ground that such jobs would entail a risk to his or her own health or to other persons, only falls within the concept of 'disability', within the meaning of that directive, where that state leads to a limitation of capacity arising from, inter alia, long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in their professional life on an equal basis with other workers. It is for the national court to determine whether those conditions are satisfied in the main proceedings;

2. Article 2(2)(b)(ii) of Directive 2000/78 must be interpreted as meaning that dismissal for 'objective reasons' of a disabled worker on the ground that he or she meets the selection criteria taken into account by the employer to determine the persons to be dismissed, namely having productivity below a given rate, a low level of multi-skilling in the undertaking's posts and a high rate of absenteeism, constitutes indirect discrimination on grounds of disability within the meaning of that provision, unless the employer has beforehand provided that worker with reasonable accommodation, within the meaning of Article 5 of that directive, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to determine.

([1]) OJ C 294, 20.8.2018.

Judgment of the Court (Fourth Chamber) of 5 September 2019 (request for a preliminary ruling from the Vilniaus apygardos administracinis teismas — Lithuania) — AW, BV, CU, DT v Lietuvos valstybė, represented by the Lietuvos Respublikos ryšių reguliavimo tarnyba, the Bendrasis pagalbos centras and the Lietuvos Respublikos vidaus reikalų ministerija

(Case C-417/18) ([1])

(Reference for a preliminary ruling — Directive 2002/22/EC — Universal service and users' rights relating to electronic communications networks and services — Article 26(5) — Single European emergency call number — Making available caller location information)

(2019/C 383/32)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: AW, BV, CU, DT

Defendant: Lietuvos valstybė, represented by the Lietuvos Respublikos ryšių reguliavimo tarnyba, the Bendrasis pagalbos centras and the Lietuvos Respublikos vidaus reikalų ministerija

Operative part of the judgment

1. Article 26(5) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as requiring the Member States, subject to technical feasibility, to ensure that the undertakings concerned make caller location information available free of charge to the authority handling emergency calls to the single European emergency call number '112' as soon as the call reaches that authority, including in cases where the call is made from a mobile telephone which is not fitted with a SIM card;

2. Article 26(5) of Directive 2002/22, as amended by Directive 2009/136, must be interpreted as conferring on the Member States a measure of discretion when laying down the criteria relating to the accuracy and reliability of the information on the location of the caller to the single European emergency call number '112'; however, the criteria which they lay down must ensure, within the limits of technical feasibility, that the caller's position is located as reliably and accurately as is necessary to enable the emergency services usefully to come to the caller's assistance, this being a matter for the national court to assess;

3. EU law must be interpreted as meaning that where, in accordance with the domestic law of a Member State, the existence of an indirect causal link between the unlawful act committed by the national authorities and the damage sustained by an individual is regarded as sufficient to render the State liable, such an indirect causal link between a breach of EU law attributable to that Member State and the damage sustained by an individual must also be regarded as sufficient for the purposes of rendering that Member State liable for that breach of EU law.

([1]) OJ C 352, 1.10.2018.

Judgment of the Court (Fifth Chamber) of 5 September 2019 — European Commission v Republic of Italy

(Case C-443/18) ([1])

(Failure of a Member State to fulfil its obligations — Protection of plant health — Directive 2000/29/EC — Protection against the introduction into and the spread within the European Union of organisms harmful to plants or plant products — Article 16(1) and (3) — Implementing decision (EU) 2015/789 — Measures to prevent the introduction into and the spread within the European Union of Xylella fastidiosa (Wells et al.) — Article 7(2)(c) — Containment measures — Obligation immediately to remove infected plants within a 20-kilometre strip in the infected zone — Article 7(7) — Obligation to monitor — Annual surveys — Article 6(2), (7) and (9) — Eradication measures — Persistent and general failure — Article 4(3) TEU — Obligation of sincere cooperation)

(2019/C 383/33)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B. Eggers and D. Bianchi, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and S. Fiorentino and G. Caselli, avvocati dello Stato)

Operative part of the judgment

The Court:

1. Declares that the Italian Republic,

   — by failing to ensure, in the containment area, the immediate removal of at least all plants which have been found to be infected by Xylella fastidiosa if they are situated within a distance of 20 km from the border of the infected zone with the rest of the Union territory, has failed to fulfil its obligations under Article 7(2)(c) of Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Wells et al.), as amended by Commission Implementing Decision (EU) 2016/764 of 12 May 2016, and

   — by failing to ensure, in the containment area, that the presence of Xylella fastidiosa was monitored by carrying out annual surveys at appropriate times during the year, has failed to fulfil its obligations under Article 7(7) of the implementing decision;

2. Dismisses the remainder of the action;

3. Orders the European Commission and the Italian Republic to bear their own costs.

([1]) OJ C 294, 20.8.2018.

Judgment of the Court (Third Chamber) of 5 September 2019 (request for a preliminary ruling from the Judecătoria Constanța — Romania) — R v P

(Case C-468/18) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matters relating to maintenance obligations — Regulation (EC) No 4/2009 — Article 3(a) and (d) and Article 5 — Court seised of three joined claims concerning the divorce of the parents of a minor child, parental responsibility and the maintenance obligation with regard to that child — Court declaring that it has jurisdiction relating to the divorce and no jurisdiction relating to parental responsibility — Jurisdiction to entertain proceedings with regard to the claim concerning the maintenance obligation — Court for the place where the defendant is habitually resident and before which he has entered an appearance)

(2019/C 383/34)

Language of the case: Romanian

Referring court

Judecătoria Constanța

Parties to the main proceedings

Applicant: R
Defendant: P

Operative part of the judgment

Article 3(a) and (d) and Article 5 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations must be interpreted as meaning that where there is an action before a court of a Member State which includes three claims concerning, respectively, the divorce of the parents of a minor child, parental responsibility in respect of that child and the maintenance obligation with regard to that child, the court ruling on the divorce, which has declared that it has no jurisdiction to rule on the claim concerning parental responsibility, nevertheless has jurisdiction to rule on the claim concerning the maintenance obligation with regard to that child where it is also the court for the place where the defendant is habitually resident or the court before which the defendant has entered an appearance, without contesting the jurisdiction of that court.

([1]) OJ C 381, 22.10.2018.

Judgment of the Court (Eighth Chamber) of 4 September 2019 (request for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — GP v Bundesagentur für Arbeit, Familienkasse Baden-Württemberg West

(C-473/18) ([1])

(Reference for a preliminary ruling — Social security — Migrant workers — EU rules on the conversion of currencies — Regulation (EC) No 987/2009 — Decision No H3 of the Administrative Commission for the coordination of social security systems — Calculation of the differential supplement for family allowance, owed to a worker residing in a Member State and working in Switzerland — Determination of the reference date for the exchange rate)

(2019/C 383/35)

Language of the case: German

Referring court
Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicants: GP

Defendants: Bundesagentur für Arbeit, Familienkasse Baden-Württemberg West

Operative part of the judgment

1. With regard to the currency conversion of a dependent child benefit with a view to determining the amount of differential supplement, if any, under Article 68(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, the application and the interpretation of Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004, and of Decision No H3 of the Administrative Commission for the coordination of social security systems of 15 October 2009 concerning the date to be taken into consideration for determining the exchange rate referred to in Article 90 of Regulation No 987/2009, are unaffected by the fact that the benefit is paid in Swiss francs by a Swiss institution.

2. Decision No H3 of 15 October 2009 must be interpreted as meaning that Paragraph 2 thereof applies for the purposes of a currency conversion of dependent child benefits with a view to determining the amount of differential supplement, if any, under Article 68(2) of Regulation No 883/2004, as amended by Regulation No 988/2009.

3. Paragraph 2 of Decision No H3 of 15 October 2009 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the concept of 'the day when the operation is performed by the institution', within the meaning of that provision, refers to the day on which payment of the family benefit in question is made by the competent institution of the State of employment.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Seventh Chamber) of 11 September 2019 — HX v Council of the European Union

(Case C-540/18 P) ([1])

(Appeal — Restrictive measures taken against the Syrian Arab Republic — Measures directed against influential businessmen and women engaged in activities in Syria — Proof that inclusion on the lists is well founded)

(2019/C 383/36)

Language of the case: Bulgarian

Parties

Appellant: HX (represented by: S. Koev, advokat)

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

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders HX to bear his own costs and to pay those incurred by the Council of the European Union.

([1]) OJ C 408, 12.11.2018

Judgment of the Court (Fifth Chamber) of 12 September 2019 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — AS v Deutsches Patent- und Markenamt

(Case C-541/18) ([1])

(Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Article 3(1)(b) — Distinctive character — Criteria for assessment — Sign comprising a hashtag)

(2019/C 383/37)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: AS

Defendant: Deutsches Patent- und Markenamt

Operative part of the judgment

Article 3(1)(b) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that in examining the distinctive character of a sign in respect of which registration as a trade mark is sought, all the relevant facts and circumstances must be taken into account, including all the likely types of use of the mark applied for. The latter correspond, in the absence of other indications, to the types of use which, in the light of the customs in the economic sector concerned, can be practically significant.

([1]) OJ C 436, 3.12.2018

Judgment of the Court (Sixth Chamber) of 5 September 2019 (request for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — TDK-Lambda Germany GmbH v Hauptzollamt Lörrach

(Case C-559/18) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs Union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheading 85044030 — Static converters — Classification criteria — Main intended use)

(2019/C 383/38)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: TDK-Lambda Germany GmbH

Defendant: Hauptzollamt Lörrach

Operative part of the judgment

Subheading 85 044 030 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, and Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013, must be interpreted as meaning that static converters such as those at issue in the main proceedings may fall within that subheading only if the main use for which they are intended is with 'telecommunication apparatus or automatic data processing machines and the units thereof', within the meaning of that subheading, which is a matter for verification by the referring court.

([1]) OJ C 436, 3.12.2018.

Order of the Court (Ninth Chamber) of 5 September 2019 (request for a preliminary ruling from the High Court of Justice (Chancery Division) – United Kingdom) — Eli Lilly and Company v Genentech Inc.

