Official Journal of the European Union

C 279

English edition

Information and Notices

Volume 63

24 August 2020

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(Notices)

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(2020/C 279/01)

Last publication

OJ C 271, 17.8.2020

Past publications

OJ C 262, 10.8.2020

OJ C 255, 3.8.2020

OJ C 247, 27.7.2020

OJ C 240, 20.7.2020

OJ C 230, 13.7.2020

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 25 June 2020 — French Republic v European Parliament

(Case C-92/18) [1]

(Action for annulment — Law of the institutions — Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union — European Parliament — Concept of 'budgetary session' held in Strasbourg (France) — Article 314 TFEU — Exercise of budgetary powers during an additional plenary part-session held in Brussels (Belgium))

(2020/C 279/02)

Language of the case: French

Parties

Applicant: French Republic (represented initially by: E. de Moustier, A.-L. Desjonquères, J.-L. Carré, F. Alabrune, D. Colas and B. Fodda, and subsequently by E. de Moustier, A.-L. Desjonquères, A. Daly and J.-L. Carré, acting as Agents)

Defendant: European Parliament (represented initially by: R. Crowe, U. Rösslein and S. Lucente, acting as Agents)

Intervener in support of the applicant: Grand Duchy of Luxembourg (represented initially by: D. Holderer, C. Schiltz and T. Uri, and subsequently by C. Schiltz and T. Uri, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the French Republic to pay, in addition to its own costs, those of the European Parliament;

3. Orders the Grand Duchy of Luxembourg to bear its own costs.

(1) OJ C 44, 4.2.2019.

Judgment of the Court (Second Chamber) of 25 June 2020 — HF v European Parliament

(Case C-570/18 P) [1]

(Appeal — Civil service — European Parliament — Member of contract staff — Articles 12a and 24 of the Staff Regulations of Officials of the European Union — Psychological harassment — Request for assistance — Right to be heard — Rejection of a request for assistance — Article 41 of the Charter of Fundamental Rights of the European Union — Scope of judicial review)

(2020/C 279/03)

Language of the case: French

Parties

Appellant: HF (represented by: A. Tymen, avocate)

Other party to the proceedings: European Parliament (represented by: E. Taneva and T. Lazian, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 29 June 2018, *HF* v *Parliament* (T-218/17, EU:T:2018:393);

2. Annuls the decision of the Director-General for Personnel of the European Parliament, acting in his capacity as the authority empowered to conclude contracts of employment for that institution, of 3 June 2016, rejecting the request for assistance, within the meaning of Article 24 of the Staff Regulations of Officials of the European Union, submitted by HF;

3. Dismisses the appeal as to the remainder;

4. Orders the European Parliament to bear its own costs and to pay those incurred by HF in the proceedings at first instance and the appeal proceedings.

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(1) OJ C 455, 17.12.2018.

Judgment of the Court (Seventh Chamber) of 25 June 2020 — VTB Bank PAO, formerly VTB Bank OAO v Council of the European Union, European Commission

(Case C-729/18 P) (1)

(Appeal — Restrictive measures adopted in view of the Russian Federation's actions destabilising the situation in Ukraine — Inclusion of the appellant's name on the list of entities to which restrictive measures apply — Principle of proportionality — Right to property — Right to carry on an economic activity)

(2020/C 279/04)

Language of the case: English

Parties

Appellant: VTB Bank PAO, formerly VTB Bank OAO (represented by M. Lester QC, J. Dawid, Barrister, C. Claypoole, Solicitor, and J. Ruiz Calzado, abogado)

Other parties to the proceedings: Council of the European Union (represented by M.-M. Joséphidès and J.-P. Hix, acting as Agents), European Commission (represented initially by J. Norris, A. Tizzano and L. Havas, and subsequently by J. Norris and L. Havas, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders VTB Bank PAO to bear its own costs and to pay those incurred by the Council of the European Union;

3. Orders the European Commission to bear its own costs.

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(1) OJ C 93, 11.3.2019.

Judgment of the Court (First Chamber) of 25 June 2020 — SC v Eulex Kosovo

(Case C-730/18 P) [1]

(Appeal — Arbitration clause — Staff of EU international missions — Internal competition — Non-renewal of a contract of employment — Measure separable from the contract)

(2020/C 279/05)

Language of the case: English

Parties

Appellant: SC (represented by: A. Kunst, Rechtsanwältin and L. Moro, avvocatessa)

Other party to the proceedings: Eulex Kosovo (represented by: E. Raoult, avocate)

Operative part of the judgment

The Court:

1. Sets aside the order of the General Court of the European Union of 19 September 2018, *SC* v *Eulex Kosovo* (T-242/17, EU:T:2018:586);

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

3. Reserves the costs.

([1]) OJ C 112, 25.3.2019.

Judgment of the Court (Seventh Chamber) of 25 June 2020 — Bank for Development and Foreign Economic Affairs (Vnesheconombank) v Council of the European Union, European Commission

(Case C-731/18 P) [1]

(Appeal — Restrictive measures adopted in view of the Russian Federation's actions destabilising the situation in Ukraine — Appellant's name included and retained in the list of entities to which the restrictive measures apply — Obligation to state reasons — Manifest error of assessment — Right to effective judicial protection — Misuse of power — Right to property — Equal treatment)

(2020/C 279/06)

Language of the case: Spanish

Parties

Appellant: Bank for Development and Foreign Economic Affairs (Vnesheconombank) (represented by: J. Viñals Camallonga and J. Iriarte Ángel, abogados)

Other parties to the proceedings: Council of the European Union (represented by: F. Florindo Gijón and P. Mahnič, acting as Agents), European Commission (represented initially by S. Pardo Quintillán, A. Tizzano and C. Zadra, and subsequently by S. Pardo Quintillán and J. Roberti di Sarsina, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Bank for Development and Foreign Economic Affairs (Vnesheconombank) to bear its own costs and to pay those incurred by the Council of the European Union;

3. Orders the European Commission to bear its own costs.

([1]) OJ C 65, 18.2.2019.

Judgment of the Court (First Chamber) of 25 June 2020 (requests for a preliminary ruling from the Rayonen sad Haskovo, Corte suprema di cassazione — Italy, Bulgaria) — QH v Varhoven kasatsionen sad na Republika Bulgaria (C-762/18), CV v Iccrea Banca SpA (C-37/19)

(Joined Cases C-762/18 and C-37/19) ([1])

(References for a preliminary ruling — Social policy — Protection of the safety and health of workers — Directive 2003/88/EC — Article 7 — Worker unlawfully dismissed then reinstated in her employment by decision of a court — Exclusion of any right to paid annual leave not taken for the period between the dismissal and the reinstatement — No right to financial compensation in lieu of annual leave not taken for that period where the employment relationship subsequently ceases)

(2020/C 279/07)

Languages of the case: Bulgarian and Italian

Referring court

Rayonen sad Haskovo, Corte suprema di cassazione

Parties to the main proceedings

Applicants: QH (C-762/18), CV (C-37/19)

Defendants: Varhoven kasatsionen sad na Republika Bulgaria (C-762/18), Iccrea Banca SpA (C-37/19)

Interested party: Prokuratura na Republika Bulgaria (C-762/18)

Operative part of the judgment

1. Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national case-law by virtue of which a worker who was unlawfully dismissed then reinstated in her employment, in accordance with national law, following the annulment of the dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and that of the reinstatement in her employment on the ground that, during that period, that worker did not actually carry out work for the employer;

2. Article 7(2) of Directive 2003/88 must be interpreted as precluding national case-law by virtue of which, in the event of termination of the employment relationship after the worker concerned has been unlawfully dismissed then reinstated in her employment, in accordance with national law, following the annulment of the dismissal by a decision of a court, that worker is not entitled to financial compensation in lieu of paid annual leave not taken during the period between the date of the unlawful dismissal and that of her reinstatement in her employment.

([1]) OJ C 54, 11.2.2019.
OJ C 182, 27.5.2019.

Judgment of the Court (Fifth Chamber) of 2 July 2020 (request for a preliminary ruling from the Curtea de Apel Timişoara — Romania) — SC Terracult SRL v Direcția Generală Regională a Finanțelor Publice Timişoara — Administrația Județeană a Finanțelor Publice Arad — Serviciul Inspecție Fiscală Persoane Juridice 5, ANAF Direcția Generală Regională a Finanțelor Publice Timişoara Serviciul de Soluționare a Contestațiilor

(Case C-835/18) [1]

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Invoice correction — Tax invoiced incorrectly — Refund of tax paid but not due — Reverse charge mechanism for VAT — Transactions relating to a tax period that has already been the subject of a tax inspection — Fiscal neutrality — Principle of effectiveness — Proportionality)

(2020/C 279/08)

Language of the case: Romanian

Referring court

Curtea de Apel Timişoara

Parties to the main proceedings

Applicant: SC Terracult SRL

Defendants: Direcția Generală Regională a Finanțelor Publice Timişoara — Administrația Județeană a Finanțelor Publice Arad — Serviciul Inspecție Fiscală Persoane Juridice 5, ANAF Direcția Generală Regională a Finanțelor Publice Timişoara Serviciul de Soluționare a Contestațiilor

Operative part of the judgment

The provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system for value added tax, as amended by Council Directive 2013/43/EU of 22 July 2013, and the principles of fiscal neutrality, effectiveness and proportionality must be interpreted as precluding national legislation or a national administrative practice preventing a taxable person that has carried out transactions which subsequently proved to be covered by the reverse charge mechanism for value added tax (VAT) from correcting the invoices relating to those transactions and relying on them by correcting an earlier tax return or submitting a new tax return taking account of the correction thus made, with a view to obtaining a refund of the VAT improperly invoiced and paid by that taxable person, on the ground that the period in respect of which those transactions were carried out had already been the subject of a tax inspection at the end of which the competent tax authority had issued a tax assessment which, not having been contested by that taxable person, had become final.

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[1] OJ C 131, 8.4.2019.

Judgment of the Court (Second Chamber) of 25 June 2020 — European Union Satellite Centre v KF, Council of the European Union

(Case C-14/19 P) [1]

(Appeal — Staff of the European Union Satellite Centre (SatCen) — Member of SatCen's contract staff — Complaints of psychological harassment — Administrative investigation — Request for assistance — Suspension of the staff member — Disciplinary proceedings — Removal of the staff member — SatCen's Appeals Board — Conferral of exclusive jurisdiction in relation to SatCen staff disputes — Action for annulment — First and fifth paragraphs of Article 263 TFEU — Action for damages — Article 268 TFEU — Jurisdiction of the EU judicature — Admissibility — Acts open to challenge — Contractual nature of the dispute — Articles 272 and 274 TFEU — Effective judicial protection — Final sentence of the second subparagraph of Article 24(1) TEU — First paragraph of Article 275 TFEU — Principle of equal treatment — General Court's obligation to state reasons — Distortion of the facts and evidence — Rights of the defence — Principle of sound administration)

(2020/C 279/09)

Language of the case: English

Parties

Appellant: European Union Satellite Centre (represented by: A. Guillerme, avocate)

Other parties to the proceedings: KF (represented by: N. Macaulay, Barrister, and A. Kunst, Rechtsanwältin), Council of the European Union (represented by: M. Bauer and A. Vitro, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Union Satellite Centre (SatCen) to bear its own costs and to pay those incurred by KF;

3. Orders the Council of the European Union to bear its own costs.

(1) OJ C 164, 13.5.2019.

Judgment of the Court (First Chamber) of 2 July 2020 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — WM v Stadt Frankfurt am Main

(Case C-18/19) [1]

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2008/115/EC — Common standards and procedures in Member States for returning illegally staying third-country nationals — Conditions of detention — Article 16(1) — Detention in prison accommodation for the purpose of removal — Third-country national who poses a serious threat to public policy or public security)

(2020/C 279/10)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: WM

Defendant: Stadt Frankfurt am Main

Operative part of the judgment

Article 16(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not precluding national legislation which allows an illegally staying third-country national to be detained in prison accommodation for the purpose of removal, separated from ordinary prisoners, on the ground that he poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State concerned.

([1]) OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 25 June 2020 (request for a preliminary ruling from the Raad voor Vergunningsbetwistingen — Belgium) — A and Others v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen

(Case C-24/19) ([1])

(Reference for a preliminary ruling — Directive 2001/42/EC — Environmental impact assessment — Development consent for the installation of wind turbines — Article 2(a) — Concept of 'plans and programmes' — Conditions for granting consent laid down by an order and a circular — Article 3(2)(a) — National instruments setting the framework for future development consent of projects — Absence of environmental assessment — Maintenance of the effects of national instruments, and consents granted on the basis of those instruments, after those instruments have been declared not to comply with EU law — Conditions)

(2020/C 279/11)

Language of the case: Dutch

Referring court

Raad voor Vergunningsbetwistingen

Parties to the main proceedings

Applicants: A, B, C, D, E

Defendant: Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen

Interested party: Organisatie voor Duurzame Energie Vlaanderen VZW

Operative part of the judgment

1. Article 2(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment must be interpreted as meaning that the concept of 'plans and programmes' covers an order and circular, adopted by the government of a federated entity of a Member State, both of which contain various provisions concerning the installation and operation of wind turbines;

2. Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that an order and a circular, both of which contain various provisions concerning the installation and operation of wind turbines, including measures on shadow flicker, safety, and noise level standards, constitute plans and programmes that must be subject to an environmental assessment in accordance with that provision;

3. Where it appears that an environmental assessment within the meaning of Directive 2001/42 should have been carried out prior to the adoption of the order and circular on the basis of which a consent, which is contested before a national court, was granted for the installation and operation of wind turbines with the result that those instruments and that consent do not comply with EU law, that court may maintain the effects of those instruments and that consent only if the national law permits it to do so in the proceedings before it and if the annulment of that consent would be likely to have significant implications for the electricity supply of the whole of the Member State concerned, and only for the period of time strictly necessary to remedy that illegality. It is for the referring court, if necessary, to carry out that assessment in the case in the main proceedings.

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(1) OJ C 139, 15.4.2019.

Judgment of the Court (Eighth Chamber) of 25 June 2020 — Gregor Schneider v European Union Intellectual Property Office (EUIPO)

(Case C-116/19 P) (1)

(Appeal — Civil service — Temporary staff — Internal reorganisation of the services of the European Union Intellectual Property Office (EUIPO) — Reassignment — Legal basis — Article 7 of the Staff Regulations of Officials of the European Union — Interests of the service — Substantial changes in tasks — Qualification — Transfer — Change — Misuse of power — Right to be heard — Obligation to state reasons — Right to a fair hearing — Right to effective judicial protection — Article 47 of the Charter of Fundamental Rights of the European Union)

(2020/C 279/12)

Language of the case: German

Parties

Appellant: Gregor Schneider (represented by: H. Tettenborn, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office (represented by: A. Lukošiūtė, acting as Agent, B. Wägenbaur, Rechtsanwalt)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mr Gregor Schneider to pay the costs.

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(1) OJ C 213, 24.6.2019.

