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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Tribunal de commerce de Bordeaux (France) lodged on 18 November 2019 — Boé Aquitaine SELARL v Mercialys SA

(Case C-838/19)

(2020/C 209/02)

Language of the case: French

Referring court

Tribunal de commerce de Bordeaux

Parties to the main proceedings

Applicant: Boé Aquitaine SELARL

Defendant: Mercialys SA

By order of 19 March 2020, the Court of Justice (Ninth Chamber) declared the request for a preliminary ruling manifestly inadmissible.

Appeal brought on 24 November 2019 by Nathaniel Magnan against the order of the General Court (Fifth Chamber) delivered on 25 September 2019 in Case T-99/19 Nathaniel Magnan v Commission

(Case C-860/19 P)

(2020/C 209/03)

Language of the case: French

Parties

Appellant: Nathaniel Magnan (represented by: J. Fayolle, avocat)

Other party to the proceedings: European Commission

By order of 26 March 2020, the Court of Justice (Sixth Chamber) dismissed the appeal.

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 24 December 2019 — Flightright GmbH v Eurowings GmbH

(Case C-939/19)

(2020/C 209/04)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: Flightright GmbH

Defendant: Eurowings GmbH

The case was decided by order of the Court of Justice of the European Union (Eighth Chamber) of 30 April 2020.

Appeal brought on 30 January 2020 by the European Commission against the judgment of the General Court (Eighth Chamber) delivered on 20 November 2019 in Case T-502/16, Stefano Missir Mamachi di Lusignano and Others v Commission

(Case C-54/20 P)

(2020/C 209/05)

Language of the case: Italian

Parties

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

Other parties to the proceedings: Stefano Missir Mamachi di Lusignano, as heir of Livio Missir Mamachi di Lusignano, Anne Jeanne Cécile Magdalena Maria Sintobin, as heir of Livio Missir Mamachi di Lusignano, Maria Letizia Missir Mamachi di Lusignano, as heir of Livio Missir Mamachi di Lusignano, Carlo Amedeo Missir Mamachi di Lusignano, Giustina Missir Mamachi di Lusignano, Tommaso Missir Mamachi di Lusignano and Filiberto Missir Mamachi di Lusignano

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in so far as the General Court ordered the Commission to pay compensation for the non-material harm suffered by Ms Maria Letizia Missir and Mr Stefano Missir following the death of Mr Alessandro Missir;

— dispose of the case itself and dismiss the action at first instance as inadmissible;

— order Mr Stefano Missir and Ms Maria Letizia Missir to pay the costs of the present proceedings and those at first instance.

Pleas in law and main arguments

In support of its appeal, the Commission relies on two grounds of appeal.

The first ground of appeal is divided into two parts. By the first part, the appellant claims that the General Court erred in law in its interpretation of the concept of the person 'to whom the Staff Regulations apply'. That part is directed against paragraphs 48 to 64 of the judgment under appeal. By the second part, the appellant claims, in the alternative, that the General Court erred in law by recognising the brother and sister of a deceased official as being entitled to receive compensation for non-material damage on the basis of the Staff Regulations. That part is directed against paragraphs 134 and 135 of the judgment under appeal.

By the second ground of appeal, the appellant alleges that the General Court failed to have regard for the obligation to state reasons when ordering the Commission to pay compensation for the non-material harm suffered by the brother and sister of a deceased official as a result of the latter's death. The second ground of appeal is directed against paragraphs 154 to 168, 171 to 172 and 181 of the judgment under appeal.

Request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 4 February 2020 — AR v Stadt Pforzheim

(Case C-56/20)

(2020/C 209/06)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: AR

Defendant: Stadt Pforzheim

Question referred

Does EU law, in particular Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, ([1]) preclude provisions of national law under which, where a decision refusing to recognise the validity of a driving licence, within the meaning of the second subparagraph of Article 11(4) of Directive 2006/126/EC, is adopted, the foreign EC card driving licence of a person who does not have normal residence in national territory must be submitted to the decision-making national authority without delay so that the latter can record in the driving licence that that person does not have a right to drive in national territory; the endorsement (indicating a ban) usually being entered on an EC card driving licence by affixing a red 'D', crossed out by a diagonal line, to space 13 (for example by means of a sticker)?

([1]) OJ 2006 L 403, p. 18.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 7 February 2020 — VI v KRONE — Verlag Gesellschaft mbH & Co KG

(Case C-65/20)

(2020/C 209/07)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: VI

Defendant: KRONE — Verlag Gesellschaft mbH & Co KG

Question referred

Is Article 2 together with Article 1 and Article 6 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products ([1]) to be interpreted as meaning that a physical copy of a daily newspaper containing a technically inaccurate health tip which, when followed, causes damage to health can also be regarded as a (defective) product?

([1]) OJ 1985 L 210, p. 29.

Request for a preliminary ruling from the Procura della Repubblica di Trento (Italy) lodged on 24 January 2020 — Criminal proceedings against XK

(Case C-66/20)

(2020/C 209/08)

Language of the case: Italian

Referring court

Procura della Repubblica di Trento

Party to the main proceedings

XK

Other Party

Finanzamt Münster

Question referred

In so far as it provides that 'any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law', may also be regarded as an issuing authority, but also provides that, in that case, 'before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1, by a judge, court, investigating judge or a public prosecutor in the issuing State', is Article 2(1)(c)(ii) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ([1]) to be interpreted as allowing a Member State to exempt an administrative authority from the obligation to have the EIO validated by defining it as a "judicial authority for the purposes of Article 2 of the Directive?

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

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 24 February 2020 — LW v Bundesrepublik Deutschland

(Case C-91/20)

(2020/C 209/09)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: LW

Defendant: Bundesrepublik Deutschland

Questions referred

1. Is Article 3 of Directive 2011/95/EU [1] to be interpreted as meaning that it precludes a provision enacted by a Member State to the effect that the unmarried minor child of a person who has been granted refugee status must be granted refugee status derived from that person (that is to say, protection as a family member of a refugee) even in the case where that child — by virtue of the other parent — is, in any event, also a national of another country which is not the same as the refugee's country of origin and the protection of which that child is able to avail itself of?

2. Is Article 23(2) of that directive to be interpreted as meaning that, in the circumstances set out in question 1, the restriction whereby the entitlement of family members to claim the benefits referred to in Articles 24 to 35 of that directive is to be granted only as far as is compatible with the personal legal status of the family member prohibits the minor child from being granted refugee status derived from the person recognised as a refugee?

3. In providing an answer to questions 1 and 2, is it material whether or not it is possible and reasonable for the child and its parents to take up residence in the country of which the child and the mother are nationals, the protection of which they are able to avail themselves of and which is not the same as the refugee's (father's) country of origin, or is it sufficient that family unity in Germany can be maintained on the basis of the rules governing the right of residence?

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

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 24 February 2020 — Ordine Nazionale dei Biologi, MX, NY, OZ v Presidenza del Consiglio dei Ministri

(Case C-96/20)

(2020/C 209/10)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Ordine Nazionale dei Biologi, MX, NY, OZ

Defendant: Presidenza del Consiglio dei Ministri

Questions referred

1. Is Article 9(2) of Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components [1] to be interpreted as meaning that, by identifying as minimum conditions of qualification for appointment to the position of responsible person of a blood establishment the possession of an academic qualification 'in the field of medical or biological sciences', it confers directly on individuals having a degree in either discipline the right to carry out the duties of responsible person within a blood establishment?

2. Does European Union law accordingly permit national law to exclude individuals having a degree in biological sciences from carrying out the duties of responsible person within a blood establishment or preclude it from doing so?

[1] Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC (OJ 2003 L 33, p. 30).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 26 February 2020 — XY v Hauptzollamt B

(Case C-100/20)

(2020/C 209/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: XY

Defendant: Hauptzollamt B

Question referred

Is interest payable under EU law in respect of an entitlement to a refund of incorrectly assessed electricity tax if the assessment of the electricity tax in a lower amount was based on the optional tax reduction pursuant to Article 17(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([1]) and the tax assessment in too high an amount was based solely on an error in the application of the national provision adopted to transpose Article 17(1)(a) of Directive 2003/96?

