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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 11 November 2020 — European Union Intellectual Property Office v John Mills Ltd, Jerome Alexander Consulting Corp.

(Case C-809/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Opposition proceedings — Relative ground for refusal — Article 8(3) — Scope — Identity or similarity of the mark applied for to the earlier mark — EU word mark MINERAL MAGIC — Application for registration by the agent or representative of the proprietor of the earlier mark — Earlier national word mark MAGIC MINERALS BY JEROME ALEXANDER)

(2021/C 19/02)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (represented by: A. Lukošiūtė, acting as Agent)

Other parties to the proceedings: John Mills Ltd (represented by: S. Malynicz QC), Jerome Alexander Consulting Corp.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 15 October 2018, John Mills v EUIPO — Jerome Alexander Consulting (MINERAL MAGIC) (T-7/17, EU:T:2018:679);

2. Dismisses the action in Case T-7/17, brought by John Mills Ltd against the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 5 October 2016 (Case R 2087/2015-1);

3. Orders John Mills Ltd to pay, in addition to its own costs, the costs incurred by the European Union Intellectual Property Office (EUIPO) relating to the present appeal and to the proceedings before the General Court, and those incurred by Jerome Alexander Consulting Corp. relating to the proceedings before the General Court.

([1]) OJ C 148, 29.4.2019.

Judgment of the Court (First Chamber) of 12 November 2020 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Sonaecom SGPS SA v Autoridade Tributária e Aduaneira

(Case C-42/19) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Article 4 — Concept of 'taxable person' — Mixed holding company — Article 17 — Right to deduct input VAT — Input VAT paid by a mixed holding company in respect of consultancy services relating to a market study with a view to the possible acquisition of shareholdings in other companies — Abandonment of proposed acquisition — Input VAT paid on a bank commission for organising and putting together a bond loan, intended to provide subsidiaries with the necessary means to make investments — Investments not made)

(2021/C 19/03)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Sonaecom SGPS SA

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

1. Article 4(1) and (2) and Article 17(1), (2) and (5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct the input value added tax paid on the purchase of consultancy services relating to a market study carried out with a view to acquiring shares in another company, including where that acquisition did not ultimately take place.

2. Article 4(1) and (2) and Article 17(1),(2) and (5) of Sixth Directive 77/388 must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is not entitled to deduct input value added tax paid on the commission paid to a credit institution for organising and putting together a bond loan, which was intended for making investments in a given sector, where those investments did not ultimately take place and the capital obtained by means of that loan was paid in full to the parent company of the group in the form of a loan.

([1]) OJ C 139, 15.4.2019.

Judgment of the Court (Second Chamber) of 11 November 2020 (request for a preliminary ruling from the Tribunalul Bucureşti — Romania) — Orange România SA v Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal (ANSPDCP)

(Case C-61/19) [1]

(Reference for a preliminary ruling — Directive 95/46/EC — Article 2(h) and Article 7(a) — Regulation (EU) 2016/679 — Article 4(11) and Article 6(1)(a) — Processing of personal data and protection of private life — Collection and storage of the copies of identity documents by a provider of mobile telecommunications services — Concept of the data subject's 'consent' — Freely given, specific and informed indication of wishes — Declaration of consent by means of a tick box — Signing of the contract by the data subject — Burden of proof)

(2021/C 19/04)

Language of the case: Romanian

Referring court

Tribunalul Bucureşti

Parties to the main proceedings

Applicant: Orange România SA

Defendant: Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal (ANSPDCP)

Operative part of the judgment

Article 2(h) and Article 7(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Article 4(11) and Article 6(1)(a) 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 it is for the data controller to demonstrate that the data subject has, by active behaviour, given his or her consent to the processing of his or her personal data and that he or she has obtained, beforehand, information relating to all the circumstances surrounding that processing, in an intelligible and easily accessible form, using clear and plain language, allowing that person easily to understand the consequences of that consent, so that it is given with full knowledge of the facts. A contract for the provision of telecommunications services which contains a clause stating that the data subject has been informed of, and has consented to, the collection and storage of a copy of his or her identity document for identification purposes is not such as to demonstrate that that person has validly given his or her consent, as provided for in those provisions, to that collection and storage, where

— the box referring to that clause has been ticked by the data controller before the contract was signed, or where

— the terms of that contract are capable of misleading the data subject as to the possibility of concluding the contract in question even if he or she refuses to consent to the processing of his or her data, or where

— the freedom to choose to object to that collection and storage is unduly affected by that controller, in requiring that the data subject, in order to refuse consent, must complete an additional form setting out that refusal.

[1] OJ C 164, 13.5.2019.

Judgment of the Court (First Chamber) of 11 November 2020 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — DenizBank AG v Verein für Konsumenteninformation

(Case C-287/19) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive (EU) 2015/2366 — Payment services in the internal market — Article 4(14) — Concept of 'payment instrument' — Personalised multifunctional bank cards — Near-field communication (NFC) functionality — Article 52(6)(a) and Article 54(1) — Information to be provided to users — Change in the conditions of a framework contract — Tacit consent — Article 63(1)(a) and (b) — Rights and obligations related to payment services — Derogation for low-value payment instruments — Conditions under which applicable — Payment instrument that does not allow its blocking — Payment instrument used anonymously — Limitation of the temporal effects of the judgment)

(2021/C 19/05)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: DenizBank AG

Defendant: Verein für Konsumenteninformation

Operative part of the judgment

1. Article 52(6)(a) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, read in conjunction with Article 54(1) thereof, must be interpreted to the effect that it governs the information and conditions to be provided by a payment service provider wishing to agree, with a user of its services, on tacit consent with regard to changes, in accordance with the detailed rules laid down in those provisions, of the framework contract that they have concluded, but does not lay down restrictions regarding the status of the user or the type of contractual terms that may be the subject of such tacit consent, without prejudice, however, where the user is a consumer, to a possible review of the unfairness of those terms in the light of the provisions of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

2. Article 4(14) of Directive 2015/2366 must be interpreted as meaning that the near-field communication (NFC) functionality of a personalised multifunctional bank card, by means of which low-value payments are debited from the associated bank account, constitutes a 'payment instrument', as defined in that provision;

3. Article 63(1)(b) of Directive 2015/2366 must be interpreted as meaning that a contactless low-value payment using the near-field communication (NFC) functionality of a personalised multifunctional bank card constitutes 'anonymous' use of the payment instrument in question, within the meaning of that derogation provision;

4. Article 63(1)(a) of Directive 2015/2366 must be interpreted as meaning that a payment service provider who intends to rely on the derogation provided for in that provision may not simply assert that it is impossible to block the payment instrument concerned or to prevent its continued use, where, in the light of the objective state of available technical knowledge, that impossibility cannot be established.

([1]) OJ C 246, 22.7.2019.

Judgment of the Court (First Chamber) of 11 November 2020 (request for a preliminary ruling from the Juzgado de lo Social No 3 de Barcelona — Spain) — UQ v Marclean Technologies SLU

(Case C-300/19) ([1])

(Reference for a preliminary ruling — Social policy — Collective redundancies — Directive 98/59/EC — First subparagraph of Article 1(1)(a) — Definition of 'collective redundancies' — Methods of calculating the number of redundancies — Reference period take into account)

(2021/C 19/06)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 3 de Barcelona

Parties to the main proceedings

Applicant: UQ

Defendant: Marclean Technologies SLU

Other parties: Ministerio Fiscal, Fondo de Garantía Salarial

Operative part of the judgment

Article 1(1), first subparagraph, (a) of Directive 98/59 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted in the sense that, with a view to determining whether a contested individual dismissal forms part of an instance of collective redundancy, the reference period laid down in that provision for determining the existence of collective redundancies must be calculated taking into account any period of 30 or 90 consecutive days during which that individual dismissal occurred and during which the largest number of dismissals were effected by the employer for one or more reasons not related to the individual worker concerned, within the meaning of that provision.

([1]) OJ C 295, 2.9.2019.

Judgment of the Court (Eighth Chamber) of 12 November 2020 –Ralph Pethke v European Union Intellectual Property Office (EUIPO)

(Case C-382/19 P) ([1])

(Appeal — Civil Service — Official — Internal reorganisation of the services of the European Union Intellectual Property Office (EUIPO) — Redeployment — Article 7 of the Staff Regulations of Officials of the European Union — Covert penalty — Interests of the service — Equivalence of posts — Obligation to state reasons — Distortion of the facts — Psychological harassment — Article 12a of the Staff Regulations of Officials of the European Union)

(2021/C 19/07)

Language of the case: German

Parties

Appellant: Ralph Pethke (represented by: H. Tettenborn, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office (represented by: A. Lukošiūtė and B. Wägenbaur, Rechtsanwälte)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mr Ralph Pethke to bear his own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 337, 7.10.2019.

Judgment of the Court (First Chamber) of 12 November 2020 (request for a preliminary ruling from the Sofiyski rayonen sad — Bulgaria) — Bulstrad Vienna Insurance Group AD v Olympic Insurance Company Ltd

(Case C-427/19) (1)

(Reference for a preliminary ruling — Directive 2009/138/EC — Article 274 — Law applicable to winding-up proceedings with regard to insurance undertakings — Withdrawal of the authorisation of an insurance company — Appointment of a provisional liquidator — Concept of 'decision to open winding-up proceedings with regard to an insurance undertaking' — Absence of a court decision to open winding-up proceedings in the home Member State — Stay of court proceedings with regard to the insurance undertaking concerned in Member States other than its home Member State)

(2021/C 19/08)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: Bulstrad Vienna Insurance Group AD

Defendant: Olympic Insurance Company Ltd

Operative part of the judgment

1. Article 274 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended by Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013, must be interpreted as meaning that a decision of the competent authority to withdraw the authorisation of the insurance undertaking concerned and to appoint a provisional liquidator cannot constitute a 'decision to open winding-up proceedings with regard to an insurance undertaking' within the meaning of that article, unless the law of the home Member State of that insurance undertaking provides either that that provisional liquidator is empowered to realise the assets of that insurance undertaking and distribute the proceeds among its creditors or that the withdrawal of the authorisation of that insurance undertaking has the effect of opening automatically the winding-up proceedings, without a separate authority being required to adopt a formal decision to that end.

2. Article 274 of Directive 2009/138, as amended by Directive 2013/58, must be interpreted as meaning that, if the conditions required for a decision to withdraw the authorisation of an insurance undertaking and to appoint a provisional liquidator for that undertaking to constitute a 'decision to open winding-up proceedings with regard to an insurance undertaking', within the meaning of that article, are not met, Article 274 does not oblige the courts of other Member States to apply the law of the home Member State of the insurance undertaking concerned, which law provides for the stay of all court proceedings that have been opened with regard to such an undertaking.

(1) OJ C 288, 26.8.2019.

Judgment of the Court (First Chamber) of 11 November 2020 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Ellmes Property Services Limited v SP

(Case C-433/19) [1]

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction, recognition and enforcement of judgments in civil and commercial matters — Article 24, point 1 — Exclusive jurisdiction in matters relating to rights in rem in immovable property — Article 7, point 1(a) — Special jurisdiction in matters relating to a contract — Legal action brought by a co-owner seeking an order that another co-owner cease the use, for touristic purposes, of immovable property subject to co-ownership)

(2021/C 19/09)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Ellmes Property Services Limited

Defendant: SP

Operative part of the judgment

1. Point 1 of Article 24 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 an action by which a co-owner of immovable property seeks to prohibit another co-owner of that property from carrying out changes, arbitrarily and without the consent of the other co-owners, to the designated use of his or her property subject to co-ownership, as provided for in a co-ownership agreement, must be regarded as constituting an action 'which has as its object rights in rem in immovable property' within the meaning of that provision, provided that that designated use may be relied on not only against the co-owners of that property, but also erga omnes, which it is for the referring court to verify.

2. Point 1(a) of Article 7 of Regulation No 1215/2012 must be interpreted as meaning that, where the designated use of immovable property subject to co-ownership provided for by a co-ownership agreement cannot be relied upon erga omnes, an action by which a co-owner of immovable property seeks to prohibit another co-owner of that property from carrying out changes, arbitrarily and without the consent of the other co-owners, to that designated use must be regarded as constituting an action 'in matters relating to a contract', within the meaning of that provision. Subject to verification by the referring court, the place of performance of the obligation on which that action is based is the place where the property is situated.

[1] OJ C 357, 21.10.2019.

Judgment of the Court (Eighth Chamber) of 12 November 2020 — Stephan Fleig v European External Action Service

(Case C-446/19 P) ([1])

(Appeal — Civil Service — Contract staff — European External Action Service (EEAS) — Article 47(c)(i) of the Conditions of Employment of Other Servants of the European Union — Termination of a contract of indefinite duration — Occupational disease — Breakdown in the relationship of trust — Right to a fair hearing — Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union — Duty of care — Articles 30 and 41 of the Charter of Fundamental Rights — Distortion of the facts — Scope of judicial review)

(2021/C 19/10)

Language of the case: German

Parties

Appellant: Stephan Fleig (represented by: H. Tettenborn, Rechtsanwalt)

Other party to the proceedings: European External Action Service (represented by: S. Marquardt and R.C. Weiss, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mr Stephan Fleig to pay the costs.

([1]) OJ C 337, 7.10.2019.

Judgment of the Court (Seventh Chamber) of 12 November 2020 — Bruno Gollnisch v European Parliament, Council of the European Union

(Case C-676/19 P) ([1])

(Appeal — Law governing the institutions — European Parliament — Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid — Effects of a judgment of the Court)

(2021/C 19/11)

Language of the case: French

Parties

Appellant: Bruno Gollnisch (represented by: B. Bonnefoy-Claudet, avocat)

Other party to the proceedings: European Parliament (represented by: S. Seyr and M. Ecker, acting as Agents), Council of the European Union

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mr Bruno Gollnisch to pay the costs.

([1]) OJ C 363, 28.10.2019.

Judgment of the Court (Eighth Chamber) of 12 November 2020 (request for a preliminary ruling from the Tribunalul Bucureşti — Romania) — ITH Comercial Timişoara SRL v Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Bucureşti, Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Bucureşti — Administrația Sector 1 a Finanțelor Publice

(Case C-734/19) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Deduction of input tax — Abandonment of the activity initially planned — Adjustment of the deduction of input VAT — Real estate activity)

(2021/C 19/12)

Language of the case: Romanian

Referring court

Tribunalul Bucureşti

Parties to the main proceedings

Applicant: ITH Comercial Timişoara SRL

Defendants: Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Bucureşti, Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Bucureşti — Administrația Sector 1 a Finanțelor Publice

Operative part of the judgment

1. Articles 167, 168, 184 and 185 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the right to deduct input value added tax (VAT) on goods, in the present case on immoveable property, and on services purchased in order to carry out taxed transactions is retained where the investment projects initially planned were abandoned due to circumstances beyond the control of the taxable person and that it is not necessary for that VAT to be adjusted if the taxable person still intends to use those goods for the purposes of a taxed activity.

2. Directive 2006/112, in particular Article 28 thereof, must be interpreted as meaning that, in the absence of an agency agreement without representation, the mechanism imposing the rules governing commissioning is not applicable where a taxable person constructs a building in accordance with the specifications and requirements of another person expected to lease that building.

([1]) OJ C 54, 17.2.2020.

Judgment of the Court (Tenth Chamber) of 12 November 2020 — European Commission v Republic of Austria

(Case C-796/19) ([1])

(Failure of a Member State to fulfil obligations — Directive 2007/59/EC — Certification of train drivers — Article 3(a) — Competent national authority — Directive 2004/49/EC — Article 16(1) — Safety authority — Designation of several authorities)

(2021/C 19/13)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls and C. Vrignon, acting as Agents)

Defendant: Republic of Austria (represented by: J. Schmoll and A. Posch, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by designating as 'competent authority', for the purposes of Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community, an authority other than the safety authority referred to in Article 16 of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), the Republic of Austria has failed to fulfil its obligations under Article 3(a) of Directive 2007/59;

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

(1) OJ C 432, 23.12.2019.