Judgment of the Court (Eighth Chamber) of 25 June 2020 — European Commission v CX

(Case C-131/19 P) ([1])

(Appeal — Civil Service — Disciplinary proceedings — Rights of the defence — Right to be heard — Annex IX to the Staff Regulations of Officials of the European Union — Article 4 — Opportunity for the official who cannot be heard to comment in writing or to be represented — Article 22 — Hearing of the official by the Appointing Authority prior to the adoption of the disciplinary penalty — Alleged inability of the official to be heard and to make written submissions or to be represented — Assessment of medical evidence — Failure of the General Court of the European Union to reply to arguments raised at first instance)

(2020/C 279/13)

Language of the case: French

Parties

Appellant: European Commission (represented by: G. Berscheid, T. S. Bohr and C. Ehrbar, acting as Agents)

Other party to the proceedings: CX (represented by: É. Boigelot, avocat)

Operative part of the judgment

The Court:

1. Annuls the judgment of the General Court of 13 December 2018, CX v Commission (T-743/16 RENV, not published, EU:T:2018:937);

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

3. Reserves the costs.

([1]) OJ C 182, 27.5.2019.

Judgment of the Court (Tenth Chamber) of 2 July 2020 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — proceedings initiated by the Veronsaajien oikeudenvalvontayksikkö

(Case C-215/19) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Supply of services — Article 135(1)(l) — Exemption from VAT — Letting of immovable property — Concept of 'immovable property' — Exclusion — Article 47 — Place of taxable transactions — Supply of services connected with immovable property — Implementing Regulation (EU) No 282/2011 — Articles 13b and 31a — Equipment cabinets — Computing centre services)

(2020/C 279/14)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Veronsaajien oikeudenvalvontayksikkö

Intervening parties: A Oy

Operative part of the judgment

1. Article 135(1)(l) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, must be interpreted as meaning that computing centre services with which the supplier of those services makes available to its customers equipment cabinets for holding their servers and provides them with ancillary goods and services, such as electricity and various services designed to ensure the use of those servers under optimal conditions, do not constitute the letting of immovable property falling within the exemption from value added tax provided for by that provision, where — which it is for the referring court to verify — first, that supplier does not provide an area or space to its customers passively, guaranteeing them the right to occupy it as if they were the owners thereof and secondly, the equipment cabinets do not form an integral part of the building in which they are installed nor are they installed there permanently;

2. Article 47 of Directive 2006/112, as amended by Directive 2008/8, and Article 31a of Council Implementing Regulation No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112, as amended by Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013, must be interpreted as meaning that computing centre services with which the supplier of those services makes available to its customers equipment cabinets for holding their servers and provides them with ancillary goods and services, such as electricity and various services intended to ensure the use of those servers under optimal conditions, do not constitute services connected with immovable property as referred to in those provisions, where those customers do not enjoy — which it is for the referring court to verify — a right to exclusive use of the part of the building in which the equipment cabinets are installed.

(1) OJ C 164, 13.5.2019.

Judgment of the Court (First Chamber) of 2 July 2020 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — BlackRock Investment Management (UK) Limited v Commissioners for Her Majesty’s Revenue & Customs

(Case C-231/19) [1]

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Exemptions — Article 135(1)(g) — Exemption of transactions for the management of special investment funds — Single supply used for the management of special investment funds and for other funds)

(2020/C 279/15)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: BlackRock Investment Management (UK) Limited

Defendant: Commissioners for Her Majesty’s Revenue & Customs

Operative part of the judgment

Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a single supply of management services, provided by a software platform belonging to a third-party supplier for the benefit of a fund management company, which manages both special investment funds and other funds, does not fall within the exemption provided for in that provision.

(1) OJ C 172, 20.5.2019.

Judgment of the Court (Sixth Chamber) of 25 June 2020 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV v Deutsche Apotheker- und Ärztebank eG

(Case C-380/19) [1]

(Reference for a preliminary ruling — Consumer protection — Directive 2013/11/EU — Alternative dispute resolution — Article 13(1) and (2) — Mandatory information — Accessibility of information)

(2020/C 279/16)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicants: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

Defendant: Deutsche Apotheker- und Ärztebank eG

Operative part of the judgment

Article 13(1) and (2) of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on consumer alternative dispute resolution and repealing Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on ADR) are to be interpreted as meaning that a trader who provides in an accessible manner on his website the general terms and conditions of sales or service contracts, but concludes no contracts with consumers via that website, must provide in his general terms and conditions information about the ADR entity or ADR entities by which that trader is covered, when that trader commits to or is obliged to use that entity or those entities to resolve disputes with consumers. It is not sufficient in that respect that the trader either provides that information in other documents accessible on his website, or under other tabs thereof, or provides that information to the consumer in a separate document from the general terms and conditions, upon conclusion of the contract subject to those general terms and conditions.

[1] OJ C 288, 26.8.2019.

Judgment of the Court (Seventh Chamber) of 2 July 2020 (request for a preliminary ruling from the Verwaltungsgericht Wien — Austria) — IE v Magistrat der Stadt Wien

(Case C-477/19) [1]

(Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection for animal species — Annex IV — Cricetus cricetus (European hamster) — Resting places and breeding sites — Deterioration or destruction — Areas which have been abandoned)

(2020/C 279/17)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Applicant: IE

Defendant: Magistrat der Stadt Wien

Operative part of the judgment

Article 12(1)(d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the term 'resting places' referred to in that provision also includes resting places which are no longer occupied by one of the protected animal species listed in Annex IV(a) to that directive, such as the *Cricetus cricetus* (European hamster), where there is a sufficiently high probability that that species will return to such places, which is a matter for the referring court to determine.

([1]) OJ C 328, 30.9.2019.

Judgment of the Court (Tenth Chamber) of 2 July 2020 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — mk advokaten GbR v MBK Rechtsanwälte GbR

(Case C-684/19) ([1])

(Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Article 5(1) — Use in the course of trade of a sign that is identical with or similar to another person's trade mark for goods or services that are identical with or similar to those for which that mark is registered — Scope of the term 'using' — Advertisement placed on a website by order of a person operating in the course of trade and subsequently reproduced on other websites)

(2020/C 279/18)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: mk advokaten GbR

Defendant: MBK Rechtsanwälte GbR

Operative part of the judgment

Article 5(1) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a person operating in the course of trade that has arranged for an advertisement which infringes another person's trade mark to be placed on a website is not using a sign which is identical with that trade mark where the operators of other websites reproduce that advertisement by placing it online, on their own initiative and in their own name, on other websites.

([1]) OJ C 413, 9.12.2019.

Judgment of the Court (Fourth Chamber) of 25 June 2020 (request for a preliminary ruling from the Juzgado de Instrucción No 3 de San Bartolomé de Tirajana — Spain) — proceedings concerning VL

(Case C-36/20 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Asylum and immigration policy — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 6 — Access to the procedure — Application for international protection made to an authority competent under national law to register such applications — Application made to other authorities that are likely to receive such applications but are not, under national law, competent to register them — Definition of 'other authorities' — Article 26 — Detention — Standards for the reception of applicants for international protection — Directive 2013/33/EU — Article 8 — Detention of the applicant — Grounds for detention — Decision to hold an applicant in detention on account of a lack of capacity at humanitarian reception centres)

(2020/C 279/19)

Language of the case: Spanish

Referring court

Juzgado de Instrucción No 3 de San Bartolomé de Tirajana

Parties to the main proceedings

VL

Intervening party: Ministerio Fiscal

Operative part of the judgment

1. The second subparagraph of Article 6(1) of Directive 2013/32 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 meaning that examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to that person's refoulement are among the 'other authorities' referred to in that provision, which are likely to receive applications for international protection but are not competent, under national law, to register such applications;

2. The second and third subparagraphs of Article 6(1) of Directive 2013/32 must be interpreted as meaning that examining magistrates, as 'other authorities' within the meaning of that provision, must, first, inform third-country nationals without a legal right of residence of the procedure for lodging an application for international protection and, second, where a third-country national has expressed his or her wish to make such an application, send the file to the competent authority for the purposes of registering that application, in order that that third-country national may benefit from the material reception conditions and health care provided for in Article 17 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection;

3. Article 26 of Directive 2013/32 and Article 8 of Directive 2013/33 must be interpreted as meaning that a third-country national without a legal right of residence who has expressed his or her wish to apply for international protection before 'other authorities', within the meaning of the second subparagraph of Directive 2013/32, cannot be detained on grounds other than those laid down in Article 8(3) of Directive 2013/33.

([1]) OJ C 137, 27.4.2020.

Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 17 April 2019 — KPKONPI v ZV, AX, Meditsinski tsentar po dermatologia i estetichna meditsina PRIMA DERM OOD

(Case C-319/19)

(2020/C 279/20)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicant: Komisia za protivodeystvie na koruptsiata i za otnemane na nezakonno pridobitoto imushtestvo (KPKONPI)

Defendants: ZV, AX, Meditsinski tsentar po dermatologia i estetichna meditsina PRIMA DERM OOD

Questions referred

1. Does the confiscation of illegally obtained assets constitute a punitive measure for the purposes of Directive 2014/42/EU [1] of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union or a measure under civil law if:

   A) the objective of the confiscation of assets as declared by national law is general prevention, that is to say the prevention of the possibility of obtaining and disposing of assets illegally, whereby confiscation is not conditional on the commission of a crime or other offence or on a direct or indirect connection between the offence and the assets obtained;

   B) the confiscation threatens not an individual asset, but (i) the total assets of the person under inquiry, (ii) property rights of third persons (natural and legal) acquired by the person under inquiry, whether for consideration or not, and (iii) property rights of the contracting partners of the person under inquiry and of the third parties;

   (C) the only condition for confiscation is the introduction of an irrebuttable presumption of the unlawfulness of all the assets for which no legal origin has been identified (without a previously established definition of 'legal/illegal origin');

   (D) in the absence of proof of the origin of the acquisition of assets by the person under inquiry, the law governing the lawfulness of the acquired assets is revised with retroactive effect for a period of ten years for all the persons concerned (person under inquiry, third parties and their contracting partners in the past), whereby at the time of acquisition of the specific property right there was no statutory obligation to provide such proof?

2. Must the minimum standards of guaranteed rights of owners and third parties contained in Article 8 of Directive 2014/42/EU be interpreted as permitting national law and case-law which prescribe confiscation without it being necessary to satisfy the conditions laid down for that purpose in Articles 4, 5 and 6 of that directive if the criminal proceedings against the person concerned have been terminated (as confirmed by the court) owing to the absence of a criminal offence or the person has been acquitted owing to the absence of a criminal offence?

3. In particular, must Article 8 of Directive 2014/42/EU be interpreted as meaning that the guarantees contained in that provision for the rights of a convicted person whose assets are subject to confiscation are also applicable in a case such as that in the present proceedings which runs in parallel with and independently of the criminal proceedings?

4. Are the presumption of innocence enshrined in Article 48(1) of the Charter of Fundamental Rights of the European Union, the guarantee of the rights of the defence enshrined in Article 48(2) of the Charter and the principle of effectiveness to be interpreted as allowing national legislation such as that at issue in the main proceedings which:

   — introduces a presumption for the criminal nature of assets of unknown or unproven origin (Article 1(2) of the Zakon za otnemane v polza na darzhavata na nezakonno pridobito imushtestvo [otm.] (Law on the confiscation of illegally obtained assets (repealed), 'ZOPDNPI');

   — introduces a presumption of reasonable suspicion that assets have been obtained illegally (Article 21(2) ZOPDNPI, repealed);

   — reverses the burden of proof regarding the origin of the assets and the means of acquiring them not only for the person under inquiry, but also for third parties, who must prove the origin not of their assets but of those of their legal predecessor, even in cases where the assets are acquired for no consideration;

   — introduces 'asset discrepancy' as the sole and decisive means of proving the existence of illegally obtained assets;

   — reverses the burden of proof for all persons concerned, and not only for the convicted person, even before, or irrespective of, the conviction;

— allows the application of a methodology for legal and financial investigation and analysis by means of which the suspicion of the illegal nature of the relevant assets and the value of the assets are determined, and that suspicion is binding on the adjudicating court without the latter being able to exercise full judicial control over the content and application of that methodology?

5. Must Article 5(1) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union be interpreted as allowing national law to replace a reasonable suspicion (on the basis of the facts and circumstances gathered in the proceedings and assessed by the court) that the assets were obtained by means of a criminal offence with a suspicion (presumption) of the illegality of the origin of the increase in assets which is based solely on the established circumstance that the increase is higher than a value referred to in the national law (for example, EUR 75 000 in ten years)?

6. Must the right to property, as a general principle of EU law enshrined in Article 17 of the Charter of Fundamental Rights of the European Union, be interpreted as allowing national legislation such as that at issue in the main proceedings which:

— introduces an irrebuttable presumption regarding the content and scope of the illegally obtained assets (Article 63(2) ZOPDNPI, repealed);

— introduces an irrebuttable presumption of the invalidity of transactions acquiring or disposing of assets (Article 65 ZOPDNPI, repealed) or

— restricts the rights of third parties holding or asserting independent rights to assets subject to confiscation by means of the procedure for notifying them of the case, as provided for in Article 76(1) ZOPDNPI (repealed)?

7. Do the provisions of Article 6(2) and Article 8(1) to (10) of Directive 2014/42/EU have direct effect in so far as they provide guarantees and safeguard clauses for the persons affected by the confiscation or for bona fide third parties?

(1) OJ 2014 L 127, p. 39.

Appeal brought on 29 October 2019 by Paix et justice pour les juifs séfarades en Israël against the order of the General Court (First Chamber) delivered on 5 September 2019 in Case T-337/19, Paix et justice pour les juifs séfarades en Israël v Commission and Council of Europe

(Case C-798/19 P)

(2020/C 279/21)

Language of the case: French

Parties

Appellant: Paix et justice pour les juifs séfarades en Israël (represented by: R. Paternel, avocat)

Other parties to the proceedings: European Commission, Council of Europe

By order of 27 May 2020, the Court (Seventh Chamber) dismissed the appeal as manifestly inadmissible.

Appeal brought on 3 December 2019 by Roxtec AB against the judgment of the General Court (Second Chamber) delivered on 24 September 2019 in Case T-261/18, Roxtec v EUIPO — Wallmax

(Case C-893/19 P)

(2020/C 279/22)

Language of the case: English

Parties

Appellant: Roxtec AB (represented by: T. Lampel, Rechtsanwalt, K. Wagner, Rechtsanwältin, J. Olsson, advokat)

Other parties to the proceedings: European Union Intellectual Property Office, Wallmax Srl

By order of 12 March 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 12 February 2020 — Wilo Salmson France SAS v Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București, and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Nerezidenți

(Case C-80/20)

(2020/C 279/23)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: Wilo Salmson France SAS

Defendants: Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București, and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Nerezidenți

Questions referred

1. As regards the interpretation of **Article 167 of Directive 2006/112/EC,** [1] **read in conjunction with Article 178 thereof**, is there a distinction between the moment the right of deduction arises and the moment it is exercised with regard to the way in which the system of VAT operates?

   To that end, it is necessary to clarify whether the right to deduct VAT may be exercised where no (valid) tax invoice has been issued for purchases of goods.

2. As regards the interpretation of **Articles 167 and 178 of Directive 2006/112/EC, read in conjunction with the first sentence of Article 14(1)(a) of Directive 2008/9/EC**, [2] what is the procedural point of reference for determining the lawfulness of the exercise of the right to a refund of VAT?

   To that end, it is necessary to clarify whether an application for a refund may be made in respect of VAT which became chargeable prior to the 'refund period' but which was invoiced during the refund period.

3. As regards the interpretation of **the first sentence of Article 14(1)(a) of Directive 2008/9/EC, read in conjunction with Article 167 and Article 178 of Directive 2006/112/EC**, what are the effects of the annulment of invoices and the issuing of new invoices in respect of purchases of goods made before the 'refund period' on the exercise of the right to a refund of the VAT relating to those purchases?