(Case C-239/19) ([1])

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Supplementary protection certificate for medicinal products — Regulation (EC) No 469/2009 — Article 3(b) — Conditions for obtaining — Marketing authorisation — Authorisation issued to a third party — Manifest inadmissibility)

(2019/C 383/39)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Eli Lilly and Company

Defendant: Genentech Inc.

Operative part of the order

The request for a preliminary ruling from the High Court of Justice (England & Wales), Chancery Division (Patents Court) (United Kingdom), made by decision of 4 March 2019, is manifestly inadmissible.

([1]) OJ C 172, 20.5.2019

Appeal brought on 30 January 2019 by João Miguel Barata against the judgment of the General Court (Second Chamber) delivered on 20 November 2018 in Case T-854/16: Barata v Parliament

(Case C-71/19 P)

(2019/C 383/40)

Language of the case: English

Parties

Appellant: João Miguel Barata (represented by G. Pandey and D. Rovetta, avocats, and by J. Grayston, Solicitor)

Other party to the proceedings: European Parliament

By order of 26 September 2019 the Court of Justice (Ninth Chamber) held that the appeal is dismissed as being in part manifestly inadmissible and in part manifestly unfounded and that Mr João Miguel Barata shall bear his own costs.

Request for a preliminary ruling from the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Romania) lodged on 25 February 2019 — KE v LF

(Case C-185/19)

(2019/C 383/41)

Language of the case: Romanian

Referring court

Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj

Parties to the main proceedings

Applicant: KE

Defendant: LF

By Order of 24 September 2019, the Court (Sixth Chamber) declared the request for a preliminary ruling manifestly inadmissible and declared that it manifestly lacks jurisdiction to give a ruling thereon.

Appeal brought on 27 May 2019 by Xianhao Pan against the judgment of the General Court (Eighth Chamber) delivered on 21 March 2019 in Case T-777/17: Pan v EUIPO - Entertainment One UK (TOBBIA)

(Case C-412/19 P)

(2019/C 383/42)

Language of the case: English

Parties

Appellant: Xianhao Pan (represented by: M. Oliva, avvocato)

Other parties to the proceedings: European Union Intellectual Property Office, Entertainment One UK Ltd

By order of 12 July 2019 of the Vice-President the Court of Justice held that the appeal is dismissed as inadmissible.

Appeal brought on 14 June 2019 by Stada Arzneimittel AG against the judgment of the General Court (Seventh Chamber) delivered on 4 April 2019 in Case T-804/17, Stada Arzneimittel AG v European Union Intellectual Property Office (EUIPO)

(Case C-460/19 P)

(2019/C 383/43)

Language of the case: German

Parties

Appellant: Stada Arzneimittel AG (represented by: A.K. Marx, R. Kaase, J.-C. Plate, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

By order of 1 October 2019, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 16 July 2019 — XW v Eurowings GmbH

(Case C-541/19)

(2019/C 383/44)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: XW

Defendant: Eurowings GmbH

Questions referred

Is the total flight distance to be used as a basis for calculating the entitlement to compensation under Article 7 of Regulation (EC) No 261/2004 ([1]) also in the case where the arrival of a passenger at the final destination is delayed by three hours or more solely as a result of a delay/cancellation of the connecting flight, but the feeder flight was on time, the two flights were operated by different air carriers and the flights were booked together?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 16 July 2019 — YX v Eurowings GmbH

(Case C-542/19)

(2019/C 383/45)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: YX

Defendant: Eurowings GmbH

Question referred

Is the total flight distance to be used as a basis for calculating the entitlement to compensation under Article 7 of Regulation (EC) No 261/2004 ([1]) also in the case where the arrival of a passenger at the final destination is delayed by three hours or more solely as a result of a delay/cancellation of the connecting flight, but the feeder flight was on time, the two flights were operated by different air carriers and the flights were booked together?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 29 July 2019 — PL v Deutsche Lufthansa AG

(Case C-574/19)

(2019/C 383/46)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: PL

Defendant: Deutsche Lufthansa AG

The case was removed from the register of the Court of Justice by Order of the President of the Court of 23 September 2019.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 30 July 2019 — FRENETIKEXITO — UNIPESSOAL, LDA v Autoridade Tributária e Aduaneira

(Case C-581/19)

(2019/C 383/47)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: FRENETIKEXITO — UNIPESSOAL

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Where, as occurs in this case, a company

   (a) carries on, principally, fitness and physical well-being activities and, on a secondary basis, human health activities, which include nutrition services, nutrition/dietary advice, fitness assessment services and massages; and

   (b) offers its customers plans that include only fitness services and plans that include nutrition services in addition to fitness services,

   for the purposes of Article 2(1)(c) of Directive 2006/112/EC of 28 November 2006, ([1]) must the human health activity, and the nutrition service in particular, be regarded as ancillary to the fitness and physical well-being activity, with the effect that the ancillary supply must be given the same tax treatment as the principal supply, or, on the contrary, must the human health activity, and the nutrition service in particular, be regarded as independent of and distinct from the fitness and physical well-being activity, with the effect that the tax treatment established for each of those activities will apply to that activity?

2. For the purposes of applying the exemption under Article 132(1)(c) of Directive 2006/112/EC of 28 November 2006, must the services listed in that article actually be supplied, or is it sufficient in order for that exemption to apply that they are merely made available, so that use of those services depends solely on the wishes of the customer?

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

Request for a preliminary ruling from the Landesgericht für Strafsachen Wien (Austria) lodged on 2 August 2019 — Criminal proceedings against A*** and further unknown perpetrators**

(Case C-584/19)

(2019/C 383/48)

Language of the case: German

Referring court

Landesgericht für Strafsachen Wien

Parties to the main proceedings

Applicant: Staatsanwaltschaft Wien

Accused: A***** and further unknown perpetrators

Other parties: Staatsanwaltschaft Hamburg

Question referred

Are the terms 'judicial authority' within the meaning of Article 1(1) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order ([1]) in criminal matters and 'public prosecutor' within the meaning of Article 2(c)(i) of the aforementioned Directive to be interpreted as also including the public prosecutor's offices of a Member State which are exposed to the risk of being directly or indirectly subject to orders or individual instructions from the executive, such as the Senator of Justice in Hamburg, in the context of the adoption of a decision on the issuance of a European investigation order?

([1]) OJ 2014 L 130, p. 1.

Request for a preliminary ruling from the Ondernemingsrechtbank Antwerpen (Belgium) lodged on 6 August 2019 — M.I.C.M. Mircom International Content Management & Consulting Limited v Telenet BVBA

(Case C-597/19)

(2019/C 383/49)

Language of the case: Dutch

Referring court

Ondernemingsrechtbank Antwerpen

Parties to the main proceedings

Applicant: M.I.C.M. Mircom International Content Management & Consulting Limited

Defendant: Telenet BVBA

Questions referred

1. (a) Can the downloading of a file via a peer-to-peer network and the simultaneous provision for uploading of parts ('pieces') thereof (which may be very fragmentary as compared to the whole) ('seeding') be regarded as a communication to the public within the meaning of Article 3(1) of Directive 2001/29, ([1]) even if the individual pieces as such are unusable?

   If so,

   (b) is there a *de minimis* threshold above which the seeding of those pieces would constitute a communication to the public?

   (c) is the fact that seeding can take place automatically (as a result of the torrent client's settings), and thus without the user's knowledge, relevant?

2. (a) Can a person who is the contractual holder of the copyright (or related rights), but does not himself exploit those rights and merely claims damages from alleged infringers — and whose economic business model thus depends on the existence of piracy, not on combating it — enjoy the same rights as those conferred by Chapter II of Directive 2004/48 ([2]) on authors or licence holders who do exploit copyright in the normal way?

   (b) How can the licence holder in that case have suffered 'prejudice' (within the meaning of Article 13 of Directive 2004/48) as a result of the infringement?

3. Are the specific circumstances set out in questions 1 and 2 relevant when assessing the correct balance to be struck between, on the one hand, the enforcement of intellectual property rights and, on the other, the rights and freedoms safeguarded by the Charter, such as respect for private life and protection of personal data, in particular in the context of the assessment of proportionality?

4. Is, in all those circumstances, the systematic registration and general further processing of the IP-addresses of a 'swarm' of 'seeders' (by the licence holder himself, and by a third party on his behalf) legitimate under the General Data Protection Regulation, ([3]) and specifically under Article 6(1)(f) thereof?

([1]) 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).

([2]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

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

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny we Wrocławiu (Poland) lodged on 9 August 2019 — Gmina Wrocław v Dyrektor Krajowej Informacji Skarbowej

(Case C-604/19)

(2019/C 383/50)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: Gmina Wrocław

Defendant: Dyrektor Krajowej Informacji Skarbowej

Questions referred

1. Does the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law, such as in the circumstances of the present case, constitute a supply of goods within the meaning of Article 14(2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) read in conjunction with Article 2(1)(a) thereof, which is subject to value added tax ('VAT')?

2. If the answer to Question 1 is in the negative, does the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law constitute a supply of goods within the meaning of Article 14(1) of Directive 2006/112, read in conjunction with Article 2(1)(a) thereof, which is subject to VAT?

3. Does a municipality that charges fees for the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law, such as in the circumstances of the present case, act as a taxable person within the meaning of Article 9(1) of Directive 2006/112, read in conjunction with Article 2(1)(a) thereof, or as a public authority within the meaning of Article 13 of that directive?

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

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 20 August 2019 — Land Nordrhein-Westfalen v D.-H. T., acting as insolvency administrator in relation to the assets of J & S Service UG (limited liability)

(Case C-620/19)

(2019/C 383/51)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant on a point of law, appellant in the first appeal and defendant: Land Nordrhein-Westfalen

Respondent in the appeal on a point of law, respondent in the first appeal and applicant: D.-H. T., acting as insolvency administrator in relation to the assets of J & S Service UG (limited liability)

Interested party: the representative of the federal interest before the Bundesverwaltungsgericht

Questions referred

1. Does Article 23(1)(j) of Regulation (EU) 2016/679 (1) also serve to protect the interests of financial authorities?

2. If so, does the wording 'the enforcement of civil law claims' also cover the defence of the financial authority against civil law claims and must such claims already have been submitted?

3. Does the provision of Article 23(1)(e) of Regulation (EU) 2016/679 relating to the protection of an important financial interest of a Member State in taxation matters allow a restriction of the right of access under Article 15 of Regulation (EU) 2016/279 in relation to the defence of civil law insolvency avoidance claims against the financial authority?

