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Contents

EN

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

(2020/C 61/01)

Last publication

OJ C 54, 17.2.2020

Past publications

OJ C 45, 10.2.2020

OJ C 36, 3.2.2020

OJ C 27, 27.1.2020

OJ C 19, 20.1.2020

OJ C 10, 13.1.2020

OJ C 432, 23.12.2019

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 19 December 2019 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Michael Dobersberger v Magistrat der Stadt Wien

(Case C-16/18) ([1])

(Reference for a preliminary ruling — Articles 56 and 57 TFEU — Freedom to provide services — Directive 96/71/EC — Applicability — Article 1(3)(a) — Posting of workers in the framework of the provision of services — Provision of services on board international trains — National rules imposing administrative obligations in relation to the posting of workers)

(2020/C 61/02)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Michael Dobersberger

Defendant: Magistrat der Stadt Wien

Operative part of the judgment

Article 1(3)(a) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as meaning that it does not cover the provision, under a contract concluded by an undertaking established in a Member State and an undertaking established in another Member State, which is contractually linked to a railway undertaking established in that same Member State, of on-board services, cleaning or food and drink services for passengers carried out by salaried employees of the first undertaking, or by workers hired out to it by an undertaking also established in the first Member State, on international trains crossing the second Member State, where those workers carry out a significant part of the work inherent in those services in the territory of the first Member State and where they begin or end their shifts there.

([1]) OJ C 123, 9.4.2018.

Judgment of the Court (Fifth Chamber) of 19 December 2019 (request for a preliminary ruling from the Bundesarbeitsgericht — Germany) — Pensions-Sicherungs-Verein VVaG v Günther Bauer

(Case C-168/18) ([1])

(Reference for a preliminary ruling — Social policy — Protection of employees in the event of the insolvency of their employer — Directive 2008/94/EC — Article 8 — Supplementary pension schemes — Protection of entitlement to old-age benefits — Minimum guaranteed level of protection — Former employer's obligation to offset a reduction in an occupational old-age pension — External pension institution — Direct effect)

(2020/C 61/03)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Pensions-Sicherungs-Verein VVaG

Defendant: Günther Bauer

Operative part of the judgment

1. Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as applying to a situation in which an employer, which provides occupational old-age pension benefits through an inter-occupational institution, cannot, on account of its insolvency, offset losses resulting from a reduction in the amount of those benefits paid by the inter-occupational institution, a reduction which was authorised by the State supervisory authority for financial services which is the prudential regulator for that institution.

2. Article 8 of Directive 2008/94 must be interpreted as meaning that a reduction in the amount of occupational old-age pension benefits paid to a former employee, on account of the insolvency of his or her former employer, is regarded as being manifestly disproportionate, even though the former employee receives at least half of the amount of the benefits arising from his or her acquired rights, where, as a result of the reduction, the former employee is already living, or would have to live, below the at-risk-of-poverty threshold determined by Eurostat for the Member State concerned.

3. Article 8 of Directive 2008/94, which lays down an obligation to provide a minimum degree of protection, is capable of having direct effect, so that it may be relied upon against an institution governed by private law that is designated by the State as the institution which guarantees occupational pensions against the risk of an employer's insolvency where, in the light of the task with which it is vested and the circumstances in which it performs the task, that institution can be treated as comparable to the State, provided that the task of providing a guarantee with which the institution is vested actually covers the type of old-age benefits in respect of which the minimum degree of protection provided for in Article 8 is sought.

([1]) OJ C 231, 2.7.2018.

Judgment of the Court (Seventh Chamber) of 19 December 2019 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Club de Variedades Vegetales Protegidas v Adolfo Juan Martínez Sanchís

(Case C-176/18) ([1])

(Reference for a preliminary ruling — Community plant variety rights — Regulation (EC) No 2100/94 — Article 13(2) and (3) — Effects of community plant variety rights — Cumulative protection scheme — Planting of variety constituents and harvesting the fruit — Distinction between acts effected in respect of variety constituents and those concerning harvested material — Concept of 'unauthorised use of variety constituents' — Article 95 — Provisional protection)

(2020/C 61/04)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Club de Variedades Vegetales Protegidas

Defendant: Adolfo Juan Martínez Sanchís

Operative part of the judgment

1. Article 13(2)(a) and (3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights must be interpreted as meaning that the activity of planting a protected variety and harvesting the fruit thereof, which is not likely to be used as propagating material, requires the authorisation of the holder of the Community plant variety right relating to that plant variety where the conditions laid down in Article 13(3) of that regulation are fulfilled;

2. Article 13(3) of Regulation No 2100/94 must be interpreted as meaning that the fruit of a plant variety, which is not likely to be used as propagating material, may not be regarded as having been obtained through the 'unauthorised use of variety constituents' of that plant variety, within the meaning of that provision, where those variety constituents were propagated and sold to a farmer by a nursery in the period between the publication of the application for a Community plant variety right in relation to that plant variety and the grant thereof. Where, after such protection has been granted, those variety constituents were propagated and sold without the authorisation of the right holder, the latter may assert his or her right under Article 13(2)(a) and (3) of that regulation in respect of that fruit, unless he or she had reasonable opportunity to exercise his or her right in relation to those variety constituents.

([1]) OJ C 211, 18.6.2018.

Judgment of the Court (Grand Chamber) of 19 December 2019 (request for a preliminary ruling from the rechtbank Den Haag — Netherlands) — Nederlands Uitgeversverbond, Groep Algemene Uitgevers v Tom Kabinet Internet BV, Tom Kabinet Holding BV, Tom Kabinet Uitgeverij BV

(Case C-263/18) ([1])

(Reference for a preliminary ruling — Harmonisation of certain aspects of copyright and related rights in the information society — Directive 2001/29/EC — Article 3(1) — Right of communication to the public — Making available — Article 4 — Distribution right — Exhaustion — Electronic books (e-books) — Virtual market for 'second-hand' e-books)

(2020/C 61/05)

Language of the case: Dutch

Referring court

Rechtbank Den Haag

Parties to the main proceedings

Applicants: Nederlands Uitgeversverbond, Groep Algemene Uitgevers

Defendants: Tom Kabinet Internet BV, Tom Kabinet Holding BV, Tom Kabinet Uitgeverij BV

Operative part of the judgment

The supply to the public by downloading, for permanent use, of an e-book is covered by the concept of 'communication to the public' and, more specifically, by that of 'making available to the public of [authors'] works in such a way that members of the public may access them from a place and at a time individually chosen by them', within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

([1]) OJ C 276, 6.8.2018.

Judgment of the Court (Third Chamber) of 19 December 2019 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Cargill Deutschland GmbH v Hauptzollamt Krefeld

(Case C-360/18) ([1])

(Reference for a preliminary ruling — Regulation (EU) No 1360/2013 — Agriculture — Common organisation of the markets — Sugar sector — Production levy — Effectiveness — Right to reimbursement of sums unduly paid — Applicability of national rules on limitation periods — Principle of effectiveness)

(2020/C 61/06)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Cargill Deutschland GmbH

Defendant: Hauptzollamt Krefeld

Operative part of the judgment

Council Regulation (EU) No 1360/2013 of 2 December 2013 fixing the production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years, the coefficient required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years and the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy to be charged for the 2002/2003, 2003/2004 and 2005/2006 marketing years must be interpreted as:

— meaning that the sums unduly paid by economic operators by way of those production levies must be reimbursed under national law, in particular within the limitation periods provided for by that law, in compliance with the principles of equivalence and effectiveness; and as

— precluding national rules which, as interpreted by the competent courts, provide that the applicable limitation period during which reimbursement of unduly paid sugar production levies may be requested expired before that regulation entered into force, making it practically impossible to exercise the right, conferred on those economic operators by the EU legal order, to obtain reimbursement of those levies for the marketing years covered by that regulation.

([1]) OJ C 328, 17.9.2018.

Judgment of the Court (Second Chamber) of 19 December 2019 (request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — Coöperatieve Producentenorganisatie en Beheersgroep Texel UA v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-386/18) ([1])

(Reference for a preliminary ruling — Common fisheries policy — Regulations (EU) Nos 1303/2013, 1379/2013 and 508/2014 — Fishery and aquaculture producer organisations — Production and marketing plans — Financial support for the preparation and implementation of those plans — Conditions of eligibility of costs — Discretion of the Member States — No possibility under national law to apply for financial support)

(2020/C 61/07)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Coöperatieve Producentenorganisatie en Beheersgroep Texel UA

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Operative part of the judgment

1. Article 66(1) of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council must be interpreted as precluding a Member State from refusing to act on a subsidy application from a producer organisation for fishery and aquaculture products in respect of the expenditure it has incurred preparing and implementing a production and marketing plan, on the ground that, at the date on which it submitted its application, that State had not yet provided, in its internal legal order, for the possibility for such an application to be processed;

2. Article 66(1) of Regulation No 508/2014 must be interpreted as not directly creating for producer organisations for fishery and aquaculture products a right to financial support under the European Maritime and Fisheries Fund for the expenditure they have incurred in preparing and implementing a production and marketing plan;

3. Article 65(6) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 must be interpreted as not precluding the issuance of a grant under the European Maritime and Fisheries Fund for the preparation and implementation of a production and marketing plan where the grant application has been submitted after the preparation and implementation of such a plan.

([1]) OJ C 294, 20.8.2018.

Judgment of the Court (Seventh Chamber) of 19 December 2019 (request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles — Belgium) — Brussels Securities SA v État Belge

(Case C-389/18) ([1])

(Reference for a preliminary ruling — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Directive 90/435/EEC — Prevention of double taxation — First indent of Article 4(1) — Prohibition on taxing profits received — Inclusion of the dividend distributed by the subsidiary in the parent company's tax base — Deduction of the dividend distributed from the parent company's tax base and the indefinite carrying forward of the surplus to the following tax years — The order in which tax deductions on profits are to be applied — Loss of a tax advantage)

(2020/C 61/08)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicant: Brussels Securities SA

Defendant: État Belge

Operative part of the judgment

Article 4(1) of Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003 must be interpreted as precluding legislation of a Member State which provides that dividends received by a parent company from its subsidiary must first be included in the tax base of the parent company, before 95 % of the amount of the dividends is then deducted, and any surplus may be carried forward to subsequent tax years indefinitely, that deduction having priority over another tax deduction which may only be carried forward for a limited time.

