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Information and Notices

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(2020/C 222/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 2 April 2020 (requests for a preliminary ruling from the Tribunal de grande instance de Bobigny and Cour de cassation, France) — Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC) v Vueling Airlines SA (C-370/17), Vueling Airlines SA v Jean-Luc Poignant (C-37/18)

(Joined Cases C-370/17 and C-37/18) [1]

(Reference for a preliminary ruling — Migrant workers — Social security — Regulation (EEC) No 1408/71 — Legislation applicable — Article 14(1)(a) — Posted workers — Article 14(2)(a)(i) — Person normally employed in the territory of two or more Member States and employed by a branch or a permanent representation that an undertaking has in the territory of a Member State other than that where it has its registered office — Regulation (EEC) No 574/72 — Article 11(1)(a) — Article 12a(1a) — E 101 certificate — Binding effect — Certificate fraudulently obtained or relied on — Power of the courts of the host Member State to make a finding of fraud and to disregard the certificate — Article 84a(3) of Regulation No 1408/71 — Cooperation between competent institutions — Authority in civil proceedings of res judicata in criminal proceedings — Primacy of EU law)

(2020/C 222/02)

Language of the case: French

Referring courts

Tribunal de grande instance de Bobigny and Cour de cassation (France)

Parties to the main proceedings

Applicants: Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC) (C-370/17), Vueling Airlines SA (C-37/18)

Defendants: Vueling Airlines SA (C-370/17), Jean-Luc Poignant (C-37/18)

Operative part of the judgment

1. Article 11(1)(a) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that a court or tribunal of a Member State, seised of an action in legal proceedings brought against an employer with respect to facts that might indicate that E 101 certificates, issued under Article 14(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Regulation No 118/97, as amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004, were fraudulently obtained and relied on with respect to workers employed in that Member State, can make a finding of fraud and consequently disregard those certificates only if it has satisfied itself that:

— first, the procedure laid down in Article 84a(3) of that regulation was promptly initiated and the competent institution of the issuing Member State was thus put in a position to review the grounds for the issue of those certificates in the light of the concrete evidence submitted by the competent institution of the host Member State that indicates that those certificates were fraudulently obtained or relied on, and

— second, the competent institution of the issuing Member State has failed to undertake such a review and has failed to make a decision, within a reasonable time, on that evidence, cancelling or withdrawing the certificates at issue, where appropriate;

2. Article 11(1) of Regulation No 574/72, in the version amended and updated by Regulation No 118/97, as amended by Regulation No 647/2005, and the principle of the primacy of EU law must be interpreted as precluding, in a situation where an employer has, in the host Member State, acquired a criminal conviction based on a definitive finding of fraud made in breach of EU law, a civil court or tribunal of that Member State, bound by the principle of national law that a decision which has the authority of *res judicata* in criminal proceedings also has that authority in civil proceedings, from holding that employer to be liable, solely by reason of that criminal conviction, to pay damages intended to provide compensation to workers or a pension fund of that Member State who claim to be affected by that fraud.

(1) OJ C 283, 28.8.2017.
OJ C 112, 26.3.2018.

Judgment of the Court (Third Chamber) of 2 April 2020 — European Commission v Republic of Poland, Commission v Hungary, Commission v Czech Republic

(Joined Cases C-715/17, C-718/17 and C-719/17) (1)

(Failure of a Member State to fulfil obligations — Decisions (EU) 2015/1523 and (EU) 2015/1601 — Article 5(2) and 5(4) to 5(11) of each of those decisions — Provisional measures in the area of international protection for the benefit of Italy and of Greece — Emergency situation characterised by a sudden influx of third-country nationals into certain Member States — Relocation of those nationals to other Member States — Relocation procedure — Obligation on the Member States to indicate at regular intervals, and at least every three months, the number of applicants for international protection who can be relocated swiftly to their territory — Consequent obligations leading to actual relocation — Interests of the Member States linked to national security and public order — Possibility for a Member State to rely on Article 72 TFEU in order not to apply EU legal acts of a binding nature)

(2020/C 222/03)

Languages of the cases: Czech, Hungarian and Polish

Parties

(Case C-715/17)

Applicant: European Commission (represented by: Z. Malůšková, A. Stobiecka-Kuik, G. Wils and A. Tokár, acting as Agents)

Defendant: Republic of Poland (represented by: E. Borawska-Kędzierska and B. Majczyna, acting as Agents)

Interveners in support of the Republic of Poland: Czech Republic (represented by: M. Smolek, J. Vláčil, J. Pavliš and A. Brabcová, acting as Agents), Hungary (represented by: M.Z. Fehér, acting as Agent)

(Case C-718/17)

Applicant: European Commission (represented by: Z. Malůšková, A. Stobiecka-Kuik, G. Wils and A. Tokár, acting as Agents)

Defendant: Hungary (represented by: M.Z. Fehér and G. Koós, acting as Agents)

Interveners in support of Hungart: Czech Republic (represented by: M. Smolek, J. Vláčil, J. Pavliš and A. Brabcová, acting as Agents), Republic of Poland (represented by: E. Borawska-Kędzierska and B. Majczyna, acting as Agents)

(Case C-719/17)

Applicant: European Commission (represented by: Z. Malůšková, A. Stobiecka-Kuik, G. Wils and A. Tokár, acting as Agents)

Defendant: Czech Republic (represented by: M. Smolek, J. Vláčil, J. Pavliš and A. Brabcová, acting as Agents)

Interveners in support of the Czech Republic: Hungary (represented by: M.Z. Fehér, acting as Agent), Republic of Poland (represented by: E. Borawska-Kędzierska and B. Majczyna, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that Cases C-715/17, C-718/17 and C-719/17 are joined for the purposes of the judgment;

2. Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Republic of Poland has, since 16 March 2016, failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, and Article 5(2) of Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;

3. Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, Hungary has, since 25 December 2015, failed to fulfil its obligations under Article 5(2) of Decision 2015/1601 and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of that decision;

4. Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Czech Republic has, since 13 August 2016, failed to fulfil its obligations under Article 5(2) of Decision 2015/1523 and Article 5(2) of Decision 2015/1601, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;

5. Orders the Republic of Poland, in addition to bearing its own costs in Cases C-715/17, C-718/17 and C-719/17, to pay those of the Commission in Case C-715/17;

6. Orders Hungary, in addition to bearing its own costs in Cases C-715/17, C-718/17 and C-719/17, to pay those of the Commission in Case C-718/17;

7. Orders the Czech Republic, in addition to bearing its own costs in Cases C-715/17, C-718/17 and C-719/17, to pay those of the Commission in Case C-719/17.

(1) OJ C 112, 26.3.2018.

Judgment of the Court (Second Chamber) of 19 March 2020 (request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 8 de Madrid, Juzgado Contencioso-Administrativo No 14 de Madrid— Spain) — Domingo Sánchez Ruiz (C-103/18), Berta Fernández Álvarez and Others (C-429/18) v Comunidad de Madrid (Servicio Madrileño de Salud)

(Joined Cases C-103/18 and C-429/18) ([1])

(References for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework Agreement, concluded by ETUC, UNICE and CEEP regarding fixed-term work — Clause 5 — Concept of 'successive fixed-term employment contracts or relationships' — Failure by the employer to respect the relevant legal deadline for definitively filling posts temporarily occupied by fixed-term workers — Implicit extension of the employment relationship from year to year — Occupation by a fixed-term worker of the same post in the context of two consecutive appointments — Concept of 'objective reasons' justifying the renewal of successive fixed-term employment contracts or relationships — Respect for the reasons for recruitment provided for by the national legislation — Concrete examination finding that the successive renewal of fixed-term employment relationships seeks to cover the employer's permanent and regular staffing needs — Measures seeking to prevent and, where appropriate, to punish abuses resulting from the use of successive fixed-term employment contracts or relationships — Selection procedures seeking to definitively fill posts occupied temporarily by fixed-term workers — Conversion of the situation of fixed-term workers into 'non-permanent workers of indefinite duration' — Grant to the worker of compensation equal to that paid in the event of unfair dismissal — Applicability of the Framework Agreement despite the fact that the worker consented to successive renewals of fixed-term contracts — Clause 5(1) — Absence of obligation for national courts to disapply inconsistent national legislation)

(2020/C 222/04)

Language of the case: Spanish

Referring courts

Juzgado Contencioso-Administrativo No 8 de Madrid, Juzgado Contencioso-Administrativo No 14 de Madrid

Parties to the main proceedings

Applicants: Domingo Sánchez Ruiz (C-103/18), Berta Fernández Álvarez and Others (C-429/18)

Defendant: Comunidad de Madrid (Servicio Madrileño de Salud)

Operative part of the judgment

1. Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is 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, must be interpreted as meaning that the Member States and/or the social partners cannot exclude from the concept of 'successive fixed-term employment contracts or relationships', within the meaning of that provision, a situation in which a worker recruited on the basis of a fixed-term employment relationship, namely until the vacant post to which he or she is recruited is definitively filled, occupied, in the context of several appointments, the same post continuously over several years and continuously performed the same functions, since the continuation of that worker in that vacant post is the result of the employer's failure to comply with its legal obligation to organise within the relevant deadline a selection procedure seeking to definitively fill that vacant post and since his or her employment relationship was thereby implicitly extended from year to year;

