Official Journal of the European Union

C 110

English edition

Information and Notices

Volume 64

29 March 2021

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(2021/C 110/01)

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These texts are available on:

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

GENERAL COURT

Formation of Chambers and assignment of Judges to Chambers

(2021/C 110/02)

On 1 March 2021, the General Court decided, following the entry into office of Mr Petrlík as Judge of the General Court, to amend the decision on the formation of the Chambers of 30 September 2019 [1], as amended [2], and the decision on the assignment of Judges to Chambers of 4 October 2019 [3], as amended [4], for the period from 1 March 2021 to 31 August 2022 and to assign the Judges to Chambers as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Mr Jaeger, Ms Półtorak, Ms Porchia and Ms Stancu, Judges.

First Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

Formation A: Mr Jaeger and Ms Półtorak, Judges;

Formation B: Mr Jaeger and Ms Porchia, Judges;

Formation C: Mr Jaeger and Ms Stancu, Judges;

Formation D: Ms Półtorak and Ms Porchia, Judges;

Formation E: Ms Półtorak and Ms Stancu, Judges;

Formation F: Ms Porchia and Ms Stancu, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Ms Tomljenović, President of the Chamber, Mr Schalin, Ms Škvařilová-Pelzl, Mr Nõmm and Ms Steinfatt, Judges.

Second Chamber, sitting with three Judges:

Ms Tomljenović, President of the Chamber;

Formation A: Mr Schalin and Ms Škvařilová-Pelzl, Judges;

Formation B: Mr Schalin and Mr Nõmm, Judges;

Formation C: Ms Škvařilová-Pelzl and Mr Nõmm, Judges.

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[1] OJ C 372, 4.11.2019, p. 3.
[2] OJ C 68, 2.3.2020, p. 2, OJ C 114, 6.4.2020, p. 2, and OJ C 371, 3.11.2020, p. 2.
[3] OJ C 372, 4.11.2019, p. 3.
[4] OJ C 68, 2.3.2020, p. 2, OJ C 114, 6.4.2020, p. 2, and OJ C 371, 3.11.2020, p. 2.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Collins, President of the Chamber, Mr Kreuschitz, Mr Csehi, Mr De Baere and Ms Steinfatt, Judges.

Third Chamber, sitting with three Judges:

Mr Collins, President of the Chamber;

Formation A: Mr Kreuschitz and Mr Csehi, Judges;

Formation B: Mr Kreuschitz and Mr De Baere, Judges;

Formation C: Mr Kreuschitz and Ms Steinfatt, Judges;

Formation D: Mr Csehi and Mr De Baere, Judges;

Formation E: Mr Csehi and Ms Steinfatt, Judges;

Formation F: Mr De Baere and Ms Steinfatt, Judges.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Gervasoni, President of the Chamber, Mr Madise, Mr Nihoul, Ms Frendo and Mr Martín y Pérez de Nanclares, Judges.

Fourth Chamber, sitting with three Judges:

Mr Gervasoni, President of the Chamber;

Formation A: Mr Madise and Mr Nihoul, Judges;

Formation B: Mr Madise and Ms Frendo, Judges;

Formation C: Mr Madise and Mr Martín y Pérez de Nanclares, Judges;

Formation D: Mr Nihoul and Ms Frendo, Judges;

Formation E: Mr Nihoul and Mr Martín y Pérez de Nanclares, Judges;

Formation F: Ms Frendo and Mr Martín y Pérez de Nanclares, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Spielmann, President of the Chamber, Mr Öberg, Ms Spineanu-Matei, Mr Mastroianni and Mr Norkus, Judges.

Fifth Chamber, sitting with three Judges:

Mr Spielmann, President of the Chamber;

Formation A: Mr Öberg and Ms Spineanu-Matei, Judges;

Formation B: Mr Öberg and Mr Mastroianni, Judges;

Formation C: Ms Spineanu-Matei and Mr Mastroianni, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Ms Marcoulli, President of the Chamber, Mr Frimodt Nielsen, Mr Schwarcz, Mr Iliopoulos and Mr Norkus, Judges.

Sixth Chamber, sitting with three Judges:

Ms Marcoulli, President of the Chamber;

Formation A: Mr Frimodt Nielsen and Mr Schwarcz, Judges;

Formation B: Mr Frimodt Nielsen and Mr Iliopoulos, Judges;

Formation C: Mr Frimodt Nielsen and Mr Norkus, Judges;

Formation D: Mr Schwarcz and Mr Iliopoulos, Judges;

Formation E: Mr Schwarcz and Mr Norkus, Judges;

Formation F: Mr Iliopoulos and Mr Norkus, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr da Silva Passos, President of the Chamber, Mr Valančius, Ms Reine, Mr Truchot and Mr Sampol Pucurull, Judges.