([1]) OJ C 294, 20.8.2018.

Judgment of the Court (Grand Chamber) of 19 December 2019 (request for a preliminary ruling from the tribunal de grande instance de Paris — France) — Criminal proceedings against X

(Case C-390/18) ([1])

(Reference for a preliminary ruling — Directive 2000/31/EC — Information society services — Directive 2006/123/EC — Services — Connection of hosts, whether businesses or individuals, with accommodation to rent with persons seeking that type of accommodation — Qualification — National legislation imposing certain restrictions on the exercise of the profession of real estate agent — Directive 2000/31/EC — Article 3(4)(b), second indent — Obligation to give notification of measures restricting the freedom to provide information society services — Failure to give notification — Enforceability — Criminal proceedings with an ancillary civil action)

(2020/C 61/09)

Language of the case: French

Referring court

Investigating judge of the tribunal de grande instance de Paris

Party in the main proceedings

X

Interveners: YA, Airbnb Ireland UC, Hôtelière Turenne SAS, Association pour un hébergement et un tourisme professionnels (AHTOP), Valhotel

Operative part of the judgment

1. Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), which refers to Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, must be interpreted as meaning that an intermediation service which, by means of an electronic platform, is intended to connect, for remuneration, potential guests with professional or non-professional hosts offering short-term accommodation, while also providing a certain number of services ancillary to that intermediation service, must be classified as an 'information society service' under Directive 2000/31;

2. The second indent of Article 3(4)(b) of Directive 2000/31 must be interpreted as meaning that, in criminal proceedings with an ancillary civil action, an individual may oppose the application to him or her of measures of a Member State restricting the freedom to provide an information society service which that individual provides from another Member State, where those measures were not notified in accordance with that provision.

([1]) OJ C 301, 27.8.2018.

Judgment of the Court (First Chamber) of 19 December 2019 — European Central Bank v Espírito Santo Financial (Portugal), SGPS, SA

(Case C-442/18 P) ([1])

(Appeal — Refusal to grant access to decisions of the Governing Council of the European Central Bank (ECB) — Protocol on the Statute of the European System of Central Banks and of the ECB — Article 10.4 — Confidentiality of the proceedings of meetings — Outcome of deliberations — Possibility of disclosure — Decision 2004/258/EC — Access to ECB documents — Article 4(1)(a) — Confidentiality of proceedings — Undermining of the protection of the public interest)

(2020/C 61/10)

Language of the case: English

Parties

Appellant: European Central Bank (represented by: F. Malfrère and M. Ioannidis, acting as Agents, and by H.-G. Kamann, Rechtsanwalt)

Other party to the proceedings: Espírito Santo Financial (Portugal), SGPS, SA (represented by: L. Soares Romão, J. Shearman de Macedo and D. Castanheira Pereira, advogados)

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 26 April 2018, Espírito Santo Financial (Portugal) v ECB (T-251/15, EU:T:2018:234), in so far as, by that point, the General Court annulled the decision of the European Central Bank (ECB) of 1 April 2015 partially refusing access to certain documents relating to the ECB's decision of 1 August 2014 concerning Banco Espírito Santo SA in so far as, by that decision, the ECB refused to disclose the amount of credit indicated in the extracts from the minutes recording the decision of the Governing Council of the ECB of 28 July 2014;

2. Dismisses the appeal as to the remainder;

3. Dismisses the action brought by Espírito Santo Financial (Portugal), SGPS, SA in so far as it seeks annulment of the decision of the European Central Bank (ECB) of 1 April 2015 partially refusing access to certain documents relating to the ECB's decision of 1 August 2014 concerning Banco Espírito Santo SA in so far as, by that decision, the ECB refused to disclose the amount of credit indicated in the extracts from the minutes recording the decision of the Governing Council of the ECB of 28 July 2014;

4. Orders Espírito Santo Financial (Portugal), SGPS, SA to bear its own costs and to pay one third of those incurred by the European Central Bank (ECB) in the present appeal and in the proceedings at first instance;

5. Orders the European Central Bank (ECB) to bear two thirds of its own costs relating to the present appeal and to the proceedings at first instance.

(1) OJ C 445, 10.12.2018.

Judgment of the Court (Third Chamber) of 18 December 2019 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovak Republic) — UB v Generálny riaditeľ Sociálnej poisťovne Bratislava

(Case C-447/18) (1)

(Reference for a preliminary ruling — Social security — Coordination of social security systems — Regulation (EC) No 883/2004 — Article 3 — Matters covered — Old-age benefit — Freedom of movement for workers within the European Union — Regulation (EU) No 492/2011 — Article 7 — Equal treatment of national workers and migrant workers — Social advantages — Legislation of a Member State restricting the grant of an 'additional benefit for sportspersons who have represented the State' to the citizens of that State)

(2020/C 61/11)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: UB

Defendant: Generálny riaditeľ Sociálnej poisťovne Bratislava

Operative part of the judgment

1. Article 3(1)(d) 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 must be interpreted as meaning that an additional benefit paid to certain high-level sportspersons who have represented a Member State or its legal predecessors in international sporting competitions is not covered by the 'old-age benefit' referred to in that provision and, consequently, falls outside the scope of that regulation.

2. Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State which makes receipt of an additional benefit introduced for certain high-level sportspersons who have represented that Member State or its legal predecessors in international sporting competitions conditional upon, in particular, the person applying for the benefit having the nationality of that Member State.

(1) OJ C 328, 17.9.2018.

Judgment of the Court (Fourth Chamber) of 19 December 2019 (requests for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — Exportslachterij J. Gosschalk en Zn. BV (C-477/18), Compaxo Vlees Zevenaar BV, Ekro BV, Vion Apeldoorn BV, Vitelco BV (C-478/18) v Minister van Landbouw, Natuur en Voedselkwaliteit

(Joined Cases C-477/18 and C-478/18) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 882/2004 — Article 27(1) and (4) — Points 1 and 2 of Annex VI — Official controls on feed and food — Financing — Fees payable in relation to official controls — Calculation — Definition of 'staff involved in the official controls' — Inclusion of administrative and support staff — Possibility of charging for quarter-hour periods requested by the slaughterhouse for the purposes of official controls but not worked — Conditions)

(2020/C 61/12)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Exportslachterij J. Gosschalk en Zn. BV (C-477/18), Compaxo Vlees Zevenaar BV, Ekro BV, Vion Apeldoorn BV, Vitelco BV (C-478/18)

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Operative part of the judgment

1. Article 27(1) and (4)(a) 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, read in conjunction with point 1 and 2 of Annex VI thereto, must be interpreted as meaning that Member States may consider the salaries and costs of administrative and support staff as being costs occasioned by official controls, for the purposes of those provisions, and as not exceeding the costs borne by the competent authorities, within the meaning of Article 2(4) of that regulation, in proportion to the time objectively required of that staff for activities inextricably linked to the performance of official controls;

2. Article 27(4)(a) of Regulation No 882/2004, read in conjunction with Annex VI thereto, must be interpreted as not precluding slaughterhouses from being charged fees in relation to official controls for quarter-hour periods requested by such slaughterhouses from the competent authority, within the meaning of Article 2(4) of Regulation No 882/2004, but not actually worked, where the slaughterhouse subject to the control did not inform that authority sufficiently in advance of its intention to shorten the duration of that control vis-à-vis the period originally planned;

3. Point 2 of the operative part of the present judgment may also apply in the case where, first, official controls have been carried out by contracted official veterinarians who are not paid for quarter-hour periods requested by slaughterhouses but not worked and, second, the share of the fee corresponding to those quarter-hour periods requested but not worked is allocated to covering the general overhead costs of the competent authority, within the meaning of Article 2(4) of Regulation No 882/2004, if it is established that the share of the fee relating to those quarter-hour periods does not include the unpaid salary costs of contracted official veterinarians and genuinely corresponds to general overhead costs falling within one or more cost categories referred to in Annex VI to that regulation;

4. Article 27(4)(a) and (b) of Regulation No 882/2004 must be interpreted as not precluding slaughterhouses being charged an average rate not only when the official controls are performed by veterinarians employed by the competent authority, within the meaning of Article 2(4) of that regulation, but also where those controls are carried out by contracted veterinarians, who are paid less, provided that the fees collected for the purposes of official controls are not, in general, higher than the costs borne by the responsible competent authorities in relation to the items listed in Annex VI to that regulation;

5. Article 27(4)(a) of Regulation No 882/2004 must be interpreted as precluding account being taken, when calculating fees for official controls, of the costs for building up buffer reserves for a private company which the competent authority, within the meaning of Article 2(4) of that regulation, uses to source official auxiliaries where those reserves are intended to be used to pay the salaries and training costs of staff who actually perform official controls as well as of staff who make it possible for official controls to be carried out, in the event of a health crisis.

(1) OJ C 373, 15.10.2018.

Judgment of the Court (Fifth Chamber) of 19 December 2019 (request for a preliminary ruling from the Audiencia Nacional — Spain) — Engie Cartagena SL v Ministerio para la Transición Ecológica, formerly Ministerio de Industria, Energía y Turismo

(Case C-523/18) (1)

(Reference for a preliminary ruling — Internal market in electricity — Common rules — Directive 2003/54/EC — Article 3(2) — Directive 2009/72/EC — Article 3(2) — Public service obligations — Meaning — National rules — Financing of energy efficiency plans — Designation of electricity generating undertakings — Mandatory contribution)

(2020/C 61/13)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: Engie Cartagena SL

Defendant: Ministerio para la Transición Ecológica, formerly Ministerio de Industria, Energía y Turismo

Interveners in support of the defendant: Endesa Generación, SA, EDP España SAU, Bizkaia Energía, SL, Iberdrola Generación SAU, Tarragona Power SL, Bahia de Bizkaia Electricidad SL, Viesgo Generación SL

Operative part of the judgment

Article 3(2) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC must be interpreted as meaning that a financial contribution imposed on certain electricity generating undertakings for the purpose of financing savings and energy efficiency plans managed by a public authority does not constitute a public service obligation falling within that provision.

(1) OJ C 408, 12.11.2018.