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

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 22 August 2019 — Openbaar Ministerie v XD

(Case C-625/19)

(2019/C 383/52)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: XD

Question referred

Can a Public Prosecutor who participates in the administration of justice in the issuing Member State, who acts independently in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant, and who has issued an EAW, be regarded as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584/JHA [1] if a judge in the issuing Member State has assessed the conditions for issuing an EAW and, in particular, its proportionality prior to the actual decision of that Public Prosecutor to issue the EAW?

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

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 22 August 2019 — Openbaar Ministerie v YC

(Case C-626/19)

(2019/C 383/53)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: YC

Questions referred

1. Can a Public Prosecutor who participates in the administration of justice in the issuing Member State, who acts independently in the execution of those of his responsibilities which are inherent in the issuing of a European arrest warrant, and who has issued an EAW, be regarded as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584/JHA ([1]) if a judge in the issuing Member State has assessed the conditions for issuing an EAW and, in particular, the proportionality thereof, prior to the actual decision of that Public Prosecutor to issue the EAW?

2. If the answer to the first question is in the negative: has the condition been met that the decision of the Public Prosecutor to issue an EAW and, in particular, the question of its proportionality, must be capable of being the subject of court proceedings which meet in full the requirements inherent in effective judicial protection as referred to in paragraph 75 of the judgment of the Court of Justice of 27 May 2019 (Cases C-508/18 and C-82/19 PPU, EU:C:2019:456) if, after his actual surrender, the requested person can avail of a legal remedy under which the invalidity of the EAW may be invoked before a court in the issuing Member State and under which that court examines, inter alia, whether the decision to issue that EAW was proportionate?

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

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 22 August 2019 — Openbaar Ministerie v ZB

(Case C-627/19)

(2019/C 383/54)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: ZB

Question referred

In the case where an EAW seeks the enforcement of a custodial sentence imposed by an enforceable decision of a judge or court, whereas the EAW has been issued by a Public Prosecutor who participates in the administration of justice in the issuing Member State, and there is a guarantee that he acts independently in the execution of those of his responsibilities which are inherent in the issuing of a European arrest warrant, does the condition also apply that there must be a possibility of instituting court proceedings against the decision to issue an EAW — in particular its proportionality — which meet in full the requirements inherent in effective judicial protection?

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 23 August 2019 — PAGE Internacional Lda. v Autoridade Tributária e Aduaneira

(Case C-630/19)

(2019/C 383/55)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: PAGE Internacional Lda.

Defendant: Autoridade Tributária e Aduaneira

Question referred

Must Article 168(a) and Article 176 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax and the principles of VAT neutrality and of proportionality be interpreted as meaning that the Portuguese legislature is entitled, under Article 21(1)(d) and 21(2)(d) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code), as approved by Decree No 394-B/84 of 26 December 1984, to limit the deductibility of the input VAT on expenditure on food to 50 %, even where the taxable person demonstrates that all that expenditure has been fully applied to the carrying on of its taxed economic activity?

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

Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) lodged on 26 August 2019 — Y v CAK

(Case C-636/19)

(2019/C 383/56)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: Y

Defendant: CAK

Questions referred

1. Must Directive 2011/24/EU ([1]) be interpreted as meaning that persons referred to in Article 24 of Regulation (EC) No 883/2004, ([2]) who receive benefits in their country of residence at the expense of the Netherlands but who are not insured in the Netherlands under the statutory health insurance scheme can rely directly on that directive for the reimbursement of costs of care provided?

If not,

2. Does it follow from Article 56 TFEU that, in a case such as the present one, not granting reimbursement for care provided in a Member State other than the country of residence or the country providing the pension is an unjustified obstacle to the free movement of services?

([1]) Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ 2011 L 88, p. 45).

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

Appeal brought on 9 September 2019 by Changmao Biochemical Engineering Co. Ltd against the judgment of the General Court (Second Chamber) delivered on 28 June 2019 in Case T-741/16: Changmao Biochemical Engineering v Commission

(Case C-666/19 P)

(2019/C 383/57)

Language of the case: English

Parties

Appellant: Changmao Biochemical Engineering Co. Ltd (represented by: K. Adamantopoulos and P. Billiet, avocats)

Other parties to the proceedings: European Commission, Hyet Sweet

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 28 June 2019 in Case T-741/16 in its entirety;

— grant the form of order sought by the appellant in its action before the General Court and annul the Contested Regulation ([1]), in so far as it relates to the appellant, pursuant to Article 61 of the Statute of the Court of Justice; and

— order the defendant and the intervener before the General Court to pay the appellant's costs of this appeal and those of the proceedings before the General Court in Case T-741/16.

In the alternative, the appellant respectfully requests the Court of Justice to:

— refer the case back to the General Court of the European Union for it to rule on the second part of the first plea of the application;

— in the further alternative, refer the case back to the General Court of the European Union for it to rule on any other of the appellant's pleas, as justified by the state of procedure; and

— reserve the costs.

Pleas in law and main arguments

The appellant advances five pleas of appeal.

First plea: the General Court's findings in paragraphs 54, 64-67, 69-70, 78-80, 87, 93 and 97-98 of the judgment under appeal are vitiated by manifest errors in the application of the law and distort the facts in determining that the appellant's accounts were not prepared in accordance with International Accounting Standards ('IAS') and thus failed to satisfy Article 2(7)(c) 2nd indent of the Basic Regulation ([2]). As a further consequence, the General Court erred in law when it declined to examine the appellant's claim under Article 2(7)(c) 3rd indent of the Basic Regulation.

Second plea: the General Court's findings in paragraphs 113, 115-118, 125-126 and 128 -130 of the judgment under appeal are vitiated by manifest errors in the application of the law and distort the facts in determining that the Commission did not infringe Articles 2(7)(a), 6(8) and 9(4) of the Basic Regulation and its duty of care and good administration by failing to request and assess a detailed export transaction listing from the analogue country producer.

Third plea: the General Court's findings in paragraphs 141-144, 152-153 and 155-162 of the judgment under appeal are vitiated by manifest errors in the application of the law and distort the facts in determining that the Commission did not infringe Articles 2(10) and 9(4) of the Basic Regulation, Article 2.4 ADA and its duty of care and good administration by refusing to adjust the normal value and the appellant's export price for dumping margin calculation purposes.

Fourth plea: the General Court's findings in paragraphs 148 and 150 of the judgment under appeal are vitiated by manifest errors in the application of the law and distort the facts in determining that the Commission did not infringe Articles 3(2)(3) and 9(4) of the Basic Regulation, the principle of good administration and its duty of care by not adjusting the Union producer's noninjurious price level on account of differences in additional services, packaging and patent and know how royalties payable by the Union industry.

Fifth plea: the General Court's findings in paragraphs 189-191, 194, 200-201 and 203-206 of the judgment under appeal are vitiated by manifest errors in the application of the law and distort the facts in determining that the Commission did not infringe Articles 2(7)(a) and (10), 3(2)(3)(5), 6(8) and 9(4) of the Basic Regulation, the principle of good administration and its duty of care by failing to ensure that the Union industry's raw material costs from its related supplier were at arm's length without requesting the completion of a related supplier's questionnaire.

([1]) Commission Implementing Regulation (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China (OJ 2016, L 204, p. 92).

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

Appeal brought on 9 September 2019 by BP against the judgment of the General Court (Fifth Chamber) delivered on 11 July 2019 in Case T-838/16: BP v European Union Agency for Fundamental Rights

(Case C-669/19 P)

(2019/C 383/58)

Language of the case: English

Parties

Appellant: BP (represented by: E. Lazar, avocat)

Other party to the proceedings: European Union Agency for Fundamental Rights (FRA)

Form of order sought

The appellant claims that the Court should:

— set aside points 1, 3 and 4 of the operative part of the judgment under appeal; and consequently

— grant the appellant adequate compensation for the non-material and material damage caused;

— grant the appellant adequate compensation related to the consequences of FRA's defamatory statements against her and damage to her professional and personal reputation;

— order FRA to pay the costs in the first instance and appeal.

Pleas in law and main arguments

1) First plea in law, alleging error of law and manifest error of assessment of the admissibility of the new plea in law and of the evidences submitted under Article 85 of the Rules of Procedure; violation of the right to be heard; absence of a fair trial; infringement of the principle of effective judicial protection laid down in Article 47 of the EU Charter; limitation of rights; and breach of Article 52 EU Charter.

2) Second plea in law, alleging error of law and manifest error in the assessment of paragraphs 112, 115 to 117, 126, 140 to 142 of appellant's action for damages related to alleged breach of article 2(3) of Regulation 1049/2001 ([1]), breach of Article 8 ECHR and violation of paragraphs 63-65 of the Bavarian Lager Judgement ([2]); violation of the duty to state reasons in relation to initial partial disclosure erga omnes and subsequent full disclosure of appellant's personal data; breach of the legal equilibrium established by the EU legislator between Regulation 1049/2001 and Regulation 45/2001 ([3]); and violation of the Bavarian Lager Judgement.

3) Third plea in law, alleging violation of Article 134 and 135 of the Rules of Procedure and violation of the duty to state reasons; violation of case law regarding costs; limitation of rights; and breach of Article 52 EU Charter.

4) Fourth plea in law, alleging violation of Article 66 of the Rules of Procedure; refusal to allow the application for omission of certain sensitive information from the judgement T-838/16; subsequent excessive redaction of judgement; as well as absence of a lawful composition of the 5th Chamber with no possibility to act in extended composition or to vote effectively.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001, L 145, p. 43).

([2]) Judgment of 29 June 2010, Commission/Bavarian Lager (C-28/08 P, ECLI:EU:C:2010:378).

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

Appeal brought on 20 September 2019 by Sony Corporation, Sony Electronics, Inc against the judgment of the General Court (Fifth Chamber) delivered on 12 July 2019 in Case T-762/15: Sony et Sony Electornics v Commission

(Case C-697/19 P)

(2019/C 383/59)

Language of the case: English

Parties

Appellants: Sony Corporation, Sony Electronics, Inc (hereinafter referred to as Sony or appellants) (represented by: N. Levy, avocat, R. Snelders, avocat, E.M. Kelly, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— grant the forms of order sought at first instance;

— order the Commission to bear the costs, including the costs of the proceedings at first instance.