2. Clause 5 of the Framework Agreement on Fixed-Term Work, concluded on 18 March 1999 and annexed to Directive 1999/70, must be interpreted as precluding national legislation according to which the successive renewal of fixed-term employment relationships is justified for 'objective reasons', within the meaning of paragraph 1(a) of that Clause, on the sole ground that that renewal responds to the reasons for recruitment covered by that legislation, namely grounds of need, urgency or for the development of programmes of a temporary, auxiliary or extraordinary nature, in so far as such national legislation and case-law does not prevent the employers concerned from responding, in practice, by such renewals, to fixed and permanent staffing needs;

3. Clause 5 of the Framework Agreement on Fixed-Term Work, concluded on 18 March 1999 and annexed to Directive 1999/70, must be interpreted as meaning that it is for the referring court to assess, in accordance with all the applicable rules under its national law, whether the organisation of selection procedures seeking to definitively fill posts occupied on a temporary basis by workers employed in the context of fixed-term employment relationships, the conversion of those workers' status into that of 'non-permanent workers of indefinite duration' and the grant to those workers of compensation equivalent to that paid in the event of unfair dismissal constitute measures which are adequate for the purposes of preventing and, where appropriate, punishing abuses resulting from the use of successive fixed-term employment contracts or relationships or equivalent legal measures, within the meaning of that provision;

4. Clause 2, Clause 3(1) and Clause 5 of the Framework Agreement on Fixed-Term Work, concluded on 18 March 1999 and annexed to Directive 1999/70, must be interpreted as meaning that, in the event of abusive use, by a public employer, of successive fixed-term employment relationships, the fact that the worker concerned consented to the establishment and/or renewal of those employment relationships is not capable, from that perspective, of removing the abusive element from that employer's conduct, so that the Framework Agreement would not be applicable to that worker's situation;

5. EU law must be interpreted as not obliging a national court hearing a dispute between a worker and his or her public employer to disapply national legislation which is not compatible with Clause 5(1) of the Framework Agreement on Fixed-Term Work, concluded on 18 March 1999 and annexed to Directive 1999/70.

([1]) OJ C 161, 7.5.2018.
OJ C 373, 15.10.2018.

Judgment of the Court (Fifth Chamber) of 2 April 2020 (request for a preliminary ruling from the Kúria — Hungary) — Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others

(Case C-228/18) ([1])

(Reference for a preliminary ruling — Competition — Agreements, decisions and concerted practices — Article 101(1) TFEU — Card payment systems — Interbank agreement fixing the level of interchange fees — Agreement restricting competition 'by object' and 'by effect' — Concept of restriction of competition 'by object')

(2020/C 222/05)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Appellant: Gazdasági Versenyhivatal

Respondents: Budapest Bank Nyrt., ING Bank NV Magyarországi Fióktelepe, OTP Bank Nyrt., Kereskedelmi és Hitelbank Zrt., Magyar Külkereskedelmi Bank Zrt., ERSTE Bank Hungary Zrt., Visa Europe Ltd, MasterCard Europe SA

Operative part of the judgment

1. Article 101(1) TFEU must be interpreted as not precluding the same anticompetitive conduct from being regarded as having as both its object and its effect the restriction of competition, within the meaning of that provision.

2. Article 101(1) TFEU must be interpreted as meaning that an interbank agreement which fixes at the same amount the interchange fee payable, where a payment transaction by card takes place, to the banks issuing such cards offered by card payment services companies operating on the national market concerned cannot be classified as an agreement which has 'as [its] object' the prevention, restriction or distortion of competition, within the meaning of that provision, unless that agreement, in the light of its wording, its objectives and its context, can be regarded as posing a sufficient degree of harm to competition to be classified thus, a matter which is for the referring court to determine.

(1) OJ C 231, 2.7.2018.

Judgment of the Court (Third Chamber) of 19 March 2020 (request for a preliminary ruling from the Sofiyski gradski sad — Bulgaria) — Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v BP, AB, PB, 'Trast B' OOD, 'Agro In 2001' EOOD, 'ACounT Service 2009' EOOD, 'Invest Management' OOD, 'Estate' OOD, 'Bromak' OOD, 'Bromak Finance' EAD, 'Viva Telekom Bulgaria' EOOD, 'Balgarska Telekomunikationna Kompania' AD, 'Hedge Investment Bulgaria' AD, 'Kemira' OOD, 'Dunarit' AD, 'Technologichen Zentar-Institut Po Mikroelektronika' AD, 'Evrobild 2003' EOOD, 'Technotel Invest' AD, 'Ken Trade' EAD, 'Konsult Av' EOOD, Louvrier Investments Company 33 SA, EFV International Financial Ventures Ltd, Interv Investment SARL, LIC Telecommunications SARL, V Telecom Investment SCA, V2 Investment SARL, Empreno Ventures Ltd

(Case C-234/18) (1)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Proceedings for the confiscation of illegally obtained assets in the absence of a criminal conviction — Directive 2014/42/EU — Scope — Framework Decision 2005/212/JHA)

(2020/C 222/06)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicant: Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo

Defendants: BP, AB, PB, 'Trast B' OOD, 'Agro In 2001' EOOD, 'ACounT Service 2009' EOOD, 'Invest Management' OOD, 'Estate' OOD, 'Bromak' OOD, 'Bromak Finance' EAD, 'Viva Telekom Bulgaria' EOOD, 'Balgarska Telekomunikationna Kompania' AD, 'Hedge Investment Bulgaria' AD, 'Kemira' OOD, 'Dunarit' AD, 'Technologichen Zentar-Institut Po Mikroelektronika' AD, 'Evrobild 2003' EOOD, 'Technotel Invest' AD, 'Ken Trade' EAD, 'Konsult Av' EOOD, Louvrier Investments Company 33 SA, EFV International Financial Ventures Ltd, Interv Investment SARL, LIC Telecommunications SARL, V Telecom Investment SCA, V2 Investment SARL, Empreno Ventures Ltd

Other party to the proceedings: Corporate Commercial Bank, in liquidation

Operative part of the judgment

Council Framework Decision 2005/212/JHA, of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, must be interpreted as not precluding legislation of a Member State which provides that the confiscation of illegally obtained assets is ordered by a national court following proceedings which are not subject either to a finding of a criminal offence or, a fortiori, the conviction of the persons accused of committing such an offence.

(1) OJ C 240, 9.7.2018.

Judgment of the Court (First Chamber) of 19 March 2020 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — PG v Bevándorlási és Menekültügyi Hivatal

(Case C-406/18) ([1])

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Common procedures for granting international protection — Directive 2013/32/EU — Article 46(3) — Full and ex nunc examination — Article 47 of the Charter of Fundamental Rights of the European Union — Right to an effective remedy — Powers and obligations of the first instance court or tribunal — No power to vary the decisions of the authorities competent in the area of international protection — National legislation providing for an obligation to adjudicate within a time limit of 60 days)

(2020/C 222/07)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: PG

Defendant: Bevándorlási és Menekültügyi Hivatal

Operative part of the judgment

1. Article 46(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as not precluding national legislation which confers solely on courts or tribunals the power to annul decisions of the competent authorities in matters of international protection, to the exclusion of the power to amend those decisions. However, if the file is referred back to the competent administrative authority, a new decision should be adopted within a short period of time and in compliance with the assessment contained in the judgment annulling the decision. Moreover, where a national court has found — after making a full and ex nunc examination of all the relevant elements of fact and law submitted by an applicant for international protection — that, under the criteria laid down by 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, the applicant concerned must be granted such protection on the ground that he relied on in support of his application, but after which the administrative authority adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court must, where national law does not provide it with any means of ensuring that its judgment is complied with, amend that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, by disapplying, if necessary, the national law that prohibits it from proceeding in that way;

2. Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which sets a period of 60 days for the court hearing an action against a decision rejecting an application for international protection to give a ruling, provided that that court is able to ensure, within that period, that the substantive and procedural rules which EU law affords to the applicant are effective. If that is not the case, that court must disapply the national legislation laying down the period for adjudication and, once that period has elapsed, deliver its judgment as promptly as possible.

([1]) OJ C 311, 3.9.2018.

Judgment of the Court (Fifth Chamber) of 2 April 2020 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — 'GVC Services (Bulgaria)' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia

(Case C-458/18) ([1])

(Reference for a preliminary ruling — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Directive 2011/96/EU — Article 2(a)(i) and (iii), and Annex I, Part A(ab) and the last indent of Part B — Concepts of 'companies incorporated under United Kingdom law' and 'United Kingdom corporation tax' — Companies registered in Gibraltar which are subject to corporation tax there)

(2020/C 222/08)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: 'GVC Services (Bulgaria)' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia

Operative part

Article 2(a)(i) and (iii) of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, read in conjunction with Part A(ab) and the last indent of Part B of Annex I to that directive, must be interpreted as meaning that the concepts 'companies incorporated under United Kingdom law' and 'corporation tax in the United Kingdom' in those provisions do not cover companies incorporated in Gibraltar which are subject to corporation tax there.