Judgment of the Court (Fourth Chamber) of 19 December 2019 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — GN, represented for legal purposes by HM v ZU, acting as administrator in the insolvency of Niki Luftfahrt GmbH

(Case C-532/18) ([1])

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 17(1) — Air carrier liability in the event of accidents — Concept of 'accident' — Aircraft in flight — Spillage of a cup of coffee placed on the tray table of a seat — Bodily injuries caused to the passenger)

(2020/C 61/14)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: GN, represented for legal purposes by HM

Defendant: ZU, acting as administrator in the insolvency of Niki Luftfahrt GmbH

Operative part of the judgment

Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that the concept of 'accident' within the meaning of that provision covers all situations occurring on board an aircraft in which an object used when serving passengers has caused bodily injury to a passenger, without it being necessary to examine whether those situations stem from a hazard typically associated with aviation.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Seventh Chamber) of 19 December 2019 — Viscas Corp. v European Commission and Furukawa Electric Co. Ltd

(Case C-582/18 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — European market for underground and submarine power cables — Market allocation in connection with projects — Fines — 2006 Guidelines on the method of setting fines — Determining the relative weight of the European and non-European members in the cartel — Participation of European undertakings in the cartel at several levels — Principle of equal treatment)

(2020/C 61/15)

Language of the case: English

Parties

Appellant: Viscas Corp. (represented by: J.-F. Bellis, avocat)

Other parties to the proceedings: European Commission (represented by: H. van Vliet, A. Biolan and I. Zaloguin, acting as Agents), Furukawa Electric Co. Ltd (represented by: initially, by A. Luke and C. Pouncey, Solicitors, and, subsequently, by A. Luke and K. Fountoukakos, Solicitors)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Viscas Corp. to bear its own costs and to pay those incurred by the European Commission;

3. Orders Furukawa Electric Co. Ltd to bear its own costs.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Seventh Chamber) of 19 December 2019 — Furukawa Electric Co. Ltd v European Commission, Viscas Corp.

(Case C-589/18 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — European market for underground and submarine power cables — Market allocation in connection with projects — Fines — 2006 Guidelines on the method of setting fines — Determination of the value of sales — Principle of equal treatment)

(2020/C 61/16)

Language of the case: English

Parties

Appellant: Furukawa Electric Co. Ltd (represented by: initially, A. Luke and C. Pouncey, Solicitors, then A. Luke and K. Fountoukakos-Kyriakakos, Solicitors)

Other parties to the proceedings: European Commission (represented by: H. van Vliet, A. Biolan and I. Zaloguin, acting as Agents), Viscas Corp. (represented by: J.-F. Bellis, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Declares that Furukawa Electric Co. Ltd is to bear its own costs and orders it to pay those incurred by the European Commission;

3. Declares that Viscas Corp. is to bear its own costs.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Seventh Chamber) of 19 December 2019 — Fujikura Ltd v European Commission, Viscas Corp.

(Case C-590/18 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — European market for underground and submarine power cables — Market allocation in connection with projects — Fines — 2006 Guidelines on the method of setting fines — Determination of the relative weight of the European and non-European participants in the cartel — Participation of European undertakings at several levels of the cartel — Principle of equal treatment)

(2020/C 61/17)

Language of the case: English

Parties

Appellant: Fujikura Ltd (represented by: L. Gyselen, avocat)

Other party to the proceedings: European Commission (represented by: H. van Vliet, A. Biolan and I. Zaloguin, acting as Agents), Viscas Corp (represented by: J.-F. Bellis, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Declares that Fujikura Ltd is to bear its own costs and orders it to pay those incurred by the European Commission;

3. Declares that Viscas Corp. is to bear its own costs.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Fifth Chamber) of 18 December 2019 (request for a preliminary ruling from the Cour d'appel de Paris — France) — IT Development SAS v Free Mobile SAS

(Case C-666/18) ([1])

(Reference for a preliminary ruling — Intellectual property — Enforcement of intellectual property rights — Directive 2004/48/EC — Legal protection of computer programs — Directive 2009/24/EC — Software licence agreement — Unauthorised modification of the source code of a computer program by a licensee in breach of the licence agreement — Action for infringement brought by the author of the program against the licensee — Nature of the applicable liability regime)

(2020/C 61/18)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: IT Development SAS

Defendant: Free Mobile SAS

Operative part of the judgment

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights and Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs must be interpreted as meaning that the breach of a clause in a licence agreement for a computer program relating to the intellectual property rights of the owner of the copyright of that program falls within the concept of 'infringement of intellectual property rights', within the meaning of Directive 2004/48, and that, therefore, that owner must be able to benefit from the guarantees provided for by that directive, regardless of the liability regime applicable under national law.

([1]) OJ C 4, 7.1.2019.

Judgment of the Court (Eighth Chamber) of 19 December 2019 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Segler-Vereinigung Cuxhaven eV v Finanzamt Cuxhaven

(Case C-715/18) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 98 — Option for the Member States to apply a reduced rate of VAT to certain supplies of goods and services — Point 12 of Annex III — Reduced rate of VAT applicable to the letting of places on camping or caravan sites — Question of whether that reduced rate is applicable to the letting of boat moorings in a marina — Comparison with the letting of premises and sites for the parking of vehicles — Equal treatment — Principle of fiscal neutrality)

(2020/C 61/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Segler-Vereinigung Cuxhaven eV

Respondent: Finanzamt Cuxhaven

Operative part of the judgment

Article 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with point 12 of Annex III thereto, must be interpreted as meaning that the reduced rate of value added tax, envisaged in that provision, for the letting of places on camping or caravan sites is not applicable to the letting of boat moorings.

([1]) OJ C 82, 4.3.2019.

Judgment of the Court (Grand Chamber) of 19 December 2019 (request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof — Germany) — Deutsche Umwelthilfe eV v Freistaat Bayern

(Case C-752/18) ([1])

(Reference for a preliminary ruling — Environment — Article 6, the first paragraph of Article 47 and Article 52(1) of the Charter of Fundamental Rights of the European Union — Directive 2008/50/EC — Atmospheric pollution — Ambient air quality — Air quality plan — Limit values for nitrogen dioxide — Obligation to adopt appropriate measures to ensure that any exceedance period is very short — Obligation on the national courts to take any necessary measure — Refusal of a regional government to comply with an injunction — Coercive detention contemplated in respect of senior political representatives or senior officials of the region concerned — Effective judicial protection — Right to liberty of the person — Legal basis — Proportionality)

(2020/C 61/20)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Deutsche Umwelthilfe eV

Defendant: Freistaat Bayern

Operative part of the judgment

EU law, in particular the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in circumstances in which a national authority persistently refuses to comply with a judicial decision enjoining it to perform a clear, precise and unconditional obligation flowing from EU law, in particular from Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, it is incumbent upon the national court having jurisdiction to order the coercive detention of office holders involved in the exercise of official authority where provisions of domestic law contain a legal basis for ordering such detention which is sufficiently accessible, precise and foreseeable in its application and provided that the limitation on the right to liberty, guaranteed by Article 6 of the Charter of Fundamental Rights, that would result from so ordering complies with the other conditions laid down in that regard in Article 52(1) of the Charter. On the other hand, if there is no such legal basis in domestic law, EU law does not empower that court to have recourse to such a measure.

([1]) OJ C 54, 11.2.2019.

Appeal brought on 20 September 2019 by Mr Andreas Hauzenberger against the judgment of the General Court (Fourth Chamber) delivered on 11 July 2019 in Case T-349/18, Andreas Hauzenberger v European Union Intellectual Property Office (EUIPO)

(Case C-696/19 P)

(2020/C 61/21)

Language of the case: German

Parties

Appellant: Andreas Hauzenberger (represented by: B. Bittner, Rechtsanwalt, U. Heinrich, Rechtsanwältin)

Other party to the proceedings: European Union Intellectual Property Office

By order of 19 December 2019, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to bear his own costs.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 22 November 2019 — G. Sp. z o.o. v Dyrektor Izby Administracji Skarbowej w Bydgoszczy

(Case C-855/19)

(2020/C 61/22)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: G. Sp. z o.o.

Defendant: Dyrektor Izby Administracji Skarbowej w Bydgoszczy

Questions referred

1. Do Article 110 of the Treaty on the Functioning of the European Union and Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added ([1]) not preclude a provision such as Article 103(5a) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on the tax on goods and services), ([2]) which stipulates that, in the case of an intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of the customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty:

   (a) within 5 days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit — if the goods are the subject of intra-Community acquisition within the meaning of the Ustawa z dnia 6 grudnia 2008 r. o podatku akcyzowym (Law of 6 December 2008 on excise duty) by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty;

   (b) within 5 days of the date on which such goods enter a tax warehouse from the territory of a Member State other than Poland;

   (c) upon the movement of these goods within the territory of Poland — if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty?

2. Does Article 69 of Directive 2006/112/EC preclude a provision such as Article 103(5a) of the VAT Law, which stipulates that, in the case of the intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of a customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty:

   (a) within 5 days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit — if the goods are the subject of intra-Community acquisition within the meaning of the Law of 6 December 2008 on excise duty by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty;

   (b) within 5 days of the date on which such goods enter a tax warehouse from the territory of a Member State other than Poland;

   (c) upon the movement of these goods within the territory of Poland — if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty:

   where the above amounts are interpreted as not constituting interim VAT payments within the meaning of Article 206 of Directive 2006/112/EC?

3. Does an interim VAT payment within the meaning of Article 206 of Directive 2006/112/EC which is not paid on time lose its legal status at the end of the tax period for which it is to be paid?

([1]) OJ 2006 L 347, p. 1.
([2]) *Journal of Laws* [Dz. U.] of 2016, item 710, as amended; 'the VAT Law'.

