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(2020/C 287/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 9 July 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 3 de Teruel — Spain) — XZ v Ibercaja Banco SA

(Case C-452/18) [1]

(Reference for a preliminary ruling — Consumer Protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Mortgage loan agreement — Term limiting the variability of the interest rate ('floor' term) — Novation agreement — Waiver of the right to bring an action contesting the terms of a contract — Non-binding)

(2020/C 287/02)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción No 3 de Teruel

Parties to the main proceedings

Applicant: XZ

Defendant: Ibercaja Banco SA

Operative part of the judgment

1. Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a term in a contract concluded between a seller or supplier and a consumer, which might be found by a court to be unfair, from being the subject of a novation agreement between that seller or supplier and that consumer, whereby the consumer waives the effects that would result from that term being found to be unfair, provided that that waiver is the result of the consumer's free and informed consent, which it is for the national court to verify;

2. Article 3(2) of Directive 93/13 must be interpreted as meaning that a term in a contract concluded between a seller or supplier and a consumer for the purpose of amending a potentially unfair term in a previous contract concluded between them or for the purpose of dealing with the consequences of that other term being unfair may itself be regarded as not having been individually negotiated and, where appropriate, be found to be unfair;

3. Articles 3(1), 4(2) and 5 of Directive 93/13 must be interpreted as meaning that the requirement of transparency incumbent on a seller or supplier under those provisions means that, when concluding a mortgage loan agreement subject to a variable interest rate that contains a 'floor' term, the consumer must be placed in a position to understand the economic consequences that the mechanism initiated by such a term will cause for him or her, in particular by means of being provided with information on past changes in the index on the basis of which the interest rate is calculated;

4. Article 3(1) of Directive 93/13, read in conjunction with paragraph 1(q) of the Annex thereto and Article 6(1) of that directive, must be interpreted as meaning that:

— a term included in a contract concluded between a seller or supplier and a consumer with a view to resolving an existing dispute, whereby the consumer waives the right to submit to a national court claims that he or she could have submitted in the absence of that term, may be regarded as 'unfair', in particular where the consumer was not provided with the relevant information enabling him or her to understand the legal consequences for him or her;

— a term whereby the same consumer waives, in respect of future disputes, the right to take legal action based on his or her rights under Directive 93/13 is not binding on the consumer.

(1) OJ C 381, 22.10.2018.

Judgment of the Court (Grand Chamber) of 9 July 2020 — Czech Republic v European Commission

(Case C-575/18 P) (1)

(Appeal — Own resources of the European Union — Financial liability of the Member States — Request to be released from the obligation to make own resources available — Action for annulment — Admissibility — Letter from the European Commission — Concept of 'actionable measure' — Article 47 of the Charter of Fundamental Rights of the European Union — Effective judicial protection — Action alleging unjust enrichment on the part of the European Union)

(2020/C 287/03)

Language of the case: Czech

Parties

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

Other party to the proceedings: European Commission (represented: initially by M. Owsiany-Hornung and Z. Malůšková, and subsequently by Z. Malůšková and J.-P. Keppenne, acting as Agents)

Intervener in support of the appellant: Kingdom of the Netherlands (represented by: M.K. Bulterman, C.S. Schillemans, M.L. Noort, M.H.S. Gijzen and J. Langer, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Czech Republic to bear its own costs and to pay the costs incurred by the European Commission;

3. Orders the Kingdom of the Netherlands to bear its own costs.

(1) OJ C 408, 12.11.2018.

Judgment of the Court (Grand Chamber) of 9 July 2020 (request for a preliminary ruling from the Cour d'appel de Paris — France) — Santen SAS v Directeur général de l'Institut national de la propriété industrielle

(Case C-673/18) (1)

(Reference for a preliminary ruling — Medicinal product for human use — Supplementary protection certificate for medicinal products — Regulation (EC) No 469/2009 — Article 3(d) — Conditions for the grant of a certificate — Obtaining the first authorisation to place the product on the market as a medicinal product — Authorisation to place on the market a new therapeutic application of a known active ingredient)

(2020/C 287/04)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Santen SAS

Defendant: Directeur général de l'Institut national de la propriété industrielle

Operative part of the judgment

Article 3(d) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that a marketing authorisation cannot be considered to be the first marketing authorisation, for the purpose of that provision, where it covers a new therapeutic application of an active ingredient, or of a combination of active ingredients, and that active ingredient or combination has already been the subject of a marketing authorisation for a different therapeutic application.

(1) OJ C 25, 21.1.2019.

Judgment of the Court (Fourth Chamber) of 9 July 2020 (request for a preliminary ruling from the Tribunalul Specializat Mureş — Romania) — SC Raiffeisen Bank SA v JB (C-698/18), BRD Groupe Société Générale SA v KC (C-699/18)

(Joined Cases C-698/18 and C-699/18) (1)

(Reference for a preliminary ruling — Directive 93/13/EEC — Personal loan agreement — Contract performed in full — Finding that contractual terms are unfair — Action for reimbursement of sums unduly paid on the basis of an unfair clause — Judicial arrangements — Ordinary legal action not subject to any limitation period — Ordinary legal action of a personal and pecuniary nature subject to a limitation period — Point from which the limitation period starts to run — Objective point in time at which the consumer knows of the existence of the unfair term)

(2020/C 287/05)

Language of the case: Romanian

Referring court

Tribunalul Specializat Mureş

Parties to the main proceedings

Applicants: SC Raiffeisen Bank SA (C 698/18), BRD Groupe Société Générale SA (C-699/18)

Defendants: JB (C 698/18), KC (C-699/18)

Operative part of the judgment

1. Article 2(b), Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a national rule which, while providing that an action seeking a finding of nullity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period, provided that that period is not less favourable than those governing similar domestic actions (principle of equivalence) and that it does not render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order, in particular Directive 93/13 (principle of effectiveness);

2. Article 2(b), Article 6(1) and Article 7(1) of Council Directive 93/13 must be interpreted as precluding a judicial interpretation of the national rule according to which the legal action for reimbursement of amounts unduly paid on the basis of an unfair term in a contract concluded between a consumer and a seller or supplier is subject to a three-year limitation period which runs from the date of full performance of the contract, where it is assumed, without need for verification, that, on that date the consumer should have known about the unfair nature of the term in question or where for similar actions, based on certain provisions of national law, that same period starts to run only from the time when a court finds there to be a cause of those actions;

3. The Court of Justice does not have jurisdiction to answer the questions referred by the Tribunalul Specializat Mureş (Specialised Court, Mureş, Romania) in its order for reference of 12 June 2018 concerning Case C-699/18.

([1]) OJ C 54, 11.2.2019.

Judgment of the Court (Fifth Chamber) of 9 July 2020 (request for a preliminary ruling from the Curtea de Apel Timişoara — Romania) — CT v Administrația Județeană a Finanțelor Publice Caraş-Severin — Serviciul Inspecție Persoane Fizice, Direcția Generală Regională a Finanțelor Publice Timişoara — Serviciul Soluționare Contestații 1

(Case C-716/18) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Point 4 of the first paragraph of Article 288 — Special scheme for small enterprises — Method of calculating annual turnover which serves as a reference for the application of the special scheme for small enterprises — Concept of 'ancillary real estate transaction' — Letting of immovable property by a natural person who exercises several liberal professions)

(2020/C 287/06)

Language of the case: Romanian

Referring court

Curtea de Apel Timişoara

Parties to the main proceedings

Applicant: CT

Defendant: Administrația Județeană a Finanțelor Publice Caraş-Severin — Serviciul Inspecție Persoane Fizice, Direcția Generală Regională a Finanțelor Publice Timişoara — Serviciul Soluționare Contestații 1

Operative part of the judgment

Point 4 of the first paragraph of Article 288 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/162/EU of 22 December 2009, must be interpreted as meaning that, with respect to a taxable person who is a natural person and whose economic activity consists of the exercise of several liberal professions and the letting of immovable property, such a letting does not constitute an 'ancillary transaction' under that provision where that transaction is carried out in the context of a usual business activity of the taxable person.

([1]) OJ C 65, 18.2.2019.

Judgment of the Court (Eighth Chamber) of 9 July 2020 — European Commission v HM

(Case C-70/19 P) ([1])

(Appeal — Civil service — Officials — Recruitment — Notice of competition EPSO/AST-SC/03/15 — Refusal to allow participation in the assessment tests — Request for review — Email of the European Personnel Selection Office (EPSO) — EPSO's failure to send the request for review to the selection board of the competition — Ground for refusal — Out of time — Classification of EPSO's email — Decision to reject the request for review — Powers — No legal basis — Setting aside)

(2020/C 287/07)

Language of the case: German

Parties

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

Other party to the proceedings: HM (represented by: H. Tettenborn, Rechtsanwalt)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 21 November 2018, HM v Commission (T-587/16, EU:T:2018:818);

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

3. Reserves the costs.

([1]) OJ C 164, 13.5.2019.