In the alternative, should the state of the proceedings not permit a decision by the Court of Justice, the appellants respectfully request that the Court:

— refer the case back to the General Court;

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

In support of the action, the appellants rely on four pleas in law.

First plea: The General Court erred in substituting its own reasoning for that of the decision (Commission's decision in case AT.39639 - Optical Disk Drives C(2015) 7135 final).

— The decision was based on a finding that the appellants participated in 'several separate infringements' that could also be characterized as a single and continuous infringement. The General Court accepted that not all of the individual contacts alleged in the decision were proven.

— Unproven contacts cannot amount to infringements of Article 101(1) TFEU. The General Court nevertheless upheld the decision's finding of a single and continuous infringement based on those unproven contacts forming part of an overall 'body of evidence' on which the Commission could rely. By substituting its own reasoning for that of the decision, the General Court erred in law.

Second plea: The General Court erred in law by upholding the finding of participation a single and continuous infringement for the period alleged based on a more limited number of contacts than had been identified in the decision.

— The General Court wrongly held that Sony participated in the alleged infringement continuously, between August 23, 2004 and September 15, 2006, despite accepting that there was a period of approximately eight months during which the Commission had failed to prove any anticompetitive contacts involving Sony.

— The General Court's reasoning is internally inconsistent, accepting that there were no proven contacts involving Sony for a period of more than six months, but also finding that these contacts took place every 'two or three months'.

Third plea: The General Court erred in law by treating a single continuous infringement as necessarily consisting of a series of separate infringements.

— The General Court failed to find that the Commission had breached Sony's rights of defense, despite the Commission's finding in the decision - without previously alleging in the Statement of Objections - that the alleged conduct amounted not only to a single and continuous infringement but also several separate infringements.

— The General Court wrongly held that the Commission had provided adequate reasons for its finding that Sony had committed several separate infringements.

Fourth plea: The General Court erred in law, breached the principles of equal treatment and proportionality and failed to state reasons, in upholding the fine against Sony based on the same revenues that formed the basis for a separate fine against Lite-On.

— The General Court breached the principle, in the Fining Guidelines, that the value of sales should "reflect the economic importance of the infringement" and the "relative weight of each undertaking in the infringement," and infringed the principles of equal treatment and proportionality.

— The General Court breached its duty to give reasons because it failed properly to address the argument that double counting inflated the economic importance of the infringement.

— The General Court erred in law in dismissing the appellants' argument that the Commission had failed to justify its departure from its established practice.

Appeal brought on 20 September 2019 by Sony Optiarc, Inc, Sony Optiarc America, Inc against the judgment of the General Court (Fifth Chamber) delivered on 12 July 2019 in Case T-763/15: Sony Optiarc, Sony Optiarc America v Commission

(Case C-698/19 P)

(2019/C 383/60)

Language of the case: English

Parties

Appellants: Sony Optiarc, Inc, Sony Optiarc America, Inc (hereinfafter referred to as Sony or appellants) (represented by: N. Levy, avocat, R. Snelders, avocat, E.M. Kelly, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— grant the forms of order sought at first instance;

— order the Commission to bear the costs, including the costs of the proceedings at first instance.

In the alternative, should the state of the proceedings not permit a decision by the Court of Justice, the appellants respectfully request that the Court:

— refer the case back to the General Court;

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

In support of the action, the appellants rely on four pleas in law.

First plea: The General Court erred in substituting its own reasoning for that of the decision (Commission's decision in Case AT.39639 – Optical Disk Drives).

— The decision was based on a finding that the appellants participated in 'several separate infringements' that could also be characterized as a single and continuous infringement. The General Court accepted that not all of the individual contacts alleged in the decision were proven.

— Unproven contacts cannot amount to infringements of Article 101(1) TFEU. The General Court nevertheless upheld the decision's finding of a single and continuous infringement based on those unproven contacts forming part of an overall body of 'evidence and indicia which could be taken into account, considered as a whole' on which the Commission could rely. By substituting its own reasoning for that of the decision, the General Court erred in law.

Second plea: The General Court erred in law by upholding the finding of participation a single and continuous infringement based on a more limited number of contacts than had been identified in the decision.

— The General Court wrongly held that Sony Optiarc participated in the alleged infringement continuously, between July 25, 2007 and October 29, 2008, despite accepting that there was a period of approximately five months during which the Commission had failed to prove any anticompetitive contacts involving Sony Optiarc.

— The General Court's reasoning is internally inconsistent, accepting that there were no proven contacts involving Sony Optiarc for a period of approximately five months, but also finding that 'the longest established period without a contact taking place is only 3 months' and that '[m]ost of the contacts were only a month apart'.

Third plea: The General Court erred in law by treating a single continuous infringement as necessarily consisting of a series of separate infringements.

— The General Court failed to find that the Commission had breached Sony Optiarc's rights of defense, despite the Commission's finding in the decision - without previously alleging in the Statement of Objections - that the alleged conduct amounted not only to a single and continuous infringement but also several separate infringements.

— The General Court wrongly held that the Commission had provided adequate reasons for its finding that Sony Optiarc had committed several separate infringements.

Fourth plea: The General Court erred in law, breached the principles of equal treatment and proportionality, and failed to give reasons, in upholding the fine against Sony Optiarc based on the same revenues that formed the basis for a separate fine against Quanta.

— The General Court breached the principle, in the Fining Guidelines, that the value of sales should "reflect the economic importance of the infringement" and the "relative weight of each undertaking in the infringement," and infringed the principles of equal treatment and proportionality.

— The General Court breached its duty to give reasons because it failed properly to address the argument that double counting inflated the economic importance of the infringement.

— The General Court erred in law in dismissing the appellants' argument that the Commission had failed to justify its departure from its established practice.

Appeal brought on 20 September 2019 by Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corp. against the judgment of the General Court (Fifth Chamber) delivered on 12/07/2019 in Case T-8/16: Toshiba Samsung Storage Technology, Toshiba Samsung Storage Technology Korea v Commission

(Case C-700/19 P)

(2019/C 383/61)

Language of the case: English

Parties

Appellant: Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corp. (hereinafter refferd to as the appellants) (represented by: M. Bay, avvocato, J. Ruiz Calzado, abogado, A. Aresu, avvocato)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the Judgment of the General Court under appeal;

— annul the Commission decision in case COMP/39.639 – Optical Disk Drives at issue in so far as it concerns the appellants;

— annul or reduce the amount of the fine imposed on the appellants in that decision;

— order the Commission to bear the entirety of the costs at first instance and on appeal; and

— make any other order as may be appropriate in the circumstances of the case.

Pleas in law and main arguments

In support of the appeal, the appellants rely on four pleas in law.

First plea in law, alleging errors in law as regards limbs one, two and three of the first plea at first instance, consisting of infringements of essential procedural requirements and of the rights of defence.

Second plea in law, alleging errors of law in stating the legal standard for the existence of a single and continuous infringement.

Third plea in law, alleging violation of the rights of defence and erroneous legal standard.

Fourth plea in law, alleging failure to comply with essential procedural requirements; full inadequacy of the statement of reasons supporting the rejection of the second plea, first part (lack of jurisdiction), at first instance; and errors in the legal test governing the admissibility of evidence.

Appeal brought on 20 September 2019 by Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG against the judgment of the General Court (Seventh Chamber) delivered on 11 July 2019 in Case T-582/15, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG v European Commission

(Case C-702/19 P)

(2019/C 383/62)

Language of the case: German

Parties

Appellants:

Silver Plastics GmbH & Co. KG (represented by: M. Wirtz and S. Möller, Rechtsanwälte)

Johannes Reifenhäuser Holding GmbH & Co. KG (represented by: C. Karbaum, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court of Justice should:

1. set aside the judgment under appeal and refer the case back to the General Court for a fresh examination;

2. in the alternative, set aside the judgment under appeal and annul the contested decision for the second appellant and reduce the fine imposed on the first appellant;

3. in the alternative, set aside the judgment under appeal and reduce the fine imposed jointly and severally on the appellants;

4. order the Commission to pay the costs of the appeal and of the proceedings before the General Court.

Grounds of appeal and main arguments

By the first ground of appeal, the appellants allege that the General Court infringed Article 6(3) TEU, Article 6(1) ECHR and Article 47(2) of the Charter of Fundamental Rights of the European Union, in conjunction with the principle of directness.

Contrary to several requests made by the appellants, the General Court infringed procedural rules in failing to summon Mr W, the significant source of the leniency application that was submitted by competitor L and taken into account to the detriment of the appellants, as a witness and to hear him in person. Furthermore, that Court considered all of the statements made by Mr W, submitted by the appellants in writing and contradicting the leniency application, to be lacking in credibility, but without hearing Mr W in that regard. According to the principle of the direct adduction of evidence, the General Court should have summoned Mr W and heard him (directly) in person in that regard.

By the second ground of appeal, the appellants claim that the General Court infringed the principle of *audi alteram partem* enshrined in Article 6(1) (in conjunction with Article 6(3)(d)) ECHR.

The General Court refused the appellants' request, even after it had been made repeatedly, to directly question Mr W in his capacity as a key source of the leniency application relied on to the detriment of the appellants. It infringed procedural rules in assessing the credibility of the statements made by Mr W in the leniency application without granting a right directly to question him and justified the ruling against the appellants essentially on the basis of those statements without there being any legitimate reasons for restricting the right to question him.

By the third ground of appeal, the appellants argue that there has been an infringement of the principle of equality of arms pursuant to Article 6(3)(d) ECHR.

Contrary to several requests made by the appellants, the General Court infringed procedural rules in failing to hear Mr W in his capacity as a witness on the appellants' behalf even though the Commission had heard Mr W in his capacity as a key source of the leniency application in the previous administrative-fine proceedings without the knowledge and in the absence of the appellants and without preparing a transcript. The refusal to hear in person other witnesses put forward by the appellants to testify on their behalf infringed the principle of equality of arms guaranteed to the appellants.