([1]) OJ C 341 of 24.9.2018.

Judgment of the Court (Fourth Chamber) of 2 April 2020 (request for a preliminary ruling from the Tribunalul Specializat Cluj — Romania) — AU v Reliantco Investments LTD, Reliantco Investments LTD Limassol Sucursala Bucureşti

(Case C-500/18) ([1])

(Reference for a preliminary ruling — Freedom of establishment — Freedom to provide services — Markets in financial instruments — Directive 2004/39/EC — Meanings of 'retail client' and 'consumer' — Conditions for relying on the status of consumer — Determining jurisdiction to hear the request)

(2020/C 222/09)

Language of the case: Romanian

Referring court

Tribunalul Specializat Cluj

Parties to the main proceedings

Applicant: AU

Defendants: Reliantco Investments LTD, Reliantco Investments LTD Limassol Sucursala Bucureşti

Operative part of the judgment

1. Article 17(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a natural person who, under a contract such as a financial contract for differences concluded with a finance company, carries out transactions through that company may be classified as a 'consumer' within the meaning of that provision if the conclusion of that contract does not fall within the scope of that person's professional activity, which it is for the national court to ascertain. For the purposes of that classification, first, factors such as the fact that that person carried out a high volume of transactions within a relatively short period or that he or she invested significant sums in those transactions are, as such, in principle irrelevant, and secondly, the fact that that same person is a 'retail client' within the meaning of Article 4(1) point 12 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 is, as such, in principle irrelevant;

2. Regulation No 1215/2012 must be interpreted as meaning that, for the purposes of determining the courts having jurisdiction, an action in tort brought by a consumer comes under Chapter II, Section 4, of that regulation if it is indissociably linked to a contract actually concluded between that consumer and the seller or supplier, which is a matter for the national court to verify.

([1]) OJ C 381, 22.10.2018.

Judgment of the Court (First Chamber) of 19 March 2020 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — LH v Bevándorlási és Menekültügyi Hivatal

(Case C-564/18) ([1])

(Reference for a preliminary ruling — Asylum policy — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Application for international protection — Article 33(2) — Grounds of inadmissibility — National legislation under which an application is inadmissible if the applicant has arrived in the Member State concerned via a country in which he or she is not exposed to persecution or the risk of serious harm, or if that country provides sufficient protection — Article 46 — Right to an effective remedy — Judicial review of administrative decisions concerning the inadmissibility of applications for international protection — Time limit of eight days within which to give a decision — Article 47 of the Charter of Fundamental Rights of the European Union)

(2020/C 222/10)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: LH

Defendant: Bevándorlási és Menekültügyi Hivatal

Operative part of the judgment

1. Article 33 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed;

2. Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which sets a time limit of eight days within which a court hearing an appeal against a decision rejecting an application for international protection as inadmissible is to give a decision, where that court is unable to ensure, within such a time limit, that the substantive rules and procedural guarantees enjoyed by the applicant under EU law are effective.

(1) OJ C 436, 3.12.2018.

Judgment of the Court (Fifth Chamber) of 2 April 2020 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Coty Germany GmbH v Amazon Services Europe Sàrl, Amazon FC Graben GmbH, Amazon Europe Core Sàrl, Amazon EU Sàrl

(Case C-567/18) (1)

(Reference for a preliminary ruling — EU trade mark — Regulation (EC) No 207/2009 — Article 9 — Regulation (EU) 2017/1001 — Article 9 — Rights conferred by a trade mark — Use — Stocking of goods for the purposes of offering them or putting them on the market — Storage with a view to dispatching goods sold in an online marketplace which infringe trade mark rights)

(2020/C 222/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Coty Germany GmbH

Defendants: Amazon Services Europe Sàrl, Amazon FC Graben GmbH, Amazon Europe Core Sàrl, Amazon EU Sàrl

Operative part of the judgment

Article 9(2)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark and Article 9(3)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark must be interpreted as meaning that a person who, on behalf of a third party, stores goods which infringe trade mark rights, without being aware of that infringement, must be regarded as not stocking those goods in order to offer them or put them on the market for the purposes of those provisions, if that person does not itself pursue those aims.

(1) OJ C 427, 26.11.2018.

Judgment of the Court (Tenth Chamber) of 19 March 2020 — ClientEarth v European Commission

(Case C-612/18 P) ([1])

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Article 4(1)(a), third indent, and (6) — Exceptions to the right of access — Protection of the public interest as regards international relations — Documents drawn up by the European Commission's legal service concerning Investor-State Dispute Settlement and the Investment Court System in EU trade agreements — Partial refusal of access)

(2020/C 222/12)

Language of the case: English

Parties

Appellant: ClientEarth (represented by: O. W. Brouwer and E. M. Raedts, advocaten, and N. Frey, Solicitor)

Other party to the proceedings: European Commission (represented by: J. Baquero Cruz, F. Clotuche-Duvieusart and C. Ehrbar, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

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

([1]) OJ C 93, 11.3.2019.

Judgment of the Court (Fifth Chamber) of 2 April 2020 (request for a preliminary ruling from the Högsta domstolen — Sweden) — Föreningen Svenska Tonsättares Internationella Musikbyrå u.p.a. (Stim), Svenska Artisters och musikers, intresseorganisation ek. för. (SAMI) v Fleetmanager Sweden AB, Nordisk Biluthyrning AB

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

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights — Directive 2001/29/EC — Article 3(1) — Directive 2006/115/EC — Article 8(2) — Concept of 'communication to the public' — Undertaking hiring out cars each having a radio receiver as standard equipment)

(2020/C 222/13)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Föreningen Svenska Tonsättares Internationella Musikbyrå u.p.a. (Stim), Svenska Artisters och musikers, intresseorganisation ek. för. (SAMI)

Defendants: Fleetmanager Sweden AB, Nordisk Biluthyrning AB

Operative part of the judgment

Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and Article 8(2) of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property must be interpreted as meaning that the hiring out of motor vehicles equipped with radio receivers does not constitute a communication to the public within the meaning of those provisions.

(1) OJ C 65, 18.2.2019.

Judgment of the Court (Seventh Chamber) of 2 April 2020 (request for a preliminary ruling from the Landgericht Koblenz — Germany) — Stadtwerke Neuwied GmbH v RI

(Case C-765/18) (1)

(Reference for a preliminary ruling — Directive 2003/55/EC — Common rules for the internal market in natural gas — Consumer protection — Article 3(3) and point (b) of Annex A — Transparency of contractual terms and conditions — Obligation to give consumers adequate notice directly of an increase in charges)

(2020/C 222/14)

Language of the case: German

Referring court

Landgericht Koblenz

Parties to the main proceedings

Applicant: Stadtwerke Neuwied GmbH

Defendant: RI

Operative part of the judgment

Article 3(3) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, read in conjunction with points (b) and (c) of Annex A thereto, must be interpreted as meaning that, where tariff changes which have not been personally notified to customers are implemented by a gas supplier of last resort with the sole aim of passing on the increase in the cost of acquisition of natural gas without any profit being sought, it is not a condition for the validity of the tariff changes in question that that supplier fulfil the obligations of transparency and information referred to in those provisions, provided that the customers are able to terminate the contract at any time and have the appropriate remedies available to obtain compensation for damage that may have been incurred as a result of the failure to notify the changes personally.

(1) OJ C 112, 25.3.2019.

Judgment of the Court (Sixth Chamber) of 2 April 2020 (request for a preliminary ruling from the Conseil supérieur de la Sécurité sociale — Luxembourg) — Caisse pour l'avenir des enfants v FV, GW

(Case C-802/18) ([1])

(Reference for a preliminary ruling — Article 45 TFEU — Social security for migrant workers — Regulation (EC) No 883/2004 — Article 1(i) — Freedom of movement for workers — Equal treatment — Social advantages — Directive 2004/38/EC — Article 2(2) — Regulation (EU) No 492/2011 — Article 7(2) — Family allowance — Concept of 'family members' — Exclusion of children of spouses of non-resident workers — Difference in treatment vis-à-vis children of spouses of resident workers — Justification)

(2020/C 222/15)

Language of the case: French

Referring court

Conseil supérieur de la Sécurité sociale

Parties to the main proceedings

Applicant: Caisse pour l'avenir des enfants

Defendants: FV, GW

Operative part

1) Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as meaning that a family allowance linked to the pursuit, by a frontier worker, of an activity as an employed person in a Member State constitutes a social advantage within the meaning of those provisions.

2) Articles 1(i) and 67 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, read in conjunction with Article 7(2) of Regulation No 492/2011 and Article 2(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as precluding provisions of a Member State under which frontier workers may receive a family allowance linked to the exercise by them of an activity as an employed person in that Member State only in respect of their own children, excluding those of their spouse with whom they have no parent-child relationship but for whose maintenance they provide, whereas all children residing in that Member State are entitled to receive that allowance.

