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Information and Notices

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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2021/C 9/01)

Last publication

OJ C 443, 21.12.2020

Past publications

OJ C 433, 14.12.2020

OJ C 423, 7.12.2020

OJ C 414, 30.11.2020

OJ C 399, 23.11.2020

OJ C 390, 16.11.2020

OJ C 378, 9.11.2020

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 10 November 2020 — European Commission v Italian Republic

(Case C-644/18) [1]

(Failure of a Member State to fulfil obligations — Environment — Directive 2008/50/EC — Ambient air quality — Article 13(1) and Annex XI — Systematic and persistent exceedance of limit values for microparticles (PM10) in certain Italian zones and agglomerations — Article 23(1) — Annex XV — Exceedance period to be 'as short as possible' — Appropriate measures)

(2021/C 9/02)

Language of the case: Italian

Parties

Applicant: European Commission (represented initially by: G. Gattinara and K. Petersen, and subsequently by G. Gattinara and E. Manhaeve, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and by F. De Luca and P. Gentili, avvocati dello Stato)

Operative part of the judgment

The Court:

1. Declares that, by having systematically and persistently exceeded the limit values for concentrations of particulate matter PM_{10}, and continuing to exceed them,

   — as regards the daily limit value,

   — from 2008 and up to 2017 inclusive in the following zones: IT 1212 (Sacco Valley); IT 1507 (former zone IT 1501, 'improvement zone' — Naples and Caserta); IT 0892 (Emilia- Romagna, Pianura Ovest (Western Plain)); IT 0893 (Emilia-Romagna, Pianura Est (Eastern Plain)); IT 0306 (agglomeration of Milan); IT 0307 (agglomeration of Bergamo); IT 0308 (agglomeration of Brescia); IT 0309 (Lombardy, plain with a high level of urbanisation A); IT 0310 (Lombardy, plain with a high level of urbanisation B); IT 0312 (Lombardy, valley floor D); IT 0119 (Piedmont, plain); IT 0120 (Piedmont, high ground);

   — from 2008 and up to 2016 inclusive, in zone IT 1215 (agglomeration of Rome);

   — from 2009 and up to 2017 inclusive in the following zones: IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso); IT 0510 (former zone IT 0502, agglomeration of Padua); IT 0511 (former zone IT 0503, agglomeration of Vicenza), IT 0512 (former zone IT 0504, agglomeration of Verona); IT 0513 and IT 0514 (former zone IT 0505; zone A 1 — Veneto Province);

   — from 2008 to 2013, and subsequently again from 2015 to 2017 in zone IT 0907 (zone Prato-Pistoia);

   — from 2008 to 2012, and subsequently again from 2014 to 2017 in zones IT 0909 (zone Valdarno Pisano and Piana Lucchese) and IT 0118 (agglomeration of Turin);

— from 2008 to 2009, and from 2011 to 2017, in zones IT 1008 (zone Conca Ternana) and IT 1508 (former zone IT 1504 Benevento hilly coastal zone);

— in 2008, and from 2011 to 2017, in zone IT 1613 (Apulia — industrial zone) and from 2008 to 2012, and in 2014 and 2016, in zone IT 1911 (agglomeration of Palermo); as well as

— with regard to the annual limit value in the following zones: IT 1212 (Sacco Valley) from 2008 to 2016 inclusive; IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso) in 2009, 2011 and 2015; IT 0511 (former zone IT 0503, agglomeration of Vicenza), in 2011, 2012 and 2015; IT 0306 (agglomeration of Milan), from 2008 to 2013 and in 2015, IT 0308 (agglomeration of Brescia), IT 0309 (Lombardy, plain with a high level of urbanisation A) and IT 0310 (Lombardy, plain with a high level of urbanisation B) from 2008 until 2013 and in 2015 and 2017; IT 0118 (agglomeration of Turin) from 2008 until 2012 and in 2015 and 2017,

the Italian Republic has failed to fulfil its obligations under the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe,

and

by failing to adopt as from 11 June 2010 appropriate measures to ensure compliance with the limit values for concentrations of particulate matter PM_{10} in all those zones, the Italian Republic has failed to meet its obligations under Article 23(1) of Directive 2008/50, on its own and in conjunction with Section A of Annex XV to that directive, and in particular the obligation laid down in the second subparagraph of Article 23(1), to ensure that the air quality plans provide for appropriate measures to ensure that the period of exceedance of the limit values is kept as short as possible.

2. Orders the Italian Republic to pay the costs.

(1) OJ C 427, 26.11.2018.

Appeal brought on 7 April 2020 by Jean Whitehead and David Evans against the order of the General Court (Tenth Chamber) delivered on 29 January 2020 in Case T-541/19, Shindler and Others v Council

(Case C-158/20 P)

(2021/C 9/03)

Language of the case: French

Parties

Appellants: Jean Whitehead, David Evans (represented by: J. Fouchet, avocat)

Other parties to the proceedings: Council of the European Union, Harry Shindler, Douglas Edward Watson, David Maxwell Anstead, Ross Adrian Bailey

By order of 1 October 2020 the Court (Ninth Chamber) dismissed the appeal as, in part, manifestly inadmissible and, in part, manifestly unfounded.

Request for a preliminary ruling from the Curtea de Apel Constanța (Romania) lodged on 23 April 2020 — SC Novart Engineering SRL v Unitatea Administrativ Teritorială Municipiul Tulcea

(Case C-170/20)

(2021/C 9/04)

Language of the case: Romanian

Referring court

Curtea de Apel Constanța

Parties to the main proceedings

Applicant: SC Novart Engineering SRL

Defendant: Unitatea Administrativ Teritorială Municipiul Tulcea

By order of 12 November 2020, the Court (Tenth Chamber) declared the request for a preliminary ruling manifestly inadmissible.

Appeal brought on 5 June 2020 by ViaSat, Inc. against the judgment of the General Court (Second Chamber) delivered on 26 March 2020 in Case T-734/17, ViaSat v Commission

(Case C-235/20 P)

(2021/C 9/05)

Language of the case: English

Parties

Appellant: ViaSat, Inc. (represented by: P. de Bandt, avocat, M. R. Gherghinaru, avocate, J. Ruiz Calzado, abogado, L. Marco Perpiñà, abogada)

Other parties to the proceedings: European Commission, Inmarsat Ventures Ltd

Form of order sought

The appellant claims that the Court should:

— declare the present appeal admissible and well-founded and, consequently,

— set aside the judgment under appeal and give a final judgment in this case ordering the Commission to provide the access to the documents requested,

— annul the decision of the Secretary-General of the Commission of 11 January 2018;

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

Pleas in law and main arguments

First plea in law: error in law regarding the application of a general presumption of confidentiality to the requested documents and violation of Article 4(2) of Regulation No 1049/2001 ([1]) relating to the protection of commercial interests and of the duty to state reasons.

Second plea in law: Error in law regarding the existence of an overriding public interest in disclosure and violation of the last clause of Article 4(2) of Regulation No 1049/2001 relating to the protection of commercial interests.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001, L 145, p. 43).