   To that end, it is necessary to clarify whether, in the event of the annulment, by the supplier, of the invoices initially issued for the purchase of goods and the issuing of new invoices by that supplier at a later date, the exercise of the right of the recipient to apply for a refund of the VAT relating to the purchases is to be linked to the date of the new invoices, in a situation where the annulment of the initial invoices and the issuing of the new invoices is not within the recipient's control but is exclusively at the supplier's discretion.

4. May national legislation make the refund of VAT granted under [Directive 2008/9/EC] conditional upon the chargeability of the VAT in a situation where a corrected invoice is issued during the application period?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
(2) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 12 February 2020 — SC Mitliv Exim SRL v Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

(Case C-81/20)

(2020/C 279/24)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: SC Mitliv Exim SRL

Defendants: Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

Questions referred

1. Do Articles 2 and 273 of Council Directive 2006/112 of 28 November 20[0]6 on the common system of value added tax, [1] Article 50 of the Charter of Fundamental Rights of the European Union and Article 325 TFEU, in circumstances such as those in the main proceedings, preclude national legislation, such as that at issue in the main proceedings, which permits the adoption or implementation of sanctioning measures in relation to a taxpayer who is a legal person, in both administrative and criminal proceedings which are conducted in parallel in relation to that taxpayer, for the same specific acts of tax evasion, in a situation where the penalty applied in the administrative proceedings may also be classified as a criminal penalty, in accordance with the criteria identified by the Court of Justice of the European Union in its case-law, and to what extent are all of those events, taken together, excessive with regard to the taxpayer concerned?

2. In the light of the answer to Question 1, should EU law be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits a State, through its tax authorities, to disregard, in administrative proceedings, in respect of the same specific acts of tax evasion, the sum already paid by way of criminal damages which at the same time also constitutes the sum covering the tax loss, thereby making that amount unavailable for a certain period, in order subsequently also to establish in respect of that taxpayer, in the administrative proceedings, ancillary tax obligations in respect of the debt which has already been cleared?

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

Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Romania) lodged on 24 February 2020 — Siebenburgisches Nugat Srl, Hans Draser Internationales Marketing v Direcția Generală Regională a Finanțelor Publice Brașov, Agenția Națională de Administrare Fiscală — Direcția Generală a Vămilor — Direcția Regională Vamală Brașov — Biroul Vamal de Interior Sibiu

(Case C-99/20)

(2020/C 279/25)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Applicants: Siebenburgisches Nugat Srl, Hans Draser Internationales Marketing

Defendants: Direcția Generală Regională a Finanțelor Publice Brașov, Agenția Națională de Administrare Fiscală — Direcția Generală a Vămilor — Direcția Regională Vamală Brașov — Biroul Vamal de Interior Sibiu

Question referred

Is the combined nomenclature set out in Annex I to Council Regulation No 2658/87 [1] to be interpreted as meaning that goods generically described as 'rail components for hanging curtains and drapes, or finished tubes (painted, nickel-plated, chromed)', such as those at issue in the present case, fall under tariff subheading 8302 41 90 or under subheading 7306 30 77 of the combined nomenclature?

[1] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1, Special edition in Romanian: Chapter 02 Volume 004 P. 3).

Request for a preliminary ruling from the Curtea de Apel Timișoara (Romania) lodged on 28 February 2020 — S.C. Avio Lucos SRL v Agenția de Plăți și Intervenție pentru Agricultură — Centrul Județean Dolj, Agenția de Plăți și Intervenție pentru Agricultură (APIA) — Aparat Central

(Case C-116/20)

(2020/C 279/26)

Language of the case: Romanian

Referring court

Curtea de Apel Timișoara

Parties to the main proceedings

Applicant: S.C. Avio Lucos SRL

Defendants: Agenția de Plăți și Intervenție pentru Agricultură — Centrul Județean Dolj, Agenția de Plăți și Intervenție pentru Agricultură (APIA) — Aparat Central

Questions referred

1. Does [EU] law applicable to financial support relating to the agricultural year 2014 — in particular Regulation (EC) No 73/2009 [1] and Regulation No 1122/2009 [2] — preclude the introduction, through national legislation, of an obligation to provide proof of the right to use an area of land for the purpose of obtaining financial support relating to area schemes?

2. In so far as the abovementioned [EU] law does not preclude the national legislation referred to in Question 1, does [EU] law (including the principle of proportionality) preclude — in the particular case where the right to exploit the agricultural area has been justified by the beneficiary by submitting a concession contract for an area of pastureland (under which the applicant acquired the right to exploit the pastureland at his own risk and for his benefit, in return for a fixed sum) — national legislation which imposes, for such a concession contract to be valid, the condition that the future concessionaire must be only a keeper or owner of animals?

3. Does the activity of a beneficiary under an area scheme who — after concluding a concession contract for pastureland for the purpose of obtaining the right to exploit that area and obtaining rights to aid in the agricultural year 2014 — subsequently concludes a cooperation contract with livestock farmers by which he permits use, free of charge, of the land granted for the purposes of grazing animals, and the beneficiary retains the right to use the land but undertakes not to hinder grazing and to clean up the pastureland, fall within the definition of agricultural activity set out in Article 2 of Regulation No 73/2009?

4. Does [EU] law preclude an interpretation of a national legal provision, such as Article 431(2) of the Code of Civil Procedure — on the status of res judicata of a final judicial decision — to the effect that a final judicial decision finding a payment application ineligible on the ground of failure to comply with national law as regards the requirement relating to the lawfulness of the right to exploit/use the land in respect of which an area scheme has been applied for in the agricultural year 2014 (in a dispute in which annulment of the decision imposing multiannual penalties has been sought), and which prevents analysis of the conformity of that national requirement with [EU] law applicable in the agricultural year 2014 in a new dispute in which the lawfulness of the measure recovering the sums unduly paid to the applicant is examined, in respect of the same agricultural year 2014, and the measure is based on the same facts and the same national legislation which were analysed in the earlier final judicial decision?

(1) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

(2) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 24 March 2020 — DS v Porsche Inter Auto GmbH & Co KG and Volkswagen AG

(Case C-145/20)

(2020/C 279/27)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: DS

Defendants: Porsche Inter Auto GmbH & Co KG, Volkswagen AG

Questions referred

1. Is Article 2(2)(d) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (1) to be interpreted as meaning that a motor vehicle that falls within the scope of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (2) shows the quality which is normal in goods of the same type and which the consumer can reasonably expect if the vehicle is equipped with a prohibited defeat device within the meaning of point 10 of Article 3 and Article 5(2) of Regulation No 715/2007 but the vehicle type nevertheless has a valid EC type-approval, meaning that the vehicle can be used on the road?

2. Is Article 5(2)(a) of Regulation No 715/2007 to be interpreted as meaning that a defeat device within the meaning of point 10 of Article 3 of that regulation, which is designed in such a way that the exhaust gas recirculation is fully operational outside of test operation under laboratory conditions and during real-world driving only if outside temperatures are between 15 and 33 degrees Celsius, may be permissible pursuant to Article 5(2)(a) of that regulation, or is the application of the aforementioned exemption provision excluded from the outset for the simple reason that the full effectiveness of the exhaust gas recirculation is restricted to conditions that exist for only around half of the year in parts of the European Union?

3. Is Article 3(6) of Directive 1999/44 to be interpreted as meaning that a lack of conformity consisting in the equipping of a vehicle with a defeat device that is prohibited under point 10 of Article 3 in conjunction with Article 5(2) of Regulation No 715/2007 must be regarded as minor within the meaning of the aforementioned provision if the purchaser acquired the vehicle even though he was aware of the presence and operation of that device?

(1) OJ 1999 L 171, p. 12.

(2) OJ 2007 L 171, p. 1.

Request for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 16 March 2020 — AC v Deutsche Lufthansa AG

(Case C-148/20)

(2020/C 279/28)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: AC

Defendant: Deutsche Lufthansa AG

Questions referred

Is Directive (EU) 2016/681 ([1]) compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the Charter) in relation to the following points:

(1) Are the PNR data to be transferred under the directive sufficiently specified, having regard to Articles 7 and 8 of the Charter?

(2) In view of its scope and having regard to Articles 7 and 8 of the Charter, does the directive provide for sufficient objective differentiation when PNR data are collected and transferred, in relation to the type of flights and the threat level in a particular country and in relation to the comparison against databases and patterns?

(3) Is the blanket, indiscriminating retention period for all PNR data compatible with Articles 7 and 8 of the Charter?

(4) Having regard to Articles 7 and 8 of the Charter, does the directive provide for adequate procedural protection of passengers in respect of the use of retained PNR data?

(5) Having regard to Articles 7 and 8 of the Charter, does the directive adequately safeguard the level of protection of European fundamental rights when PNR data are transferred to third country authorities by third countries?

([1]) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ 2016 L 119, p. 132).

Request for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 16 March 2020 — DF v Deutsche Lufthansa AG

(Case C-149/20)

(2020/C 279/29)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: DF

Defendant: Deutsche Lufthansa AG

Questions referred

Is Directive (EU) 2016/681 [1] compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the Charter) in relation to the following points:

(1) Are the PNR data to be transferred under the directive sufficiently specified, having regard to Articles 7 and 8 of the Charter?

(2) In view of its scope and having regard to Articles 7 and 8 of the Charter, does the directive provide for sufficient objective differentiation when PNR data are collected and transferred, in relation to the type of flights and the threat level in a particular country and in relation to the comparison against databases and patterns?

(3) Is the blanket, indiscriminating retention period for all PNR data compatible with Articles 7 and 8 of the Charter?

(4) Having regard to Articles 7 and 8 of the Charter, does the directive provide for adequate procedural protection of passengers in respect of the use of retained PNR data?

(5) Having regard to Articles 7 and 8 of the Charter, does the directive adequately safeguard the level of protection of European fundamental rights when PNR data are transferred to third country authorities by third countries?

(1) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ 2016 L 119, p. 132).

Request for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 17 March 2020 — BD v Deutsche Lufthansa AG

(Case C-150/20)

(2020/C 279/30)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: BD

Defendant: Deutsche Lufthansa AG

Questions referred

Is Directive (EU) 2016/681 [1] compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the Charter) in relation to the following points:

(1) Are the PNR data to be transferred under the directive sufficiently specified, having regard to Articles 7 and 8 of the Charter?

(2) In view of its scope and having regard to Articles 7 and 8 of the Charter, does the directive provide for sufficient objective differentiation when PNR data are collected and transferred, in relation to the type of flights and the threat level in a particular country and in relation to the comparison against databases and patterns?

(3) Is the blanket, indiscriminating retention period for all PNR data compatible with Articles 7 and 8 of the Charter?

(4) Having regard to Articles 7 and 8 of the Charter, does the directive provide for adequate procedural protection of passengers in respect of the use of retained PNR data?

(5) Having regard to Articles 7 and 8 of the Charter, does the directive adequately safeguard the level of protection of European fundamental rights when PNR data are transferred to third country authorities by third countries?

([1]) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ 2016 L 119, p. 132).

Request for a preliminary ruling from Tribunalul Mureș (Romania) lodged on 30 March 2020 — DG, EH v SC Gruber Logistics SRL

(Case C-152/20)

(2020/C 279/31)

Language of the case: Romanian

Referring court

Tribunalul Mureș

Parties to the main proceedings

Applicants: DG, EH

Defendant: SC Gruber Logistics SRL

Questions referred

1. Is Article 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 ([1]) to be interpreted as meaning that the choice of law applicable to an individual employment contract excludes the application of the law of the country in which the employee has habitually carried out his or her work or as meaning that the fact that a choice of law has been made excludes the application of the second sentence of Article 8(1) of that regulation?

2. Is Article 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as meaning that the minimum wage applicable in the country in which the employee has habitually carried out his or her work is a right that falls within the scope of 'provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable', within the meaning of the second sentence of Article 8(1) of the regulation?

3. Is Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as meaning that the specification, in an individual employment contract, of the provisions of the Romanian Labour Code does not equate to a choice of Romanian law, in so far as, in Romania, it is well-known that there is a legal *obligation* to include such a choice-of-law clause in individual employment contracts? In other words, is Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as precluding national rules and practices pursuant to which a clause specifying the choice of Romanian law must *necessarily* be included in individual employment contracts?

([1]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 3 April 2020 — FI v Eurowings GmbH

(Case C-157/20)

(2020/C 279/32)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: FI

Defendant: Eurowings GmbH

Question referred

Does a trade union organised strike by an operating air carrier's own staff (in this case the cabin crew) constitute an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation (EC) No 261/2004? [1]

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

Request for a preliminary ruling from the Győri Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 7 April 2020 — 'Grossmania' Mezőgazdasági Termelő és Szolgáltató Kft. v Vas Megyei Kormányhivatal

(Case C-177/20)

(2020/C 279/33)

Language of the case: Hungarian

Referring court

Győri Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: 'Grossmania' Mezőgazdasági Termelő és Szolgáltató Kft.

Defendant: Vas Megyei Kormányhivatal

Question referred

Must Article 267 of the Treaty on the Functioning of the European Union be interpreted as meaning that, where the Court of Justice of the European Union, in a decision given in preliminary ruling proceedings, has declared a legislative provision of a Member State to be incompatible with EU law, that legislative provision cannot be applied in subsequent national administrative or judicial proceedings either, notwithstanding that the facts of the subsequent proceedings are not entirely identical to those of the previous preliminary ruling proceedings?

Request for a preliminary ruling from the Fővárosi Törvényszék (formerly the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary)) lodged on 7 April 2020 — Pharma Expressz Szolgáltató és Kereskedelmi Kft v Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet

(Case C-178/20)

(2020/C 279/34)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék (formerly Fővárosi Közigazgatási és Munkaügyi Bíróság)

Parties to the main proceedings

Applicant: Pharma Expressz Szolgáltató és Kereskedelmi Kft

Defendant: Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet

Questions referred

1. Does an obligation flow from Articles 70 to 73 of Directive 2001/83 [1] to regard a medicinal product which can be dispensed without medical prescription in one Member State as a medicinal product which can also be dispensed without medical prescription in another Member State, including where, in that other Member State, the medicinal product in question does not have a marketing authorisation and has not been classified?

2. Is a quantitative restriction which makes the possibility of ordering and dispensing to a patient a medicinal product which does not have a marketing authorisation in one Member State but does have such an authorisation in another [Member State of the EEA] conditional on the existence of a medical prescription and a declaration from the pharmaceutical authority, including where the medicinal product is registered in the other Member State as a medicinal product not subject to medical prescription, justified in the interests of protection of the health and life of humans, as referred to in Article 36 TFEU?

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 5 May 2020 — Laudamotion GmbH v Verein für Konsumenteninformation

(Case C-189/20)

(2020/C 279/35)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: Laudamotion GmbH

Respondent in the appeal on a point of law: Verein für Konsumenteninformation

Questions referred

1. Are the provisions of Regulation (EU) No 1215/2012, [1] in particular Article 25, Article 17(3) and Article 19, and in any event in the light of Article 67, to be interpreted as precluding a review of unfairness of international agreements conferring jurisdiction in accordance with Directive 93/13/EEC [2] or the corresponding national implementing provisions?