Seventh Chamber, sitting with three Judges:

Mr da Silva Passos, President of the Chamber;

Formation A: Mr Valančius and Ms Reine, Judges;

Formation B: Mr Valančius and Mr Truchot, Judges;

Formation C: Mr Valančius and Mr Sampol Pucurull, Judges;

Formation D: Ms Reine and Mr Truchot, Judges;

Formation E: Ms Reine and Mr Sampol Pucurull, Judges;

Formation F: Mr Truchot and Mr Sampol Pucurull, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Svenningsen, President of the Chamber, Mr Barents, Mr Mac Eochaidh, Ms Pynnä and Mr Laitenberger, Judges.

Eighth Chamber, sitting with three Judges:

Mr Svenningsen, President of the Chamber;

Formation A: Mr Barents and Mr Mac Eochaidh, Judges;

Formation B: Mr Barents and Ms Pynnä, Judges;

Formation C: Mr Barents and Mr Laitenberger, Judges;

Formation D: Mr Mac Eochaidh and Ms Pynnä, Judges;

Formation E: Mr Mac Eochaidh and Mr Laitenberger, Judges;

Formation F: Ms Pynnä and Mr Laitenberger, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Ms Costeira, President of the Chamber, Mr Gratsias, Ms Kancheva, Mr Berke and Ms Perišin, Judges.

Ninth Chamber, sitting with three Judges:

Ms Costeira, President of the Chamber;

Formation A: Mr Gratsias and Ms Kancheva, Judges;

Formation B: Mr Gratsias and Mr Berke, Judges;

Formation C: Mr Gratsias and Ms Perišin, Judges;

Formation D: Ms Kancheva and Mr Berke, Judges;

Formation E: Ms Kancheva and Ms Perišin, Judges;

Formation F: Mr Berke and Ms Perišin, Judges.

Tenth Chamber (Extended Composition), sitting with five Judges:

Mr Kornezov, President of the Chamber, Mr Buttigieg, Ms Kowalik-Bańczyk, Mr Hesse and Mr Petrlík, Judges.

Tenth Chamber, sitting with three Judges:

Mr Kornezov, President of the Chamber;

Formation A: Mr Buttigieg and Ms Kowalik-Bańczyk, Judges;

Formation B: Mr Buttigieg and Mr Hesse, Judges;

Formation C: Mr Buttigieg and Mr Petrlík, Judges;

Formation D: Ms Kowalik-Bańczyk and Mr Hesse, Judges;

Formation E: Ms Kowalik-Bańczyk and Mr Petrlík, Judges;

Formation F: Mr Hesse and Mr Petrlík, Judges.

The Second Chamber, composed of four Judges, will be extended by the addition of a fifth Judge from the Third Chamber. The Fifth Chamber, composed of four Judges, will be extended by the addition of a fifth Judge from the Sixth Chamber. The fifth Judge shall be designated according to the reverse order to the order laid down in Article 8 of the Rules of Procedure for the period ending on 31 August 2022.

The General Court confirms its decision of 4 October 2019 that the First, Fourth, Seventh and Eighth Chambers shall hear cases brought under Article 270 TFEU and, where appropriate, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union, and that the Second, Third, Fifth, Sixth, Ninth and Tenth Chambers shall hear cases relating to intellectual property rights referred to in Title IV of the Rules of Procedure.

It also confirms that:

— the President and the Vice-President shall not be attached permanently to a Chamber,

— in the course of each judicial year, the Vice-President shall sit in each of the ten Chambers sitting with five Judges, on the basis of one case per Chamber in the following order:

  — the first case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the First Chamber, the Second Chamber, the Third Chamber, the Fourth Chamber and the Fifth Chamber,

  — the third case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the Sixth Chamber, the Seventh Chamber, the Eighth Chamber, the Ninth Chamber and the Tenth Chamber.

Where the Chamber in which the Vice-President sits is composed of:

— five Judges; the extended Chamber shall be composed of the Vice-President, Judges from the Chamber sitting with three Judges originally seised as well as one of the other Judges of the Chamber in question, determined on the basis of the reverse order to the order laid down in Article 8 of the Rules of Procedure,

— four Judges; the extended Chamber shall be composed of the Vice-President, Judges from the Chamber sitting with three Judges originally seised and the fourth Judge of the Chamber in question.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Seventh Chamber) of 3 February 2021 — European Commission v Hungary

(Case C-637/18) [1]

(Failure of a Member State to fulfil obligations — Environment — Directive 2008/50/EC — Ambient air quality — Article 13(1) and Annex XI — Systematic and persistent exceedance of limit values for microparticles (PM_{10}) in certain Hungarian zones — Article 23(1) — Annex XV — Exceedance period to be 'as short as possible' — Appropriate measures)