([1]) OJ 2003 L 283, p. 51.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 26 February 2020 — StWL Städtische Werke Lauf a.d. Pegnitz GmbH v eprimo GmbH

(Case C-102/20)

(2020/C 209/12)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: StWL Städtische Werke Lauf a.d. Pegnitz GmbH

Defendant: eprimo GmbH

Other party to the proceedings: Interactive Media CCSP GmbH

Questions referred

1. Does the concept of 'sending' within the meaning of Article 2(h) of Directive 2002/58/EC ([1]) cover a situation in which a message is not transmitted by a user of an electronic communications service, via a service provider, to the electronic 'address' of a second user, but, as a consequence of the opening of the password-protected web page of an email account, is automatically displayed by ad servers in certain areas designated for that purpose in the email inbox of a randomly selected user (inbox advertising)?

2. Does the collection of a message within the meaning of Article 2(h) of Directive 2002/58/EC presuppose that, after becoming aware of the existence of a message, the recipient triggers the programmatically prescribed transmission of the message data by making an intentional collection request, or is it sufficient for the appearance of a message in an email account inbox to be triggered by the user opening the password-protected web page of his e-mail account?

3. Does a message constitute electronic mail within the meaning of Article 13(1) of Directive 2002/58/EC even where it is not sent to an individual recipient already specifically identified prior to transmission but is displayed in the inbox of a randomly selected user?

4. Is electronic mail used for the purposes of direct marketing within the meaning of Article 13(1) of Directive 2002/58/EC only where the user is found to be the subject of a burden that is greater than a nuisance?

5. Does individual advertising meet the conditions governing the presence of 'solicitation', for the purposes of the first sentence of point 26 of Annex I to Directive 2005/29/EC, ([2]) only where a customer is contacted via a medium traditionally used for individual communication between a sender and a recipient, or is it sufficient if — as with the advertisement at issue in the case in point — an individual connection is established by the fact that the advertisement is displayed in the inbox of a private email account, and thus in an area in which the customer expects to find messages addressed to him personally?

([1]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

([2]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 3 March 2020 — JY

(Case C-118/20)

(2020/C 209/13)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: JY

Defendant: Wiener Landesregierung

Questions referred

1. Does the situation of a natural person who, like the appellant in cassation in the main proceedings, has renounced her only nationality of a Member State of the European Union, and thus her citizenship of the Union, in order to obtain the nationality of another Member State, having been given a guarantee by the other Member State of grant of the nationality applied for, and whose possibility of recovering citizenship of the Union is subsequently eliminated by revocation of that guarantee, fall, by reason of its nature and its consequences, within the scope of EU law, such that regard must be had to EU law when revoking the guarantee of grant of citizenship?

   If the first question is answered in the affirmative,

2. Is it for the competent national authorities, including any national courts, involved in the decision to revoke the guarantee of grant of nationality of the Member States, to establish whether the revocation of the guarantee that prevented the recovery of citizenship of the Union is compatible with the principle of proportionality from the point of view of EU law in terms of its consequences for the situation of the person concerned?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 3 March 2020 — Koleje Mazowieckie — KM sp. z o.o. v Skarb Państwa — Minister Infrastruktury i Budownictwa, now Minister Infrastruktury, and Prezes Urzędu Transportu Kolejowego, and PKP Polskie Linie Kolejowe S.A.

(Case C-120/20)

(2020/C 209/14)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Koleje Mazowieckie — KM sp. z o.o.

Respondents: Skarb Państwa — Minister Infrastruktury i Budownictwa, now Minister Infrastruktury, and Prezes Urzędu Transportu Kolejowego, and PKP Polskie Linie Kolejowe S.A.

Questions referred

1. Are the provisions of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001, ([1]) and in particular Article 4(5) and Article 30(1), (3), (5) and (6) thereof, to be interpreted as precluding a railway undertaking from claiming, with no judicial review of the decision of a supervisory body, damages against a Member State on grounds of incorrect implementation of a directive in a situation where an element of the damages is an overpaid charge for the use of railway infrastructure?

2. Does the assumption that a right to damages under Community law for misapplication of EU law, and in particular the incorrect implementation or non-implementation of a directive, exists only where the rule of law infringed is intended to confer rights on individuals, the infringement of the law is qualified in nature (in particular in the form of manifest and grave disregard of a Member State's discretion in implementing a directive), and the causal link between the infringement and the damage is direct in nature, preclude rules of law of a Member State which, in such cases, confer a right to damages where less stringent conditions are satisfied?

([1]) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29).

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Amsterdam (Netherlands) lodged on 4 March 2020 — VG v Minister van Buitenlandse Zaken

(Case C-121/20)

(2020/C 209/15)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Amsterdam

Parties to the main proceedings

Applicant: VG

Defendant: Minister van Buitenlandse Zaken

Question referred

Is the answer to the questions referred for a preliminary ruling in the cases before the Court registered under numbers C-225/19 and C-226/19 different if it has been made known or has become known which country it is that objected to the issuing of a visa to the applicant during the prior consultation as referred to in Article 22 of the Visa Code? ([1])

([1]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ 2009 L 243, p. 1).

Request for a preliminary ruling from the Sąd Rejonowy w Gliwicach (Poland) lodged on 5 March 2020 — D. Spółka Akcyjna v W. Zrt

(Case C-127/20)

(2020/C 209/16)

Language of the case: Polish

Referring court

Sąd Rejonowy w Gliwicach

Parties to the main proceedings

Applicant: D. Spółka Akcyjna

Defendant: W. Zrt

Questions referred

Must Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 …, ([1]) be interpreted as meaning that an air carrier whose aircraft has suffered a bird strike is obliged, as part of the reasonable measures that it must take, to provide, in its rotation-based flight planning system, for sufficient reserve time for a required safety check to be made?

and, in the event that this question is answered in the negative:

Must Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 …, be interpreted as meaning that an air carrier whose aircraft has suffered a bird strike is obliged, as part of the reasonable measures that it must take, to establish crew rosters or staffing levels in such a way that crews are ready for flight duties immediately after a required safety check is made, regardless of the limits on flight time and duty time and the rest period requirements laid down in Annex III to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations …? ([2])

([1]) OJ 2004 L 46, p. 1.
([2]) OJ 2012 L 296, p. 1.

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 10 March 2020 — BM, DM and EN v Getin Noble Bank SA

(Case C-132/20)

(2020/C 209/17)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellants: BM, DM and EN

Respondent: Getin Noble Bank SA

Questions referred

1. Must Article 2, Article 4(3), Article 6(1) and (3) and the second subparagraph of Article 19(1) of the Treaty on European Union ('TEU') in conjunction with the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7 (1) and (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts … [1] be interpreted as meaning that a body which includes a person appointed to the position of judge for the first or a subsequent time (to a higher court) by a political body within the executive branch of a State characterised by a totalitarian, undemocratic and communist system of power (the Rada Państwa Polskiej Rzeczypospolitej Ludowej (the Council of State of the People's Republic of Poland)) at the request of the Minister for Justice of that State, is a duly qualified independent and impartial tribunal within the meaning of EU law, in particular given (1) the lack of transparency of the appointment criteria, (2) the possibility that the judge may be removed from office at any time, and the lack of participation in the appointment procedure of (3) judicial self-government or (4) suitable public authorities elected through democratic elections, all of which could undermine the confidence which the judiciary should inspire in a democratic society?

2. Is it relevant for resolving the issue referred to in Question 1 that appointment to the position of judge in subsequent posts (in higher courts) could take place due to the acknowledgement of an appropriate period of work (length of service) and on the basis of an assessment of work in the post to which that person was appointed at least for the first time by the political body referred to in Question 1 and on the basis of the procedure described therein, which could undermine the confidence which the judiciary should inspire in a democratic society?

3. Is it relevant for resolving the issue referred to in Question 1 that appointment to the position of judge in subsequent posts (in higher courts, not including the Sąd Najwyższy (Supreme Court, Poland)) was not conditional upon taking a judicial oath to respect the values of a democratic society, and that when appointed for the first time the person concerned promised to uphold the political system of the communist State and the 'praworządność ludowa' (people's rule of law), which could undermine the confidence which the judiciary should inspire in a democratic society?

4. Must Article 2, Article 4(3), Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that a body which includes a person appointed to the position of judge for the first or a subsequent time (to a higher court) in flagrant breach of the constitutional provisions of a Member State of the European Union, since the composition of the body selecting that person as a candidate for subsequent appointment to the position of judge (the Krajowa Rada Sądownictwa (National Council of the Judiciary)) does not comply with the constitution of the Member State, as established by the constitutional court of that Member State, and which could consequently undermine the confidence which the judiciary should inspire in a democratic society, is a duly qualified independent and impartial tribunal within the meaning of EU law?