2. Is the last clause of the first sentence of Article 25(1) of Regulation (EU) No 1215/2012 (‘*unless the agreement is null and void as to its substantive validity under the law of that Member State*’) to be interpreted as meaning that it opens up the possibility — which extends even beyond the area of harmonised law — of a substantive review in accordance with the national law of the Member State on which jurisdiction has been conferred via prorogation?

3. In the event that Questions 1 and 2 are answered in the negative:

   Are the national implementing provisions applicable to a review of unfairness in accordance with Directive 93/13/EEC determined by the law of the Member State on which jurisdiction has been conferred via prorogation or by the *lex causae* of the Member State seised?

(1) Regulation 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 (OJ 2012 L 351, p. 1).
(2) Council Directive of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 5 May 2020 — DocMorris NV v Apothekerkammer Nordrhein

(Case C-190/20)

(2020/C 279/36)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: DocMorris NV

Respondent: Apothekerkammer Nordrhein

Question referred

Is it compatible with the provisions of Title VIII and, in particular, with Article 87(3) of Directive 2001/83/EC [1] if a national provision (in this case the first sentence of Paragraph 7(1) of the Gesetz über die Werbung auf dem Gebiete des Heilwesens (Law on Advertising in the Field of Medicine')) is interpreted as prohibiting a mail-order pharmacy established in another Member State from using a prize competition to attract customers if participation in the prize competition is linked to the submission of a prescription for a medicinal product for human use subject to a medical prescription, the prize offered is not a medicinal product but another object (in this case an electric bike worth EUR 2 500 and electric toothbrushes), and there is no risk that irrational and excessive use of that medicinal product is encouraged?

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

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 7 May 2020 — KAHL GmbH & Co. KG v Hauptzollamt Hannover

(Case C-197/20)

(2020/C 279/37)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: KAHL GmbH & Co. KG

Defendant: Hauptzollamt Hannover

Questions referred

1. Are the Explanatory Notes to subheading 1521 9099 [1] of the Combined Nomenclature [2] applicable in so far as the word ‘*geschmolzen*’ [melted] is used?

2. If the first question referred is answered in the negative, is the term ‘raw’ within the meaning of subheading 1521 9091 of the Combined Nomenclature to be interpreted as meaning that beeswax which has been melted down in the exporting country and from which foreign bodies have been mechanically separated during the process of melting it down, whereby some foreign bodies still remain in beeswax, must be classified under that subheading?

(1) Explanatory notes to the Combined Nomenclature of the European Union (OJ 2019 C 119, p. 1).

(2) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2019 L 280, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 30 March 2020 — Rad Service Srl Unipersonale and Others v Del Debbio SpA and Others

(Case C-210/20)

(2020/C 279/38)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Rad Service Srl Unipersonale, Cosmo Ambiente Srl, Cosmo Scavi Srl

Defendants: Del Debbio SpA, Gruppo Sei Srl, Ciclat Val di Cecina Soc. Coop., Daf Costruzioni Stradali Srl, as representative of the ad hoc tendering consortium formed with GARC SpA and Edil Moter Srl

Question referred

Does Article 63 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014, [1] concerning reliance on the capacities of other entities, in conjunction with the principles of freedom of establishment and freedom to provide services enshrined in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), preclude the application of the provisions of Italian law relating to reliance on the capacities of other entities and exclusion from award procedures set out in the fourth sentence of Article 89(1) of the Public Procurement Code referred to in decreto legislativo 18 aprile 2016, n. 50 (Legislative Decree No 50 of 18 April 2016), under which, if untruthful declarations are made by an ancillary undertaking regarding the existence of convictions in criminal proceedings that have become final, which may demonstrate serious professional misconduct, the contracting authority must in all cases exclude the economic operator taking part in the tender procedure, without requiring or permitting that operator to indicate another suitable ancillary undertaking to replace the former undertaking, which is, conversely, permitted in other cases where the entities on whose capacities the economic operator intends to rely fail to meet a relevant selection criterion or are subject to mandatory grounds for exclusion?

(1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 19 May 2020 — JV v Bundesrepublik Deutschland

(Case C-215/20)

(2020/C 279/39)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: JV

Defendant: Bundesrepublik Deutschland

Questions referred

1. In the light of its objective and the need for clarity and proportionality, is Directive (EU) 2016/681 [1] of the European Parliament and of the Council of 27 April 2016 on the [use of passenger name record (PNR) data for the] prevention, detection, investigation and prosecution of terrorist offences and serious crime ('the PNR Directive'), under which air carriers transfer comprehensive data on every single passenger to the passenger information units (PIUs) established by the Member States, where the data are used without justification for automated comparison against databases and profiles, after which they are retained for a period of five years[,] compatible with the Charter of Fundamental Rights of the European Union, especially Articles 7, 8 and 52 thereof?

2. In particular:

   (a) In the light of the need for sufficient clarity and proportionality and inasmuch as it defines the term 'serious crime' within the meaning of the PNR Directive as the offences listed in Annex II that are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, is point (9) of Article 3 of the PNR Directive, read in conjunction with Annex II to the PNR Directive, compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union?

   (b) Inasmuch as they require the transfer of the name (first sentence of Article 8(1) of the PNR Directive, read in conjunction with point (4) of Annex I to the Directive), frequent flyer information (first sentence of Article 8(1) of the PNR Directive, read in conjunction with point (8) of Annex I to the Directive) and general remarks in a 'free text' box (first sentence of Article 8(1) of the PNR Directive, read in conjunction with point (12) of Annex I to the Directive), are the passenger name record data ('PNR data') to be transferred defined with sufficient clarity to justify interference with the rights set out in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union?

   (c) Is the fact that data are collected not only on passengers, but also on third parties, such as travel agency/travel agent (point (9) of Annex I to the PNR Directive), guardians of minors (point (12) of Annex I to the PNR Directive) and other travellers (point (17) of Annex I to the PNR Directive), compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and the purpose of the PNR Directive?

   (d) Inasmuch as the PNR data of minor passengers are transferred, processed and retained, is the PNR Directive compatible with Articles 7, 8 and 24 of the Charter of Fundamental Rights of the European Union?

   (e) Inasmuch as the PNR data of minor passengers are transferred, processed and retained, is the PNR Directive compatible with Articles 7, 8 and 24 of the Charter of Fundamental Rights of the European Union?

   (f) As the legal basis for determining the criteria for data comparison ('profiles'), is Article 6(4) of the PNR Directive a sufficient legitimate basis laid down by law within the meaning of Article 8(2) and Article 52 of the Charter of Fundamental Rights of the European Union and Article 16(2) TFEU?

   (g) As the data transferred are retained by the PIUs of the Member States for a period of five years, does Article 12 of the PNR Directive limit interference with the rights enacted in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union to what is strictly necessary?

   (h) Where depersonalisation in accordance with Article 12(2) of the PNR Directive is no more than pseudonymisation that can be reversed at any time, does it reduce the personal data to the minimum required under Articles 8 and 52 of the Charter of Fundamental Rights of the European Union?

   (i) Are Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union to be interpreted as meaning that the passengers whose data are de-depersonalised during passenger data processing (Article 12(3) of the PNR Directive) must be notified accordingly and thus afforded the opportunity to seek a judicial review?

3. Inasmuch as it allows PNR data to be transferred to third countries which do not have an appropriate level of data protection, is Article 11 of the PNR Directive compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union?

4. As the 'free text' box for 'general remarks' (point (12) of Annex I to the PNR Directive) can be used to transfer information such as choice of meal, from which particular categories of personal data can be inferred, does the fourth sentence of Article 6(4) of the PNR Directive afford adequate protection against the processing of those particular categories of personal data within the meaning of Article 9 of Regulation (EU) 2016/679 ([2]) 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 and Article 10 of Directive (EU) 2016/680 ([3]) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA?

5. Is the fact that air carriers simply refer passengers on their website to the national transposing legislation (in this case, the Gesetz über die Verarbeitung von Fluggastdaten zur Umsetzung der Richtlinie (EU) 2016/681 (Law on the Processing of Passenger Name Record (PNR) Data for the purpose of transposing Directive (EU) 2016/681) of 6 June 2017 (*BGBl* (Federal Law Gazette) I, p. 1484) compatible with Article 13 of the General Data Protection Regulation?

(1) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ 2016 L 119, p. 132).

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

(3) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 7 May 2020 — C.E. Roeper GmbH v Hauptzollamt Hamburg

(Case C-216/20)

(2020/C 279/40)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: C.E. Roeper GmbH

Defendant: Hauptzollamt Hamburg

Questions referred

1. Are the Explanatory Notes to subheading 1521 9099 [1] of the Combined Nomenclature [2] applicable in so far as the word 'geschmolzen' [melted] is used?

2. If the first question referred is answered in the negative, is the term 'raw' within the meaning of subheading 1521 9091 of the Combined Nomenclature to be interpreted as meaning that beeswax which has been melted down in the exporting country and from which foreign bodies have been mechanically separated during the process of melting it down, whereby some foreign bodies still remain in beeswax, must be classified under that subheading?

(1) Explanatory notes to the Combined Nomenclature of the European Union (OJ 2019 C 119, p. 1).

(2) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2019 L 280, p. 1).

Request for a preliminary ruling from the Ufficio del Giudice di Pace di Lanciano (Italy) lodged on 28 May 2020 — XX v OO

(Case C-220/20)

(2020/C 279/41)

Language of the case: Italian

Referring court

Ufficio del Giudice di Pace di Lanciano

Parties to the main proceedings

Applicant: XX

Defendant: OO

Intervener: WW

Question referred

Do Articles 2, 4(3), 6(1) and 9 of the Treaty on [European] Union and Articles 67(1) and (4), 81 and 82 of the Treaty on the Functioning of the European Union, in conjunction with Articles 1, 6, 20, 21, 31, 34, 45 and 47 of the Charter of Fundamental Rights of the European Union, preclude national provisions such as Articles 42, 83 and 87 of Decree Law No 18 of 17 March 2020, the decision of the Council of Ministers of 31 January 2020 declaring a state of national health emergency for six months until 31 July 2020 and Articles 14 and 263 of Decree Law No 34 of 19 May 2020 extending the national state of emergency for Covid-19 and the paralysis of civil and criminal justice and of the administrative work of Italian courts until 31 January 2021, taken together, in so far as they undermine the independence of the referring court and infringe the principle of due process as well as the connected rights to personal dignity, liberty and security, equality before the law, non-discrimination, fair and just working conditions, access to social security benefits and freedom of movement and of residence?

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 27 May 2020 — OC v Bundesrepublik Deutschland

(Case C-222/20)

(2020/C 279/42)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: OC

Defendant: Bundesrepublik Deutschland

Questions referred

1. Are Article 21 and Article 67(2) TFEU to be interpreted as meaning that they preclude national legislation (in this case, Paragraph 2(3) of the Gesetz über die Verarbeitung von Fluggastdaten zur Umsetzung der Richtlinie (EU) 2016/681 of 6 June 2017 (Law on the Processing of Passenger Name Record (PNR) Data for the purpose of transposing Directive (EU) 2016/681 [*BGBl* (Federal Law Gazette) I, p. 1484], as amended by Article 2 of the Law of 6 June 2017, *BGBl* I, p. 1484), ('the FlugDaG'), that provides, in application of the flexibility clause in Article 2(1) of Directive (EU) 2016/681 [1] ('the PNR Directive'), for air carriers to transfer comprehensive data on every single passenger of also intra-EU flights to the passenger information units (PIUs) established by the Member States where, except for the flight booking, the data are retained without justification and used for automated comparison against databases and profiles, after which they must be retained?

2. Does it follow from Article 7 and Article 8 of the Charter of Fundamental Rights of the European Union that the national legislation transposing point (9) of Article 3 of the PNR Directive, read in conjunction with Annex II to the Directive, (in this case: Paragraph 4(1) of the FlugDaG) has to enumerate each of the relevant provisions of national criminal law for each of the offences listed in the PNR Directive?

3. Are Article 7 and Article 8 of the Charter of Fundamental Rights of the European Union to be interpreted as meaning that they preclude domestic legislation of a Member State (in this case, Paragraph 6(4) of the FlugDaG) that allows the authorities of that Member State, inasmuch as they perform prosecution-related tasks, to process the PNR data transferred for purposes other than the prevention, detection, investigation and prosecution of terrorist offences and serious crime where findings, including in the light of additional information, give cause to suspect another specific offence?

4. Is the flexibility clause in Article 2(1) of the PNR Directive permitting national legislation (in this case, Paragraph 2(3) of the FlugDaG) that allows the PNR Directive to be applied to intra-EU flights also, meaning that PNR data are collected twice within the European Union (country of departure and country of arrival collect PNR data), compatible with Article 7 and Article 8 of the Charter of Fundamental Rights of the European Union in the light of the principle of data minimisation?

5. If the PNR Directive does not infringe higher-ranking law (see order of the Verwaltungsgericht Wiesbaden (Administrative Court, Wiesbaden) of 13 May 2020, reference 6 K 805/19.WI) and is therefore applicable:

   (a) Are Article 7(4) and (5) of the PNR Directive to be interpreted as meaning that they preclude domestic legislation of a Member State (in this case, Paragraph 6(4) of the FlugDaG) that allows the authorities of that Member State, inasmuch as they perform prosecution-related tasks, to process the PNR data transferred for purposes other than the prevention, detection, investigation and prosecution of terrorist offences and serious crime where findings, including in the light of further information, give cause to suspect another specific offence (so-called by-catch)?

   (b) Is the practice of a Member State of including in the list of competent authorities under Article 7(1) of the PNR Directive an authority (in this case, the Bundesamt für Verfassungsschutz (Federal Office for the Protection of the Constitution)) which, under national law (in this case, Paragraph 5(1), read in conjunction with Paragraph 3(1), of the Gesetz über die Zusammenarbeit des Bundes und der Länder in Angelegenheiten des Verfassungsschutzes und das Bundesamt für Verfassungsschutz (Law on Cooperation between the Federal Government and the Federal *Länder* in Matters of the Protection of the Constitution and the Federal Office for the Protection of the Constitution)), does not have police powers due to the separation of powers required under domestic law, compatible with Article 7(2) of the PNR Directive?

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[1] Directive of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ 2016 L 119, p. 132).

Request for a preliminary ruling from the Sø- og Handelsretten (Denmark) lodged on 29 May 2020 — Merck Sharp & Dohme B.V., Merck Sharp & Dohme Corp., MSD DANMARK ApS, MSD Sharp & Dohme GmbH, Novartis AG, FERRING LÆGEMIDLER A/S and H. Lundbeck A/S v Abacus Medicine A/S, Paranova Danmark A/S, 2CARE4 ApS

(Case C-224/20)

(2020/C 279/43)

Language of the case: Danish

Referring court

Sø- og Handelsretten

Parties to the main proceedings

Applicants: Merck Sharp & Dohme BV, Merck Sharp & Dohme Corp., MSD DANMARK ApS, MSD Sharp & Dohme GmbH, Novartis AG, FERRING LÆGEMIDLER A/S and H. Lundbeck A/S

Defendants: Abacus Medicine A/S, Paranova Danmark A/S and 2CARE4 ApS

Questions referred

1. Must Article 15(2) of Directive 2015/2436/EU [1] of the European Parliament and of the Council on trade marks and Article 15(2) of Regulation 2017/1001/EU [2] of the European Parliament and of the Council on the EU trade mark be interpreted as meaning that a trade mark proprietor may oppose further commercialisation of a medicinal product which a parallel importer has repackaged in new external packaging to which the trade mark has been reaffixed, where

(i) the importer is able to achieve packaging which may be marketed and gain effective access to the market of the Member State of importation by breaking the original external packaging in order to affix new labels to the inner packaging and/or replace the package leaflet and then reseal the original external packaging with a new device to verify whether the packaging has been tampered with, in accordance with Article 47a of Directive 2001/83/EC [3] of the European Parliament and of the Council of 6 November 2001 on medicinal products (as amended by Directive 2011/62/EU [4] of the European Parliament and of the Council) and Article 16 of Commission Delegated Regulation (EU) 2016/161 [5] on safety features appearing on the packaging of medicinal products?