Judgment of the Court (Seventh Chamber) of 9 July 2020 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi', the successor in law to Mitnitsa Aerogara Sofia v 'Curtis Balkan' EOOD

(Case C-76/19) ([1])

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 32(1)(c) — Regulation (EEC) No 2454/93 — Article 157(2), Article 158(3), and Article 160 — Determining the customs value — Adjustment — Royalties relating to the goods being valued — Royalties constituting a 'condition of sale' of the goods being valued — Royalties paid by the buyer to its parent company for the supply of the know-how required for the manufacture of the finished products — Goods purchased from third parties, which constitute components to be incorporated in the licensed products)

(2020/C 287/08)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi', successor in law to Mitnitsa Aerogara Sofia

Defendant: 'Curtis Balkan' EOOD

Operative part of the judgment

Article 32(1)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, read in conjunction with Article 157(2), Article 158(3) and Article 160 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, must be interpreted as meaning that a proportion of the royalties paid by a company to its parent company in consideration for the supply of know-how for the manufacture of finished products must be added to the price actually paid or payable for imported goods in circumstances where those goods are intended to be included, along with other component parts, in the composition of those finished products and are purchased by the former company from sellers separate from the parent company, where

— the royalties were not included in the price actually paid or payable for those goods;

— they relate to the imported goods, which presupposes that there is a sufficiently close link between the royalties and those goods;

— the payment of royalties is a condition of the sale of those goods, so that, had it not been for that payment, the contract of sale relating to the imported goods would not have been concluded and, consequently, they would not have been delivered; and

— it is possible to make an appropriate apportionment of the royalties based on objective and quantifiable data,

which is for the referring court to ascertain, taking into account all the relevant facts, in particular the relationships of law and of fact between the buyer, the respective sellers and the licensor.

(1) OJ C 155, 6.5.2019.

Judgment of the Court (First Chamber) of 9 July 2020 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — NG, OH v SC Banca Transilvania SA

(Case C-81/19) (1)

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Scope — Article 1(2) — Definition of 'mandatory statutory or regulatory provisions' — Supplementary provisions — Loan agreement denominated in a foreign currency — Term relating to the foreign exchange risk)

(2020/C 287/09)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicants: NG, OH

Defendant: SC Banca Transilvania SA

Operative part of the judgment

Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a contractual term which has not been individually negotiated but which reflects a rule that, under national law, applies between contracting parties provided that no other arrangements have been established in that respect falls outside the scope of that directive.

(1) OJ C 187, 3.6.2019.

Judgment of the Court (Fourth Chamber) of 9 July 2020 (request for a preliminary ruling from the Juzgado de lo Mercantil No 9 de Barcelona — Spain) — SL v Vueling Airlines SA

(Case C-86/19) ([1])

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 17(2) — Liability of air carriers in respect of checked baggage — Fact of loss of checked baggage established — Right to compensation — Article 22(2) — Limits of liability in the event of destruction, loss and delay of, or of damage to, baggage — Absence of information regarding the lost baggage — Burden of proof — Procedural autonomy of the Member States — Principles of equivalence and effectiveness)

(2020/C 287/10)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 9 de Barcelona

Parties to the main proceedings

Applicant: SL

Defendant: Vueling Airlines SA

Operative part of the judgment

1. Article 17(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, read in conjunction with Article 22(2) of that convention, must be interpreted as meaning that the sum provided for in that latter provision as the limit of the air carrier's liability in the event of destruction, loss and delay of, or of damage to, checked baggage which has not been the subject of a special declaration of interest in delivery constitutes a maximum amount of compensation which the passenger concerned does not enjoy automatically and at a fixed rate. Consequently, it is for the national court to determine, within that limit, the amount of compensation payable to that passenger in the light of the circumstances of the case.

2. Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) thereof, must be interpreted as meaning that the amount of compensation due to a passenger, whose checked baggage which has not been the subject of a special declaration of interest in delivery has been destroyed, lost, damaged or delayed, must be determined by the national court in accordance with the applicable rules of national law, in particular in relation to evidence. Those rules must not, however, be any less favourable than those governing similar domestic actions and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the Montreal Convention.

([1]) OJ C 164, 13.5.2019.

Judgment of the Court (Fourth Chamber) of 9 July 2020 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Donex Shipping and Forwarding BV v Staatssecretaris van Financiën

(Case C-104/19) ([1])

(Reference for a preliminary ruling — Common commercial policy — Dumping — Anti-dumping duty imposed on imports of iron or steel fasteners originating in the People's Republic of China — Regulation (EC) No 91/2009 — Validity — Regulation (EC) No 384/96 — Article 2(10) and (11) — Rights of the defence)

(2020/C 287/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Donex Shipping and Forwarding BV

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

Examination of the questions referred for a preliminary ruling has not revealed any elements capable of affecting the validity of Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China.

(1) OJ C 155, 6.5.2019.

Judgment of the Court (Ninth Chamber) of 9 July 2020 (request for a preliminary ruling from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi — Poland) — RL sp. z o.o. v J.M.

(Case C-199/19) (1)

(Reference for a preliminary ruling — Combating late payment in commercial transactions — Directive 2011/7/EU — Concept of 'commercial transaction' — Provision of services — Article 2(1) — Lease or rental agreement — Periodical payments — Payment schedule providing for instalments — Article 5 — Scope)

(2020/C 287/12)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi

Parties to the main proceedings

Applicant: RL sp. z o.o.

Defendant: J.M.

Operative part of the judgment

1. Article 2(1) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions must be interpreted as meaning that a contract under which the main obligation is the provision, for payment, of a property for temporary use, such as lease or rental agreement for business premises, is a commercial transaction leading to a provision of services, within the meaning of that provision, provided that that transaction is between undertakings or between undertakings and public authorities;

2. Since a fixed-term or indefinite contract providing for periodic payments at pre-determined intervals, such as the monthly rent relating to a lease or rental agreement for business premises, falls within the material scope of Directive 2011/7 as a commercial transaction leading to the provision of services for remuneration, within the meaning of Article 2(1) of that directive, Article 5 of that directive must be interpreted as meaning that in order for such a contract to give rise, in the event of payment which is not regulated by a payment schedule, to the rights to interest and compensation provided for in Article 3 and Article 6 of that directive, it must not necessarily be considered to be an agreement on a payment schedule providing for instalments, within the meaning of Article 5 of that directive.

(1) OJ C 164, 13.5.2019.

Judgment of the Court (Eighth Chamber) of 9 July 2020 — George Haswani v Council of the European Union, European Commission

(Case C-241/19 P) ([1])

(Appeal — Common foreign and security policy — Restrictive measures taken against Syria — Measures directed against leading businesspersons operating in Syria — List of persons subject to the freezing of funds and economic resources — Inclusion of the appellant's name — Action for annulment and compensation)

(2020/C 287/13)

Language of the case: French

Parties

Appellant: George Haswani (represented by: G. Karouni, avocat)

Other parties to the proceedings: Council of the European Union (represented by: S. Kyriakopoulou and V. Piessevaux, acting as Agents), European Commission (represented: initially by A. Bouquet, L. Baumgart and A. Tizzano, and subsequently by A. Bouquet and L. Baumgart, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal.

2. Orders Mr George Haswani to pay the costs.

([1]) OJ C 187, 3.6.2019.

Judgment of the Court (Fifth Chamber) of 9 July 2020 — European Commission v Ireland

(Case C-257/19) ([1])

(Failure of a Member State to fulfil obligations — Principles governing the investigation of accidents in the maritime transport sector — Directive 2009/18/EC — Article 8(1) — Parties whose interests could conflict with the task entrusted to the investigative body — Members of the investigative body simultaneously performing other functions — Failure to provide for an independent investigative body)

(2020/C 287/14)

Language of the case: English

Parties

Applicant: European Commission (represented by: S.L. Kalėda and N. Yerrell, acting as Agents)

Defendant: Ireland (represented by: M. Browne, G. Hodge and A. Joyce, acting as Agents, and by N.J. Travers, Senior Counsel, and B. Doherty, Barrister-at-Law)

Operative part of the judgment

The Court:

1. Declares that, by failing to provide for an investigative body which is independent in its organisation and decision-making of any party whose interests could conflict with the task entrusted to that investigative body, Ireland has failed to comply with its obligations under Article 8(1) of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council;

2. Orders Ireland to pay the costs.

([1]) OJ C 206, 17.6.2019.

Judgment of the Court (Fifth Chamber) of 9 July 2020 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Constantin Film Verleih GmbH v YouTube LLC, Google Inc.

(Case C-264/19) ([1])

(Reference for a preliminary ruling — Copyright and related rights — Internet video platform — Uploading of a film without the consent of the rightholder — Proceedings concerning an infringement of an intellectual property right — Directive 2004/48/EC — Article 8 — Applicant's right of information — Article 8(2)(a) — Definition of 'addresses' — Email address, IP address and telephone number — Not included)

(2020/C 287/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Constantin Film Verleih GmbH

Defendants: YouTube LLC, Google Inc.

Operative part of the judgment

Article 8(2)(a) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as meaning that the term 'addresses' contained in that provision does not cover, in respect of a user who has uploaded files which infringe an intellectual property right, his or her email address, telephone number and IP address used to upload those files or the IP address used when the user's account was last accessed.

([1]) OJ C 230, 8.7.2019.

