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Information and Notices

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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2021/C 72/01)

Last publication

OJ C 62, 22.2.2021

Past publications

OJ C 53, 15.2.2021

OJ C 44, 8.2.2021

OJ C 35, 1.2.2021

OJ C 28, 25.1.2021

OJ C 19, 18.1.2021

OJ C 9, 11.1.2021

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 13 January 2021 — European Commission v Republic of Slovenia

(Case C-628/18) [1]

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Market in financial instruments — Directives 2014/65/EU and (EU) 2016/1034 — Failure to transpose and/or to notify transposition measures — Article 260(3) TFEU — Application for an order to pay a lump sum)

(2021/C 72/02)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: T. Scharf, G. von Rintelen and B. Rous Demiri, acting as Agents)

Defendant: Republic of Slovenia (represented by: T. Mihelič Žitko, A. Dežman Mušič and N. Pintar Gosenca, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: S. Eisenberg, acting as Agent), Republic of Estonia (represented by: N. Grünberg, acting as Agent), Republic of Austria (represented by: G. Hesse, acting as Agent), Republic of Poland (represented by: B. Majczyna, acting as Agent)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt or, in any event, by failing to notify to the European Commission, by the expiry of the period prescribed in the reasoned opinion, the laws, regulations and administrative provisions necessary to comply with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended by Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016, the Republic of Slovenia has failed to fulfil its obligations under Article 93 of Directive 2014/65, as amended by Directive 2016/1034;

2. Orders the Republic of Slovenia to pay the European Commission a lump sum in the amount of EUR 750 000;

3. Orders the Republic of Slovenia to bear its own costs and to pay those incurred by the European Commission;

4. Orders the Federal Republic of Germany, the Republic of Estonia, the Republic of Austria and the Republic of Poland to bear their own costs.

[1] OJ C 427, 26.11.2018.

Judgment of the Court (Third Chamber) of 13 January 2021 — European Commission v Republic of Slovenia

(Case C-631/18) ([1])

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Market for financial instruments — Delegated Directive (EU) 2017/593 — Failure to transpose and/or to notify transposition measures)

(2021/C 72/03)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: T. Scharf and B. Rous Demiri, acting as Agents)

Defendant: Republic of Slovenia (represented by: V. Klemenc, acting as Agent)

Operative part of the judgment

The Court:

1. By failing to adopt all the laws, regulations and administrative provisions necessary to ensure compliance with Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, or by failing to notify those measures to the European Commission, the Republic of Slovenia has failed to fulfil its obligations under Article 14 of Delegated Directive 2017/593;

2. Orders the Republic of Slovenia to pay the costs.

([1]) OJ C 155, 6.5.2019.

Judgment of the Court (First Chamber) of 14 January 2021 (request for a preliminary ruling from the Rechtbank Limburg — Netherlands) — LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied v College van burgemeester en wethouders van de gemeente Echt-Susteren

(Case C-826/18) ([1])

(Reference for a preliminary ruling — Aarhus Convention — Article 9(2) and (3) — Access to justice — No access to justice for the public other than the public concerned — Admissibility of the action subject to prior participation in the decision-making procedure)

(2021/C 72/04)

Language of the case: Dutch

Referring court

Rechtbank Limburg

Parties to the main proceedings

Applicants: LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied

Defendant: College van burgemeester en wethouders van de gemeente Echt-Susteren

Operative part of the judgment

1. Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus (Denmark) on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 must be interpreted as not precluding members of the 'public' which is referred to in Article 2(4) of that convention from having no access as such to justice for the purposes of challenging a decision which falls within the scope of Article 6 of that convention. However, Article 9(3) of that convention precludes such persons from not being able to have access to justice for the purposes of relying on more extensive rights to participate in the decision-making procedure which may be conferred on them solely by the national environmental law of a Member State;

2. Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus (Denmark) on 25 June 1998 and approved on behalf of the European Community by Decision 2005/370/EC must be interpreted as precluding the admissibility of the judicial proceedings to which it refers, brought by non-governmental organisations which are part of the 'public concerned' referred to in Article 2(5) of that convention, from being made subject to the participation of those organisations in the procedure preparatory to the contested decision, even though that condition does not apply where such organisations cannot reasonably be criticised for not having participated in that procedure. However, Article 9(3) of that convention does not preclude the admissibility of judicial proceedings to which it refers from being made subject to the participation of the applicant in the procedure preparatory to the contested decision, unless the applicant cannot reasonably be criticised, in the light of the circumstances of the case, for not having intervened in that procedure.

([1]) OJ C 122, 1.4.2019.

Judgment of the Court (Fifth Chamber) of 14 January 2021 — European Commission v Italian Republic

(Case C-63/19) ([1])

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Directive 2003/96/EC — Taxation of energy products and electricity — Articles 4 and 19 — Regional law adopted by the autonomous region of a Member State — Contribution towards the purchase of petrol and diesel subject to excise duties — Article 6(c) — Exemption from or reduction of excise duty — Concept of 'refunding all or part of' the amount of taxation — No evidence of a link between that contribution and excise duties)

(2021/C 72/05)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: R. Lyal and F. Tomat, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and by G.M. De Socio, avvocato dello Stato)

Intervener in support of the defendant: Kingdom of Spain (represented by: S. Jiménez García and J. Rodríguez de la Rúa, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the European Commission to pay the costs;

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

([1]) OJ C 112, 25.3.2019.

Judgment of the Court (Tenth Chamber) of 14 January 2021 — European Research Council Executive Agency (ERCEA) v Aristoteleio Panepistimio Thessalonikis

(Case C-280/19 P) ([1])

(Appeal — Arbitration clause — Minatran contract concluded under the Seventh Framework Programme — Eligible costs — Debit note issued by the ERCEA — Recovery of amounts advanced — Personnel costs and indirect expenditure relating to those personnel costs — Obligation to carry out work solely on the premises of the beneficiary of the grant — Supervision by the beneficiary — Normal practices of the beneficiary)

(2021/C 72/06)

Language of the case: Greek

Parties

Appellant: European Research Council Executive Agency (ERCEA) (represented by: F. Sgritta and M. Pesquera Alonso, acting as Agents, and by E.Kourakis, dikigoros)

Other party to the proceedings: Aristoteleio Panepistimio Thessalonikis (represented by: V. Christianos, dikigoros)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Research Council Executive Agency (ERCEA) to pay the costs.

([1]) OJ C 182, 27.5.2019.

Judgment of the Court (Fourth Chamber) of 14 January 2021 (requests for a preliminary ruling from the High Court (Ireland), International Protection Appeals Tribunal — Ireland) — K.S., M.H.K. v The International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland and the Attorney General (C-322/19), R.A.T., D.S. v Minister for Justice and Equality (C-385/19)

(Joined Cases C-322/19 and C-385/19) ([1])

(References for a preliminary ruling — Border controls, asylum and immigration — International protection — Standards for the reception of applicants for international protection — Directive 2013/33/EU — Third-country national who has travelled from one Member State of the European Union to another, but who has applied for international protection only in the latter Member State — Decision to transfer to the first Member State — Regulation (EU) No 604/2013 — Access to the labour market as an applicant for international protection)

(2021/C 72/07)

Language of the case: English

Referring courts

High Court (Ireland), International Protection Appeals Tribunal

Parties to the main proceedings

Applicants: K.S., M.H.K. (C-322/19), R.A.T., D.S. (C-385/19)

Defendants: The International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland and the Attorney General (C-322/19), Minister for Justice and Equality (C-385/19)

Operative part of the judgment

1. A national court must take account of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, which, pursuant to Articles 1 and 2 and Article 4a(1) of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, does not apply in the Member State of that court, in order to interpret the provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, which is, by contrast, applicable in that Member State in accordance with Article 4 of that protocol.