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 27 November 2019 — SC v Zakład Ubezpieczeń Społecznych I Oddział w Warszawie Wydział Realizacji Umów Międzynarodowych

(Case C-866/19)

(2020/C 61/23)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: SC

Defendant: Zakład Ubezpieczeń Społecznych I Oddział w Warszawie Wydział Realizacji Umów Międzynarodowych

Question referred

Should Article 52(1)(b) of Regulation (EC) No 883/[20]04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([1]) be interpreted as meaning that the competent institution:

(a) takes into account, in accordance with national law, non-contribution periods not exceeding one third of the aggregated contribution periods completed under national law and under the legislations of the other Member States both for the purpose of determining the theoretical amount (point (i)) and the actual amount (point (ii)) of the benefit; or

(b) takes into account, in accordance with national law, non-contribution periods not exceeding one third of the aggregated contribution periods completed under national law and under the legislations of the other Member States only for the purpose of determining the theoretical amount (point (i)) but not for the purpose of establishing the actual amount (point (ii)) of the benefit; or

(c) does not take into account, either for the purpose of determining the theoretical amount (point (i)) or the actual amount (point (ii)) of the benefit, periods of insurance in another Member State when calculating the limit on non-contribution periods under national law?

(1) OJ 2004 L 166, p. 1.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 10 December 2019 — DQ v Ministre de la transition écologique et solidaire, Ministre de l'action et des comptes publics

(Case C-903/19)

(2020/C 61/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: DQ

Defendants: Ministre de la transition écologique et solidaire, Ministre de l'action et des comptes publics

Question referred

Is the benefit of the provisions of Article 11(1) of Annex VIII to the Regulation laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, (1) as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, (2) reserved exclusively to officials and contract staff posted for the first time within a national administration after having been employed as officials, contract staff or temporary staff in an EU institution, or does that benefit also extend to officials and contract staff returning to the service of a national administration after having performed duties in an EU institution and having been assigned non-active status or granted leave for personal reasons during that period?

(1) Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ 1968 L 56, p. 1).

(2) Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

Request for a preliminary ruling from the Cour de Cassation (France) lodged on 11 December 2019 — FO v Ministère public

(Case C-906/19)

(2020/C 61/25)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Appellant: FO
Defendant: Ministère public

Questions referred

1. Does Article 19(2) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, ([1]) which provides that 'a Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country', apply only to infringements of the provisions of that regulation, or does it also apply to infringements of the provisions of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, ([2]) which has been replaced by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport? ([3])

2. Is Article 3(a) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 to be interpreted as permitting a driver to derogate from the provisions of Article 15(2) and (7) of Regulation No 3821/85 of 20 December 1985 on recording equipment in road transport, which has been replaced by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, under which the driver must be able to produce, whenever an inspecting officer so requests, the record sheets and any manual record and printout made during the current day and the previous 28 days, where a vehicle is used, during a period of 28 days, for some journeys falling within the exception referred to above, and some journeys in respect of which there is no relevant derogation from the requirement to use recording equipment?

([1]) OJ 2006 L 102, p. 1.
([2]) OJ 1985 L 370, p. 8.
([3]) Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport Text with EEA relevance (OJ 2014 L 60, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 13 December 2019 — Fédération bancaire française (FBF) v Autorité de contrôle prudentiel et de résolution (ACPR)

(Case C-911/19)

(2020/C 61/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Fédération bancaire française (FBF)

Defendant: Autorité de contrôle prudentiel et de résolution (ACPR)

Questions referred

1. May an action be brought under Article 263 of the Treaty on the Functioning of the European Union for annulment of guidelines issued by a European supervisory authority? If so, is it open to a professional federation to challenge, by means of an action for annulment, the validity of guidelines intended for the members whose interests it protects but which are not of direct or individual concern to it?

2. In the event of a negative answer to either of the questions raised in paragraph 1, may guidelines issued by a European supervisory authority be the subject of a reference for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union? If so, is it open to a professional federation to challenge, by means of a plea of invalidity, guidelines intended for the members whose interests it protects and which are not of direct or individual concern to it?

3. In the event that it is open to the Fédération bancaire française to challenge, by means of a plea of invalidity, the Guidelines adopted by the European Banking Authority on 22 March 2016, did that Authority, in issuing those guidelines, exceed the powers conferred on it under Regulation No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)? ([1])

([1]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12).

GENERAL COURT

Judgment of the General Court of 19 December 2019 — BPC Lux 2 and Others v Commission

(Case T-812/14 RENV) [1]

(State aid — Aid granted by the Portuguese authorities for the resolution of the financial institution Banco Espírito Santo — Creation and capitalisation of a Bridge Bank — Decision declaring the aid compatible with the internal market — Lack of standing — Inadmissibility)

(2020/C 61/27)

Language of the case: English

Parties

Applicants: BPC Lux 2 Sàrl (Senningerberg, Luxembourg) and the 19 other applicants whose names are set out in the Annex to the judgment (represented by: J. Webber and M. Steenson, Solicitors, and B. Woolgar and K. Bacon, Barristers)

Defendant: European Commission (represented by: L. Flynn and P.-J. Loewenthal, acting as Agents)

Intervener in support of the defendant: Portuguese Republic (represented by: L. Inez Fernandes and S. Jaulino, acting as Agents, and M. Mendes Pereira, lawyer)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Decision C(2014) 5682 final of 3 August 2014 on State aid SA.39250 (2014/N) — Portugal — Resolution of Banco Espírito Santo, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders BPC Lux 2 Sàrl and the other applicants whose names are set out in the Annex to bear their own costs and to pay those incurred by the European Commission for the proceedings for interim relief, at first instance and after referral back to the General Court;*

3. *Orders the Commission to bear the costs incurred by it in the proceedings on the appeal;*

4. *Orders the Portuguese Republic to bear its own costs.*

[1] OJ C 46, 9.2.2015.

Judgment of the General Court of 19 December 2019 — Greece v Commission

(Case T-14/18) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Decoupled direct aid — Flat-rate financial correction — Article 52 of Regulation (EU) No 1306/2013 — Article 12 of Delegated Regulation (EU) No 907/2014 — Obligation to state reasons — Assessment of the damage — Proportionality)

(2020/C 61/28)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, E. Leftheriotou and A. Vasilopoulou, acting as Agents)

Defendant: European Commission (represented by: D. Triantafyllou and D. Bianchi, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of Commission Implementing Decision (EU) 2017/2014 of 8 November 2017, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2017 L 292, p. 61) in so far as it concerns the Hellenic Republic.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 112, 26.3.2018.

Judgment of the General Court of 19 December 2019 — Probelte v Commission

(Case T-67/18) ([1])

(Plant protection products — Active substance 8-hydroxyquinoline — Request for amendment of the conditions of approval — Procedure for harmonised classification and labelling — Right to be heard — Legitimate expectations — Manifest error of assessment)

(2020/C 61/29)

Language of the case: English

Parties

Applicant: Probelte, SA (Murcia, Spain) (represented by: C. Mereu and S. Saez Moreno, lawyers)

Defendant: European Commission (represented by: A. Lewis, G. Koleva and I. Naglis, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Regulation (EU) 2017/2065 of 13 November 2017 confirming the conditions of approval of the active substance 8-hydroxyquinoline, as set out in Implementing Regulation (EU) No 540/2011 and modifying Implementing Regulation (EU) 2015/408 as regards the inclusion of the active substance 8-hydroxyquinoline in the list of candidates for substitution (OJ 2017 L 295, p. 40).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Probelte, SA to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 112, 26.3.2018.

Judgment of the General Court of 19 December 2019 — Vanda Pharmaceuticals v Commission

(Case T-211/18) ([1])

(Medicinal products for human use — Application for marketing authorisation for the medicinal product Fanaptum — iloperidone — Commission refusal decision — Regulation (EC) No 726/2004 — Scientific evaluation of the risks and benefits of a medicinal product — Obligation to state reasons — Manifest error of assessment — Proportionality — Equal treatment)

(2020/C 61/30)

Language of the case: English

Parties

Applicant: Vanda Pharmaceuticals Ltd (London, United Kingdom) (represented by: M. Meulenbelt, B. Natens, A. S. Melin and C. Muttin, lawyers)

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

Re:

Application pursuant to Article 263 TFEU seeking the annulment of (i) the Commission Implementing Decision C(2018) 252 final of 15 January 2018 refusing marketing authorisation under 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) for the medicinal product for human use Fanaptum — iloperidone, and (ii) the opinion and the assessment report of the Committee for Human Medicinal Products of the European Medicines Agency (EMA) of 9 November 2017.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Vanda Pharmaceuticals Ltd to pay the costs.*

([1]) OJ C 190, 4.6.2018.

Judgment of the General Court of 19 December 2019 — Zotkov v Commission

(Case T-457/18) ([1])

(Civil Service — Contractual agents — Remuneration — Family benefits — Request to treat a person as a dependent child — Conditions of grant — Factors to take into account in the calculation of maintenance expenditure — Error in law)

(2020/C 61/31)

Language of the case: Bulgarian

Parties

Applicant: Rosen D. Zotkov (Brussels, Belgium) (represented by: N. Stankov, lawyer)

Defendant: European Commission (represented by: Y. Marinova and D. Milanowska, acting as Agents)

Re:

Application based on Article 270 TFEU seeking, first, annulment of the Commission's decision of 30 April 2018 rejecting the applicant's application for the grant of the allowance for a person treated as a dependent child and, second, review by the Commission of that decision, after correction of the financial calculation

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Rosen D. Zotkov to pay the costs.*

([1]) OJ C 341, 24.9.2018.

Judgment of the General Court of 19 December 2019 — Currency One v EUIPO — Cinkciarz.pl (CINKCIARZ)

(Case T-501/18) ([1])

(EU trade mark — Invalidity proceedings — EU word mark CINKCIARZ — Absolute grounds for refusal — Distinctive character — No descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — Pejorative term relating to the goods or services at issue)

(2020/C 61/32)

Language of the case: Polish

Parties

Applicant: Currency One S.A. (Poznań, Poland) (represented by: P. Szmidt and B. Jóźwiak, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 18 June 2018 (Case R 2598/2017-5), relating to invalidity proceedings between Currency One and Cinkciarz.pl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Currency One S.A. to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and Cinkciarz.pl sp. z o.o.*

([1]) OJ C 364, 8.10.2018.

Judgment of the General Court of 19 December 2019 — Czech Republic v Commission

(Case T-509/18) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Applicable time periods between multiple visits by the national control authorities — Announcement of on-the-spot checks — Implied notice — Articles 25 and 26 of Implementing Regulation (EU) No 809/2014 — Flat rate financial correction)

(2020/C 61/33)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek, J. Pavliš, O. Serdula and J. Vláčil, acting as Agents)

Defendant: European Commission (represented by: A. Lewis, A. Sauka and K. Walkerová, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2018 L 152, p. 29) in so far as it excludes expenditure of a total of EUR 151 116,65 incurred by the Czech Republic under the EAFRD.