Judgment of the Court (Sixth Chamber) of 12 November 2020 — European Commission v Kingdom of Belgium

(Case C-842/19) (1)

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Free movement of capital — Article 63 TFEU — Incompatibility of Belgian tax provisions concerning income from immovable property located abroad — Article 260(2) TFEU — Application for an order to pay a penalty payment and a lump sum)

(2021/C 19/14)

Language of the case: French

Parties

Applicant: European Commission (represented by: W. Roels and A. Armenia, acting as Agents)

Defendant: Kingdom of Belgium (represented by: P. Cottin, J.-C. Halleux and C. Pochet, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by failing to take all the measures necessary to comply with the judgment of 12 April 2018 delivered in Case C-110/17, *Commission* v *Belgium* (C-110/17, EU:C:2018:250), the Kingdom of Belgium failed to fulfil its obligations under Article 260(1) TFEU;

2. Orders the Kingdom of Belgium to pay to the European Commission a lump sum of EUR 2 000 000;

3. Orders the Kingdom of Belgium to make to the European Commission a penalty payment of EUR 7 500 per day as from the date of delivery of the present judgment and until the date of compliance with the judgment of 12 April 2018, *Commission* v *Belgium* (C-110/17, EU:C:2018:250);

4. Orders the Kingdom of Belgium to pay the costs.

(1) OJ C 45, 10.2.2020.

Request for a preliminary ruling from the Gericht Erster Instanz Eupen (Belgium) lodged on 28 January 2020 — DQ v Wallonische Region

(Case C-41/20)

(2021/C 19/15)

Language of the case: German

Referring court

Gericht Erster Instanz Eupen

Parties to the main proceedings

Applicant: DQ

Defendant: Wallonische Region

Questions referred

1. Does national legislation which, as applied by the authorities, makes the use without any re-registration requirement of a foreign vehicle provided occasionally and for short periods of time to a citizen resident in Belgium by a citizen established in a different Member State contingent upon the citizen resident in Belgium carrying in the vehicle the private attestation of permission to use the vehicle, that is, an attestation within the meaning of Article 3(2), point 6, of the Royal Decree of 20 July 2001 on the registration of vehicles, conflict with the relevant provisions of EU law, in particular Articles 20 and 21 of the Treaty on the Functioning of the European Union on freedom of movement and the free movement of capital, on the one hand, and/or Articles 63 and 64 of the Treaty on the Functioning of the European Union on the free movement of capital, on the other, as two of the four fundamental freedoms of the European Union?

2. Is national legislation, as described above and applied by the Walloon Region, justified by requirements of public security or other protective measures and is compliance with the national legislation, interpreted as meaning that a document issued by the foreign owner of the vehicle granting permission to use the vehicle for a limited and specified period of time must be carried in the vehicle, with no possibility of providing such a document subsequently, necessary in order to attain the objective pursued or could the objective have been attained by other, less strict and formalistic means?

By order of 10 September 2020, the Court of Justice of the European Union (Sixth Chamber) ruled as follows:

Article 63(1) TFEU must be interpreted as precluding legislation of a Member State according to which a person residing in that Member State may rely on a derogation from the requirement to register vehicles laid down in that Member State, in respect of a vehicle registered in another Member State and made available to that person free of charge, for short periods of time, by the owner of that vehicle who resides in that other Member State, only where the documents attesting that the person concerned fulfils the conditions for that derogation are carried in the vehicle at all times, with no possibility of providing those documents subsequently.

Request for a preliminary ruling from the Gericht Erster Instanz Eupen (Belgium) lodged on 28 January 2020 — FS v Wallonische Region

(Case C-42/20)

(2021/C 19/16)

Language of the case: German

Referring court

Gericht Erster Instanz Eupen

Parties to the main proceedings

Applicant: FS

Defendant: Wallonische Region

Questions referred

1. Does national legislation which, as applied by the authorities, makes the use without any re-registration requirement of a foreign vehicle provided occasionally and for short periods of time to a citizen resident in Belgium by a citizen established in a different Member State contingent upon the citizen resident in Belgium carrying in the vehicle the private attestation of permission to use the vehicle, that is, an attestation within the meaning of Article 3(2), point 6, of the Royal Decree of 20 July 2001 on the registration of vehicles, conflict with the relevant provisions of EU law, in particular Articles 20 and 21 of the Treaty on the Functioning of the European Union on freedom of movement, Article 45 TFEU (freedom of movement for workers), Article 49 TFEU (freedom of establishment) and Article 56 TFEU (freedom to provide services)?

2. Is national legislation, as described above and applied by the Walloon Region, justified by requirements of public security or other protective measures and is compliance with the national legislation, interpreted as meaning that a document issued by the foreign owner of the vehicle granting permission to use the vehicle for a limited and specified period of time must be carried in the vehicle, necessary in order to attain the objective pursued or could the objective have been attained by other, less strict and formalistic means?

By order of 10 September 2020, the Court of Justice of the European Union (Sixth Chamber) ruled as follows:

Article 63(1) TFEU must be interpreted as precluding legislation of a Member State according to which a person residing in that Member State may rely on a derogation from the requirement to register vehicles laid down in that Member State, in respect of a vehicle registered in another Member State and made available to that person free of charge, for short periods of time, by the owner of that vehicle who resides in that other Member State, only where the documents attesting that the person concerned fulfils the conditions for that derogation are carried in the vehicle at all times, with no possibility of providing those documents subsequently.

Request for a preliminary ruling from the Gericht Erster Instanz Eupen (Belgium) lodged on 28 January 2020 — HU v Wallonische Region

(Case C-43/20)

(2021/C 19/17)

Language of the case: German

Referring court

Gericht Erster Instanz Eupen

Parties to the main proceedings

Applicant: HU

Defendant: Wallonische Region

Questions referred

1. Does national legislation which, as applied by the authorities, makes the use without any re-registration requirement of a foreign vehicle provided occasionally and for short periods of time to a citizen resident in Belgium by a citizen established in a different Member State contingent upon the citizen resident in Belgium carrying in the vehicle the private attestation of permission to use the vehicle, that is, an attestation within the meaning of Article 3(2), point 6, of the Royal Decree of 20 July 2001 on the registration of vehicles, conflict with the relevant provisions of EU law, in particular Articles 20 and 21 of the Treaty on the Functioning of the European Union on freedom of movement, Article 45 TFEU (freedom of movement for workers), Article 49 TFEU (freedom of establishment) and Article 56 TFEU (freedom to provide services)?

2. Is national legislation, as described above and applied by the Walloon Region, justified by requirements of public security or other protective measures and is compliance with the national legislation, interpreted as meaning that a document issued by the foreign owner of the vehicle granting permission to use the vehicle for a limited and specified period of time must be carried in the vehicle, necessary in order to attain the objective pursued or could the objective have been attained by other, less strict and formalistic means?

By order of 10 September 2020, the Court of Justice of the European Union (Sixth Chamber) ruled as follows:

Article 63(1) TFEU must be interpreted as precluding legislation of a Member State according to which a person residing in that Member State may rely on a derogation from the requirement to register vehicles laid down in that Member State, in respect of a vehicle registered in another Member State and made available to that person free of charge, for short periods of time, by the owner of that vehicle who resides in that other Member State, only where the documents attesting that the person concerned fulfils the conditions for that derogation are carried in the vehicle at all times, with no possibility of providing those documents subsequently.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 23 April 2020 — AZ, BY, CX, DW, EV, FU, GJ v Presidenza del Consiglio dei Ministri, Ministero dell'Istruzione, dell'Università e della Ricerca — MIUR, Università degli studi di Perugia

(Case C-173/20)

(2021/C 19/18)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: AZ, BY, CX, DW, EV, FU, GJ

Defendants: Presidenza del Consiglio dei Ministri, Ministero dell'Istruzione, dell'Università e della Ricerca — MIUR, Università degli studi di Perugia

Questions referred

(1) Does clause 5 of the Framework Agreement annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP ('the Directive'), ([1]) entitled 'Measures to prevent abuse', read in conjunction with recitals 6 and 7 and clause 4 of that agreement ('Principle of non-discrimination'), and in the light of the principles of equivalence, effectiveness and practical effect of European Union law, preclude national legislation, specifically Article 24(3)(a) and Article 22(9) of Law No 240/2010, which allows universities to make unlimited use of fixed-term three-year contracts for researchers which may be extended for a further two years, without making the conclusion and extension of such contracts contingent on there being an objective reason connected with the temporary or exceptional requirements of the university offering such contracts, and which only stipulates, as the sole limit on the use of multiple fixed-term contracts with the same person, a maximum duration of 12 years, continuous or otherwise?

(2) Does clause 5 of the Framework Agreement, read in conjunction with recitals 6 and 7 of the Directive and clause 4 of the Framework Agreement, and in the light of the practical effect of European Union law, preclude national legislation (specifically Articles 24 and 29(1) of Law No 240/2010), in so far as it allows universities to recruit researchers on a fixed-term basis only — without making the decision to employ such researchers contingent on the existence of temporary or exceptional requirements and without imposing any limit on that practice — through the potentially indefinite succession of fixed-term contracts, to cover the ordinary teaching and research requirements of those universities?

(3) Does clause 4 of that Framework Agreement preclude national legislation, such as Article 20(1) of Legislative Decree No 75/2017 (as interpreted by the above-mentioned Ministerial Circular No 3/2017), which — while recognising that researchers on fixed-term contracts with public research bodies may be made permanent members of staff, provided that they have been employed for at least three years prior to 31 December 2017 — does not permit this for university researchers on fixed-term contracts solely because Article 22(16) of Legislative Decree No 75/2017 applies the 'public law regime' to the employment relationship — even though, as a matter of law, that relationship is based on a contract of employment — and despite the fact that Article 22(9) of Law No 240/2010 imposes the same rule on researchers at research bodies and at universities regarding the maximum duration of fixed-term employment relationships with universities and research bodies, whether in the form of the contracts referred to in Article 24 of that law or the research projects referred to in Article 22?

(4) Do the principles of equivalence, effectiveness and practical effect of EU law, with regard to the Framework Agreement, and the principle of non-discrimination enshrined in clause 4 thereof, preclude national legislation (Article 24(3)(a) of Law No 240/2010 and Article 29(2)(d) and (4) of Legislative Decree No 81/2015) which — notwithstanding the existence of rules applicable to all public-sector and private-sector workers recently set out in Legislative Decree No 81 which establish (from 2018) that the maximum duration of a fixed-term relationship is 24 months (including extensions and renewals) and make the use of fixed-term relationships by the public authorities contingent on the existence of 'temporary and exceptional requirements' — allows universities to hire researchers on a three-year fixed-term contract, which may be extended for two years in the event of a favourable assessment of the research and teaching activities carried out during those three years, without making either the conclusion of the initial contract or its extension conditional on the university having such temporary or exceptional requirements, and even allowing it, at the end of the five-year period, to enter into another fixed-term contract of the same type with the same individuals or with other individuals, in order to cover the same teaching and research requirements as those of the earlier contract?

(5) Does clause 5 of the Framework Agreement, in the light of the principles of effectiveness and equivalence and clause 4 of that agreement, preclude national legislation (Article 29(2)(d) and (4) of Legislative Decree No 81/2015 and Article 36(2) and (5) of Legislative Decree No 165/2001) which prevents university researchers hired on a three-year fixed-term contract, which may be extended for a further two years (pursuant to Article 24(3)(a) of Law No 240/2010), from subsequently establishing a relationship of indefinite duration, there being no other measures within the Italian legal system which can prevent and penalise the misuse of successive fixed-term contracts by universities?

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

Request for a preliminary ruling from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (Poland) lodged on 22 July 2020 — Prokuratura Rejonowa Łódź-Bałuty v D.P.

(Case C-338/20)

(2021/C 19/19)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi

Parties to the main proceedings

Applicant: Prokuratura Rejonowa Łódź-Bałuty

Defendant: D.P.

Questions referred

Does the service on a sentenced person of a decision imposing a financial penalty, without providing a translation into a language which the addressee understands, entitle the authority of the enforcing State to refuse to enforce the decision on the basis of the provisions implementing Article 20(3) of Framework Decision 2005/214/JHA ([1]) on the grounds of a breach of the right to fair trial?

([1]) Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16–30).

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie (Poland) lodged on 2 October 2020 — Delfarma Sp. z o.o. v Prezes Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych

(Case C-488/20)

(2021/C 19/20)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Warszawie

Parties to the main proceedings

Applicant: Delfarma Sp. z o.o.

Defendant: Prezes Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych

Questions referred

1. Does Article 34 TFEU preclude national legislation under which a parallel import licence is to expire after one year from the expiry of the marketing authorisation for the reference medicinal product?

2. In the light of Articles 34 and 36 TFEU, may a national authority adopt a decision of a declaratory nature to the effect that a marketing authorisation for a medicinal product in connection with parallel import is to expire automatically, solely on the ground that the period laid down by law has expired, as from the date on which the marketing authorisation for the reference medicinal product expired, without examining the reasons for the expiry of [the marketing authorisation for] that product or other requirements referred to in Article 36 TFEU relating to the protection of the health and life of humans?

3. Is the fact that parallel importers are exempt from the obligation to submit periodic safety reports, and the authority consequently has no current data on the benefit/risk of pharmacotherapy, sufficient to adopt a decision of a declaratory nature to the effect that a marketing authorisation for a medicinal product in connection with parallel import is to expire?

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 6 October 2020 — ÖBB-Infrastruktur Aktiengesellschaft v Lokomotion Gesellschaft für Schienentraktion mbH

(Case C-500/20)

(2021/C 19/21)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant and respondent in the appeal on a point of law: Lokomotion Gesellschaft für Schienentraktion mbH

Defendant and appellant in the appeal on a point of law: ÖBB-Infrastruktur Aktiengesellschaft

Questions referred

1. Is the Court of Justice of the European Union competent to interpret the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI; Appendix E to the Convention concerning International Carriage by Rail [COTIF]) ([1])?

2. If the first question is answered in the affirmative:

   Is Article 8(1)(b) CUI to be interpreted in such a way that the liability of the manager for loss of or damage to property as codified therein also includes the costs incurred by the carrier as a result of having to lease locomotives to replace his existing locomotives due to damage caused to them?

3. If the first question is answered in the affirmative and the second question in the negative:

   Are Articles 4 and 19(1) CUI to interpreted to the effect that the parties to the contract may effectively assume greater liability by means of a blanket reference to national law, if this means that, in derogation from strict liability in accordance with CUI, liability is conditional upon fault, even though the extent of liability is greater?

([1]) 2013/103/EU: Council Decision of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (OJ 2013 L 51, p. 1).

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 13 October 2020 — Autoridade Tributária e Aduaneira v Termas Sulfurosas de Alcafache, S.A.

(Case C-513/20)

(2021/C 19/22)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Autoridade Tributária e Aduaneira

Defendant: Termas Sulfurosas de Alcafache, S.A.

Question referred

May payments made in return for the service of opening, for each user, an individual file setting out the clinical history entitling the user to purchase 'traditional thermal cure' treatments be included within the concept of 'closely related activities', provided for in Article 132(1)(b) of the VAT Directive ([1]), and may they, as such, be regarded as being exempt from VAT?

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

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 13 October 2020 — DS v Koch Personaldienstleistungen GmbH

(Case C-514/20)

(2021/C 19/23)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: DS

Respondent in the appeal on a point of law: Koch Personaldienstleistungen GmbH

Question referred

Do Article 31(2) of the Charter of Fundamental Rights of the European Union and Article 7 of Directive 2003/88/EC [1] preclude a provision in a collective labour agreement which, for the purpose of calculating whether an employee is entitled to overtime pay and for how many hours, takes account only of the hours actually worked and not also of the hours during which the employee takes his paid minimum annual leave?

[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 Bundesarbeitsgericht (Germany) lodged on 16 October 2020 — XP v St. Vincenz-Krankenhaus GmbH

(Case C-518/20)

(2021/C 19/24)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: XP

Respondent in the appeal on a point of law: St. Vincenz-Krankenhaus GmbH

Questions referred

1. Do Article 7 of Directive 2003/88 [1] and Article 31(2) of the Charter preclude an interpretation of a rule of national law such as Paragraph 7(3) of the German Bundesurlaubsgesetz (Federal Law on leave; 'the BUrIG') according to which the as yet unexercised entitlement to paid annual leave of a worker who suffers, on health grounds, a full reduction of earning capacity in the course of the leave year, but who could still have taken — at least some of — the leave in the leave year before the onset of his reduction of earning capacity, lapses 15 months after the end of the leave year in the event of a continuing uninterrupted reduction of earning capacity even if the employer has not actually enabled the worker to exercise his leave entitlement by informing him of the leave concerned and inviting him to take it?