(2021/C 110/03)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: K. Petersen, K. Talabér-Ritz and E. Manhaeve, Agents)

Defendant: Hungary (represented by: M. Z. Fehér and A. Pokoraczki, Agents)

Operative part of the judgment

The Court:

1. Declares that:

— by systematically and persistently exceeding the daily limit value for concentrations of particulate matter PM_{10}, first, from 1 January 2005 up to and including 2017, in the zone HU0001 — Budapest region and in the zone HU0008 — Sajó valley and, secondly, from 11 June 2011 up to and including 2017 (with the exception of 2014), in the zone HU0006 — Pécs, Hungary has failed to fulfil its obligation under the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, and

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

2. Orders Hungary to pay the costs.

[1] OJ C 427, 26.11.2018.

Judgment of the Court (Fourth Chamber) of 3 February 2021 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — Federazione Italiana Giuoco Calcio (FIGC), Consorzio Ge.Se.Av. S. c. arl v De Vellis Servizi Globali Srl

(Joined Cases C-155/19 and C-156/19) ([1])

(Reference for a preliminary ruling — Public procurement — Public procurement procedure — Directive 2014/24/EU — Article 2(1)(4) — Contracting authority — Bodies governed by public law — Concept — National sports federation — Meeting of needs in the general interest — Supervision of the federation's management by a body governed by public law)

(2021/C 110/04)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Federazione Italiana Giuoco Calcio (FIGC), Consorzio Ge.Se.Av. S. c. arl

Defendant: De Vellis Servizi Globali Srl

Intervening parties: Consorzio Ge.Se.Av. S. c. arl, Comitato Olimpico Nazionale Italiano (CONI), Federazione Italiana Giuoco Calcio (FIGC)

Operative part of the judgment

1. Article 2(1)(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that an entity entrusted with tasks of a public nature exhaustively defined by national law may be regarded as having been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, within the meaning of that provision, even though it was established not in the form of a public authority but of an association governed by private law and some of its activities, for which it enjoys a self-financing capacity, are not public in nature.

2. The second part of the alternative referred to in Article 2(1)(4)(c) of Directive 2014/24 must be interpreted as meaning that where a national sports federation has management autonomy under national law, that federation may be regarded as being subject to management supervision by a public authority only if it emerges from an overall analysis of the powers which that authority has in relation to that federation that there is active management control which, in practice, calls into question that autonomy to such an extent as to allow the authority to influence the federation's decisions with regard to public contracts. The circumstance that the various national sports federations exert an influence over the activity of the public authority concerned on account of their majority participation in that authority's main deliberative and collegiate bodies is relevant only if it can be established that each federation, considered individually, is in a position to exert a significant influence over the public supervision exercised by that authority over it with the result that that supervision would be offset and such a national sports federation would thus regain control over its management, notwithstanding the influence of the other national sports federations in a similar situation.

([1]) OJ C 206, 17.6.2019.

Judgment of the Court (Fourth Chamber) of 4 February 2021 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — eurocylinder systems AG v Hauptzollamt Hamburg

(Case C-324/19) ([1])

(Reference for a preliminary ruling — Common commercial policy — Anti-dumping duties — Regulation (EC) No 384/96 — Article 3(9) — Threat of material injury — Factors — Article 9(4) — Regulation (EC) No 926/2009 — Imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China — Invalidity)

(2021/C 110/05)

Language of the case: Dutch

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: eurocylinder systems AG

Defendant: Hauptzollamt Hamburg

Operative part of the judgment

Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China is invalid.

([1]) OJ C 255, 29.7.2019.

Judgment of the Court (Grand Chamber) of 2 February 2021 (request for a preliminary ruling from the Corte costituzionale — Italy) — DB v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-481/19) ([1])

(Reference for a preliminary ruling — Approximation of laws — Directive 2003/6/EC — Article 14(3) — Regulation (EU) No 596/2014 — Article 30(1)(b) — Market abuse — Administrative sanctions of a criminal nature — Failure to cooperate with the competent authorities — Articles 47 and 48 of the Charter of Fundamental Rights of the European Union — Right to remain silent and to avoid self-incrimination)

(2021/C 110/06)

Language of the case: Italian

Referring court

Corte costituzionale

Parties to the main proceedings

Applicant: DB

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Interested party: Presidente del Consiglio dei ministri

Operative part of the judgment

Article 14(3) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and Article 30(1)(b) of 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 and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, read in the light of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be interpreted as allowing Member States not to penalise natural persons who, in an investigation carried out in respect of them by the competent authority under that directive or that regulation, refuse to provide that authority with answers that are capable of establishing their liability for an offence that is punishable by administrative sanctions of a criminal nature, or their criminal liability.