5. Must Article 2, Article 4(3), Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that a body which includes a person appointed to the position of judge for the first or a subsequent time (to a higher court) who was selected as a candidate for appointment to that office in proceedings before the body which assesses candidates (the National Council of the Judiciary), where those proceedings did not fulfil the criteria of open and transparent rules for the selection of candidates, which could undermine the confidence which the judiciary should inspire in a democratic society, is a duly qualified independent and impartial tribunal within the meaning of EU law?

6. Must Article 2, Article 4(3), Article 6(3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that the court of last instance of a Member State of the European Union (the Supreme Court), in order to ensure effective judicial protection as a means of preventing the continued use of unfair terms in contracts concluded by sellers and suppliers with consumers, is obliged to assess *ex officio* at each stage of the proceedings:

   (a) whether the court referred to in Questions 1 and 4 fulfils the criteria of a duly qualified independent and impartial tribunal within the meaning of EU law, regardless of the impact the assessment of the criteria set out in those questions has on the substance of the decision as to whether a contractual term is unfair and, in addition,

   (b) whether the proceedings before the court referred to in Questions 1 and 4 are valid?

7. Must Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that the constitutional provisions of a Member State of the European Union concerning the organisation of courts or the appointment of judges which make it impossible to assess the effectiveness of a judicial appointment may, in accordance with EU law, prevent determination of the lack of independence of a court or the lack of independence of a judge sitting in that court by reason of the circumstances referred to in Questions 1 to 5?

([1]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 11 March 2020 — European Pallet Association eV v PHZ BV

(Case C-133/20)

(2020/C 209/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: European Pallet Association eV

Defendant: PHZ BV

Questions referred

1. (a) Does successful recourse to Article 13(2) of the CTM Regulation ([1]) require that the further commercialisation of the branded products concerned adversely affect or are liable to adversely affect one or more of [the functions of guaranteeing origin and quality, as well as the functions of communication, investment and advertising] of the trade mark?

(b) If the answer to question 1(a) is in the affirmative, does that constitute a requirement that is additional to that of the existence of 'legitimate reasons'?

(c) Does it suffice for successful recourse to Article 13(2) of the CTM Regulation that one or more of the functions of the trade mark referred to in question 1(a) above are adversely affected?

2. (a) In general, can it be said that, under Article 13(2) of the CTM Regulation, a trade mark proprietor may oppose the further commercialisation of goods under his trade mark if those goods have been repaired by persons other than the trade mark proprietor or persons to whom he has given consent to do so?

(b) If the answer to question 2(a) is in the negative, is the existence of 'legitimate reasons' within the meaning of Article 13(2) of the CTM Regulation, after repairs by a third party of goods put on the market by or with the consent of the trade mark proprietor, dependent on the nature of the goods or the nature of the repair performed …, or on other circumstances, such as special circumstances like those in the present case …?

3. (a) Is opposition by the trade mark proprietor as referred to in Article 13(2) of the CTM Regulation to the further commercialisation of goods repaired by third parties excluded if the trade mark is used in such a way that it does not give the impression that there is a commercial connection between the trade mark proprietor (or his licensees) and the party who further commercialises the goods, for example if, by the removal of the brand and/or by the additional labelling of the goods, it is clear after the repair that the repair has not been carried out by or with the consent of the trade mark proprietor or a licensee of the latter?

(b) Does that mean that significance should be attached to the answer to the question of whether the trade mark can be easily removed without compromising the technical soundness or practical usability of the goods?

4. When answering the foregoing questions, is it important whether it is a collective trade mark under the CTM Regulation that is at issue, and if so, in what respect?

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version), (OJ 2009 L 78, p. 1).

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 12 March 2020 — JS v Câmara Municipal de Gondomar

(Case C-135/20)

(2020/C 209/19)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: JS

Defendant: Câmara Municipal de Gondomar

Questions referred

1. Should EU law, in particular Clause 5 of the framework agreement annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, ([1]) be interpreted as precluding national legislation which in all cases prohibits the conversion of fixed-term employment contracts concluded by public law entities into contracts of an indefinite duration?

2. Should Directive 1999/70/EC be interpreted as requiring the conversion of the contracts as being the only means to prevent abuse arising from the use of successive fixed-term employment contracts?

(1) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Tribunal Judicial da Comarca dos Açores (Portugal) lodged on 12 March 2020 — MV v SATA Internacional — Serviços de Transportes Aéreos SA

(Case C-137/20)

(2020/C 209/20)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca dos Açores

Parties to the main proceedings

Applicant: MV

Defendant: SATA Internacional — Serviços de Transportes Aéreos SA

Question referred

Must an event such as that which occurred on 6 June 2016, in which a flight was cancelled due to the meteorological conditions at the destination airport — that is to say, because at the time of the flight's departure the minimal horizontal visibility limits, and also the minimum vertical visibility limits for the runway, were not ensured and, therefore, the required safety conditions not guaranteed in that airport and for the aircraft in question for the landing manoeuvre, it even being forecast that the atmospheric conditions would deteriorate in the following hours — be characterised as an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004 (1) which relieves the air carrier of the obligation to pay compensation?

(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione Siciliana (Italy) lodged on 26 March 2020 — Analisi G. Caracciolo s.r.l. v Regione Siciliana — Assessorato regionale della salute — Dipartimento regionale per la pianificazione and Others

(Case C-142/20)

(2020/C 209/21)

Language of the case: Italian

Referring court

Consiglio di Giustizia Amministrativa per la Regione Siciliana

Parties to the main proceedings

Applicant: Analisi G. Caracciolo s.r.l.

Defendants: Regione Siciliana — Assessorato regionale della salute — Dipartimento regionale per la pianificazione, Regione Sicilia — Assessorato della salute — Dipartimento per le attività sanitarie e osservatorio, Accredia — Ente Italiano di accreditamento, Azienda sanitaria provinciale di Palermo

Questions referred

1. Does Regulation (EC) No 765/2008 ([1]) preclude a provision of national law (such as Article 40 of Law No 88/2009) being interpreted as allowing accreditation to be carried out by bodies not established in a Member State of the European Union — and therefore without the party concerned being required to apply to the single accreditation body — where such bodies in any event ensure that standards UNI CEI EN ISO/IEC 17025 and UNI CEI EN ISO/IEC 17011 are complied with and demonstrate (by means of mutual recognition agreements, for example) possession of a qualification which is essentially the same as that of the single bodies referred to in Regulation (EC) No 765/2008?

2. In the light of Article 56 TFEU, Articles 20 and 21 of the Charter of Fundamental Rights of the European Union and Article 102 TFEU –in so far as it establishes essentially a national monopoly in respect of accreditation by the 'single body' system, does Regulation (EC) No 765/2008 infringe the principles of primary EU law and, in particular, the principles of freedom to provide services and non-discrimination, the prohibition of unequal treatment and competition rules that prohibit monopoly situations?

([1]) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ 2008 L 218, p. 30).

Request for a preliminary ruling from the Sąd Rejonowy dla Warszawy-Woli w Warszawie (Poland) lodged on 24 March 2020 — A v O

(Case C-143/20)

(2020/C 209/22)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy-Woli w Warszawie

Parties to the main proceedings

Applicant: A

Defendant: O

Questions referred

1. Are Article 185(3)(i) of Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]) and Article 36(1) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ([2]) in conjunction with point 12 of Annex III(A) thereto to be interpreted as meaning that, in the case of unit-linked life insurance contracts where the underlying assets of the fund are derivatives (or structured financial instruments with derivatives embedded in them), the insurer or policyholder (who offers such insurance, distributes the insurance product, or 'sells' the insurance) is obliged to communicate to the insured consumer information on the nature and the type specification and characteristics (English: indication of the nature, German: Angabe der Art, French: indications sur la nature) of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it), or is it sufficient to indicate only the type of the underlying assets without communicating the characteristics of that instrument?