(ii) the importer is not able to achieve packaging which may be marketed and gain effective access to the market of the Member State of importation by breaking the original external packaging in order to affix new labels to the inner packaging and/or replace the package leaflet and then reseal the original external packaging with a new device to verify whether the packaging has been tampered with, in accordance with Article 47a of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on medicinal products (as amended by Directive 2011/62/EU of the European Parliament and of the Council) and Article 16 of Commission Delegated Regulation (EU) 2016/161 on safety features appearing on the packaging of medicinal products?

2. Must Directive 2001/83/EC of the European Parliament and of the Council on medicinal products (as amended by Directive 2011/62/EU), including, in particular, Articles 47a and point (o) of Article 54, be interpreted as meaning that a new device to verify whether the packaging has been tampered with (anti-tampering device), affixed to the original packaging of the medicinal products (in connection with additional labelling after the packaging has been opened in such a way that the original anti-tampering device has been fully or partially covered and/or removed), within the meaning of Article 47a(1)(b), '*[is] equivalent as regards the possibility to verify the authenticity, identification and to provide evidence of tampering [with] the medicinal product*' and, within the meaning of Article 47a(1)(b)(ii), "*[is] equally effective in enabling the verification of authenticity and identification of medicinal products and in providing evidence of tampering with medicinal products*', where the packaging of the medicinal products (a) displays visible signs that the original anti-tampering device has been tampered with, or (b) that can be established by touching the product, including

(i) through mandatory verification of the integrity of the anti-tampering device carried out by the manufacturers, wholesalers, pharmacists and persons authorised or entitled to supply medicinal products to the public (see Directive 2011/62/EU of the European Parliament and of the Council, Article 54a(2)(d) and Commission Delegated Regulation 2016/161, Article 10(b) and Articles 25 and 30), or

(ii) after the packaging of the medicinal products has been opened, for example by a patient?

3. If the answer to Question 2 is in the negative:

Must Article 15 of Directive 2015/2436/EU of the European Parliament and of the Council on trade marks, Article 15 of Regulation 2017/1001/EU of the European Parliament and Council on EU trade marks, and Articles 36 and 34 TFEU, then be interpreted as meaning that repackaging in new external packaging is objectively necessary for effective access to the market of the State of importation, where it is not possible for the parallel importer to affix additional labelling and reseal the original packaging in accordance with Article 47a of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on medicinal products (as amended by Directive 2011/62/EU of the European Parliament and of the Council), that is to say without the packaging of the medicinal products (a) displaying visible signs that the original anti-tampering device has been tampered with, or (b) that can be established by touching the product, as described in Question 2, in a manner which is not in accordance with Article 47a?

4. Must Directive 2001/83/EC of the European Parliament and of the Council on medicinal products (as amended by Directive 2011/62/EU of the European Parliament and of the Council) and Commission Delegated Regulation (EU) 2016/161, in conjunction with Articles 34 and 36 TFEU and Article 15(2) of Directive 2015/2436/EU of the European Parliament and of the Council on trade marks, be interpreted as meaning that a Member State (in Denmark: the Lægemiddelstyrelsen (Danish Medicines Agency)) is entitled to lay down guidelines, in accordance with which, in general, repackaging in new external packaging is to be carried out and it is only on application, in exceptional cases (for example where there is a risk to the supply of the medicinal product), that additional labelling and resealing may be permitted to be carried out by attaching new security features to the original external packaging, or is the Member State's issuing and observance of such guidelines incompatible with Articles 34 and 36 TFEU and/or Article 47a of Directive 2001/83/EC of the European Parliament and of the Council on medicinal products and Article 16 of Commission Delegated Regulation (EU) 2016/161?

5. Must Article 15(2) of Directive 2015/2436/EU of the European Parliament and of the Council on trade marks and Article 15(2) of Regulation 2017/1001/EU of the European Parliament and of the Council on trade marks, in conjunction with Articles 34 and 36 TFEU, be interpreted as meaning that repackaging in new external packaging carried out by a parallel importer in accordance with the guidelines laid down by a Member State, as referred to in Question 4, must be regarded as necessary for the purposes of the case-law of the Court of Justice of the European Union,

   (i) where such guidelines are compatible with Articles 34 and 36 TFEU and the case-law of the Court of Justice of the European Union on parallel imports of medicinal products?

   (ii) where such guidelines are incompatible with Articles 34 and 36 TFEU and the case-law of the Court of Justice of the European Union on parallel imports of medicinal products?

6. Must Articles 34 and 36 TFEU be interpreted as meaning that the repackaging of a medicinal product in new external packaging must be objectively necessary for effective access to the market of the importing State, even if the parallel importer has not reaffixed the original trade mark (product name), but instead given the new external packaging a product name which does not contain the trade mark proprietor's product trade mark ('de-branding')?

7. Must Article 15(2) of Directive 2015/2436/EU of the European Parliament and of the Council on trade marks and Article 15(2) of Regulation 2017/1001/EU of the European Parliament and of the Council on EU trade marks be interpreted as meaning that a trade mark proprietor may oppose further commercialisation of a medicinal product which a parallel importer has repackaged in a new external packaging, in so far as the parallel importer has reaffixed only the trade mark proprietor's product-specific trade mark, but has not reaffixed the other trade marks and/or commercial indications which the trade mark proprietor had affixed to the original external packaging?

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(1) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336, p. 1).

(2) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

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

(4) Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products (OJ 2011 L 174, p. 74).

(5) Commission Delegated Regulation (EU) 2016/161 of 2 October 2015 supplementing Directive 2001/83/EC of the European Parliament and of the Council by laying down detailed rules for the safety features appearing on the packaging of medicinal products for human use (OJ 2016 L 32, p. 1).

Request for a preliminary ruling from the Landesarbeitsgericht Berlin-Brandenburg (Germany) lodged on 3 June 2020 — NP v Daimler AG

(Case C-232/20)

(2020/C 279/44)

Language of the case: German

Referring court

Landesarbeitsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: NP

Defendant: Daimler AG, Mercedes-Benz Werk Berlin

Questions referred

1. Is the assignment of a temporary agency worker to a user undertaking no longer to be regarded as 'temporary' for the purposes of Article 1 of the Temporary Agency Work Directive [1] as soon as the employment takes place in a job which is permanent and not performed as cover?

2. Is the assignment of a temporary agency worker for a period of less than 55 months no longer to be regarded as ‘temporary’ for the purposes of Article 1 of the Temporary Agency Work Directive?

3. If the answer to Question 1 and/or Question 2 is in the affirmative, the following additional questions arise:

   3.1 Does the temporary agency worker have an entitlement to the establishment of an employment relationship with the user undertaking even if the national law does not provide for such a penalty before 1 April 2017?

   3.2 Does a national provision such as Paragraph 19(2) of the Arbeitnehmerüberlassungsgesetz (Law regulating temporary agency work) infringe Article 1 of the Temporary Agency Work Directive where it prescribes an individual maximum assignment period of 18 months for the first time as from 1 April 2017, but expressly excludes the taking into account of prior periods of assignment, although the assignment could no longer be classified as temporary if the prior periods of assignment were taken into account?

   3.3 Can the extension of the individual maximum assignment period be left to the discretion of the parties to a collective agreement? If so, does this also apply to parties to a collective agreement who exercise competence not over the employment relationship of the temporary agency worker concerned, but over the sector in which the user undertaking is active?

([1]) Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 9 June 2020 — Skatteverket v Skellefteå Industrihus Aktiebolag

(Case C-248/20)

(2020/C 279/45)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Skellefteå Industrihus Aktiebolag

Question referred

Is it compatible with the VAT Directive, ([1]) in particular with Articles 137, 168, 184 to 187, 189 and 192 thereof, that a property owner, who opted for taxation of the construction of a building and who has deducted the input tax paid on the acquisitions relating to the building project, must immediately repay the total amount of input tax, together with interest, on the ground that the liability for tax ceases by reason of the discontinuance of the construction project before the building is completed and that there is therefore no letting?

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

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 10 June 2020 — CY v Eurowings GmbH

(Case C-252/20)

(2020/C 279/46)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: CY

Defendant: Eurowings GmbH

Questions referred

1. Can a right to compensation under Article 7 of Regulation (EC) No 261/2004 ([1]) also exist when a passenger misses a directly connecting flight due to a relatively minor delay in arrival, resulting in a delay in arrival at the final destination of three hours or more, where the two flights were operated by different air carriers and the booking was not made through the air carrier which operated the flight on the first segment of the journey and against which a claim has been made in the main proceedings?

2. If the answer to Question 1 is in the affirmative:

   Is the air carrier which actually operated the delayed flight on the first segment of the journey the 'operating air carrier' within the meaning of Article 5(1)(c) and Article 7(1) of Regulation (EC) No 261/2004 or is the air carrier which operated the punctual flight on the second segment of the journey, via which both flights were booked, the 'operating air carrier' within the meaning of Article 5(1)(c) and Article 7(1) of Regulation (EC) No 261/2004?

3. If both air carriers are to be regarded as 'operating air carriers' within the meaning of Article 5(1)(c) and Article 7(1) of Regulation (EC) No 261/2004:

   Does the passenger have a choice, that is to say, can he or she make a claim against either of the air carriers?

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

Request for a preliminary ruling from the Commissione Tributaria Regionale del Lazio (Italy) lodged on 10 June 2020 — Agenzia delle dogane e dei monopoli — Ufficio delle dogane di Gaeta v Punto Nautica Srl

(Case C-255/20)

(2020/C 279/47)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale del Lazio

Parties to the main proceedings

Appellant: Agenzia delle dogane e dei monopoli — Ufficio delle dogane di Gaeta

Respondent: Punto Nautica Srl

Question referred

Must the judgment of the Court of Justice of the European Union handed down in Case C-82/12, and Article 3(2) of Council Directive 92/12/EEC, ([1]) be interpreted as precluding the provisions of Italian law currently in force as set out in Article 17 of Legislative Decree No 398 of 21 December 1990 and in Article 3(1) of Lazio Regional Law … No 19 of 2011, which appear to introduce a regional tax on transport petrol which is not for 'specific purposes' as required by the abovementioned Community directive?

([1]) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 9 June 2020 — Viva Telekom Bulgaria EOOD v Direktor na Direktsia Obzhalvane i danachno-osiguritelna praktika — Sofia

(Case C-257/20)

(2020/C 279/48)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Viva Telekom Bulgaria EOOD

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

Questions referred

1. Does national legislation such as that enacted in Article 16(2), point 3, of the Zakon za korporativnoto podohodno oblagane (Bulgarian Law on Corporation Tax, 'the ZKPO') conflict with the principle of proportionality enshrined in Article 5(4) and Article 12(b) of the Treaty on European Union and the right to an effective remedy and to a fair trial enshrined in Article 47 of the Charter of Fundamental Rights of the European Union?

2. Are interest payments in accordance with Article 4(1)(d) of Directive 2003/49/EC (1) profit distributions to which Article 5 of Directive 2011/96/EU (2) applies?

3. Does the rule laid down in Article 1(1)(b) and (3) and Article 5 of Directive 2011/96/EU apply to payments pursuant to an interest-free loan, which becomes due 60 years after the loan contract was entered into, and which is covered by Article 4(1)(d) of Directive 2003/49/EC?

4. Does national legislation such as that enacted in Article 195(1) and Article 200(2) of the ZKPO and Article 200a(1) and (5), point 4, of the ZKPO (repealed), as amended, which applied from 1 January 2011 to 1 January 2015, and Article 195(1), (6), point 3, and (11), point 4, of the ZKPO, as amended on 1 January 2015, and a taxation practice according to which unpaid interest on an interest-free 60-year loan granted on 22 November 2013 to a resident subsidiary by a parent company registered in a different Member State is subject to withholding tax conflict with Article 49 and Article 63(1) and (2) of the Treaty on the Functioning of the European Union, Article 1(1)(b) and (3) and Article 5 of Directive 2011/96/EU and Article 4(1)(d) of Directive 2003/49/EC?

5. Does national legislation such as that enacted in Article 16(1) and (2), point 3, and Article 195(1) of the ZKPO on the taxation at source of fictitious interest income on an interest-free loan granted to a resident company by a company in another Member State which is the borrower's sole shareholder conflict with Article 3(1)(h) to (j), Article 5(1)(a) and (b), Article 7(1) and Article 8 of Council Directive 2008/7/EC (3) of 12 February 2008 concerning indirect taxes on the raising of capital?

6. Does the transposition of Directive 2003/49/EC in Article 200(2) and Article 200a(1) and (5), point 4, of the ZKPO in 2011, that is prior to expiry of the transposition period laid down in point 3 of the section on taxation in Annex VI to the Act and the Protocol to the Treaty concerning the accession of the Republic of Bulgaria to the European Union, which sets a tax rate of 10 % rather than the maximum rate of 5 % prescribed in the Act and the Protocol to the Treaty concerning the accession of the Republic of Bulgaria to the European Union, infringe the principles of legal certainty and legitimate expectation?

(1) Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157, p. 49, Special edition in Bulgarian: Chapter 09 Volume 002 P. 75).

(2) 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 (OJ 2011 L 345, p. 8).

(3) OJ 2008 L 46, p. 11.

Request for a preliminary ruling from the Rayonen sad Lukovit (Bulgaria) lodged on 15 June 2020 — VB v Glavna Direktsia 'Pozharna bezopasnost i zaschtita na naselenieto' kam Ministerstvo na vatreshnite raboti

(Case C-262/20)

(2020/C 279/49)

Language of the case: Bulgarian

Referring court

Rayonen sad Lukovit

Parties to the main proceedings

Applicant: VB

Defendant: Glavna Direktsia 'Pozharna bezopasnost i zaschtita na naselenieto' kam Ministerstvo na vatreshnite raboti

Questions referred

1. For the purposes of effective protection under Article 12(a) of Directive 2003/88/EC, [1] should the normal duration of periods of night duty of police officers and firefighters be shorter than the normal duration of periods of day duty?
2. For the purposes of the principle of equality set out in Articles 20 and 31 of the Charter of Fundamental Rights of the European Union, must the normal duration of periods of night work laid down in national law for workers in the private sector (7 hours) also apply to public-sector workers, including police officers and firefighters?
3. Can the objective of limiting the duration of periods of night work mentioned in the eighth recital of Directive 2003/88/EC be effectively attained only if the normal duration of periods of night work, including for public-sector workers, is expressly laid down in national law?

(1) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9, Special edition in Bulgarian: Chapter 05 Volume 007 P. 3).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 15 June 2020 — Airhelp Limited v Laudamotion GmbH

(Case C-263/20)

(2020/C 279/50)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: Airhelp Limited

Defendant: Laudamotion GmbH

Questions referred

1. Are Article 5(1)(c) and Article 7 of Regulation (EC) No 261/2004 [1] to be interpreted as meaning that the passenger has a right to compensation where the original time of departure of 14.40 is brought forward to 8.25 on the same day?