(1) OJ C 357, 21.10.2019.

Judgment of the Court (Third Chamber) of 3 February 2021 (request for a preliminary ruling from the Landgericht Stuttgart — Germany) — Fussl Modestraße Mayr GmbH v SevenOne Media GmbH, ProSiebenSat.1 TV Deutschland GmbH, ProSiebenSat.1 Media SE

(Case C-555/19) (1)

(Reference for a preliminary ruling — Directive 2010/13/EU — Provision of audiovisual media services — Article 4(1) — Freedom to provide services — Equal treatment — Article 56 TFEU — Articles 11 and 20 of the Charter of Fundamental Rights of the European Union — Audiovisual commercial communication — National legislation prohibiting television broadcasters from inserting in their programmes broadcast throughout the national territory television advertisements whose broadcasting is limited to a regional level)

(2021/C 110/07)

Language of the case: German

Referring court

Landgericht Stuttgart

Parties to the main proceedings

Applicant: Fussl Modestraße Mayr GmbH

Defendants: SevenOne Media GmbH, ProSiebenSat.1 TV Deutschland GmbH, ProSiebenSat.1 Media SE

Operative part of the judgment

Article 4(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services ('the Audiovisual Media Services Directive') and Article 11 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation which prohibits television broadcasters from inserting in their programmes broadcast throughout the national territory television advertising whose broadcasting is limited to a regional level;

Article 56 TFEU must be interpreted as not precluding such national legislation, provided that it is suitable for securing the attainment of the objective of protecting media pluralism at regional and local level which it pursues and does not go beyond what is necessary to attain that objective, which it is for the referring court to ascertain;

Article 20 of the Charter of Fundamental Rights must be interpreted as not precluding such national legislation, provided that it does not give rise to unequal treatment between national television broadcasters and internet advertising providers as regards the broadcasting of advertising at regional level, which it is for the referring court to ascertain.

(1) OJ C 357, 21.10.2019.

Judgment of the Court (Sixth Chamber) of 4 February 2021 (request for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio — Italy) — Azienda Agricola Ambrosi Nicola Giuseppe and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Ministero delle Politiche agricole e forestali

(Case C-640/19) (1)

(Reference for a preliminary ruling — Agriculture — Common organisation of markets — Regulation (EC) No 1234/2007 — Milk quotas — Surplus levies — Milk used to produce cheeses with a protected designation of origin (PDO) intended for export to non-EU countries — Exclusion — Article 32(a), Article 39(1) and (2)(a), Article 40(2) and Article 41(b) TFEU — Principles of proportionality and non-discrimination — Validity)

(2021/C 110/08)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per il Lazio

Parties to the main proceedings

Applicants: Azienda Agricola Ambrosi Nicola Giuseppe, Azienda Agricola Castagna Giovanni, Azienda Agricola Castellani Enio Nereo e Giuliano Ss, Azienda Agricola De Fanti Maria Teresa, Azienda Agricola Giacomazzi Vilmare, Azienda Agricola Iseo di Lunardi Giampaolo e Silvano Ss, Azienda Agricola Mastrolat di Mastrotto Franco e Luca Ss, Azienda Agricola Righetti Michele e Damiano, Azienda Agricola Scandola Stefano e Gianni, Azienda Agricola Tadiello Roberto, Azienda Agricola Turazza Mario, Azienda Agricola Zuin Tiziano, 2 B Società Agricola Srl, Azienda Agricola Fracasso Claudio, Azienda Agricola Pozzan Mirko

Defendants: Agenzia per le Erogazioni in Agricoltura (AGEA), Ministero delle Politiche agricole e forestali

Operative part of the judgment

1. Articles 55, 65 and 78 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, as amended by Council Regulation (EC) No 248/2008 of 17 March 2008, must be interpreted as not excluding the quantities of milk used for the production of cheeses with a protected designation of origin intended for export to countries outside the European Union from the calculation of national quotas for the production of milk and other milk products and of surplus levies.

2. Examination of the third question referred has not revealed any factors of such a kind as to affect the validity of Articles 55, 65 and 78 of Regulation No 1234/2007 as amended by Regulation No 248/2008.

(1) OJ C 399, 25.11.2019.