Appeal brought on 10 July 2020 by Kerry Luxembourg Sàrl against the judgment of the General Court (Eighth Chamber) delivered on 29 April 2020 in Case T-108/19, Kerry Luxembourg v EUIPO

(Case C-304/20 P)

(2021/C 9/06)

Language of the case: English

Parties

Appellant: Kerry Luxembourg Sàrl (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

By order of 29 October 2020, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal is not allowed to proceed and that Kerry Luxembourg Sàrl shall bear its own costs.

Appeal brought on 10 July 2020 by Kerry Luxembourg Sàrl against the judgment of the General Court (Eighth Chamber) delivered on 29 April 2020 in Case T-109/19, Kerry Luxembourg v EUIPO

(Case C-305/20 P)

(2021/C 9/07)

Language of the case: English

Parties

Appellant: Kerry Luxembourg Sàrl (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

By order of 29 October 2020, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal is not allowed to proceed and that Kerry Luxembourg Sàrl shall bear its own costs.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 6 August 2020 — SP v KLM Royal Dutch Airlines, Direktion für Deutschland

(Case C-367/20)

(2021/C 9/08)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: SP

Defendant: KLM Royal Dutch Airlines, Direktion für Deutschland

Question referred

Must Article 5(1)(c) and Article 7(1) of Regulation No 261/2004 ([1]), read together with Article 3(5) of that regulation, be interpreted as meaning that, in the case of connecting flights, where there are two flights which are the subject of a single reservation, departing from an airport located outside the territory of any Member State (in a third country) for an airport located within the territory of a Member State via an airport in another [Member State], a passenger who suffers a delay of three hours or more in reaching his or her final destination, the cause of that delay arising in the journey's first segment operated, under a code-share agreement, by an air carrier established in a third country, may bring his or her action for compensation under that regulation against the Community air carrier through which the flight was reserved in its entirety and which operated only the second segment of the journey?

By order of 12 November 2020, the Court of Justice of the European Union (Ninth Chamber) ruled as follows:

Article 5(1)(c) and Article 7(1) 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, read together with Article 3(1)(b) and (5) of that regulation, must be interpreted as meaning that, in the case of connecting flights, where there are two flights which are the subject of a single reservation, departing from an airport located within the territory of a third country for an airport located in a Member State via the airport of another Member State, a passenger who suffers a delay of three hours or more in reaching his or her final destination, the cause of that delay arising in the first flight operated, under a code-share agreement, by a carrier established in a third country, may bring his or her action for compensation under that regulation against the Community air carrier that performed the second flight.

(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).

Appeal brought on 21 September 2020 by Katjes Fassin GmbH & Co. KG against the order of the General Court (Second Chamber) delivered on 10 July 2020 in Case T-616/19, *Katjes Fassin GmbH & Co. KG* v *European Union Intellectual Property Office (EUIPO)*

(Case C-446/20 P)

(2021/C 9/09)

Language of the case: German

Parties

Appellant: Katjes Fassin GmbH & Co. KG (represented by: S. Stolzenburg-Wiemer, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office, Haribo The Netherlands & Belgium B.V.

By order of 12 November 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to pay its own costs.

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 24 September 2020 — Namur-Est Environnement ASBL v Région wallonne

(Case C-463/20)

(2021/C 9/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Namur-Est Environnement ASBL

Defendant: Région wallonne

Questions referred

1. Do a decision 'authorising the disturbance of animals and degradation of the areas of habitat of those species for the working of a quarry' and the decision authorising or refusing that working (single permit) form a single development consent (within the meaning of Article 1(2)(c) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment) ([1]) relating to a single project (within the meaning of Article 1(2)(a) of that directive) where, first, that working cannot take place without the first of those decisions and, secondly, the authority responsible for issuing single permits retains the ability to determine the environmental effects of that working more strictly having regard to the parameters set by the body that issued the first decision?

2. If the answer to that first question is in the affirmative, are the requirements laid down by that directive, specifically in Articles 2, 5, 6, 7 and 8, sufficiently met where the public participation phase takes place after adoption of the decision 'authorising the disturbance of animals and degradation of the areas of habitat of those species for the working of a quarry' but before adoption of the principal decision entitling the developer to proceed to work the quarry?

([1]) OJ 2012 L 26, p. 1.

Request for a preliminary ruling from the Amtsgericht Nürnberg (Germany) lodged on 29 September 2020 — RightNow GmbH v Wizz Air

(Case C-469/20)

(2021/C 9/11)

Language of the case: German

Referring court

Amtsgericht Nürnberg

Parties to the main proceedings

Applicant: RightNow GmbH

Defendant: Wizz Air

Question referred

Is Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) to be interpreted as meaning that a term in the general terms and conditions of a commercial air carrier which has not been individually negotiated, under which a contract of carriage concluded with a consumer in the course of electronic commerce is to be governed by the law of the Member State in which the air carrier is resident, which is not identical to the law of the place in which the passenger is habitually resident, is unfair in so far as it leads the consumer into error by failing to draw his attention to the fact that the choice as to the law applicable in accordance with the second subparagraph of Article 5(2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ([2]) does not apply to any law and is limited to the law of the countries named in the second subparagraph of Article 5(2) of the Rome I Regulation?

The case was removed from the Register of the Court of Justice by order of the Court of 12 November 2020.

([1]) OJ 1993 L 95, p. 29.
([2]) OJ 2008 L 177, p. 6.

Request for a preliminary ruling from the Cour du travail de Mons (Belgium) lodged on 28 September 2020 — Centre d'enseignement secondaire Saint-Vincent de Soignies ASBL v FS

(Case C-471/20)

(2021/C 9/12)

Language of the case: French

Referring court

Cour du travail de Mons

Parties to the main proceedings

Applicant: Centre d'enseignement secondaire Saint-Vincent de Soignies ASBL

Defendant: FS

Questions referred

1. Can the work of a teacher at a boarding school, who works, inter alia, at night, be covered by the derogations provided for in Article 17(3)(b) of Directive 2003/88/EC ([1])?

2. Can it be considered, without depriving the rights conferred by Directive 2003/88/EC of practical effect, that, in the context of Article 18 of Directive 2003/88/EC, with respect to a reference period of 12 months, it is permissible for compensatory rest not to be granted expressly and that compensatory rest is, where applicable, granted automatically to a worker in the education sector, such as a teacher at a boarding school, who works, inter alia, at night, on the understanding that periods of school holiday, in particular those in the summer, compensate even for the most extensive extra work carried out by that worker?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 29 September 2020 — XXXX v Commissaire général aux réfugiés et aux apatrides

(Case C-483/20)

(2021/C 9/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: XXXX

Respondent: Commissaire général aux réfugiés et aux apatrides

Question referred

Does EU law, essentially Articles 18 and 24 of the Charter of Fundamental Rights of the European Union, Articles 2, 20, 23 and 31 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted ([1]), and Article 25 (6) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ([2]), preclude a Member State, when applying the powers conferred by Article 33(2)(a) of Directive 2013/32/EU, from rejecting an application for international protection as inadmissible because of protection already granted by another Member State, where the applicant is the father of an unaccompanied child who has been granted protection in the first Member State, he is the sole parent of the nuclear family present by the child's side, he lives with the child and has been conferred parental responsibility for the child by that Member State? Do the principle of family unity and that requiring compliance with the best interests of the child not require, on the contrary, protection to be granted to that parent by the State where his child has been granted protection?