([1]) OJ C 82, 4.3.2019

Judgment of the Court (Tenth Chamber) of 19 March 2020 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 2 de A Coruña — Spain) — Compañía de Tranvías de La Coruña SA v Ayuntamiento de A Coruña

(Case C-45/19) [1]

(Reference for a preliminary ruling — Regulation (EC) No 1370/2007 — Public passenger transport services by rail and by road — Article 8 — Transitional arrangements — Article 8(3) — Expiry of public service contracts — Calculation of the maximum contractual term set at 30 years — Determination of the date from which the maximum term of 30 years starts to run)

(2020/C 222/16)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 2 de A Coruña

Parties to the main proceedings

Applicant: Compañía de Tranvías de La Coruña SA

Defendant: Ayuntamiento de A Coruña

Operative part of the judgment

The second sentence of the second subparagraph of Article 8(3) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 must be interpreted as meaning that the maximum term of 30 years, laid down in that provision for the contracts referred to in point (b) of the first subparagraph of Article 8(3) of that regulation, runs from the date of entry into force of that regulation.

[1] OJ C 155, 6.5.2019.

Judgment of the Court of Justice (First Chamber) of 2 April 2020 (request for a preliminary ruling from the Tribunale di Milano — Italy) — Condominio di Milano, via Meda v Eurothermo SpA

(Case C-329/19) [1]

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Article 1(1) — Article 2(b) — Definition of 'consumer' — Commonhold of a building)

(2020/C 222/17)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicant: Condominio di Milano, via Meda

Defendant: Eurothermo SpA

Operative part of the judgment

Article 1(1) and Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding national case-law which interprets legislation intended to transpose that directive into national law in such a way that its protective rules of consumer law also apply to a contract between a seller or supplier and a subject of the law such as the *condominio* in Italian law, notwithstanding that such a subject of the law does not fall within the scope of that directive.

([1]) OJ C 288, 26.8.2019.

Judgment of the Court (Grand Chamber) of 2 April 2020 (request for a preliminary ruling from the Vrhovni sud — Croatia) — Criminal proceedings against I.N.

(Case C-897/19 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — EEA Agreement — Non-discrimination — Article 36 — Freedom to provide services — Scope — Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen acquis — Agreement on the surrender procedure between the Member States of the European Union and Iceland and Norway — Extradition to a third State of an Icelandic national — Protection of a Member State's nationals against extradition — No equivalent protection for nationals of another State — Icelandic national who was granted asylum under national law before acquiring Icelandic citizenship — Restriction of freedom of movement — Justification based on the prevention of impunity — Proportionality — Verification of the guarantees provided for in Article 19(2) of the Charter of Fundamental Rights of the European Union)

(2020/C 222/18)

Language of the case: Croatian

Referring court

Vrhovni sud

Party in the main proceedings

I.N.

Intervener: Ruska Federacija

Operative part of the judgment

EU law, in particular Article 36 of the Agreement on the European Economic Area of 2 May 1992 and Article 19(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, when a Member State, to which a national of a Member State of the European Free Trade Association (EFTA) — which is a party to the Agreement on the European Economic Area and with which the European Union has concluded a surrender agreement — has moved, receives an extradition request from a third State pursuant to the European Convention on Extradition, signed at Paris on 13 December 1957, and when that national was granted asylum by that EFTA State — before he or she acquired the nationality of that State — precisely on account of the criminal proceedings brought against him or her in the State which issued the request for extradition, it is for the competent authority of the requested Member State to verify that the extradition would not infringe the rights covered by Article 19(2) of the Charter of Fundamental Rights, the grant of asylum being a particularly substantial piece of evidence in the context of that verification. Before considering executing the request for extradition, the requested Member State is obliged, in any event, to inform that same EFTA State and, should that State so request, surrender that national to it, in accordance with the provisions of the surrender agreement, provided that that EFTA State has jurisdiction, pursuant to its national law, to prosecute that national for offences committed outside its national territory.

([1]) OJ C 45, 10.2.2020.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 23 March 2020 — Finanzamt Kiel v Norddeutsche Gesellschaft für Diakonie mbH

(Case C-141/20)

(2020/C 222/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Kiel

Defendant: Norddeutsche Gesellschaft für Diakonie mbH

Questions referred

1. Is the second subparagraph of Article 4(4) in conjunction with Article 21(1)(a) and Article 21(3) of Sixth Council Directive 77/388/EEC ([1]) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (Directive 77/388/EEC) to be interpreted as permitting a Member State to designate, instead of the VAT group ('Organkreis', group treated as a single entity for tax purposes), a member of the VAT group ('Organträger', controlling company) as the taxable person?

2. If question 1 is answered in the negative: Can the second subparagraph of Article 4(4) in conjunction with Article 21(1)(a) and Article 21(3) of Directive 77/388/EEC be invoked in this regard?

3. Must a strict or lenient standard be applied in the assessment to be carried out in accordance with paragraph 46 of the *Larentia + Minerva* judgment ([2]) of the Court of Justice of 16 July 2015, C-108/14 and C-109/14 (EU:C:2015:496, paragraph 44 and 45), as to whether the requirement of financial integration contained in the first sentence of point 2 of Paragraph 2(2) of the Umsatzsteuergesetz (Law on turnover tax) constitutes a permissible measure which is necessary and appropriate for attaining the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance?

4. Are Article 4(1) and the first subparagraph of Article 4(4) of Directive 77/388/EEC to be interpreted as permitting a Member State to regard a person as not being independent within the meaning of Article 4(1) of Directive 77/388/EEC if that person is integrated into the undertaking of another undertaking ('Organträger', controlling company) in financial, economic and organisational terms in such a way that the controlling company is able to impose its will on the person and thus prevent the person from forming his own will, which diverges from that of the controlling company?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

([2]) Judgment of the Court of Justice of 16 July 2015 (C-108/14 and C-109/14, EU:C:2015:496).

Request for a preliminary ruling from the Rechtbank Rotterdam (Netherlands) lodged on 24 March 2020 — Stichting Rookpreventie Jeugd and Others v Staatssecretaris van Volksgezondheid, Welzijn en Sport

(Case C-160/20)

(2020/C 222/20)

Language of the case: Dutch

Referring court

Rechtbank Rotterdam

Parties to the main proceedings

Applicants: Stichting Rookpreventie Jeugd and Others

Defendant: Staatssecretaris van Volksgezondheid, Welzijn en Sport

Other party to the proceedings: Vereniging Nederlandse Sigaretten- en Kerftakfabrikanten (VSK)

Questions referred

1. Is the form of the measurement method provided for in Article 4(1) of Directive 2014/14/EU, ([1]) based on ISO standards which are not freely accessible, in accordance with Article 297(1) TFEU (and Regulation (EU) No 216/2013 ([2])) and with the underlying principle of transparency?

2. Must the ISO standards 4387, 10315, 8454 and 8243 referred to by Article 4(1) of Directive 2014/14/EU be interpreted and applied in such a way that, in the interpretation and application of Article 4(1) of that directive, emissions of tar, nicotine and carbon monoxide should not be measured (and verified) only by the prescribed method, but that those emissions may or must also be measured (and verified) in a different manner and with a different intensity?

3. (a) Is Article 4(1) of Directive 2014/14/EU contrary to the underlying principles of that directive and to Article 4(2) thereof as well as to Article 5(3) of the WHO Framework Convention on Tobacco Control, given that the tobacco industry played a role in determining the ISO standards referred to in Article 4(1) of that directive?

   (b) Is Article 4(1) of Directive 2014/14/EU contrary to the underlying principles of that directive, to Article 114(3) TFEU, to the spirit of the WHO Framework Convention on Tobacco Control and to Articles 24 and 35 of the Charter, in so far as the measurement method prescribed therein does not measure the emissions from filter cigarettes during their intended use since, with that method, no account is taken of the effect of the ventilation holes in the filter which are largely closed off during their intended use by the smoker's lips and fingers?

4. (a) Which alternative measurement method (and verification method) may or must be used should the Court of Justice:

   — answer question 1 in the negative?

   — answer question 2 in the affirmative?

   — answer question 3(a) and/or question 3(b) in the affirmative?

   (b) [*If the Court is unable to give an answer to question 4(a)*]: Does the temporary unavailability of a measurement method give rise to a situation such as that referred to in Article 24(3) of Directive 2014/14/EU?

([1]) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

([2]) Council Regulation of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ 2013 L 69, p. 1).

Request for a preliminary ruling from the Administratīvā apgabaltiesa (Latvia) lodged on 14 April 2020 — SIA SS v Valsts ieņēmumu dienests

(Case C-175/20)

(2020/C 222/21)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: SIA SS

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Must the requirements laid down in the General Data Protection Regulation ([1]) be interpreted as meaning that a request for information issued by a tax authority, such as the request at issue in this case, which seeks the disclosure of information containing a considerable amount of personal data, must comply with the requirements laid down in the General Data Protection Regulation (in particular Article 5(1) thereof)?