2. If the answer to the first question is that the insurer or policyholder (who offers such insurance, distributes the insurance product, or 'sells' unit-linked insurance) is obliged to communicate to the consumer information on the nature and the type specification and characteristics of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it), are Article 185(3)(i) of Directive 2009/138/EC and Article 36(1) of Directive 2002/83/EC in conjunction with point 12 of Annex III(A) thereto to be interpreted as meaning that information on the nature and the type specification and characteristics of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it) communicated to the insured consumer should contain the same information as that required by Article 19(3) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([3]) and Article 24(4) of Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, ([4]) that is to say, comprehensive information on the derivatives and proposed investment strategies which should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies, including, in particular, information on the methodology used by the insurer or calculation agent during the term of the insurance cover for pricing the underlying instrument and information on the risks associated with the derivative and its issuer, including on the change in the value of the derivative over time, the various factors determining those changes and the extent to which those factors affect the value?

3. Is Article 185(4) of Directive 2009/138/EC to be interpreted as meaning that, in the case of unit-linked life and endowment insurance contracts where the underlying asset of the fund is a derivative (or a structured financial instrument with a derivative embedded in it), the insurer or policyholder (who offers such insurance, distributes the insurance product, or 'sells' the insurance) is obliged to communicate to the insured consumer the same information as that required by Article 19(3) of Directive 2004/39/EC and Article 24(4) of Directive 2014/65/EU, that is to say, comprehensive information on the derivatives and proposed investment strategies which should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies, including, in particular, information on the methodology used by the insurer or calculation agent during the term of the insurance cover for pricing the underlying instrument and information on the risks associated with the derivative and its issuer, including on the change in the value of the derivative over time, the various factors determining those changes and the extent to which those factors affect the value?

4. If the answer to the second or third question (or both) is in the affirmative, does the failure of the insurer or the policyholder offering unit-linked life insurance to provide the insured consumer with the information required (as referred to in the second and third questions) when offering insurance to the consumer constitute an unfair commercial practice within the meaning of Article 5 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') ([5]) or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?

5. If both the second and third questions are answered in the negative, does the failure of the insurer or the policyholder (who offers such insurance, distributes the insurance product, or 'sells' unit-linked life insurance) to inform the consumer clearly that the assets of the investment fund (unit-linked fund) are invested in derivatives (or structured products with derivatives embedded in them) constitute an unfair commercial practice within the meaning of Article 5 of the Unfair Commercial Practices Directive or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?

6. If both the second and third questions are answered in the negative, does the failure of the insurer or the policyholder offering unit-linked life insurance to explain to the consumer in detail the precise characteristics of the instrument in which the assets of the investment fund (unit-linked fund) are invested, including information on the operating rules of such an instrument, where it is a derivative (or a structured instrument with a derivative embedded in it) constitute an unfair commercial practice within the meaning of Article 5 of the Unfair Commercial Practices Directive or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?

(1) OJ 2009 L 335, p. 1.
(2) OJ 2002 L 345, p. 1.
(3) OJ 2004 L 145, p. 1.
(4) OJ 2014 L 173, p. 349.
(5) OJ 2005 L 149, p. 22.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 27 March 2020 — Bundeswettbewerbsbehörde v Nordzucker AG and Others

(Case C-151/20)

(2020/C 209/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Bundeswettbewerbsbehörde

Defendants: Nordzucker AG, Südzucker AG, Agrana Zucker GmbH

Questions referred

1. Is the third criterion established in the Court of Justice's competition case-law on the applicability of the 'ne bis in idem' principle, namely that conduct must concern the same protected legal interest, applicable even where the competition authorities of two Member States are called upon to apply the same provisions of EU law (here: Article 101 TFEU), in addition to provisions of national law, in respect of the same facts and in relation to the same persons?

In the event that this question is answered in the affirmative:

2. Does the same protected legal interest exist in such a case of parallel application of European and national competition law?

3. Furthermore, is it of significance for the application of the 'ne bis in idem' principle whether the first decision of the competition authority of a Member State to impose a fine took account, from a factual perspective, of the effects of the competition law infringement on the other Member State whose competition authority only subsequently took a decision in the competition proceedings conducted by it?

4. Do proceedings in which, owing to the participation of a party in the national leniency programme, only a declaratory finding of that party's infringement of competition law can be made also constitute proceedings governed by the 'ne bis in idem' principle, or can such a mere declaratory finding of the infringement be made irrespective of the outcome of previous proceedings concerning the imposition of a fine (in another Member State)?

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 31 March 2020 — Kemwater ProChemie s.r.o. v Odvolací finanční ředitelství

(Case C-154/20)

(2020/C 209/24)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Kemwater ProChemie s.r.o.

Defendant: Odvolací finanční ředitelství

Questions referred

1. Is it compatible with Directive 2006/112/EC ([1]) for exercise of the right to deduct input value added tax to be conditional on the taxable person fulfilling the obligation to prove that the taxable supply received was made by another specific taxable person?

2. If the first question is answered in the affirmative and the taxable person fails to fulfil that evidentiary obligation, can the right to deduct input tax be refused without it being established that that taxable person knew or could have known that by acquiring the goods or services in question he was participating in tax fraud?

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

Action brought on 14 April 2020 — European Commission v Council of the European Union

(Case C-161/20)

(2020/C 209/25)

Language of the case: English

Parties

Applicant: European Commission (represented by: J.-F. Brakeland, E. Georgieva, S. L. Kalėda, W. Mölls, Agents)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the Council decision ([1]), contained in the act of Coreper of 5 February 2020, endorsing the submission to the International Maritime Organization (IMO) concerning the introduction of life cycle guidelines to estimate well-to-tank greenhouse gas emissions of sustainable alternative fuels, with a view to its transmission by the Presidency of the Council to the IMO on behalf of the Member States and the Commission;

— maintain the effects of the decision;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The action for annulment brought by the Commission concerns a Council decision, contained in the act of Coreper of 5 February 2020, endorsing the submission to the International Maritime Organization (IMO) concerning the introduction of life cycle guidelines to estimate well-to-tank greenhouse gas emissions of sustainable alternative fuels (the GHG submission), with a view to its transmission by the Presidency of the Council to the IMO on behalf of the Member States and the Commission.

The Commission relies, in support of its action, on two grounds.

The Commission considers first that the decision of the Council breaches the exclusive competence of the Union under Article 3(2) TFEU. Indeed, the Union has exclusive competence in the area addressed by the GHG submission within the meaning of Article 3(2) TFEU, because that area is covered to a large extent by the common rules applicable to intra-EU situations within the meaning of the consistent case-law of the Court of Justice.

The Commission considers secondly that the decision of the Council breaches the institutional prerogatives of the Commission under Article 17(1) TEU, because only the Commission is entitled to act on behalf of the Union and to ensure the Union's external representation.

(1) Council document ST 6287/20 of 24 February 2020.

Action brought on 23 April 2020 — European Commission v Portuguese Republic

(Case C-169/20)

(2020/C 209/26)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: M. França and C. Perrin, Agents)

Defendant: Portuguese Republic

Form of order sought

The applicant claims that the Court should:

— declare that, in not applying depreciation to the environmental component when calculating the value applicable to used vehicles imported into Portuguese territory, purchased in other Member States, in the calculation of registration tax, the Portuguese Republic has failed to fulfil its obligations under Article 110 of the Treaty on the Functioning of the European Union;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese legislation at issue provides for discrimination between the taxation of imported vehicles and the taxation imposed on similar national vehicles. The detailed rules and method of calculation in force almost always result in imported vehicles being taxed more heavily.

That situation is all the more worrying, since it is contrary to the settled case-law of the Court of Justice: the Portuguese legislation on the calculation of the tax applicable to used vehicles purchased in other Member States has already been the subject of previous infringement proceedings and various judgments of the Court of Justice.

The Portuguese legislation does not ensure that the used vehicles imported from other Member States are taxed in an amount not exceeding the tax reflected in similar used national vehicles. This may be explained by the fact that, as a result of the amendment of the legislation in 2016, depreciation is not applied to the environmental component used to calculate the value of a used vehicle.

Accordingly, the depreciation table enacted by the national legislation does not result in a reasonable approximation of the actual value of the used imported vehicle. Consequently, the amount paid to register a used imported vehicle exceeds the amount for a similar used vehicle already registered in Portugal, which constitutes an infringement of Article 110 TFEU and the case-law of the Court of Justice.