2. If Question 1 is answered in the affirmative: Under these conditions, is it also impossible for the entitlement to lapse at a later point in time in cases where a full reduction of earning capacity persists?

[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 Amtsgericht Hannover (Germany) lodged on 15 October 2020 — K

(Case C-519/20)

(2021/C 19/25)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Appellant: K

Party to the proceedings: Landkreis Gifhorn

Questions referred

1. Must EU law, in particular Article 18(1) and (3) of Directive 2008/115/EC ([1]), be interpreted as meaning that a national court deciding on detention for the purpose of removal must, in each individual case, examine the conditions laid down in that provision, in particular whether the exceptional situation persists, where the national legislature, on the basis of Article 18(1), has derogated from the conditions laid down in Article 16(1) in national law?

2. Must EU law, in particular Article 16(1) of Directive 2008/115/EC, be interpreted as precluding national legislation which on a temporary basis, until 1 July 2022, allows the placement of detainees awaiting removal in a prison facility despite specialised detention facilities being provided in the Member State and despite the fact that there is no emergency situation within the meaning of Article 18(1) of Directive 2008/115/EC which would make that absolutely necessary?

3. Must Article 16(1) of Directive 2008/115/EC be interpreted as meaning that a 'specialised detention facility' to detain persons awaiting removal is not deemed to exist merely because:

   — the 'specialised detention facility' indirectly is subject to supervision by the same government body as detention facilities for prisoners, namely the Minister for Justice,

   — the 'specialised detention facility' is organised as a division of a prison and, while it has its own governor, is under the overall management of the prison facility as it is one of a number of divisions of that prison?

4. If Question 3 is answered in the negative:

   Must Article 16(1) of Directive 2008/115/EC be interpreted as meaning that accommodation in a 'specialised detention facility' for detainees awaiting removal exists if a prison facility sets up a specific division as a detention facility, if that division operates for detainees awaiting removal a specific area with three buildings within the perimeter fence and one of those three buildings temporarily solely houses prisoners serving custodial sentences for default of payment of a fine or short custodial sentences, where the prison facility takes care to ensure detainees awaiting removal are separated from prisoners and where, in particular, every house has its own facilities (its own clothing store, medical facilities, gym) and, while the yard/outside space is visible from all houses, each house has its own area for use by the detainees which is fenced off with a wire-mesh fence that prevents direct access between houses?

([1]) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 22 October 2020 — *UAB Tiketa* v *M.Š., VšĮ Baltic Music*

(Case C-536/20)

(2021/C 19/26)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellant on a point of law: UAB Tiketa

Other parties in the appeal on a point of law: M.Š., VšĮ Baltic Music

Questions referred

1. Is the concept of a trader defined in Article 2(2) of Directive 2011/83 ([1]) to be construed as meaning that a person acting as an intermediary when a consumer purchases a ticket may be regarded as a trader bound by the obligations set out in Directive 2011/83 and, accordingly, as a party to the sales contract or service contract against whom the consumer may file a claim or bring an action?

   1.1. Is it relevant for the interpretation of the concept of a trader defined in Article 2(2) of Directive 2011/83 whether the person acting as an intermediary when a consumer purchases a ticket has, before the consumer is bound by a distance contract, provided that consumer, in a clear and comprehensible manner, with all information on the main trader as laid down in Article 6(1)(c) and (d) of Directive 2011/83?

   1.2. Is the fact of intermediation to be deemed to have been disclosed in the case where the person involved in the process of the ticket purchase, before the consumer is bound by a distance contract, provides the name and legal form of the main trader as well as the information that the main trader assumes full responsibility for the event, its quality and content and information provided thereon and indicates that it itself acts only as a ticket distributor and is a disclosed agent?

   1.3. May the concept of a trader defined in Article 2(2) of Directive 2011/83 be construed as meaning that, given the legal relationship of twofold service (ticket distribution and event organisation) between the parties, both the ticket vendor and the event organiser can be deemed to be traders, that is to say, parties to the consumer contract?

2. Is the requirement to provide information and to make that information available to the consumer in plain and intelligible language, as laid down in Article 8(1) of Directive 2011/83, to be construed and applied in such a way that the obligation to inform the consumer is considered to be fulfilled properly where such information is provided in the intermediary's rules on the provision of services made available to the consumer on the website tiketa.lt before the consumer makes the payment confirming that he or she has become acquainted with the intermediary's rules on the provision of services and undertaking to respect them as part of the terms and conditions of the transaction to be concluded by means of a so-called 'click-wrap' agreement, that is to say, by actively ticking a specific box in the online system and clicking on a specific link?

   2.1. Is it relevant for the interpretation and application of this requirement that such information is not provided on a durable medium and that there is no subsequent confirmation of the contract that contains all the information necessary under Article 6(1) of Directive 2011/83 on a durable medium as required under Article 8(7) of Directive 2011/83?

   2.2. Under Article 6(5) of Directive 2011/83, does that information provided in the intermediary's rules on the provision of services form an integral part of the distance contract irrespective of whether that information is not provided on a durable medium and/or there is no subsequent confirmation of the contract on a durable medium?

([1]) OJ 2011 L 304, p. 64.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 October 2020 — L Fund v Finanzamt D

(Case C-537/20)

(2021/C 19/27)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: L Fund

Respondent in the appeal on a point of law: Finanzamt D

Other party to the proceedings: Bundesministerium der Finanzen (Germany)

Question referred

Does Article 56 of the Treaty establishing the European Community (now: Article 63 of the Treaty on the Functioning of the European Union) conflict with a rule in a Member State, by virtue of which domestic specialised property funds with exclusively foreign investors are exempt from corporate income tax, while foreign specialised property funds with exclusively foreign investors are subject to limited liability for corporate income tax on their rental income obtained within the Member State?

Action brought on 23 October 2020 — *Republic of Lithuania* v *European Parliament* and *Council of the European Union*

(Case C-541/20)

(2021/C 19/28)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania, represented by: K. Dieninis, V. Kazlauskaitė-Švenčionienė, R. Dzikovič, A. Kisieliauskaitė, G. Taluntytė and R. Petravičius, advokatas,

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant requests the Court of Justice to:

1. Annul Article 1(3) and (7) of Directive 2020/1057 ([1]), laying down the requirement to apply the rules on posting workers to international (cross-border) transport and cabotage operations for the purposes of Directive 96/71/EC. If it is not possible to annul Article 1(3) and (7) of Directive 2020/1057 without altering the substance of that directive, the Republic of Lithuania requests that Directive 2020/1057 be annulled in its entirety;

2. Annul Article 1(6)(d) of Regulation 2020/1054 ([2]) in so far as the obligation laid down therein requires transport undertakings to ensure that drivers return to their place of residence or to the undertaking's operational centre every four weeks. If it is not possible to annul that part of that provision, the Republic of Lithuania requests that that provision be annulled in its entirety;

3. Annul Article 3 of Regulation 2020/1054 in so far as it provides that the amendments made to Regulation (EC) No 561/2006 are to enter into force on the twentieth day following that of the publication of Regulation 2020/1054 (20 August 2020). If it is not possible to annul Article 3 of Regulation 2020/1054 without affecting the other provisions of that regulation, the Republic of Lithuania requests that Regulation 2020/1054 be annulled in its entirety;

4. Order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

The Republic of Lithuania bases its application on the following pleas in law:

1. In so far as it provides for a requirement for the application of the rules on the posting of workers to international non-bilateral (cross-border) and cabotage operations, **Article 1(3) and (7) of Directive 2020/1057 is contrary to:**

   1.1 **The principle of equal treatment**, in that the selective allocation of transport operations lacks any basis and gives rise to double standards of remuneration for workers working in the same undertaking, even though the nature of their work is the same. Consequently, the rules governing posting were established in the absence of objective criteria, thereby infringing the principle of 'equal pay for equal work' and disregarding the principle of equal treatment enshrined in Article 20 of the Charter of Fundamental Rights of the European Union;

   1.2 **The principle of proportionality,** in that the EU institutions (i) established different pay arrangements for drivers performing the same work; (ii) failed to take account of the special features of international transport operations; (iii) failed to take account of the exceptionally high level of mobility of those working in the international transport sector; (iv) imposed, by the criteria which they have laid down, an unjustifiably heavy administrative burden on small and medium-sized undertakings, and thereby committed a manifest error and adopted a measure which is disproportionate in relation to the objective pursued;

   1.3 **The principles of sound legislative procedure**, in that the EU institutions were required to carry out an assessment of the impact of the contested provisions or to provide justification as to why such an assessment was not necessary.

2. **Article 1(6)(d) of Regulation 2020/1054**, which imposes an obligation on transport undertakings to ensure that their drivers return to their place of residence or to the operational centre of the undertaking every four weeks, **is contrary to:**

   2.1 **Article 45 TFEU,** in that the obligation imposed on drivers to return to their place of residence or to the operational centre of the undertaking, without any possibility for them to choose themselves where they wish to spend their rest time, infringes their freedom of movement as workers;

   2.2 **Article 26 TFEU and the general principle of non-discrimination**, in that the free movement of workers is restricted and those working for transport undertakings in peripheral Member States are subjected to discrimination by being obliged to return to their place of residence or to the operational centre of the undertaking in order to rest, as they are thereby forced to cover considerable distances and to waste significantly more time than drivers working for transport undertakings in Member States situated at, and close to, the centre of the European Union; in order to give effect to the provision on the return of workers, transport undertakings in the peripheral Member States will find themselves in an unfavourable situation in comparison with that of other undertakings operating on the internal market;

   2.3 **Article 3(3) TEU, Articles 11 and 191 TFEU and the EU policy on the environment and climate change,** in that the requirement to ensure the compulsory return of drivers every four weeks will cause an artificial increase in traffic on roads in the European Union and in the number of drivers returning with unloaded trailers, in the number of other organised transport operations, in the amount of fuel consumed and in CO_2 emissions into the environment;

   2.4 **The principle of proportionality**, in that the mandatory regular return of drivers laid down by that provision is a measure which is manifestly disproportionate and inappropriate in relation to the publicly declared objective of improving the conditions under which workers can rest.

3. **Article 3 of Regulation 2020/1054**, which fixes the date on which that regulation enters into force (20 August 2020) without providing for any transitional period, particularly with regard to the fact that there is an obligation immediately to apply (i) the amendments made to Article 8(8) of Regulation No 561/2006 prohibiting rest periods from being taken in the cabin of the vehicle, and (ii) the amendments made to Article 8(8a) of Regulation No 561/2006 relating to the obligation to ensure that drivers return to their place of residence every four weeks, **is contrary to:**

3.1 **The principle of proportionality**, in that, in fixing the period up to the date of entry into force at 20 days, the EU institutions (i) failed to have regard for the fact that, for objective reasons and in the absence of a transitional period, the Member States and transporters are unable to adapt to the obligations as amended, and (ii) did not put forward any arguments to justify the urgency in bringing those new requirements into force;

3.2 **The obligation to state reasons, laid down in Article 296 TFEU,** in that the EU institutions, when examining the proposal, were aware, by reason of the impact analysis and from other sources, that (i) the prohibition on spending sleeping time in the cabin during the periods concerned would be inapplicable in practice for the majority of Member States (because of the inadequate availability of alternative accommodation) and for transport undertakings, (ii) the obligation to ensure that drivers return to their place of residence or to the operational centre of the undertaking would give rise to practical difficulties as the rules for the implementation of that obligation are not clear, with the result that the EU institutions were required to put forward arguments to justify the absence of a transitional period or the non-deferment of the entry into force of the legislation;

3.3 **The principle of sincere cooperation,** in that the EU institutions not only failed in any way to justify the need to ensure the immediate entry into force of the prohibition on spending the night in the vehicle cabin during the periods in question and of the obligation to ensure that drivers would return to their place of residence but also failed to take into account the data submitted by Member States and interested parties concerning objective obstacles and the need to provide for a transitional period which would make it possible to prepare for the amended rules.

([1]) Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49).

([2]) Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

Action brought on 23 October 2020 — *Republic of Lithuania* v *European Parliament* and *Council of the European Union*

(Case C-542/20)

(2021/C 19/29)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: K. Dieninis, V. Kazlauskaitė-Švenčionienė, R. Dzikovič, A. Kisieliauskaitė, G. Taluntytė and R. Petravičius, advokatas)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant requests the Court of Justice to:

1. Annul Article 1(3) of Regulation 2020/1055 ([1]) in so far as it inserts an Article 5(1)(b) into Regulation (EC) No 1071/2009 ([2]) providing that '*in the Member State of establishment an undertaking shall … organise its vehicle fleet's activity in such a way as to ensure that vehicles that are at the disposal of the undertaking and are used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it*';

2. Annul Article 2(4)(a) of Regulation 2020/1055, which amends Article 8 of Regulation (EC) No 1072/2009 ([3]) by inserting into it a paragraph 2a providing that '*Hauliers are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, in the same Member State within four days following the end of its cabotage operation in that Member State*';

3. Order the European Parliament and the Council to pay the costs of the proceedings.

Pleas in law and main arguments

The Republic of Lithuania bases its application on the following pleas in law:

1. **Article 1(3) of Regulation 2020/1055,** in so far as it inserts an Article 5(1)(b) into Regulation (EC) No 1071/2009 providing that *'in the Member State of establishment an undertaking shall … organise its vehicle fleet's activity in such a way as to ensure that vehicles that are at the disposal of the undertaking and are used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it'*, **is contrary to**:

   1.1 **Article 3(3) TEU, Articles 11 and 191 TFEU and the EU policy on the environment and climate change**. The requirement to return to the operational centre will increase the number of unloaded vehicles driving on European roads, as well as the amount of CO_2 emissions and environmental pollution. When the EU institutions adopted the contested provision, they failed to have regard for measures relating to the European Union's policy on the environment and climate-change policy, particularly the requirements relating to protection of the environment and the environmental-protection objectives promoted in the European Green Deal and confirmed by the European Council;

   1.2 **Article 26 TFEU and the general principle of non-discrimination**. The contested provision is a protectionist measure by which the EU transport market is partitioned, competition restricted and a discriminatory regime established in regard to hauliers in the Member States situated on the geographical fringes of the European Union (peripheral Member States). By this provision, the international road transport sector is also subjected to discrimination in comparison with other transport sectors;

   1.3 **Articles 91(2) and 94 TFEU**. The EU institutions were required to have regard for the fact that the contested provision will have a particularly significant impact on the standard of living and level of employment in the peripheral Member States of the European Union and will impact in a particularly negative way on the economic situation of hauliers established on the periphery; the EU institutions, however, failed to comply with that duty;

   1.4 **The principles of sound legislative procedure,** in that the contested provision was **adopted without any assessment as to its impact** and without a proper examination of its negative social and economic consequences and its effect on the environment;

   1.5 **The principle of proportionality,** in that the fixed requirement for the regular return of vehicles is a manifestly disproportionate measure and inappropriate for achieving the publicly declared objective, namely that of combatting so-called letterbox companies.

2. **Article 2(4)(a) of Regulation 2020/1055,** which amends Article 8 of Regulation (EC) No 1072/2009 by inserting into it a paragraph 2a providing that *'Hauliers are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, in the same Member State within four days following the end of its cabotage operation in that Member State'*, **is contrary to:**

   2.1 **Article 3(3) TEU and Articles 11 and 191 TFEU,** because the compulsory four-day period for refraining from activity following a cabotage operation will increase the stream of transport of the number of unloaded vehicles on roads in the European Union, and will result in increased emissions of CO_2 and environmental pollution. The contested provision is for that reason contrary to the requirement, confirmed in the Treaties, that, in the implementation of the European Union's transport policy, regard must be had to the requirements of environmental protection and to the objectives of the European Green Deal;

   2.2 **Article 26 TFEU and the principle of non-discrimination**. The four-day period laid down for refraining from activity following a cabotage operation creates restrictions for the operation of the internal market and for the efficiency of the logistical chain. The partitioning of the road haulage market has given rise to discrimination against small Member States and against those on the periphery of the European Union, at the same time conferring an unlawful and unjustified advantage on the large central EU Member States solely because of their geographical location;

   2.3 **Articles 91(2) and 94 TFEU**, in that the contested provision was adopted without any consideration being taken of the negative consequences for the economic situation of hauliers from the small Member States and from those on the periphery of the European Union and for the standard of living and level of employment in those Member States;

2.4 **The principles of sound legislative procedure,** in that the contested provision was adopted without any assessment as to its impact and without a proper examination of its negative social and economic consequences and its effect on the environment;

2.5 **The principle of proportionality**, in that the four-day period laid down for refraining from activity following a cabotage operation is an inappropriate measure that is disproportionate in relation to the intended objectives of clarifying the principles governing cabotage and extending the effectiveness of their implementation.