2. Must the requirements laid down in the General Data Protection Regulation be interpreted as meaning that the Tax Administration may depart from the provisions of Article 5(1) of that regulation even though the legislation in force in the Republic of Latvia does not empower it to do so?

3. For the purposes of interpreting the requirements laid down in the General Data Protection Regulation, can there be considered to be a legitimate objective justifying the obligation, imposed by a request for information such as that at issue in this case, to provide all of the data requested in an undefined amount and for an undefined period of time, in the case where there is no prescribed expiry date for the fulfilment of that request for information?

4. For the purposes of interpreting the requirements laid down in the General Data Protection Regulation, can there be considered to be a legitimate objective justifying the obligation, imposed by a request for information such as that at issue in this case, to provide all of the data requested even if the request for information does not (or does not fully) specify the purpose of disclosing that information?

5. For the purposes of interpreting the requirements laid down in the General Data Protection Regulation, can there be considered to be a legitimate objective justifying the obligation, imposed by a request for information such as that at issue in this case, to provide all of the data requested even if that request relates in practice to absolutely all data subjects who have published advertisements in the 'Motor Vehicles' section of a portal?

6. What criteria must be used to verify that a tax authority, acting as controller, is duly ensuring that the processing of data (including the collection of information) is compliant with the requirements laid down in the General Data Protection Regulation?

7. What criteria must be used to verify that a request for information such as that at issue in this case is duly reasoned and occasional?

8. What criteria must be used to verify that personal data are being processed to the extent necessary and in a manner compatible with the requirements laid down in the General Data Protection Regulation?

9. What criteria must be used to verify that a tax authority, acting as controller, ensures that data are processed in accordance with the requirements laid down in Article 5(1) of the General Data Protection Regulation (accountability)?

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

Request for a preliminary ruling from the Nejvyšší soud (Czech Republic) lodged on 24 April 2020 — VYSOČINA WIND a.s. v Česká republika — Ministerstvo životního prostředí

(Case C-181/20)

(2020/C 222/22)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: VYSOČINA WIND a.s.

Defendant: Česká republika — Ministerstvo životního prostředí

Questions referred

1. Must Article 13 of Directive 2012/19/EU (1) of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) be interpreted such that it prevents a Member State from imposing the obligation to finance the costs of the collection, treatment, recovery, and environmentally sound disposal of WEEE coming from photovoltaic panels placed on the market prior to 1 January 2013 on their users, rather than their producers?

2. If the first question is answered in the affirmative, is the evaluation of the conditions for the liability of a Member State for damage caused to an individual due to a breach of EU law influenced by the fact — which was at issue in the original proceedings — that the Member State itself regulated the method of financing of waste from photovoltaic panels prior to the adoption of the directive, which newly included photovoltaic panels in the scope of EU regulation and imposed the obligation to finance the costs on producers, including in relation to panels placed on the market prior to the expiry of the directive's implementation period (and the adoption of regulation at European Union level)?

(1) OJ 2012 L 197, p. 38.

Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 29 April 2020 — HYDINA SK s.r.o. v Finančné riaditeľstvo Slovenskej republiky

(Case C-186/20)

(2020/C 222/23)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: HYDINA SK s.r.o.

Defendant: Finančné riaditeľstvo Slovenskej republiky

Questions referred

1. Must recital 25 of Council Regulation (EU) No 904/2010 [1] of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, which states that 'the time limits laid down in this Regulation for the provision of information are to be understood as maximum periods not to be exceeded', be interpreted as meaning that those time limits cannot be exceeded and that exceeding them results in the suspension of a tax audit being unlawful?
2. Does failure to comply with the time limits for implementing the international exchange of information provided for in Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax result in consequences for (sanctions against) the requested authority and the requesting authority?
3. Can international exchange of information that does not comply with the time limits laid down in Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax be regarded as unlawful interference in the rights of a taxable person?

[1] OJ 2010 L 268, p. 1.

GENERAL COURT

Order of the General Court of 14 May 2020 –Bernis and Others v SRB

(Case T-282/18) ([1])

(Action for annulment — Economic and Monetary Union — Banking Union — Single resolution mechanism for credit institutions and certain investment firms (SRM) — Article 18(1) of Regulation (EU) No 806/2014 — Resolution procedure applicable where an entity is failing or is likely to fail — Parent company and subsidiary — Declaration by the ECB that an entity is failing or is likely to fail — Decision of the SRB not to adopt a resolution scheme — Lack of public interest — Winding up in accordance with national law — Shareholders — Lack of individual concern — Inadmissibility)

(2020/C 222/24)

Language of the case: English

Parties

Applicants: Ernests Bernis (Jurmala, Latvia), Oļegs Fiļs (Jurmala), OF Holding SIA (Riga, Latvia), Cassandra Holding Company SIA (Jurmala) (represented by: O. Behrends, lawyer)

Defendant: Single Resolution Board (represented by: J. De Carpentier, M. Meijer Timmerman Thijssen, A. Valavanidou, H. Ehlers and E. Muratori, acting as Agents, and by A. Rivas, lawyer, and B. Heenan, Solicitor)

Intervener in support of the defendant: European Central Bank (represented by: G. Marafioti, E. Koupepidou and J. Rodríguez Cárcamo, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the decisions of the SRB of 23 February 2018, by which it decided not to adopt resolution schemes in respect of ABLV Bank AS and its subsidiary, ABLV Bank Luxembourg SA, under Article 18(1) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. Messrs Ernests Bernis and Oļegs Fiļs, OF Holding SIA and Cassandra Holding Company SIA shall bear their own costs and shall pay those incurred by the Single Resolution Board (SRB) and the European Central Bank (ECB).

([1]) OJ C 259, 23.7.2018.

Order of the General Court of 6 May 2020 — Sabo and Others v Parliament and Council

(Case T-141/19) ([1])

(Action for annulment — Environment — Energy — Directive (EU) 2018/2001 — Inclusion of forest biomass among the sources of renewable energy — Act not of individual concern — Inadmissibility)

(2020/C 222/25)

Language of the case: English

Parties

Applicants: Peter Sabo (Tulčik, Slovakia) and the 9 other applicants whose names appear in the Annex to the order (represented by: R. Smith, A. Dews and C. Day, Solicitors, D. Wolfe QC and P. Lockley and B. Mitchell, Barristers)

Defendants: European Parliament (represented by: I. McDowell, C. Ionescu Dima and A. Tamás, acting as Agents), Council of the European Union (represented by: A. Lo Monaco and R. Meyer, acting as Agents)

Re:

Application under Article 263 TFEU for annulment in part of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82), in so far as it includes forest biomass among the sources of renewable energy.

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no need to adjudicate on the applications to intervene made by the Commission, U.S. Industrial Pellet Association, Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network).

3. Mr Peter Sabo and the other applicants whose names appear in the Annex shall bear their own costs and those incurred by the European Parliament and the Council of the European Union.

4. The Commission, U.S. Industrial Pellet Association, Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network) shall each bear their own costs relating to the applications to intervene.

([1]) OJ C 148, 29.4.2019.

Order of the General Court of 13 March 2020 — Aurora v CPVO — SESVanderhave (M 02205)

(Case T-278/19) ([1])

(Action for annulment — Plant varieties — Nullity proceedings — Sugar beet variety M 02205 — Decision to remit the case to the competent body of the CPVO for further action — Article 72 of Regulation (EC) No 2100/94 — No interest in bringing proceedings — Power to alter decisions — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2020/C 222/26)

Language of the case: English

Parties

Applicant: Aurora Srl (Padua, Italy) (represented by: L.B. Buchman, lawyer)

Defendant: Community Plant Variety Office (represented by: M. Ekvad, F. Mattina, M. Garcia Monco-Fuente and A. Weitz, acting as Agents)

Other party to the proceedings before the Board of Appeal of the CPVO, intervener before the General Court: SESVanderhave NV (Tienen, Belgium) (represented by: P. de Jong, lawyer)

Re:

Action brought against the decision of the Board of Appeal of the CPVO of 27 February 2019 (Case A 10/2013 RENV), concerning nullity proceedings between Aurora and SESVanderhave.

Operative part of the order

1. The action is dismissed.

2. Aurora Srl, the Community Plant Variety Office (CPVO) and SESVanderhave NV shall bear their own costs.

([1]) OJ C 213, 24.6.2019.

Order of the General Court of 13 May 2020 — Lucaccioni v Commission

(Case T-308/19) ([1])

(Action for annulment and for compensation — Civil service — Non actionable measure — Preparatory measure — No claim — Action in part manifestly inadmissible and in part inadmissible)

(2020/C 222/27)

Language of the case: Italian

Parties

Applicant: Arnaldo Lucaccioni (San Benedetto del Tronto, Italy) (represented by: E. Bonanni, lawyer)

Defendant: European Commission (represented by: T. Bohr and L. Vernier, acting as Agents, and A. Dal Ferro, lawyer)

Re

Application under Article 270 TFEU seeking, first, annulment of the Commission's decision of 11 January 2019 on the mandate of a new medical committee in the context of a request made by the applicant for recognition of aggravation of an occupational disease and, second, compensation for the damage allegedly suffered by the applicant.