2. Is Article 5(1)(c)(i) to (iii) of Regulation No 261/2004 to be interpreted as meaning that examination as to whether the passenger is informed of the cancellation is to be conducted solely in accordance with that provision and precludes the application of national law on the receipt of declarations which was enacted in transposition of Directive 2000/31/EC ([2]) and includes a provision whereby declarations are deemed to be received?

3. Are Article 5(1)(c)(i) to (iii) of Regulation No 261/2004 and Article 11 of Directive 2000/31 to be interpreted as meaning that, where a passenger reserved a flight via a booking platform and provided his telephone number and email address, but the booking platform forwarded to the air carrier the telephone number and an email address that was generated automatically by the booking platform, delivery to the automatically generated email address of the notification that the flight has been brought forward is to be regarded as information or delivery of notification that the flight has been brought forward, even where the booking platform does not forward, or delays forwarding, the air carrier's notification to the passenger?

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

([2]) Directive of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 18 June 2020 — AG and Others v Austrian Airlines AG

(Case C-270/20)

(2020/C 279/51)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Appellants: AG, MG and HG, all minors and all represented for legal purposes

Defendant: Austrian Airlines AG

Question referred

Is Article 7(2)(b) of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that the air carrier may reduce the entitlement to compensation under Article 7(1)(b) of the Regulation also in the case where, as a result of the cancellation of the flight booked, the passengers are offered an alternative flight the scheduled time of departure and the scheduled time of arrival of which are each 11:55 hours earlier than the flight times of the cancelled flight?

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

Action brought on 23 June 2020 — European Commission v Council of the European Union

(Case C-275/20)

(2020/C 279/52)

Language of the case: English

Parties

Applicant: European Commission (represented by: J.-F. Brakeland, M. Afonso, D. Schaffrin, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision (EU) 2020/470 [1] of 25 March 2020 as regards the extension of the period of entitlement for audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part;

— order Council to pay the costs.

Pleas in law and main arguments

The action for annulment brought by the Commission concerns the renewal for 3 years of an entitlement of audiovisual co-productions of producers from the EU Party and Korea to benefit from the respective schemes for the promotion of local/regional cultural content under Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, and the Republic of Korea.

The Commission relies, in support of its action, on one single ground.

The Commission considers that by basing its decision on Article 3(1) of Council Decision (EU) 2015/2169 [2] of 1 October 2015 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, and not on Article 218(6) TFEU as proposed by the Commission, the Council relied on a secondary legal basis, not provided for in the Treaty on the Functioning of the European Union (TFEU). Therefore, the Council violated the principle of conferral of powers in Article 13(2) of the Treaty on European Union (TEU) and the principle of institutional balance as developed in the case-law of the Court of Justice.

[1] Council Decision (EU) 2020/470 of 25 March 2020 as regards the extension of the period of entitlement for audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ 2020, L 101, p. 1.

[2] Council Decision (EU) 2015/2169 of 1 October 2015 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ 2015, L 307, p. 2.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 30 June 2020 — EL and CP v Ryanair Designated Activity Company

(Case C-287/20)

(2020/C 279/53)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: EL, CP

Defendant: Ryanair Designated Activity Company

Questions referred

Does the trade-union-organised strike by the staff of an operating air carrier constitute an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation (EC) No 261/2004? [1]

Is it relevant in this regard whether negotiations were held with the employees' representative(s) in advance of the strike?

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

GENERAL COURT

Action brought on 28 May 2020 — ACMO and Others v SRB

(Case T-330/20)

(2020/C 279/54)

Language of the case: English

Parties

Applicants: ACMO Sàrl (Luxembourg, Luxembourg) and 69 other applicants (represented by: T. Soames, N. Chesaites, lawyers and R. East, Solicitor)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— annul Article 2 of the Single Resolution Board's decision SRB/EES/2020/52 of 17 March 2020 determining whether compensation needs to be granted to the shareholders and creditors in respect of which the resolution actions concerning Banco Popular Espanol S.A. have been effected ('the contested decision'); and/or

— annul Article 1 of the contested decision; and/or

— annul Article 3 of the contested decision; and/or

— in the alternative, annul the contested decision in its entirety;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision, and in particular the determination that no compensation is due, pursuant to Article 76(1)(e) of Regulation (EU) 806/2014 of the European Parliament and of the Council ([1]) (Article 2), to creditors (including the applicants), is vitiated by manifest errors of assessment and errors of law, and therefore in violation of the applicants' right to property. Specifically, the applicants argue that the SRB committed manifest errors of assessment and errors of law by adopting the contested decision on the basis of a valuation report ('Valuation 3 Report') and a 'clarification' thereof appended to the contested decision, authored by Deloitte Réviseurs d'Entreprises ('Deloitte') which determined that the applicants would not have realised any recoveries if Banco Popular had entered normal insolvency proceedings in Spain.

2. Second plea in law, alleging that the SRB's decision to appoint Deloitte to undertake Valuation 3 was vitiated by manifest errors of assessment and/or errors of law in that Deloitte did not satisfy the fundamental criterion of independence under Article 20(16) of Regulation (EU) 806/2014.

3. Third plea in law, alleging that the SRB improperly delegated its decision-making powers under Regulation (EU) 806/2014 to Deloitte in violation of the principle laid down by Union case law in the seminal Case 9/56 *Meroni*. ([2])

([1]) Regulation (EU) 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).

([2]) Judgment of 13 June 1958, *Meroni* v *High Authority*, Case 9/56, EU:C:1958:7.

Action brought on 27 May 2020 KI v eu-LISA

(Case T-338/20)

(2020/C 279/55)

Language of the case: English

Parties

Applicant: KI (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice

Form of order sought

The applicant claims that the Court should:

— annul the decision of 15 July 2019 to reassign the applicant to another position;

— as far as necessary, annul the decision of 17 February 2020 rejecting the applicant's complaint;

— order the compensation of his moral prejudice estimated at 10 000 EUR; and,

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an illegality of the decision of the Executive Director of 25 June 2019, confirmed and complemented by the decision of the Executive Director of 29 August 2019, insofar as it violates the requirements of a fair and transparent comparison of merits, the principle of non-discrimination, Article 41 of the Charter and the interest of the service.

2. Second plea in law, alleging that the reassignment decision manifestly violates the interests of the service and the principle of assignment to an equivalent post.

3. Third plea in law, alleging a violation of the right to be heard, of the duty to state reasons and of Article 41 of the Charter.

4. Fourth plea in law, alleging a violation of the duty of care and of Article 31, paragraph 2 of the Charter, Article 1st sexies of the Staff Regulations and Directive 2003/88/CE concerning certain aspects of the organisation of working time, as well as breach of the principle of non-discrimination.

Action brought on 11 June 2020 — Net Technologies Finland v REA

(Case T-358/20)

(2020/C 279/56)

Language of the case: English

Parties

Applicant: Net Technologies Finland Oy (Helsinki, Finland) (represented by: S. Pappas and N. Kyriazopoulou, lawyers)

Defendant: Research Executive Agency

Form of order sought

The applicant claims that the Court should:

— declare that i) the Research Executive Agency has breached its contractual obligations under the Grant Agreement FP7-SEC-2012-312484, concluded in the context of Seventh Framework Programme for research, technological development and demonstration activities, ii) the claim formulated in the debit notes no 3242005872 concerning the reimbursement of the amount of EUR 171 342.97 for unjustified contribution and no 3242005825 concerning the reimbursement of the amount of EUR 17 134.30 for liquidated damages, is unfounded, and iii) the corresponding costs for the in-house consultants are eligible; and,

— order the defendant to bear its costs as well as the applicant's costs for the current proceedings.

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 REA has misinterpreted the provisions regarding eligibility of costs and failed to fulfill its contractual obligations, by issuing the contested debit notes, on the grounds that the costs for in-house consultants met the eligibility criteria, set out in the Grant Agreement and thus they do not give rise to any reimbursement claim.

2. Second plea in law, alleging that the REA failed to perform the contract in good faith.

3. Third plea in law, alleging that the REA has violated the principle of proportionality.

Action brought on 18 June 2020 — KN v EESC

(Case T-377/20)

(2020/C 279/57)

Language of the case: French

Parties

Applicant: KN (represented by: M. Casado García-Hirschfeld and M. Aboudi, lawyers)

Defendant: European Economic and Social Committee

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible;

— annul the contested decision of 9 June 2020, notified on 17 June 2020;

— order the payment of compensation for non-material damage, amounting to the sum of EUR 200 000, and compensation for material damage, estimated in the amount of EUR 50 000;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of procedural rights and of the fundamental rights to good administration and to be heard as well as infringement of the principle of proportionality.

2. Second plea in law, alleging infringement of the principle of presumption of innocence and of the principle of impartiality.

3. Third plea in law, alleging infringement of the principle of legal certainty, in accordance with the maxim 'nulla poena sine lege', and of the principle of non-retroactivity.

4. Fourth plea in law, alleging infringement of the principle of confidentiality of disciplinary proceedings and judicial investigations as well as an apparent infringement of the guarantees provided under Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

Action brought on 16 June 2020 — OC (*) v Commission

(Case T-384/20)

(2020/C 279/58)

Language of the case: Greek

Parties

Applicant: OC (*) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— order the European Commission to pay the applicant an amount totalling EUR 1 100 000 to compensate for the non-material harm that she has suffered up until today, and

— order the European Commission to pay all the applicant's costs.

Pleas in law and main arguments

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

1. By the present action, the applicant seeks, pursuant to Article 268 and the second paragraph of Article 340 TFEU, compensation for the harm that she has suffered on account of unlawful acts and omissions of the European Anti-Fraud Office (OLAF), following the publication by the latter of Press Release No 13/2020 by which personal data and false information that related to the applicant unlawfully leaked out.

2. According to the applicant, in (a) publishing (by the press release directed at the public at large) personal data of the applicant and (b) disseminating inaccurate and false information in the press release, OLAF seriously infringed rules that confer rights on individuals.

3. In particular, by those acts, it infringed Articles 4(1)(a) and (b), 5, 6 and 15(3) of Regulation 2018/1725, [1] Articles 10 (5) and 9(1) of Regulation No 883/2013, [2] and the presumption of innocence, the right to good administration and the principle of proportionality.

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[1] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

[2] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

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

Action brought on 23 June 2020 — KO v Commission

(Case T-389/20)

(2020/C 279/59)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 18 October 2019 by which PMO decided not to grant the applicant the benefit of the expatriation allowance, along with, if necessary, the decision of 20 March 2020 by which the defendant rejected the complaint under Article 90(2) of the Staff Regulations lodged by the applicant; and

— order that the defendant pays all the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 69 of the Staff Regulations and of Article 4(1) and (2) of Annex VII to the Staff Regulations.

2. Second plea in law, alleging breach of the principle of good administration and duty of care.

Action brought on 17 June 2020 — Scandlines Danmark and Scandlines Deutschland v Commission

(Case T-390/20)

(2020/C 279/60)

Language of the case: English

Parties

Applicants: Scandlines Danmark ApS (Copenhagen, Denmark), Scandlines Deutschland GmbH (Hamburg, Germany) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the European Commission’s decision of 20 March 2020 on State aid SA.39078 — 2019/C (ex 2014/N) which Denmark implemented for Femern A/S for the planning and construction of the Fehmarn Fixed Link between Denmark and Germany;

— order the Commission to pay the applicant’s costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 107(1) TFEU and Article 1(d) and (e) of Council Regulation (EU) 2015/1589, [1] by classifying (i) all State guarantees and State loans granted under the Construction Act as one single ad hoc aid; and (ii) a capital injection and all State guarantees and State loans granted under the Planning Act as another single ad hoc aid, whereas each State loan and State guarantee should constitute a separate ad hoc aid measure notified individually to the Commission when the terms of each State loan and State guarantee are agreed between Femern A/S and the Danish authorities.

2. Second plea in law, alleging that the Commission infringed Article 107(3)(b) TFEU and the IPCEI Communication, [2] by committing errors of law and manifest errors of assessment by deeming the aid to be compatible with the internal market. This plea is divided into four sub-pleas:

— first, the applicant argues that the Commission has erred by finding that the Fixed Link is in the European interest;

— second, the Commission has erred by finding that the aid is necessary, as the aid has no incentive effect and does not satisfy the requirements for the counterfactual scenario and the existence of alternative projects set out in the IPCEI Communication. Also, the Commission has erred in the contested decision by relying on an erroneously low IRR, as it calculated it on the basis of a very short lifetime of the project of 40 years, which does not correspond to the true lifetime of the infrastructure, i.e., the period during which Femern A/S will be able to economically exploit the Fixed Link;

— third, the Commission has erred by holding that the aid is proportionate, as the aid is unlimited in time. The Commission also committed a number of manifest errors in the funding gap analysis. The Commission has erroneously relied on the above very short lifetime of the project, which has resulted in a higher proportion of costs compared to the revenues from the operation of the Fixed Link; the Commission has underestimated the projected revenues of Femern A/S and overestimated the projected costs by including in particular operating costs in the funding gap calculation. Finally, the Commission erroneously concludes that the aid element consists in the interest rate paid by Femern A/S to the Danish State, whereas, due to the fact that no private operator was willing to invest in the project without significant State aid, the aid element consists of the entire amount of the State loans and the amounts of the loans covered by the State guarantees;

— fourth, the Commission has erred by concluding that the aid does not cause an undue distortion of competition, as the aid leads to the creation of a dominant position for Femern A/S in the relevant market, it creates overcapacity, and allows Femern A/S to use below-cost pricing. Finally, the Commission disregarded the fact that the aid is used for downgrading the access to the applicant's harbour in Germany. The Commission failed to acknowledge that these negative effects outweigh any positive effects created by the aid.

[1] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

[2] Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (OJ 2014 C 188, p. 4).

Action brought on 17 June 2020 — Stena Line Scandinavia v Commission

(Case T-391/20)

(2020/C 279/61)

Language of the case: English

Parties

Applicant: Stena Line Scandinavia AB (Göteborg, Sweden) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision of 20 March 2020 on State aid SA.39078 — 2019/C (ex 2014/N) which Denmark implemented for Femern A/S;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 107(1) TFEU and Article 1(d) and (e) of Council Regulation (EU) 2015/1589, [1] by classifying (i) all State guarantees and State loans granted under the Construction Act as one single ad hoc aid; and (ii) a capital injection and all State guarantees and State loans granted under the Planning Act as another single ad hoc aid, whereas each State loan and State guarantee should constitute a separate ad hoc aid measure notified individually to the Commission when the terms of each State loan and State guarantee are agreed between Femern A/S and the Danish authorities.

2. Second plea in law, alleging that the Commission infringed Article 107(3)(b) TFEU and the IPCEI Communication, [2] by committing errors of law and manifest errors of assessment by deeming the aid to be compatible with the internal market. This plea is divided into four sub-pleas:

   — first, the applicant argues that the Commission has erred by finding that the Fixed Link is in the European interest;

   — second, it is argued that the Commission has erred by finding that the aid is necessary, as the aid has no incentive effect and does not satisfy the requirements for the counterfactual scenario and the existence of alternative projects set out in the IPCEI Communication. Also, the Commission has erred in the contested decision by relying on an erroneously low IRR, as it calculated it on the basis of a very short lifetime of the project of 40 years, which does not correspond to the true lifetime of the infrastructure, i.e., the period during which Femern A/S will be able to economically exploit the Fixed Link;

   — third, the applicant argues that Commission has erred by holing that the aid is proportionate, as the aid is unlimited in time. The Commission also committed a number of manifest errors in the funding gap analysis. The Commission has erroneously relied on the above very short lifetime of the project, which has resulted in a higher proportion of costs compared to the revenues from the operation of the Fixed Link; the Commission has underestimated the projected revenues of Femern A/S and overestimated the projected costs, by including in particular operating costs in the funding gap calculation. Finally, the Commission erroneously concludes that the aid element consists in the interest rate paid by Femern A/S to the Danish State, whereas, due to the fact that no private operator was willing to invest in the project without significant State aid, the aid element consists of the entire amount of the State loans and the amounts of the loans covered by the State guarantees.