2. Article 15 of Directive 2013/33 must be interpreted as precluding national legislation which excludes an applicant for international protection from access to the labour market on the sole ground that a transfer decision has been taken in his or her regard under Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

3. Article 15(1) of Directive 2013/33 must be interpreted as meaning that:

— a delay in the adoption of a decision at first instance concerning an application for international protection which results from a lack of cooperation by the applicant for international protection with the competent authorities may be attributed to that applicant;

— a Member State may not attribute to the applicant for international protection the delay in adopting a decision at first instance concerning an application for international protection on account of the fact that the applicant did not lodge his or her application with the first Member State of entry, within the meaning of Article 13 of Regulation No 604/2013;

— a Member State may not attribute to the applicant for international protection the delay in processing his or her application which results from the bringing, by that applicant, of legal proceedings with suspensory effect against the transfer decision taken in his or her regard under Regulation No 604/2013.

([1]) OJ C 220, 1.7.2019.
OJ C 255, 29.7.2019.

Judgment of the Court (Third Chamber) of 13 January 2021 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v XT

(Case C-507/19) ([1])

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection — Directive 2011/95/EU — Article 12 — Exclusion from being a refugee — Stateless person of Palestinian origin registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) — Conditions to be entitled ipso facto to the benefits of Directive 2011/95 — Cessation of UNRWA protection or assistance)

(2021/C 72/08)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: XT

Operative part of the judgment

1. The second sentence of Article 12(1)(a) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted must be interpreted as meaning that, in order to determine whether the protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has ceased, it is necessary to take into account, as part of an individual assessment of all the relevant factors of the situation in question, all the fields of UNRWA's area of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein;

2. The second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which he or she could receive protection or assistance from UNRWA and, secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which he or she travelled or to be able to return at short notice to the field from which he or she came, which is for the national court to verify.

([1]) OJ C 348, 14.10.2019.

Judgment of the Court (Third Chamber) of 13 January 2021 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against MM

(Case C-414/20 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Surrender procedures between Member States — Article 6(1) and Article 8(1)(c) — European arrest warrant issued on the basis of a national measure putting a person under investigation — Concept of an 'arrest warrant or any other enforceable judicial decision having the same effect' — No national arrest warrant — Consequences — Effective judicial protection — Article 47 of the Charter of Fundamental Rights of the European Union)

(2021/C 72/09)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Criminal proceedings against

MM

Interested party: Spetsializirana prokuratura

Operative part of the judgment

1. Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the status of 'issuing judicial authority', within the meaning of that provision, is not conditional on there being review by a court of the decision to issue the European arrest warrant and of the national decision upon which that warrant is based.

2. Article 8(1)(c) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that a European arrest warrant must be regarded as invalid where it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision. That concept covers national measures adopted by a judicial authority to search for and arrest a person who is the subject of a criminal prosecution, with a view to bringing that person before a court for the purpose of conducting the stages of the criminal proceedings. It is for the referring court to determine whether a national measure putting a person under investigation, such as that on which the European arrest warrant at issue in the main proceedings is based, produces such legal effects.

3. Where no provision is made in the legislation of the issuing Member State for an action to be brought before a court for the purpose of obtaining review of the conditions under which a European arrest warrant was issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as permitting the national court hearing an action seeking to challenge the lawfulness of the continued pre-trial detention of a person who has been surrendered pursuant to a European arrest warrant issued on the basis of a national measure that cannot be regarded as a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of Article 8(1)(c) of that framework decision, and in the context of which a plea in law is raised alleging that that European arrest warrant is invalid in the light of EU law, to find that it has jurisdiction to conduct such a review of validity.

   Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights, must be interpreted as not requiring that a finding by the national court that the European arrest warrant at issue has been issued in breach of Article 8(1)(c) of that framework decision, in so far as it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision, has the effect of releasing the person placed in pre-trial detention following his or her surrender by the executing Member State to the issuing Member State. It is therefore for the referring court to decide, in accordance with its national law, what consequences the absence of such a national measure, as a legal basis for the European arrest warrant at issue, may have on deciding whether or not to keep the accused person in pre-trial detention.

(1) OJ C 390, 16.11.2020.

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

(Case C-264/20)

(2021/C 72/10)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: Airhelp Limited

Defendant: Austrian Airlines AG

Questions referred

1. Must Article 5(3) of Regulation (EC) No 261/2004 (1) be interpreted as meaning that an extraordinary circumstance exists where the cancellation of the flight is due to the fact that another aircraft is pushed back from an opposite gate and in doing so damages an elevator of the aircraft intended for the subsequently cancelled flight?

2. Must Articles 5(3) and 7 of that regulation be interpreted as meaning that the operating air carrier arguing extraordinary circumstances as the cause for cancellation can rely on the ground for exoneration in Article 5(3) of the regulation only if it can also prove that the consequences of the cancellation for the individual passenger could not have been prevented by re-booking onto alternative transport?

3. Must a re-booking referred to under question 2 meet specific temporal or qualitative criteria, in particular the criteria set out in Article 5(1)(c)(iii) or in Article 8(1)(b) and (c) of the Regulation?

By order of 14 January 2021, the Court of Justice of the European Union (Ninth Chamber) rules as follows:

1. Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a collision between the elevator of an aircraft in the parking position and the winglet of an aircraft of another airline caused by the movement of the second aircraft falls within the concept of 'extraordinary circumstances' within the meaning of that provision.must be interpreted as meaning that a collision between the elevator of an aircraft in the parked position and the winglet of an aircraft of another airline caused by the movement of the second aircraft is not covered by that regulation.

2. Article 5(1)(c) of Regulation No 261/2004 must be interpreted as meaning that, where an air carrier cancels the originally scheduled flight owing to extraordinary circumstances, the re-routing of a passenger on a flight on which the passenger reaches his final destination on the day after the originally scheduled date of arrival constitutes a 'reasonable measure' which relieves that carrier of its obligation to provide compensation under Article 5(1)(c) and Article 7(1) of that regulation, unless there was another possibility of direct or indirect transport by a flight operated by itself or by another air carrier which arrived with a shorter delay than the next flight operated by the air carrier concerned, unless the latter proves that the provision of such alternative transport would have represented an unacceptable sacrifice for it in view of the capacity of its undertaking at the relevant time, which is for the referring court to determine.

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

Appeal brought on 2 July 2020 by Peter Sabo, Lesoochranárske zoskupenie VLK, Hasso Krull, 2 Celsius, Bernard Auric, Tony Lowes, Kent Roberson, Hiite Maja SA, Association de lutte contre toutes formes de Nuisance et de Pollutions sur les communes de Meyreuil et Gardanne (ALNP Meyreuil — Gardanne), Friends of the Irish Environment CLG against the order of the General Court (Fourth Chamber) delivered on 6 May 2020 in Case T-141/19, Sabo and Others v Parliament and Council

(Case C-297/20 P)

(2021/C 72/11)

Language of the case: English

Parties

Appellants: Peter Sabo, Lesoochranárske zoskupenie VLK, Hasso Krull, 2 Celsius, Bernard Auric, Tony Lowes, Kent Roberson, Hiite Maja SA, Association de lutte contre toutes formes de Nuisance et de Pollutions sur les communes de Meyreuil et Gardanne (ALNP Meyreuil — Gardanne), Friends of the Irish Environment CLG (represented by: R. Smith and C. Day, Solicitors, by P. Lockley and B. Mitchell, Barristers and by D. Wolfe QC)

Other parties to the proceedings: European Parliament, Council of the European Union

By order of 14 January 2021, the Court of Justice (Eighth Chamber) decided that the appeal is dismissed as manifestly unfounded and ordered the appellants to bear their own costs.