(1) 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 (OJ 2020 L 249, p. 17).

(2) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ 2009 L 300, p. 51).

(3) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72).

Action brought on 23 October 2020 — Republic of Bulgaria v European Parliament, Council of the European Union

(Case C-543/20)

(2021/C 19/30)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: L. Zaharieva, T. Mitova and M. Georgieva, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1(6)(c) and (d) of Regulation (EU) 2020/1054 (1) of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs;

— in the alternative, should it find that it cannot grant the principal claim for partial annulment of the contested regulation, annul, in its entirety, Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs; and

— order the European Parliament and the Council of the European Union to pay the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 21(1) and Article 45 of the Treaty on the Functioning of the European Union (TFEU) and of Article 45(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2. Second plea in law, alleging infringement of the principle of proportionality, laid down in Article 5(4) of the Treaty on European Union (TEU) and in Article 1 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the TEU and the TFEU.

3. Third plea in law, alleging infringement of the principle of legal certainty.

4. Fourth plea in law, alleging infringement of the principle of proportionality, laid down in Article 5(4) TEU and in Article 1 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the TEU and the TFEU.

5. Fifth plea in law, alleging infringement of the principle of equal treatment and non-discrimination, laid down in Article 18 TFEU and in Articles 20 and 21 of the Charter, of the principle of equality of Member States before the Treaties, laid down in Article 4(2) TEU, and, in so far as the Court considers it necessary, of Article 95(1) TFEU.

(1) OJ 2020 L 249, p. 1.

Action brought on 23 October 2020 — Republic of Bulgaria v European Parliament, Council of the European Union

(Case C-544/20)

(2021/C 19/31)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: L. Zaharieva, T. Mitova and M. Georgieva, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Directive (EU) 2020/1057 (1) of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012; and

— order the European Parliament and the Council of the European Union to pay the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of proportionality, laid down in Article 5(4) of the Treaty on European Union (TEU) and in Article 1 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the TEU and the Treaty on the Functioning of the European Union (TFEU).

2. Second plea in law, alleging infringement of the principle of equal treatment and non-discrimination, laid down in Article 18 TFEU and in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, of the principle of equality of Member States before the Treaties, laid down in Article 4(2) TEU, and, in so far as the Court considers it necessary, of Article 95(1) TFEU.

3. Third plea in law, alleging infringement of Article 91(1) TFEU.

4. Fourth plea in law, alleging infringement of Article 91(1) and Article 90 TFEU in connection with Article 3(3) TEU and Article 94 TFEU.

5. Fifth plea in law, alleging infringement of Articles 34 and 35 TFEU that is not justified under Article 36 TFEU, and infringement of Article 58(1) TFEU in connection with Article 91 TFEU or, alternatively, Article 56 TFEU.

(1) OJ 2020 L 249, p. 49.

Action brought on 23 October 2020 — Republic of Bulgaria v European Parliament, Council of the European Union

(Case C-545/20)

(2021/C 19/32)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: L. Zaharieva, T. Mitova and M. Georgieva, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the following provisions of Regulation (EU) 2020/1055 (1) 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:

  — Article 1(3), in so far as it provides for a subparagraph (b) of Article 5(1) of Regulation (EC) No 1071/2009. In the alternative, should the Court find that this is not possible, the Republic of Bulgaria claims that Article 1(3) should be annulled in its entirety; and

  — Article 2(4)(a). In the alternative, should the Court find that this is not possible, the Republic of Bulgaria claims that Article 2(4) should be annulled;

— in the alternative, should it find that it cannot grant the principal claim for partial annulment of the contested regulation, annul, in its entirety, 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; and

— order the European Parliament and the Council of the European Union to pay the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 90 of the Treaty on the Functioning of the European Union (TFEU) in connection with Article 3(3) of the Treaty on European Union (TEU), Article 11 TFEU, Article 37 of the Charter of Fundamental Rights of the European Union, Article 3(5) TEU, Article 208(2) and Article 216(2) TFEU and the Paris Agreement.

2. Second plea in law, alleging infringement of the principle of proportionality, laid down in Article 5(4) TEU and in Article 1 of Protocol (No 2).

3. Third plea in law, alleging infringement of the principle of equal treatment and non-discrimination (Article 18 TFEU and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union), of the principle of equality of Member States before the Treaties (Article 4(2) TEU), and, in so far as necessary, of Article 95(1) TFEU.

4. Fourth plea in law, alleging infringement of Article 91(1) TFEU.

5. Fifth plea in law, alleging infringement of Article 90, Article 91(2) and Article 94 TFEU and of Article 3(3) TEU.

6. Sixth plea in law, alleging infringement of the freedom to exercise a profession and the freedom of establishment under Article 49 TFEU and Articles 15 and 16 of the Charter of Fundamental Rights of the European Union.

7. Seventh plea in law, alleging infringement of Article 58(1) in connection with Article 91 TFEU, and, alternatively, Article 56 TFEU.

([1]) OJ 2020 L 249, p. 17.

Action brought on 23 October 2020 — Romania v European Parliament, Council of the European Union

(Case C-546/20)

(2021/C 19/33)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: E. Gane, L. Lițu and M. Chicu, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2020/1054 in part, in particular:

  — Article 1(6)(c), amending Article 8(8) of Regulation (EC) No 561/2006, and

  — Article 1(6)(d), amending Article 8 of Regulation (EC) No 561/2006 through the insertion of new paragraph (8a);

  in the alternative, only if the Court should find that those provisions are inextricably linked to other provisions of Regulation (EU) 2020/1054 or concern the essence of that act, annul the EU legislative act in its entirety;

— order the Parliament and the Council to pay the costs.

Pleas in law and main arguments

In support of its action, Romania relies on three pleas in law:

1. **The first plea in law, alleging the infringement of the principle of proportionality, provided for in Article 5(4) TEU**

   Romania submits that the measure governed by Article 1(6)(c) — consisting in the prohibition of taking in a vehicle the regular weekly rest period and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods — is inappropriate for achieving the objectives pursued, in particular improving road safety and working conditions for drivers. In addition, that measure does not eliminate the risks and impediments identified by the Commission.

Furthermore, the data and information which indicated that that measure was manifestly inappropriate were known to the co-legislators at the time it was adopted.

Romania further submits that the measure governed by Article 1(6)(d) — concerning the return of drivers every four consecutive weeks (and, respectively, before the regular weekly rest period of more than 45 hours taken in compensation, after two consecutive reduced weekly rest periods) to the employer's operational centre in the latter's EU Member State of establishment or to the driver's place of residence — is manifestly inappropriate, having regard, in particular, to the new administrative obligations established, the considerable expenditure incurred by operators, the limitation of their commercial activity and also the fact that the measure does not ensure the adequate protection of drivers.

Furthermore, the impact assessment does not seem to have considered all those aspects, a context in which the co-legislators could not take into consideration all the relevant factors and circumstances of the situation.

2. **The second plea in law, alleging the unjustified restriction on the right of establishment provided for in Article 49 TFEU**

Romania submits that the measure established by Article 1(6)(d) implies, for operators in States on the geographical periphery of the European Union, new administrative obligations, considerable expenditure and a limitation of commercial activity, which will lead to their relocation and will deter the creation of transport companies in such States.

Consequently, that measure constitutes a restriction on the freedom of establishment within the meaning of Article 49 TFEU. That restriction is unjustified.

3. **The third plea in law, alleging the infringement of the principle of non-discrimination on the ground of nationality, provided for in Article 18 TFEU**

Romania submits that the measure governed by Article 1(6)(c) creates clear disadvantages for the States on the geographical periphery of the European Union, in view, in particular, of the specific features of the parking and accommodation network.

Romania further submits that ensuring the return of drivers in accordance with Article 1(6)(d) involves significant losses for companies formed in Member States located on the European Union's periphery — in any event, losses which are clearly greater than those in Member States situated near the centre of transport in the European Union.

Furthermore, the measures governed by Regulation (EU) 2020/1054, Regulation (EU) 2020/1055 ([1]) and Directive (EU) 2020/1057 ([2]) (concerning the additional restriction of cabotage operations, the return of the vehicle to the operating centre in the Member State of establishment every eight weeks, the return of the driver every four works, the prohibition on taking the regular weekly rest period in the vehicle cabin and the posting of drivers) were designed as pillars of an integrated legislative package, a context in which only an analysis of the their cumulative effects can illustrate their actual impact on the transport market.

([1]) 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 (OJ 2020 L 249, p. 17).

([2]) Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49).

Action brought on 23 October 2020 — Romania v European Parliament, Council of the European Union

(Case C-547/20)

(2021/C 19/34)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: E. Gane, R.I. Haţieganu and A. Rotăreanu, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2020/1055 in part, in particular:

— Article 1(3), amending Article 5(1)(b) of Regulation (EC) No 1071/2009, and

— Article 2(4),(b) and (c), amending Article 8 of Regulation (EC) No 1072/2009 through the insertion of paragraph (2a), the amendment of paragraph (3) and the insertion of paragraph (4a);

in the alternative, only if the Court should find that those provisions are inextricably linked to other provisions of Regulation (EU) 2020/1055 or concern the essence of that act, annul the EU legislative act in its entirety;

— order the Parliament and the Council to pay the costs.

Pleas in law and main arguments

In support of its action, Romania relies on three pleas in law.

1. **The first plea in law, alleging the infringement of the principle of proportionality, provided for in Article 5(4) TEU**

Romania submits that the measure governed by Article 1(3), concerning the obligation to return the vehicle to the operational centre in the Member State of establishment within eight weeks, is not necessary to consolidate the real and effective presence of the company in that Member State and is manifestly inappropriate to achieve the stated objective.

It represents an economically unjustified obligation which is burdensome for operators, which will generate pointless operational costs, and increase the number of empty runs as well as CO_2 emissions.

Romania further submits that the measure governed by Article 2(4)(a), (b) and (c), providing for the additional restriction of cabotage operations, is manifestly inappropriate to achieve the stated objectives and is not necessary to resolve the problems identified concerning the failure to comply with the cabotage rules.

It represents a regression as compared to the current level of market liberalisation and is capable of creating imbalances in the organisation of the logistics chains of transport companies and of increasing the periods of inactivity and the number of empty runs. The new provisions introduced make it difficult to apply the regulations on cabotage and make the control mechanisms more complicated, adding pointless administrative burdens for operators.

Both measures are disproportionate in terms of the negative impact on transport undertakings in the EU Member States, especially those situated on the geographical periphery of the European Union.

2. **The second plea in law, alleging the unjustified restriction on the right of establishment provided for in Article 49 TFEU**

Romania submits that the measure established by Article 1(3) generates significant operational costs for transport companies established in a Member State on the European Union's geographical periphery. The profitability and by implication the attractiveness of creating such a company in those States will decrease significantly. At the same time, operators already established will relocate their activities to States in Western Europe in order to reduce the negative effects entailed by the obligation to return the vehicle to the operational centre in the Member State of establishment within eight weeks.

Consequently, that measure constitutes a restriction on the freedom of establishment within the meaning of Article 49 TFEU. That restriction is unjustified.

3. **The third plea in law, alleging the infringement of the principle of non-discrimination on the ground of nationality, provided for in Article 18 TFEU**

Romania submits that the measure providing for the vehicle's return to the operational centre in the Member State of establishment within eight weeks and the additional restrictions concerning cabotage are contrary to the European Union's convergence objectives and are protectionist, which creates a significant barrier to entry of non-resident operators to the transport markets.

Although apparently non-discriminatory, those measures will *de facto* affect Member States to different extents, in that they will have a significant and disproportionate impact on the economic activity of transport operators established in the States located on the European Union's geographical periphery.

Furthermore, the measures governed by Regulation (EU) 2020/1055, Regulation (EU) 2020/1054 ([1]) and Directive (EU) 2020/1057 ([2]) (concerning the additional restriction of cabotage operations, the return of the vehicle to the operating centre in the Member State of establishment within eight weeks, the return of the driver every four works, the prohibition on taking the regular weekly rest period in the vehicle cabin and the posting of drivers) were designed as pillars of an integrated legislative package, a context in which only an analysis of the their cumulative effects can illustrate their actual impact on the transport market.

([1]) Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

([2]) Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49).

Action brought on 23 October 2020 — Romania v European Parliament, Council of the European Union

(Case C-548/20)

(2021/C 19/35)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: E. Gane, L. Lițu and M. Chicu, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Directive (EU) 2020/1057 in part, in particular Article 1(3) to (6);

in the alternative, only if the Court should find that those provisions are inextricably linked to other provisions of Directive (EU) 2020/1057 or concern the essence of that act, annul the EU legislative act in its entirety;

— order the Parliament and the Council to pay the costs.

Pleas in law and main arguments

In support of its action, Romania relies on two pleas in law:

1. **The first plea in law, alleging the infringement of the principle of proportionality, provided for in Article 5(4) TEU**

Romania submits that the solution of referring to the criterion of the typology of transport operations, with a view to identifying the situations in which the rules for the posting of drivers in the road transport sector may be applied was not the subject of an impact assessment carried out by the Commission and is not substantiated on the basis of any report/study or scientific data.

The co-legislators had, in the present case, the obligation to conduct an impact assessment, since they amended the Commission's proposal substantially without having sufficient information enabling them to assess the proportionality of the new measure.

In addition, the criterion of the typology of transport operations creates uncertainty in identifying the host Member State and the legislation applicable. Consequently, referring to that criterion adversely affects legal certainty, being contrary, inter alia, even to the stated objectives of Directive (EU) 2020/1057.

Furthermore, applying the rules for posting drivers in the road transport sector by reference to the criterion of transport operations may affect the flexibility and rapidity specific to that sector.

2. **The second plea in law, alleging the infringement of the principle of non-discrimination on the ground of nationality, provided for in Article 18 TFEU**

Romania submits that, since the international transport market is objectively centralised/polarised, and the share of operators from the Member States in the European Union's peripheral areas in the international transport market is increasing, it is clear that the operators from those areas will mainly bear the administrative and financial costs relating to posting and will be deterred from carrying out operations by measures such as Article 1(3) to (6) of Directive (EU) 2020/1057.

Furthermore, the measures governed by Directive (EU) 2020/1057, Regulation (EU) 2020/1054 ([1]) and Regulation (EU) 2020/1055 ([2]) (concerning the additional restriction of cabotage operations, the return of the vehicle to the operating centre in the Member State of establishment every eight weeks, the return of the driver every four works, the prohibition on taking the regular weekly rest period in the vehicle cabin and the posting of drivers) were designed as pillars of an integrated legislative package, a context in which only an analysis of the their cumulative effects can illustrate their actual impact on the transport market.

([1]) Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

([2]) 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 (OJ 2020 L 249, p. 17).

Action brought on 23 October 2020 — Republic of Cyprus v European Parliament and Council of the European Union

(Case C-549/20)

(2021/C 19/36)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by Eirini Neofytou)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1(3) of Regulation (EU) 2020/1055055 ([1]) 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, to the extent that that provision establishes point (b) in Article 5(1) of Regulation No 1071/2009. In the alternative, if the Court holds that that is not possible, the Court is asked to annul Article 1(3) in its entirety;

— in the alternative, if the Court holds an action seeking partial annulment of the contested regulation in terms of the above paragraph to be inadmissible, annul Regulation (EU) 2020/1055055 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 European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action the applicant relies on seven grounds for annulment:

First ground for annulment: The applicant submits that the defendants infringed Article 90 TFEU read in conjunction with Article 3(3) TEU, Article 11 TFEU, Article 37 of the Charter of Fundamental Rights of the European Union, Article 3(5) TEU, Articles 208(2) and 216(2) TFEU and the Paris Agreement [on climate change].