Judgment of the Court (Third Chamber) of 9 July 2020 (request for a preliminary ruling from the Verwaltungsgericht Wiesbaden — Germany) — VQ v Land Hessen

(Case C-272/19) ([1])

(Reference for a preliminary ruling — Article 267 TFEU — Concept of 'court or tribunal' — Protection of natural persons with regard to the processing of personal data — Regulation (EU) 2016/679 — Scope — Article 2(2)(a) — Meaning of 'activity which falls outside the scope of Union law' — Article 4(7) — Concept of 'controller' — Petitions Committee of the parliament of a Federated State of a Member State — Article 15 — Right of access by the data subject)

(2020/C 287/16)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: VQ

Defendant: Land Hessen

Operative part of the judgment

Article 4(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) must be interpreted as meaning that, in so far as a Petitions Committee of the parliament of a Federated State of a Member State determines, alone or with others, the purposes and means of the processing of personal data, that committee must be categorised as a 'controller', within the meaning of that provision, and consequently the processing of personal data carried out by that committee falls within the scope of that regulation and, in particular, of Article 15 thereof.

(1) OJ C 187, 3.6.2019.

Judgment of the Court (First Chamber) of 9 July 2020 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Naturschutzbund Deutschland — Landesverband Schleswig-Holstein e.V. v Kreis Nordfriesland

(Case C-297/19) (1)

(Reference for a preliminary ruling — Environment — Environmental liability — Directive 2004/35/EC — Second indent of the third paragraph of Annex I — Damage not having to be classified as 'significant damage' — Concept of 'normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators' — Article 2(7) — Concept of 'occupational activity' — Activity carried out in the public interest pursuant to a statutory assignment of tasks — Whether or not included)

(2020/C 287/17)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Naturschutzbund Deutschland — Landesverband Schleswig-Holstein e.V.

Defendant: Kreis Nordfriesland

Other parties: Deich- und Hauptsielverband Eiderstedt, Körperschaft des öffentlichen Rechts; Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

1. The concept of 'normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators', in the second indent of the third paragraph of Annex I to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, must be understood as covering, first, any administrative or organisational measure liable to have an effect on the protected species and natural habitats which are on a site, that measure being in the form resulting from the management documents adopted by the Member States on the basis of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and interpreted, if need be, by reference to any domestic legal rule which transposes the latter two directives or, failing this, is compatible with the spirit and purpose of those directives, and second, any administrative or organisational measure that is regarded as usual, is generally recognised, is established and was carried out by the owners or operators for a sufficiently long period of time until the occurrence of damage caused by virtue of that measure to the protected species and natural habitats, all of those measures having, in addition, to be compatible with the objectives underlying Directive 92/43 and Directive 2009/147 and, inter alia, with commonly accepted agricultural practices.

2. Article 2(7) of Directive 2004/35 must be interpreted as meaning that the concept of 'occupational activity' which is defined therein also covers activities carried out in the public interest pursuant to a statutory assignment of tasks.

(1) OJ C 230, 8.7.2019.

Judgment of the Court (First Chamber) of 9 July 2020 (request for a preliminary ruling from the Landesgericht Klagenfurt — Austria) — Verein für Konsumenteninformation v Volkswagen AG

(Case C-343/19) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Point 2 of Article 7 — Jurisdiction in matters relating to tort, delict or quasi-delict — Place where the harmful event occurred — Place where the damage occurred — Manipulation of data relating to the emission of exhaust gases from engines produced by a motor vehicle manufacturer)

(2020/C 287/18)

Language of the case: German

Referring court

Landesgericht Klagenfurt

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: Volkswagen AG

Operative part of the judgment

Point 2 of Article 7 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where a manufacturer in a Member State has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State, the place where the damage occurs is in that latter Member State.

(1) OJ C 230, 8.7.2019.

Judgment of the Court (Eighth Chamber) of 9 July 2020 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — HF v Finanzamt Bad Neuenahr-Ahrweiler

(Case C-374/19) (1)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Adjustment of deductions — Variation in the deduction entitlement — Capital goods used for both taxed and exempt transactions — Cessation of the activity giving rise to the right of deduction — Remaining use solely for exempt transactions)

(2020/C 287/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: HF

Defendant: Finanzamt Bad Neuenahr-Ahrweiler

Operative part of the judgment

Articles 184, 185 and 187 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding national legislation pursuant to which a taxable person who has acquired the right to deduct, on a pro-rata basis, value added tax (VAT) related to the construction of a cafeteria, which is annexed to the retirement home operated by him as an activity exempt from VAT and which is intended to be used for both taxed and exempt transactions, is required to adjust the initial VAT deduction where he has ceased all taxed transactions in that cafeteria's premises, if he has continued to carry out exempt transactions in those premises, thus using them henceforth only for those transactions.

([1]) OJ C 288, 26.8.2019.

Judgment of the Court (Eighth Chamber) of 9 July 2020 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'Unipack' AD v Direktor na Teritorialna direktsiya 'Dunavska' kam Agentsiya 'Mitnitsi', Prokuror ot Varhovna administrativna prokuratura na Republika Bulgaria

(Case C-391/19) ([1])

(Reference for a preliminary ruling — Customs union — The Union Customs Code — Delegated Regulation (EU) 2015/2446 — Article 172(2) — Authorisation for the use of the end-use procedure — Retroactive effect — Concept of 'exceptional circumstances' — Change of tariff classification — Binding tariff information decision no longer valid)

(2020/C 287/20)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: 'Unipack' AD

Defendants: Direktor na Teritorialna direktsiya 'Dunavska' kam Agentsiya 'Mitnitsi', Prokuror ot Varhovna administrativna prokuratura na Republika Bulgaria

Operative part of the judgment

Article 172(2) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code must be interpreted as meaning that for the purposes of the grant, under Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, of authorisation with retroactive effect for the use of the end-use customs procedure, as provided for in that provision, factors such as the premature end of the validity of a binding tariff information decision as a result of an amendment to the Combined Nomenclature, that there was no action by the customs authorities concerning imports bearing an incorrect code or the fact that the goods were used for a purpose exempted from the anti-dumping duty cannot be classified as 'exceptional circumstances', within the meaning of that provision.

([1]) OJ C 280, 19.8.2019.

Order of the Court (Tenth Chamber) of 30 April 2020 — Republic of Cyprus v European Union Intellectual Property Office (EUIPO), Papouis Dairies Ltd, Pagkyprios organismos ageladotrofon (POA) Dimosia Ltd, M.J. Dairies EOOD

(Joined Cases C-608/18 P, C-609/18 P and C-767/18 P) ([1])

(Appeal — EU trade mark — Opposition proceedings — Invalidity of the mark cited by the opposing party — Appeals which have become devoid of purpose — No need to adjudicate)

(2020/C 287/21)

Language of the case: English

Parties

Appellant: Republic of Cyprus (represented by: S. Malynicz, QC, S. Baran, Barrister, and V. Marsland, Solicitor)

Other parties to the proceedings: European Union Intellectual Property Office (represented by: D. Gája, H. O'Neill and D. Botis, acting as Agents), Papouis Dairies Ltd (represented by: N. Korogiannakis, dikigoros), Pagkyprios organismos ageladotrofon (POA) Dimosia Ltd (represented by: N. Korogiannakis, dikigoros), M.J. Dairies EOOD (represented by: D. Dimitrova, advocate)

Operative part of the order

1. There is no need to adjudicate on the appeals.

2. The Republic of Cyprus shall pay the costs of the appeals.

([1]) OJ C 93, 11.3.2019.

Order of the Court (Seventh Chamber) of 28 May 2020 — (request for a preliminary ruling from the Špecializovaný trestný súd — Slovakia) — Criminal proceedings against UL, VM

(Case C-709/18) ([1])

(Reference for a preliminary ruling — Article 53(2) and Article 99 of the Rules of Procedure of the Court of Justice — Directive (EU) 2016/343 — Articles 3 and 4 — Charter of Fundamental Rights of the European Union — Articles 47 and 48 — Public references to guilt — National court — Acceptance by order of the guilty plea of one of two co-accused for the offences stated in the indictment — Examination of the guilt of the second co-accused who pleaded not guilty — Conviction by the same court which accepted the guilty plea)

(2020/C 287/22)

Language of the case: Slovak

Referring court

Špecializovaný trestný súd

Criminal proceedings against

UL, VM

intervener: Úrad špeciálnej prokuratúry Generálnej prokuratúry Slovenskej republiky

Operative part of the order

Articles 3 and 4(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, read in conjunction with recital 16 of that directive and the second paragraph of Article 47 and Article 48 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a national court, first of all, from accepting, in the context of criminal proceedings brought against two persons, by order, the guilty plea of the first person to offences stated in the indictment allegedly committed together with the second person who has not pleaded guilty and, thereafter, from deciding, after taking evidence relating to what the second person is alleged to have done, on the guilt of that person, provided that, first, the reference to the second person as co-perpetrator of the alleged offences is necessary to the characterisation of the legal liability of the person who pleaded guilty and, secondly, that order and/or the indictment to which it refers clearly state that the guilt of that second person has not been legally established and will be the subject of separate taking of evidence and a separate judgment.

(1) OJ C 44, 4.2.2019.