([1]) OJ 2011 L 337, p. 9.
([2]) OJ 2013 L 180, p. 60.

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 29 September 2020 — XXXX v HR Rail, SA

(Case C-485/20)

(2021/C 9/14)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: XXXX

Opposing party: HR Rail, SA

Question referred

Is Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([1]) to be interpreted as meaning that an employer has an obligation, in relation to a person who, due to his disability, is no longer capable of performing the essential functions of the post to which he was assigned, to assign him to another post, for which he has the requisite skills, capabilities and availability, where such a measure would not impose a disproportionate burden on the employer?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 8 October 2020 — RR and JG, applicants in the context of criminal proceedings

(Case C-505/20)

(2021/C 9/15)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Applicants in the context of criminal proceedings

RR and JG

Questions referred

Does Article 8 of Directive 2014/42 ([1]) preclude a national law pursuant to which a person whose property has been seized as an alleged instrumentality or as alleged proceeds of a criminal offence and has been frozen is not entitled to apply to the court during the trial stage of the criminal proceedings for the return of that property?

Is a national law which does not permit the confiscation of an 'instrumentality' which is the property of a third party who is not involved in the criminal offence but who has made that property available to the accused for the latter's permanent use in such a way that, from the perspective of the relationship between them, it is the accused who exercises the rights of ownership, in line with Article 4(1) of Directive 2014/42 in conjunction with Article 2(3) thereof and Article 17 of the Charter?

If the [second] question is answered in the negative: Do the second sentence of Article 8(6) and Article 8(7) of Directive 2014/42 establish an obligation to interpret the national law as granting a third party whose property has been frozen and may be confiscated as an instrumentality the right to participate in the proceedings which may result in confiscation and to challenge the confiscation decision in court?

([1]) Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 23 October 2020 — Schneider Electric SA and Others v Premier ministre, Ministre de l'Economie, des Finances et de la Relance

(Case C-556/20)

(2021/C 9/16)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Schneider Electric SA, Axa SA, BNP Paribas, ENGIE, Orange SA, L'Air liquide, société anonyme pour l'étude et l'exploitation des procédés Georges Claude

Defendants: Premier ministre, Ministre de l'Economie, des Finances et de la Relance

Question referred

Does Article 4 of Directive 90/435/EC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States ([1]), in view, in particular, of Article 7(2) thereof, preclude a provision such as Article 223 *sexies* of the General Tax Code, which provides, in order to ensure the correct implementation of a scheme designed to eliminate economic double taxation of dividends, for a levy when a parent company redistributes profits which have been distributed to it by subsidiaries established in another Member State?

([1]) OJ 1990 L 225, p. 6.

Appeal brought on 9 November 2020 by P. Krücken Organic GmbH against the judgment of the General Court (First Chamber) delivered on 9 September 2020 in Case T-565/18, *P. Krücken Organic GmbH* v *European Commission*

(Case C-586/20 P)

(2021/C 9/17)

Language of the case: German

Parties

Appellant: P. Krücken Organic GmbH (represented by: H. Schmidt, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (First Chamber) of 9 September 2020 in Case T-565/18;

— order the European Commission to pay EUR 216 749,02 together with default interest to be calculated from the date of service of the action at the rate of 8 % per annum above the base rate of the European Central Bank (ECB);

— order the European Commission to make available, through access to the file, those documents which were drawn up in the context of ECOCERT's activities during the organic control of the company which produced the product at issue, in particular the 2016, 2017 and 2018 inspection reports and the related evaluation statements, which are connected to ECOCERT's findings, evaluations and decisions and formed the basis for the issuing of the certificate of inspection for the product at issue and for the subsequent withdrawal of that certificate of inspection by ECOCERT;

— require the Commission to, in turn, oblige the organic control bodies which it has tasked with carrying out certain functions in the European Union's system of control for organic farming in third countries to notify to the importer concerned their decision concerning the withdrawal, revocation or cancellation of the certificate of inspection issued, and to receive and decide on that importer's objections; to encourage the organic control bodies which it has appointed in third countries to make available to importers the documents of the organic control procedure on which such decisions are based, in particular the inspection reports and evaluation statements, redacting sections which are subject to data protection in favour of third parties; or, in the alternative, limit the Commission's obligation to an obligation to the appellant.

Pleas in law and main arguments

The appellant alleges that its fundamental rights to the freedom to conduct a business and to protection of its property have been infringed. It contends that EU organic law should be interpreted in the light of the Charter of Fundamental Rights, which the General Court entirely disregarded in its judgment. As a result, companies which import organic products from non-member States are deprived of any protection of fundamental rights.

The appellant takes the view that the judgment of the General Court is based on an incorrect legal assessment of the scope of the obligations and, therefore, the responsibility of the European Commission for the conduct and the decisions of the organic control bodies. According to the appellant, the General Court erred in assuming in its judgment that there is no 'specific provision' which states that any wrongful act by ECOCERT through its subsidiary in the People's Republic of China should be attributable to the European Union or the European Commission. The General Court considered that attribution would imply that organic control was transferred to the Commission itself as a public function in non-member States. The legal provisions of Regulation (EC) No 834/2007 ([1]) and of Regulation (EC) No 1235/2008 ([2]) set out for the European Commission the manner in which — through the appointment of organic control bodies as agents of the European Union — organic controls are to be carried out in non-member States.

The appellant further alleges that the General Court's finding, that both Article 33 of Regulation No 834/2007 and the framework for assessing liability for breach of official duty have the effect of affording the European Commission a 'wide discretion' as regards both the finding and assessment of risks and in respect of supervision measures which are based on an established risk, is not consistent with the importance of the protection of fundamental rights. The appellant contends that such a wide discretion would have the effect that no judicial review of the European Commission's conduct is carried out.

Finally, according to the appellant, the General Court's reasoning in rejecting the claim that the Commission is obliged to promote transparency as regards the decisions taken by organic control bodies is not compatible with the importance of fundamental rights and the importance of the fundamental guarantee of effective judicial protection.

([1]) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1).

([2]) Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (OJ 2008 L 334, p. 25).

GENERAL COURT

Judgment of the General Court of 18 November 2020 — Lietuvos geležinkeliai v Commission

(Case T-814/17) ([1])

(Competition — Abuse of a dominant position — Rail freight market — Decision finding an infringement of Article 102 TFEU — Access by third-party undertakings to infrastructure managed by Lithuania's national railway company — Removal of a section of railway track — Concept of 'abuse' — Actual or likely exclusion of a competitor — Calculation of the amount of the fine — 2006 Guidelines on the method for setting fines — Remedies — Proportionality — Unlimited jurisdiction)

(2021/C 9/18)

Language of the case: English

Parties

Applicant: Lietuvos geležinkeliai AB (Vilnius, Lithuania) (represented by: W. Deselaers, K. Apel and P. Kirst, lawyers)

Defendant: European Commission (represented by: A. Cleenewerck de Crayencour, A. Dawes, H. Leupold and G. Meessen, acting as Agents)

Intervener, in support of the defendant: Orlen Lietuva AB (Mažeikiai, Lithuania) (represented by: C. Thomas and C. Conte, lawyers)

Re:

Application pursuant to Article 263 TFEU seeking, primarily, the annulment of Commission Decision C(2017) 6544 final of 2 October 2017 relating to proceedings under Article 102 TFEU (Case AT.39813 — Baltic Rail) and, in the alternative, the reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. Sets the amount of the fine imposed on Lietuvos geležinkeliai AB by Article 2 of European Commission Decision C(2017) 6544 final of 2 October 2017 relating to proceedings under Article 102 TFEU (Case AT.39813 — Baltic Rail) at EUR 20 068 650;

2. Dismisses the action as to the remainder;

3. Orders Lietuvos geležinkeliai and the Commission to bear their own costs;

4. Orders Orlen Lietuva AB to bear its own costs.

([1]) OJ C 52, 12.2.2018.