Appeal brought on 17 July 2020 by Veselin Atanasov Vasilev against the order of the General Court delivered on 7 July 2020 in Case T-273/20, Vasilev v Bulgaria

(Case C-320/20 P)

(2021/C 72/12)

Language of the case: Bulgarian

Parties

Appellant: Veselin Atanasov Vasilev (represented by: B. Kolev, advokat)

Other party to the proceedings: Republic of Bulgaria

By order of 12 January 2021, the Court of Justice (Seventh Chamber) dismissed the appeal as manifestly unfounded.

Appeal brought on 24 August 2020 by Leinfelder Uhren München GmbH & Co. KG against the judgment of the General Court (Tenth Chamber) delivered on 10 June 2020 in Case T-577/19, Leinfelder Uhren München v EUIPO

(Case C-401/20 P)

(2021/C 72/13)

Language of the case: German

Parties

Appellant: Leinfelder Uhren München GmbH & Co. KG (represented by: S. Lüft, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Thomas Schafft

By order of 19 January 2021, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Verwaltungsgericht Wien (Austria) lodged on 26 October 2020 — CR, GF, TY

(Case C-560/20)

(2021/C 72/14)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Appellants: CR, GF, TY

Respondent authority: Landeshauptmann von Wien (head of government of the province of Vienna)

Questions referred

1. Can the third-country national parents of a refugee who has applied for asylum as an unaccompanied minor and has been granted asylum as a minor continue to rely on Article 2(f) in conjunction with Article 10(3)(a) of Council Directive 2003/86/EC [1] if the refugee reached the age of majority after being granted asylum but during the procedure for granting a residence permit to his parents?

2. If Question I is to be answered in the affirmative: In such a case, is it necessary that the parents of the third-country national comply with the period for submitting an application for family reunification referred to in the judgment of the Court of Justice of 12 April 2018, C-550/16, *A and S* [2], paragraph 61, namely 'in principle, […] within a period of three months of the date on which the "minor" concerned was declared to have refugee status'?

3. If Question I is to be answered in the affirmative: In such a case, is it necessary that the parents of the third-country national comply with the period for submitting an application for family reunification referred to in the judgment of the Court of Justice of 12 April 2018, C-550/16, *A and S*, paragraph 61, namely 'in principle, […] within a period of three months of the date on which the "minor" concerned was declared to have refugee status'?

4. If Question II is to be answered in the affirmative: What criteria are to be applied when assessing whether such an application for family reunification was submitted 'in principle' within a period of three months within the meaning of the statements made in the judgment of the Court of Justice of 12 April 2018, C-550/16, *A and S*, paragraph 61?

5. If Question II is to be answered in the affirmative: Can the refugee's parents continue to rely on their right to family reunification under Article 10(3)(a) of Directive 2003/86 if three months and one day have elapsed between the date on which the minor was declared to have refugee status and the date on which they applied for family reunification?

6. Can a Member State require the refugee's parents, in principle, to meet the conditions of Article 7(1) of Directive 2003/86 in a family reunification procedure under Article 10(3)(a) of Directive 2003/86?

7. Is the requirement to meet the conditions referred to in Article 7(1) of Directive 2003/86 in the context of family reunification under Article 10(3)(a) of Directive 2003/86 dependent on whether the application for family reunification was submitted within a period of three months after the granting of the refugee status within the meaning of the third subparagraph of Article 12(1) of Directive 2003/86?

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[1] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).
[2] EU:C:2018:248.

Request for a preliminary ruling from the Verwaltungsgericht Köln (Germany) lodged on 19 November 2020 — M2Beauté Cosmetics GmbH v Federal Republic of Germany

(Case C-616/20)

(2021/C 72/15)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: M2Beauté Cosmetics GmbH

Defendant: Federal Republic of Germany, represented by the Federal Institute for Drugs and Medical Devices

Questions referred

1. Is a national authority, when classifying a cosmetic product as a medicinal product by function, within the meaning of Article 1(2)(b) of Directive 2001/83/EC [1] of 6 November 2001, and, in so doing, examining all the characteristics of that product, entitled to base the necessary scientific assessment of the pharmacological properties of that product and the risks associated with it on a 'structural analogy', in a case where the active substance used has only recently been developed, is comparable in its structure to pharmacological active substances which are already known and studied, but no comprehensive pharmacological, toxicological or clinical studies of the new substance in relation to its effects and its dosage, which are necessary only if Directive 2001/83/EC is applicable, have been submitted by the applicant?

2. Is Article 1(2)(b) of Directive 2001/83/EC of 6 November 2001 to be interpreted as meaning that a product which is placed on the market as a cosmetic and which significantly modifies physiological functions by producing a pharmacological effect is to be regarded as a medicinal product by function only in the case where it has a specific positive health-promoting effect? Is it sufficient in this regard even that the product has on a person's appearance a predominantly positive effect which, by increasing self-esteem or wellbeing, is of indirect benefit to health?

3. Or is that product also a medicinal product by function in the case where its positive effect is confined to an improvement in a person's appearance, without being of direct or indirect benefit to health, but where it does not have properties that are exclusively harmful to health and is not therefore comparable to a narcotic?

(1) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67as amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 (OJ 2019 L 198, p. 241).

Request for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Córdoba (Spain) lodged on 19 November 2020 — ZU and TV v Ryanair Ltd

(Case C-618/20)

(2021/C 72/16)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Córdoba

Parties to the main proceedings

Applicants: ZU and TV

Defendant: Ryanair Ltd

Questions referred

1. May a carrier that sells tickets through its own website for flights operated under the code of another airline be considered an operating air carrier for the purposes of Article 5(5) of Regulation No 261/2004 (1) in respect of the specific flights it sells that are operated by another company?

2. May a carrier that sells tickets through its own website for flights operated under the code of another airline be considered an operating air carrier for the purposes of Article 5(5) of Regulation No 261/2004 in respect of the specific flights it sells that are operated by another company where the company that operates a flight is part of the corporate group of the company that sells tickets for that flight?

3. May the concept of contracting carrier in Article 45 of the Montreal Convention be equated with the concept of operating air carrier in Article 5(5) of Regulation No 261/2004?

4. May the concept of actual carrier referred to in Article 45 of the Montreal Convention be equated with the concept of operating air carrier in Article 5(5) of Regulation No 261/2004?

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

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 23 November 2020 — Deutsche Lufthansa AG v OP

(Case C-627/20)

(2021/C 72/17)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Deutsche Lufthansa AG

Respondent: OP

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 Landgericht Köln (Germany) lodged on 23 November 2020 — Deutsche Lufthansa AG v BA

(Case C-628/20)

(2021/C 72/18)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Deutsche Lufthansa AG

Respondent: BA

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 Landgericht Köln (Germany) lodged on 23 November 2020 — Deutsche Lufthansa AG v LE

(Case C-629/20)

(2021/C 72/19)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Deutsche Lufthansa AG

Respondent: LE

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 Landgericht Köln (Germany) lodged on 23 November 2020 — Deutsche Lufthansa AG v CS

(Case C-630/20)

(2021/C 72/20)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Deutsche Lufthansa AG

Respondent: CS

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 Landgericht Köln (Germany) lodged on 23 November 2020 — Deutsche Lufthansa AG v PR, TV

(Case C-631/20)

(2021/C 72/21)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Deutsche Lufthansa AG

Respondent: PR, TV

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 Bundesfinanzhof (Germany) lodged on 8 December 2020 — Y GmbH v Hauptzollamt

(Case C-668/20)

(2021/C 72/22)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant and appellant in the appeal on a point of law: Y GmbH

Defendant and respondent in the appeal on a point of law: Hauptzollamt

Questions referred

1. Is subheading 1302 19 05 of the Combined Nomenclature ('the CN') ([1]) to be interpreted as meaning that an extracted vanilla oleoresin diluted with ethanol and water consisting of approximately 90 % (v/v) or 85 % (m/m) ethanol, up to 10 % (m/m) water, 4.8 % (m/m) dry residue and 0.5 % (m/m) vanilla is to be classified under that subheading even though, according to Note 1(ij) to Chapter 13 of the CN, heading 1302 of the CN does not apply to extracted oleoresins?