Order of the Court (Eighth Chamber) of 28 May 2020 (request for a preliminary ruling from the Amtsgericht Köln — Germany) — FZ v DER Touristik GmbH

(Case C-153/19) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Air transport — Regulation (EC) No 261/2004 — Article 12 — Package tour — Long delay of a flight — Passengers' compensation — Additional compensation — Passenger's right to a reduction in the price of the journey)

(2020/C 287/23)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: FZ

Defendant: DER Touristik GmbH

Operative part of the order

Article 12 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as not precluding a passenger who has already been compensated under Article 7 of that regulation, from being compensated under a right to a reduction in the price of the journey available to him or her against a tour operator, provided for by the law of the Member State concerned, in so far as that compensation is granted for a loss that is specific to that individual passenger arising from one of the situations provided for in Article 1(1) of that regulation, which it is for the national court to determine.

(1) OJ C 182, 27.5.2019.

Order of the Court (Seventh Chamber) of 11 March 2020 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sardegna — Italy) — Telecom Italia SpA v Regione Sardegna

(Case C-338/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — State aid — Article 108 TFEU — Regulation (EC) No 659/1999 — Recovery of aid by the Member State on its own initiative — Regulation (EC) No 794/2004 — Applicable interest rate)

(2020/C 287/24)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Sardegna

Parties to the main proceedings

Applicant: Telecom Italia SpA

Defendant: Regione Sardegna

Operative part of the order

The interest rate provided for in Article 9(1) and (2) of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article [108 TFEU], as amended by Commission Regulation (EC) No 271/2008 of 30 January 2008, is not applicable where a national authority recovers State aid on its own initiative.

([1]) OJ C 312, 16.9.2019.

Order of the Court (Ninth Chamber) of 2 April 2020 — Italian Republic v European Commission, French Republic, Hungary

(Case C-390/19 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — European Agricultural Guarantee Fund (EAGF) — European Agricultural Fund for Rural Development (EAFRD) — Sugar sector — Expenditure excluded from EU financing — Expenditure incurred by the Italian Republic — Appeal, in part, manifestly inadmissible and, in part, manifestly unfounded)

(2020/C 287/25)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri, acting as Agent, assisted by C. Colelli and M.F. Severi, avvocatti dello Stato)

Other parties to the proceedings: European Commission (represented by: D. Bianchi and B. Hofstötter, acting as Agents), French Republic, Hungary

Operative part of the order

1. The appeal is dismissed as being, in part, manifestly inadmissible and, in part, manifestly unfounded.

2. The Italian Republic is ordered to pay the costs.

(1) OJ C 230, 8.7.2019.

Order of the Court (Tenth Chamber) of 29 April 2020 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Autorità per le Garanzie nelle Comunicazioni v BT Italia SpA and Others

(Case C-399/19) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Electronic communications networks and services — Directive 2002/20/EC — Article 12 — Administrative charges imposed on undertakings providing an electronic communications service or network — Administrative costs of the national regulatory authority which may be covered by a charge — Yearly overview of the administrative costs and the total of charges levied)

(2020/C 287/26)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità per le Garanzie nelle Comunicazioni

Defendants: BT Italia SpA, Basictel SpA, BT Enia Telecomunicazioni SpA, Telecom Italia SpA, Postepay SpA, formerly PosteMobile SpA, Vodafone Italia SpA

Intervening parties: Telecom Italia SpA, Fastweb SpA, Wind Tre SpA, Sky Italia SpA, Vodafone Omnitel BV, Vodafone Italia SpA

Operative part of the order

1. Article 12(1)(a) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that the costs which may be covered by a charge imposed under that provision on undertakings providing electronic communications networks and services are only those relating to the three categories of national regulatory authority activities referred to in that provision, including regulatory, supervisory, dispute-resolution and penalty-imposing tasks, and are not limited to costs arising from the activity of ex ante market regulation.

2. Article 12(2) of Directive 2002/20, as amended by Directive 2009/140, must be interpreted as not precluding the legislation of a Member State under which, first, the yearly overview provided for in that provision is published after the end of the financial year in which the administrative charges were levied and, second, the appropriate adjustments are made in a financial year which does not immediately follow the financial year in which those charges were levied.

(1) OJ C 312, 16.9.2019.

Order of the Court (Sixth Chamber) of 6 May 2020 (requests for a preliminary ruling from the Corte suprema di cassazione — Italy) — Blumar SpA (C-415/19), Roberto Abate SpA (C-416/19), Commerciale Gicap SpA (C-417/19) v Agenzia delle Entrate

(Joined Cases C-415/19 to C–417/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — State aid — European Commission decision declaring an aid scheme compatible with the internal market — National legislation precluding the award of aid under the authorised scheme in the event of non-compliance with a condition not provided for in the Commission decision)

(2020/C 287/27)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Blumar SpA (C-415/19), Roberto Abate SpA (C-416/19), Commerciale Gicap SpA (C-417/19)

Defendant: Agenzia delle Entrate

Operative part of the order

Article 108(3) TFEU, Commission Decision C(2008) 380 of 25 January 2008, 'State aid N 39/2007 — Italy — Tax credit for new investment in less-favoured areas', and the principle of proportionality must be interpreted as not precluding legislation of a Member State pursuant to which the award of aid, under an aid scheme established by that Member State and authorised by that decision, is subject to a declaration by the applicant that it has not received aid declared unlawful and incompatible by the European Commission, which it has failed to repay or deposit into a blocked account, even though it is not the subject of a request for repayment and despite the fact that that decision does not explicitly provide for such a requirement.

([1]) OJ C 328, 30.9.2019.

Order of the Court of (Ninth Chamber) 2 April 2020 — International Tax Stamp Association Ltd (ITSA) v European Commission

(Case C-553/19 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — Approximation of laws — Manufacture, presentation and sale of tobacco products and related products — Establishment and operation of a traceability system for tobacco products — Delegated Regulation and implementing acts — Action for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Lack of direct concern — Article 256(1), second subparagraph, TFEU — Article 58, first paragraph, of the Statute of the Court of Justice of the European Union — Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court — No precise identification of the contested points in the grounds of the judgment under appeal or specific legal arguments in support of the appeal — Arguments seeking to obtain from the Court a mere re-examination of the arguments presented at first instance — Appeal manifestly inadmissible)

(2020/C 287/28)

Language of the case: French

Parties

Appellant: International Tax Stamp Association Ltd (ITSA) (represented by: F. Scanvic, avocat)

Other party to the proceedings: European Commission (represented by: I. Rubene and C. Valero, acting as Agents)

Operative part of the order

1. The appeal is dismissed as being manifestly inadmissible.

2. International Tax Stamp Association Ltd (ITSA) is ordered to pay the costs.

(1) OJ C 357, 21.10.2019.

Order of the Court (Tenth Chamber) of 4 June 2020 — (request for a preliminary ruling from the Amtsgericht Kehl — Germany) — Criminal proceedings against FU

(Cases C-554/19) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EU) 2016/399 — Schengen borders code — Articles 22 and 23 — Abolition of internal border controls in the Schengen area — Checks within the territory of a Member State — Measures having an effect equivalent to border checks — Identity checks in the vicinity of an internal border of the Schengen area — Possibilities of checks irrespective of the behaviour of the person concerned or of the existence of specific circumstances — National framework concerning the intensity, frequency and selectivity of the checks)

(2020/C 287/29)

Language of the case: German

Referring court

Amtsgericht Kehl

Criminal proceedings against

FU

Intervening party: Staatsanwaltschaft Offenburg

Operative part of the order

Article 67(2) TFEU and Articles 22 and 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) must be interpreted as not precluding a national legislative provision which confers on the police authorities of the Member State in question the power to check the identity of any person, within an area of 30 kilometres from that Member State's land border with other Schengen States, with a view to preventing or terminating unlawful entry into or residence in the territory of that Member State or preventing certain criminal offences which undermine the security of the border, irrespective of the conduct of the person concerned or the existence of specific circumstances, provided that that power is framed by sufficiently detailed specifications and limitations on the intensity, frequency and selectivity of the checks carried out, thereby guaranteeing that the practical exercise of that power cannot have an effect equivalent to border checks, which is, however, a matter for the referring court to verify.

(1) OJ C 357, 21.10.2019.

Order of the Court (Ninth Chamber) of 30 June 2020 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ge.Fi.L. — Gestione Fiscalità Locale SpA v Regione Campania

(Case C-618/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Public contracts — Directive 2014/24/EU — Article 12(4) — Awarding of contract to a non-economic public institution without being put out to competition — Exclusion of contracts covered by cooperation between public bodies — Conditions)

(2020/C 287/30)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Ge.Fi.L. — Gestione Fiscalità Locale SpA

Defendant: Regione Campania

Other parties: ACI — Automobile Club d'Italia, ACI Informatica SpA, ACI di Napoli, ACI di Avellino, ACI di Benevento, ACI di Caserta, ACI di Salerno

Operative part of the order

Article 12(4) of 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 must be interpreted as precluding a national provision which permits public service contracts relating to the management of the tax on vehicles to be awarded directly to non-economic public institutions that have the task of maintaining the public register of motor-vehicles.

([1]) OJ C 413, 9.12.2019.