Judgment of the Court (Ninth Chamber) of 4 February 2021 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — JCM Europe (UK) Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-760/19) ([1])

(Reference for a preliminary ruling — Customs union — Common Customs Tariff — Combined Nomenclature — Tariff classification — Headings 8472 and 9031 — Bank note validator and cash boxes — Device intended to be integrated in a host device and connected to an external control centre — Implementing Regulation (EU) 2016/1760 — Validity)

(2021/C 110/09)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: JCM Europe (UK) Ltd

Defendant: Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

The examination of the questions referred has disclosed no factor capable of affecting the validity of Commission Implementing Regulation (EU) 2016/1760 of 28 September 2016 concerning the classification of certain goods in the Combined Nomenclature.

([1]) OJ C 19, 20.1.2020.

Judgment of the Court (Eighth Chamber) of 4 February 2021 (request for a preliminary ruling from the Conseil d'État — France) — DQ v Ministre de la Transition écologique et solidaire, Ministre de l'Action and des Comptes publics

(Case C-903/19) ([1])

(Reference for a preliminary ruling — Civil service — Transfer of retirement pension rights — Staff Regulations of Officials of the European Union — Article 11 of Annex VIII — Officials and temporary staff reinstated in their national administration of origin after a period of non-active status and the performance of duties in an EU institution)

(2021/C 110/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: DQ

Defendant: Ministre de la Transition écologique et solidaire, Ministre de l'Action and des Comptes publics

Operative part of the judgment

Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union must be interpreted as meaning that the transfer of the actuarial equivalent of retirement pension rights may be requested both by officials and members of the contract staff who enter a national administration for the first time after having been employed in an EU institution and by those who return to a national administration after having performed duties in an EU institution in the context of a period of non-active status or leave on personal grounds.

(1) OJ C 61, 24.2.2020.

Judgment of the Court (Sixth Chamber) of 3 February 2021 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Stichting Waternet v MG

(Case C-922/19) (1)

(Reference for a preliminary ruling — Directive 97/7/EC — Article 9 — Directive 2011/83/EU — Article 27 — Directive 2005/29/EC — Article 5(5) — Annex I, point 29 — Unfair commercial practices — Concept of 'inertia selling' — Supply of drinking water)

(2021/C 110/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Stichting Waternet

Defendant: MG

Operative part of the judgment

1. Article 9 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and Article 27 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, read in conjunction with Article 5(5) of, and point 29 of Annex I to, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, do not regulate the formation of contracts, with the result that it is for the referring court to assess, in accordance with national legislation, whether a contract may be regarded as concluded between a water supply company and a consumer in the absence of the latter's express consent;

2. The concept of 'inertia selling', within the meaning of point 29 of Annex I to Directive 2005/29, must be interpreted as meaning that, subject to verifications by the referring court, it does not cover a commercial practice of a drinking water supply company consisting in maintaining the connection to the public water supply network when a consumer moves into a previously occupied dwelling, since that consumer does not have the choice of the supplier of that service, that supplier charges cost-covering, transparent and non-discriminatory rates that are proportionate to the water consumption, and the consumer knows that that dwelling is connected to the public water supply network and that water is supplied against payment.

(1) OJ C 103, 30.3.2020.

Judgment of the Court (Seventh Chamber) of 3 February 2021 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Rottendorf Pharma GmbH v Hauptzollamt Bielefeld

(Case C-92/20) [1]

(Reference for a preliminary ruling — Customs Union — Community Customs Code — Regulation (EEC) No 2913/92 — Second indent of Article 239(1) — Reimbursement of lawfully collected customs duties — Special situation — Issuance of an authorisation for release for free circulation — Invalidation of the authorisation and issue of an authorisation for inward processing with retroactive effect — Re-exporting goods outside of the EU territory — Failure to present goods to customs)

(2021/C 110/12)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Rottendorf Pharma GmbH

Defendant: Hauptzollamt Bielefeld

Operative part of the judgment

The second indent of Article 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, first, an economic operator may claim repayment of the customs duties which it has paid only where that operator is in a special situation and there is no manifest negligence or deception on its part and, second, that the fact that the goods concerned were re-exported to a third country without entering the economic network of the European Union is insufficient to establish that that economic operator was in such a special situation. The same conclusion applies where the conduct giving rise to the imposition of the customs duties concerned was caused by an error in the information contained in the computer system of that economic operator, since that error could have been avoided if the same economic operator had taken account of the conditions contained in the authorisation granted to it.

[1] OJ C 201, 15.6.2020.

Appeal brought on 1 December 2020 by the Kingdom of Spain against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Joined Cases T-515/13 RENV and T-719/13 RENV, *Kingdom of Spain and Others* v *European Commission*

(Case C-649/20 P)

(2021/C 110/13)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: S. Centeno Huerta and S. Jiménez García, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 23 September 2020, *Kingdom of Spain and Others* v *Commission*, in Joined Cases T-515/13 RENV and T-719/13 RENV, EU:T:2020:434;

— annul Commission Decision 2014/200/EU of 17 July 2013 on the aid scheme SA.21233 C/11 (ex NN/11, ex CP 137/06) implemented by Spain — Tax scheme applicable to certain finance lease agreements also known as the Spanish Tax Lease System; ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

1. The General Court infringed Article 47 of the Charter, read in conjunction with Article 256 TFEU, for failure to give a statement of reasons with regard to the analysis of selectivity under Article 107(1) TFEU and the principles of cost recovery.