2. Do extracted oleoresins within the meaning of subheading 3301 90 30 of the CN include the goods described in the first question referred?

3. Is subheading 3302 10 90 of the CN to be interpreted as meaning that the goods described in the first question referred are to be classified as mixtures of odiferous substances and mixtures (including alcohol solutions) with a basis of one or more of these substances, of a kind used in the food industry?

4. Do flavours within the meaning of Article 27(1)(e) of Directive 92/83/EEC ([2]) include goods of subheading 1302 19 05 of the CN or extracted oleoresins of subheading 3301 90 30 of the CN?

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2015 L 285, p. 1).

([2]) Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 10 December 2020 — L GmbH v FK

(Case C-672/20)

(2021/C 72/23)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: L GmbH

Defendant: FK

Questions referred

1. Is Article 3(2)(a) of Regulation (EC) No 261/2004 ([1]) ('the Air Passenger Rights Regulation') to be interpreted as meaning that the Regulation applies to a passenger who has already [Or. 2] checked in online before arriving at the airport and is not carrying any checked baggage; acknowledges the flight delay shown on the airport's departure board, waits at the departure gate for further information and makes an enquiry at the air carrier's counter regarding the departure of the booked flight; does not receive any explanation as to whether and when the flight will leave nor any offer of a replacement flight from the defendant's staff; and thereupon books another flight to his final destination himself, without boarding the originally booked flight?

2. Is Article 5(3) of the Air Passenger Rights Regulation to be interpreted as meaning that an air carrier is not obliged to pay compensation in accordance with Article 7 of the Regulation, if it arrives at the passenger's final destination after a delay of eight hours and nineteen minutes, because the aircraft was damaged by a lightning strike during the first of three preceding flights; the technician from the air carrier's contracted maintenance company who was called in after landing found only minor damage that did not affect the airworthiness of the aircraft ('some minor findings'); the second of three preceding flights went ahead; however, during the course of a pre-flight check before the third of three preceding flights, it emerged that the aircraft was not fit for further use for the time being; and the air carrier therefore used a replacement aircraft in place of the originally intended, damaged aircraft, which completed the third of the preceding flights with a departure delay of seven hours and forty minutes?

3. Is Article 5(3) of the Air Passenger Rights Regulation to be interpreted as meaning that the reasonable measures to be taken by the air carrier include offering to rebook the passenger on a different flight, which would have enabled him to reach his final destination with a delay of five hours [Or. 3] (and actually did so as a result of the booking made on his own initiative), even though the air carrier operated the flight with a replacement aircraft in place of the now unfit aircraft, with which the passenger would have reached his final destination with a delay of eight hours and nineteen minutes?

([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 Bundesarbeitsgericht (Germany) lodged on 11 December 2020 — Industriegewerkschaft Metall (IG Metall) and ver.di — Vereinte Dienstleistungsgewerkschaft

(Case C-677/20)

(2021/C 72/24)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicants, appellants and appellants on a point of law: Industriegewerkschaft Metall (IG Metall), ver.di — Vereinte Dienstleistungsgewerkschaft

Parties involved: SAP SE, SE-Betriebsrat der SAP SE, Konzernbetriebsrat der SAP SE, Deutscher Bankangestellten-Verband e. V., Christliche Gewerkschaft Metall (CGM), Verband angestellter Akademiker und leitender Angestellter der chemischen Industrie e. V.

Question referred

Is Paragraph 21(6) of the Gesetz über die Beteiligung der Arbeitnehmer in einer Europäischen Gesellschaft (German Law on involvement of employees in a European company), which determines that, in the case where an SE [*Societas Europaea*; European Company] with its registered office in Germany is established by means of transformation, a separate selection procedure for persons nominated by trade unions for a certain number of supervisory board members representing the employees must be guaranteed, compatible with Article 4(4) of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees ([1])?

([1]) OJ 2001 L 294, p. 22.

Order of the President of the Court of 23 November 2020 (request for a preliminary ruling from the Tribunale di Vicenza — Italy) — AV v Minister for Justice and the Italian Republic

(Case C-834/19) ([1])

(2021/C 72/25)

Language of the case: Italian

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

([1]) OJ C 54, 17.2.2020.

GENERAL COURT

Judgment of the General Court of 13 January 2021 — Bezouaoui and HB Consultant v Commission

(Case T-478/18) ([1])

(State aid — Construction plant driving safety training — Reimbursement of training by State-authorised collecting bodies (Organismes paritaires de collecte agréés, OPCAs) — Decision finding no State aid — Concept of State aid — Whether imputable to the State — Public control of resources)

(2021/C 72/26)

Language of the case: French

Parties

Applicants: Hacène Bezouaoui (Avanne, France) and HB Consultant (Beure, France) (represented by: J.-F. Henrotte and N. Neyrinck, lawyers)

Defendant: European Commission (represented by: C. Georgieva-Kecsmar and K. Herrmann, acting as Agents)

Re:

Application under Article 263 TFEU for annulment in part of Commission Decision C(2018) 2075 final of 10 April 2018 on Case SA.46897 (2018/NN) — France presumed aid in respect of the funding of training for the certificat d'aptitude à la conduite d'engins de chantier en sécurité (Handling Equipment Safe Operation Certificate, CACES).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders HB Consultant and Mr Hacène Bezouaoui to pay the costs.

([1]) OJ C 373, 15.10.2018.

Judgment of the General Court of 13 January 2021 — Helbert v EUIPO

(Case T-548/18) ([1])

(Civil service — Recruitment — Notice of competition — Open Competition EUIPO/AD/01/17 — Decision not to place the applicant's name on the reserve list for the competition — Composition of the selection board — Stability — Liability)

(2021/C 72/27)

Language of the case: English

Parties

Applicant: Lars Helbert (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė and K. Tóth, acting as Agents, assisted by B. Wägenbaur, lawyer)

Re:

Action pursuant to Article 270 TFEU seeking, on the one hand, annulment, first, of the decision of 1 December 2017 of the selection board for Competition EUIPO/AD/01/17 — Administrators (AD 6) in the field of intellectual property not to place the applicant's name on the reserve list drawn up with a view to the recruitment of administrators by EUIPO and, second, of the decision of that selection board of 7 March 2018 rejecting the applicant's request for review in its final form following EUIPO's decision of 8 June 2018 rejecting his complaint, and, on the other hand, compensation for the damage that the applicant claims to have suffered as a result.

Operative part of the judgment

The Court:

1. Annuls the decision of 7 March 2018, by which the selection board for Open Competition EUIPO/AD/01/17 refused, after review, to place Mr Lars Helbert on the reserve list for the recruitment of grade AD 6 administrators in the field of intellectual property;

2. Dismisses the action as to the remainder;

3. Orders the European Union Intellectual Property Office (EUIPO) to pay the costs.

([1]) OJ C 427, 26.11.2018.