Order of the Court (Ninth Chamber) of 6 May 2020 — Csanád Szegedi v European Parliament

(Case C-628/19 P) ([1])

(Appeal — European Parliament — Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid)

(2020/C 287/31)

Language of the case: Hungarian

Parties

Appellant: Csanád Szegedi (represented by: K. Bodó, ügyvéd)

Other party to the proceedings: European Parliament (represented by: S. Seyr and Z. Nagy, acting as Agents)

Operative part of the order

1. The appeal is dismissed as manifestly unfounded.

2. Mr Csanád Szegedi is ordered to pay the costs.

(1) OJ C 372, 4.11.2019.

Order of the Court (Ninth Chamber) of 25 May 2020 (request for a preliminary ruling from the Tribunal Central Administrativo Norte — Portugal) — Resopre — Sociedade Revendedora de Aparelhos de Precisão SA v Município de Peso da Régua

(Case C-643/19) (1)

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Directive 2014/24/EU — Public procurement — Directive 2014/23/EU — Services concessions — Absence of factual or legal material necessary to give a useful answer to the questions referred — Inadmissibility)

(2020/C 287/32)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Norte

Parties to the main proceedings

Applicant: Resopre — Sociedade Revendedora de Aparelhos de Precisão SA

Defendant: Município de Peso da Régua

Intervening parties: Datarede — Sistemas de Dados e Comunicações SA, Alexandre Barbosa Borges SA, Fernando L. Gaspar — Sinalização e Equipamentos Rodoviários SA

Operative part of the order

The request for a preliminary ruling made by the Tribunal Central Administrativo Norte (Northern Central Administrative Court, Portugal) by decision of 26 July 2019 is manifestly inadmissible.

(1) OJ C 399, 25.11.2019.

Order of the Court (Eighth Chamber) of 22 April 2020 (request for a preliminary ruling from the Watford Employment Tribunal — United Kingdom) — B v Yodel Delivery Network Ltd

(Case C-692/19) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Directive 2003/88/EC — Organisation of working time — Concept of 'worker' — Parcel delivery undertaking — Classification of couriers engaged under a services agreement — Possibility for a courier to engage subcontractors and to perform similar services concurrently for third parties)

(2020/C 287/33)

Language of the case: English

Referring court

Watford Employment Tribunal

Parties to the main proceedings

Applicant: B

Defendant: Yodel Delivery Network Ltd

Operative part of the order

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 a person engaged by his putative employer under a services agreement which stipulates that he is a self-employed independent contractor from being classified as a 'worker' for the purposes of that directive, where that person is afforded discretion:

— to use subcontractors or substitutes to perform the service which he has undertaken to provide;

— to accept or not accept the various tasks offered by his putative employer, or unilaterally set the maximum number of those tasks;

— to provide his services to any third party, including direct competitors of the putative employer, and

— to fix his own hours of 'work' within certain parameters and to tailor his time to suit his personal convenience rather than solely the interests of the putative employer,

provided that, first, the independence of that person does not appear to be fictitious and, second, it is not possible to establish the existence of a relationship of subordination between that person and his putative employer. However, it is for the referring court, taking account of all the relevant factors relating to that person and to the economic activity he carries on, to classify that person's professional status under Directive 2003/88.

(1) OJ C 423, 16.12.2019.

Order of the Court (Ninth Chamber) of 30 June 2020 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Airbnb Ireland UC, Airbnb Payments UK Ltd v Agenzia delle Entrate

(Case C-723/19) (1)

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Letting of immovable property for periods of less than thirty days — Online property rental platform — Manifest inadmissibility)

(2020/C 287/34)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Airbnb Ireland UC, Airbnb Payments UK Ltd

Defendant: Agenzia delle Entrate

Other parties to the proceedings: Presidenza del Consiglio dei Ministri, Ministero dell'Economia e delle Finanze, Federazione delle Associazioni Italiane Alberghi e Turismo (Federalberghi), Renting Services Group s.r.l.s., Coordinamento delle Associazioni e dei Comitati di Tutela dell'Ambiente e dei Diritti degli Utenti e dei Consumatori (Codacons)

Operative part of the order

The request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy), made by decision of 11 July 2019, is manifestly inadmissible.

(1) OJ C 432, 23.12.2019.

Order of the Court (Seventh Chamber) of 29 April 2020 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — Ramada Storax SA v Autoridade Tributária e Aduaneira

(Case C-756/19) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Articles 90 and 273 — Taxable amount — Reduction — Non-payment — Insolvency of the debtor residing outside the country — Ruling by a court of another Member State declaring debts claimed irrecoverable — Principles of fiscal neutrality and proportionality)

(2020/C 287/35)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Ramada Storax SA

Defendant: Autoridade Tributária e Aduaneira

Re:

Articles 90 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding the legislation of a Member State, pursuant to which the right to a reduction of the value added tax paid and relating to debts deemed irrecoverable following insolvency proceedings is refused to the taxable person where the debts concerned have been declared irrecoverable by a court of another Member State on the basis of the law in force in that Member State.

(1) OJ C 19, 20.1.2020.

Order of the Court of 10 March 2020 (request for a preliminary ruling from the Tribunal Judicial da Comarca dos Açores — Portugal) — QE, RD v SATA Internacional — Serviços de Transportes Aéreos SA

(Case C-766/19) (1)

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Manifest inadmissibility — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Scope — Exemption from the obligation to pay compensation — Concept of 'extraordinary circumstances' — Generalised malfunction in an airport's refuelling system)

(2020/C 287/36)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca dos Açores

Parties to the main proceedings

Applicants: QE, RD

Defendant: SATA Internacional — Serviços de Transportes Aéreos SA

Other party: ANA — Aeroportos de Portugal SA

Operative part of the order

The request for a preliminary ruling made by the Tribunal Judicial da Comarca dos Açores (District Court, Azores, Portugal), by decision of 8 July 2019, is manifestly inadmissible.

(1) OJ C 19, 20.1.2020.

Order of the Court (Ninth Chamber) of 2 July 2020 (request for a preliminary ruling from the Okresný súd Poprad — Slovakia) — IM v Sting Reality s.r.o.

(Case C-853/19) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 99 of the Rules of Procedure of the Court of Justice — Consumer protection — Directive 2005/29/EC — Unfair business-to-consumer commercial practices — Articles 8 and 9 — Aggressive commercial practices — Directive 93/13/EEC — Unfair terms in consumer contracts — Term which has been individually negotiated — Powers of the national court)

(2020/C 287/37)

Language of the case: Slovak

Referring court

Okresný súd Poprad

Parties to the main proceedings

Applicant: IM

Defendant: Sting Reality s.r.o.

Operative part of the order

1. Articles 8 and 9 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council must be interpreted as meaning that the classification of a commercial practice as aggressive, within the meaning of those provisions, requires a concrete and specific assessment, in the light of the criteria set out in those provisions, of all the circumstances characterising that practice. Where a contract has been concluded by an elderly person suffering from a serious disability and having a limited income which does not enable that person to repay the debts that he or she has accumulated, the fact that the contract thus concluded had the effect of enabling a national consumer protection provision to be circumvented is an indication that the trader concerned intended to knowingly take advantage of the particular gravity of the situation of that person, in order to influence his or her decision, this being a matter for the referring court to assess.

2. Article 3 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the national court hearing an application for a review of the unfair nature of the terms of a contract concluded between a consumer and a trader is required, where the latter refuses — despite a request to that effect addressed to him or her — to communicate to that court similar contracts which he or she has concluded with other consumers, to give effect to the national procedural rules available to it in order to assess whether the terms of such a contract have been individually negotiated.

3. The third question referred by the Okresný súd Poprad (District Court, Poprad, Slovakia) is manifestly inadmissible.

(1) OJ C 36, 3.2.2020.

Order of the Court (Ninth Chamber) of 28 May 2020 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia — Italy) — MC v Ufficio territoriale del governo (U.T.G.) — Prefettura di Foggia

(Case C-17/20) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Manifest inadmissibility — General principles of EU law — Right to good administration — Right of defence — Right to be heard — Measure adopted by the prefecture aimed at prohibiting an activity on account of alleged mafia infiltration — Legislation not providing for an adversarial administrative procedure)

(2020/C 287/38)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicant: MC

Defendant: Ufficio territoriale del governo (U.T.G.) — Prefettura di Foggia

Operative part of the order

The request for a preliminary ruling made by the Tribunale amministrativo regionale per la Puglia (Regional Administrative Court, Apulia, Italy), by decision of 27 November 2019, is manifestly inadmissible.

(1) OJ C 161, 11.5.2020.

Appeal brought on 29 July 2019 by GMP-Orphan (GMPO) against the judgment of the General Court (Seventh Chamber) delivered on 16 May 2019 in Case T-733/17, GMPO v Commission

(Case C-575/19 P)

(2020/C 287/39)

Language of the case: English

Parties

Appellant: GMP-Orphan (GMPO) (represented by: J. Mulryne, L. Tsang, Solicitors, C. Schoonderbeek, avocate)

Other party to the proceedings: European Commission

By order of 11 June 2020, the Court of Justice (Ninth Chamber) decided that the appeal should be dismissed as being manifestly inadmissible and ordered GMP-Orphan SA to bear its own costs.