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as the European Commission excluded under that decision expenditure of a total of EUR 151 116,65 incurred by the Czech Republic under the EAFRD;*

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

([1]) OJ C 399, 5.11.2018.

Judgment of the General Court of 19 December 2019 — Vins el Cep v EUIPO — Rotkäppchen-Mumm Sektkellereien (MIM NATURA)

(Case T-589/18) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark MIM NATURA — Earlier international word and figurative registrations MM and MM and earlier national word mark MUMM — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2020/C 61/34)

Language of the case: English

Parties

Applicant: Vins el Cep, SL (Sant Sadurní d'Anoia, Spain) (represented by: J. Vázquez Salleras and G. Ferrer Gonzalvez, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Rotkäppchen-Mumm Sektkellereien GmbH (Eltville, Germany) (represented by: W. Berlit, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 12 July 2018 (Case R 2270/2017-1), relating to opposition proceedings between Rotkäppchen-Mumm Sektkellereien and Vins el Cep, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Vins el Cep, SL, to pay the costs.*

([1]) OJ C 427, 26.11.2018.

Judgment of the General Court of 18 December 2019 — Gres de Aragón v EUIPO (GRES ARAGÓN)

(Case T-624/18) ([1])

(EU trade mark — Application for the EU figurative mark GRES ARAGÓN — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001 — No descriptive character — Article 7(1)(c) of Regulation 2017/1001 — Obligation to state reasons — Error of law)

(2020/C 61/35)

Language of the case: Spanish

Parties

Applicant: Gres de Aragón, SA (Alcalñiz, Spain) (represented by: J. Learte Álvarez, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 16 August 2018 (Case R 2269/2017-1), concerning an application for registration of the figurative sign GRES ARAGÓN as an EU trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 August 2018 (Case R 2269/2017-1);*

2. *Orders EUIPO to pay the costs.*

([1]) OJ C 445, 10.12.2018.

Judgment of the General Court of 19 December 2019 — ZQ v Commission

(Case T-647/18) ([1])

(Civil service — Officials — Psychological harassment — Article 12a of the Staff Regulations — Request for assistance — Article 24 of the Staff Regulations — Rejection of the request — Reasonable time — Absence of prima facie evidence — Obligation to state reasons — Liability)

(2020/C 61/36)

Language of the case: Italian

Parties

Applicant: ZQ (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: European Commission (represented by: B. Mongin, acting as Agent, and A. Dal Ferro, lawyer)

Re:

Application based on Article 270 TFEU seeking, first, annulment of the Commission decision of 15 December 2017 rejecting the request for assistance made by the applicant on 18 August 2017 and, in so far as is necessary, of the Commission decision of 19 July 2018 rejecting the complaint lodged by the applicant on 19 March 2018 and, second, compensation for the material and non-material damage he claims to have suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ZQ to bear his own costs and to pay those incurred by the European Commission.*

([1]) OJ C 16, 14.1.2019.

Judgment of the General Court of 19 December 2019 — Sony Interactive Entertainment Europe v EUIPO — Vieta Audio (Vita)

(Case T-690/18) ([1])

(EU trade mark — Revocation proceedings — EU word mark Vita — Decision taken following the annulment by the General Court of an earlier decision — Article 65(6) of Regulation (EC) No 207/2009 (now Article 72(6) of Regulation (EU) 2017/1001) — Res judicata)

(2020/C 61/37)

Language of the case: English

Parties

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

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 10 September 2018 (Case R 695/2018-4), relating to revocation proceedings between Vieta Audio and Sony Interactive Entertainment Europe.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 September 2018 (Case R 695/2018-4), relating to revocation proceedings between Vieta Audio, SA and Sony Interactive Entertainment Europe Ltd;*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Sony Interactive Entertainment Europe.*

([1]) OJ C 35, 28.1.2019.

Judgment of the General Court of 19 December 2019 — El Corte Inglés v EUIPO — Lloyd Shoes (LLOYD)

(Case T-729/18) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark LLOYD — Earlier EU figurative mark LLOYD'S — Relative ground for refusal — No likelihood of confusion — No similarity between the goods and services — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2020/C 61/38)

Language of the case: English

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Lloyd Shoes GmbH (Sulingen, Germany) (represented by: M. Stöckel, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 13 September 2018 (Case R 2385/2017-1), relating to opposition proceedings between El Corte Inglés and Lloyd Shoes.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);*

3. *Orders Lloyd Shoes GmbH to bear its own costs.*

([1]) OJ C 44, 4.2.2019.

Judgment of the General Court of 19 December 2019 — Japan Tobacco v EUIPO — I.J. Tobacco Industry (I.J. TOBACCO INDUSTRY)

(Case T-743/18) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark I.J. TOBACCO INDUSTRY — Earlier EU figurative mark JTi — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2020/C 61/39)

Language of the case: English

Parties

Applicant: Japan Tobacco, Inc. (Tokyo, Japan) (represented by: J. Gracia Albero and R. Ahijón Lana, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: I.J. Tobacco Industry FZE (Ras Al Khaimah, United Arab Emirates) (represented by: A.-E. Malami, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 15 October 2018 (Case R 979/2018-4), relating to opposition proceedings between Japan Tobacco and I.J. Tobacco Industry.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Japan Tobacco, Inc., to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by I.J. Tobacco Industry FZE.*

([1]) OJ C 65, 18.2.2019.

Judgment of the General Court of 19 December 2019 — Karlovarské minerální vody v EUIPO — Aguas de San Martín de Veri (VERITEA)

(Case T-28/19) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark VERITEA — Earlier EU word mark VERI — AGUA PURA DEL PIRINEO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons)

(2020/C 61/40)

Language of the case: English

Parties

Applicant: Karlovarské minerální vody a.s. (Karlovy Vary, Czech Republic) (represented by: J. Mrázek, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Aguas de San Martín de Veri, SA (Bisaurri, Spain) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 8 November 2018 (Case R 499/2018-5), relating to opposition proceedings between Aguas de San Martín de Veri and Karlovarské minerální vody.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Karlovarské minerální vody a.s. to pay the costs.*

([1]) OJ C 82, 4.3.2019.

Judgment of the General Court of 19 December 2019 — Amigüitos pets & life v EUIPO — Société des produits Nestlé (THE ONLY ONE by alphaspirit wild and perfect)

(Case T-40/19) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark THE ONLY ONE by alphaspirit wild and perfect — Earlier EU word mark ONE — Relative grounds for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Article 8(5) of Regulation 2017/1001)

(2020/C 61/41)

Language of the case: English

Parties

Applicant: Amigüitos pets & life, SA (Lorca, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

Defendant: European Union Intellectual Property Office (represented by: G. Sakalaitė-Orlovskienė and J. Crespo Carrillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Société des produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz, A. Lambrecht and C. Elkemann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 November 2018 (Case R 272/2018-4) relating to opposition proceedings between Société des produits Nestlé SA and Amigüitos pets & life.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 19 November 2018 (Case R 272/2018-4);*

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

3. *Orders EUIPO to pay, in addition to its own costs, half of the costs incurred by Amigüitos pets & life, SA, including those incurred for the purposes of the proceedings before the Board of Appeal;*

4. *Orders Société des produits Nestlé, SA to pay, in addition to its own costs, half of the costs incurred by Amigüitos pets & life, including those incurred for the purposes of the proceedings before the Board of Appeal.*

([1]) OJ C 93, 11.3.2019.

Judgment of the General Court of 19 December 2019 — Nosio v EUIPO (BIANCOFINO)

(Case T-54/19) ([1])

(EU trade mark — Application for EU word mark BIANCOFINO — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons — Article 94 of Regulation 2017/1001)

(2020/C 61/42)

Language of the case: Italian

Parties

Applicant: Nosio SpA (Mezzocorona, Italy) (represented by: J. Graffer and A. Ottolini, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 22 November 2018 (Case R 2434/2017-1), relating to an application for registration of the word sign BIANCOFINO as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nosio SpA to pay the costs.*

([1]) OJ C 112, 25.3.2019.

Judgment of the General Court of 19 December 2019 — Südwestdeutsche Salzwerke v EUIPO (Bad Reichenhaller Alpensaline)

(Case T-69/19) ([1])

(EU trade mark — Application for EU figurative mark Bad Reichenhaller Alpensaline — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2020/C 61/43)

Language of the case: German

Parties

Applicant: Südwestdeutsche Salzwerke AG (Heilbronn, Germany) (represented by: M. Douglas, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Eberl and A. Söder, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 4 December 2018 (Case R 412/2018-1) relating to an application for registration of the figurative sign Bad Reichenhaller Alpensaline as an EU trade mark.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Südwestdeutsche Salzwerke AG to pay the costs.*

([1]) OJ C 112, 25.3.2019.

Judgment of the General Court of 19 December 2019 — Vereinigung der Bayerischen Wirtschaft v EUIPO (eVoter)

(Case T-175/19) ([1])

(EU trade mark — Application for EU word mark eVoter — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001)

(2020/C 61/44)

Language of the case: German

Parties

Applicant: Vereinigung der Bayerischen Wirtschaft eV (Munich, Germany) (represented by: L. Genz, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Eberl and A. Söder, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 11 January 2019 (Case R 1983/2018-5) relating to an application for registration of the word sign eVoter as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Vereinigung der Bayerischen Wirtschaft eV to pay the costs.*

([1]) OJ C 164, 13.5.2019.

Judgment of the General Court of 19 December 2019 — Amazon Technologies v EUIPO (ring)

(Case T-270/19) ([1])

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

(2020/C 61/45)

Language of the case: English

Parties

Applicant: Amazon Technologies, Inc. (Seattle, Washington, United States) (represented by: A. Klett and C. Mikyska, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 12 February 2019 (Case R 2211/2018-5), relating to the international registration designating the European Union in respect of the figurative mark ring

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Amazon Technologies, Inc. to pay the costs.*

([1]) OJ C 213, 24.6.2019.