By the fourth ground of appeal, the appellants allege an infringement of the duty to state reasons pursuant to Article 36 of the Statute of the Court of Justice of the European Union, in conjunction with the first paragraph of Article 53 of that statute, because it was not clear to them (i) on what basis the General Court (positively) infers participation in alleged anti-competitive contacts, (ii) why it regarded the exculpatory (written) statements made by Mr W as lacking credibility and (iii) for what specific reasons it refused to grant the right to question him.

The fifth ground of appeal alleges an infringement of Article 23(3) of Regulation (EC) No 1/2003 ([1]) due to an excessively far-reaching assumption by the General Court that there was one single and continuous infringement.

According to the findings of the General Court, the appellants did not participate in anti-competitive conduct in respect of all product areas during the entire assumed period of the infringement. However, the calculation of the fine confirmed by the General Court was based on the turnover of all product areas for the entire assumed period of the infringement.

By the sixth ground of appeal, the appellants allege an infringement of the first and second sentences of Article 23(2) of Regulation No 1/2003.

The General Court erred in law in assuming that the appellants formed an economic unit and therefore erred in law in including the turnover of the first appellant in the calculation of the fine despite the fact that the appellants had explained why no decisive influence was exercised by the second appellant over the first appellant, thus refuting the presumption of an economic unit applied by the General Court.

By the seventh ground of appeal, the appellants allege an error in the calculation of the fine pursuant to the second subparagraph of Article 23(2) of Regulation No 1/2003 because, in fixing the amount of the fine, the General Court wrongly included the turnover of a former subsidiary of the second appellant. The fine therefore exceeded the statutory upper limit of 10 % of the turnover of the fined undertaking.

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

Appeal brought on 20 September 2019 by CCPL — Consorzio Cooperative di Produzione e Lavoro SC and Others against the judgment of the General Court (Seventh Chamber) delivered on 11 July 2019 in Case T-522/15 CCPL and Others v Commission

(Case C-706/19 P)

(2019/C 383/63)

Language of the case: Italian

Parties

Appellants: CCPL — Consorzio Cooperative di Produzione e Lavoro SC, Coopbox group SpA, Coopbox Eastern s.r.o. (represented by: S. Bariatti, E. Cucchiara, A. Cutrupi, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— annul in part, within the limits set out in the present appeal, the judgment under appeal and, consequently, annul the contested decision as far as concerns the fines imposed on the appellants for infringement of Article 23(2) of Regulation (EC) No 1/2003, ([1]) the principle of proportionality and the principle of adequacy;

— order the Commission to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of the present action, the appellants rely on the following grounds of appeal:

1. First ground of appeal — Error in law, absence or inadequacy of reasoning in relation to the complaints relating to 'parental liability'

   By its first ground of appeal, the appellants claims that the judgment under appeal is vitiated by an error in law and the absence of inadequacy of reasoning in that the General Court ruled that the holding company of the group was liable, even though the intermediary company — which owned the companies involved in the infringement — was found not to be liable.

2. Second ground of appeal — Manifest error of assessment and error in law in relation to the alleged infringement of Article 23 of Regulation No 1/2003

   By the second ground of appeal, the appellants claim that the General Court manifestly erred in law by rejecting the plea relating to the incorrect application of the 10 % limit laid down in Article 23(2) of Regulation No 1/2003, in that the Commission applied that limit to a turnover different to the consolidated turnover, calculated on the basis of the EU accounting consolidation rules. Moreover, the General Court infringed the principles of proportionality and adequacy because of the unacceptable difference in treatment, for the purpose of the calculation of the consolidated turnover referred to in Article 23(2) of Regulation No 1/2003, of, on the one hand, the areas of activity which were transferred on a definitive basis and, on the other hand, those which were leased, on the ground of a presumed difference in terms of economic and substantial profitability.

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

GENERAL COURT

Judgment of the General Court of 10 September 2019 — Poland v Commission

(Case T-883/16) ([1])

(Internal market in natural gas — Directive 2009/73/EC — Commission Decision approving the variation of the conditions for the exemption from EU requirements of the rules governing the operation of the OPAL pipeline with regard to third party access and tariff regulation — Article 36(1) of Directive 2009/73 — Principle of energy solidarity)

(2019/C 383/64)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, K. Rudzińska and M. Kawnik, acting as Agents)

Defendant: European Commission (represented by: O. Beynet and K. Herrmann, acting as Agents)

Interveners in support of the applicants: Republic of Latvia (represented by: I. Kucina, G. Bambāne and V. Soņeca, Agents), and by Republic of Lithuania, (represented: initially by D. Kriaučiūnas, R. Dzikovič and R. Krasuckaitė, and subsequently by R. Dzikovič, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented: initially by T. Henze and R. Kanitz, and subsequently by R. Kanitz, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2016) 6950 final of 28 October 2016 on the review of the conditions for exemption of the OPAL pipeline, granted under Directive 2003/55/EC, from the rules on third party access and tariff regulation.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2016) 6950 final of 28 October 2016 on the review of the conditions for exemption of the OPAL pipeline, granted under Directive 2003/55/EC, from the rules on third party access and tariff regulation;*

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

3. *Orders the Federal Republic of Germany, the Republic of Latvia and the Republic of Lithuania to bear their own costs.*

([1]) OJ C 38, 6.2.2017.

Judgment of the General Court of 11 September 2019 — Topor-Gilka and WO Technopromexport v Council

(Joined Cases T-721/17 and T-722/17) ([1])

(Common foreign and security policy — Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine — Freezing of funds — Obligation to state reasons — Error of assessment)

(2019/C 383/65)

Language of the case: German

Parties

Applicant in Case T-721/17: Sergey Topor-Gilka (Moscow, Russia) (represented by: N. Meyer, lawyer)

Applicant in Case T-722/17: OOO WO Technopromexport (Moscow, Russia) (represented by: N. Meyer, lawyer)

Defendant: Council of the European Union (represented by: J.-P. Hix and E. Salia, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented: initially by T. Henze, J. Möller and R. Kanitz, and subsequently by J. Möller and R. Kanitz, acting as Agents), European Commission (represented by: L. Baumgart, M. Kellerbauer, T. Ramopoulos and E. Schmidt, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Council Decision (CFSP) 2017/1418 of 4 August 2017 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2017 L 203 I, p. 5), of Council Decision (CFSP) 2018/392 of 12 March 2018 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2018 L 69, p. 48), and of Council Decision (CFSP) 2018/1237 of 12 September 2018 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2018 L 231, p. 27).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Sergey Topor-Gilka and OOO WO Technopromexport to bear their own costs and pay the costs incurred by the Council of the European Union;*

3. *Orders the Federal Republic of Germany and the European Commission to bear their own costs.*

([1]) OJ C 424, 11.12.2017.

Judgment of the General Court of 10 September 2019 — Trasys International and Axianseu — Digital Solutions v EASA (Case T-741/17) ([1])

(Public service contracts — Tender procedure — IT application and infrastructure management services — Rejection of a tenderer's offer and award of the contract to other tenderers — Obligation to state reasons — Assessment of the existence of abnormally low tenders — Characteristics and relative merits of the tenders accepted — Request for a statement of reasons from a tenderer who is not in an exclusion situation and whose tender is compliant with the procurement documents)

(2019/C 383/66)

Language of the case: French

Parties

Applicants: Trasys International GEIE (Brussels, Belgium) and Axianseu — Digital Solutions SA (Lisbon, Portugal) (represented by L. Masson and G. Tilman, lawyers)
Defendant: European Aviation Safety Agency (EASA) (represented by S. Rostren, E. Tellado Vásquez and H. Köppen, acting as Agents, and V. Ost, M. Vanderstraeten and F. Tulkens, lawyers)

Re:

Application under Article 263 TFEU seeking annulment of the decision of the European Aviation Safety Agency (EASA) of 28 August 2017 rejecting the tender submitted by the consortium of applicants in call for tenders EASA.2017.HVP.08 relating to a public service contract concerning IT application and infrastructure management services in Cologne (Germany), and the award of the successive contract to three other tenderers.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Aviation Safety Agency (EASA) of 28 August 2017 rejecting the tender submitted by the consortium of Trasys International GEIE and Axianseu — Digital Solutions SA in call for tenders EASA.2017.HVP.08 relating to a public service contract concerning IT application and infrastructure management services in Cologne (Germany), and the award of the successive contract to three other tenderers;*

2. *Orders EASA to pay the costs.*

([1]) OJ C 13, 15.1.2018.

Judgment of the General Court of 10 September 2019 — BO v Court of Justice of the European Union (Case T-50/18) ([1])

(Public service contracts — Tender procedure — Call for tenders of the Court of Justice of the European Union — Freelance translators — Selection procedure — Rejection of a tenderer's offer — Obligation to state reasons — Manifest error of assessment)

(2019/C 383/67)

Language of the case: English

Parties

Applicant: BO (represented by: E. Kleani, lawyer)

Defendant: Court of Justice of the European Union (represented by: J. Inghelram, Á. Almendros Manzano and V. Hanley-Emilsson, acting as Agents)

Re:

Action based on Article 263 TFEU seeking annulment of the decision of the Court of Justice of the European Union of 23 November 2017 rejecting the applicant's tender for the conclusion of a framework contract for the translation of legal texts from German into Greek.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BO to pay the costs.*

([1]) OJ C 134, 16.4.2018.

Judgment of the General Court of 10 September 2019 — BP v Court of Justice of the European Union

(Case T-51/18) ([1])

(Public service contracts — Tender procedure — Call for tenders of the Court of Justice of the European Union — Freelance translators — Selection procedure — Rejection of a tenderer's offer — Obligation to state reasons — Manifest error of assessment)

(2019/C 383/68)

Language of the case: English

Parties

Applicant: BP (represented by: S. Tassi, lawyer)

Defendant: Court of Justice of the European Union (represented by: J. Inghelram, Á. Almendros Manzano and V. Hanley-Emilsson, acting as Agents)

Re:

Action based on Article 263 TFEU seeking annulment of the decision of the Court of Justice of the European Union of 23 November 2017 rejecting the applicant's tender for the conclusion of a framework contract for the translation of legal texts from German into Greek.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BP to pay the costs.*

([1]) OJ C 134, 16.4.2018.