Judgment of the General Court of 13 January 2021 — ZR v EUIPO

(Case T-610/18) ([1])

(Civil service — Recruitment — Notice of competition — Open Competition EUIPO/AD/01/17 — Decision not to place the applicant's name on the reserve list for the competition — Composition of the selection board — Stability)

(2021/C 72/28)

Language of the case: English

Parties

Applicant: ZR (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė and K. Tóth, acting as Agents, assisted by B. Wägenbaur, lawyer)

Re:

Action pursuant to Article 270 TFEU seeking annulment, first, of the decision of 1 December 2017 of the selection board for Competition EUIPO/AD/01/17 — Administrators (AD 6) in the field of intellectual property, not to place the applicant's name on the reserve list drawn up with a view to the recruitment of administrators by EUIPO, second, of the decision of that selection board of 7 March 2018 rejecting the applicant's request for review and, third, of the decision of EUIPO of 27 June 2018 rejecting the applicant's complaint in accordance with Article 90(2) of the Staff Regulations of Officials of the European Union.

Operative part of the judgment

The Court:

1. Annuls the decision of 7 March 2018, by which the selection board for Open Competition EUIPO/AD/01/17 refused, after review, to place ZR on the reserve list for the recruitment of grade AD 6 administrators in the field of intellectual property;

2. Dismisses the action as to the remainder;

3. Orders the European Union Intellectual Property Office (EUIPO) to pay the costs.

(1) OJ C 455, 17.12.2018.

Judgment of the General Court of 20 January 2021 — ABLV Bank v SRB

(Case T-758/18) (1)

(Economic and monetary Union — Banking union — Single resolution mechanism for credit institutions and certain investment firms (SRM) — Single Resolution Fund (SRF) — Setting of the 2015 and 2018 ex ante contributions — Rejection of the request for a recalculation and a reimbursement of contributions — Action for annulment — Challengeable act — Admissibility — Institution whose licence has been withdrawn — Article 70(4) of Regulation (EU) No 806/2014 — Concept of 'change of status' — Article 12(2) of Delegated Regulation (EU) 2015/63)

(2021/C 72/29)

Language of the case: English

Parties

Applicant: ABLV Bank AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: Single Resolution Board (SRB) (represented by: J. Kerlin and P. Messina, acting as Agents, and by B. Meyring, S. Schelo, T. Klupsch and S. Ianc, lawyers)

Intervener in support of the defendant: European Commission (represented by: D. Triantafyllou, A. Nijenhuis and A. Steiblytė, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the letter from the SRB of 17 October 2018 by which the SRB rejected the applicant's application for, first, the recalculation of its 2018 ex ante contribution and the repayment of the overpayment and, second, the repayment of a portion of its 2015 ex ante contribution, following the withdrawal of its licence by the European Central Bank (ECB).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ABLV Bank AS to pay, in addition to its own costs, the costs incurred by the Single Resolution Board (SRB);

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

(1) OJ C 82, 4.3.2019.

Judgment of the General Court of 20 January 2021 — Stada Arzneimittel v EUIPO — Optima Naturals (OptiMar)

(Case T-261/19) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark OptiMar — Earlier national word mark Mar — Relative ground for refusal — No 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 72/30)

Language of the case: English

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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, intervener before the General Court: Optima Naturals Srl (Gallarate, Italy) (represented by: S. Brustia and E. Montelione, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 31 January 2019 (Case R 1348/2018-1), relating to opposition proceedings between Stada Arzneimittel and Optima Naturals.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Stada Arzneimittel AG to pay the costs.

([1]) OJ C 206, 17.6.2019.

Judgment of the General Court of 20 January 2021 — 12seasons v EUIPO — Société immobilière et mobilière de Montagny (BE EDGY BERLIN)

(Case T-329/19) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark BE EDGY BERLIN — Earlier national word mark EDJI — 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 72/31)

Language of the case: English

Parties

Applicant: 12seasons GmbH (Berlin, Germany) (represented by: M. Gail, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Société immobilière et mobilière de Montagny (Roanne, France) (represented by: A. Grolée, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 19 March 2019 (Case R 1522/2018-5), relating to opposition proceedings between Société immobilière et mobilière de Montagny and 12seasons.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders 12seasons GmbH to pay the costs.

(1) OJ C 246, 22.7.2019.

Judgment of the General Court of 20 January 2021 — Enoport v EUIPO — Miguel Torres (CABEÇA DE TOIRO)

(Case T-811/19) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark CABEÇA DE TOIRO — Earlier EU word mark SANGRE DE TORO — 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 72/32)

Language of the case: English

Parties

Applicant: Enoport — Produção de Bebidas Lda (Rio Maior, Portugal) (represented by: J. Alves Coelho, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Miguel Torres, SA (Vilafranca del Penedès, Spain) (represented by: M. Ceballos Rodríguez and M. Robledo McClymont, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 9 September 2019 (Case R 394/2019-5), relating to opposition proceedings between Miguel Torres and Enoport — Produção de Bebidas.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Enoport — Produção de Bebidas Lda to pay the costs.

(1) OJ C 36, 3.2.2020.

Judgment of the General Court of 13 January 2021 — RY v Commission

(Case T-824/19) (1)

(Civil service — Members of the temporary staff — Termination of a contract of indefinite duration pursuant to Article 47(c)(i) of the CEOS — Compliance with a judgment of the General Court — Article 266 TFEU — Right to be heard — New termination decision)

(2021/C 72/33)

Language of the case: French

Parties

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

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

Re:

Application under Article 270 TFEU for annulment of the decision of the Commission of 10 April 2019 terminating the applicant's contract of indefinite duration.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders RY to pay the costs.

(1) OJ C 36, 3.2.2020.

Judgment of the General Court of 20 January 2021 — Apologistics v EUIPO — Peikert (discount-apotheke.de)

(Case T-844/19) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark discount-ap*theke.de — Earlier EU word marks APODISCOUNTER and APO and earlier figurative marks apo-discounter.de, apo.co and apo.de — Relative ground for refusal — No 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 72/34)

Language of the case: German

Parties

Applicant: Apologistics GmbH (Markkleeberg, Germany) (represented by: H. Hug (lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Söder, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Franz Michael Peikert (Offenbach, Germany) (represented by: T. Bruggmann, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 10 October 2019 (Case R 2309/2018-5) in opposition proceedings between Apologistics and Mr Peikert.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Apologistics GmbH to pay the costs.

(1) OJ C 45, 10.2.2020.

Judgment of the General Court of 13 January 2021 — Multi-Service v Commission

(Case T-873/19) ([1])

(Environment — Regulation (EU) No 517/2014 — Fluorinated greenhouse gases — Electronic registry for quotas for placing hydrofluorocarbons on the market — Decision annulling the registration of an undertaking — Failure to provide the required information)

(2021/C 72/35)

Language of the case: Polish

Parties

Applicant: Multi-Service S.A. (Kwidzyn, Poland) (represented by: P. Jankowski, lawyer)

Defendant: European Commission (represented by: A. Becker, M. Jáuregui Gómez and M. Rynkowski, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Decision ARES (2019) 6103796 of 3 October 2019, by which the Commission annulled the applicant's registration in the registry established and managed by the Commission pursuant to Article 17 of Regulation (EU) No 517/2014.

Operative part of the judgment

The Court:

1. Dismisses the action.

2. Orders Multi-Service S.A. to pay the costs.

([1]) OJ C 87, 16.3.2020.