Order of the General Court of 17 December 2019 — repowermap.org v EUIPO — Repower (REPOWER)

(Case T-188/16) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Work mark REPOWER — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2020/C 61/46)

Language of the case: French

Parties

Applicant: repowermap.org (Bern, Switzerland) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Repower AG (Brusio, Switzerland) (represented by: R. Kunz-Hallstein and H. P. Kunz-Hallstein, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 8 February 2016 (Case R 2311/2014-5) relating to invalidity proceedings between repowermap.org and Repower.

Operative part of the order

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

2. *The European Union Intellectual Property Office (EUIPO) is ordered to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Order of the General Court of 16 December 2019 — Kipper v Commission

(Case T-394/18)

(Independent service provider for the Commission (free-lance) — Application for social benefits granted to officials in category B — Lack of jurisdiction)

(2020/C 61/47)

Language of the case: German

Parties

Applicant: Michael Kipper (Remich, Luxembourg) (represented by: H-J. Dupré, lawyer)

Defendant: European Commission (represented by: B. Mongin and T. Bohr, acting as Agents)

Re:

Application for various social benefits granted to officials in category B.

Operative part of the order

1. *The action is dismissed for having been brought before a court that has no jurisdiction to hear it.*

2. *Mr Michael Kipper is ordered to pay the costs.*

Order of the General Court of 17 December 2019 — AG v Europol

(Case T-756/18) [1]

(Action for annulment — Civil service — Decision (EU) 2015/1889 on the dissolution of the Europol pension fund — Failure to follow the pre-litigation procedure — Inadmissibility)

(2020/C 61/48)

Language of the case: German

Parties

Applicant: AG (represented by: C. Abrar, lawyer)

Defendant: European Union Agency for Law Enforcement Cooperation (represented by: J. Teal and A. Ketels, acting as Agents, and D. Waelbroeck and A. Duron, lawyers)

Re:

Application under Article 270 TFEU seeking annulment of Europol's implied decision refusing the applicant's complaint of 2 July 2018 against Europol's implied refusal to adopt a reasoned decision concerning his entitlements in the provisional independent pension fund created by Article 37 of Annex 6 to the Europol Staff Regulations.

Operative part of the order

1. *The action is dismissed.*

2. *There is no longer any need to adjudicate on the application for leave to intervene made by the Council of the European Union.*

3. *AC and the European Union Agency for Law Enforcement Cooperation (Europol) shall each bear their own costs.*

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

([1]) OJ C 93, 11.3.2019.

Order of the General Court of 18 December 2019 — Lazarus Szolgáltató és Kereskedelmi v Commission

(Case T-763/18) ([1])

(Action for annulment — State aid — Allegedly unlawful aid implemented by Hungary in favour of undertakings employing disabled workers — Alleged Commission decisions declaring the aid measure compatible with the internal market — Time limit for bringing an action — Point from which time starts to run — Knowledge acquired — Proof — Duty of diligence — Act not open to challenge — Inadmissibility)

(2020/C 61/49)

Language of the case: Hungarian

Parties

Applicant: Lazarus Szolgáltató és Kereskedelmi Kft. (Lazarus Kft.) (Békés, Hungary) (represented by: L. Szabó, lawyer)

Defendant: European Commission (represented by: V. Bottka and C. Georgieva-Kecsmar, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the decisions allegedly adopted by the Commission concerning, first, complaint SA.29432 — CP 290/2009 — Hungary — Aid for the employment of disabled workers alleged to be unlawful due to the discriminatory nature of the legislation and, second, complaint SA.45498 (FC/2016) — Complaint by OPS Újpest-lift Kft. concerning the State aid granted between 2006 and 2012 to undertakings employing disabled workers.

Operative part of the order

1. *The action is dismissed.*

2. *Lazarus Szolgáltató és Kereskedelmi Kft. (Lazarus Kft.) shall pay the costs.*

([1]) OJ C 103, 18.3.2019.

Order of the General Court of 18 December 2019 — Nowhere v EUIPO — Junguo Ye (APE TEES)

(Case T-12/19) ([1])

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2020/C 61/50)

Language of the case: English

Parties

Applicant: Nowhere Co. Ltd (Tokyo, Japon) (represented by: A. Norris, lawyer)

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

Other party to the proceedings before the Board of Appeal: Junguo Ye (Elche, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 8 October 2018 (Case R 2474/2017-2), relating to opposition proceedings between Nowhere and Mr Ye.

Operative part of the order

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

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

([1]) OJ C 72, 25.2.2019.

Order of the General Court of 10 December 2019 — Vlaamse Gemeenschap and Vlaamse Gewest v Parliament and Council

(Case T-66/19) ([1])

(Action for annulment — Internal market — Fundamental freedoms — Regulation (EU) 2018/1724 — Establishment of a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services — Sub-national authority — Standing to bring proceedings — Individual concern — Inadmissibility)

(2020/C 61/51)

Language of the case: Dutch

Parties

Applicants: Vlaamse Gemeenschap (Belgium) and Vlaamse Gewest (Belgium) (represented by: T. Eyskens, N. Bonbled and P. Geysens, lawyers)

Defendants: European Parliament (represented by: I. McDowell, R. van de Westelaken and M. Peternel, acting as Agents), Council of the European Union (represented by: K. Michoel and O. Segnana, acting as Agents)

Re:

Action under Article 263 TFEU seeking the annulment of Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ 2018 L 295, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the application for leave to intervene by the European Commission.*

3. *Vlaamse Gemeenschap and Vlaamse Gewest shall, in addition to bearing their own costs, pay those incurred by the European Parliament and by the Council of the European Union.*

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

([1]) OJ C 122, 1.4.2019.

Order of the General Court of 19 December 2019 — DK Company v EUIPO — Hunter Boot (DENIM HUNTER)

(Case T-74/19) ([1])

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

(2020/C 61/52)

Language of the case: English

Parties

Applicant: DK Company A/S (Ikast, Denmark) (represented by: S. Hansen, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Hunter Boot (Edinburgh, United Kingdom)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 16 November 2018 (Case R 849/2018-2), relating to opposition proceedings between Hunter Boot and DK Company.

Operative part of the order

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

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

([1]) OJ C 112, 25.3.2019.

Order of the General Court of 20 December 2019 — ZU v EEAS

(Case T-154/19) ([1])

(Action for annulment — Civil service — Officials — Mission expenses — Act not open to challenge — Act not adversely affecting an official — Irregular nature of the pre-litigation procedure — Premature action — Inadmissibility)

(2020/C 61/53)

Language of the case: English

Parties

Applicant: ZU (represented by: C. Bernard-Glanz, lawyer)

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

Re:

Action based on Article 270 TFEU seeking annulment of the part of the decision of 30 November 2018 by which the EEAS Appointing Authority rejected the applicant's complaint of 27 July 2018, inasmuch as it implicitly refused the request concerning mission expenses submitted by the applicant on 26 February 2018.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *ZU shall pay the costs.*

([1]) OJ C 155, 6.5.2019.

Order of the General Court of 18 December 2019 — Ceramica Flaminia v EUIPO — Ceramica Cielo (goclean)

(Case T-192/19) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark goclean — Revocation of the contested decision — Article 103 of Regulation (EU) 2017/1001 — Action which has become devoid of purpose — No need to adjudicate)

(2020/C 61/54)

Language of the case: Italian

Parties

Applicant: Ceramica Flaminia (Civita Castellana, Italy) (represented by: A. Improda and R. Arista, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Ceramica Cielo SpA (Fabrica di Roma, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 30 January 2019 (Case R 991/2018-2) relating to invalidity proceedings between Ceramica Cielo and Ceramica Flaminia.

Operative part of the order

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

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

([1]) OJ C 206, 17.6.2019.

Order of the General Court of 17 December 2019 — Societá Agricola Tenuta di Rimale and Others v Commission

(Case T-210/19) ([1])

(Action for annulment — Common agricultural policy — Binding rules relating to the regulation of the supply of cheese benefiting from a protected designation of origin — Refusal of the application for the adoption of implementing acts — Act not open to challenge — Inadmissibility)

(2020/C 61/55)

Language of the case: Italian

Parties

Applicants: Societá Agricola Tenuta di Rimale (Fidenza, Italy) and the 9 other applicants whose names are listed in the annex to the order (represented by: M. Libertini, A. Scognamiglio and M. Spolidoro, lawyers)

Defendant: European Commission (represented by: D. Bianchi and F. Moro, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the decision allegedly contained in the Commission's letter of 6 February 2019 (Ares(2019) 677860) refusing the applicants' application for (i) a declaration as to the alleged infringement by the Italian authorities 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 (EC) No 1234/2007 (OJ 2013 L 347, p. 671) and of Article 101 TFEU; and (ii) the adoption by the Commission of implementing acts, on the basis of Article 150(8) of that regulation, requiring that the Italian Republic repeal rules relating to the regulation of the supply of Parmigiano Reggiano cheese for the period 2017-2019.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Società Agricola Tenuta di Rimale and the other applicants whose names are listed in the annex are ordered to pay the costs.*

([1]) OJ C 213, 24.6.2019.

Order of the General Court of 20 December 2019 — Dragomir v Commission

(Case T-297/19) ([1])

(Non-contractual liability — Rule of law — Independence of the judiciary — Right to a fair trial — Protection of personal data — Failure by the Commission to adopt measures to ensure that Romania fulfils its obligations — Sufficiently serious breach of a rule of law conferring rights on individuals — Action manifestly lacking any foundation in law)

(2020/C 61/56)

Language of the case: Romanian

Parties

Applicant: Daniel Dragomir (Bucharest, Romania) (represented by: R. Chiriță, lawyer)

Defendant: European Commission (represented by: C. Giolito and H. Stancu, acting as Agents)

Re:

Action under Article 270 TFEU seeking compensation for the harm allegedly suffered by the applicant as a result of the Commission's failure to fulfil its obligations to ensure that Romania respects the rule of law, the independence of the judiciary and the right to a fair trial and of the Commission's failure to fulfil its obligations relating to the protection of personal data.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Daniel Dragomir shall pay the costs.*

([1]) OJ C 270, 12.8.2019.