Judgment of the General Court of 10 September 2019 — BQ v Court of Justice of the European Union

(Case T-66/18) ([1])

(Public service contracts — Tender procedure — Call for tenders of the Court of Justice of the European Union — Freelance translators — Selection procedure — Rejection of a tenderer's offer — Obligation to state reasons — Manifest error of assessment)

(2019/C 383/69)

Language of the case: English

Parties

Applicant: BQ (represented by: E. Kleani, lawyer)

Defendant: Court of Justice of the European Union (represented by: J. Inghelram, Á. Almendros Manzano and V. Hanley-Emilsson, acting as Agents)

Re:

Action based on Article 263 TFEU seeking annulment of the decision of the Court of Justice of the European Union of 23 November 2017 rejecting the applicant's tender for the conclusion of a framework contract for the translation of legal texts from German into Greek.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BQ to pay the costs.*

([1]) OJ C 134, 16.4.2018.

Order of the President of the General Court of 19 August 2019 — BASF v Commission

(Case T-472/19 R R)

(Interim measures — Medicinal product — Marketing authorisation — Omega-3 acid ethyl esters — No urgency)

(2019/C 383/70)

Language of the case: English

Parties

Applicant: BASF AS (Oslo, Norway) (represented by: E. Wright, A. Rusanov and H. Boland, lawyers)

Defendant: European Commission (represented by: L. Haasbeek and A. Sipos, Agents)

Re:

Application pursuant to Articles 278 TFEU and 279 TFEU for the grant of interim measures to suspend the operation of the Commission Implementing Decision of 6 June 2019 concerning, in the framework of Article 31 of Directive 2001/83/EC, the marketing authorisations of medicinal products for human use containing 'Omega-3 acid ethyl esters' for oral use in secondary prevention after myocardial infarction (C(2019) 4336 final).

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 14 August 2019 – Oltchim v Commission

(Case T-565/19)

(2019/C 383/71)

Language of the case: English

Parties

Applicant: Oltchim SA (Râmnicu Vâlcea, Romania) (represented by: C. Arhold, L.-A. Bondoc and S. Petrisor, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and Article 3 to 7 of the Commission decision of 17 December 2018 in State aid Case SA.36086 (2016/C)(ex 2016/NN), implemented by Romania for Oltchim SA; ([1])

— award the application the costs of the present action.

Pleas in law and main arguments

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

1. First plea in law, with regard to the non-enforcement of debts by the Romanian Authority for State Assets Management, alleging manifest error of assessment by deciding that that measure provided an economic advantage within the meaning of Article 107(1) TFEU.

2. Second plea in law, with regard to the aforesaid measure of non-enforcement of debts, alleging that the defendant failed, in violation of Article 296(2) TFUE, to provide sufficient reasoning with respect to the State aid classification of that measure.

3. Third plea in law, with regard to the alleged grant of aid by means of the continued supply of electricity to the applicant and further accumulation of debt by a third party after the failed privatisation of the applicant, alleging manifest error of assessment by deciding that that measure provided an economic advantage within the meaning of Article 107(1) TFEU.

4. Fourth plea in law, with regard to the aforesaid measure of continued supply of electricity and accumulation of debt by a third party, alleging infringement of Article 296(2) TFEU.

5. Fifth plea in law, with regard to the partial debt cancellation envisaged by the reorganisation plan approved by the applicant's creditors, alleging a manifest error of assessment by deciding that the debt cancellation was a transfer of State resources, to the extent that a third party private undertaking was involved.

6. Sixth plea in law, alleging that, in any case, the aforesaid debt cancellation was not imputable to the State as far as the public companies involved were concerned.

7. Seventh plea in law, alleging that the aforesaid debt cancellation passed the private creditor test, since the most important private creditors had voted for the reorganisation plan (*pari passu*), the reorganisation plan was economically more favourable for the public creditors than a liquidation scenario, and under the revised reorganisation plan the company was actually sold in asset bundles – a scenario which the Commission had praised as the best option in its decision.

8. Eighth plea in law, alleging, with regard to the partial debt cancellation measure, that the defendant infringed Article 296(2) TFUE.

9. Ninth plea in law, alleging, with regard to the partial debt cancellation measure, that the Commission infringed Article 107(1) and 108(2) TFEU, as well as the Procedural Regulation, [2] by ordering the recovery of the total amount of the debt cancellation, albeit that, even under the defendant's own (wrong) calculations of its hypothetical best case scenario, it was clear that the public creditors could not achieve much more than they actually achieved under the revised reorganisation plan.

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[1] OJ 2019 L 181, p. 13.

[2] The version of this instrument cited in the application is Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1)

Action brought on 5 September 2019 — EM v Parliament

(Case T-599/19)

(2019/C 383/72)

Language of the case: French

Parties

Applicant: EM (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

— annul the contested decision dated 31 October 2018, which was confirmed by the decision dated 24 May 2019 rejecting the applicant's complaint;

— order the payment of compensation in respect of the material harm allegedly suffered, amounting to EUR 165 000, and compensation in respect of the non-material harm allegedly suffered, estimated at the sum of EUR 50 000.

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 1 and 31 of the Charter of Fundamental Rights, infringement of Articles 12 and 12a(3) of the Staff Regulations of Officials of the European Union, a failure to observe the duty to provide assistance and misuse of powers.

2. Second plea in law, alleging breach of the duty of good administration, breach of the duty to have regard for the welfare of staff and a manifest error of assessment.

Action brought on 9 September 2019 — Helsingin Bussiliikenne v Commission

(Case T-603/19)

(2019/C 383/73)

Language of the case: Finnish

Parties

Applicant: Helsingin Bussiliikenne Oy (Helsinki, Finland) (represented by: O. Hyvönen and N. Rosenlund, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul entirely or partially the Commission decision of 28 June 2019 relating to alleged State aid SA.33846 (2015/C) (ex 2011/CP)

— order the Commission to pay the entirety of the costs incurred by the applicant, together with statutory interest.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 108(2) TFEU and Article 6(1) of Regulation 2015/1589, and that it committed a material procedural error during the examination procedure and breached the applicant's rights.

   — The applicant should have been granted the possibility of being heard before the adoption of the contested decision and should have been invited to submit observations during the formal examination procedure, because the contested decision designates it as the beneficiary of the aid and it concerns it directly.

2. Second plea in law, alleging a manifest error of assessment on the part of the Commission.

   — The Commission did not carry out sufficient enquiries relating to the case, with the result that it made its decision on the basis of incomplete and erroneous information.

   — The Commission's errors of assessment concern, at least, the question whether the transfer of activity complied with market conditions, its objective and its economic rationale.

3. Third plea in law, alleging that the reasons given for the contested decision did not satisfy the requirements of Article 296 TFEU and the case-law relating thereto.

   — That complaint concerns in particular to the reasons relating to the question whether the price at which the activity of HelB was transferred complied with market conditions.

4. Fourth plea in law, alleging that the contested decision is contrary to the general principles of Union law, in particular the principle of legitimate expectations and the principle of proportionality.

   — The applicant could legitimately believe, firstly, that the examination carried out by the Commission concerned only the measures and persons identified in the decision to open the formal investigation procedure, and, secondly, that if the examination was extended to the sale of the activity or to its person, the Commission would consequently extend the decision relating to the formal examination procedure and would hear it.

   — The repayment obligation must, as regards the initial beneficiary, in any event be considered to be contrary to the principle of proportionality in so far as it exceeds the price which was actually paid for the repurchase of the activity and, as regards the applicant, in so far as it exceeds the difference between the sale price, which is allegedly underestimated, and the fair price.

5. Fifth plea in law, alleging that the contested decision is based on a manifestly erroneous application of Article 107(1) TFEU.

   — The measures identified in the Commission's decision did not involve unlawful State aid.

   — None of the measures classified as unlawful State aid by the Commission was applicable to the applicant.

Action brought on 9 September 2019 — EP v Commission

(Case T-605/19)

(2019/C 383/74)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision not to promote the applicant to grade AD 9 under the 2018 promotion procedure;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an inadequate statement of reasons provided in the reply rejecting the complaint, in particular having regard to the fact that the Joint Promotions Committee recommended that the applicant be promoted.

2. Second plea in law, alleging infringement of Article 45 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') by the Appointing Authority inasmuch as it did not actually carry out an examination of the comparative merits of all the officials eligible for promotion.

3. Third plea in law, alleging that the contested decision is vitiated, in any event, by manifest errors of assessment, on the basis of the statement of grounds available for that decision.

4. Fourth plea in law, alleging infringement of Article 24b of the Staff Regulations and of the sixth paragraph of Article 1 of Annex II to the Staff Regulations, inasmuch as the applicant was penalised on account of the staff representation duties he performs.

Action brought on 20 September 2019 — Shindler and Others v European Commission

(Case T-627/19)

(2019/C 383/75)

Language of the case: French

Parties

Applicants: Harry Shindler (Porto d'Ascoli, Italy) and five other applicants (represented by: J. Fouchet, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the European Commission's express refusal of 13 September 2019 to acknowledge a failure to act;

— rule that the European Commission unlawfully failed to take:

  — first, a decision safeguarding the European citizenship of applicants of the United Kingdom who enjoy a private and family life in the other Member States of the European Union and did not have the right to vote on whether their Member State of origin should leave the European Union, based solely on the exercise of their freedom of movement ('the 15-year rule'), irrespective of whether or not there is an agreement on the United Kingdom's withdrawal from the European Union,

  — secondly, a binding decision uniformly applicable in the other 27 Member States of the European Union in which citizens of the United Kingdom live, comprising various measures with regard to entry, stay, social rights and occupation, to apply in the absence of an agreement on the United Kingdom's withdrawal from the European Union;

consequently:

— take note of the failure to act;

— order the European Commission to pay each of the applicants the sum of EUR 1 500 for the costs relating to their legal representation.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights they derive from their European citizenship, whether or not there is a withdrawal agreement. In the context of that plea, the applicants rely in particular on:

   — the lack of acknowledgment in the EU Treaties of the loss of European citizenship where a Member State leaves the European Union and, accordingly, infringement of the principle of legal certainty;

   — infringement of the principle of proportionality;

   — infringement of the right to respect for private and family life.