Judgment of the General Court of 28 October 2020 — Pharma Mar v Commission

(Case T-594/18) ([1])

(Medicinal products for human use — Application for marketing authorisation for the medicinal product Aplidin — plitidepsin — Commission decision refusing authorisation — Regulation (EC) No 726/2004 — Scientific evaluation of the risks and benefits of a medicinal product — Committee for Medicinal Products for Human Use — Objective impartiality)

(2021/C 9/19)

Language of the case: English

Parties

Applicant: Pharma Mar, SA (Colmenar Viejo, Spain) (represented by: M. Merola and V. Salvatore, lawyers)

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

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Implementing Decision C(2018) 4831 final of 17 July 2018 refusing marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1) for Aplidin — plitidepsin, a medicinal product for human use.

Operative part of the judgment

The Court:

1. Annuls Commission Implementing Decision C(2018) 4831 final of 17 July 2018 refusing marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, for Aplidin — plitidepsin, a medicinal product for human use;

2. Orders the Commission to pay the costs.

([1]) OJ C 445, 10.12.2018.

Judgment of the General Court of 11 November 2020 — AD v ECHA

(Case T-25/19) ([1])

(Civil service — Members of the temporary staff — Fixed-term contracts — Decision not to renew — Duty of care — Equal treatment — Manifest error of assessment — Misuse of powers — Right to be heard — Duty to state reasons — Liability)

(2021/C 9/20)

Language of the case: English

Parties

Applicant: AD (represented by: N. Flandin and L. Levi, lawyers)

Defendant: European Chemicals Agency (represented by: C.-M. Bergerat and T. Zbihlej, acting as Agents, and by A. Duron, lawyer)

Re:

Application under Article 270 TFEU seeking (i) annulment, in substance, first, of ECHA's decision of 28 March 2018 not to renew the applicant's fixed-term contract and, second, of the vacancy notice for the establishment of a reserve list for the recruitment of contract staff for function group II published on 9 March 2018 and (ii) compensation for the material and non-material damage allegedly suffered by the applicant as a result of the decision of 28 March 2018 and the vacancy notice of 9 March 2018.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders AD to pay the costs.

([1]) OJ C 103, 18.3.2019.

Judgment of the General Court of 11 November 2020 — AV and AW v Parliament

(Case T-173/19) ([1])

(Civil service — Officials — Reimbursement of medical expenses — OLAF investigation — Article 85 of the Staff Regulations — Recovery of undue payments)

(2021/C 9/21)

Language of the case: French

Parties

Applicants: AV and AW (represented by: L. Levi, S. Rodrigues and J. Martins, lawyers)

Defendant: European Parliament (represented by: T. Lazian and I. Lázaro Betancor, acting as Agents)

Re:

Application under Article 270 TFEU seeking the annulment of the decisions of the Parliament of 23 July and 1 August 2018 recovering from one applicant the sum of EUR 5 289 and from the other applicant the sum of EUR 3 880, on the ground of undue payment having been made to them as reimbursement of medical expenses.

Operative part of the judgment

The General Court hereby:

1. Dismisses the action;

2. Orders each party to bear its own costs.

([1]) OJ C 172, 20.5.2019.

Judgment of the General Court of 28 October 2020 — Target Ventures Group v EUIPO — Target Partners (TARGET VENTURES)

(Case T-273/19) ([1])

(EU trade mark — Invalidity proceedings — EU word mark TARGET VENTURES — Absolute ground for invalidity — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2021/C 9/22)

Language of the case: English

Parties

Applicant: Target Ventures Group Ltd (Road Town, British Virgin Islands) (represented by: T. Dolde and P. Homann, lawyers)

Defendant: European Union Intellectual Property Office (represented by: P. Sipos and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Target Partners GmbH (Munich, Germany) (represented by: A. Klett and C. Mikyska, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 February 2019 (Case R 1684/2017-2), relating to invalidity proceedings between Target Ventures Group and Target Partners.

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 4 February 2019 (Case R 1684/2017-2);

2. Orders EUIPO to bear its own costs and to pay those incurred by Target Ventures Group Ltd, including those which the latter party incurred before the Board of Appeal;

3. Orders Target Partners GmbH to bear its own costs.

(1) OJ C 220, 1.7.2019.

Judgment of the General Court of 28 October 2020 — Electrolux Home Products v EUIPO — D. Consult (FRIGIDAIRE)

(Case T-583/19) (1)

(EU trade mark — Revocation proceedings — EU word mark FRIGIDAIRE — Genuine use — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2021/C 9/23)

Language of the case: English

Parties

Applicant: Electrolux Home Products, Inc. (Charlotte, North Carolina, United States) (represented by: P. Brownlow, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO: D. Consult (Wattignies, France)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 17 June 2019 (Case R 166/2018-5), relating to revocation proceedings between D. Consult and Electrolux Home Products.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Electrolux Home Products, Inc., to pay the costs.

(1) OJ C 348, 14.10.2019.

Judgment of the General Court of 18 November 2020 — Dermavita v EUIPO — Allergan Holdings France (JUVEDERM ULTRA)

(Case T-643/19) (1)

(EU trade mark — Revocation proceedings — EU word mark JUVEDERM ULTRA — Genuine use of the mark — Use in connection with the goods in respect of which the mark was registered — Use in the form in which the mark was registered — Use with the proprietor's consent — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2021/C 9/24)

Language of the case: English

Parties

Applicant: Dermavita Co. Ltd (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, V.J. Ruzek, and K. Zajfert, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Allergan Holdings France (Courbevoie, France) (represented by: J. Day, Solicitor, and T. de Haan, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 18 July 2019 (Joined Cases R 1655/2018-4 and R 1723/2018-4), relating to revocation proceedings between Dermavita Co. and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dermavita Co. Ltd to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders Allergan Holdings France to bear its own costs.

([1]) OJ C 383, 11.11.2019.

Judgment of the General Court of 18 November 2020 — Allergan Holdings France v EUIPO — Dermavita (JUVEDERM ULTRA)

(Case T-664/19) ([1])

(EU trade mark — Revocation proceedings — EU word mark JUVEDERM ULTRA — Genuine use of the mark — Use in connection with the goods in respect of which the mark was registered — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2021/C 9/25)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, V.J. Ruzek, and K. Zajfert, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Dermavita Co. Ltd (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 18 July 2019 (Joined Cases R 1655/2018-4 and R 1723/2018-4), relating to revocation proceedings between Dermavita Co. and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Allergan Holdings France to pay the costs.

([1]) OJ C 383, 11.11.2019.