Order of the General Court of 10 December 2019 — Gollnisch v Parliament

(Case T-319/19) ([1])

(Action for annulment — Institutional law — Rules governing the payment of expenses and allowances to Members of the European Parliament — Amendment of the voluntary additional pension scheme — Regulatory act — Deadline for bringing an action — Out of time — Act not open to challenge — Disregard of the procedural requirements — Inadmissibility)

(2020/C 61/57)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Lilliers-le-Mahieu, France) (represented by: B. Bonnefoy-Claudet, lawyer)

Defendant: European Parliament (represented by: Z. Nagy and M. Ecker, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the decision of the Bureau of the European Parliament of 10 December 2018 amending the Implementing Measures for the Statute for Members of the European Parliament (OJ 2018, C 466, p. 8), the letter of 26 March 2019 from the President of the Parliament rejecting the administrative appeal brought against the decision of the Bureau of the Parliament and all acts adopted as a consequence thereof.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Bruno Gollnisch shall bear his own costs and pay those incurred by the European Parliament.*

([1]) OJ C 255, 29.7.2019.

Order of the General Court of 19 December 2019 — Jalkh v Parliament

(Case T-360/19) ([1])

(Action for annulment — Institutional law — European Parliament legislative resolution — Act not open to challenge — Preparatory act — Inadmissibility)

(2020/C 61/58)

Language of the case: French

Parties

Applicant: Jean-François Jalkh (Gretz-Armainvilliers, France) (represented by: F. Wagner, lawyer)

Defendant: European Parliament (represented by: Z. Nagy and S. Lucente, acting as Agents)

Re:

Action under Article 263 TFEU seeking annulment of the European Parliament's legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations (COM(2018)0338 C8-0214/2018 2018/0170(COD).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Jean-François Jalkh shall pay the costs.*

([1]) OJ C 263, 5.8.2019.

Order of the President of the General Court of 12 December 2019 — FF v Commission

(Case T-654/19 R)

(Interim relief — Law governing the institutions — Liability of the European Union — Photograph of a man used as a health warning — Action for damages — Application for interim measures — Necessity — Inadmissibility)

(2020/C 61/59)

Language of the case: French

Parties

Applicant: FF (represented by: A. Fittante, lawyer)

Defendant: European Commission (represented by: I. Rubene and D. Martin, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for an order that an expert's report be obtained as an interim measure.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 13 December 2019 – WM v Commission

(Case T-411/18)

(2020/C 61/60)

Language of the case: English

Parties

Applicant: WM (represented by: B. Entringer, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the selection board of 27 September 2017 in open competition EPSO/AD/338/17 not to include the applicant on the reserve list;

— annul the decision of the appointing authority of 19 April 2018 rejecting complaint No R/75/17;

— award the applicant an amount of no less than EUR 25 000 in damages;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the Commission infringed the principle of non-discrimination and equal treatment related to employment and occupation.

— The applicant refers to Article 5 of Directive 2000/78, ([1]) and to Article 1d of the Staff Regulations of Officials of the European Union, in support of his plea, and argues that the defendant failed to undertake the required individual assessment of the applicant's needs.

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Action brought on 2 December 2019 – Gaspar v Commission

(Case T-827/19)

(2020/C 61/61)

Language of the case: English

Parties

Applicant: Norbert Gaspar (Mensdorf, Luxembourg) (represented by: R. Wardyn, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 23 May 2018; and

— order the Commission to pay the costs of the process.

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 violation of article 11(2) of Annex VIII of Staff Regulations and Article 7(1) of the GIP:

   — the transferable pensionable years should be calculated on the basis of the amount actually transferred minus the capital appreciation between the date of the application for a transfer and the actual date of the transfer;

   — the PMO erred by calculating the transferable pensions rights based solely on the amount provided by the national administration in the provisional decision while the amount actually transferred did not correspond uniquely to the capital appreciation between the date of the application for a transfer and the date of the actual transfer.

2. Second plea in law, alleging unjustified enrichment of the Union:

   — the calculation of the transferable years on the basis of a provisional amount which was subject to recalculation and that did not correspond uniquely to the capital appreciation between the date of the application for a transfer and the actual date of the transfer resulted in unjustified enrichment of the Union.

Action brought on 12 December 2019 — Golden Omega v Commission

(Case T-846/19)

(2020/C 61/62)

Language of the case: Dutch

Parties

Applicant: Golden Omega S.A. (Santiago, Chile) (represented by: S. Moolenaar, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Implementing Regulation (EU) 2019/1661 of 24 September 2019 concerning the classification of certain goods in the Combined Nomenclature (OJ 2019 L 251, p. 1) in its entirety.

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 that the Commission exceeded its powers under Article 9(1) of Regulation 2658/87 by unlawfully altering the scope of CN heading 1516.

2. Second plea in law, alleging that the Commission exceeded its powers under Article 9(1) of Regulation 2658/87 by unlawfully amending the customs tariff because that implementing regulation amends the customs tariff, in so far products are excluded by that implementing regulation from a CN heading in which the product at issue should be categorised on the basis of its objective characteristics and properties.

Action brought on 16 December 2019 – Body Attack Sports Nutrition v EUIPO – Sakkari (SAKKATTACK)

(Case T-851/19)

(2020/C 61/63)

Language of the case: English

Parties

Applicant: Body Attack Sports Nutrition GmbH & Co. KG (Hamburg, Germany) (represented by: S. Labesius, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Maria Sakkari (Nicosia, Cyprus)

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 SAKKATTACK in the colours black, red, yellow, white and grey – Application for registration No 16 603 557

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 October 2019 in Case R 2560/2018-4

Form of order sought

The applicant claims that the Court should:

— order the joinder of the present case with case T-788/19;

— annul the contested decision;

— order EUIPO to pay the costs.

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 37(1) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of the rule of equal treatment and sound administration;

— Infringement of Article 94(1)(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 December 2019 — Dehousse v Court of Justice of the European Union

(Case T-857/19)

(2020/C 61/64)

Language of the case: French

Parties

Applicant: Franklin Dehousse (Brussels, Belgium) (represented by: L. Levi and S. Rodrigues, lawyers)

Defendant: Court of Justice of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— set aside the contested decision;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action against the decision of the Registrar of the Court of Justice of the European Union of 14 October 2019 concerning a measure giving effect to the judgment of 20 September 2019, *Dehousse* v *Court of Justice of the European Union*, T-433/17, EU:T:2019:632), the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of Article 266 TFEU, in that the contested decision was not an appropriate measure to comply with the judgment in Case T-433/17, *Dehousse* v *Court of Justice of the European Union*.

2. Second plea in law, alleging infringement of the decision of the Court of 2016 on access to administrative documents, Article 15(3) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union, in particular public access to documents of the institutions and the duty of transparency.

3. Third plea in law, alleging infringement of Article 41 of the Charter of Fundamental Rights of the European Union, in particular the right to good administration, including the duty to state reasons.

Action brought on 18 December 2019 — Brasserie St Avold v EUIPO (Shape of a bottle)

(Case T-862/19)

(2020/C 61/65)

Language of the case: French

Parties

Applicant: Brasserie St Avold (Saint-Avold, France) (represented by: P. Greffe, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of a tridimensional sign (Shape of a bottle) — Application for registration No 1 408 065

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 October 2019 in Case R 466/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 19 December 2019 — Production Christian Gallimard v EUIPO — Éditions Gallimard (PCG CALLIGRAM CHRISTIAN GALLIMARD)

(Case T-863/19)

(2020/C 61/66)

Language in which the application was lodged: French

Parties

Applicant: Production Christian Gallimard (Luxembourg, Luxembourg) (represented by: L. Dreyfuss-Bechmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Éditions Gallimard la nouvelle revue française éditions de la nouvelle revue française SA (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for the European Union word mark 'PCG CALLIGRAM CHRISTIAN GALLIMARD' — Application for registration No 15 299 589

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 October 2019 in Case R 2316/2018-5

Form of order sought

The applicant claims that the Court should:

— declare the present application and the annexes admissible;

— annul the contested decision;

— order EUIPO and the company Éditions Gallimard (if that company intervenes in the present proceedings) to pay the 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 17 December 2019 – AI and Others v ECDC

(Case T-864/19)

(2020/C 61/67)

Language of the case: English

Parties

Applicants: AI, HV, HW and HY (represented by: L. Levi and A. Champetier, lawyers)

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

Form of order sought

The applicants claim that the Court should:

— annul the decision of the ECDC of 11 February 2019 rejecting their request for compensation of 11 October 2018;

— annul, if need be, the decision of 10 September 2019 rejecting their complaint of 10 May 2019;

— order compensation in respect of the material and non-material harm allegedly suffered by the applicants;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of their action, the applicants, having specified their individual factual situations, then set out their allegations of the fault committed by the defendant, the damage suffered, and the link between the fault and the damage.

Action brought on 18 December 2019 – Nevinnomysskiy Azot and NAK 'Azot' v Commission

(Case T-865/19)

(2020/C 61/68)

Language of the case: English

Parties

Applicants: AO Nevinnomysskiy Azot (Nevinnomyssk, Russia), AO Novomoskovskaya Aktsionernaya Kompania NAK 'Azot' (Novomoskovsk, Russia) (represented by: E. Gergondet, and P. Vander Schueren, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the action admissible;

— annul the Contested Regulation, as far as it applies to the applicants; and

— order the defendant to pay the costs incurred by the applicants in relation to these proceedings.

Pleas in law and main arguments

In their application, the applicants request the Court to annul Commission Implementing Regulation (EU) 2019/1688 ([1]).

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

1. First plea in law, alleging that the defendant acted in breach of Articles 2(1), 2(9) and 2(10) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([2]) (the 'basic Regulation') and committed manifest errors of assessment by incorrectly determining the export price and the normal value and acted in breach of Articles 2(3), 2(4) and 2(5) of the basic Regulation by making its ordinary course of trade determination based on adjusted costs of production.

2. Second plea in law, alleging that the defendant acted in breach of Articles 3(2), 3(3) and 3(6) of the basic Regulation, committed manifest errors of assessment, violated the right to sound administration and violated the principle of non-discrimination as a result of its improper analysis of the effect of dumped imports on prices in the Union market for like products.