2. The General Court erred in law in the interpretation of Article 107(1) TFEU, concerning the selectivity of the measure.

3. The General Court erred in law in the interpretation and application of the principles of legitimate expectations and legal certainty, in the context of the monitoring of State aid under Article 108 TFEU, by its method of analysis and by rendering meaningless the content of both principles.

4. The General Court erred in law in the interpretation and application of the principles applicable to recovery.

([1]) OJ 2014 L 144, p. 1

Appeal brought on 3 December 2020 by Lico Leasing, S.A.U and Pequeños y Medianos Astilleros Sociedad de Reconversión, S.A. against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Joined Case T-515/13 RENV and T-719/13 RENV Kingdom of Spain and Others v Commission

(Case C-658/20 P)

(2021/C 110/14)

Language of the case: Spanish

Parties

Appellants: Lico Leasing, S.A.U and Pequeños y Medianos Astilleros Sociedad de Reconversión, S.A. (represented by: J.M. Rodríguez Cárcamo and M.A. Sánchez, lawyers)

Other parties to the proceedings: European Commission, Bankia, S.A. and Others and Aluminios Cortizo, S.A.

Form of order sought

Lico Leasing, S.A.U., Establecimiento Financiero de Crédito ('**LICO**') and Pequeños y Medianos Astilleros Sociedad de Reconversión, S.A ('**PYMAR**') respectfully request the Court of Justice to:

— set aside in its entirety the judgment of the General Court of 23 September 2020, *Spain and Others* v *Commission* (T-515/13 RENV and T-719/13 RENV, EU:T:2020:434);

— annul Commission Decision 2014/200/EU of 17 July 2013 on the aid scheme SA.21233 C/11 (ex NN/11, ex CP 137/06) implemented by Spain, Tax scheme applicable to certain finance lease agreements also known as the Spanish Tax Lease System (OJ L 114, 16.4.2014, p. 1) or, alternatively, annul the order to recover the aid; and

— order the European Commission to pay the costs incurred by LICO and PYMAR in relation to the present appeal and the costs incurred by LICO and PYMAR in relation to the proceedings following referral (T-719/13 RENV), the appeal (C-128/16 P) and in the initial proceedings at first instance (T-719/13).

Pleas in law and main arguments

FIRST GROUND OF APPEAL: SUBSTANTIVE ERRORS, ERRORS IN THE CLASSIFICATION OF THE FACTS AND ERRORS IN THE STATEMENT OF REASONS FOR APPLICATION OF ARTICLE 107(1) TFEU

LICO and PYMAR claim that the General Court has made the following errors of law, substantive errors and errors in the classification of the facts and in the statement of reasons, in the interpretation of Article 107(1) TFEU:

(i) Error of law in the verification of the reference system in so far as the Commission did not identify, in the decision or before the General Court, what is the reference system of 'the Spanish Tax Lease System' ('the STL system'), neither as a whole, nor as regards each one of its individual measures.

(ii) Errors of law in the legal classification of the administrative authorisation for accelerated depreciation: (a) error in considering that the existence of an authorisation procedure necessarily means that the measure is selective, without the need to carry out the three-stage examination resulting from the case-law of the General Court, (b) error in the classification of the authorisation for accelerated depreciation as a discretionary power that enables the achievement of objectives outside the tax system and (c) error in the assessment to the effect that the selectivity of a single one of the measures which made it possible to benefit from the STL system as a whole (the authorisation for accelerated depreciation) meant that the system was selective as a whole.

(iii) Failure to state reasons with regard to the comparison of the factual and legal situations of the companies affected by the measure at issue.

SECOND GROUND OF APPEAL: DISTORTION OF THE CLEAR SENSE OF THE FACTS AND ERROR IN THE CLASSIFICATION OF THE FACTS RELATING TO THE LETTER FROM THE COMMISSIONER RESPONSIBLE FOR DG 'COMPETITION' REGARDING THE PRINCIPLE OF PROTECTION OF LEGITIMATE EXPECTATIONS

LICO and PYMAR claim that the General Court distorted the clear sense of the content of the letter from the Commissioner responsible for DG 'Competition' and incorrectly classified its content in finding that the letter did not offer concrete, unconditional and consistent guarantees that could give rise to legitimate expectations.