Operative part of the order

1) The action is dismissed as, in part, manifestly inadmissible and, in part, inadmissible.

2) Mr Arnaldo Lucaccioni shall pay the costs.

([1]) OJ C 230, 8.7.2019.

Action brought on 6 May 2020 — HB v EIB

(Case T-757/19)

(2020/C 222/28)

Language of the case: English

Parties

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

Defendant: European Investment Bank (EIB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 20 June 2019, rejecting the applicant's complaint of psychological harassment;

— order the defendant to pay an amount of EUR 100 000 in compensation for the non-material damage, together with interest at the legal rate from the date of delivery;

— order the defendant to pay an amount of EUR 50 000 in compensation for the loss of a chance, together with interest at the legal rate from the date of delivery of the judgment until payment in full has been made;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her claim for annulment, the applicant relies on three pleas in law.

1. First plea in law, alleging breach of the right to have one's affairs handled impartially, fairly and carefully and failure to state reasons, insofar as (i) the Panel that investigated her allegations of harassment and bullying (a) failed to handle the case impartially, fairly and carefully, by showing or giving the appearance of bias towards the alleged harassers and by misrepresenting or ignoring facts and evidence, and (b) failed to state reasons, and (ii) in endorsing the report of the Panel, the President of the EIB tainted the contested decision with the same defects.

2. Second plea in law, alleging error of assessment and breach of the EIB Code of Conduct and Dignity at Work Policy, insofar as (i) the conduct of the alleged harassers towards the applicant took the form of spoken or written acts, was improper, took place over time and was repeated, and was demeaning, (ii) by failing to categorise the disputed acts as psychological harassment, both individually and jointly, the Panel erred in its assessment of the facts and breached the Staff Code of Conduct and Dignity at Work Policy and (iii) in endorsing its report, the President of the EIB wrongly found that the applicant had not been harassed; and

3. Third plea in law, alleging breach of the right to be heard and breach of confidentiality, insofar as (i) the applicant was not given the opportunity to submit her observations on (a) the content of the statements made by the alleged harassers and the witnesses before the Panel or (b) the other documents that were used by the Panel in its report in order to make recommendations to the President of the Bank and (ii) the Panel adopted its conclusions and shared them with third parties before it gave the applicant the opportunity to submit her observations thereon, i.e. before it allegedly finalised its report, and (iii) in endorsing the report of the Panel, the President of the EIB tainted the contested decision with the same defects.

   In support of her claim for damages, the applicant argues that:

   — she has suffered non-material damages that cannot be made good by the annulment of the contested decision;

   — by rejecting her request for conciliation, illegally, the defendant deprived her of a chance of settling the matter amicably and avoiding proceedings before the General Court.

Action brought on 16 April 2020 — Hellenic Republic v Commission

(Case T-217/20)

(2020/C 222/29)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: E. Tsaousi, A. Vasilopoulou and E. Krompa)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision ([1]) in so far as it excludes from European Union financing certain expenditure of the Hellenic Republic amounting to a total gross amount of EUR 9 657 608,85, corresponding to a total net amount of EUR 9 590 402,53, incurred and declared in the context of the EAFRD in respect of measures 123A, 125A, 321 and 322 of the rural development programme for the period 2007-2013 and measures 4.2, 4.3, 7.2 and 7.4 of the rural development programme for the period 2014-2020, for the financial years 2011 to 2018, and

— order the defendant to pay the costs incurred by the Hellenic Republic.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision was adopted on the basis of an incorrect interpretation and application of Article 34(7) of Regulation (EU) No 908/2014, ([2]) since the financial corrections are unlawful because the Commission exceeded the limits of its power of assessment and is vitiated by inadequate reasoning.

2. Second plea in law, alleging that there is no legal basis for the imposition of a correction in respect of expenditure incurred more than 24 months before the first inspection was notified, infringement of Article 52(4) of Regulation (EU) No 1306/2013 ([3]) and that the Commission went beyond its competence ratione temporis when imposing the contested financial corrections.

3. Third plea in law, relating, in particular, to the correction imposed in respect of measures 125A and 123A, alleges breach of the principle of ne bis in idem, of legal certainty, sound administration, the legitimate expectations of Member States and proportionality.

4. The fourth plea in law relates, in particular, to the correction for measure 125A, alleging infringement of Article 24(2)(b) of Regulation (EU) No 65/2011, ([4]) Article 43 of Regulation (EC) No 1974/2006 and the provisions of the national rural development programme which the Commission approved for the period 2007-2013, insufficient statement of reasons as regards the legal basis for the correction and the absence of a legal basis and a statement of reasons, and an error of fact as regards the flat-rate financial correction imposed and the rate thereof (10 %).

5. By the fifth plea in law, relating, inter alia, to the correction of measure 125A, it is claimed that the contested decision was adopted in breach of Article 52 of Regulation (EU) No 1306/2013, Article 34 of Regulation (EU) No 908/2014 and Guidelines C(2015)3675 of 8 June 2015, the right to a prior hearing and the rights of the defence, as well as the principles of legitimate expectations and proportionality. It is also claimed that the statement of reasons for the decision is insufficient and is vitiated by an error of fact.

6. The sixth plea in law relates, inter alia, to the correction imposed in respect of measures 321 and 322 and alleges infringement of Article 24(2)(b) of Regulation (EU) No 65/2011 and Guidelines C(2015)3675 of 8 June 2015, an error of fact, inadequate reasoning and infringement of the principle of proportionality.

7. The seventh plea relates, in particular, to the correction for measure 123A. By this plea, it is alleged that the correction in question was imposed in breach of Article 24(1) and (2) of Regulation (EU) No 65/2011, Article 52 of Regulation No 1306/2013 and Article 34 of Regulation No 908/2014, on the ground of an error of fact and on the basis of insufficient reasoning. In addition, it is claimed that the Hellenic Republic's right to be heard and rights of defence and the principle of proportionality have been infringed.

([1]) Commission Implementing Decision (EU) 2020/201 of 12 February 2020 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural development (EAFRD) (notified under document C(2020) 541) (OJ 2020 L 42, p. 17).

([2]) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ 2014 L 255, p. 59).

([3]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([4]) Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2011 L 25, p. 8).

Action brought on 4 May 2020 — JP v Commission

(Case T-247/20)

(2020/C 222/30)

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 C(2020) 1195 final of 24 February 2020 of the Commission rejecting the confirmatory application for access to documents under Regulation (EC) N° 1049/2001 — GESTDEM 2019/5394 to 5399; and

— order the defendant to pay a symbolic Euro in order to compensate the moral damage suffered by the applicant and all the costs of the proceedings.

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 violation of Articles 4(1)(b) and 17 of Regulation (EC) N° 1049/2001 related to the protection of privacy and of the integrity of the individual.

2. Second plea in law, alleging violation of Article 4(3) of Regulation (EC) N° 1049/2001 related to the protection of the decision-making process.

3. Third plea in law, alleging violation of Article 4(6) of Regulation (EC) N° 1049/2001 related to partial access and of the principle of proportionality.

4. Fourth plea in law, alleging breach of the principle of good administration.

Action brought on 4 May 2020 — Klymenko v Council

(Case T-258/20)

(2020/C 222/31)

Language of the case: French

Parties

Applicant: Oleksandr Viktorovych Klymenko (Moscow, Russia) (represented by: M. Phelippeau, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— uphold the action brought by Mr Oleksandr Viktorovytch Klymenko;

In so far as concerns the applicant,

— annul Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine;

— annul Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine;

— order the Council of the European Union to pay the costs of the proceedings pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea, alleging failure to state reasons for the contested measures. The applicant claims that the Council failed to comply with the obligation to state reasons for the contested measures with regard to the justification of those measures, respect for the rights of defence, effective judicial protection and the checks carried out on that basis.

2. Second plea, alleging error of assessment of the facts of the case and misuse of power. The applicant claims that, taking into account the evidence submitted to it, the Council could only have found that there was not a sufficient legal basis for bringing criminal proceedings. The applicant also noted a number of infringements of his fundamental rights, from which the Council failed to draw any conclusions.

3. Third plea, alleging infringement of fundamental rights, in so far as the contested measures were not adopted with due respect for the rights of defence, the right to effective judicial protection, or the right to equality of arms.

4. Fourth plea, alleging absence of legal basis, in that Article 29 of the Treaty on European Union cannot provide an admissible legal basis for the restrictive measures adopted against the applicant.

5. Fifth plea, alleging infringement of the fundamental right to respect for property.

Action brought on 6 May 2020 — Rochem Group v EUIPO — Rochem Marine (ROCHEM)

(Case T-261/20)

(2020/C 222/32)

Language of the case: English

Parties

Applicant: Rochem Group AG (Zug, Suisse) (represented by: K. Guridi Sedlak, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Rochem Marine Srl (Genova, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark ROCHEM — International registration designating the European Union No 1 151 485

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 March 2020 in Case R 1547/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to render a new decision refusing the declaration of invalidity filed against the International trademark registration No 1 151 485, also for classes 11 and 40;

— order EUIPO and the intervener, should the other party to the proceedings before the Board of Appeal appear before the Court, to pay its own costs and bear the fees and costs of the applicant.