Judgment of the General Court of 11 November 2020 — Totalizator Sportowy v EUIPO — Lottoland Holdings (Lottoland)

(Case T-820/19) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Lottoland — Earlier national figurative marks LOTTO and Lotto — Earlier national word mark lotto — Declaration of partial invalidity — Relative ground for refusal — No damage to reputation — No link between the marks at issue — Article 8(5) and Article 60(1)(a) of Regulation (EU) 2017/1001)

(2021/C 9/26)

Language of the case: English

Parties

Applicant: Totalizator Sportowy sp. z o.o. (Warsaw, Poland) (represented by: B. Matusiewicz-Kulig, lawyer)

Defendant: European Union Intellectual Property Office (represented by: P. Sipos and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Lottoland Holdings Ltd (Ocean Village, Gibraltar) (represented by: A. Gérard, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 October 2019 (Case R 97/2019-4), relating to invalidity proceedings between Totalizator Sportowy and Lottoland Holdings.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Totalizator Sportowy sp. z o.o. to pay the costs.

([1]) OJ C 45, 10.2.2020.

Judgment of the General Court of 28 October 2020 — Dehousse v Court of Justice of the European Union

(Case T-857/19) ([1])

(Access to documents — Court of Justice of the European Union — Documents held by an institution in the exercise of its administrative functions — Article 266 TFEU — Decision adopted to give effect to a judgment of the General Court — Measures necessary to give effect to a judgment delivered in an action for annulment — Presumption of non-existence or non-possession of documents — Plausible explanations making it possible to determine the reasons for the non-existence or non-possession of documents — Obligation to state reasons — Retention of documentation — Principle of good administration)

(2021/C 9/27)

Language of the case: French

Parties

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

Defendant: Court of Justice of the European Union (represented by: J. Inghelram and Á. Almendros Manzano, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking annulment of the decision of the Registrar of the Court of Justice of the European Union of 14 October 2019 concerning a measure giving effect to the judgment of 20 September 2019, *Dehousse* v *Court of Justice of the European Union* (T-433/17, EU:T:2019:632).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Franklin Dehousse to pay the costs.

([1]) OJ C 61, 24.2.2020.

Judgment of the General Court of 11 November 2020 — Deutsche Post v EUIPO Pošta Slovenije (Representation of a stylised horn)

(Case T-25/20) ([1])

(EU trade mark — Opposition proceedings — Application for registration of an EU figurative mark representing a stylised horn — Earlier EU figurative mark representing a post horn on a yellow background — Relative ground for refusal — No likelihood of confusion — Similarity of the signs — Lack of distinctive character of the earlier mark — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 9/28)

Language of the case: English

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: M. Viefhues, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Pošta Slovenije d.o.o. (Maribor, Slovenia) (represented by: M. Kavčič and R. Jerovšek, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 18 November 2019 (Case R 994/2019 1) relating to opposition proceedings between Deutsche Post and Pošta Slovenije.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Deutsche Post AG to pay the costs.

([1]) OJ C 68, 2.3.2020.

Order of the General Court of 16 October 2020 — L. Oliva Torras v EUIPO — Mecánica del Frío (Vehicle couplings)

(Case T-629/19) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a coupling to hitch refrigeration or air conditioning equipment to a motor vehicle — Ground for invalidity — Failure to comply with the requirements for protection — Articles 4 to 9 and Article 25(1)(b) of Regulation (EC) No 6/2002 — Extent of the examination carried out by the Board of Appeal — Pleas in law referring to the grounds of another decision — Action manifestly lacking any foundation in law)

(2021/C 9/29)

Language of the case: Spanish

Parties

Applicant: L. Oliva Torras, SA (Manresa, Spain) (represented by: E. Sugrañes Coca, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Mecánica del Frío, SL (Cornellá de Llobregat, Spain) (represented by: J. Torras Toll, acting as Agent)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 10 July 2019 (Case R 1399/2017-3), relating to invalidity proceedings between L. Oliva Torras and Mecánica del Frío.

Operative part of the order

1. The action is dismissed.

2. L. Oliva Torras, SA shall bear its own costs and pay those incurred by EUIPO and by Mecánica del Frío, SL.

([1]) OJ C 399, 25.11.2019.

Order of the General Court of 16 October 2020 — Valiante v Commission

(Case T-13/20) ([1])

(Action for annulment — Civil Service — Officials — Internal competition COM/1/AD 10/18 (AD 10) — Submission of the application by means of the form provided for that purpose and referred to in Article 2 of Annex III to the Staff Regulations — Separate application to be admitted to the competition submitted at the same time to the appointing authority — Eligibility criteria — Selection board's decision rejecting the applicant's application — Appointing authority's decision refusing the applicant's request to disregard one of the conditions set out in the competition notice in order to admit him to the competition — Challenge to the appointing authority's decision not that of the selection board — Legal interest in bringing proceedings — Inadmissibility)

(2021/C 9/30)

Language of the case: English

Parties

Applicant: Diego Valiante (Antwerp-Berchem, Belgium) (represented by: R. Wardyn, lawyer)

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

Re:

Application under Article 270 TFEU seeking annulment of the Commission's decision of 14 March 2019 by which that institution's appointing authority rejected the applicant's application to be admitted to the internal competition COM/1/AD 10/18 (AD 10), on the ground that he did not fulfil the condition set out in the related competition notice concerning the holding of grade AD 8.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Mr Diego Valiante shall pay the costs.

([1]) OJ C 95, 23.3.2020.

Order of the General Court of 16 October 2020 — Tratkowski v Commission

(Case T-14/20) ([1])

(Action for annulment — Civil service — Officials — Internal Competition COM/2/AD 12/18 (AD 12) — Submission of the application using the form provided for that purpose and referred to in Article 2 of Annex III to the Staff Regulations — Request to be admitted to the competition, lodged at the same time and on a separate sheet of paper, to the Appointing Authority — Eligibility conditions — Decision of the selection board to reject the applicant's application — Rejection by the selection board of the candidate's request for re-examination due to it being out of time — Decision of the Appointing Authority refusing to grant the applicant's request to set aside one of the conditions provided for in the notice of competition in order to admit him to the competition — Challenge to the decision of the Appointing Authority and not to that of the selection board — Legal interest in bringing proceedings — Inadmissibility)

(2021/C 9/31)

Language of the case: English

Parties

Applicant: Michal Tratkowski (Brussels, Belgium) (represented by: R. Wardyn, Radca Prawny)

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

Re:

Application under Article 270 TFEU seeking annulment of the decision of the Commission of 14 March 2019 by which the Appointing Authority of that institution rejected the applicant's request to be admitted to Internal Competition COM/2/AD 12/18 (AD 12) on the ground that he did not fulfil the condition, laid down in the relevant notice of competition, relating to him holding grade AD 10.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Mr Michal Tratkowski shall pay the costs.

([1]) OJ C 95, 23.3.2020.

Order of the General Court of 15 October 2020 — Lotto24 v EUIPO (LOTTO24)

(Case T-38/20) [1]

(EU trade mark — Application for EU figurative mark LOTTO24 — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001 — Article 7(2) of Regulation 2017/1001 — Action manifestly lacking any foundation in law)

(2021/C 9/32)

Language of the case: German

Parties

Applicant: Lotto24 AG (Hamburg, Germany) (represented by: O. Brexl, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 5 November 2019 (Case R 1216/2019-2), concerning an application for registration of the figurative sign LOTTO24 as an EU trade mark.