Action brought on 24 April 2020 — European Commission v Council of the European Union

(Case C-180/20)

(2020/C 209/27)

Language of the case: English

Parties

Applicant: European Commission (represented by: M. Kellerbauer, T. Ramopoulos, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision (EU) 2020/245 ([1]) of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part ('CEPA'), as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of that Agreement with the exception of Title II thereof ('Council Decision 2020/245') and Council Decision (EU) 2020/246 ([2]) of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the CEPA, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of Title II of that Agreement ('Council Decision 2020/246');

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission argues that i) excluding Title II CEPA from the scope of Council Decision 2020/245; (ii) adopting a separate Council Decision 2020/246 concerning solely Title II CEPA, which is based on the substantive legal basis of Article 37 TEU; and (iii) adding the second subparagraph of Article 218(8) TFEU, which provides that the Council shall act unanimously when the agreement covers a field for which unanimity is required, violates the Treaty as interpreted in the case law of the Court.

This plea is substantiated by the following arguments:

First, according to established case-law of the Court, the substantive legal basis for the Council Decision based on Article 218(9) TFEU on the position to be taken on behalf of the Union within the bodies established by an agreement needs to be determined in accordance with the centre of gravity of the agreement as a whole. CEPA is predominantly concerned with trade and development cooperation as well as trade in transport services whilst the links between the CEPA and the CFSP are not sufficiently significant to warrant a substantive CFSP legal basis regarding the Agreement as a whole. Accordingly, the Council was wrong to include Article 37 TEU in the legal basis of Decision 2020/246 and that Decision was incorrectly adopted under the voting rule requiring unanimity.

Second, it is not open to the Union institutions artificially to split a single act into different parts and thereby create parts with different centres of gravity respectively, lest they be allowed to circumvent the requirement in Article 13 TEU that each institution act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. Where the Council establishes the position to be taken on behalf of the Union in a body set up by an agreement pursuant to Article 218(9) TFEU regarding rules governing the operation of that body across all provisions of the agreement, splitting the Council decision into two decisions cannot be justified. Since the CEPA does not draw a distinction between the Rules of Procedure that apply when the bodies concerned act under Title II or under other Titles of the CEPA, the Council was wrong to adopt two separate Council decisions, one of which solely concerns Title II CEPA.

([1]) OJ 2020, L 52, p. 3.
([2]) OJ 2020, L 52, p. 5.

GENERAL COURT

Judgment of the General Court of 26 March 2020 — Armani v EUIPO — Asunción (GIORGIO ARMANI le Sac 11)

(Case T-653/18) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark GIORGIO ARMANI le sac 11 — Earlier national word mark LESAC and earlier national figurative marks lesac — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EU) 2017/1001 — Genuine use of the earlier mark — Article 47(2) and (3) of Regulation 2017/1001)

(2020/C 209/28)

Language of the case: English

Parties

Applicant: Giorgio Armani SpA (Milan, Italy) (represented by: S. Martínez-Almeida y Alejos-Pita, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Felipe Domingo Asunción (Madrid, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 13 August 2018 (Case R 2462/2017-4), relating to opposition proceedings between Mr Asunción and Giorgio Armani.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Giorgio Armani SpA to pay the costs.

([1]) OJ C 25, 21.1.2019.

Judgment of the General Court of 26 March 2020 — Armani v EUIPO — Asunción (le Sac 11)

(Case T-654/18) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark le sac 11 — Earlier national word mark LESAC and earlier national figurative marks lesac — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EU) 2017/1001 — Genuine use of the earlier mark — Article 47(2) and (3) of Regulation 2017/1001)

(2020/C 209/29)

Language of the case: English

Parties

Applicant: Giorgio Armani SpA (Milan, Italy) (represented by: S. Martínez-Almeida y Alejos-Pita, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Felipe Domingo Asunción (Madrid, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 13 August 2018 (Case R 2464/2017-4), relating to opposition proceedings between Mr Asunción and Giorgio Armani.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Giorgio Armani SpA to pay the costs.

([1]) OJ C 25, 21.1.2019.

Judgment of the General Court of 29 April 2020 — Tilly-Sabco v Council and Commission

(Case T-707/18) ([1])

(Agriculture — Export refunds — Poultrymeat — Regulation (EU) 2018/1277 adopted following the annulment of Implementing Regulation (EU) No 689/2013 by a judgment of the Court of Justice — Competence of the author of the act — Abuse of process — Obligation to state reasons — Non-contractual liability — Sufficiently serious breach of a rule of law conferring rights on individuals — Damage)

(2020/C 209/30)

Language of the case: French

Parties

Applicant: Tilly-Sabco (Guerlesquin, France) (represented by: R. Milchior and S. Charbonnel, lawyers)

Defendants: Council of the European Union (represented by: D. Komilaki and M. Alver, acting as Agents), European Commission (represented by: A. Lewis and B. Hofstötter, acting as Agents)

Re:

First, application based on Article 263 TFEU seeking annulment of Council Regulation (EU) 2018/1277 of 18 September 2018 on fixing the export refunds on poultrymeat (OJ 2018 L 239, p. 1), and, second, application based on Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicant as a result of fixing those export refunds at zero for the period 19 July to 31 December 2013.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tilly-Sabco to pay the costs.

([1]) OJ C 54, 11.2.2019.

Judgment of the General Court of 26 March 2020 — Tecnodidattica v EUIPO (Shape of bases for globes and lamps)

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

(EU trade mark — Application for a three-dimensional EU trade mark — Shape of bases for globes and lamps — Absolute ground for refusal — Sign consisting exclusively of the shape of goods which is necessary to obtain a technical result — Article 7(1)(e)(ii) of Regulation (EC) No 207/2009 (now Article 7 (1)(e)(ii) of Regulation (EU) 2017/1001) — No decorative or imaginative elements playing an important or essential role)

(2020/C 209/31)

Language of the case: Italian

Parties

Applicant: Tecnodidattica SpA (San Colombano Certenoli, Italy) (represented by: S. Corona and F. Corona, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 9 October 2018 (Case R 76/2017-2), concerning an application for registration of a three-dimensional sign consisting of the shape of bases for globes and lamps as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tecnodidattica SpA to pay the costs.

([1]) OJ C 72, 25.2.2019.

Judgment of the General Court of 29 April 2020 — Bergslagernas Järnvaru v EUIPO — Scheppach Fabrikation von Holzbearbeitungsmaschinen (Wood-splitting tool)

(Case T-73/19) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a wood-splitting tool — Earlier national design — Ground for invalidity — No individual character — No different overall impression — Article 6(1) of Regulation (EC) No 6/2002 — Infringement of the rights of the defence — Article 62 of Regulation No 6/2002)

(2020/C 209/32)

Language of the case: English

Parties

Applicant: Bergslagernas Järnvaruaktiebolag (Saltsjö-Boo, Sweden) (represented by: S. Kirschstein-Freund and B. Breitinger, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Scheppach Fabrikation von Holzbearbeitungsmaschinen GmbH (Ichenhausen, Germany)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 23 November 2018 (Case R 1455/2018-3), relating to invalidity proceedings between Scheppach Fabrikation von Holzbearbeitungsmaschinen and Bergslagernas Järnvaru.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Bergslagernas Järnvaruaktiebolag to pay the costs.

(1) OJ C 122, 1.4.2019.

Judgment of the General Court of 29 April 2020 — Abarca v EUIPO — Abanca Corporación Bancaria (ABARCA SEGUROS)

(Case T-106/19) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark ABARCA SEGUROS — Earlier EU word mark ABANCA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2020/C 209/33)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (represented by: G. Schneider, 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: Abanca Corporación Bancaria, SA (Betanzos, Spain) (represented by: M. Aznar Alonso, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 November 2018 (Case R 1370/2018-2), relating to opposition proceedings between Abanca Corporación Bancaria and Abarca — Companhia de Seguros.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Abarca — Companhia de Seguros SA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Abanca Corporación Bancaria, SA.

(1) OJ C 131, 8.4.2019.

Judgment of the General Court of 29 April 2020 — Kerry Luxembourg v EUIPO — Döhler (TasteSense)

(Case T-109/19) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark TasteSense — Earlier EU word mark MultiSense — Relative ground for refusal — Likelihood of confusion — Article 8 (1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2020/C 209/34)

Language of the case: English

Parties

Applicant: Kerry Luxembourg Sàrl (Luxembourg, Luxembourg) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Döhler GmbH (Darmstadt, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 27 November 2018 (Case R 1178/2018-2), relating to opposition proceedings between Döhler and Kerry Luxembourg.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Kerry Luxembourg Sàrl to pay the costs.