Pleas in law

— Infringement of Article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 64(2) and (3) in connection with Article 198 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 6 May 2020 — Rochem Group v EUIPO — Rochem Marine (ROCHEM)

(Case T-262/20)

(2020/C 222/33)

Language of the case: English

Parties

Applicant: Rochem Group AG (Zug, Suisse) (represented by: K. Guridi Sedlak, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Rochem Marine Srl (Genova, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the word mark ROCHEM — International registration designating the European Union No 1 151 545

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 March 2020 in Case R 1546/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to render a new decision refusing the declaration of invalidity filed against the International trademark registration No 1 151 545, also for classes 11 and 40;

— order EUIPO and the intervener, should the other party to the proceedings before the Board of Appeal appear before the Court, to pay its own costs and bear the fees and costs of the applicant.

Pleas in law

— Infringement of Article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 64(2) and (3) in connection with Article 198 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 5 May 2020 — Arbuzov v Council

(Case T-267/20)

(2020/C 222/34)

Language of the case: Czech

Parties

Applicant: Sergej Arbuzov (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, ([1]) and Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, ([2]) in so far as that decision and that regulation apply to the applicant;

— declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant in the proceedings.

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 right to good administration

   — The applicant claims in support of his action, inter alia, that the Council of the European Union did not in adopting Council Decision (CFSP) 2019/354 of 4 March 2019 ([3]) act with due care, since before adopting the contested decision it did not address the applicant's arguments and the evidence the applicant submitted, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigation in the Ukraine.

2. Second plea in law, alleging infringement of the applicant's right to property

   — The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms

— The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as were his rights of the defence and his right to the protection of private property.

(1) OJ 2020 L 71, p. 10.
(2) OJ 2020 L 71, p. 1.
(3) Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 7).

Action brought on 5 May 2020 — Pšonka v Council

(Case T-268/20)

(2020/C 222/35)

Language of the case: Czech

Parties

Applicant: Artem Viktorovyč Pšonka (Kramatorsk, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (1) and Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, (2) in so far as that decision and that regulation apply to the applicant;

— declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant in the proceedings.

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 right to good administration

— The applicant claims in support of his action, inter alia, that the Council of the European Union did not, in adopting the contested decision, act with due care, since before adopting the contested decision it did not address the applicant's arguments and the evidence the applicant submitted, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigation in the Ukraine.

2. Second plea in law, alleging infringement of the applicant's right to property

— The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms

— The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as were his rights of the defence and his right to the protection of private property.

(1) OJ 2020 L 71, p. 10.
(2) OJ 2020 L 71, p. 1.

Action brought on 5 May 2020 — Pšonka v Council

(Case T-269/20)

(2020/C 222/36)

Language of the case: Czech

Parties

Applicant: Viktor Pavlovyč Pšonka (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, (1) and Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, (2) in so far as that decision and that regulation apply to the applicant;

— declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant in the proceedings.

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 right to good administration

— The applicant claims in support of his action, inter alia, that the Council of the European Union did not, in adopting the contested decision, act with due care, since before adopting the contested decision it did not address the applicant's arguments and the evidence the applicant submitted, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigation in the Ukraine.

2. Second plea in law, alleging infringement of the applicant's right to property

— The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms

— The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as were his rights of the defence and his right to the protection of private property.

(1) OJ 2020 L 71, p. 10.
(2) OJ 2020 L 71, p. 1.

Action brought on 11 May 2020 — Zhejiang Hangtong Machinery Manufacture and Ningbo Hi-Tech Zone Tongcheng Auto Parts v Commission

(Case T-278/20)

(2020/C 222/37)

Language of the case: English

Parties

Applicants: Zhejiang Hangtong Machinery Manufacture Co. Ltd (Taizhou, Chine), Ningbo Hi-Tech Zone Tongcheng Auto Parts Co. Ltd (Ningbo, Chine) (represented by: K. Adamantopoulos and P. Billiet, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Contested Regulation in so far as the applicants are concerned; and

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The applicants request the annulment of Commission Implementing Regulation (EU) 2020/353 of 3 March 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel road wheels originating in the People's Republic of China (1).

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

1. First plea in law, alleging that the Commission committed manifest errors in law and the assessment of the facts and adopted a cyclical reasoning by (1) concluding that the applicants persistently failed to materially cooperate with the Commission and, for that reason, using Article 17(4) of the Basic Regulation (2); (2) finding that the applicants had requested an individual dumping margin as opposed to being a sampled exporting producer under Article 17(1)(2) of the Basic Regulation, thereby also violating Article 6 of the Basic Regulation; and (3) imposing on the applicants the maximum punitive residual anti-dumping duty intended for non-cooperating parties or parties that failed to make themselves known, thereby also violating Articles 2, 3 and 9(4) of the Basic Regulation and the principles of legitimate expectations, good administration, non-discrimination and proportionality.

2. Second plea in law, alleging that the Commission committed manifest errors in law and the assessment of the facts, infringed the principle of good administration, failed to provide adequate reasoning and offered erroneous and contradictory reasoning in (1) applying the concept of 'facts available' to the applicants; and (2) failing to take into account the applicants' (a) normal value and (b) export price or alternative methods for establishing the applicants' export price for their dumping margin calculations, contrary to Articles 2(6a), (8), (10) and (11), 3, 6, 9(4) and 18(1) and (3) of the Basic Regulation; and Articles 2, 3, 6(6) and (8) as well as Annex II(3) of the WTO Anti-Dumping Agreement.

3. Third plea in law, alleging that the Commission infringed the applicants' rights of defence by (1) refusing to calculate and disclose their normal value contrary to Articles 20(2) and (4) of the Basic Regulation; and Article 12.2 of the WTO Anti-Dumping Agreement; and (2) not disclosing the information it used for the calculation of the applicants' dumping and injury margins.

(1) OJ 2020 L 65, p. 9.
(2) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 12 May 2020 — CWS Powder Coatings v Commission

(Case T-279/20)

(2020/C 222/38)

Language of the case: German

Parties

Applicant: CWS Powder Coatings GmbH (Düren, Germany) (represented by: R. van der Hout, C. Wagner and V. Lemmonier, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Delegated Regulation (EU) 2020/217, (1) in so far as it concerns the classification and labelling of titanium dioxide;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 53c of Regulation (EC) No 1272/2008 of the European Parliament and the Council (2) by adopting a single act for different matters.

2. Second plea in law, alleging that the classification of titanium oxide carried out in the contested regulation does not comply with the classification requirements pursuant to Article 53a, Article 37(5) and Article 3(1) of Regulation No 1272/2008, read in conjunction with point 3.6.2.2 of Annex I to that regulation.

3. Third plea in law, alleging that the amendment to Annex II of Regulation No 1272/2008 as regards liquid mixtures with a titanium dioxide component cannot be made on the basis of Article 53(1), read in conjunction with Article 53a, of that regulation.

4. Fourth plea in law, alleging that the amendment to Annex II of Regulation No 1272/2008 as regards solid mixtures with a titanium dioxide component cannot be made on the basis of Article 53(1), read in conjunction with Article 53a, of that regulation.

5. Fifth plea in law, alleging that the Commission infringed its obligation to carry out an impact assessment prior to the adoption of the contested regulation.

6. Sixth plea in law, alleging that the contested regulation infringes the principle of proportionality, since the classification of certain titanium dioxide particles and the laying down of labelling obligations is not appropriate for the purpose of attaining the objective (health protection) and there are less onerous means available.

7. Seventh plea in law, alleging that the Commission made several significant errors of assessment in the adoption of the contested regulation.

8. Eighth plea in law, alleging that, by adopting the contested regulation, the Commission exceeded the powers conferred on it.

9. Ninth plea in law, alleging that, in the event that the Court were to find that, in the adoption of the contested regulation, the Commission may itself define the requirements for a classification or the subject of a classification, or that it was left with no scope for an impact assessment or a proportionate application, Article 37(5), Article 53(1) and Article 53a of Regulation No 1272/2008 would infringe Article 290(1) and (2) TFEU. In that case, invoking the basic act (Regulation No 1272/2008) of the contested regulation would infringe Article 290 TFEU.

([1]) Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting that Regulation (OJ 2020 L 44, p. 1).

([2]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1), as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (OJ 2019 L 198, p. 241).

Action brought on 13 May 2020 — Klaus Berthold v EUIPO — Thomann (HB Harley Benton)

(Case T-284/20)

(2020/C 222/39)

Language in which the application was lodged: German

Parties

Applicant: Klaus Berthold Besitzgesellschaft GmbH & Co. KG (Thalhausen, Germany) (represented by: E. Strauß, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Thomann GmbH (Burgebrach, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark HB Harley Benton — International registration designating the European Union No 1 380 752

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 March 2020 in Case R 1359/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and allow the opposition against the registration of international registration No 1 380 752 in the European Union for the goods in Class 25;

— order EUIPO to refuse the registration of international registration No 1 380 752 in the European Union for the goods in Class 25;

— order the other party to the proceedings to pay the costs of the proceedings before EUIPO and, if appropriate, order EUIPO to pay the costs of the present proceedings.