Second ground for annulment, The applicant submits that the defendants infringed the principle of proportionality, as provided for in Article 5(4) TEU and in Article 1 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the EU Treaty and to the FEU Treaty.

Third ground for annulment, The applicant submits that the defendants infringed the principle of equal treatment and the prohibition of discrimination, as set out in Article 18 TFEU and in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, the principle of the equality of the Member States before the Treaties, as set out in Article 4(2) TEU, and, to the extent that it has been held to be necessary by the Court of Justice, Article 95(1) TFEU.

Fourth ground for annulment, The applicant submits that the defendants infringed Article 91(1) TFEU.

Fifth ground for annulment, The applicant submits that the defendants infringed Article 91(2) TFEU and Article 90 TFEU, read in conjunction with Article 3(3) TEU and Article 94 TFEU.

Sixth ground for annulment, The applicant submits that the defendants infringed the principles of freedom to pursue an occupation and freedom of establishment, as set out in Article 49 TFEU and Articles 15 and 16 of the Charter of Fundamental Rights of the European Union.

Seventh ground for annulment, The applicant submits that the defendants infringed Article 58(1) read in conjunction with Article 91 TFEU and, in the alternative, Article 56 TFEU.

([1]) OJ 2020 L 249 p. 17.

Action brought on 23 October 2020 — Republic of Cyprus v European Parliament and Council of the European Union

(Case C-550/20)

(2021/C 19/37)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: Eirini Neofytou)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Directive (EU) 2020/1057 ([1]) of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, and

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

Pleas in law and main arguments

In support of the action the applicant relies on five grounds for annulment:

First ground for annulment: The applicant submits that the defendants infringed the principle of proportionality, as provided for in Article 5(4) TEU and in Article 1 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the EU Treaty and to FEU Treaty.

Second ground for annulment: The applicant submits that the defendants infringed the principle of equal treatment and the prohibition on discrimination, as set out in Article 18 TFEU and in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, the principle of the equality of the Member States before the Treaties, as set out in Article 4(2) TEU, and, to the extent that it has been held to be necessary by the Court of Justice, Article 95(1) TFEU.

Third ground for annulment: The applicant submits that the defendants infringed Article 91(1) TFEU.

Fourth ground for annulment: The applicant submits that the defendants infringed Article 91(2) TFEU and Article 90 TFEU, read in conjunction with Article 3(3) TEU and Article 94 TFEU.

Fifth ground for annulment: The applicant submits that the defendants infringed Articles 34 and 35 TFEU, with no justification on the basis of Article 36 TFEU, and Article 58(1) TFEU read in conjunction with Article 91 TFEU or, in the alternative, Article 56 TFEU.

(1) OJ 2020 L 249, p. 49.

Action brought on 26 October 2020 — Hungary v European Parliament and Council of the European Union

(Case C-551/20)

(2021/C 19/38)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M. Z. Fehér and K. Szíjjártó, acting as Agents)

Defendant: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should annul:

— Article 1(6)(c) and Article 2(2) of Regulation (EU) 2020/1054 (1) and, secondly, all provisions that form an inseparable unit with those provisions;

— Article 1(3) of Regulation (EU) 2020/1055 (2), in so far as it amends Article 5 of Regulation (EC) No 1071/2009 by introducing a new subparagraph (b) in paragraph 1, and, secondly, all provisions that form an inseparable unit with those provisions;

— Article 1 of Directive (EU) 2020/1057 (3) or, in the alternative, Article 1(6) thereof and, secondly, all provisions that form an inseparable unit with those provisions;

— order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

1. ***Pleas related to the contested provisions of Regulation 2020/1054***

The provision laid down in **Article 1(6)(c)** of Regulation 2020/1054, stating that the regular weekly rest periods and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods may not be taken in a vehicle, cannot be applied in practice as there are not sufficient suitable rest facilities available. That requirement imposes a disproportionate burden on the legal subjects concerned — drivers and transport undertakings — and constitutes a manifest error of assessment by the legislators. Similarly, the fact that, in the context of the legislative procedure, the availability, amount or location of accommodation that meets the requirements contained in the contested provision was not examined at all, despite serious objections being raised in that regard, is also a manifest error of assessment.

The Hungarian Government submits that **Article 2(2)** of Regulation 2020/1054, which lays down the date by which vehicles must be fitted with a second generation (V2) smart tachograph, is unlawful. In the first place, when adopting that provision, the legislators made a manifest error of assessment and infringed the principle of proportionality by not examining the economic and social effects of bringing the date forward. In the second place, the legislators failed to meet the legitimate expectations of economic operators and infringed the principles of protection of legitimate expectations and legal certainty. In the third place, that provision does not comply with the need to maintain the competitiveness of the EU economy as laid down in the second paragraph of Article 151 TFEU, since currently vehicles of undertakings established in non-Member States are not subject to a similar requirement, and thus those undertakings have a clear competitive advantage over EU undertakings.

2. ***Pleas related to the contested provisions of Regulation 2020/1055***

According to the Hungarian Government, the obligation to return the vehicle every eight weeks infringes the principle of proportionality and constitutes a manifest error of assessment, since the European Parliament and the Council did not carry out any type of economic, social or economic impact assessment in relation to the new requirements and therefore did not have any background information as to whether or not the new requirement is proportionate. Thus, the legislators also infringed the precautionary principle, since they did not assess the environmental effects of the measure. As a result of that measure, vehicles will have to return unloaded on many occasions, which will result in high levels of carbon dioxide emissions in the European Union.

In addition, the abovementioned requirement infringes the prohibition of discrimination, since it has different effects on carriers established in the centre of the European Union and those established in the periphery, in particular those known as 'the EU-13 Member States'. Under Article 91(2) and Article 94 TFEU, the legislators should have taken into account the special circumstances of those countries and should have refrained from adopting legislation that has discriminatory effects.

3. ***Pleas related to the contested provisions of Regulation 2020/1057***

Principally, the Hungarian Government seeks the annulment of Article 1 of Directive 2020/1057, which contains 'specific rules on the posting of drivers'. It submits that those 'specific rules' are unlawful because drivers who carry out international transport cannot be considered to be persons taking a transnational measure within the meaning of Article 1(3)(a) of Directive 96/71/EC and, consequently, the provisions of the abovementioned directive are not applicable to them.

In the alternative, the Hungarian Government seeks the annulment of Article 1(6) of Directive 2020/1057 on the ground that the legislators did not satisfy the requirement of equal treatment, since the exemption for bilateral transport operations laid down in Article 1(3) of the directive does not cover so-called accompanied combined transport operations. As regards that provision, the Hungarian Government also relies on the fact that no impact assessment was carried out and, in that context, claims that the legislators infringed the principle of proportionality and committed a manifest error of assessment.

(1) Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

(2) 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 (OJ 2020 L 249, p. 17).

(3) Directive (EU) 2020/1057 of the European Parliament and of the Council, of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49).

Action brought on 23 October 2020 — Republic of Malta v European Parliament, Council of the European Union

(Case C-552/20)

(2021/C 19/39)

Language of the case: English

Parties

Applicant: Republic of Malta (represented by: A. Buhagiar, Agent, D. Sarmiento Ramírez-Escudero, J. Sedano Lorenzo, abogados)

Defendants: European Parliament, Council of the European Union

The applicant claims that the Court should:

— Annul Article 5(1)(b) of Regulation 1071/2009 ([1]) and Article 8(2a) of Regulation 1072/2009 ([2]), as amended by Articles 1 and 2, respectively, of Regulation (EU) 2020/1055 ([3]) 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 European Parliament and the Council to pay the Applicant's costs.

Pleas in law and main arguments

In support of the action, the Republic of Malta seeks the annulment of the contested measures on the following grounds.

First plea in law, requesting that the Court declares the annulment of Article 1(3) of Regulation 2020/1055 (the 'Return-Home of Vehicles' rule), inasmuch it

— Infringes Article 91(2) TFEU, in conjunction with Article 11 TFEU and Article 37 of the Charter of Fundamental Rights of the European Union, given its enactment with disregard of environmental impact considerations and its serious effects on transport operations.

— Infringes Article 5(4) TEU and the principle of proportionality, as it is not the least restrictive measure and causes a disproportionate harm in terms of a costs versus benefits from an environmental and transport operations perspective.

Second plea in law, requesting that the Court declares the annulment of Article 2(4)(a) of Regulation 2020/1055 ('Cabotage Cooling-Off Period' rule), inasmuch it

— Infringes Article 91(2) TFEU due to the defendants' neglect of the measure's serious impact on transport operations.

— Infringes Article 5(4) TEU and the principle of proportionality, as it severely restricts the ability of haulers to arrange their logistics and ensure a smooth running of their fleets.

— Infringes Articles 20 and 21 of the Charter of Fundamental Rights of the EU and the principle of equal-treatment, for not taking into account the singularities of an insular Member State and of its market of transport of goods without any objective justification.

(1) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ 2009, L 300, p. 51).
(2) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009, L 300, p. 72).
(3) OJ 2020, L 249, p. 17.

Action brought on 26 October 2020 — Republic of Poland v European Parliament and Council of the European Union

(Case C-553/20)

(2021/C 19/40)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1(6)(d) of Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (1);

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

In the alternative, should the Court of Justice consider that the contested provision of Regulation 2020/1054 cannot be separated from the rest of that regulation without altering its substance, the Republic of Poland seeks the annulment of Regulation 2020/1054 in its entirety.

Pleas in law and main arguments

The Republic of Poland raises the following pleas in law against the contested provisions of Regulation 2020/1054, alleging:

(1) infringement of the principle of proportionality (Article 5(4) TEU), by arbitrarily determining the places where drivers are required to take a rest;

(2) infringement of Article 91(2) TFEU, by adopting measures without taking account of their impact on the quality of life and level of employment in certain regions, as well as on the functioning of the transport infrastructure;

(3) infringement of Article 94 TFEU, by adopting measures without taking account of the economic situation of carriers;

(4) infringement of the principle of legal certainty, in that the provision is worded in a way that is imprecise and does not allow the obligations arising from it to be determined;

(5) infringement of Article 11 TFEU and Article 37 of the Charter of Fundamental Rights of the European Union, by failing to take account of environmental protection requirements.

In particular, the Republic of Poland claims that the contested provision infringes the principle of proportionality. As a result of the adoption of inappropriate criteria for deciding where drivers should take their rest, the principle, resulting from Regulation No 561/2006, that the driver may make free disposal of his or her time during the rest period is infringed. At the same time, excessive burdens have been imposed on road hauliers, which will have a negative impact not only on the situation of individual entrepreneurs, especially small and medium-sized undertakings, and on the transport services market, but also on the natural environment. The negative effects of the application of the contested provision will be felt in particular by entrepreneurs from countries outside the centre of the European Union. At the same time, the solution adopted is not objectively justified in view of the situation of drivers. Nor does it reflect the specific nature of the regulated services.

(1) OJ 2020 L 249, p. 1.

Action brought on 26 October 2020 — Republic of Poland v European Parliament and Council of the European Union

(Case C-554/20)

(2021/C 19/41)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the following provisions 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:

  a) Article 1(3) in so far as it adds paragraph 1(b) and (g) to Article 5 of Regulation 1071/2009) (1),

  b) Article 2(4)(a), in so far as it adds a paragraph 2a to Article 8 of Regulation 1072/2009 (2),

  c) Article 2(5)(b), in so far as it adds a paragraph 7 to Article 10 of Regulation 1072/2009;

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

In the alternative, should the Court of Justice consider that the contested provisions of Regulation 2020/1055 cannot be separated from the rest of that Regulation without altering its substance, the Republic of Poland seeks the annulment of Regulation 2020/1055 in its entirety.

Pleas in law and main arguments

The Republic of Poland raises the following pleas in law against the contested provisions of Regulation 2020/1055, alleging:

1) with regard to Article 1(3) to the extent that it adds paragraph 1(b) to Article 5 of Regulation 1071/2009:

  a) infringement of the principle of proportionality (Article 5(4) TEU), Article 91(2) TFEU and Article 94 TFEU by making it compulsory to return vehicles to their operating base every eight weeks,

b) infringement of Article 11 TFEU and Article 37 of the Charter of Fundamental Rights of the European Union by failing to take account of environmental protection requirements;

2) with regard to Article 1(3) to the extent that it adds paragraph 1(g) to Article 5 of Regulation 1071/2009:

a) infringement of the principle of proportionality (Article 5(4) TEU) by introducing arbitrary requirements concerning the number of vehicles that road hauliers should have at their disposal and concerning the location of drivers in the operating base in the country of establishment,

b) infringement of the principle of legal certainty by introducing inaccurate requirements regarding the number of vehicles that road hauliers should have at their disposal and regarding the location of drivers in the operating base in the country of establishment,

c) infringement of Article 11 TFEU and Article 37 of the Charter by failing to take account of environmental protection requirements;

3) with regard to Article 2(4)(a):

a) infringement of the principle of proportionality (Article 5(4) TEU), Article 91(2) TFEU and Article 94 TFEU by introducing a mandatory interruption of cabotage operations,

b) infringement of Article 11 TFEU and Article 37 of the Charter by failing to take account of environmental protection requirements;

4) with regard to Article 2(5)(b):

a) infringement of the principle of proportionality (Article 5(4) TEU), Article 91(2) TFEU and Article 94 TFEU by allowing Member States to impose restrictions on the performance of cabotage operations involving initial or final road sections which form part of combined transport operations between Member States;

b) infringement of Article 11 TFEU and Article 37 of the Charter by failing to take account of environmental protection requirements.

In particular, the Republic of Poland claims that the contested provisions infringe the principle of proportionality. As a result of the adoption of inappropriate criteria for restricting the possibility of carrying out cabotage and cross-trade operations, excessive burdens have been imposed on carriers which will have a negative impact not only on the situation of individual undertakings, the market for transport services, but also on the environment and the functioning of the transport infrastructure.

In particular, entrepreneurs from countries outside the centre of the European Union will be affected by the application of the contested provisions. At the same time, the solutions adopted are not objectively justified in the light of the drivers' situation. Nor do they reflect the specific nature of the regulated services.

(1) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ 2009 L 300, p. 51).

(2) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72).

Action brought on 26 October 2020 — Republic of Poland v European Parliament and the Council of the European Union

(Case C-555/20)

(2021/C 19/42)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1(3), (4), (6) and (7) and Article 9(1) of Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 ([1]);

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

In the alternative, should the Court of Justice consider that the contested provisions of Directive 2020/1057 cannot be separated from the rest of that directive without altering its substance, the Republic of Poland seeks annulment of that directive in its entirety.

Pleas in law and main arguments

The Republic of Poland seeks the annulment of Article 1(3), (4), (6) and (7) and Article 9(1) of Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49), and an order that the European Parliament and the Council of the European Union pay the costs.

In the alternative, should the Court of Justice consider that the contested provisions of Directive (EU) 2020/1057 cannot be separated from the rest of that directive without altering its substance, the Republic of Poland seeks the annulment of Directive (EU) 2020/1057 in its entirety.

The Republic of Poland raises the following pleas in law against Article 1(3), (4), (6) and (7) of Directive (EU) 2020/1057, alleging:

1) infringement of the principle of proportionality (Article 5(4) TEU) by establishing inadequate criteria for the application of the provisions of Directive 96/71/EC and Directive 2014/67/EU to transport operations;

2) infringement of Article 91(2) TFEU by adopting measures without taking account of their impact on the quality of life and level of employment in certain regions, as well as on the functioning of the transport infrastructure;

3) infringement of Article 94 TFEU by adopting measures without taking account of the economic situation of carriers;

4) infringement of Article 11 TFEU and Article 37 of the EU Charter of Fundamental Rights by failing to take account of environmental protection requirements.

In contrast, against Article 9(1) of Directive (EU) 2020/1057, the Republic of Poland alleges infringement of the principle of proportionality (Article 5(4) TEU), the principle of legal certainty and Article 94 TFEU by defining an excessively short period for implementing that directive.