Judgment of the General Court of 20 January 2021 — Marc Folschette and Others v Commission

(Case T-884/19) ([1])

(Non-contractual liability — Investigation by OLAF — Information technology contract — Corruption — Trading in influence — Final report recommending the bringing of criminal proceedings — Final acquittal by a criminal court — Period of limitation — Sufficiently serious infringement of a rule of law intended to confer rights on individuals)

(2021/C 72/36)

Language of the case: French

Parties

Applicants: Marc Folschette (Leudelange, Luxembourg), Tetyana Grygorenko (Leudelange), Professional Business Solutions SA (Leudelange) (represented by: N. Bauer, lawyer)

Defendant: European Commission (represented by: J. Baquero Cruz and F. Blanc, Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicants claim to have suffered as a result of the conduct of the European Anti-Fraud Office (OLAF) in the context of an internal investigation.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Marc Folschette, Tetyana Grygorenko and Professional Business Solutions SA to pay the costs.

(1) OJ C 61, 24.2.2020.

Judgment of the General Court of 20 January 2021 — Oatly v EUIPO (IT'S LIKE MILK BUT MADE FOR HUMANS)

(Case T-253/20) (1)

(EU trade mark — Application for the EU word mark IT'S LIKE MILK BUT MADE FOR HUMANS — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2021/C 72/37)

Language of the case: English

Parties

Applicant: Oatly AB (Malmö, Sweden) (represented by: M. Johansson, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 7 February 2020 (Case R 2446/2019-5), regarding an application for registration of the word sign IT'S LIKE MILK BUT MADE FOR HUMANS as an EU trade mark.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 7 February 2020 (Case R 2446/2019-5), regarding an application for registration of the word sign IT'S LIKE MILK BUT MADE FOR HUMANS as an EU trade mark;

2. Orders EUIPO to bear its own costs and to pay those incurred by Oatly AB.

(1) OJ C 215, 29.6.2020.

Judgment of the General Court of 20 January 2021 — Crevier v EUIPO (air freshener)

(Case T-276/20) (1)

(Community design — Application for a Community design representing an air freshener — Non-compliance with a time limit vis-à-vis EUIPO — Application for restitutio in integrum — Article 67 (1) of Regulation (EC) No 6/2002 — Duty of care)

(2021/C 72/38)

Language of the case: English

Parties

Applicant: Jeffrey Scott Crevier (Fort Lauderdale, Florida, United States) (represented by: M. Kime, Barrister)

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

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 2 March 2020 (Case R 2396/2019-3) relating to an application for restitutio in integrum.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Jeffrey Scott Crevier to pay the costs.

(1) OJ C 247, 27.7.2020.

Action brought on 15 December 2020 — Grupa Azoty and Others v Commission

(Case T-726/20)

(2021/C 72/39)

Language of the case: English

Parties

Applicants: Grupa Azoty S.A. (Tarnów, Poland), Azomureş SA (Tîrgu Mureş, Romania), Lipasmata Kavalas LTD Ypokatastima Allodapis (P. Fáliro, Greece) (represented by: D. Haverbeke, L. Ruessmann and P. Sellar, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Annex I of the Communication from the Commission — Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (1), to the extent that it wrongfully excludes the fertilisers sector;

— order, pursuant to Article 264 TFEU, that the effects of Annex I to the contested act be continued until such time as the defendant takes the measures necessary to comply with the Court's decision pursuant to Article 266 TFEU;

— order the defendant to pay 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 that Annex I to the contested act is vitiated by a lack of competence.

   — In accordance with Articles 5(1) and 5(2) TEU, the EU shall act only within the limits of the competence conferred upon it by the Member States. Competences not conferred upon the EU by the Treaties remain with the Member States;

   — It is not the defendant but the Member States that are competent, under Article 10a(6) of Directive 2003/87/EC, as amended (2), to identify the sectors and subsectors and adopt a list as in Annex I to the contested act.

2. Second plea in law, alleging that Annex I to the contested act is vitiated by an infringement of an essential procedural requirement (statement of reasons).

   — The statement of reasons of the contested act required by Article 296 TFEU fails to disclose clearly and unequivocally the reasoning followed by the defendant in calculating the indirect emission intensity figure for the applicants' sector, which is the determinative factor of inclusion or exclusion from the Annex I to the contested act;

— As a consequence of this failure to state reasons, the applicants are unable to defend their rights and the Court is unable to exercise its supervisory jurisdiction.

3. Third plea in law, alleging that Annex I to the contested act is vitiated by manifest errors of assessment.

— In the context of its discretion when carrying out complex economic and social assessments in the exercise of its competence under Article 107(3)(c) TFEU, the defendant must be able to show that it evaluated all the relevant factors and circumstances of the situation which the contested act was intended to govern. The defendant committed several manifest errors of assessment when excluding the applicants' sector from the list of eligible sectors contained in Annex I to the contested act, notably by (a) failing to take into account the relevant and complete electricity consumption data of the fertiliser sector to determine the sector's indirect emission intensity, which led to the underestimation of the sector's indirect emission intensity and to its exclusion from Annex I; (b) failing to take into account and examine all relevant facts provided by the application, as it disregarded the evidence, without stating reasoning, of the applicants; (c) with regard to the qualitative assessment, incorrectly assessing the sector's qualification on the fuel/electricity substitutability criterion and failing to substantiate why the sector's subsectors were not included in Annex I based on this criterion.

4. Fourth plea in law, alleging that Annex I to the contested act is vitiated by a misapplication of the correct assessment criterion.

— Article 10(a)(6) of Directive 2003/87/EC requires that sectors be considered against a criterion involving the assessment of 'genuine risk' of carbon leakage;

— The defendant applied a different test, that of 'significant risk'. By doing so, it applied the wrong lawful test.

5. Fifth plea in law, alleging that Annex I to the contested act infringes the principle of transparency.

— The process leading to the adoption of the contested act lacked transparency in key respects, in particular: (a) the defendant failed to disclose the data used to calculate the indirect emission intensity figure calculated for the applicants' sector in either the contested act or the accompanying impact assessment; (b) the defendant failed to provide explanations substantiating its assessment on which subsectors have the highest potential for electrification.

— Throughout the contested act's adoption process, the defendant refused to communicate to the concerned parties how their indirect emission intensity figure would be calculated and how the electrification criterion would be applied, thus preventing them from entering into any substantive discussion with the defendant during the consultation periods;

— The defendant therefore failed to comply with its obligations under Article 15 TFEU and Article 11 TEU to ensure the transparency of the process leading to the adoption of Annex I to the contested act.

6. Sixth plea in law, alleging that Annex I to the contested act infringes the principle of subsidiarity.

— According to Article 5(3) TFEU, the European Union only acts, in areas which do not fall within its exclusive competence, if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at EU level;

— While the national measures based on Article 10a(6) of Directive 2003/87/EC are subject to State aid control, the defendant breached the principle of subsidiarity by determining an ex ante list limiting the sectors and subsectors that can be eligible for indirect emission costs compensation, since (a) Member States are best placed to assess the genuine risk of carbon leakage for each industrial sector due to significant indirect costs actually incurred; and (b) the defendant adopted Annex I without providing a sufficient explanation of the necessity to do so.

7. Seventh plea in law, alleging that Annex I to the contested act infringes the proportionality principle.

— The defendant infringes the proportionality principle as it: (a) fails to seek to achieve the legitimate objective which is to incentivise a cost-effective decarbonisation of the economy by allowing energy-intensive sectors to invest in energy efficiency instead of shifting their production to third countries; (b) places an excessive burden on the excluded sectors while less burdensome solutions (such as setting maximum aid levels or conditionality mechanisms) would meet the objectives of the contested act at least in the same way; and (c) revealed the core details of its assessment of the eligible sectors only four days prior to publication of the contested act on 25 September 2020, which itself is only a little over three months prior to the expiry of the currently applicable Emission Trading Scheme Guidelines. By doing so, the defendant infringes Article 5(4) TEU.

(1) OJ 2020 C 317, p. 5.
(2) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), as amended.