Pleas in law

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

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 15 May 2020 — MCM Products v EUIPO — The Nomad Company (NOMAD)

(Case T-285/20)

(2020/C 222/40)

Language in which the application was lodged: German

Parties

Applicant: MCM Products AG (Zürich, Switzerland) (represented by: S. Eichhammer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: The Nomad Company BV (Zevenaar, Netherlands)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'NOMAD' — EU trade mark No 1 742 089

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 13 March 2020 in Case R 854/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it relates to the registered goods in Class 18;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) 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 May 2020 — Capella v EUIPO — Cobi.bike (GOBI)

(Case T-286/20)

(2020/C 222/41)

Language in which the application was lodged: German

Parties

Applicant: Capella EOOD (Sofia, Bulgaria) (represented by: R. Klenke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cobi.bike GmbH (Frankfurt am Main, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU trade mark GOBI — Application for registration No 17 168 089

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 February 2020 in Case R 1685/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 15 May 2020 — Eggy Food v EUIPO (EGGY FOOD)

(Case T-287/20)

(2020/C 222/42)

Language of the case: German

Parties

Applicant: Eggy Food GmbH & Co. KG (Osnabrück, Germany) (represented by: J. Eberhardt and R. Böhm, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark EGGY FOOD — Application for registration No 1 795 2953

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 March 2020 in Case R 1316/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the publication of the application for registration of the EU mark No 1 795 2953;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council;

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

— Infringement of Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 May 2020 — Brillux and Daw v Commission

(Case T-288/20)

(2020/C 222/43)

Language of the case: German

Parties

Applicants: Brillux GmbH & Co. KG (Münster, Germany) and Daw SE (Ober-Ramstadt, Germany) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Delegated Regulation (EU) 2020/217, [1] in so far as it concerns the classification and labelling of titanium dioxide;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on nine pleas in law, which are, in essence, identical or similar to those raised in Case T-279/20, *CWS Powder Coatings* v *Commission*.

[1] Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting that Regulation (OJ 2020 L 44, p. 1).

Action brought on 14 May 2020 — Ceramica Flaminia v EUIPO — Ceramica Cielo (goclean)

(Case T-290/20)

(2020/C 222/44)

Language in which the application was lodged: Italian

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark goclean — European Union trade mark No 13 270 046

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 16 March 2020 in Case R 991/2018-2

Form of order sought

The applicant claims that the Court should:

— annul and alter the contested decision;

and, accordingly,

— recognise the validity of European Union trade mark No 13 270 046 with regard to all or some of the goods in Class 11;

— order EUIPO and/or Ceramica Cielo SpA. to pay the costs of the present proceedings and of the previous two stages before the Cancellation Division and before the Board of Appeal incurred by Ceramica Flaminia SpA.

Pleas in law

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

— Interpretation of distinctive character within the meaning of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Unfounded classification of the mark as a slogan;

— Infringement and misapplication of Article 95(1) in relation to Article 59 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement and misapplication of Article 7(3) and Article 59(1) and (2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 14 May 2020 — Yanukovych v Council

(Case T-291/20)

(2020/C 222/45)

Language of the case: English

Parties

Applicant: Viktor Fedorovych Yanukovych (Rostov on Don, Russia) (represented by: M. Anderson, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/373 ([1]), in so far as it concerns the applicant;

— annul Council Regulation (EU) 2020/370 ([2]), in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time.

2. Second plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. The Council has failed to ensure that there was a sufficiently solid factual basis for the Applicant's designation and failed to verify that the decisions of the Ukrainian authorities upon which it relied were taken in accordance with the rights of the defence and the right to effective judicial protection.

3. Third plea in law, alleging that the Council has failed to identify the actual and specific reasons for the applicant's designation. The Council has also failed to identify the reasons it considers the decisions of the Ukrainian authorities on which it relies to have been adopted in accordance with the applicant's rights of defence and to effective judicial protection.

4. Fourth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. The Council has failed to consult with the Applicant prior to the re-designation, failed to provide the applicant with all the material upon which it relied, and failed to afford the applicant a proper or fair opportunity to correct errors or produce information. At no stage has the applicant been provided with serious, credible or concrete evidence and reasoning to justify the imposition of restrictive measures and there is no indication that the Council took properly into account the applicant's Observations prior to making its decision.

5. Fifth plea in law, alleging that the Council lacked a proper legal basis for the Eighth Amending Instruments.

6. Sixth plea in law, alleging that the Council misused its powers.

7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU have been breached in that the restrictive measures are an unjustified and disproportionate restriction on those rights, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the applicant's assets since the Ukrainian authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the applicant.

(1) Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2020, L 71, p. 10).

(2) Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2020, L 71, p. 1).

Action brought on 14 May 2020 — Yanukovych v Council

(Case T-292/20)

(2020/C 222/46)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Saint Petersburg, Russia) (represented by: M. Anderson, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/373 (1), in so far as it concerns the applicant;

— annul Council Regulation (EU) 2020/370 (2), in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time.

2. Second plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. The Council has failed to ensure that there was a sufficiently solid factual basis for the Applicant's designation and failed to verify that the decisions of the Ukrainian authorities upon which it relied were taken in accordance with the rights of the defence and the right to effective judicial protection.

3. Third plea in law, alleging that the Council has failed to identify the actual and specific reasons for the applicant's designation. The Council has also failed to identify the reasons it considers the decisions of the Ukrainian authorities on which it relies to have been adopted in accordance with the applicant's rights of defence and to effective judicial protection.

4. Fourth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. The Council has failed to consult with the Applicant prior to the re-designation, failed to provide the applicant with all the material upon which it relied, and failed to afford the applicant a proper or fair opportunity to correct errors or produce information. At no stage has the applicant been provided with serious, credible or concrete evidence and reasoning to justify the imposition of restrictive measures and there is no indication that the Council took properly into account the applicant's Observations prior to making its decision.

5. Fifth plea in law, alleging that the Council lacked a proper legal basis for the Eighth Amending Instruments.

6. Sixth plea in law, alleging that the Council misused its powers.

7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU have been breached in that the restrictive measures are an unjustified and disproportionate restriction on those rights, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the applicant's assets since the Ukrainian authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the applicant.

([1]) Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2020, L 71, p. 10).

([2]) Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2020, L 71, p. 1).

Action brought on 18 May 2020 — Ruiz-Ruiz v Commission

(Case T-293/20)

(2020/C 222/47)

Language of the case: Italian

Parties

Applicant: Vanesa Ruiz-Ruiz (Alkmaar, Netherlands) (represented by: M. Velardo, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 23 May 2019 by which the applicant was excluded from competition EPSO/AD/371/19 on the ground of lack of professional experience;

— annul the decision of 20 September 2019 rejecting the request for review of the applicant's exclusion from competition EPSO/AD/371/19;

— annul the decision of 7 February 2020 dismissing the administrative appeal brought under Article 90(2) of the Staff Regulations;

— order the Commission to pay 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 a manifest error of assessment and breach of the competition notice.

   — The applicant claims in this regard that, despite exhausting the two remedies available internally (a request for review by the selection board and an administrative appeal under Article 90(2)), it remains unclear what specific requirement regarding professional experience the applicant lacks.

2. Second plea in law, alleging failure to observe the principle of equal treatment.

   — The applicant claims in this regard that the competition selection board must ensure that its assessments of all the candidates examined are made under conditions of equality and objectivity, and that the marking criteria are uniform and applied in a consistent manner to all candidates. By departing from the competition notice, the selection board failed to ensure that the assessment of the specific conditions, which did not have due regard for the *lex specialis* of the competition, was objective and impartial.

3. Third plea in law, alleging breach of the obligation to state reasons and failure to observe the connected principle of equality of the parties in proceedings (Article 47 of the Charter of Fundamental Rights).

   — The applicant claims in this regard that the competition selection board gave only very summary reasons for the contested decision rejecting the applicant's request for review. Indeed, aside from general statements and the indications that it had established selection criteria — without specifying their content — no precise explanation allowing the applicant to understand the reason for the selection board's decision concerning her was provided. The applicant takes the view that it can therefore be inferred that no review actually took place, in breach of the applicant's rights of defence and of the competition notice itself, which provided for review as a measure of protection for the candidate.

   — Equally, no reasons were given for the appointing authority's decision of 20 September 2019, in which once again the further criteria set by the selection board to supplement the competition notice were not explained and no reference to the actual professional experience of the applicant was made, despite the accurate description of her experience provided in her application form. Moreover, the appointing authority did not base its decision on a complete factual and legal context since it took into consideration only the initial decision of 23 May 2019 and failed to make any analysis or assessment in respect of the review.

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