In particular, the Republic of Poland claims that the contested provisions infringe the principle of proportionality. As a result of the adoption of inappropriate criteria determining to which drivers the provisions of Directives 96/71/EC and 2014/67/EU will apply, excessive burdens have been imposed on carriers, which will have a negative impact not only on the situation of individual entrepreneurs and the transport services market, but also on the environment. The negative effects of the provisions complained of will be felt in particular by entrepreneurs from countries outside the centre of the European Union. At the same time, the solutions adopted are not objectively justified in view of the situation of drivers. They also do not reflect the specific nature of the regulated services.

(1) OJ 2020 L 249, p. 49.

Request for a preliminary ruling from the Administratīvā rajona tiesa (Latvia) lodged on 28 October 2020 — SIA Rodl & Partner v Valsts ieņēmumu dienests

(Case C-562/20)

(2021/C 19/43)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: SIA Rodl & Partner

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Must Article 18(1) and (3) of Directive 2015/849 (1), in conjunction with Annex III, point 3(b), thereto, be interpreted as meaning that those provisions i) automatically require a provider of external bookkeeping services to take enhanced customer due diligence measures on the ground that the customer is a non-governmental organisation and the person authorised and employed by the customer is a national of a high-corruption-risk third country, in the present case, the Russian Federation, who holds a Latvian residence permit, and ii) automatically require that customer to be categorised as representing a higher degree of risk?

2. If the preceding question is answered in the affirmative, can the abovementioned interpretation of Article 18(1) and (3) of Directive 2015/849 be regarded as proportionate and, therefore consistent with the first subparagraph of Article 5(4) of the Treaty on European Union?

3. Must Article 18 of Directive 2015/849, in conjunction with Annex III, point 3(b), thereto, be interpreted as meaning that it lays down an automatic obligation to take enhanced customer due diligence measures in every case where one of the customer's business partners, but not the customer itself, is in some way linked to a high-corruption-risk third country, in the present case, the Russian Federation?

4. Must Article 13(1)(c) and (d) of Directive 2015/849 be interpreted as meaning that, when taking customer due diligence measures, the obliged entity must obtain from the customer a copy of the contract concluded between that customer and a third party, and, therefore, that an examination of that contract *in situ* is considered to be insufficient?

5. Must Article 14(5) of Directive 2015/849 be interpreted as meaning that the obliged entity is required to apply due diligence measures to existing commercial customers even where there is no indication of any significant changes in the customer's circumstances and the time limit laid down by the competent authority of the Member State for the adoption of new monitoring measures has not expired, and that that obligation is applicable only in relation to customers that have been categorised as representing a high risk?

6. Must Article 60(1) and (2) of Directive 2015/849 be interpreted as meaning that, when publishing information on a decision imposing an administrative sanction or measure for breach of the national provisions transposing that directive against which there is no appeal, the competent authority has an obligation to ensure that the information published conforms exactly to the information contained in that decision?

(1) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73).

Reference for a preliminary ruling from Supreme Court (Ireland) made on 21 October 2020 — PF, MF v Minister for Agriculture Food and the Marine, Sea Fisheries Protection Authority

(Case C-564/20)

(2021/C 19/44)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: PF, MF

Respondents: Minister for Agriculture Food and the Marine, Sea Fisheries Protection Authority

Questions referred

1. Is the Single Control Authority in a Member State in notifying and certifying to the European Commission under Article 33(2)(a) and Article 34 of the Control Regulation (1) limited to notifying the data as to catch in a particular fishing ground logged by fishers under Articles 14 and 15 of the Regulation when the Single Control Authority for good reason believes the logged data to be grossly unreliable or is it entitled to employ reasonable, scientifically valid methods to treat and certify the logged data so as to achieve more accurate outtake figures for notification to the European Commission?

2. Where the Authority is so satisfied, based on reasonable grounds, can it lawfully utilise other data flows such as fishing licenses, fishing authorisations, vessel monitoring system data, landing declarations, sales notes and transport documents?

(1) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ 2009, L 343, p. 1).

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 29 October 2020 — DS v Deutsche Lufthansa AG

(Case C-565/20)

(2021/C 19/45)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: DS

Defendant: Deutsche Lufthansa AG

Question referred

Does a strike by the air carrier's own employees that is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) [of] Regulation (EC) No 261/2004 ([1])?

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

Request for a preliminary ruling from the Općinski građanski sud u Zagrebu (Croatia) lodged on 29 October 2020 — A. H. v Zagrebačka banka d.d.

(Case C-567/20)

(2021/C 19/46)

Language of the case: Croatian

Referring court

Općinski građanski sud u Zagrebu

Parties to the main proceedings

Applicant: A. H.

Defendant: Zagrebačka banka d.d.

Questions referred

1. Must Article 6(1) of Directive 93/13 ([1]) on unfair terms in consumer contracts, as interpreted in the case-law of the Court of Justice, in particular in Case C-118/17, *Dunai*, be interpreted as meaning that the legislature's intervention in the relationships between a consumer who is a borrower [**Or. 2**] and a bank cannot deprive consumers of their right to challenge in court the terms of the original contract, or of an annex to the contract concluded pursuant to statute, in order to exercise their right to reimbursement of all the advantages which the bank unduly obtained to the detriment of consumers as a result of applying unfair contract terms, where, following an intervention by the legislature, the consumers entered into an amendment of the original contractual relationship voluntarily on the basis of a statutory obligation imposed on banks to offer consumers this possibility, and not directly as a result of statutory intervention as was the case in *Dunai*?

2. If the answer to the first question is in the affirmative, is a national court ruling on a case between two parties (the borrower and the bank) — where that court is unable, following the interpretation adopted by the Vrhovni sud (Supreme Court, Croatia), to give an interpretation to the provisions of the national Zakon o izmjeni i dopunama Zakona o potrošačkom kreditiranju (Law Amending and Supplementing the Law on Consumer Credit) that would meet the requirements of Directive 93/13 — authorised and/or required, under that directive and under Articles 38 and 47 of the Charter of Fundamental Rights of the European Union, to disapply that national law as interpreted by the Supreme Court?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (JO 1993 L 95, p. 29).

GENERAL COURT

Judgment of the General Court of 18 November 2020 — Aquind v ACER

(Case T-735/18) ([1])

(Energy — Article 17 of Regulation (EC) No 714/2009 — Decision of ACER refusing a request for exemption relating to new electrical interconnectors — Appeal before the Board of Appeal of ACER — Intensity of the review)

(2021/C 19/47)

Language of the case: English

Parties

Applicant: Aquind Ltd (Wallsend, United Kingdom) (represented by: S. Goldberg and C. Davis, Solicitors, and E. White, lawyer)

Defendant: European Union Agency for the Cooperation of Energy Regulators (ACER) (represented by: P. Martinet, E. Tremmel, C. Gence-Creux and A. Hofstadter, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of (i) Decision A-001-2018 of the Board of Appeal of ACER of 17 October 2018 which upheld Decision No 05/2018 of ACER of 19 June 2018 refusing a request for exemption relating to an electrical interconnector connecting the electricity transmission systems in the United Kingdom and France, and (ii) the decision of ACER thus upheld.

Operative part of the judgment

The Court:

1. Annuls Decision A-001-2018 of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 17 October 2018;

2. Dismisses the action as to the remainder;

3. Orders ACER to bear its own costs and to pay those incurred by Aquind Ltd.

([1]) OJ C 103, 18.3.2019.

Judgment of the General Court of 18 November 2020 — Topcart v EUIPO — Carl International (TC CARL)

(Case T-377/19) ([1])

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

(2021/C 19/48)

Language of the case: German

Parties

Applicant: Topcart GmbH (Wiesbaden, Germany) (represented by: M. Hoffmann, lawyer)

Defendant: European Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Carl International (Limonest, France) (represented by: B. Müller, lawyer)

Re

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 April 2019 (Case R 1826/2018-2), relating to opposition proceedings between Carl International and Topcart.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Topcart GmbH to pay the costs.*

(1) OJ C 270, 12.8.2019.

Judgment of the General Court of 18 November 2020 — Topcart v EUIPO — Carl International (TC CARL)

(Case T-378/19) (1)

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

(2021/C 19/49)

Language of the case: German

Parties

Applicant: Topcart GmbH (Wiesbaden, Germany) (represented by: M. Hoffmann, lawyer)

Defendant: European Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Carl International (Limonest, France) (represented by: B. Müller, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 April 2019 (Case R 1617/2018-2), relating to opposition proceedings between Carl International and Topcart.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Topcart GmbH to pay the costs.

(1) OJ C 270, 12.8.2019.

Judgment of the General Court of 18 November 2020 — LG Electronics v EUIPO — Staszewski (K7)

(Case T-21/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark K7 — Earlier EU word mark k7 — Relative ground for refusal — Likelihood of confusion — Similarity of the goods — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2021/C 19/50)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, South Korea) (represented by: R. Schiffer, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Miłosz Staszewski (Wrocław, Poland) (represented by: E. Gryc Zerych, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 31 October 2019 (Case R 401/2019 1), relating to opposition proceedings between Mr Staszewski and LG Electronics.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders LG Electronics, Inc., to pay the costs.

([1]) OJ C 68, 2.3.2020.

Order of the General Court of 13 November 2020 — UG v Commission

(Case T-571/17) ([1])

(Civil service — Contract staff — Contract of indefinite duration — Article 47(c)(i) of the CEOS — Termination with notice — Agreement on the quantified amount of compensation for damages — No need to adjudicate)

(2021/C 19/51)

Language of the case: French

Parties

Applicant: UG (represented by: M. Richard and P. Junqueira de Oliveira, lawyers)

Defendant: European Commission (represented by: L. Radu Bouyon and B. Mongin, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of 17 October 2016 by which the Commission's Office for 'Infrastructures and Logistics in Luxembourg' (OIL) terminated the applicant's contract of employment on the basis of Article 47(c)(i) of the Conditions of Employment of Other Servants of the European Union with effect from 20 August 2017 and, second, to obtain compensation for the material damage that the applicant allegedly suffered as a result of that decision as well as for the non-material damage that she allegedly suffered as a result of the degrading treatment to which she was subjected as a result of her trade union activity and the taking of her parental leave

Operative part of the order

1. There is no longer any need to adjudicate on the monetary compensation resulting from the decision of 17 October 2016 by which the European Commission's Office for 'Infrastructures and Logistics in Luxembourg' (OIL) terminated UG's employment contract.

2. The European Commission shall bear its own costs and pay one-half of the costs of UG. UG shall bear one-half of her own costs.

(1) OJ C 357, 23.10.2017.

Order of the General Court of 30 October 2020 — Gáspár v Commission

(Case T-827/19) (1)

(Action for annulment — Civil service — Transfer of national pension rights — Complaint brought after the expiry of the three-month period laid down in Article 90(2) of the Staff Regulations — No excusable error — Manifest inadmissibility)

(2021/C 19/52)

Language of the case: English

Parties

Applicant: Norbert Gáspár (Mensdorf, Luxembourg) (represented by: R. Wardyn, lawyer)

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

Re:

Action brought under Article 270 TFEU, seeking annulment of the decision of the Commission's Office for the Administration and Payment of Individual Entitlements (PMO) of 23 May 2018 confirming the transfer to the pension scheme of the EU institutions of pension rights acquired by the applicant prior to his entry into the service of the European Union.

Operative part of the order

1. The action is dismissed as manifestly inadmissible.

2. Mr Norbert Gáspár shall pay the costs.

(1) OJ C 61, 24.2.2020.

Judgment of the General Court of 19 November 2020 — Buxadé Villalba and Others v Parliament

(Case T-32/20) (1)

(Action for annulment — Law governing the institutions — Member of the Parliament — Acknowledgement by the Parliament of the election as Members of the European Parliament of two Spanish elected representatives — Locus standi of three other Members of the European Parliament — Lack of individual concern — Application for a declaratory judgment — Action partly inadmissible and partly brought before a court that is manifestly incompetent to hear it)

(2021/C 19/53)

Language of the case: Spanish

Parties

Applicants: Jorge Buxadé Villalba (Madrid, Spain) María Esperanza Araceli Aguilar Pinar (Madrid), Hermann Tertsch Del Valle-Lersundi (Madrid) (represented by: M. Castro Fuertes, lawyer)

Defendant: European Parliament (represented by: N. Görlitz and C. Burgos, acting as Agents)

Re:

Application under Article 263 TFEU seeking the annulment of the Parliament's acknowledgment of the election as Members of the European Parliament of Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres, announced by the President of the Parliament at the plenary sitting of 13 January 2020.

Operative part of the judgment

The Court:

1. Dismisses the action as partly inadmissible and as partly brought before a court that is manifestly incompetent to hear it;

2. Declares that there is no longer any need to adjudicate on the applications to intervene of the Kingdom of Spain and of Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres;

3. Orders Mr Jorge Buxadé Villalba, Mr Hermann Tertsch Del Valle-Lersundi and Ms María Esperanza Araceli Aguilar Pinar to bear their own costs and to pay those incurred by the European Parliament;

4. Orders the Kingdom of Spain, Mr Puigdemont i Casamajó and Mr Comín i Oliveres to bear the costs relating to their respective applications to intervene.

(1) OJ C 77, 9.3.2020.

Order of the General Court of 29 October 2020 — Isopix v Parliament

(Case T-163/20) (1)

(Action for annulment and for compensation — Public supply contracts — Tender procedure — Provision of photography services — Rejection of a tenderer's bid and award of the contract to another tenderer — Cancellation of the procurement procedure — Action which has become, in part, devoid of purpose — No need, in part, to adjudicate — Order — Appeal in part brought before a court manifestly lacking in jurisdiction to hear it)

(2021/C 19/54)

Language of the case: French

Parties

Applicant: Isopix SA (Ixelles, Belgium) (represented by: P. Van den Bulck and J. Fahner, lawyers)

Defendant: European Parliament (represented by: K. Wójcik and E. Taneva, acting as Agents)

Re:

First, application based on Article 263 TFEU for annulment of the Parliament's decision of 24 March 2020 rejecting the tender submitted by the applicant in the context of the call for tenders COMM/DG/AWD/2019/854, entitled 'Provision of Photography Services — Photographic Coverage of the Current Affairs and Institutional Activities of the European Parliament', and informing the applicant that the contract had been awarded to another tenderer, and of the letter of the Parliament of 17 April 2020 informing the applicant of the rejection of its tender submitted in the context of the call for tenders COMM/DG/AWD/2019/854 on the grounds that it did not meet the selection criteria relating to financial and economic standing and, secondly, application based, primarily, on Article 266 TFEU seeking an order that the Parliament re-examine the tenders and, in the alternative, on Article 268 TFEU, seeking compensation in respect of the harm allegedly suffered by the applicant.

Operative part of the order

1. There is no longer any need to adjudicate on the action in so far as it seeks the annulment of the European Parliament's decision of 24 March 2020 rejecting the tender submitted by Isopix SA in the context of the call for tenders COMM/DG/AWD/2019/854, entitled 'Provision of Photography Services — Photographic Coverage of the Current Affairs and Institutional Activities of the European Parliament', and informing it that the contract had been awarded to another tenderer, and of the letter of the Parliament of 17 April 2020 informing Isopix SA of the rejection of its tender submitted in the context of the call for tenders COMM/DG/AWD/2019/854 on the grounds that it did not meet the selection criteria relating to financial and economic standing.

2. The action is dismissed as to the remainder for having been brought before a court manifestly lacking in jurisdiction to hear it.

3. The Parliament shall bear the costs, including those relating to the proceedings for interim measures.

([1]) OJ C 191, 8.6.2020.

Order of the General Court of 17 November 2020 — González Calvet v SRB

(Case T-257/20) ([1])

(Action for annulment — Economic and monetary policy — Single Resolution Mechanism for credit institutions and certain investment firms (SRM) — Decision refusing to grant financial compensation to the shareholders and creditors concerned — Failure to comply with formal requirements — Article 76(d) of the Rules of Procedure — Manifest inadmissibility)

(2021/C 19/55)

Language of the case: Spanish

Parties

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

Defendant: Single Resolution Board (represented by: S. Branca, J. King, L. Forestier and E. Muratori, acting as Agents, and by H.-G. Kamann, F. Louis, V. Del Pozo Espinosa De Los Monteros and L. Hesse, lawyers)

Re:

Application under Article 263 TFEU seeking the annulment of SRB Decision SRB/EES/2020/52 of 17 March 2020 determining whether compensation needs to be granted to the shareholders and creditors in respect of which the resolution actions concerning Banco Popular Español S.A. have been effected.