2. Second plea in law, alleging unlawful failure to act on the part of the Commission, which adopted no binding measures but mere recommendations.

3. Third plea in law, alleging breach, by the United Kingdom 15-year rule, of the *audi alteram partem* rule, the freedom of movement and the principle of equality before the right to vote. The applicants take the view in that respect that the 15-year rule is a national rule that places certain nationals of a Member State at a disadvantage simply because they have exercised their freedom to move and reside in another Member State and that it constitutes a restriction on the freedoms recognised by Article 21(1) TFEU.

Action brought on 20 September 2019 – Teva v Commission and EMA

(Case T-628/19)

(2019/C 383/76)

Language of the case: English

Parties

Applicant: Teva BV (Haarlem, Netherlands) (represented by: T. de la Mare, QC, R. Mehta, Barrister and G. Morgan, Solicitor)

Defendants: European Commission and European Medicines Agency

Form of order sought

The applicant claims that the Court should:

— annul Commission's Implementing Decision C (2019)5393 final of 11 July 2019 refusing marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council ([1]) for 'Cabazitaxel Teva – cabazitaxel' ('the decision') insofar as it applies to the applicant, and

— order the defendants to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission failed correctly to apply the concept of a '*global marketing authorisation*' within the meaning of Directive 2001/83 of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001, L 311, p. 67), in particular the concept of a '*derivative*' medicinal product in Article 10(2)(b) thereof.

2. Second plea in law, alleging that the Commission and the EMA breached the principle of procedural fairness and the applicant's right to good administration, in particular by reversing the burden of proof on generic applicants for marketing authorisations contrary to the requirements of the EU legislation in this field.

3. Third plea in law, alleging that by this conduct, the Commission also breached the principle of equal treatment, by treating the applicant differently to the holder of the marketing authorisation for Jevtana®/docetaxel.

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004, L 136, p. 1)

Action brought on 20 September 2019 — AH v Eurofound

(Case T-630/19)

(2019/C 383/77)

Language of the case: French

Parties

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

Defendant: European Foundation for the improvement of Living and Working Conditions

Form of order sought

The applicant claims that the Court should:

— annul the decision of 9 November 2018 closing the administrative investigation AI-2018/01 opened following the complaint made by the applicant against his superiors;

— order the defendant to pay the applicant compensation in respect of the non-material harm suffered, assessed at EUR 30 000;

— order the opposing party to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the principle of sound administration inasmuch as, in its processing of the complaint, the administration was intimidating, accusatory and did not act in an appropriate manner, both as regards procedure and as regards substance.

2. Second plea in law, alleging infringement of the tables providing for the competence of the AECE. The applicant submits, inter alia, that his complaint was dealt with by a law firm and that that complaint was therefore not dealt with by the authority authorised to do so. According to the applicant, that transfer of competences to external legal advisers prevented him from being able to exercise his right to lodge a complaint which would be dealt with in the context of the adoption and challenging of administrative decisions, in breach of the principles of legal certainty and transparency.

3. Third plea in law, alleging the lack of a decision on his request for assistance. The applicant submits in this respect that the decision adversely affecting him simply dismissed the complaint alleging harassment and closed the investigation.

4. Fourth plea in law, alleging that the contested decision is vitiated by a failure to state reasons.

5. Fifth plea in law, alleging that both the investigators and the institution had a conflict of interests and lacked independence, neutrality and objectivity in the management of the administrative investigation and the processing of the applicant's request and his complaint.

6. Sixth plea in law, alleging infringement of Articles 24 and 12a of the Staff Regulations of Officials of the European Union, inasmuch as the defendant behaved in a hostile manner towards the applicant from the point at which it received his complaint onwards, which is irreconcilable with the administration's duty to have regard for the welfare of staff and duty of assistance.

7. Seventh plea in law, alleging infringement of the right to be heard effectively, inasmuch as the defendant did not allow the applicant to be heard properly regarding the plea as to the harassment to which he claimed to have been subject.

8. Eighth plea in law, alleging that the defendant committed a manifest error of assessment when it analysed the complaint submitted by the applicant.

Action brought on 21 September 2019 — BNetzA v ACER

(Case T-631/19)

(2019/C 383/78)

Language of the case: German

Parties

Applicant: Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA) (represented by: H. Haller, T. Heitling, L. Reiser, N. Gremminger and V. Vacha, lawyers)

Defendant: Agency for the Cooperation of Energy Regulators (ACER)

Form of order sought

The applicant claims that the Court should:

— annul the provisions listed below of Decision No 2/2019 of the defendant of 21 February 2019, and the related decision No A-003-2019 of the defendant's Board of Appeal of 11 July 2019:

(i) Article 5(5) to (9) of Annex I;

(ii) the second half of the sentence in Article 10(4) of Annex I and Article 10(5) of that annex;

(iii) the second sentence of Article 16(2) of Annex I and Article 16(3)(d)(vii) of that annex;

(iv) Article 5(5) to (9) of Annex II;

(v) Article 17(3)(d)(vii) of Annex II;

(vi) all the provisions of Annexes I and II which refer expressly to the provisions listed in points (i) to (v);

— in the alternative, annul in its entirety Decision No 2/2019 of the defendant of 21 February 2019, and the related decision No A-003-2019 of the defendant's Board of Appeal of 11 July 2019;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law:

1. First plea in law, alleging the formal unlawfulness of the contested decision.

The contested decision taken by ACER is formally unlawful since ACER exceeded the limits of its competence by taking that decision.

2. Second plea in law, alleging an infringement of Regulation (EU) 2019/943 of the European Parliament and of the Council. ([1])

— ACER is not empowered to establish a mechanism allowing the exclusion of internal network elements from the capacity calculation in the context of a pre-selection.

— In its decision, ACER (i) defined the critical network elements, (ii) provided for a differentiated application of the Power-Transfer-Distribution-Factor (PTDF) value to internal network elements, on the one hand, and cross-zonal elements, on the other hand, and (iii) introduced a criterion of efficiency for the internal network elements. It thus infringes Article 16(4) and (8) of Regulation (EU) 2019/943.

— In the contested decision, ACER provides that the bidding zone configuration must be revised according to a specific method and within a precise time-frame. That is contrary to Regulation (EU) 2019/943.

— The transmission system operators are de facto required to maintain a minimum exchange capacity of 100 % available on their internal network elements and more for cross-border exchanges. That is contrary to Regulation (EU) 2019/943.

— ACER wishes to exclude over the long-term internal lines which have a Power-Transfer-Distribution-Factor (PTDF) value lower than 10 % from the capacity calculation. That is contrary to Regulation (EU) 2019/943.

— The introduction of a criterion of efficiency would circumvent the transitional provision of Article 15(2) of Regulation (EU) 2019/943.

— The ACER decision infringes Article 14(5) of Regulation (EU) 2019/943 since it does not take into account new investments in the network infrastructure.

— ACER requires an extensive use of corrective actions. That is contrary to the provisions of Regulation (EU) 2019/943.

— ACER circumvents the provisions of Regulation (EU) 2019/943 relating to the new configuration of bidding zones.

— ACER claims competence in relation to the reorganisation of bidding zones and thus infringes Article 14(3), (6), (7) and (8) and Article 15(5) and (7) of Regulation (EU) 2019/943.

3. Third plea in law, alleging an infringement of Commission Regulation (EU) 2015/1222. [2]

— The criterion of efficiency introduced by ACER obliges the Member States de facto to reconfigure their bidding zones. That is contrary to the requirements of Regulation (EU) 2015/1222.

— ACER requires an extensive use of corrective actions. That is contrary to the requirements of Regulation (EU) 2015/1222.

4. Fourth plea in law, alleging a breach of the principle of proportionality.

The ACER decision is disproportionate because it is not capable of achieving the objectives of Regulation (EU) 2015/1222.

5. Fifth plea in law, alleging a breach of the principle of non-discrimination.

The determination of critical network elements and the early adoption of corrective actions in order to remove loop flows amounts to indirect discrimination on the basis of nationality.

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[1] Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019 L 158, p. 54).

[2] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015 L 197, p. 24).

Action brought on 24 September 2019 – Essential Export v EUIPO – Shenzhen Liouyi International Trading (TOTU)

(Case T-633/19)

(2019/C 383/79)

Language of the case: English

Parties

Applicant: Essential Export SA (San José, Costa Rica) (represented by: A. Tarí Lázaro, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Shenzhen Liouyi International Trading Co. Ltd (Shenzhen, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark TOTU in red and black – Application for registration No 16 736 712

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 July 2019 in Case R 362/2019-2

Form of order sought

The applicant claims that the Court should:

— reverse the contested decision;

— award the applicant's costs.

Plea in law

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

Action brought on 25 September 2019 — Fondazione Cassa di Risparmio di Pesaro and Others v Commission

(Case T-635/19)

(2019/C 383/80)

Language of the case: Italian

Parties

Applicants: Fondazione Cassa di Risparmio di Pesaro (Pesaro, Italy), Montani Antaldi Srl (Pesaro), Fondazione Cassa di Risparmio di Fano (Fano, Italy), Fondazione Cassa di Risparmio di Jesi (Jesi, Italy), Fondazione Cassa di Risparmio della Provincia di Macerata (Macerata, Italy) (represented by: A. Sandulli and B. Cimino, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— find and declare that the European Commission is non-contractually liable for having prevented the recapitalisation of the Banca delle Marche by the Fondo Interbancario italiano per Tutela dei Depositi (Italian Interbank Deposit Protection Fund) ('the F.I.T.D.') by giving unlawful instructions to the Italian national authorities;

— order the European Commission to pay compensation for the damage caused to the applicants, estimated according to the criteria indicated below or in such other manner as the Court may deem appropriate;

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, concerning the admissibility of the claim for damages.

   — In this regard the applicants claim that the damage complained of is attributable to a European institution even though the resolution measures concerning Banca [delle] Marche were formally adopted by a national authority. In fact, the Banca d'Italia exercised no discretion in that regard, but acted on the basis of detailed instructions given by the European Commission. Moreover, because of the manner in which the Commission exercised its power, the applicants were deprived of the possibility of bringing an ordinary action for annulment before the General Court; therefore an action for damages was the only procedural route that could be taken.