Action brought on 17 December 2020 — Car-Master 2 v Commission

(Case T-743/20)

(2021/C 72/40)

Language of the case: Polish

Parties

Applicant: Car-Master 2 sp. z o.o sp.k. (Krakow, Poland) (represented by: M. Miśkowicz, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul European Commission Decision C(2020)7369 final of 22 October 2020 in Case AT.40665 — Toyota;

— Order the defendant to pay the costs of the proceedings, including the costs of legal representation.

Pleas in law and main arguments

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

1. First plea in law, alleging misinterpretation and misapplication of Article 13(2) of Council Regulation No 1/2003 ('Regulation No 1/2003') (1).

— In support of this plea, the applicant claims that the case was not dealt with by the Polish competition authority within the meaning of Article 13(2) of Regulation No 1/2003. The applicant submitted a notice concerning a suspicion of anti-competitive practices to the President of the Urząd Ochrony Konkurencji i Konsumentów (Office for the Protection of Competition and Consumers) ('the President of the UOKiK'). That authority refused, first, to take the steps provided for in the legal provisions and to conduct an assessment of the conduct at issue, on the basis that it did not have sufficient information, and called on the applicant to provide information. At the same time, the authority itself did not take any steps with the objective of obtaining that information, and shifted the burden of proof in its entirety onto the applicant. As a result, the action of the authority does not qualify as 'examination of the case' as provided for in the Commission Notice on cooperation within the Network of Competition Authorities (2) and the case-law of the General Court. The Commission therefore also relied incorrectly on Article 13(2) of Regulation No 1/2003 to reject the complaint. The applicant adds that as a result of the Commission's rejection of the complaint, the case was not examined by any authority, which is in fact contrary to recital 18 of Regulation No 1/2003.

2. Second plea in law, alleging infringement of the right to good administration resulting from Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter').

— The applicant submits in support of this plea that it cannot take advantage of its rights under Article 41(1) of the Charter, since no authority has examined its case. It is unable to act, since, first, national legislation does not provide for the possibility of bringing an appeal against the refusal of the President of the UOKiK to take legal action. Second, the Commission has abstained from examining the case, incorrectly finding that it has already been examined. As a result, the applicant has been denied a means to exercise its rights. The applicant specifies that the Commission failed to take into account all circumstances of the given case and failed to examine carefully the applicant's situation. According to the applicant, the Commission should have investigated in detail whether the case was examined and how, and therefore should have carefully analysed the action taken by the national competition authority. The Commission failed to comply with this obligation and therefore failed to observe the duty of due diligence resulting from the right to good administration The Commission also failed to comply with the obligation stemming from Article 105(1) TFEU, since it failed to take into account the circumstance that in the event of its rejection of the complaint, a case involving potential infringement of the principle of competition would remain unresolved, since it was not examined by the national authority.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).
(2) OJ 2004 C 101, p. 43.

Action brought on 21 December 2020 — Jakeliūnas v ESMA

(Case T-760/20)

(2021/C 72/41)

Language of the case: Lithuanian

Parties

Applicant: Stasys Jakeliūnas (Vilnius, Lithuania) (represented by: R. Paukštė, lawyer)

Defendant: European Securities and Markets Authority (ESMA)

Form of order sought

The applicant claims that the General Court should:

— declare that ESMA's refusal by letter ESMA22-105-1261 of 30 October 2020 to grant the applicant's request of 30 September 2020 that it launch an inquiry into possible market manipulation ('the request') is unfounded;

— order ESMA to reassess the request;

— order ESMA to pay the costs.

Pleas in law and main arguments

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

1. The basis for the first plea in law is that:

— the rules laid down by Directive 2003/6/EC of the European Parliament and of the Council (1) encompass the possible infringements specified in the request;

— that directive was, from its adoption, coordinated and overseen at EU level. That is also provided for by Commission Directive 2003/124/EC (2);

— Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([3]) established ESMA, which in fact took over the functions of the bodies overseeing European securities that had operated until then and became responsible for successful implementation and oversight of Directive 2003/6/EC and investor protection;

— Directive 2003/6/EC was repealed with effect from 3 July 2016;

— therefore ESMA has the duty to investigate infringements of Directive 2003/6/EC that may have been committed up until the time when ESMA was established.

2. The second plea in law relates to the fact that the applicant's request is not founded on a need to apply Regulation (EU) 2016/1011 of the European Parliament and of the Council ([4]) and Regulation (EU) No 596/2014 of the European Parliament and of the Council ([5]), enactments upon which ESMA founded its refusal.

3. The basis for the third plea in law is that:

— ESMA interprets Directive 2003/6/EC too narrowly and inflexibly and unjustifiably restricts its field of application. The fact that the rules of that directive were extended and given more specific definition by Regulation (EU) No 596/2014 does not in itself mean that that directive did not encompass the possible cases of market manipulation specified in the request and does not have to be applied to them;

— ESMA ignored the information submitted to it concerning possible undisclosed conflicts of interests of banks, which is information showing that Article 1(2)(c) and Article 6(5) of Directive 2003/6/EC may have been infringed.

([1]) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

([2]) Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (OJ 2003 L 339, p. 70).

([3]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ 2010 L 331, p. 84).

([4]) Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ 2016 L 171, p. 1).

([5]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014 L 173, p. 1).

Action brought on 24 December 2020 — PB v Commission

(Case T-775/20)

(2021/C 72/42)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

and accordingly,

— set aside the Commission's decision of 22 October 2020, notified on 23 October 2020, adopting an administrative measure against the applicant to withdraw the amount allegedly received unduly by [HB] under the TACIS/2006/101-510 and CARDS/2008/166-429 contracts;

— order the repayment of any amounts recovered by the Commission on the basis of that decision, together with default interest at the rate applied by the European Central Bank, increased by seven percentage points;

— order the payment of 10,000 euros by way of damages, subject to completion of the proceedings;

— order the Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the findings of the OLAF reports and the irregularities found against the company of which the applicant is manager are unlawful. In that regard, the applicant considers that the irregularities of which he is accused cannot be dissociated from the irregularities found against the company of which he is the manager, and that he contested by two actions (Cases T-795/19 and T-796/19 HB v Commission) maintaining that were the General Court to confirm the unlawfulness of the OLAF reports and/or the decisions of 15 October 2019 in the context of those cases, those findings would necessarily render the contested decision in the present case unlawful;

2. Second plea in law, alleging that the claim is time-barred and, in any event, infringement of the reasonable period prescribed by Article 73a(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1). 1) ('the 2002 Financial Regulation'), the right to good administration as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'). According to the applicant, the Commission's claim against the applicant is time-barred since the period of five years laid down in Article 73a of the 2002 Financial Regulation has expired and, in any case, the period prescribed for adopting the contested decision and the accompanying debit note is manifestly unreasonable and infringes Article 41 of the Charter and Article 6(1) of the ECHR in so far as it lays down a fundamental right which is also a general principle of law;

3. Third plea in law, alleging the lack of a proper legal basis and breach of the principle of the legality of sanctions and of the principle of the application of the most lenient criminal law. The applicant considers that, according to Article 103 of the 2002 Financial Regulation, only the contracting party, i.e. the company of which he is the manager, may be subject to recovery proceedings. In so doing, the defendant also violated the principle of the application of the most lenient 'criminal' law or even the principle of the legality of sanctions, enshrined in Article 49 of the Charter, by seeking to apply a stricter legal obligation than that provided for in the 2002 Financial Regulation. Furthermore, the applicant submits that he is not an economic operator, that he did not obtain any advantage from the alleged illegalities, was not the recipient of any payment from the contracting authority and certainly never received an advantage equivalent to the full value of the two contracts in question;