Operative part of the order

The Court:

1. Dismisses the action as manifestly inadmissible.

2. Declares that there is no longer any need to adjudicate on the application to intervene by the Kingdom of Spain.

3. Orders Mr Ramón González Calvet and Mr Joan González Calvet to bear their own costs and to pay those incurred by the Single Resolution Board (SRB), with the exception of those relating to the application to intervene of the Kingdom of Spain.

4. Orders Messrs González Calvet, the SRB and the Kingdom of Spain to each bear their own costs relating to the application to intervene of the Kingdom of Spain.

(1) OJ C 209, 22.6.2020.

Order of the General Court of 5 November 2020 — Moloko Beverage v EUIPO — Nexus Liquids (moloko)

(Case T-383/20) (1)

(EU trade mark — Cancellation proceedings — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2021/C 19/56)

Language of the case: German

Parties

Applicant: Moloko Beverage GmbH (Göppingen, Germany) (represented by: D. Wieland, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Nexus Liquids GmbH (Bad Salzuflen, Germany) (represented by: F. Schembecker, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 18 March 2020 (Case R 1485/2019-5), relating to cancellation proceedings between Nexus Liquids and Moloko Beverage.

Operative part of the order

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

2. Moloko Beverage GmbH and Nexus Liquids GmbH shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 262, 10.8.2020.

Order of the President of the General Court of 29 October 2020 — Facebook Ireland v Commission

(Case T-451/20 R)

(Interim proceedings — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for interim measures — Urgency — Prima facie case — Weighing of competing interests)

(2021/C 19/57)

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 (represented by: G. Conte, C. Urraca Caviedes and C. Sjödin, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking the suspension of operation of Decision C(2020) 3011 final of the European Commission of 4 May 2020, relating to a proceeding pursuant to Article 18(3) and Article 24(1)(d) of Council Regulation (EC) No 1/2003 (Case AT.40628 — Facebook Data-related practices).

Operative part of the order

1. The operation of Article 1 of Decision C(2020) 3011 final of the European Commission of 4 May 2020 relating to a proceeding pursuant to Article 18(3) and Article 24(1)(d) of Council Regulation (EC) No 1/2003 (Case AT.40628 — Facebook Data-related practices) is suspended, in so far as the obligation set out therein relates to documents which are not linked to Facebook Ireland Ltd's business activities and which contain sensitive personal data, and for as long as the procedure referred to in point 2 has not been put in place.

2. Facebook Ireland shall identify the documents containing the data referred to in point 1 and transmit them to the Commission on a separate electronic medium. Those documents shall then be placed in a virtual data room which shall be accessible to as limited a number as possible of members of the team responsible for the investigation, in the presence (virtual or physical) of an equivalent number of Facebook Ireland's lawyers. The members of the team responsible for the investigation shall examine and select the documents in question, while giving Facebook Ireland's lawyers the opportunity to comment on them before the documents considered relevant are placed on the file. In the event of disagreement as to the classification of a document, Facebook Ireland's lawyers shall have the right to explain the reasons for their disagreement. In the event of continuing disagreement, Facebook Ireland may ask the Director for Information, Communication and Media at the Commission's Directorate-General for Competition to resolve the disagreement.

3. The application for interim relief is dismissed as to the remainder.

4. The order of 24 July 2020, Facebook Ireland v Commission (T-451/20 R), is set aside.

5. The costs are reserved.

Order of the President of the General Court of 29 October 2020 — Facebook Ireland v Commission

(Case T-452/20 R)

(Interim proceedings — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for interim measures — Urgency — Prima facie case — Weighing of competing interests)

(2021/C 19/58)

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 (represented by: G. Conte, C. Urraca Caviedes and C. Sjödin, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking the suspension of operation of Decision C(2020) 3013 final of the European Commission of 4 May 2020, relating to a proceeding pursuant to Article 18(3) and Article 24(1)(d) of Council Regulation (EC) No 1/2003 (Case AT.40684 — Facebook Marketplace).

Operative part of the order

1. The operation of Article 1 of Decision C(2020) 3013 final of the European Commission of 4 May 2020 relating to a proceeding pursuant to Article 18(3) and Article 24(1)(d) of Council Regulation (EC) No 1/2003 (Case AT.40684 — Facebook Marketplace) is suspended, in so far as the obligation set out therein relates to documents which are not linked to Facebook Ireland Ltd's business activities and which contain sensitive personal data, and for as long as the procedure referred to in point 2 has not been put in place.

2. Facebook Ireland shall identify the documents containing the data referred to in point 1 and transmit them to the Commission on a separate electronic medium. Those documents shall then be placed in a virtual data room which shall be accessible to as limited a number as possible of members of the team responsible for the investigation, in the presence (virtual or physical) of an equivalent number of Facebook Ireland's lawyers. The members of the team responsible for the investigation shall examine and select the documents in question, while giving Facebook Ireland's lawyers the opportunity to comment on them before the documents considered relevant are placed on the file. In the event of disagreement as to the classification of a document, Facebook Ireland's lawyers shall have the right to explain the reasons for their disagreement. In the event of continuing disagreement, Facebook Ireland may ask the Director for Information, Communication and Media at the Commission's Directorate-General for Competition to resolve the disagreement.

3. The application for interim relief is dismissed as to the remainder.

4. The order of 24 July 2020, Facebook Ireland v Commission (T-452/20 R), is set aside.

5. The costs are reserved.

Action brought on 30 September 2020 — LA International Cooperation v Commission

(Case T-609/20)

(2021/C 19/59)

Language of the case: English

Parties

Applicant: LA International Cooperation Srl (Milan, Italy) (represented by: B. O'Connor, Solicitor and M. Hommé, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission directly addressed to the applicant and dated 20 July 2020 (the contested decision), excluding the applicant from participating in contract award procedures governed by the EU budget and by the 11th European Development Fund or from being selected for implementing Union funds under Regulation (EU, Euratom) 2018/1046 ([1]) and for implementing funds under the European Development Fund governed by Regulation (EU) 2018/1877 ([2]); and,

— order the Commission to pay its costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a breach of the principle of good administration, the prohibition of the abuse of rights, the duty of care and Regulation (EU, Euratom) No 883/2013 ([3]).

2. Second plea in law, alleging that OLAF failed to correctly address the applicant in breach of the right of defence, the duty of care and due process.

3. Third plea in law, alleging a breach of Articles 7 and 9 of Regulation (EU, Euratom) No 883/2013 and the right of good administration, the duty of care and due process.

4. Fourth plea in law alleging a breach of Article 9(4) of the basic OLAF Regulation and the right to due process and the obligation to state reasons.

5. Fifth plea in law alleging that OLAF acted in breach of Article 7(8) of Regulation (EU, Euratom) No 883/2013 and the principle of good administration.

6. Sixth plea in law alleging a breach of Article 9(1) of Regulation (EU, Euratom) No 883/2013 and the right of good administration.

7. Seventh plea in law alleging that the EDES Panel acted in breach of Articles 41, 47, 48 and 54 of the Charter of Fundamental Rights in making a preliminary classification in law of the facts established by OLAF.

8. Eighth plea in law alleging that the redacted OLAF Final Report did not allow the EDES Panel to make an independent judgement or adequately assess the weight of the submission of the applicant in breach of the principle of good administration and Articles 135 to 143 of the Financial Regulation.

9. Ninth plea in law alleging that neither lobbying nor success fees are per se illegal and by making this assumption there was a breach of the principle of good administration.

10. Tenth plea in law alleging that the core of the findings of the contested decision in relation to the applicant are flawed in that the EDES Panel and the appointing authority (DG NEAR) acted in breach of the fundamental rights of the applicant and in particular the principles of good administration, the duty of care, and that the contested decision is not adequately reasoned.

11. Eleventh plea in law alleging breach of Article 13(2) of the EDES Panel Rules of Procedure and the right of defence.

12. Twelfth plea in law alleging that the EDES Panel must have had information other than the redacted Final Report in breach of Article 13(2) of the EDES Panel's rules of procedure.

13. Thirteenth plea in law alleging that the extent of the redaction of the redacted OLAF Final Report was such as to be in breach of the principle of good administration, the duty of care and due process.

14. Fourteenth plea in law alleging that the sanction was set at a level that was influenced by the different breaches of Regulation (EU, Euratom) No 883/2013, the Financial Regulation and the fundamental principles of law.

15. Fifteenth plea in law alleging that the redacted Final Report does not show that the curriculum of an expert was doctored or fabricated and thus the contested decision on this point is unfounded and in breach of the principles of good administration, the duty of care and the right of defence.

16. Sixteenth plea in law alleging that the OLAF Operational Analysis Report was inadequate for the purposes intended in breach of the principles of good administration and the right of defence.

(1) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018, L 193, p. 1)

(2) Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund, and repealing Regulation (EU) 2015/323 (OJ 2018, L 307, p. 1)

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

Action brought on 15 October 2020 — OG v EDA

(Case T-632/20)

(2021/C 19/60)

Language of the case: English

Parties

Applicant: OG (represented by: S. Pappas and N. Kyriazopoulou, lawyers)

Defendant: European Defence Agency (EDA)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Defence Agency of 13 December 2019, by which the applicant had not been placed on the reserve list of suitable candidates;

— annul the decision of the Chief Executive of EDA by which the complaint of the applicant against the EDA decision of 13 December 2019 was rejected, to the extent it offers an additional reasoning; and

— order compensation in the amount of EUR 3 000 (three thousand euros) for the non-material damage suffered by the applicant;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the essential procedural requirement to state reasons.

2. Second plea in law, alleging infringement of the principles of equal treatment, transparency, objectivity and sound administration.

3. Third plea in law, alleging infringement of the vacancy notice, illegal or insufficient reasoning and manifest error of assessment vitiating the assessment of the qualifications of the applicant in respect of the post to be filled.

Action brought on 20 October 2020 — Leonine Distribution v Commission

(Case T-641/20)

(2021/C 19/61)

Language of the case: English

Parties

Applicant: Leonine Distribution GmbH (Munich, Germany) (represented by: J. Kreile, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision C(2020) 5515 final of 10 August 2020, reviewing the legality of an act of the Education, Audiovisual and Culture Executive Agency pursuant to Council Regulation (EC) 58/2003 ([1]);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in interpreting the wording of the Call documents.

   — It is argued that the wording does not permit the conclusion that the nationality of 'ultimate shareholders' and not only of direct shareholders is decisive for the classification of the applicant as a European company.

2. Second plea in law, alleging that the Commission wrongly rejected the KKR European Fund IV LP as European ultimate owner of LEONINE Distribution.

   — The applicant argues that already the EACEA assumes that the KKR European Fund IV LP is to be regarded as the 'ultimate owner' of the applicant.

3. Third plea in law, alleging that the Commission wrongly based its decision on alleged lack of information on the shareholding structure of the KKR European Fund IV LP.

   — For the evaluation of the eligibility of the applicant, the detailed structure of the individual investors of the Fund is not important, but only an — assured — majority participation of European shareholders.

4. Fourth plea in law, alleging that the Commission did not take the facts of the case and the objectives of Regulation (EU) No 1295/2013 ('the Creative Europe Regulation') ([2]) into sufficient account.

   — The Commission bases its decision on the unproven assertion that the requested funding would be transferred to third countries;

   — The Commission did not examine the objectives of the funding laws in its decision.

5. Fifth plea in law, alleging that the Commission's decision contradicts the objectives of the applicable funding Guidelines.

   — A rejection of the applicant's eligibility for funding is incompatible with the objectives of the Creative Europe Regulation.

6. Sixth plea in law, alleging that the decision of the Commission contradicts the notion of 'European work' in the Creative Europe Regulation.

   — The concept of 'European work', which is defined by Directive 2010/13/EU of the European Parliament and of the Council ([3]), is widely understood and is not compatible with the Commission's restrictive understanding of eligibility for funding.

7. Seventh plea in law, alleging that the Commission's decision infringes the principle of proportionality.

   — The granting of MEDIA funding, subject to its use in accordance with the funding laws, would have been an equally effective but milder means.

8. Eighth plea in law, alleging that the Commission unlawfully failed to take into account the further clarifications submitted by the claimant in its letter of 15 July 2020.

   — The Commission should have taken the applicant's observations into account, since they were not submitted late and were therefore not precluded.

([1]) Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2003 L 11, p. 1).

([2]) Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC (OJ 2013 L 347, p. 221).

([3]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1).

Action brought on 23 October 2020 — NU v EUIPO

(Case T-650/20)

(2021/C 19/62)

Language of the case: English

Parties

Applicant: NU (represented by: S. Pappas and N. Kyriazopoulou, lawyers)

Defendant: European Union Intellectual Property Office

Form of order sought

The applicant claims that the Court should:

— annul the decision dated 1 April 2020 of the Authority Authorised to Conclude Contracts of the European Union Intellectual Property Office (EUIPO) not to renew the applicant's contract;

— order compensation in the amount of EUR 20 000 (twenty thousand euros) for the non-material harm suffered by the applicant, as a result of the decision not to renew her contract;

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

Pleas in law and main arguments

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

1. First plea in law, alleging lack of competence.

2. Second plea in law, alleging infringement of an essential procedural requirement consisting in the failure to include in the dialogue prior to making the contested decision the appraisal report for 2019.

3. Third plea in law, alleging breach of the duty of care, with regard to the failure of the administration to consider the health problems of the applicant, the appraisal report for 2019 and all the legal criteria for evaluating the performance of the applicant.

4. Fourth plea in law, alleging unlawful reasoning and/or manifest error of assessment.

5. Fifth plea in law, alleging irregularity of the pre-litigation procedure, which did not lead to a proper review by the Appointing Authority of the decision of 15 July 2020.

Action brought on 27 October 2020 — Silex v Commission and EASME

(Case T-654/20)

(2021/C 19/63)

Language of the case: Hungarian

Parties

Applicant: Silex Ipari Automatizálási Zrt. (Budapest, Hungary) (represented by: Á. Baratta, lawyer)

Defendants: European Commission and European Agency for Small and Medium-sized Enterprises (EASME)

Form of order sought

The applicant claims that the General Court should:

— annul debit note No 3242009492 issued by EASME on 18 August 2020 ('the debit note'), in so far as it orders the payment of EUR 55 454,44;

— annul the letter of 18 August 2020, bearing the reference Ref. Ares(2020)4309529 ('the letter'), sent by EASME with the debit note, in so far as it orders the repayment of EUR 49 238,75 in respect of the waiver of the contribution to the Guarantee Fund;

— annul the letter sent with the debit note, in so far as the final financial statement set out therein categorises direct staff costs in the sum of EUR 210 423,11 as ineligible expenditure;

— annul the letter sent with the debit note, in so far as the final financial statement set out therein categorises indirect costs in the sum of EUR 52 605,78 as ineligible expenditure;

— order EASME and the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea, alleging breach of the obligation to state reasons:

   EASME breached the obligation to state reasons in that it failed lawfully to justify the claims contained in the debit note and the letter sent therewith.

2. Second plea, alleging infringement of the principle of sound administration:

   EASME infringed the principle of sound administration in so far as it:

   — failed to provide any substantive response to the technical reports and proposals submitted by the applicant, nor did it reply to the applicant's requests for amendment of the contract;

— failed to make a project officer available at a critical stage in the project;

— infringed Article 40 of Regulation (EU) No 1290/2013 ([1]) in relation to the appointment of independent experts, to which Article 40(2) refers, and the requirements contained in Article 40(3) regarding independent experts facing conflicts of interest.

3. Third plea, alleging a manifest error of assessment:

EASME committed a manifest error of assessment by finding, in the list of references sent with the debit note, that the project did not, in principle, meet the overall technical and commercial objectives, as a result of the failure to take into account certain facts and documents when carrying out that assessment.

4. Fourth plea, alleging breach of proportionality requirements:

EASME failed to comply with the proportionality requirements by finding that costs in the total amount of EUR 263 028,09 out of costs declared by the applicant in the amount of EUR 804 020,75 constituted ineligible expenditure.