Appeal brought on 10 October 2019 by Jorge Minguel Rosellò against the order of the General Court (Second Chamber) delivered on 9 September 2019 in Case T-524/19

(Case C-747/19 P)

(2020/C 287/40)

Language of the case: Italian

Parties

Appellant: Jorge Minguel Rosellò (represented by: V. Falcucci and G. Bonavita, avvocati)

Other party to the proceedings: Italian Republic

By order of 29 April 2020 the Court (Sixth Chamber) held that the appeal was in part manifestly unfounded and in part manifestly ineffective.

Appeal brought on 4 February 2020 by Billa AG against the judgment of the General Court (Ninth Chamber) delivered on 4 December 2019 in Case T-524/18, Billa AG v EUIPO

(Case C-61/20 P)

(2020/C 287/41)

Language of the case: English

By order of 28 May 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered Billa AG to bear its own costs.

Appeal brought on 28 April 2020 by Fabryki Mebli 'Forte' S.A. against the judgment of the General Court (Fifth Chamber) delivered on 27 February 2020 in Case T-159/19, Bog-Fran v EUIPO — Fabryki Mebli 'Forte'

(Case C-183/20 P)

(2020/C 287/42)

Language of the case: English

Parties

Appellant: Fabryki Mebli 'Forte' S.A. (represented by: H. Basiński, adwokat)

Other parties to the proceedings: European Union Intellectual Property Office, Bog-Fran sp. z o.o. sp.k

By order of 16 July 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered Fabryki Mebli 'Forte' S.A. to bear its own costs.

Appeal brought on 6 May 2020 by Dekoback GmbH against the judgment of the General Court (Tenth Chamber) delivered on 5 March 2020 in Case T-80/19, Dekoback GmbH v EUIPO

(Case C-193/20 P)

(2020/C 287/43)

Language of the case: English

Parties

Appellant: Dekoback GmbH (represented by: V. von Moers, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 9 July 2020, the Court of Justice (Vice-President) decided that the appeal should be dismissed as inadmissible and ordered Dekoback GmbH to bear its own costs.

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 19 June 2020 — Aurubis AG v Federal Republic of Germany

(Case C-271/20)

(2020/C 287/44)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Aurubis AG

Defendant: Federal Republic of Germany

Questions referred

1. Are the requirements of Article 3(d) of Commission Decision 2011/278/EU [1] for a free allocation of emission allowances on the basis of a sub-installation with a fuel emission value fulfilled where, in an installation for the production of non-ferrous metals in accordance with Annex I to Directive 2003/87/EC, a sulphur-containing copper concentrate is used in a flash smelting furnace to produce primary copper and the non-measurable heat required to melt the copper ore contained in the concentrate is produced essentially through oxidation of the sulphur contained in the concentrate, meaning that the copper concentrate is used both as a source of raw material and as a combustible material to generate heat?

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

   Can entitlements to a further free allocation of emission allowances for the third trading period be met after the end of the third trading period with entitlements for the fourth trading period where the existence of the allowance entitlement is established by a court only after expiry of the third trading period, or do allowance entitlements that have not yet been met lapse on expiry of the third trading period?

[1] Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 25 June 2020 — ZN v Generalno konsulstvo (General Consulate) of the Republic of Bulgaria in the City of Valencia, Kingdom of Spain

(Case C-280/20)

(2020/C 287/45)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: ZN

Defendant: Generalno konsulstvo (General Consulate) of the Republic of Bulgaria in the City of Valencia, Kingdom of Spain

Question referred

Is Article 5(1) of Regulation (EU) No 1215/2012, ([1]) in conjunction with recital (3) thereof, to be interpreted as meaning that the regulation applies for the purpose of determining the international jurisdiction of the courts of a Member State to adjudicate in a dispute between a worker from that Member State and the consular service of that Member State in the sovereign territory of another Member State, or should those provisions be interpreted as meaning that the national jurisdictional rules of the Member State of which both parties are nationals apply to such a dispute?

([1]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 26 June 2020 — Criminal proceedings against ZX

(Case C-282/20)

(2020/C 287/46)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

ZX

Questions referred

Is a provision of national law, namely Article 248(3) of the Nakazatelno protsesualen kodeks (Bulgarian Code of Criminal Procedure), which does not provide for a procedural rule for the rectification, after completion of the first hearing in criminal proceedings (preliminary hearing), of substantive ambiguities and shortcomings in the bill of indictment which infringe the accused person's right to be informed of the accusation, compatible with Article 6(3) of Directive 2012/13 ([1]) and with Article 47 of the Charter of Fundamental Rights of the European Union?

If the answer to that question is in the negative: Would an interpretation of the national provisions governing amendment of the bill of indictment that allows the public prosecution service to rectify those substantive ambiguities and shortcomings in the bill of indictment at the hearing, so as to take proper and effective account of the accused person's right to be informed of the accusation, be in keeping with the aforesaid provisions and with Article 47 of the Charter, or would it be in keeping with those provisions to refrain from applying national legislation prohibiting the staying of court proceedings and referral of the case back to the public prosecution service with directions to draft a new bill of indictment?

([1]) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 29 June 2020 — GC, WG v Société Air France SA

(Case C-286/20)

(2020/C 287/47)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: GC, WG

Defendant: Société Air France SA

This case was removed from the Register of the Court of Justice by order of the President of the Court of 15 July 2020.

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 30 June 2020 — XQ v Deutsche Lufthansa AG

(Case C-291/20)

(2020/C 287/48)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: XQ

Defendant: Deutsche Lufthansa AG

Question referred

Is a strike by an air carrier's own employees, which is called by a trade union, an extraordinary circumstance for the purpose of Article 5(3) of Regulation (EC) No 261/2004? ([1])

The case was removed from the Register of the Court of Justice by order of the Court of 30 July 2020.

([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 Landgericht Köln (Germany) lodged on 30 June 2020 — KS v Deutsche Lufthansa AG

(Case C-292/20)

(2020/C 287/49)

Language of the case: German

Referring court

Landgericht Koln

Parties to the main proceedings

Applicant: KS

Defendant: Deutsche Lufthansa AG

Question referred

Is a strike by an air carrier's own employees, which is called by a trade union, an extraordinary circumstance for the purpose of Article 5(3) of Regulation (EC) No 261/2004? ([1])

The case was removed from the Register of the Court of Justice by order of the Court of 30 July 2020.

([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).

GENERAL COURT

Judgment of the General Court of 25 June 2020 — Off-White v EUIPO (OFF-WHITE)

(Case T-133/19) ([1])

(EU trade mark — Application for EU figurative mark OFF-WHITE — Partial rejection of the application for registration — Absolute grounds for refusal — Descriptive character — No distinctive character — Name of a colour — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001)

(2020/C 287/50)

Language of the case: English

Parties

Applicant: Off-White LLC (Springfield, Illinois, United States) (represented by: M. Decker, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 December 2018 (Case R-580/2018-2), concerning an application for registration of the figurative sign OFF-WHITE as an EU trade mark.

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 14 December 2018 (Case R-580/2018-2), in so far as it refused registration as an EU trade mark of the figurative sign OFF-WHITE in respect of the goods in Classes 9 and 20 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and for 'watches; wall clocks; horological and chronometric instruments; watch bands; watch cases; presentation boxes for watches; jewelry cases' and 'precious stones, semi-precious stones' in Class 14;

2. Orders EUIPO to bear its own costs and to pay those incurred by Off-White LLC, including the expenses necessarily incurred for the purpose of the appeal proceedings before the Board of Appeal of EUIPO.

([1]) OJ C 139, 15.4.2019.

Order of the General Court of 11 June 2020 — Perfect Bar v EUIPO (PERFECT BAR)

(Case T-553/19) ([1])

(Action for annulment — EU trade mark — Application for EU word mark PERFECT BAR — Absolute grounds for refusal — No distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 — Decision taken following the annulment by the General Court of an earlier decision — Article 72(6) of Regulation 2017/1001 — Action manifestly lacking any foundation in law)

(2020/C 287/51)

Language of the case: English

Parties

Applicant: Perfect Bar LLC (San Diego, California, United States) (represented by: F. Miazzetto, J.L. Gracia Albero, R. Seoane Lacayo and E. Cebollero González, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Capostagno, agent)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 22 May 2019 (Case R 371/2019-5), relating to the application for registration of the word sign PERFECT BAR as an EU trade mark.

Operative part of the order

1. Dismisses the action as manifestly lacking any foundation in law.

2. Orders Perfect Bar LLC to pay the costs.

([1]) OJ C 337, 7.10.2019.

Order of the General Court of 10 June 2020 — Golden Omega v Commission

(Case T-846/19) ([1])

(Action for annulment — Customs union — Common Customs Tariff — Tariff nomenclature — Classification in the Combined Nomenclature — Regulatory act entailing implementing measures — Lack of individual concern — Inadmissibility)

(2020/C 287/52)

Language of the case: Dutch

Parties

Applicant: Golden Omega, SA (Santiago, Chili) (represented by: S. Moolenaar, lawyer)

Defendant: European Commission (represented by: W. Roels and M. Salyková, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Regulation (EU) 2019/1661 of 24 September 2019 concerning the classification of certain goods in the Combined Nomenclature (OJ 2019 L 251, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. Golden Omega, SA is ordered to pay the costs.