4. Fourth plea in law, alleging violation of the judgment of the Court of First Instance of Brussels (Belgium) of 5 October 2017 and of the adage that 'criminal law takes precedence over administrative law'. The applicant maintains that the Commission is bound by the judgment of 5 October 2017 handed down by the Belgian criminal court, which declared the proceedings inadmissible in the absence of elements to prove the incriminating facts. The Commission, which joined a civil claim before the criminal court, having decided to await the outcome of the Belgian proceedings before adopting the recovery decision, would be bound by that outcome and the findings of the national court, even if the judgment of the Belgian court did not have the effect of res judicata with regard to the Commission;

5. Fifth plea in law, alleging manifest errors of assessment vitiating the contested decision. The applicant considers in that regard that the facts complained of are manifestly not established and that there are manifestly no irregularities, a fortiori serious ones. He maintains that the contested decision is based on two OLAF reports, even though the complaints made have not been established and are, in all cases, manifestly erroneous;

6. Sixth plea in law, alleging that the applicant cannot be held liable for the alleged illegalities under Belgian company law. In that respect, he submits that the company of which he is manager is a private limited liability company under Belgian law, distinguishable in that the manager(s) is (are) not personally liable for the commitments given in the name of the company and his (their) assets cannot be used to pay off the debts of the company;

7. Seventh plea in law, alleging infringement of the rights of the defence on the ground that the OLAF reports attached to the pre-information letters were blacked out to such an extent that they were unintelligible and that the applicant could not understand them and then make useful observations;

8. Eighth plea in law, alleging breach of the principle of sound administration, the principle of performance of contracts in good faith and the principle of the prohibition of 'abuse of rights' in that the Commission acted neither carefully nor impartially;

9. Ninth plea in law, alleging a plea of illegality raised in respect of Article 103 of the 2002 Financial Regulation, in that it infringes the general principle of the prohibition of unjust enrichment. The applicant considers that that provision provides for the possibility for the institution to recover all the amounts paid throughout the period of performance of the contract even if it was entirely performed by the contractor, which would mean that the institution may thus benefit from all the services provided by the contractor without owing any payment to it. That provision should therefore be declared unlawful in that it allows the institution to improve its assets to the detriment of the assets of the contractor without justification;

10. Tenth plea in law, in the alternative, alleging infringement of Article 103 of the 2002 Financial Regulation and of the principle of proportionality. According to the applicant, the institution's assessment must be carried out in accordance with Article 103 of the 2002 Financial Regulation, which means that the Commission may not apply more than one sanction, since that Article sets out a non-cumulative list of sanctions. Furthermore, the institution must ensure that its decision is proportionate to the seriousness of the irregularity in question by carrying out that assessment, in accordance with the principle of proportionality, which is an expression of the principle of good faith in the performance of contracts, which was not observed in the present case.

Action brought on 9 January 2021 — Griesbeck v Parliament

(Case T-10/21)

(2021/C 72/43)

Language of the case: French

Parties

Applicant: Nathalie Griesbeck (Ancy-sur-Moselle, France) (represented by: J. L. Teheux, J. M. Rikkers and G. Selnet, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

principally:

— annul the decision of the Bureau of the European Parliament of 5 October 2020;

consequently,

— annul the decision of the Secretary General of the European Parliament of 18 October 2019 and the subsequent debit note;

alternatively:

— annul the decision of the Bureau of the European Parliament of 5 October 2020;

consequently,

— annul the decision of the Secretary General of the European Parliament of 18 October 2019 and reduce the consecutive debit note by an appropriate amount;

in any event;

— provide the applicant with the opportunity to submit additional observations by way of subsequent submissions;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Parliament committed the following errors of assessment. First, it ruled out that the specific circumstances of employment of the assistant concerned could have an influence on the evidence of that assistant's work. Next, it did not take account of the time that had elapsed since the facts and the resulting loss of evidence. Lastly, it did not make use of the evidence provided by the applicant.

2. Second plea in law, alleging reversal of the burden of proof and infringement of the right to a fair trial. In this respect, the applicant takes the view, essentially, that it is not for her to bear the burden of proof regarding her assistant's work.

3. Third plea in law, alleging infringement of the principle of proportionality in so far as the Bureau took the view that the full amounts paid for the assistant's working hours should be repaid, although the reality of her work had been demonstrated only partially.

Action brought on 15 January 2021 — Ryanair v Commission

(Case T-14/21)

(2021/C 72/44)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision (EU) of 21 August 2020 on State Aid SA.57544(2020/N) — Belgium COVID-19: Aid to Brussels Airlines; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misapplied its Temporary Framework by finding that the loan to Brussels Airlines complied with the Temporary Framework and that Brussels Airlines is eligible to recapitalisation aid, by failing to assess whether there were other more appropriate and less distortive measures available besides the recapitalisation, finding that the amount of recapitalisation was proportionate, and failing to impose an effective ban on aggressive expansion by Brussels Airlines.

2. Second plea in law, alleging that the European Commission misapplied Article 107(3)(b) TFEU by finding that the aid addresses a serious disturbance in the Belgian economy, and by violating its obligation to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition (i.e., the 'balancing test').

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

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

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

Action brought on 15 January 2021 — Miquel y Costas & Miquel v EUIPO (Pure Hemp)

(Case T-17/21)

(2021/C 72/45)

Language of the case: Spanish

Parties

Applicant: Miquel y Costas & Miquel, SA (Barcelona, Spain) (represented by: J. Mora Cortés, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the EU figurative mark Pure Hemp — Application for registration No 18 132 358

Contested decision: Decision of the First Board of Appeal of EUIPO of 21 October 2020 in Case R 853/2020-1

Form of order sought

The applicant claims that the Court should:

— Annul/revoke the contested decision, in so far as it dismisses appeal R 853/2020-1 and partially denies EU mark No 18 132 358 Pure Hemp (figurative);

— order EUIPO to pay the costs, including those related to the proceedings before the Operations Department and before the First Board of Appeal of EUIPO.

Pleas in law

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

— Infringement of Article 7(1)(b), in conjunction with Article 7(2) of Regulation 2017/1001.

Action brought on 19 January 2021 — Amazon.com and Others v Commission

(Case T-19/21)

(2021/C 72/46)

Language of the case: English

Parties

Applicants: Amazon.com, Inc. (Wilmington, Delaware, United States), Amazon Services Europe Sàrl (Luxembourg, Luxembourg), Amazon EU Sàrl (Luxembourg), Amazon Europe Core Sàrl (Luxembourg) (represented by: A. Komninos and G. Tantulli, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— partially annul Decision C(2020) 7692 final of the European Commission of 10 November 2020 for the part that excludes Italy from the scope of the investigation and from the legal consequences of Article 11(6) of Regulation 1/2003;

— order the Commission to bear the applicants' costs and expenses in connection with these proceedings.

Plea in law and main arguments

In support of the action, the applicants rely on one plea in law, alleging that the Contested Decision unlawfully carved Italy out of the scope of Case AT.40703 and excluded Italy from the legal consequences of Article 11(6) of Regulation 1/2003. In so doing, the Contested Decision violated Article 11(6) of Regulation 1/2003 and undermined its effectiveness and/or it circumvented Article 11(6) of Regulation 1/2003 and defeated the purpose of its existence.

Action brought on 20 January 2021 — Corman v Commission

(Case T-25/21)

(2021/C 72/47)

Language of the case: French

Parties

Applicant: Marie Corman (Schaerbeek, Belgium) (represented by: S. Orlandi, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 4 June 2020 determining the applicant's entitlement to a retirement pension;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the contested decision infringes Articles 21 and 22 of Annex XIII to the Staff Regulations of Officials of the European Union.

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