([1]) OJ C 139, 15.4.2019.

Judgment of the General Court of 29 April 2020 — CV and Others v Commission

(Case T-496/19) ([1])

(Civil service — Officials — Remuneration — Weighting — Fixed entertainment allowance — Accommodation expenses — Obligation to state reasons — Duty of care — Equivalence in purchasing power — Equal treatment)

(2020/C 209/35)

Language of the case: French

Parties

Applicants: CV, CW and CY (represented by: J.-N. Louis, lawyer)

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

Re:

Application based on Article 270 TFEU seeking annulment of the Commission's implicit decision by which that institution's appointing authority rejected the applicants' request for, in essence, an increase, where applicable with retroactive effect, of the weighting applicable to their place of posting, in the present case Paris.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders CV, CW and CY to pay the costs.

(1) OJ C 305, 9.9.2019.

Judgment of the General Court of 29 April 2020 — CZ and Others v EEAS

(Case T-497/19) (1)

(Civil service — Officials — Remuneration — Weighting — Fixed entertainment allowance — Accommodation expenses — Obligation to state reasons — Duty of care — Equivalence in purchasing power — Equal treatment)

(2020/C 209/36)

Language of the case: French

Parties

Applicants: CZ, DB, DC, DD (represented by: J.-N. Louis, lawyer)

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

Re:

Application based on Article 270 TFEU seeking annulment of the EEAS' implicit decision by which the EEAS' appointing authority and the authority empowered to conclude contracts of employment rejected the applicants' request for, in essence, an increase, where applicable with retroactive effect, of the weighting applicable to their place of posting, in the present case Paris.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders CZ, DB, DC and DD to pay the costs.

(1) OJ C 305, 9.9.2019.

Order of the General Court of 27 April 2020 — Axactor v EUIPO — Axa (AXACTOR)

(Case T-594/19) (1)

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

(2020/C 209/37)

Language of the case: English

Parties

Applicant: Axactor SE (Oslo, Norway) (represented by: D. Stone, A. Dykes, A. Leonelli, Solicitors)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Axa SA (Paris, France) (represented by: P. Martini-Berthon, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 28 June 2019 (Case R 479/2018-4) relating to opposition proceedings between Axa SA and Axactor SE.

Operative part of the order

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

2. Axactor SE and Axa SA shall bear their own costs and shall each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 363, 28.10.2019.

Order of the General Court of 30 April 2020 — ArcelorMittal Bremen v Commission

(Case T-623/19) (1)

(Action for failure to act — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Decision 2011/278/EU — Transitional rules for harmonised free allocation of emission allowances — Amendment of Germany's national allocation table for 2013-2020 — Significant increase in capacity — Action which has become devoid of purpose — No need to adjudicate)

(2020/C 209/38)

Language of the case: German

Parties

Applicant: ArcelorMittal Bremen GmbH (Bremen, Germany) (represented by: S. Altenschmidt and L. Buschmann, lawyers)

Defendant: European Commission (represented by: J.-F. Brakeland and A. Becker, acting as Agents)

Re:

Application under Article 265 TFEU for a declaration that the Commission unlawfully refrained from taking a decision concerning the total annual quantity of emissions quotas that must be granted free of charge in response to a significant increase in capacity by a sub-installation of the applicant with a product benchmark for hot metal and, in the alternative, an application under Article 263 TFEU for annulment of the decision allegedly adopted by the Commission on 19 July 2019 concerning the giving of notice to the applicant on 1 July 2019.

Operative part of the order

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

2. Each part shall bear its own costs.

(1) OJ C 363, 28.10.2019.

Order of the President of the General Court of 4 May 2020 — Csordas and Others v Commission

(Case T-146/20 R)

(Application for interim measures — Civil service — Elections for the Luxembourg local section of the Commission's Staff Committee — Regularity — Supervisory obligation of the institution — Application for interim measures — No prima facie case)

(2020/C 209/39)

Language of the case: French

Parties

Applicants: Annamaria Csordas (Luxembourg, Luxembourg), Adrian Sorin Cristescu (Luxembourg), Jean Putz (Esch-sur-Alzette, Luxembourg), Miguel Vicente Nunez (Luxembourg) (represented by: M.-A. Lucas, lawyer)

Defendant: European Commission (represented by: D. Milanowska, T. Lilamand and T. Bohr, acting as Agents)

Re:

Application based on Article 270 TFEU and Article 91(4) of the Staff Regulations of Officials of the European Union seeking, principally, in the first place, suspension of the operation of (i) the memo of 26 November 2019 from the polling office declaring the results of the elections for the Luxembourg local section of the Commission's Staff Committee, (ii) the Commission's decision of 28 November 2019 concerning the calculation of the representativeness of representative trade unions and staff associations in the institution, (iii) the mandate of the Luxembourg local section of the Commission's Staff Committee resulting from the elections of November 2019, (iv) the appointment by the Luxembourg local section of the Commission's Staff Committee of its delegates to the Commission's Central Staff Committee, and (v) any other decision concerning the allocation of additional resources to the Commission's staff representatives, and, in the second place, an order requiring the Commission to retain the outgoing Staff Committee until the judgment is handed down in the main proceedings, while limiting its mandate to current business, and, in the alternative, an order requiring the Commission, first, to limit to current business the mandate of the Luxembourg local section of the Commission's Staff Committee resulting from the elections of November 2019 and, second, an order requiring that local section to appoint to the Commission's Central Staff Committee the representatives proposed by Union Syndicale Luxembourg.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 18 March 2020 — JP v Commission

(Case T-179/20)

(2020/C 209/40)

Language of the case: English

Parties

Applicant: JP (represented by: S. Rodrigues and A. Champetier, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 17 July 2019 not placing the applicant on the reserve list of successful candidates of Competition EPSO/AD/363/18 — Administrators (AD7), along with the decision of 10 December 2019 rejecting the applicant's request for review;

— order the defendant to compensate the damages occurred; and,

— order that defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle according to which the members of the Selection Board shall have the necessary abilities to make an objective assessment of the performance and professional qualifications of the applicant during the field-related interview, breach of the principle of equal treatment and breach of the principle of legitimate expectations.

2. Second plea in law, alleging infringement of the principle according to which the composition of the selection board must be sufficiently stable.

3. Third plea in law, alleging a manifest error of assessment.

Action brought on 20 April 2020 — Square v EUIPO ($ Cash App)

(Case T-210/20)

(2020/C 209/41)

Language of the case: English

Parties

Applicant: Square, Inc. (San Francisco, California, United States) (represented by: M. Hawkins, Solicitor, K. Lüder, and T. Dolde, lawyers)

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 the figurative mark $ Cash App — International registration designating the European Union No 1 410 819

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 February 2020 in Case R 811/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including the costs incurred in the proceedings before the Operations Department and the First Board of Appeal.

Pleas in law

— Infringement of Article 72(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

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

— Infringement of the principles of equal treatment and sound administration.

Action brought on 20 April 2020 — Square v EUIPO ($ Cash App)

(Case T-211/20)

(2020/C 209/42)

Language of the case: English

Parties

Applicant: Square, Inc. (San Francisco, California, United States) (represented by: M. Hawkins, Solicitor, K. Lüder and T. Dolde, lawyers)

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 the figurative mark $ Cash App — International registration designating the European Union No 1 410 839

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 February 2020 in Case R 810/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including the costs incurred in the proceedings before the Operations Department and the First Board of Appeal.

Pleas in law

— Infringement of Article 72(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

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

Action brought on 15 April 2020 — JK v Commission

(Case T-219/20)

(2020/C 209/43)

Language of the case: French

Parties

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

Defendant: European Commission

Forms of order sought

The applicant claims that the Court should:

— annul the decision of 5 June 2019 of the Director of DG Budget and Administration, Human Resources, of the EEAS rejecting his complaint submitted, on the basis of Article 24 of the Staff Regulations, on 5 February 2019;

— annul the implied decision of the Appointing Authority of the Commission rejecting his complaint lodged, on the basis of Article 24 of the Staff Regulations, on 5 February 2019;

— annul, in so far as that decision follows an implied rejection, the decision rejecting the complaint lodged on 4 September 2019 by the applicant and notified on 6 January 2020 by the Director of DG Budget and Administration, Human Resources and Security;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant puts forward two pleas in law.