([1]) OJ C 61, 24.2.2020.

Action brought on 2 June 2020 — Denmark v Commission

(Case T-364/20)

(2020/C 287/53)

Language of the case: Danish

Parties

Applicant: Kingdom of Denmark (represented by: J. Nymann-Lindegren and M. Wolff, acting as Agents, and R. Holdgaard and J. Pinborg, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul article 2 of the European Commission's decision of 20 March 2020 on the State aid SA.39078 — 2019/C (ex 2014/N) which Denmark implemented for Femern A/S, in so far as it found that 'the measures consisting of capital injections and a combination of State loans and State guarantees in favour of Femern A/S, which Denmark at least partially put into effect unlawfully, constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union';

— 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: the Commission erred in finding that the financing of Femern A/S constitutes State aid within the meaning of Article 107(1) TFEU.

   The first plea is divided into four parts.

   The applicant claims, first, that the Commission erred in law in finding, in paragraphs 190 to 194 of the contested decision, that Femern A/S' activities do not constitute the exercise of public power. In that regard, the applicant claims:

   — that the method adopted by the Commission in paragraphs 190 to 194 in order to assess whether Femern A/S' activities constitute the exercise of public power is contrary to Article 107(1) TFEU;

   — that, in its assessment of whether Femern A/S' activities constitute the exercise of public power and for that reason fall outside the scope of EU State aid and competition rules, the Commission erred in law by attaching importance to whether there are private operators whose activities could be considered alternatives to those of Femern A/S and who consider themselves to be in competition with Femern A/S' activities; and

   — that the Commission erred in law in finding concretely that Femern A/S' activities regarding the planning, construction and operation of the coast-to-coast link do not constitute the exercise of public power.

   The applicant claims, second, that the Commission erred in law in finding, in paragraph 193 of the contested decision, that Femern A/S offers transport services on a market in competition with others.

   The applicant claims, third, that the Commission erred in law in finding, in paragraphs 192 to 194 and 196 of the contested decision, that Femern A/S is an 'economic operator' governed by an 'economic logic' 'commercially exploiting' the fixed link.

   The applicant claims, fourth, that the Commission erred in law in finding, in paragraphs 233 to 240 of the contested decision, that the financing of Femern A/S is liable to distort competition and affect trade between Member States.

2. Second plea in law: the Commission erred in law in finding that Femern A/S is engaged in an economic activity in competition with others before the fixed link is operational.

   In support of this plea, the applicant claims that the Commission erred in law in finding, in paragraph 198 of the contested decision, that the financing of Femern A/S constitutes State aid within the meaning of Article 107(1) TFEU even when construction has been started.

Action brought on 7 July 2020 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT8)

(Case T-420/20)

(2020/C 287/54)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Huawei Technologies Co. Ltd (Shenzhen, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark GT8 — Application for registration No 14 738 281

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 in Case R 1611/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to bear their own costs and pay those of the applicant.

Pleas in law

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to identify specifically the relevant public;

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to take into account the evidence as to the likely perception of the earlier European Union Trade mark by the relevant public;

— Failure to consider the other elements of the above mentioned Articles 8(1)(b) and 8(5) objections;

— Failure to apply national rules under Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament by failing to consider the other elements under passing off law.

Action brought on 7 July 2020 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT3)

(Case T-421/20)

(2020/C 287/55)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz; QC and M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Huawei Technologies Co. Ltd (Shenzhen, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark GT3 — Application for registration No 14 738 264

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Forth Board of Appeal of EUIPO of 24 April 2020 in Case R 1609/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and other party to bear their own costs and pay those of the applicant.

Pleas in law

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to identify specifically the relevant public;

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to take into account the evidence as to the likely perception of the earlier European Union Trade mark by the relevant public;

— Failure to consider the other elements of the above mentioned Articles 8(1)(b) and 8(5) objections;

— Failure to apply national rules under Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament by failing to consider the other elements under passing off law.

Action brought on 7 July 2020 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT5)

(Case T-422/20)

(2020/C 287/56)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Huawei Technologies Co. Ltd (Shenzhen, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark GT5 — Application for registration No 14 738 272

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 in Case R 1600/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and other party to bear their costs and pay those of the applicant.

Pleas in law

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to identify specifically the relevant public;

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to take into account the evidence as to the likely perception of the earlier European Union Trade mark by the relevant public;

— Failure to consider the other elements of the above mentioned Articles 8(1)(b) and 8(5) objections;

— Failure to apply national rules under Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament by failing to consider the other elements under passing off law.

Action brought on 7 July 2020 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT9)

(Case T-423/20)

(2020/C 287/57)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Huawei Technologies Co. Ltd (Shenzhen, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark GT9 — Application for registration No 14 738 298

Procedure before EUIPO: Opposition proceeding

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 in Case R 1610/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and other party to bear their costs and pay those of the applicant.

Pleas in law

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to identify specifically the relevant public;

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by failing to take into account the evidence as to the likely perception of the earlier European Union Trade mark by the relevant public;

— Failure to consider the other elements of the above mentioned Articles 8(1)(b) and 8(5) objections;

— Failure to apply national rules under Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament by failing to consider the other elements under passing off law.

Action brought on 9 July 2020 –Włodarczyk v EUIPO — Ave Investment (dziandruk)

(Case T-434/20)

(2020/C 287/58)

Language in which the application was lodged: Polish

Parties

Applicant: Piotr Włodarczyk (Pabianice, Poland) (represented by: M. Bohaczewski, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ave Investment sp. z o.o. (Pabianice, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark featuring the word 'dziandruk' in red and grey — EU trade mark No 15 742 091

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 May 2020 in Case R 2192/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the Court and before the Cancellation Division and Board of Appeal of EUIPO;

— in the alternative, order Ave Investment to pay the costs of the proceedings before the Court and before the Cancellation Division and Board of Appeal of EUIPO.

Plea in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 15 July 2020 — Facebook Ireland v Commission

(Case T-451/20)

(2020/C 287/59)

Language of the case: English

Parties

Applicant: Facebook Ireland Ltd (Dublin, Ireland) (represented by: D. Jowell, QC, D. Bailey, Barrister, J. Aitken, D. Das, S. Malhi, R. Haria, M. Quayle, Solicitors and T. Oeyen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Decision C(2020) 3011 final, dated 4 May 2020, and notified to the Applicant on 5 May 2019, taken pursuant to Article 18(3) of Council Regulation No1/2003 in the course of an investigation in Case AT.40628 — Facebook Data-related practices;

— in the alternative: (i) partially annul Article 1 of the Contested Data Decision in so far as it unlawfully requests internal documents that are irrelevant to the investigation; and/or (ii) partially annul Article 1 of the Contested Data Decision in order that independent EEA-qualified lawyers may be permitted to conduct a manual review of the documents captured by the Contested Data Decision in order to exclude from production documents that are manifestly irrelevant to the investigation and/or personal documents; and/or (iii) partially annul Article 1 of the Contested Data Decision in so far as it unlawfully requires production of irrelevant documents that are personal and/or private in nature;

— order the Commission to pay the applicant's 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 that the Contested Data Decision fails to indicate the subject of the Commission's investigation in sufficiently clear or consistent terms, contrary to the requirements of Article 18(3) of Regulation No 1/2003, Article 296 of the Treaty on the Functioning of the European Union and the principle of legal certainty, and in breach of both Facebook's rights of defence and the right to good administration.

2. Second plea in law, alleging that the Contested Data Decision, by requiring a document production consisting of a clear majority of wholly irrelevant and/or personal documents, infringes the principle of necessity reflected in Article 18(3) of Regulation No 1/2003 and/or violates Facebook's rights of defence and/or constitutes a misuse of powers.

3. Third plea in law, alleging that the Contested Data Decision, by requiring the production of so many wholly irrelevant and personal documents (for example: correspondence regarding medical issues relating to employees and their families; correspondence at times of bereavement; documents relating to personal wills, guardianship, childcare and personal financial investments; job applications and references; internal appraisals; and documents assessing security risks to the Facebook campus and personnel), infringes the fundamental right to privacy, the principle of proportionality and the fundamental right to good administration. Therefore, the Contested Data Decision breaches the fundamental rights to privacy, as protected by Article 7 of the Charter of Fundamental Rights. The Contested Data Decision also infringes the principle of proportionality as it is excessively broad in scope and insufficiently targeted to the subject-matter of the Commission's investigation.

4. Fourth plea in law, alleging that the Contested Data Decision fails to explain why its search terms will only identify documents that are necessary and relevant for the Commission's investigation or to explain why any relevance review by external, EEA qualified lawyers is not permitted or to explain or provide for any legally binding, data room for personal and/or wholly irrelevant documents and is therefore based on insufficient reasoning, contrary to Article 18(3) of Regulation No 1/2003 and Article 296 TFEU.