THIRD GROUND OF APPEAL: ERROR IN THE CLASSIFICATION OF THE FACTS IN THE APPLICATION AND INTERPRETATION OF THE PRINCIPLE OF LEGAL CERTAINTY

LICO and PYMAR claim that, even if it were to be held that the General Court did not distort the clear sense of the content of the letter from the Commissioner responsible for DG 'Competition' for the purposes of applying the principle of legitimate expectations, the General Court, when examining the plea relating to the principle of legal certainty, erred in its classification of that fact and the decision on the French tax Economic Interest Groupings ('EIGs'), which led it to misinterpret and misapply the principle of legal certainty.

FOURTH GROUND OF APPEAL: ERROR OF LAW IN RELATION TO THE PRINCIPLES APPLICABLE TO THE RECOVERY OF AID

LICO and PYMAR claim that the General Court made an error of law in relation to the principles applicable to the recovery of aid (i) because the fact that the shipping companies were not regarded as beneficiaries of the aid does not mean that the EIGs and the investors actually received all of the aid, since it is common ground that that was not the case and (ii) because, in order to determine the existence of State aid, it is not the method used that must be taken into account, but rather the effects of the measure, Likewise, as regards recovery, account should be taken of the effects and not the method used. Accordingly, it is not reasonable that in the French case the amounts transferred to users were discounted yet such amounts are not discounted in the Spanish case, even though the practical effects in both cases are identical.

Appeal brought on 3 December 2020 by Bankia S.A., Asociación Española de Banca, Unicaja Banco, SA, Liberbank, S.A., Banco de Sabadell, S.A., Banco Gallego S.A., Catalunya Banc, S.A.,, Banco de Santanader, S.A., Santander Investment, S.A., Naviera Séneca, A.I.E. Caixabank, S.A., Industria de Diseño Textil, S.A., Naviera Nebulosa de Omega, A.I.E., Banco Mare Nostrum, S.A., Abanca Corporación Bancaria, S.A., Ibercaja Banco, S.A., Banco Grupo Cajatres, S.A.U., Naviera Bósforo, A.I.E., Joyería Tous, S.A., Corporación Alimentaria Guissona, S.A., Naviera Muriola, A.I.E., Poal Investments XXI, S.L., Poal Investments XXII, S.L., Naviera Cabo Vilaboa C-1658, A.I.E., Naviera Cabo Domaio, C-1659, A.I.E., Caamaño Sistemas Metálicos, S.L., Blumaq, S.A., Grupo Ibérica de Congelados, S.A., RNB, S.L., Inversiones Antaviana, S.L., Banco de Caja España de Inversiones, Salamanca y Soria, S.A.U., Banco de Albacete, S.A., Bodegas Muga, S.L., and Aluminios Cortizo, S.A.U. against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Joined Cases T-515/13 RENV and T-719/13 RENV, Kingdom of Spain and Others v Commission

(Case C-662/20 P)

(2021/C 110/15)

Language of the case: Spanish

Parties

Appellants: Bankia S.A., Asociación Española de Banca, Unicaja Banco, SA, Liberbank, S.A., Banco de Sabadell, S.A., Banco Gallego S.A., Catalunya Banc, S.A.,, Banco de Santanader, S.A., Santander Investment, S.A., Naviera Séneca, A.I.E. Caixabank, S.A., Industria de Diseño Textil, S.A., Naviera Nebulosa de Omega, A.I.E., Banco Mare Nostrum, S.A., Abanca Corporación Bancaria, S.A., Ibercaja Banco, S.A., Banco Grupo Cajatres, S.A.U., Naviera Bósforo, A.I.E., Joyería Tous, S.A., Corporación Alimentaria Guissona, S.A., Naviera Muriola, A.I.E., Poal Investments XXI, S.L., Poal Investments XXII, S.L., Naviera Cabo Vilaboa C-1658, A.I.E., Naviera Cabo Domaio, C-1659, A.I.E., Caamaño Sistemas Metálicos, S.L., Blumaq,
S.A., Grupo Ibérica de Congelados, S.A., RNB, S.L., Inversiones Antaviana, S.L., Banco de Caja España de Inversiones, Salamanca y Soria, S.A.U., Banco de Albacete, S.A., Bodegas Muga, S.L., and Aluminios Cortizo, S.A.U. (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados)

Other parties to the proceedings: European Commssion, Lico Leasing, S.A.U, and Pequeños y Medianos Astilleros Sociedad de Reconversión, S.A.