3. Third plea in law, alleging that the defendant acted in breach of Articles 3(7) and 9(4) of the basic Regulation, committed manifest errors of assessment and violated the right to sound administration by failing to assess other known factors causing injury to the Union industry and by failing to ensure that the injury caused by those other factors is not attributed to the dumped imports.

4. Fourth plea in law, alleging that the defendant acted in breach of Articles 7(2a), 9(4), 9(5), 18(1), 18(4) and 18(5) of the basic Regulation, committed manifest errors of assessment, violated the right to sound administration and violated the principle of equality and non-discrimination when it decided not to apply the lesser duty rule to imports of the applicants.

([1]) Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ 2019 L 258, p. 21).

([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).

Action brought on 20 December 2019 — Tetra v EUIPO — Neusta next (Wave)

(Case T-869/19)

(2020/C 61/69)

Language in which the application was lodged: German

Parties

Applicant: Tetra GmbH (Melle, Germany) (represented by: E. Kessler, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Neusta next GmbH & Co. KG (Bremen, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark Wave — EU trade mark No 12 324 042

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 4 October 2019 in Case R 2440/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and the declaration that EU trade mark No 12 324 042 is invalid;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 23 December 2019 – Broadcom/Commission

(Case T-876/19)

(2020/C 61/70)

Language of the case: English

Parties

Applicant: Broadcom Inc. (San Jose, California, United States) (represented by: L. Kjølbye, J. Ruiz Calzado, L. Crocco, lawyers, J. Bourke, and J. Holmes, Barristers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Decision in whole or in part; and

— order the Commission to pay Broadcom's costs.

Pleas in law and main arguments

In its application, the applicant claims that the Court should annul Commission Decision of 16 October 2019 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union, Article 54 of the EEA Agreement and Article 8 of 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 (Case AT.40608 – Broadcom) (notified under document C(2019) 7406 final).

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

1. First plea in law, alleging errors of law and fact regarding the Commission finding of a prima facie infringement resulting from (a) the Commission's wrong interpretation of the terms of the agreements which Broadcom concluded with six customers ('the Agreements'), (b) the Commission's conclusion that it was not required to consider the Agreements' likely effects on competition, (c) the Commission's inadequate assessment of the prima facie capability of the alleged restrictions to restrict competition, and (d) the Commission's unfounded conclusion that Broadcom is 'at first sight' dominant in one of the relevant markets at issue.

2. Second plea in law, alleging errors of law and fact in the Commission's finding that the interim measures were urgently needed to address a risk of serious and irreparable damage to competition on any of the relevant markets at issue resulting from (a) the Commission's introduction of an unknown urgency concept which is only justified by the slow pace of its own proceedings contradicting the measures' inherently exceptional character, (b) the absence of specific factors supporting an urgent need to take action as the Commission limits itself to referring to a series of generic claims, and (c) the Commission's failure to show any likely damage to competition in any of the relevant markets.

3. Third plea in law, alleging errors of law and fact in the Commission's assessment of proportionality, resulting from the Commission's failure to assess whether an expedited investigation would be more proportionate than limiting Broadcom's freedom for a three-year period; and in its balancing of the interests involved.

Action brought on 23 December 2019 — Einkaufsbüro Deutscher Eisenhändler v EUIPO — Tigges (TOOLINEO)

(Case T-877/19)

(2020/C 61/71)

Language in which the application was lodged: German

Parties

Applicant: Einkaufsbüro Deutscher Eisenhändler GmbH (Wuppertal, Germany) (represented by: T. Schmitz and M. Breuer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Tigges Rechtsanwälte and Steuerberater Partnerschaft mbB (Düsseldorf, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark TOOLINEO — Application for registration No 13 959 481

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 October 2019 in Case R 34/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the 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 23 December 2019 — Bende v EUIPO — Julius-K9 (K-9)

(Case T-878/19)

(2020/C 61/72)

Language in which the application was lodged: Hungarian

Parties

Applicant: Gábor Bende (Beloinannisz, Hungary) (represented by: R. Tóth, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Julius-K9 Zrt. (Szigetszentmiklós, Hungary)

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 'K-9' — Application for registration No 12 040 382

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 1 October 2019 in Case R 560/2018-2

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 7(1)(d) and (2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 95(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 30 December 2019 – Sumol + Compal Marcas v EUIPO – Jacob (Dr. Jacob's essentials)

(Case T-879/19)

(2020/C 61/73)

Language of the case: English

Parties

Applicant: Sumol + Compal Marcas, SA (Carnaxide, Portugal) (represented by: A. de Sampaio, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ludwig Manfred Jacob (Heidesheim, Germany)

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 Dr. Jacob's essentials – Application for registration No 13 742 903

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 3 October 2019 in Case R 1025/2019-1

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision;

— order EUIPO and the other party to the proceedings to pay the 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 30 December 2019 — Marc Folschette and Others v Commission

(Case T-884/19)

(2020/C 61/74)

Language of the case: French

Parties

Applicants: Marc Folschette (Leudelange, Luxembourg), Tetyana Grygorenko (Leudelange) and Professional Business Solutions SA (Leudelange) (represented by: N. Bauer, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— allow the application in its present form;

— declare that the application is substantiated;

— declare that the non-contractual liability of the defendant is incurred;

— order the defendant, in respect of the heads of claim set out below, to pay to:

  — Mr Marc Folschette the total amount of EUR 219 210 (in words: two hunded and twenty-four thousand and twenty-five euros and ninety-five cents);

  — Ms Tetyana Grygorenko the total amount of EUR 75 000 (in words: seventy-five thousand euros);

  — the private joint stock company, Professional Business Solutions SA, the total amount of EUR 500 000 (in words: five hundred thousand euros);

— together with statutory interest at the rate prescribed by law, from the acquittal judgment of the Court of Appeal of 11 January 2017, or, in the alternative, from the date of the present application until final settlement;

— order the defendant to pay the costs of the proceedings;

— reserve for the applicants all other rights, pleas and actions.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, alleging a sufficiently serious infringement of a rule of EU law intended to confer rights on individuals. The applicants complain that the European Anti-Fraud Office (OLAF), which is a service of the European Commission, infringed intentionally and sufficiently seriously several rules of EU law, in serious and manifest disregard of the limits imposed on its discretion. OLAF did not comply with its obligation to respect the presumption of innocence or its legal obligation to investigate both inculpatory and exculpatory evidence and to close the investigation where no inculpatory evidence has come to light. Those failures to fulfil its obligations are the direct cause of actual, certain and direct damage suffered by the applicants and in respect of which they claim compensation on the basis of Articles 340 and 268 TFEU.

Action brought on 28 December 2019 — Design Light & Led Made in Europe and Design Luce & Led Made in Italy v Commission

(Case T-886/19)

(2020/C 61/75)

Language of the case: Italian

Parties

Applicants: Design Light & Led Made in Europe (Milan, Italy) and Design Luce & Led Made in Italy (Rome, Italy) (represented by: M. Maresca, D. Maresca and S. Pelleriti, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should annul Commission Decision C(2019) 7805, notified on 29 October 2019, by which the complaint of the applicants against Koninklijke Philips N.V. was rejected.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 105 TFEU

   — The applicants allege infringement of Article 105 TFEU in so far as the Commission unlawfully exercised the discretion conferred upon it to decide not to conduct a more extensive investigation in respect of the complaint made by them. In that regard, the applicants claim that the defendant proceeded from incorrect assessments of the evidence adduced in support of the allegation of infringement of Articles 101 and 102 TFEU, and that it did not give due consideration to the settled case-law in that regard.

2. Second plea in law, alleging the erroneous application of Article 102 TFEU

   — According to the applicants, by the contested decision, the Commission, erroneously and without assessing any technical or legal aspects, considered the likelihood of establishing an infringement of Article 102 TFEU to be low, with reference to either the dominant position (in respect of the existence of Philips' patent programme and Philips' conduct independently of competitors and suppliers) or the abusive practices consisting in both discriminatory pricing and imposing licences due to alleged but never proved infringements of the patent system.

3. Third plea in law, alleging the erroneous application of Article 101 TFEU

   — In that regard, the applicants submit that the Commission erroneously assessed the evidence adduced in support of the allegation of infringement of Article 101 TFEU in so far as it concluded that it is unlikely that the PLP ('Patent Licensing Program') and the licensing agreements between Philips, Osram and Zumtobel are an agreement or concerted practice within the meaning of that provision, that it accepted, without verifying, that the conduct is unilateral (which is nevertheless an admission on its part of an infringement of Article 102 TFEU), and failed to take into account that even a unilaterally concluded agreement such as the one in question could conceal a prohibited agreement. In addition, it does not fall to the bodies making the complaint to show actual damage caused to the suppliers' market, as it is sufficient for them to adduce evidence on the basis of which the Commission could have and should have conducted further investigations.

Action brought on 10 January 2020 – Skyliners v EUIPO – Sky (SKYLINERS)

(Case T-15/20)

(2020/C 61/76)

Language of the case: English

Parties

Applicant: Skyliners GmbH (Frankfurt am Main, Germany) (represented by: A. Renck and C. Stöber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sky Ltd (Isleworth, United Kingdom)

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 SKYLINERS – Application for registration No 14 570 915

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 October 2019 in Case R 798/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the EUIPO and, in the event that the Other Party before the Board of Appeal joins the proceedings, the Intervener to pay the costs.

Pleas in law

— Infringement of Article 46(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and of Rules 19(2) and 15(2)(h)(iii) of Regulation (EC) 2868/95 of the Commission;

— Infringement of Rule 50(1) third subparagraph of Regulation (EC) 2868/95 of the Commission and Article 95(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 95(2) in conjunction with Article 94(1) first sentence of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 10 January 2020 – Hub Culture v EUIPO – PayPal (VEN)

(Case T-16/20)

(2020/C 61/77)

Language of the case: English

Parties

Applicant: Hub Culture Ltd (Hamilton, Bermuda) (represented by: A. Dellmeier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: PayPal, Inc. (San Jose, California, United States)

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 VEN – European Union trade mark No 9 158 734

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 November 2019 in Case R 1988/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Order of the General Court of 12 December 2019 — O'Flynn and Others v Commission

(Case T-270/18) ([1])

(2020/C 61/78)

Language of the case: English

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

([1]) OJ C 240, 9.7.2018.

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