Action brought on 15 July 2020 — Facebook Ireland v Commission

(Case T-452/20)

(2020/C 287/60)

Language of the case: English

Parties

Applicant: Facebook Ireland Ltd (Dublin, Ireland) (represented by: D. Jowell, QC, D. Bailey, Barrister, J. Aitken, D. Das, S. Malhi, R. Haria, M. Quayle, Solicitors and T. Oeyen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— partially annul Article 1 of the Commission Decision C(2020) 3013 final, dated 4 May 2020 (Case AT.40684 — Facebook Marketplace), in so far as it requests the internal documents specified in Annex I.B;

— in the alternative: (i) partially annul Article 1 of the Contested Marketplace Decision in so far as it unlawfully requests irrelevant documents; (ii) partially annul Article 1 of the Contested Marketplace Decision in order that independent EU-qualified lawyers may be permitted to conduct a relevance review of the documents captured by the Marketplace Document Request in order to exclude from production documents that are manifestly irrelevant to the investigation and/or personal documents; and/or (iii) partially annul Article 1 of the Contested Marketplace Decision in so far as it unlawfully requires production of irrelevant documents that are personal or private in nature;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that by requiring a document production consisting of a clear majority of wholly irrelevant and/or personal documents, the contested Decision infringes the principle of necessity reflected in Article 18(3) of Regulation No 1/2003 and/or violates Facebook's rights of defence and/or constitutes a misuse of powers. Accordingly, the Commission erred in law and/or assessment in the application of Article 18(3) of Regulation No 1/2003.

2. Second plea in law, alleging that by requiring the production of so many documents (for example: correspondence of employees regarding medical issues; correspondence at times of bereavement; documents relating to personal property investments; job applications; internal appraisals; and documents assessing security risks to the family members of key Facebook personnel), the contested Decision infringes the fundamental right to privacy, the principle of proportionality and the fundamental right to good administration.

3. Third plea in law, alleging that the Contested Marketplace Decision fails to explain why its search terms will only identify documents that are necessary and relevant for the Commission's investigation or to explain why any relevance review by external, EU qualified lawyers are not permitted or to explain or provide for any legally binding, data room for personal and/or wholly irrelevant documents and is therefore based on insufficient reasoning, contrary to Article 18(3) of Regulation No 1/2003 and Article 296 TFEU.

Action brought on 14 July 2020 — KZ v Commission

(Case T-453/20)

(2020/C 287/61)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the list of promoted officials adopted by Administrative Notice No 32-2019/14.11.2019 of 14 November 2019 inasmuch as it does not include the name of the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, raising a plea of illegality in respect of the General Implementing Provisions ('the GIPs') for Article 45 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'). The applicant contests the interpretation given by the Commission, which considers that Article 40(3) of the Staff Regulations means that an official who is on leave on personal grounds on the date when the promotion decision is adopted by the appointing authority is not eligible for the promotion exercise concluded thereby. On the contrary, the applicant puts forward a teleological and systematic interpretation of Article 40(3) of the Staff Regulations and submits that the Commission, by its interpretation, infringes the right to promotion under Article 45 of the Staff Regulations. In his view, the Commission also infringes the principle of legal certainty, the principle that the statutory provisions of which those GIPs form part should be consistent, and the principle of equal treatment in terms of career development under Article 5(5) of the Staff Regulations. Lastly, he complains that the consequences of implementing the GIPs are illogical and disproportionate.

Action brought on 16 July 2020 — Garment Manufacturers Association in Cambodia v Commission

(Case T-454/20)

(2020/C 287/62)

Language of the case: English

Parties

Applicant: Garment Manufacturers Association in Cambodia (Phnom Penh, Cambodia) (represented by: C. Ziegler and S. Monti, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's Delegated Regulation (EU) 2020/550 of 12 February 2020 amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia in part, namely with regard to the temporary withdrawal of the GSP preferences for all customs codes that are affecting GMAC members, i.e. the HS codes mentioned in the table in Article 1 subparagraph 1 and all customs HS codes mentioned in the table in Article 1 subparagraph 2, except for HS code 1212 93;

— order the Commission to bear its own costs and pay those incurred by the applicant.

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 Contested Regulation violates the principle of proportionality and the requirement of consistency between the Union's policies and activities. The Commission allegedly failed to properly assess the proportionality of the partial temporary withdrawal of customs preferences for the Cambodian garments, footwear and travel goods sectors.

2. Second plea in law, alleging a violation of the applicant's procedural rights due to the Commission's failure to provide adequate reasoning pursuant to Article 296(2) TFEU, corresponding to a violation of the right to good administration.

Action brought on 16 July 2020 — LA v Commission

(Case T-456/20)

(2020/C 287/63)

Language of the case: Italian

Parties

Applicant: LA (represented by: M. Velardo, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 20 June 2019 by which the applicant was not included in the list of candidates admitted to the Assessment Centre phase of Competition EPSO/AD/371/19;

— annul the decision of 24 September 2019 rejecting the request for review;

— annul the decision of 6 April 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 four pleas in law.

1. First plea in law, alleging a manifest error of assessment.

   — In this regard the applicant claims that the selection board infringed the competition notice (first paragraph of Article 5 of Annex III to the Staff Regulations), in so far as it did not take into account her professional qualities, clearly disregarding the requirements of the competition notice and the functions assigned to the successful candidates.

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

   — In this regard the applicant claims that during the Talent Screener phase the selection board failed to comply with the assessment criteria laid down by the competition notice and thereby failed to ensure equal treatment of candidates.

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

   — In this regard the applicant claims that there was a significant lack of reasoning for the contested decisions which consequently had repercussions on her rights of defence and on the equality of the parties in the proceedings.

4. Fourth plea in law, alleging that the competition notice is unlawful under Article 277 TFEU.

   — In this regard the applicant claims that, contrary to Article 1(e) of Annex III to the Staff Regulations, which states that the appointing authority is to establish the nature and type of the exams and how they will be marked, in the present procedure the selection board established the 'weighting factors', whereas this fell within the competence of the appointing authority according to the aforementioned provision.

Action brought on 17 July 2020 — SBG v EUIPO — VF International (GEØGRAPHICAL NØRWAY)

(Case T-458/20)

(2020/C 287/64)

Language in which the application was lodged: French

Parties

Applicant: Super Brand Licencing (SBG) (Villeurbanne, France) (represented by: T. de Haan and A. Sion, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: VF International Sagl (Stabio, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the word mark GEØGRAPHICAL NØRWAY — International registration designating the European Union No 933 206

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2020 in Case R 1178/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, by reason of the incorrect assessment of the existence of bad faith at the time when the application for the mark was filed.

Action brought on 17 July 2020 — SBG v EUIPO — VF International (GEOGRAPHICAL NORWAY EXPEDITION)

(Case T-459/20)

(2020/C 287/65)

Language in which the application was lodged: French

Parties

Applicant: Super Brand Licencing (SBG) (Villeurbanne, France) (represented by: T. de Haan and A. Sion, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: VF International Sagl (Stabio, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark GEOGRAPHICAL NORWAY EXPEDITION in black, taupe, red and white — EU trade mark No 9 860 834

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2020 in Case R 664/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, by reason of the incorrect assessment of the existence of bad faith at the time when the application for the mark was filed.

Action brought on 17 July 2020 — SBG v EUIPO — VF International (Geographical Norway)

(Case T-460/20)

(2020/C 287/66)

Language in which the application was lodged: French

Parties

Applicant: Super Brand Licencing (SBG) (Villeurbanne, France) (represented by: T. de Haan and A. Sion, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: VF International Sagl (Stabio, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark Geographical Norway — EU trade mark No 10 015 352

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2020 in Case R 662/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, by reason of the incorrect assessment of the existence of bad faith at the time when the application for the mark was filed.

Action brought on 17 July 2020 — SBG v EUIPO — VF International (GEOGRAPHICAL NORWAY)

(Case T-461/20)

(2020/C 287/67)

Language in which the application was lodged: French

Parties

Applicant: Super Brand Licencing (SBG) (Villeurbanne, France) (represented by: T. de Haan and A. Sion, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: VF International Sagl (Stabio, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark GEOGRAPHICAL NORWAY — EU trade mark No 11 048 147

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2020 in Case R 661/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, by reason of the incorrect assessment of the existence of bad faith at the time when the application for the mark was filed.

Action brought on 22 July 2020 — Ryanair v Commission

(Case T-465/20)

(2020/C 287/68)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision (EU) of 10 June 2020 on State Aid SA.57369 (2020/N) COVID-19 — *Portugal — Aid to TAP* ([1]); and,

— order the European Commission to pay the costs.

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision does not establish that the aid falls within the material scope of the Rescue and Restructuring Guidelines (R&R Guidelines). ([2])

2. Second plea in law, alleging that the Commission misapplied Article 107(3)(c) TFEU.

3. Third plea in law, alleging that the decision violates the principles of non-discrimination, free provision of services and free establishment.

4. Fourth plea in law, alleging that the Commission failed to initiate a formal investigation procedure.

5. Fifth plea in law, alleging that the decision violated the Commission's duty to state reasons.

([1]) European Commission Decision (EU) of 10 June 2020 on State Aid SA.57369 (2020/N) COVID-19 — Portugal — Aid to TAP (OJ 2020 C 228, p. 1)

([2]) Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ 2014, C 249, p. 1)

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