5. Fifth plea, alleging breach of the requirement of sound financial management and, in particular, the requirement of economy, efficiency and effectiveness:

EASME failed to take into consideration the applicant's claims relating to the evolving needs of the market and the consequent need to amend the project.

([1]) Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)' and repealing Regulation (EC) No 1906/2006 (OJ 2013 L 347, p. 81).

Action brought on 30 October 2020 — NV v eu-LISA

(Case T-661/20)

(2021/C 19/64)

Language of the case: English

Parties

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

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of 3 February 2020 insofar as it imposes a reprimand on the applicant;

— if need be, annul the decision of 3 August 2020 rejecting the applicant's complaint of 9 April 2020;

— order financial compensation for non-material harm, which can be evaluated, *ex aequo et bono*, at the sum of EUR 5 000;

— order reimbursement of the incurred 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, a plea of illegality in relation to the decision of the Management Board (2015-014) on administrative inquiries of 28 January 2015.

2. Second plea in law, alleging violation of the rights of the defence together with violation of Article 41 of the Charter of Fundamental Rights of the European Union and of the right to be heard and furthermore breach of the duty of confidentiality.

3. Third plea in law, alleging breach of Articles 12, 12a, 17 and 19 of the Staff Regulations, together with breach of the principle of good administration and furthermore manifest errors of assessment.

4. Fourth plea in law, alleging breach of Article 10 of Annex IX to the Staff Regulations on disciplinary proceedings, together with violation of the duty of care.

Action brought on 9 November 2020 — Sam McKnight v EUIPO — Carolina Herrera (COOL GIRL)

(Case T-670/20)

(2021/C 19/65)

Language of the case: English

Parties

Applicant: Sam McKnight Ltd (London, United Kingdom) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Carolina Herrera Ltd (New York, New York, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark COOL GIRL — Application for registration No 16 681 975

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 August 2020 in Case R 689/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order that the costs of the proceedings be borne by the defendant, and in case Carolina Herrera joins the proceedings, the intervener.

Plea in law

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

Action brought on 11 November 2020 — Celler Lagravera v EUIPO — Cyclic Beer Farm (Cíclic)

(Case T-673/20)

(2021/C 19/66)

Language in which the application was lodged: Spanish

Parties

Applicant: Celler Lagravera, SLU (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cyclic Beer Farm, SL (Barcelona, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for the European Union figurative mark 'Cíclic' — Application for registration No 17 948 980

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 August 2020 in Case R 465/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as, by dismissing the appeal of Celler Lagravera, SLU, it confirms the Opposition Division's decision No B 3 071 125 upholding the opposition against all the goods covered by EU trade mark No 17 948 980 'Cíclic' (figurative) designating 'wines' in Class 33; and

— order the party or parties opposing this action to pay the costs.

Plea in law

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

Action brought on 12 November 2020 — Leonardo v Frontex

(Case T-675/20)

(2021/C 19/67)

Language of the case: Italian

Parties

Applicant: Leonardo SpA (Rome, Italy) (represented by: M. Esposito, F. Caccioppoli and G. Calamo, lawyers)

Defendant: European Border and Coast Guard Agency

Form of order sought

The applicant claims that the Court should, as regards the substance:

— order the examination of the documents concerned by the access request and make a related order for exhibition or filing;

— annul the contested decision;

— consequently, order FRONTEX to exhibit, without further delay, the documents concerned by that access request;

— order the defendant to pay the costs.

Pleas in law and main arguments

The present action has been brought against the rejection of the request for access to the documents relating to Tendering Procedure No FRONTEX/OP/888/2019/JL/CG, which is the subject of the proceedings currently before the General Court of the European Union in Case T-849/19 (including the award decision, the minutes of the award committee, the documents presented by the successful bidder and all the other documents in the administrative file).

In support of its action, the applicant alleges infringement of: Article 4(1)(b), the first indent of Article 4(2), and Article 4(3) of 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); of Directives 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1) and 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), more specifically, Articles 28 and 21 thereof, respectively; of Article 161 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1); of Management Board Decision No 19 of 23 July 2019; and of Article 89 of Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ 2019 L 122, p. 1).

In the alternative, the applicant criticises FRONTEX for failing to grant it even partial access to the documents.

Action brought on 13 November 2020 — Dr. August Wolff v EUIPO — Combe International (Vagisan)

(Case T-679/20)

(2021/C 19/68)

Language of the case: English

Parties

Applicant: Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany) (represented by: A. Thünken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Combe International Ltd (New York, New York, United States)

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 Vagisan — International registration designating the European Union No 10 985 168

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 September 2020 in Case R 2459/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Cancellation Division of the EUIPO No 000018101 C of 11 September 2019,

— order the EUIPO and, as the case may be, the intervener to bear the costs of the proceedings and the costs incurred by proceedings before the EUIPO.

Plea in law

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

Action brought on 11 November 2020 — Novelis v Commission

(Case T-680/20)

(2021/C 19/69)

Language of the case: English

Parties

Applicant: Novelis Inc. (Mississauga, Ontario, Canada) (represented by: S. Völcker, T. Caspary and R. Benditz, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in whole or in part, the Commission Decision of 31 August 2020 in Case No. M.9076 — *Novelis/Aleris* rejecting Novelis' request for a one-month extension of the Closing Period pursuant to Clause 49 of the *Novelis/Aleris* Commitments;

— 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 that the Contested Decision was adopted by the Deputy Director-General of the Directorate General for Competition rather than the College of Commissioners in violation of the principle of collegiate responsibility.

2. Second plea in law, alleging a breach of the applicant's right to be heard.

3. Third plea in law, alleging failure to state adequate reasons allowing the applicant to exercise its rights of defence in an effective manner.

4. Fourth plea in law, alleging that the Contested Decision is vitiated by several manifest errors of assessment and ignores that the applicant has good cause to apply for an extension. The applicant further alleges that in light of its legal consequences and the availability of several less onerous means, the Contested Decision infringes the principle of proportionality.

Action brought on 13 November 2020 — OC v EEAS

(Case T-681/20)

(2021/C 19/70)

Language of the case: French

Parties

Applicant: OC (represented by: L. Levi and A. Champetier, lawyers)

Defendant: European External Action Service

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well-founded;

accordingly,

— annul the decision of 27 January 2020 in so far as it rejects the applicant's claim for compensation dated 27 September 2019;

— if needed, annul the decision of 4 August 2020 in so far as it rejects the applicant's complaint of 17 April 2020;

— order the defendant to compensate the applicant for the non-material and financial damage incurred, the latter being assessed respectively, *ex aequo et bono*, at EUR 20,000 and EUR 580,889;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 22a of the Staff Regulations of Officials of the European Union, infringement of Article 3.3 of the Charter of the Tasks and Responsibilities of EEAS Imprest Administrators, infringement of Article 3 of the Code of Professional Standards for EEAS Financial Audit Staff and infringement of Article 2 of Decision PROC HR(2011)008 of the High Representative of the Union for Foreign Affairs and Security Policy.

2. Second plea, alleging breach of the duty of care. The applicant submits in particular in that regard that her transfer was decided without observing the principle of equivalence of posts and that, given the circumstances of the case, her transfer was not justified by the interests of the service.

3. Third plea, alleging infringement of the right to be heard and of the obligation to state reasons, as well as infringement of the protection of personal data and of the right to respect for private and family life.

Action brought on 16 November 2020 — Legero Schuhfabrik v EUIPO — Rieker Schuh (Schuhwaren)

(Case T-682/20)

(2021/C 19/71)

Language in which the application was lodged: German

Parties

Applicant: Legero Schuhfabrik GmbH (Feldkirchen bei Graz, Austria) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Rieker Schuh AG (Thayngen, Switzerland)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 451 421-0185

Contested decision: Decision of the Third Board of Appeal of EUIPO of 10 September 2020 in Case R 1650/2019-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 5 and Article 25(1)(b) of Council Regulation (EC) No 6/2002;

— Infringement of Article 6 and Article 25(1)(b) of Council Regulation (EC) No 6/2002;

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

— Infringement of the second sentence of Article 62 of Council Regulation (EC) No 6/2002;

— Infringement of the first sentence of Article 62 of Council Regulation (EC) No 6/2002.

Action brought on 16 November 2020 — Legero Schuhfabrik v EUIPO — Rieker Schuh (Schuhwaren)

(Case T-683/20)

(2021/C 19/72)

Language in which the application was lodged: German

Parties

Applicant: Legero Schuhfabrik GmbH (Feldkirchen bei Graz, Austria) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Rieker Schuh AG (Thayngen, Switzerland)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 457 113-0405

Contested decision: Decision of the Third Board of Appeal of EUIPO of 10 September 2020 in Case R 1648/2019-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 5 and Article 25(1)(b) of Council Regulation (EC) No 6/2002;

— Infringement of Article 6 and Article 25(1)(b) of Council Regulation (EC) No 6/2002;

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

— Infringement of the second sentence of Article 62 of Council Regulation (EC) No 6/2002;

— Infringement of the first sentence of Article 62 of Council Regulation (EC) No 6/2002.

Action brought on 16 November 2020 — Legero Schuhfabrik v EUIPO — Rieker Schuh (Schuhwaren)

(Case T-684/20)

(2021/C 19/73)

Language in which the application was lodged: German

Parties

Applicant: Legero Schuhfabrik GmbH (Feldkirchen bei Graz, Austria) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Rieker Schuh AG (Thayngen, Switzerland)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 457 113-0075

Contested decision: Decision of the Third Board of Appeal of EUIPO of 10 September 2020 in Case R 1649/2019-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 5 and Article 25(1)(b) of Council Regulation (EC) No 6/2002;

— Infringement of Article 6 and Article 25(1)(b) of Council Regulation (EC) No 6/2002;

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

— Infringement of the second sentence of Article 62 of Council Regulation (EC) No 6/2002;

— Infringement of the first sentence of Article 62 of Council Regulation (EC) No 6/2002.

Action brought on 16 November 2020 — Jinan Meide Casting and Others v Commission

(Case T-687/20)

(2021/C 19/74)

Language of the case: English

Parties

Applicants: Jinan Meide Casting Co. Ltd (Jinan, China) and 10 other applicants (represented by: R. Antonini, E. Monard and B. Maniatis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2020/1210 of 19 August 2020 reimposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd following the judgment of the General Court in case T-650/17 ([1]); and

— order the European Commission to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 10(1) of Council Regulation (EC) No 1225/2009, of 30 November 2009, on protection against dumped imports from countries not members of the European Community ([2]) (the 'basic Regulation') and the general principle of non-retroactivity. The applicants claim that, pursuant to Article 10(1) of the basic Regulation, since contested Regulation entered into force on 22 August 2020, the duties could only be applied to products that entered free circulation as from 22 August 2020. The provisions in the contested Regulation that provide for an imposition and collection of duties as of 15 May 2013 therefore allegedly violate Article 10(1) of the basic Regulation and the general principle of non-retroactivity.

2. Second plea in law, alleging a violation of the general principle of non-retroactivity of Union acts and the general principle of legal certainty.

3. Third plea in law, alleging that by adopting the contested Regulation, the Commission violated Article 266 TFEU as it failed to take the necessary measures to comply with the General Court's judgment in Case T-650/17. In particular, by re-imposing duties as from 15 May 2013, the contested Regulation allegedly ignored that this judgment annulled Regulation (EU) 2017/1146 ([3]) in its entirety with respect to Jinan Meide Casting Co., Ltd. ('JMCC'), with the effect that the duties imposed on JMCC were retroactively erased from the Union legal order.

4. Fourth plea in law, alleging that, by imposing duties retroactively instead of opting for the less onerous option of imposing duties only for the future, the Commission went beyond what is necessary to implement the General Court's judgment in Case T-650/17, in violation of the principle of proportionality as well as Article 5(1) and (4) TEU.

5. Fifth plea in law, alleging that the contested Regulation violates the right to an effective remedy, which is a general principle of Union law enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. According to the applicants, the closest effective remedy for the illegal imposition of duties on their imports was to obtain an annulment and thereby be fully reimbursed for the duties that were unduly paid.

6. Sixth plea in law, alleging that, through the contested Regulation, the Commission is imposing a duty for a period for which such duty is time barred pursuant to Article 103 of the Union Customs Code ([4]), which provides for a limitation period of three years as from the date of importation to collect such duties.

7. Seventh plea in law, alleging that the registration of imports of JMCC's products did not provide the Commission with a ground to impose the duties retroactively in the present case. According to the applicants, the Commission also lacked competence to impose registration, and imports of JMCC's products were made subject to registration in violation of Article 14(5) of the basic Regulation.

([1]) OJ 2020 L 274, p. 20.
([2]) OJ 2009 L 343, p. 51.
([3]) Commission Implementing Regulation (EU) 2017/1146, of 28 June 2017, re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (OJ 2017 L 166, p. 23)
([4]) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1).

Action brought on 16 November 2020 — Freshly Cosmetics v EUIPO — Misiego Blázquez (IDENTY BEAUTY)

(Case T-688/20)

(2021/C 19/75)

Language in which the application was lodged: Spanish

Parties

Applicant: Freshly Cosmetics, SL (Reus, Spain) (represented by: P. Roiger Bellostes, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Francisco Misiego Blázquez (Madrid, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark IDENTY BEAUTY — Application for registration No 17 913 910

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 September 2020 in Case R 205/2020-4

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision and grant the registration of European Union trade mark No 17 913 910 IDENTY BEAUTY in respect of all the goods and services in Class 3;

— order the proprietor of the earlier mark to pay the costs.

Plea in law

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

Action brought on 18 November 2020 — Iliad Italia v Commission

(Case T-692/20)

(2021/C 19/76)

Language of the case: English

Parties

Applicant: Iliad Italia SpA (Milan, Italy) (represented by: D. Fosselard and D. Waelbroeck, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision C(2020) 1573 final of 6 March 2020 not to oppose the notified operation in Case M.9674-Vodafone Italia / TIM / INWIT JV as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement;

— 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 that the commitments provide no clear definition or quantification of the minimum level of power required to satisfy the obligation to provide sufficient Free Space, which is a central pillar to the effectiveness of the commitments.

2. Second plea in law, alleging that the commitments fail to explicitly and clearly require the right for a new entrant to obtain, from the outset of the implementation of the commitments, hosting services covering the 700 MHz band, which is essential for the effective operation of a competing mobile network.

3. Third plea in law, alleging that the commitments do not expressly and clearly prohibit the parties from choosing inappropriate sites in discharging their obligation to provide access to new entrants, and the commitments provide no protection against the parties exercising bias in selecting which sites to provide access to.

4. Fourth plea in law, alleging that the commitments provide for an insufficient and unclear procedure for arranging access to relevant sites, resulting in new entrants being unable to make effective use of the sites offered under the commitments.

Action brought on 5 November 2020 — Hansol Paper v Commission

(Case T-693/20)

(2021/C 19/77)

Language of the case: English

Parties

Applicant: Hansol Paper Co. Ltd (Seoul, South Korea) (represented by: B. Servais and V. Crochet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2020/1524 of 19 October 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain heavyweight thermal paper originating in the Republic of Korea in so far as it relates to the applicant;

— order the Commission and any intervener who may be allowed to support the Commission to bear the costs of the proceedings.

Plea in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the Commission's methodology for the determination of the undercutting and underselling margins of the applicant violates Articles 3(1), 3(2), 3(3), 3(6) and 9(4) of the Basic Regulation.

Order of the General Court of 28 October 2020 — Grange Backup Power v Commission

(Case T-110/18) ([1])

(2021/C 19/78)

Language of the case: English

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 23 October 2020 — ZZ v ECB

(Case T-741/18) ([1])

(2021/C 19/79)

Language of the case: English

The President of the Fourth Chamber (extended composition) has ordered that the case be removed from the register.

([1]) OJ C 103, 18.3.2019.

Order of the General Court of 27 October 2020 — CH and CN v Parliament

(Case T-222/20) ([1])

(2021/C 19/80)

Language of the case: French

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

([1]) OJ C 201, 15.6.2020.

Order of the General Court of 27 October 2020 — CH and CN v Parliament

(Case T-490/20) ([1])

(2021/C 19/81)

Language of the case: French

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

([1]) OJ C 329, 5.10.2020.

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