Operative part of the order

1. The action is dismissed.

2. Lotto24 AG shall pay the costs.

[1] OJ C 77, 9.3.2020.

Order of the President of the General Court of 19 October 2020 — KN v EESC

(Case T-377/20 R II)

(Application for interim measures — Civil Service — Member of the EESC — Harassment — OLAF investigation — EESC Bureau decision — Application for suspension of operation of a measure — New application — New facts — Lack of urgency)

(2021/C 9/33)

Language of the case: French

Parties

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

Defendant: European Economic and Social Committee (represented by: M. Pascua Mateo, K. Gambino, X. Chamodraka, I. Pouli and A. Carvajal García-Valdecasas, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking suspension of operation of the decision of the EESC of 9 June 2020 by which the applicant was, inter alia, discharged from all supervisory and personnel management activities.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 30 October 2020 — JC v EUCAP Somalia

(Case T-165/20)

(2021/C 9/34)

Language of the case: French

Parties

Applicant: JC (represented by: A. Van Himst, lawyer)

Defendant: EUCAP Somalia (Mogadishu, Somalia)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 4 November 2019, issued by EUCAP SOMALIA, through which the employment relationship between the applicant and EUCAP SOMALIA was terminated;

— annul the decision of 3 December 2019, issued by EUCAP SOMALIA, through which the employment relationship between the applicant and EUCAP SOMALIA was terminated;

— if necessary, annul the decision of 24 January 2020 dismissing the appeal brought against the decision to terminate the employment relationship;

— order the defendant to pay the applicant's salary retroactively until the definitive, proper and lawful end date of the contractual relationship;

— order the defendant to pay interest on the amounts due at the interest rate applied by the European Central Bank (ECB) for its main refinancing operations, increased by three and a half percentage points;

— order the defendant 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, concerning the fact that the first notification was addressed to the applicant only through the decision dismissing his appeal and alleging:

   — that the notification of 4 November 2019 had no effect or, at least, no retroactive effect;

   — failure to implement the formal pre-litigation procedure and infringement of Article 21 of that contract in so far as the applicant was not heard by the Deputy Head of Mission before a decision was adopted concerning the rejection of his internal appeal.

2. Second plea in law, alleging infringement of Article 18 of the employment contract, Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union, in that the defendant failed to state reasons for its dismissal decision (decisions).

3. Third plea in law, alleging infringement of Article 18 of the employment contract and an error of law in the application of Article 17(2) of the employment contract, in that the defendant should have given at least one month's notice.

4. Fourth plea in law, alleging infringement of the Law of 3 July 1978 on Employment Contracts under Belgian law invoked by the defendant as applying to the contract.

Action brought on 14 October 2020 — MW v Parliament

(Case T-630/20)

(2021/C 9/35)

Language of the case: French

Parties

Applicant: MW (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— declare the present application admissible and well founded;

and, consequently,

— annul the contested decision of 11 December 2019 by which the applicant's temporary contract for an indefinite period was terminated and her activities were suspended;

— order the payment of compensation in respect of the material damage suffered, which amounts to EUR 10 000, in addition to the amounts to be calculated for school fees and compensation in respect of the non-material damage, estimated in the amount of EUR 30 000;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 80 of the Conditions of Employment of Other Servants of the European Union leading to an error of assessment and misuse of powers. The applicant argues, inter alia, that the defendant failed to take into consideration all the factors which may affect its decision.

2. Second plea in law, alleging a violation of the right to fair and just working conditions, misuse of powers and violation of the prohibition on any form of psychological harassment provided for in Articles 12 and 12a of the Staff Regulations of Officials of the European Union.

Action brought on 9 October 2020 — CNMSE and Others v Parliament and Council

(Case T-633/20)

(2021/C 9/36)

Language of the case: French

Parties

Applicants: Coordination nationale médicale santé — environnement (CNMSE) (Paris, France) and five other applicants (represented by: G. Tumerelle, lawyer)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— declare EU regulation No 2020/1043 void.

Pleas in law and main arguments

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

1. First plea in law, based on the consequences and risks that the contested regulation ([1]) entails. The applicants take the view, in this respect, that there was no justification for removing all measures for assessing the risks associated with genetically modified organisms. They also criticise the lack of public consultation, lack of information and labelling and lack of scientific grounds.

2. Second plea in law, based on defects affecting the formal legality of the contested act. The applicants complain that the procedure followed did not involve public consultation, failed to observe the differentiated procedure laid down in Article 7 of Directive 2001/18 ([2]), and breached essential procedural requirements. They also plead lack of an adequate legal basis and error of assessment.

3. Third plea in law, based on defects affecting the substantive legality of the contested act. The applicants allege, in this respect, non-compliance with the precautionary principle, non-compliance with the fundamental principle of EU law in respect of the right to protection of legitimate expectations and the acquired right to protection of health and the environment. The applicants also plead breach of the principles of subsidiarity and proportionality and a manifest error of assessment.

([1]) Regulation (EU) 2020/1043 of the European Parliament and of the Council of 15 July 2020 on the conduct of clinical trials with and supply of medicinal products for human use containing or consisting of genetically modified organisms intended to treat or prevent coronavirus disease (COVID-19) (OJ 2020 L 231, p. 12).

([2]) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC — Commission Declaration (OJ 2001 L 106, p. 1).

Action brought on 16 October 2020 — Validity v Commission

(Case T-640/20)

(2021/C 9/37)

Language of the case: English

Parties

Applicant: Validity Foundation — Mental Disability Advocacy Centre (Budapest, Hungary) (represented by: B. Van Vooren, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2020) 5540 final of 6 August 2020 addressed to the Co-executive Director of the Validity Foundation, pursuant to Regulation 1049/2001 ([1]);

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision violates the right to participation in public life, in conjunction with the right to independent living and integration of persons with disabilities (Article 26 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 29 and 19 of the UN Convention on the Rights of Persons with Disabilities).

2. Second plea in law, alleging that the contested decision constitutes an infringement of Article 4(3) of Regulation 1049/2001, as read in light of Article 15(3) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 23 October 2020 — NC and Others v Parliament and Council

(Case T-645/20)

(2021/C 9/38)

Language of the case: English

Parties

Applicants: NC, ND, NE, NF, Uniunea Națională a Transportatorilor Rutieri din România (UNTRR) (Bucharest, Romania) (represented by: R. Martens, lawyer)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul, partially, Article 1 (3) of Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector;

— order the defendants to pay all costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of Articles 2, 4(2) and 9 TEU, Articles 18 and 95 TFEU, Article 21 of the Charter of Fundamental Rights of the European Union and the principles of equality and non-discrimination as general principles of Union law *juncto* Article 5(4) TEU and the principle of proportionality as a general principle of Union law as to substantive and indirect discrimination.

2. Second plea in law, alleging breach of Articles 26, 49 and 56 TFEU, Articles 16 and 52(1) of the Charter of Fundamental Rights of the European Union *juncto* Article 5(4) TEU and the principle of proportionality as a general principle of Union law as to unlawful restriction of the freedom to provide services, the freedom of establishment and the freedom to conduct a business.