   — fourth, it is argued that the Commission has erred by concluding that the aid does not cause an undue distortion of competition, as the aid leads to the creation of a dominant position for Femern A/S in the relevant market, it creates overcapacity, and allows Femern A/S to use below-cost pricing. The Commission failed to acknowledge that these negative effects outweigh any positive effects created by the aid.

[1] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

[2] Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (OJ 2014 C 188, p. 4).

Action brought on 23 June 2020 –Polisario Front v Council

(Case T-393/20)

(2020/C 279/62)

Language of the case: French

Parties

Applicant: Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (Polisario Front) (represented by: G. Devers, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare its action admissible;

— annul the contested decision;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action against Council Decision (EU) 2020/462 of 20 February 2020 establishing the position to be adopted on behalf of the European Union within the Association Committee set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, concerning the exchange of information for the purpose of evaluating the impact of the Agreement in the form of an Exchange of Letters on the amendment of the Euro-Mediterranean Agreement (OJ 2020 L 99, p. 13), the applicant relies on a single plea in law, alleging that that decision lacks legal basis due to the unlawfulness of Decision 2019/217. That plea in law is divided into ten parts.

1. First part, alleging lack of competence on the part of the Council to adopt the contested decision, in so far as the European Union and the Kingdom of Morocco do not have the competence to conclude an international agreement applicable to Western Sahara instead of the Sahrawi people, represented by the Polisario Front.

2. Second part, alleging failure to comply with the obligation to examine the question of respect for fundamental rights and for international humanitarian law, in so far as the Council failed to examine that question before adopting the contested decision.

3. Third part, alleging breach, on the part of the Council, of its obligation to execute judgments of the Court of Justice, in so far as the contested decision disregards the grounds of the judgment of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118).

4. Fourth part, alleging breach of the essential principles and values guiding EU action on the international scene, since:

   — first, in breach of the right of peoples to respect for their national unity, Decision 2019/217 denies the existence of the Sahrawi people by using the expression ‘the people concerned’ instead;

   — second, in breach of the right of peoples freely to dispose of their natural resources, Decision 2019/217 concludes an international agreement that organises, without the consent of the Sahrawi people, the exploitation of its resources;

   — third, Decision 2019/217 concludes an international agreement applicable to occupied Western Sahara, with the Kingdom of Morocco, in the context of the latter’s policy of annexation with regard to that territory and the systematic breaches of fundamental rights that maintaining such a policy entails.

5. Fifth part, alleging breach of the principle of protection of legitimate expectations, in so far as the contested decision is contrary to the declarations of the European Union which has consistently reiterated the need to observe the principles of self-determination and of the relative effect of treaties.

6. Sixth part, alleging misapplication of the principle of proportionality since, given the separate and distinct status of Western Sahara, the intangible character of the right to self-determination and the status of third party of the Sahrawi people, it was not for the Council to carry out a balancing exercise between the alleged advantages for the economy of that territory, deriving from the granting of preferences, and the disadvantages, such as the extensive use of natural resources and in particular groundwater reserves.

7. Seventh part, alleging breach of the right to self-determination, since:

   — first, by using the expression 'the people concerned', Decision 2019/217 and the agreement concluded by that decision deny the national unity of the Sahrawi people as a subject of the right to self-determination;

   — second, while the amending agreement concluded by it organises the export of its natural resources to the European Union, which are defined as being of Moroccan origin, Decision 2019/217 denies, by its very nature, the sovereign rights of the Sahrawi people over its natural resources and deprives it of its own means of subsistence;

   — third, as regards the territorial components of the right to self-determination, on the one hand, by concluding, with the Kingdom of Morocco, an international agreement applicable to the part of Western Sahara that is under Moroccan occupation, Decision 2019/217 breaches the right of the Sahrawi people to respect for the territorial integrity of its national territory, by denying the separate and distinct status of that territory, and endorses its illegal division by the Moroccan 'Berm'. On the other hand, by defining products from Western Sahara as being of Moroccan origin, the agreement concluded by Decision 2019/217 constitutes a breach of the separate and distinct status of Western Sahara, since it has the effect of concealing those products' true country of origin.

8. Eight part, alleging breach of the principle of the relative effect of treaties since, by using the expression 'the people concerned', Decision 2019/217 and the agreement concluded by that decision deny the existence of the Sahrawi people, represented by the Polisario Front, as a third party to EU-Morocco relations and impose international obligations on the Sahrawi people concerning its national territory and its natural resources, without its consent.

9. Ninth part, alleging violations of international humanitarian law and international criminal law, since:

   — first, Decision 2019/217 concludes an international agreement applicable to Western Sahara although the Moroccan occupying forces do not have *jus tractatus* with regard to that territory and are prohibited from exploiting its natural resources;

   — second, by using the expression 'the people concerned', which has the effect of including the Moroccan settlers on the occupied Sahrawi territory, Decision 2019/217 and the agreement concluded by it endorse the transfer of populations carried out by the Kingdom of Morocco, in serious violation of the sixth paragraph of Article 49 of the Fourth Geneva Convention and Article 8(2)(b)(viii) of the Statute of the International Criminal Court;

   — third, by granting tariff preferences to 'Moroccan' products from Western Sahara, Decision 2019/217 creates an incentive for Moroccan settlers to remain permanently on the occupied territory in order to profit from the advantages created by the amending agreement, in serious violation of the aforementioned provisions.

10. Tenth part, alleging breach, on the part of the European Union, of its obligations under the law of international responsibility, since, by concluding an international agreement, with the Kingdom of Morocco, that is applicable to Western Sahara, Decision 2019/217 endorses serious violations of international law committed by the Moroccan occupying forces against the Sahrawi people and renders aid and assistance in maintaining the situation created by those violations.

Action brought on 26 June 2020 — Allergan Holdings France v EUIPO — Dermavita Company (JUVEDERM)

(Case T-397/20)

(2020/C 279/63)

Language of the case: English

Parties

Applicant: Allergan Holdings France SAS (Courbevoie, France) (represented by: J. Day, Solicitor and T. de Haan, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dermavita Company SARL (Beirut, Lebanon)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark JUVEDERM — European Union trade mark No 2 196 822

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 April 2020 in Case R 877/2019-4

Form of order sought

The applicant claims that the Court should:

— annul points 3 and 4 of the operative part of the decision insofar as it dismissed the applicant appeal against the revocation of its EU trade mark registration No 2 196 822 JUVEDERM for 'dermal implants', and ordered the applicant to bear its own costs;

— order EUIPO and Dermavita Company Ltd to bear their own costs and pay those of the applicant, including those incurred by the applicant before the Fourth Board of Appeal.

Pleas in law

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

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

Action brought on 19 June 2020 — Wuxi Suntech Power v Commission

(Case T-403/20)

(2020/C 279/64)

Language of the case: English

Parties

Applicant: Wuxi Suntech Power Co. Ltd (Wuxi, China) (represented by: Y. Melin and B. Vigneron, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2020/444 of 25 March 2020 invalidating invoices issued by Wuxi Suntech Power Co. Ltd in breach of the undertaking repealed by Implementing Regulation (EU) 2017/1570;

— order the Commission, and any interveners who may be allowed to support the Commission in the course of the proceedings, to bear 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 in assessing the facts of the case, and breached Article 8 of 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, as well as Article 13 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, and in particular paragraphs 9 thereof, when it considered that the applicant breached the terms of the undertaking agreed between the Commission and the CCCME on behalf of *inter alia* the applicant. The applicant acted in compliance with the undertaking by reporting invoices corresponding to the resales made by Suntech Europe France, Suntech Power Italy Co., Srl and Suntech Power Deutschland GmbH to the first independent customer in the EU until it ceased to be related to these companies. The applicant acted in compliance with the undertaking as well by notifying the Commission in a timely manner about the change to its shareholding following a restructuring that ended the affiliation of the applicant to the aforementioned companies.

2. Second plea in law, alleging that even if the applicant breached the undertaking, *quod non*, the Commission acted illegally by declaring the relevant invoices invalid and collecting duties on them because the powers it relies upon to do so have either expired and/or been revoked. This is allegedly because implementing Regulations (EU) No 1238/2013 and No 1239/2013 expired on 7 December 2015. Similarly, Implementing Regulations (EU) 2017/367 and No 2017/366 expired on 3 September 2018.

3. Third plea in law, based on a plea of illegality of Article 3(2) of Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, of Article 2(2) of Commission Implementing Regulation (EU) 2017/367 of 1 March 2017 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 11 (2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036, of Article 2(2) of Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, and of Article 2(2) of Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037, which give to the Commission the power to declare undertaking invoices invalid and order customs to collect duties on past imports released for free circulation.

Action brought on 2 July 2020 — KR v Commission

(Case T-408/20)

(2020/C 279/65)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 25 October 2019 to no longer regard the applicant's child as being his dependent child within the meaning of Article 2 of Annex VII to 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 a single plea in law alleging that the Commission misconstrued, first, the concept of dependent child referred to in Article 2 of Annex VII to the Staff Regulations of Officials of the European Union and, second, revised Conclusion No 223/04 of 30 January 2013 of the Heads of Administration of the European Union.

Action brought on 3 July 2020 — KS v Frontex

(Case T-409/20)

(2020/C 279/66)

Language of the case: French

Parties

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

Defendant: European Border and Coast Guard Agency

Form of order sought

The applicant claims that the Court should:

— annul the dismissal decision of 30 August 2019 and, in so far as necessary, the express decision rejecting the complaint dated 23 March 2020;

— annul the decision rejecting the request for assistance and compensation dated 13 February 2020;

— order the defendant to pay compensation for non-contractual liability, set at EUR 250 000;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action against the decision to terminate his contract as a member of the contract staff, the applicant relies on six pleas in law.

1. First plea in law, alleging a failure to state reasons and infringement of the right to be heard.

2. Second plea in law, alleging infringement of the status of 'informer' provided for in Articles 21a(3) and 22a(3) of the Staff Regulations of Officials of the European Union ('the Staff Regulations').

3. Third plea in law, alleging abuse of process.

4. Fourth plea in law, alleging infringement of the right to a fair hearing, specifically the rights of the defence, the presumption of innocence, the duty of care and the duty of impartiality, neutrality and objectivity, alleging a failure to carry out an investigation in order to establish whether the grounds for the breach of trust were genuine and justified, and alleging inequality between agents.

5. Fifth plea in law, alleging a manifest error of assessment.

6. Sixth plea in law, alleging breach of the duty to provide assistance and the duty to have regard for the welfare of officials, the duty of sound administration and infringement of the principle of proportionality.

In support of the action against the decision rejecting his request for assistance, the applicant relies on three pleas in law.

1. First plea in law, alleging a failure to state reasons and infringement of the right to be heard.

2. Second plea in law, alleging infringement of the status of 'informer' provided for in Articles 21a(3) and 22a(3) of the Staff Regulations.

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

In support of the action against the decision rejecting his claim for compensation, the applicant relies on three pleas in law.

1. First plea in law, alleging breach of Article 26 of the Staff Regulations and of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

2. Second plea in law, alleging breach of the duty to have regard for the welfare of officials and of sound administration in connection with any agent's well-being at work and working conditions.

3. Third plea in law, alleging breach of Articles 21a(3) and 22a(3) of the Staff Regulations, and breach of the duty to provide assistance, the duty to have regard for the welfare of officials and the duty of sound administration.

Action brought on 3 July 2020 — Esteves Lopes Granja v EUIPO — Instituto dos Vinhos do Douro e do Porto (PORTWO GIN)

(Case T-417/20)

(2020/C 279/67)

Language in which the application was lodged: Portuguese

Parties

Applicant: Joaquim José Esteves Lopes Granja (Vila Nova de Gaia, Portugal) (represented by: O. Santos Costa, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Instituto dos Vinhos do Douro e do Porto, IP (Peso da Régua, Portugal)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark PORTWO GIN — Application for registration No 16 308 462

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 21 April 2020 in Case R 993/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the Instituto dos Vinhos do Douro e do Porto, IP to pay the costs.

Plea in law

Infringement of Article 103(2)(a)(ii) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

Action brought on 7 July 2020 — GitLab v EUIPO — Gitlab (GitLab)

(Case T-418/20)

(2020/C 279/68)

Language of the case: English

Parties

Applicant: GitLab BV (Utrecht, Netherlands) (represented by: A. Lorente Berges, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gitlab OÜ (Tallinn, Estonia)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark GitLab — European Union trade mark No 13 751 169

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 May 2020 in Case R 2001/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Pleas in law

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

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

Action brought on 7 July 2020 — Deutsche Kreditbank v SRB

(Case T-419/20)

(2020/C 279/69)

Language of the case: German

Parties

Applicant: Deutsche Kreditbank AG (Berlin, Germany) (represented by: H. Berger and K. Helle, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 15 April 2020 on the calculation of contributions to the Single Resolution Fund collected in advance for 2020 (SRB/ES/2020/24), including its annexes, in so far as the contested decision, including Annex I and Annex II, concerns the applicant's contribution;

— order the defendant to pay the costs.

Pleas in law and main arguments

The action is based on nine pleas which are essentially identical or similar to the first, second, third, fourth, seventh, eighth, ninth, tenth and eleventh pleas in law put forward in Case T-405/20 *DZ Hyp* v *SRB*.

Action brought on 8 July 2020 — Portigon v SRB

(Case T-424/20)

(2020/C 279/70)

Language of the case: German

Parties

Applicant: Portigon AG (Düsseldorf, Germany) (represented by: D. Bliesener, V. Jungkind und F. Geber, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 15 April 2020 on the calculation of contributions to the Single Resolution Fund collected in advance for 2020 (SRB/ESF/2020/24), in so far as the decision concerns the applicant;

— stay the proceedings under Article 69(c) and (d) of the Rules of Procedure of the General Court until a final decision is issued in Cases T-420/17, T-413/18, T-481/19 and T-339/20 or until those cases are otherwise brought to a conclusion;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law, which are essentially identical or similar to the first, second, third, fifth, sixth, seventh and eighth plea in law put forward in Case T-339/20, *Portigon* v *SRB*.

Action brought on 8 July 2020 — Techniplan v Commission

(Case T-426/20)

(2020/C 279/71)

Language of the case: Italian

Parties

Applicant: Techniplan Srl (Rome, Italy) (represented by: R. Giuffrida and A. Bonavita, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— find and declare that the European Commission infringed Article 263 TFEU, in breach of the essential procedural requirements provided for in connection with the adoption of an act which, in the present case, has a direct and individual effect on Techniplan, in so far as it failed to take account of the letter by which the applicant objected to the pre-information and the applicant's letter of formal notice under Article 265 TFEU;

— order the Commission to pay an amount of compensation to the applicant for each day of delay in compliance and order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the decision and simultaneous debit note of 28 May 2020, issued against Techniplan s.r.l., demanding payment of EUR 107 505,66 in respect of the project FED/2011/261-985.