2. Second plea in law, alleging a serious or manifest infringement of EU law.

— In this regard the applicants claim that the European Commission prevented the recapitalisation of Banca [delle] Marche by the F.I.T.D. on the grounds that the measure would constitute State aid. However, the F.I.T.D is a private undertaking which uses private resources and is not subject to the control of any public authority, as indeed the General Court recently found in the [joined cases *Italy and Others* v *Commission* (T-98/16, T-196/16 and T-198/16, EU:T:2019:167)]. It would have been, therefore, a perfectly lawful rescue according to market rules. The infringement is also shown to be serious and manifest in the light of the clear regulatory framework in that area, the established case-law of the European Courts and the lack of discretion on the part of the European Commission.

3. Third plea in law, concerning the existence of damage.

— In this regard the applicants claim that the conduct ascribed to the European Commission was the effective and exclusive cause of the damage which they have suffered. From the procedural documents, in fact, it is clear that: (i) the Italian Authorities pursued every possible alternative solution to the resolution of Banca delle Marche and the European Commission's opposition made each of those solutions impossible; and (ii) those alternative solutions would have hugely limited the detrimental effects on shareholders and bondholders.

4. Fourth plea in law, concerning the assessment of the damage.

— In this regard the applicants claim that the damage should be estimated taking into consideration the residual value that would have been retained by the subordinated bonds and shares which the applicants held in Banca [delle] Marche if, instead of the resolution taking place, the F.I.T.D had completed the recapitalisation of that bank.

Action brought on 25 September 2019 — Sánchez Romero Carvajal Jabugo v EUIPO — Embutidos Monells (5Ms MMMMM)

(Case T-639/19)

(2019/C 383/81)

Language in which the application was lodged: Spanish

Parties

Applicant: Sánchez Romero Carvajal Jabugo, SAU (El Puerto de Santa María, Spain) (represented by: J.M. Iglesias Monravá, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Embutidos Monells, SA (San Miguel de Balenya, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for registration of European Union figurative mark '5Ms MMMMM' — Application for registration No 16 338 998

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 July 2019 in Case R 1728/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— accordingly, refuse registration of European Union figurative mark No 16 338 998‘5Ms MMMMM’ in Class 29;

— order any party opposing the present action to pay the costs.

Pleas in law

Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 24 September 2019 — FD v Joint Undertaking Fusion for Energy

(Case T-641/19)

(2019/C 383/82)

Language of the case: French

Parties

Applicant: FD (represented by M. Casado García-Hirschfeld, lawyer)

Defendant: European Joint Undertaking for ITER and the Development of Fusion Energy (Joint Undertaking Fusion for Energy)

Form of order sought

The applicant claims that the General Court should:

— declare the present application admissible and well founded;

and accordingly:

— annul the decision of 3 December 2018 which was confirmed by the rejection decision of 14 June 2019;

— order the payment of compensation in respect of the material damage suffered, which amounts to EUR 75 500, together with compensation in respect of the non-material damage, estimated in the amount of EUR 30 000;

— order the defendant to bear the entirety of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging error of assessment, misuse of powers and acts of harassment committed against him. The applicant criticises, inter alia, the justification for the non-renewal of his contact, which was based on the elimination of his post following the reorganisation of the department. According to the applicant, that statement of reasons is vitiated by an error in so far as the reorganisation plans did not make provision for the elimination of a post corresponding to the characteristics of that occupied by the applicant. Moreover, he takes the view that he was the victim of psychological harassment and that the consequences of that harassment served to substantiate the decision not to renew his contract.

2. Second plea in law, alleging infringement of the principle of sound administration, the duty of care and Article 8 of the Conditions of Employment of Other Servants of the European Union. In that connection, the applicant submits, inter alia, that, in the contested decision, the defendant failed to take account of his competencies, efficiency, conduct in the service, family situation and seniority.

3. Third plea in law, alleging infringement of the principle of equal treatment and non-discrimination. The applicant claims that the decision not to renew his contract was based on budgetary and organisational reasons. However, it was possible for the contracts of other members of staff, whose factual and legal situations presented no essential difference with those of the applicant, to be renewed despite that context.

Action brought on 25 September 2019 — JCDecaux Street Furniture Belgium v Commission

(Case T-642/19)

(2019/C 383/83)

Language of the case: French

Parties

Applicant: JCDecaux Street Furniture Belgium (Brussels, Belgium) (represented by A. Winckler and G. Babin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Article 1 of the contested decision, in so far as it finds there to be incompatible State aid in favour of JCDecaux in the performance of the 1984 contract, and Articles 2 and 4, in so far as they order the recovery of that aid from JCDecaux by the Belgian State;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action against Commission Decision C(2019) 4466 final of 24 June 2019 on State aid SA.33078 (2015/C) (ex 2015/NN) implemented by Belgium in favour of JC Decaux Belgium Publicité, the applicant relies on four pleas in law.

1. First plea in law, alleging manifest error of assessment and error of law committed by the Commission in finding that the operation by the applicant of certain advertising facilities covered by the contract of 16 July 1984 beyond their expiry date constitutes an advantage.

   — The Commission wrongly found there to be an economic advantage despite the compensation mechanism operated by the City of Brussels pursuant to its obligation to safeguard the economic balance of the contract.

   — The Commission committed a manifest error of assessment and erred in law by finding that the applicant benefited from a saving in terms of rents and tax, which constituted an advantage.

2. Second plea in law, in the alternative, claiming that the hypothetical State aid is compatible with the internal market, pursuant to the Communication from the Commission on the framework for SGEIs ([1]) and the 2012 Decision on services of general economic interest. ([2])

3. Third plea in law, in the alternative, alleging infringement by the Commission of its obligation to state reasons in so far as concerns the assessment of the amount to be recovered.

   — The Commission did not deal adequately with the evidence relied on by the parties, prejudged the amount of aid to be recovered in its press release, and infringed its own internal rules of procedure.

   — It was impossible to quantify the amount of a hypothetical aid, thereby creating an obstacle to the recovery thereof.

4. Fourth plea in law, in the alternative, alleging that the State aid found in the contested decision is time-barred.

([1]) Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011) (OJ 2012 C 8, p. 15).

([2]) Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ 2012 L 7, p. 3).

Action brought on 26 September 2019 – Dermavita v EUIPO – Allergan Holdings France (JUVEDERM ULTRA)

(Case T-643/19)

(2019/C 383/84)

Language of the case: English

Parties

Applicant: Dermavita Co. Ltd (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Allergan Holdings France (Courbevoie, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark JUVEDERM ULTRA – European Union trade mark No 6 295 638

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 18 July 2019 in Joined Cases R 1655/2018-4 and R 1723/2018-4

Form of order sought

The applicant claims that the Court should:

— partially annul the contested decision concerning the dismissal of appeal R 1723/2018-4 and the decision of non-revocation of EUTM No 6 295 638 for the goods in class 5 and;

— order EUIPO and the other party to bear their own costs and pay those of the applicant for annulment at every stage of the action for revocation and appeal proceedings, including the cost of the proceedings before EUIPO and the Court.

Pleas in law

— Erroneous interpretation of the relevant law concerning the assessment of the nature of the goods the trademark has been used for;

— Misinterpretation of some of the evidence in the proceedings concerning the use of the trademark by third parties with the consent of the EUTM proprietor;

— Lack of sufficient proofs of the consent of the EUTM proprietor under the meaning of Article 18(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 26 September 2019 – Linde Material Handling v EUIPO – Verti Aseguradora (VertiLight)

(Case T-644/19)

(2019/C 383/85)

Language of the case: English

Parties

Applicant: Linde Material Handling GmbH (Aschaffenburg, Germany) (represented by: J. Plate and R. Kaase, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Verti Aseguradora, Compañía de seguros y reaseguros, SA (Madrid, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark VertiLight – Application for registration No 16 161 788

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 5 July 2019 in Case R 1849/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of the obligation to state reasons, under Article 94(1), first sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the right to be heard, under Article 94(1), second sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 26 September 2019 – eSky Group IP v EUIPO – Gröpel (e)

(Case T-646/19)

(2019/C 383/86)

Language of the case: English

Parties

Applicant: eSky Group IP sp. z o.o. (Warsaw, Poland) (represented by: P. Kurcman, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gerhard Gröpel (Straubing, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark e in colours turquoise, white, dark blue, blue and light pink – Application for registration No 16 731 333

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 July 2019 in Case R 223/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of Opposition Division of 29 November 2018 adopted in opposition proceedings No B 2 957 168;

— refer the case back to EUIPO;

— order EUIPO to pay the costs of the proceedings before the Opposition Division, Board of Appeal and General Court.

Plea in law

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

Action brought on 30 September 2019 – FF Group Romania v EUIPO – KiK Textilien und Non-Food (_kix)

(Case T-659/19)

(2019/C 383/87)

Language of the case: English

Parties

Applicant: FF Group Romania SRL (Bucharest, Romania) (represented by: A. Căvescu, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: KiK Textilien und Non-Food GmbH (Bönen, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark _kix in colours black, white and green – Application for registration No 12 517 901

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 4 July 2019 in Case R 353/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs relating to the present action.

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 94 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 95 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Rule 20(7)(c) of Regulation No 2868/95 (now Article 71(1) of Delegated Regulation (EU) No 2018/625;

— Infringement of Rule 50(1) of Regulation No 2868/95;

— Infringement of the principles of the protection of legitimate expectations, legal certainty, impartiality and equality;

— Infringement of the right to be heard and the right to a fair trial;

— Misuse of powers.

Action brought on 30 September 2019 – Allergan Holdings France v EUIPO – Dermavita (JUVEDERM ULTRA)

(Case T-664/19)

(2019/C 383/88)

Language of the case: English

Parties

Applicant: Allergan Holdings France (Courbevoie, France) (represented by: J. Day, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dermavita Co. Ltd (Beirut, Lebanon)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark JUVEDERM ULTRA – European Union trade mark No 6 295 638

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 18 July 2019 in Joined Cases R 1655/2018-4 and R 1723/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it revokes the EUTM No. 6295638 JUVEDERM ULTRA for the contested goods;

— order EUIPO and Dermavita Co. Ltd. to bear their own costs and pay those of the applicant.

Pleas in law

— Infringement of Articles 58(1) and 64(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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