3. Third plea in law, alleging breach of Article 3(3) TEU, Articles 11 and 191 TFEU and Article 37 of the Charter of Fundamental Rights of the European Union as to contravening the preservation, protection and improvement of the quality of environment.

4. Fourth plea in law, alleging breach of Article 296(2) TFEU, Article 5 Protocol 2 TFEU, the Interinstitutional Agreement on Better Law-Making and the obligation to state reasons as to failure to provide for a detailed statement of reasons and failure to carry out impact assessments.

5. Fifth plea in law, alleging breach of Articles 91 and 94 TFEU *juncto* Article 5(4) TEU and the principle of proportionality as a general principle of Union law as to seriously affecting the standard of living, the level of employment and the economic circumstances.

Action brought on 21 October 2020 — Verelst v Council

(Case T-647/20)

(2021/C 9/39)

Language of the case: French

Parties

Applicant: Jean-Michel Verelst (Eghezée, Belgium) (represented by: C. Molitor, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action against Council Implementing Decision (EU) 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office (OJ 2020 L 244, p 18), which appointed Mr Yves Van Den Berge a European Prosecutor of the European Public Prosecutor's Office as a temporary agent at grade AD 13 for a non-renewable period of six years from 29 July 2020, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of the rules applicable to the appointment of European Public Prosecutors. Those rules are Articles 288, 289, 291 and 296 TFEU, Articles 20, 21 and 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), the general principles of EU law of legal certainty, legitimate expectations, legality and non-discrimination, Council Regulation (EU) No 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ 2017 L 283, p. 1) and, in particular, Articles 14(3) and 16(1), (2) and (3) thereof, Article 1 of Council Implementing Decision (EU) 2018/1696 of 13 July 2018 on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ 2018 L 282, p. 8), the operating rules of the selection panel laid down by that implementing decision, in particular Articles VI.2. and VII.2, and the essential procedural requirements. By that plea, the applicant alleges that the contested decision, in so far as it appoints one of the candidates nominated by Belgium to the post of European Public Prosecutor:

   — in the first place (first part), has been adopted neither on the basis, nor taking account, of the conclusions drawn by the selection panel after examining the applications and hearing the candidates, set out formally in its reasoned opinion, but on the contrary, in particular, on the basis of a different assessment of the merits of those candidates, carried out within the competent preparatory bodies of the Council, and

   — in the second place (second part), has treated differently the group of candidates nominated by the Czech Republic, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Romania, Slovenia, Slovakia and Finland, on the one hand, and the group of candidates nominated by Belgium, Bulgaria and Portugal, on the other hand, the former on the basis of the opinion of the selection panel, as provided for in the regulation, and the latter by the application of a different procedure for assessing the merits of the candidates, not provided for in the regulation, carried out by a body not empowered to do so.

2. Second plea in law, alleging a failure to state reasons, an infringement of the right to sound administration and a manifest error of assessment. In particular, that plea alleges infringement of Article 296 TFEU, infringement of Article 41 of the Charter, infringement of Regulation (EU) No 2017/1939 referred to above, and. in particular, Articles 14(3) and 16(1), (2) and (3) thereof, infringement of Article 1 of Implementing Decision (EU) No 2018/1696 referred to above and infringement of the operating rules of the selection committee laid down by that implementing decision, in particular Articles VI.2. and VII.2, infringement of the principle of sound administration and the duty to have regard for the welfare of officials, infringement of essential procedural requirements and a manifest error of assessment.

In that regard, the applicant complains that the contested decision appoints to the post of European Public Prosecutor, as regards Belgium, the designated candidate, thus giving him preference over the other candidates and, more particularly, over the applicant, which was done on the basis of an analysis of the experience of the appointed candidate in the field of financial crime and international judicial cooperation, and finds that the qualifications and professional experience of that candidate were more suitable for the post of European Public Prosecutor.

Action brought on 5 November 2020 — Muratbey Gida v EUIPO — M. J. Dairies (Triple helicoid cheese)

(Case T-662/20)

(2021/C 9/40)

Language of the case: English

Parties

Applicant: Muratbey Gida Sanayí Ve Tícaret AŞ (Istanbul, Turkey) (represented by: M. Schork, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: M. J. Dairies EOOD (Sofia, Bulgaria)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: International registration designating the European Union in respect of the design No DM/080641-0002 (Triple helicoid cheese in colour yellow)

Contested decision: Decision of the Third Board of Appeal of EUIPO of 21 August 2020 in Case R 1925/2019-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and dismiss the application of the other party before the Board of Appeal for a declaration of invalidity in respect of the contested international registration No DM/080641-0002 designating the European Union;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 6 of Council Regulation (EC) No 6/2002;

— Infringement of Article 7(1) of Council Regulation (EC) No 6/2002.

Action brought on 30 October 2020 — One Voice v ECHA

(Case T-663/20)

(2021/C 9/41)

Language of the case: French

Parties

Applicant: One Voice (Strasbourg, France) (represented by: A. Ghersi, lawyer)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— rule that the ECHA Board of Appeal erred in its assessment of the relationship between the Cosmetics Regulation and the REACH Regulation;

— rule that the ECHA Board of Appeal infringed the provisions of the REACH Regulation;

and therefore

— annul the ECHA Board of Appeal's decision of 18 August 2020 No A-009-2018;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error in the assessment of the relationship between the Cosmetics Regulation ([1]) and the REACH Regulation ([2]). According to the applicant, the Board of Appeal erred in its assessment of Article 18 of the Cosmetics Regulation when applying the REACH Regulation and acted contrary to the objective pursued by the Cosmetics Regulation in the area of animal testing. Lastly, the applicant takes the view that the ECHA does not have competence to give a binding interpretation of the relationship between the Cosmetics Regulation and the REACH Regulation.

2. Second plea in law, alleging infringement of the provisions of the Reach Regulation. In this respect, the applicant submits, inter alia, that the Reach Regulation establishes the principle of the prohibition of animal testing, except where there is no alternative. No such exception was identified by the Board of Appeal in the contested decision.

([1]) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November on cosmetic products (OJ 2009 L 342, p. 59).

([2]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1 and corrigendum OJ 2007 L 136, p. 3).

Action brought on 30 October 2020 — One Voice v ECHA

(Case T-664/20)

(2021/C 9/42)

Language of the case: French

Parties

Applicant: One Voice (Strasbourg, France) (represented by: A. Ghersi, lawyer)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— rule that the ECHA Board of Appeal erred in its assessment of the relationship between the Cosmetics Regulation and the REACH Regulation;

— rule that the ECHA Board of Appeal infringed the provisions of the REACH Regulation;

and therefore

— annul the ECHA Board of Appeal's decision of 18 August 2020 No A-010-2018;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error in the assessment of the relationship between the Cosmetics Regulation ([1]) and the REACH Regulation ([2]). According to the applicant, the Board of Appeal erred in its assessment of Article 18 of the Cosmetics Regulation when applying the REACH Regulation and acted contrary to the objective pursued by the Cosmetics Regulation in the area of animal testing. Lastly, the applicant takes the view that the ECHA does not have competence to give a binding interpretation of the relationship between the Cosmetics Regulation and the REACH Regulation.