1. First plea in law, alleging an infringement of Article 12a of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), an error of law in the assessment of the concept of harassment and, more specifically, in its assessment with regard to the implementation of the institution's duty to provide assistance under Article 24 of the Staff Regulations and an error of law on the part of the Appointing Authority in rejecting the complaint, before any initiative for an administrative investigation, as regards the significance of the evidence provided in support of his complaint.

2. Second plea in law, alleging a manifest error of assessment of the evidence submitted in support of the request for assistance in view of the fact that the applicant has provided, through his complaint, sufficient evidence to demonstrate the reality of the attacks to which he was subjected.

Action brought on 23 April 2020 — Orion v Commission

(Case T-223/20)

(2020/C 209/44)

Language of the case: English

Parties

Applicant: Orion Oyj (Espoo, Finland) (represented by: C. Schoonderbeek, lawyer, J. Mulryne and E. Amos, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the defendant dated 13 February 2020 to grant a generic marketing authorisation for 'Dexmedetomidine Accord';

— order the defendant to pay the applicant's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision constitutes a violation of Article 10(1) of Directive 2001/83/EC, ([1]) read in conjunction with Article 10(2)(a) thereof, by accepting the medicinal product 'Precedex', which was granted a national marketing authorisation in the Czech Republic prior to accession to the EU as a reference medicinal product, given that this national marketing authorisation was not granted (or updated) in accordance with Union provisions in force.

2. Second plea in law, alleging that the contested decision constitutes a violation of Article 14(11) of Regulation 726/2004, ([2]) read in conjunction with Article 10(1) and 6(1) of Directive 2001/83, by concluding that the regulatory data protection for the applicant's product, 'Dexdor', had expired and accepting that it (and the research data underlying it) could be used as a reference medicinal product in support of an application for a marketing authorisation for a copy (generic) product, on the grounds that the medicinal product 'Precedex' and 'Dexdor' belong to the same global marketing authorisation.

3. Third plea in law, alleging that the contested decision does not contain an adequate statement of reasons as required by Article 296 TFEU.

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

([2]) 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 surveillance of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 27 April 2020 — PNB Banka v ECB

(Case T-230/20)

(2020/C 209/45)

Language of the case: English

Parties

Applicant: PNB Banka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the ECB's decision dated 17 February 2020 regarding the withdrawal of the banking licence of AS PNB Banka;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the text of the contested decision contains insufficient and misleading procedural information.

2. Second plea in law, alleging that the ECB illegitimately used the two-stage procedure for the contested decision (involving a proposal of the national competent authority), pursuant to Article 14(5), second subparagraph, of Council Regulation (EU) No 1024/2013 ([1]) and Article 83 of Regulation (EU) No 468/2014, ([2]) despite the ECB's reclassification decision of 1 March 2019 by which the ECB took over direct supervision of the applicant.

3. Third plea in law, alleging violations of the procedure before the national competent authority, the Financial and Capital Market Commission (FCMC).

4. Fourth plea in law, alleging that it had become procedurally impossible for the ECB to adopt a draft licence withdrawal decision dated 12 September 2019 on 17 February 2020 due to the procedural provision of Article 83(1) of Regulation (EU) No 468/2014.

5. Fifth plea in law, alleging that the contested decision is rendered procedurally and substantively illegal because of the ECB's de facto licence withdrawal by means of the preceding 'Failing or Likely to Fail' (FOLTF) assessment of 15 August 2019.

6. Sixth plea in law, alleging that the contested decision is illegal because it is based on an illegal interference with the rights of representation of the applicant which deprives it of the entirety of its procedural rights.

7. Seventh plea in law, alleging that the contested decision is illegal because it is based on insufficient reasoning.

8. Eighth plea in law, alleging a violation of the applicant's right to be heard.

9. Ninth plea in law, alleging that the ECB was estopped from relying on the Latvian insolvency ruling dated 12 September 2019 because this ruling was illegal and based exclusively on the ECB's erroneous FOLTF assessment.

10. Tenth plea in law, alleging that the ECB erroneously relied on further grounds for the contested decision, namely alleged violations of large exposure limits and regulatory capital requirements, which were not justified and which the FCMC did not rely on in its draft decision.

11. Eleventh plea in law, alleging that the contested decision is substantively illegal because the applicant has been under the FCMC's, and therefore indirectly the ECB's, exclusive control since 12 September 2019.

12. Twelfth plea in law, alleging that the contested decision is disproportionate.

13. Thirteenth plea in law, alleging that the contested decision is based on all defects of the FOLTF assessment.

([1]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

([2]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (OJ 2014 L 141, p. 1).

Action brought on 23 April 2020 — Price v Council

(Case T-231/20)

(2020/C 209/46)

Language of the case: French

Parties

Applicant: David Price (Le Dorat, France) (represented by: J. Fouchet, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Stay the proceedings in the case and refer the following questions to the Court of Justice of the European Union for a preliminary ruling under the expedited procedure:

(1) Does the withdrawal of the United Kingdom from the European Union revoke the EU citizenship of UK nationals who, prior to the end of the transition period, have exercised their right to free movement and their right to settle freely in the territory of another Member State?

(2) If so, is the combination of Articles 2, 3, 10, 12 and 27 of the withdrawal agreement, point 6 of the preamble thereto and Articles 18, 20 and 21 of the Treaty on the Functioning of the European Union to be interpreted as allowing those UK nationals to retain, without exception, the rights of EU citizenship that they enjoyed prior to the withdrawal of their country from the European Union?

(3) If the second question is answered in the negative, does the withdrawal agreement not infringe Articles 18, 20 and 21 of the Treaty on the Functioning of the European Union in so far as it does not contain a provision allowing them to retain those rights without exception?

(4) In any event, does Article 127(1)(b) of the withdrawal agreement not infringe Articles 18, 20 and 21 of the Treaty on the Functioning of the European Union and Articles 39 and 40 of the Charter of Fundamental Rights of the European Union in so far as it deprives EU citizens who have exercised their right to free movement and their right to settle freely in the United Kingdom of their right to vote and to stand as candidates in municipal elections in that country and, if the General Court and the Court of Justice read those provisions in the same way as the French Conseil d'État (Council of State), does that infringement not extend to UK nationals who have exercised their right to free movement and their right to settle freely in another Member State?

— Annul in part Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community in so far as the withdrawal agreement does not fully protect the right to health of those nationals and in so far as those acts distinguish systematically and indiscriminately, without any review of proportionality, EU citizens from UK nationals from 1 February 2020 and annul, inter alia, the sixth paragraph of the preamble and Articles 9, 10 and 127 of the withdrawal agreement;

— Order the European Union to pay the costs of the proceedings, including legal fees of EUR 5 000.

Pleas in law and main arguments

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

1. First plea in law, alleging no review of proportionality of the removal of the EU citizenship of certain categories of UK national. The applicant states that as an EU citizen who exercised his right to free movement within the European Union and given that he left the United Kingdom more than 15 years ago, he was not able to vote in the referendum of 23 June 2016 on the United Kingdom's membership of the European Union.

2. Second plea in law, alleging breach of the principles of democracy, equality of treatment, freedom of movement, freedom of expression and good administration.

3. Third plea in law, alleging infringement of the legal order of the European Union and of the principle of equality of treatment which is an inherent part of EU citizenship. The applicant claims, inter alia, that the contested decision is contrary to the legal order of the European Union, which enshrines the principle of equality of treatment of all citizens, and to the legal order of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Fourth plea in law, alleging breach of the principles of legal certainty and of the protection of legitimate expectations. In that regard, the applicant claims, inter alia, that the contested decision authorises the loss of his permanent right to remain, which he acquired after 5 years of continual residence in a Member State without the real consequences of that loss being provided for and, in particular, without any review of proportionality.

5. Fifth plea in law, alleging infringement of the right to respect for private and family life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant claims that the contested decision limits his right to private and family life to the extent that it removes his EU citizenship and, consequently, his right to reside freely in the territory of a Member State of which he is not a national, but in which he has built his family life.