In support of the action, the applicant alleges failure to observe the principles of legal certainty and transparency and infringement of essential procedural requirements. The applicant claims in this regard:

— that the final audit report drawn up by a private company showed a series of alleged discrepancies and irregularities in the execution of the works which were disputed in detail by the applicant company, highlighting a number of serious inaccuracies contained in that audit report;

— that the applicant company submitted declarations by all the experts involved in the project, made before the Congolese judicial authorities, attesting their actual presence on the works sites;

— that the experts were regularly recruited and used by Techniplan in the execution of the works provided for in the contract;

— that the applicant company was unjustifiably excluded from the continuation of the contract;

— that the payments were blocked without specific justification being provided.

Action brought on 8 July 2020 — Max Heinr.Sutor v SRB

(Case T-427/20)

(2020/C 279/72)

Language of the case: German

Parties

Applicant: Max Heinr.Sutor OHG (Hamburg, Germany) (represented by: A. Glos, H. Nemeczek and T. Kreft, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 15 April 2020 on contributions levied in advance to the Single Resolution Fund for the year 2020 (Ref.: SRB/ES/2020/24 — 1405146-2020-JB), in so far as it concerns the applicant;

— order the SRB to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 5(1)(e) of Commission Delegated Regulation (EU) 2015/63 [1] in that the client funds administered by the applicant in a fiduciary capacity were not excluded from the calculation of the contribution levied in advance to the Single Resolution Fund for the year 2020.

2. Second plea in law, alleging an infringement of the second subparagraph of Article 70(2)(b) of Regulation (EU) No 806/2014 of the European Parliament and of the Council, [2] in conjunction with Article 103(7) of Directive 2014/59/EU of the European Parliament and of the Council, [3] because the decision infringes the principle of proportionality in that it fixes a bank levy increased 200 times on the sole basis of the — risk-free — fiduciary liabilities shown by the applicant in the balance sheet.

3. Third plea in law, alleging an infringement of the principle of equal treatment, in that the decision treats the applicant unequally in relation to credit institutions whose national accounting standards do not require disclosure of fiduciary liabilities or which prepare their accounts in accordance with IFRS, and investment firms which manage clients' funds, without any objective justification.

4. Fourth plea in law, alleging an infringement of Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') in that the decision encroaches on entrepreneurial freedom, since the inclusion of the risk-free fiduciary liabilities in the basis of assessment leads to an increase in the applicant's bank levy for the year 2020 by a factor of 200, without there being any justification for such encroachment.

5. Fifth plea in law, alleging an infringement of Article 49 in conjunction with Article 54 TFEU, in that the decision restricts the applicant's freedom to pursue her professional activities in the Member State in which she has her principal establishment, which restriction is disproportionate, and discriminates against the applicant in relation to credit institutions in other Member States.

6. Sixth plea in law, alleging an infringement of Article 41(1) and (2)(a) of the Charter, in that the applicant was not heard before the decision was approved by the defendant's Bureau.

7. Seventh plea in law, alleging an infringement of Article 41(1) and (2)(c) of the Charter and Article 296(2) TFEU, since the decision does not satisfy the requirements for the statement of reasons for acts of European administrative authorities.

8. Eighth plea in law (in the alternative), alleging nullity of the legal basis for the tax base under Article 14(2) in conjunction with Article 3(11) of Delegated Regulation (EU) 2015/63 as a result of a breach of the principle of equal treatment, in that it treats credit institutions which under their national accounting standards are required to show fiduciary liabilities on the liabilities side of the balance sheet in an objectively unjustifiably unequal manner in comparison with other credit institutions whose national accounting standards do not require disclosure of the fiduciary liabilities or which account under IFRS.

9. Ninth plea in law (in the alternative), alleging nullity of the legal basis for the tax base under Article 14(2) in conjunction with Article 3(11) of Delegated Regulation (EU) 2015/63 on the grounds of infringement of Article 16 of the Charter, on the grounds that the decision encroaches on entrepreneurial freedom and that such encroachment is not justified.

10. Tenth plea in law (in the alternative), alleging nullity of the legal basis for the assessment base under Article 14(2) in conjunction with Article 3(11) of Delegated Regulation (EU) 2015/63 on the ground that it infringes Article 49 in conjunction with Article 54 TFEU, because it is contrary to the freedom of establishment.

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

([2]) 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).

([3]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Action brought on 8 July 2020 — Deutsche Hypothekenbank v SRB

(Case T-428/20)

(2020/C 279/73)

Language of the case: German

Parties

Applicant: Deutsche Hypothekenbank AG (Hanover, Germany) (represented by: D. Flore and J. Seitz, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

— annul the defendant's decision of 15 April 2020 (SRB/ES/2020/24), including the annex thereto, concerning the calculation of the contributions levied in advance to the Single Resolution Fund for 2020 and the details of the calculation in so far as they are relevant to the applicant, and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of the right to be heard

   — The defendant failed to hear the applicant before adopting the contested decision, thereby infringing Article 41(1) and (2)(a) of the Charter of Fundamental Rights of the European Union ('the Charter').

2. Second plea in law, alleging an infringement of procedural rules

   — The contested decision was adopted in breach of general procedural requirements deriving from Article 41 of the Charter, Article 298 TFEU, general principles of law and the defendant's Rules of Procedure.

3. Third plea in law, alleging a failure to state reasons for the contested decision

— The contested decision does not contain a sufficient statement of reasons; in particular, it lacks a statement of reasons relating to the individual case and a description of the fundamental considerations in the context of proportionality and discretion.

— Moreover, the calculation of the annual contribution was not comprehensible.

4. Fourth plea in law, alleging an infringement of the fundamental right to effective judicial protection (Article 47(1) of the Charter) for lack of verifiability of the contested decision

— The failure to state reasons for the contested decision makes judicial review considerably more difficult.

— In particular, the defendant infringed the principle of audi alteram partem, according to which the parties must be able to discuss both the factual and legal circumstances which are decisive for the outcome of the proceedings.

5. Fifth plea in law, alleging that the application of the IPS (Institutional Protection Scheme) indicator of Commission Delegate Regulation (EU) 2015/63 [1] infringes higher-ranking law

— The Commission has no discretion when adopting Delegated Regulation (EU) 2015/63 as a delegated act within the meaning of Article 290 TFEU, which would result in limited judicial review. The same applies to the application of Delegated Regulation (EU) 2015/63 by the defendant.

— In applying the IPS indicator, the significance of the applicant's membership of the institutional guarantee scheme of the Sparkassen-Finanzgruppe was misjudged.

— Under the second sentence of Article 6(5) of Delegated Regulation (EU) 2015/63, the defendant should also have taken account of the low probability of the institution concerned being wound up and thus of the use of the Single Resolution Fund and should have observed the principle of proportionality.

6. Sixth plea in law, alleging that the consideration of the overall derivative risk position within the framework of the risk indicator 'trading activities, off-balance-sheet risks, derivatives, complexity and settlement capability' violates higher-ranking law

— In accordance with the requirement of orientation to the risk profile, the defendant should have taken into account, when considering the overall derivative risk position in the context of the first sentence of Article 6(5)(a) and the first sentence of Article 7(4)(a) of Delegated Regulation (EU) 2015/63, that in the applicant's case all derivatives are allocated to the non-trading portfolio and serve exclusively for hedging purposes.

7. Seventh plea in law, alleging that the application of the risk adjustment multiplier infringes higher-ranking law

— When setting the risk adjustment multiplier, the defendant should have taken into account the applicant's risk-averse business model as a Pfandbrief bank without trading book activities and its low probability of default in accordance with the principle of orientation towards the risk profile and the fundamental right to entrepreneurial freedom under Article 16 of the Charter.

8. Eighth plea in law, alleging that the second sentence of Article 7(4) of Delegate Regulation (EU) 2015/63 infringes higher-ranking law

— By providing for a relativisation of the IPS indicator in the second sentence of Article 7(4) of Delegated Regulation (EU) 2015/63, that provision infringes the general principle of equality under Article 20 of the Charter and the principle of proportionality, since institutions which are subject to the same institutional guarantee and thus have the same probability of default may be treated differently.

9. Ninth plea in law, alleging that the definition of 'interbank deposits' according to Annex I, Step 1, of Delegate Regulation (EU) 2015/63 infringes higher-ranking law

— The definition of 'interbank deposits' provided for in Annex I, Step 1, of Delegate Regulation (EU) 2015/63 is unlawful in that it also includes risk-neutral securities, such as registered Pfandbriefe, in the calculation of the risk indicator 'interbank loans and deposits', thereby increasing the risk.

10. Tenth plea in law, alleging that the classification laid down in Annex I, Step 2, of Delegate Regulation (EU) 2015/63 infringes higher-ranking law

    — The classification laid down in Annex I, Step 2, of Delegate Regulation (EU) 2015/63 is unlawful because the small number of classes and the identical number of institutions per class do not allow the risk profile of the respective institution, such as the applicant, to be taken into account in a sufficiently differentiated manner.

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Action brought on 8 July 2020 — Sedus Stoll v EUIPO — Kappes (Sedus ergo+)

(Case T-429/20)

(2020/C 279/74)

Language in which the application was lodged: German

Parties

Applicant: Sedus Stoll AG (Dogern, Germany) (represented by: M. Goldmann and J. Thomsen)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wolfgang Kappes (Bochum, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark Sedus ergo+ — Application for registration No 144 074 98

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 March 2020 in Case R 1303/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— dismiss the appeal against the decision of the Opposition Division in Case B 2 863 929; and

— order the defendant to pay the costs of the proceedings before the Court of Justice of the European Union and order the potential intervener (Wolfgang Kappes) to pay the costs of the appeal proceedings before EUIPO.

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 9 July 2020 — KV v Commission

(Case T-430/20)

(2020/C 279/75)

Language of the case: Italian

Parties

Applicant: KV (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 19 September 2019 rejecting the request for review of the applicant's exclusion from competition EPSO/AD/371/19;

— annul the appointing authority's decision of 31 March 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 five pleas in law.

1. First plea in law, alleging a manifest error of assessment in so far as the applicant's three years of professional experience in communication were not taken into consideration.

2. Second plea in law, alleging infringement of the competition notice in so far as the selection board drew up criteria for assessing candidates which did not comply with the competition notice, requiring, in particular, specific professional experience in communication.

3. Third plea in law, alleging failure to observe the principle of equality in so far as the selection panel, by assessing the candidates on the basis of criteria different to those set out in the competition notice, failed to ensure that objectivity and impartiality were respected in the assessment of the candidates' professional experience.

4. Fourth plea in law, alleging infringement of the obligation to state reasons in so far as EPSO failed to clarify, with reference to facts, why the applicant's professional experience did not meet the criteria set out in the competition notice.

5. Fifth plea in law, alleging failure to observe the principle of equality of parties in proceedings in so far as EPSO, by not providing a sufficient statement of reasons, failed to allow the applicant sufficiently to develop his allegations from the time at which he lodged his appeal.

Action brought on 9 July 2020 — UniCredit Bank v SRB

(Case T-431/20)

(2020/C 279/76)

Language of the case: German

Parties

Applicant: UniCredit Bank AG (Munich, Germany) (represented by: F. Schäfer, H. Großerichter and F. Kruis, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 15 April 2020 on the calculation of contributions to the Single Resolution Fund collected in advance for 2020 (SRB/ES/2020/24), including annexes, in so far as they concern the applicant;

— order the Single Resolution Board to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements and of the right to sound administration, since the contested decision and Annexes I and II thereto did not contain an adequate statement of reasons pursuant to Article 296(2) TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter').

2. Second plea in law, alleging infringement of essential procedural requirements and of the right to sound administration under Article 41(2)(a) of the Charter, since the applicant was not heard before the adoption of the contested decision, which contains an individual measure adversely affecting the applicant.

3. Third plea in law, alleging infringement of the right to an effective remedy under Article 47(1) of the Charter, since it is in practice impossible to carry out an effective judicial review of the accuracy of the decision's content.

Action brought on 6 July 2020 — KY v Court of Justice of the European Union

(Case T-433/20)

(2020/C 279/77)

Language of the case: French

Parties

Applicant: KY (represented by: J.-N. Louis, lawyer)

Defendant: Court of Justice of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the implied decision of 17 September 2019, confirmed by the express decision of 10 October 2019, rejecting the request for repayment of the part of the pension rights acquired by the applicant before her entry into service which was not credited on transfer to the EU pension scheme;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the duty of care. In that regard, the applicant submits that, in accordance with an EU institution's duty of care, it is required to inform the official not only of the minimum subsistence figure rule and its effect on the calculation of the pension, but also of the possibility of postponing the transfer of his or her pension rights until the grant of his or her actual pension rights.

2. Second plea in law, alleging unjust enrichment. The applicant submits that the refusal to repay the part of the national pension rights transferred to the EU scheme, which was not taken into account when calculating the pension rights, may lead to an unjustified appropriation and, therefore, an unjust enrichment for the European Union, and an unjust impoverishment of the official concerned.

Action brought on 10 July 2020 — Sedus Stoll v EUIPO — Kappes (Sedus ergo+)

(Case T-436/20)

(2020/C 279/78)

Language in which the application was lodged: German

Parties

Applicant: Sedus Stoll AG (Dogern, Germany) (represented by: M. Goldmann and J. Thomsen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wolfgang Kappes (Bochum, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark Sedus ergo+ — Application for registration No 15 958 374

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 March 2020 in Case R 2194/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— dismiss the appeal against the decision of the Opposition Division in Case No B 2 863 929; and

— order the defendant to pay the costs of the proceedings before the General Court of the European Union and order the potential intervener (Wolfgang Kappes) to pay the costs of the appeal proceedings before EUIPO.

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 13 July 2020 — Ultrasun v EUIPO (ULTRASUN)

(Case T-437/20)

(2020/C 279/79)

Language of the case: German

Parties

Applicant: Ultrasun AG (Zurich, Switzerland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark ULTRASUN — Application for registration No 17 898 794

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 27 April 2020 in Case R 1453/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including the costs incurred by the applicant in the proceedings before the Board of Appeal.

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 July 2020 — Tempora v Parliament

(Case T-450/20)

(2020/C 279/80)

Language of the case: French

Parties

Applicant: Tempora (Forest, Belgium) (represented by: A. Delvaux and R. Simar, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare that the action for annulment is admissible;

— annul the decision, date unknown, by which the European Parliament decided to award the contract to SPRL IMAGINA EU;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

In support of the action against the decision to award the contract to another tenderer in the context of call for tenders COMM/AWD/2019/421, the applicant relies on two pleas in law.

1. First plea in law, alleging breach of Article 15.2 of the tender specifications, breach of the duty of care and thoroughness, infringement of the principles of equality, competition and transparency, and breach of Article 170(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1) ('Regulation 2018/1046'). In that regard, the applicant submits that the Parliament should have awarded it the contract, since SPRL IMAGINA EU did not have sufficient economic and financial resources and could not therefore be selected.

2. Second plea in law, alleging breach of point 23 of Annex I to Regulation 2018/1046 and of Article 16 of the tender specifications, infringement of the principles of equality, competition and transparency, and breach of the duty of care and thoroughness. The applicant submits that the prices submitted by SPRL IMAGINA EU in its offer are abnormally low and could not be accepted.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

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