2. Second plea in law, alleging infringement of the provisions of the Reach Regulation. In this respect, the applicant submits, inter alia, that the Reach Regulation establishes the principle of the prohibition of animal testing, except where there is no alternative. No such exception was identified by the Board of Appeal in the contested decision.

([1]) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November on cosmetic products (OJ 2009 L 342, p. 59).

([2]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1 and corrigendum OJ 2007 L 136, p. 3).

Action brought on 9 November 2020 — OA v EESC

(Case T-671/20)

(2021/C 9/43)

Language of the case: French

Parties

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

Defendant: European Economic and Social Committee

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible;

— annul the contested decision of 5 December 2019 which was upheld by the decision rejecting the applicant's complaint of 5 March 2020;

— order payment of compensation for non-material damage amounting to EUR 30 000 and compensation for material damage estimated at EUR 25 000;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the procedural safeguards laid down for administrative and disciplinary investigations, and infringement of the principles of impartiality and sound administration. In that regard, the applicant claims that the administrative investigation concerning him is vitiated by numerous formal and procedural irregularities.

2. Second plea in law, alleging infringement of the principle of proportionality and a manifest error of assessment, as well as misuse of powers.

Action brought on 6 November 2020 — Kerstens v Commission

(Case T-672/20)

(2021/C 9/44)

Language of the case: French

Parties

Applicant: Petrus Kerstens (La Forclaz, Switzerland) (represented by: C. Mourato, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision dated 20 January 2020 rejecting Mr Petrus Kerstens' request for assistance D/517/19 of 17 September 2019 brought under Articles 24 and 12a of the Staff Regulations of Officials of the European Union;

— annul the European Commission's decision dated 31 January 2020 rejecting Mr Petrus Kerstens' request for assistance D/516/19 of 17 September 2019 brought under Articles 24 and 12a of the Staff Regulations of Officials of the European Union;

— order the defendant to pay the costs of the proceedings, by applying Article 134 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of the principle of good administration and infringement of the rights of the defence, and in particular the right to be heard arising from Article 41 (2)(a) of the Charter of Fundamental Rights of the European Union in that the applicant was not heard by the Commission prior to the decisions rejecting his requests for assistance.

Action brought on 13 November 2020 — Ryanair and Laudamotion v Commission

(Case T-677/20)

(2021/C 9/45)

Language of the case: English

Parties

Applicants: Ryanair DAC (Swords, Ireland) and Laudamotion GmbH (Schwechat, Austria) (represented by: E. Vahida, F. Laprévote, V. Blanc, S. Rating and I. Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the European Commission's decision (EU) of 6 July 2020 on State Aid SA.57539 (2020/N) — Austria — COVID-19 — Aid to Austrian Airlines [1]; and

— order the European Commission to pay the costs.

The applicants have also requested that their 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 applicants rely on five pleas in law.

1. First plea in law, alleging that the European Commission failed to review possible aid to or from Lufthansa.

2. Second plea in law, alleging that the European Commission violated specific provisions of the TFEU and the general principles of European law regarding the prohibition of discrimination, free provision of services and free establishment that have underpinned the liberalisation of the air transport market in the EU. The liberalisation of air transport has allowed the growth of truly pan-European low-fares airlines. By authorising Austria to reserve the aid to Austrian Airlines, the European Commission ignored the damage caused to such pan-European airlines by the travel restrictions due to the COVID-19 crisis.

3. Third plea in law, alleging that the European Commission misapplied Article 107(2)(b) TFEU and committed manifest errors of assessment in its review of the proportionality of the aid to the damage caused by the travel restrictions due to the COVID-19 crisis, particularly by considering that all the damage caused by the COVID-19 crisis to AUA was the direct effect of travel restrictions and not verifying whether Austrian Airlines had mitigated all the avoidable costs.

4. Fourth plea in law, alleging that the European Commission failed to initiate a formal investigation procedure despite serious difficulties and violated the applicants' procedural rights.

5. Fifth plea in law, alleging that the European Commission violated its duty to state reasons.

([1]) European Commission's decision (EU) of 6 July 2020 on State Aid SA.57539 (2020/N) — Austria — COVID-19 — Aid to Austrian Airlines (OJ 2020 C 346, p. 2)

Action brought on 17 November 2020 — HB v EIB

(Case T-689/20)

(2021/C 9/46)

Language of the case: English

Parties

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

Defendant: European Investment Bank (EIB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Deputy Secretary-General of the EIB of 27 April 2020, terminating her contract of employment and, so far as necessary, the decision rejecting the request for review; and;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error of assessment, breach of the principle of sound administration and breach of the duty to have regard for the welfare of staff, insofar as:

   — terminating the applicant's contract on the ground of budget restrictions was manifestly erroneous, and against JASPERS 2020 Specific Grant Agreement and the decision of Management Committee of the EIB of 2019;

   — terminating the applicant's contract on the ground that the workload of JASPERS Smart Development Division, where the applicant was assigned, was lower than that of JASPERS other divisions and that, as a result, there was no business need for keeping the applicant in her position was manifestly erroneous; and

   — terminating the applicant's contract went manifestly against the interest of the service, whether from an administrative, financial or workload perspective, and breached the principle of sound administration and the duty to have regard for the welfare of staff.

2. Second plea in law, alleging arbitrariness and breach of the principle of sound administration, insofar as, in a context where the defendant argues that it must let go some of its staff because of budget restrictions, it goes against sound administration and is arbitrary not to establish a staff reduction plan, including notably a quantification of the number of positions to cut, and the objective criteria to select them, on the basis of which decisions regarding individual staff members could be taken, before adopting decisions of termination of contracts of employment, such as the one the applicant challenges.

3. Third plea in law, alleging lack of competence of the author of the act, insofar as the author of the contested decision, the Deputy Secretary-General of the EIB, did not have the powers to adopt it.

Order of the General Court of 6 October 2020 — Cipriani v EUIPO — Hotel Cipriani (ARRIGO CIPRIANI)

(Case T-325/19) ([1])

(2021/C 9/47)

Language of the case: English

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

([1]) OJ C 246, 22.7.2019.

Order of the General Court of 8 October 2020 — Coppo Gavazzi and Others v Parliament

(Joined Cases T-389/19 to T-394/19, T-397/19, T-398/19, T-403/19, T-404/19, T-406/19, T-407/19, T-409/19 to T-418/19, T-420/19 to T-422/19, T-425/19 to T-427/19, T-429/29 to T-432/19, T-435/19, T-436/19, T-438/19 to T-442/19, T-444/19 to T-446/19, T-448/19 to T-454/19, T-463/19 and T-465/19) ([1])

(2021/C 9/48)

Language of the case: Italian

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

([1]) OJ C 270, 12.8.2019.

Order of the General Court of 14 October 2020 — DS and Others v Commission and EEAS

(Case T-573/19) ([1])

(2021/C 9/49)

Language of the case: French

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

([1]) OJ C 357, 21.10.2019.

Order of the General Court of 14 October 2020 — DV and Others v Commission

(Case T-576/19) ([1])

(2021/C 9/50)

Language of the case: French

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

([1]) OJ C 357, 21.10.2019.

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