6. Sixth plea in law, alleging an infringement of the right of UK nationals to vote and to stand as candidates in European and municipal elections. According to the applicant, Article 127 of the withdrawal agreement infringes Article 18 TFEU and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. The contested decision should therefore be annulled in so far as it ratifies an agreement including a provision creating discrimination between UK citizens.

7. Seventh plea in law, alleging a systematic and indiscriminate distinction in the withdrawal agreement between EU citizens and UK nationals without any review of proportionality with regard to the private and family life of UK nationals from 1 February 2020. In support of that plea, the applicant argues that the removal of EU citizenship must not be systematic and indiscriminate, that a specific assessment of the consequences should be necessary and that, in the absence of such an assessment, the contested decision must be annulled.

8. Eighth plea in law, alleging infringement of Article 35 of the Charter of Fundamental Rights of the European Union, namely the right to health. The applicant claims that, since the withdrawal agreement provides in no way for the protection of his right to health, the possibility for the United Kingdom and its nationals to be lent support disappears, which puts the latter in danger, in particular during a pandemic and a health crisis.

Action brought on 1 May 2020 — Ryanair v Commission

(Case T-238/20)

(2020/C 209/47)

Language of the case: English

Parties

Applicant: Ryanair DAC (Swords, Ireland) (represented by: E. Vahida, F. Laprévote, S. Rating and I. Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision (EU) of 11 April 2020 on State aid SA.56812; ([1]) and

— order the Commission to pay the costs.

— The applicant has also requested that its action be determined under the expedited procedure as referred to in Article 23a of the Statute of the Court of Justice.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission's decision violates specific provisions of the TFEU and the general principles of European law regarding the prohibition of discrimination based on nationality and free movement of services that have underpinned the liberalisation of air transport in the EU since the late 1980s. The liberalisation of the air transport market in the EU has allowed the growth of truly pan-European low-fares airlines. The decision of the Commission ignores the role of such pan-European airlines in the connectivity of EU Member States by allowing Sweden to reserve aid only to those EU airlines to which Sweden has issued EU operating licenses. Article 107(3)(b) TFEU provides for an exception to the prohibition of State aid under Article 107(1) TFEU, but it does not provide for an exception to the other rules and principles of the TFEU.

2. Second plea in law, alleging that the Commission's decision violates the Commission's obligation to weigh the beneficial effects of aid against its adverse effects on trading conditions and the maintenance of undistorted competition (*i.e.,* the 'balancing test').

3. Third plea in law, alleging that the Commission failed to initiate a formal investigation procedure despite serious difficulties and violated the applicant's procedural rights.

4. Fourth plea in law, alleging that the decision violates the Commission's duty to state reasons.

([1]) European Commission's decision (EU) of 11 April 2020 on State aid SA.56812 Sweden — Loan guarantee scheme to airlines under the temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (not yet published in the OJ).

Action brought on 30 April 2020 — Stada Arzneimittel v EUIPO — Pfizer (RUXXIMLA)

(Case T-239/20)

(2020/C 209/48)

Language in which the application was lodged: German

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pfizer Inc. (New York, New York, United States)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark RUXXIMLA — Application for registration No 17 865 742

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 13 February 2020 in Case R 1879/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including the costs of the appeal proceedings.

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 5 May 2020 — Stada Arzneimittel v EUIPO — Pfizer (RUXYMLA)

(Case T-248/20)

(2020/C 209/49)

Language in which the application was lodged: German

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pfizer Inc. (New York, New York, United States)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark RUXYMLA — Application for registration No 17 865 739

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 13 February 2020 in Case R 1878/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including the costs of the appeal proceedings.

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 7 May 2020 — González Calvet v SRB

(Case T-257/20)

(2020/C 209/50)

Language of the case: Spanish

Parties

Applicants: Ramón González Calvet and Joan González Calvet (Barcelona, Spain) (represented by: P. Molina Bosch, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— annul the decision of the Single Resolution Board SRB/EES/2020/52 of 17 March 2020;

— evaluate all the assets of the entire Banco Popular Group and not just those of the parent company separately from its subsidiaries, as Deloitte has done, given that the entire group has been taken over by Banco Santander and not just the parent company;

— evaluate the performing loans at 100 % of their book value;

— evaluate the non-performing loans at 100 % of their book value, given that, between guarantees and provisions, their cover was close to 100 %;

— evaluate the real estate assets of the Banco Popular Group at EUR 10 896 000 000, given that the corresponding provisions were discounted;

— evaluate the total assets of the Banco Popular Group at EUR 153 785 000 000 in accordance with the arguments set out in the application which provides a realisation value for shareholders in the event of liquidation of EUR 29 365 000 000, after discounting the EUR 124 420 000 000 owed, according to Deloitte, to creditors;

— set compensation of EUR 7.00 per share, being the sum obtained by dividing EUR 29 365 000 000 by 4 196 000 000 shares which were in circulation at the time of the resolution;

— indemnify Mr Ramon González Calvet with EUR 317 072 (three hundred and seventeen thousand and seventy-two euros) for the expropriation of his 45 296 shares and Mr Juan González Calvet with EUR 11 977 (eleven thousand nine hundred and seventy-seven euros) for the expropriation of his 1 711 shares, together with legal costs.

Pleas in law and main arguments

On 6 June 2017, the Single Resolution Board (SRB) resolved Banco Popular and sold it for the sum of one euro to Banco Santander. On 17 March 2020, the SRB, after the bondholders and shareholders in Banco Popular affected by its resolution had exercised their right to be heard, decided in decision SRB/EES/2020/52 that those affected would not be compensated, relying on the Deloitte's Valuation 3 Report.

In the application, the applicants submit that Deloitte is a discredited auditing company as a result of cases such as Gowex, Bankia, Gescartera and Abengoa, and in fact, it is not currently auditing any major Spanish bank.

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

1. The applicants state that Deloitte's valuation is biased towards the interests of the SRB and is prejudicial to the shareholders, inter alia because:

   — it undervalues the deferred tax assets which were fully covered by Banco Santander;

   — it does not take into account the fact that the cover for non-performing loans, between guarantees and provisions, was100 %;

   — it undervalues the performing loans portfolio;

   — it does not count all the assets of the Banco Popular Group and separates the assets of the legal entity Banco Popular from those of its subsidiaries and investees;

   — it does not take into account the fact that the net book value of the real estate assets, after the provisions were discounted, was 10 896 000 000.

2. On 23 May 2017, the SRB instructed Deloitte to provide a valuation of Banco Popular at a time when its Chair, Elka König, in an interview with Bloomberg TV, acknowledged that Banco Popular was under observation. It follows that the SRB had already decided on 23 May 2017 to resolve Banco Popular, which filtered to the Reuters news agency on 31 May, causing the deposit flight episode which collapsed Banco Popular's liquidity.

3. According to the Banco de España (Bank of Spain), the European Central Bank considered Banco Popular to be a solvent bank as at 13 March 2017. Banco Popular was never in liquidation, as Deloitte claims, but it is clear that the SRB set itself the objective of resolving Banco Popular so as to be able to rescue Banco Santander, a European and world systemic bank whose losses (which the applicant's estimate were EUR 22 573 000 000 in 2017), were hidden from its shareholders through the expropriation of Banco Popular.

Action brought on 8 May 2020 — Global Chartered Controller Institute v EUIPO — CFA Institute (CCA CHARTERED CONTROLLER ANALYST CERTIFICATE)

(Case T-266/20)

(2020/C 209/51)

Language in which the application was lodged: Spanish

Parties

Applicant: Global Chartered Controller Institute SL (Alicante, Spain) (represented by: M. Pomares Caballero and T. Barber Giner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: CFA Institute (Charlottesville, Virginia, United States)

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 figurative mark CCA CHARTERED CONTROLLER ANALYST CERTIFICATE — Application for registration No 15 508 161

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 25 February 2020 in Case R 235/2019-5

Form of order sought

The applicant claims that the Court should:

— vary the contested decision and find that the conditions for applying the relative ground for refusal of registration in Article 8(1)(b) of EUTMR are not fulfilled in the present case;

— or, in the alternative, annul the contested decision;

— order EUIPO to bear its own costs and to pay those of the applicant (including the costs relating to the proceedings before the Board of Appeal) and order the intervener to pay the costs incurred before the Opposition Division.

Plea in law

Infringement of Article 8(1)(b) and Article 92 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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