Form of order sought

The appellants claim that the Court should:

— declare that the grounds of appeal are admissible and uphold those grounds;

— set aside the judgment of the General Court of 23 September 2020 in Joined Cases T-515/13 RENV and T-719/13 RENV, *Kingdom of Spain and Others* v *Commission*. ([1])

— annul Commission Decision of 17 July 2013 on the aid scheme SA.21233 C/11 ([2]) (ex NN/11, ex CP 137/06) implemented by Spain Tax scheme applicable to certain finance lease agreements also known as the Spanish Tax Lease System ('STLS') and, in particular, Article 1 in so far as it declares the STLS as unlawful State aid and, in the alternative, Article 4(1) in so far as it orders the recovery of the aid in its entirety from the EIG investors.

— order the European Commission to pay the costs.

Grounds of appeal and main arguments

The appellants ask the Court of Justice to set aside the judgment under appeal on the following grounds:

First ground of appeal: misinterpretation and misapplication by the General Court of Article 107(1) TFEU in relation to the concept of selectivity. In particular, the appellants submit that the General Court erred in law in its analysis of the alleged 'sectoral selectivity' of the STLS (first sub-ground). In the alternative, and in the event that the Court of Justice does not uphold the first sub-ground of appeal, the appellants submit that the General Court erred in law in its interpretation of the case-law of the EU Courts on the alleged discretionary power of the tax authorities (second sub-ground).

Second ground of appeal: misapplication by the General Court of the principle of the protection of legitimate expectations.

Third ground of appeal: misapplication by the General Court of the principles applicable to the recovery of aid.

(1) EU:T:2020:434.
(2) OJ 2014 L 114, p. 1.

Request for a preliminary ruling from the Tribunal Judicial da Comarca do Porto Este — Penafiel — Juízo Trabalho (Portugal) lodged on 21 December 2020 — B v O, P, OP, G, N

(Case C-691/20)

(2021/C 110/16)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca do Porto Este — Penafiel — Juízo Trabalho

Parties to the main proceedings

Applicant: B

Defendants: O, P, OP, G, N

Question referred

Is it contrary to EU law, specifically Article 18 TFEU, to exclude from the application of the rules laid down in Article 334 of the Código de Trabalho (Employment Code) undertakings established in another Member State, in accordance with the rules laid down in Article 481(2) of the Código das sociedades comerciais (Code on commercial companies)?

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 22 December 2020 — Fenix International Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-695/20)

(2021/C 110/17)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Fenix International Limited

Defendant: Commissioners for Her Majesty's Revenue and Customs

Question referred

Is Article 9a of Council Implementing Regulation (EU) No 282/2011 ([1]) of 15 March 2011, inserted by Article 1(1)(c) of Council Implementing Regulation (EU) No 1042/2013 ([2]) of 7 October 2013, invalid on the basis that it goes beyond the implementing power or duty on the Council established by Article 397 of Council Directive 2006/112/EC ([3]) of 28 November 2006 insofar as it supplements and/or amends Article 28 of Directive 2006/112/EC?

([1]) Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ 2011, L 77, p. 1).
([2]) Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services (OJ 2013, L 284, p. 1).
([3]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006, L 347, p. 1).

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 21 December 2020 — B. v Dyrektor Izby Skarbowej w. W.

(Case C-696/20)

(2021/C 110/18)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant on a point of law: B.

Respondent in the appeal on a point of law: Dyrektor Izby Skarbowej w. W.

Question referred

Do Article 41 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) and the principles of proportionality and neutrality preclude the application, in a situation such as that at issue in the main proceedings, of a national provision such as Article 25(2) of the ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on Value Added Tax) to an intra-Community acquisition of goods by a taxable person

— if that acquisition has already been taxed in the territory of the Member State in which dispatch ends, by the persons acquiring the goods from that taxable person

— where it has been established that the taxable person's actions did not involve any tax fraud, but that they were the result of an incorrect designation of supplies in chain transactions and that that taxable person's Polish VAT identification number was provided for the purposes of a domestic rather than an intra-Community supply?

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

Reference for a preliminary ruling from High Court of Justice Business and Property Courts of England and Wales (United Kingdom) made on 22 December 2020 — London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain

(Case C-700/20)

(2021/C 110/19)

Language of the case: English

Referring court

High Court of Justice Business and Property Courts of England and Wales

Parties to the main proceedings

Applicant: London Steam-Ship Owners' Mutual Insurance Association Limited

Defendant: Kingdom of Spain

Questions referred

1. Given the nature of the issues which the national court is required to determine in deciding whether to enter judgment in the terms of an award under Section 66 of the Arbitration Act 1996, is a judgment granted pursuant to that provision capable of constituting a relevant 'judgment' of the Member State in which recognition is sought for the purposes of Article 34(3) of EC Regulation No 44/2001 ([1])?

2. Given that a judgment entered in the terms of an award, such as a judgment under Section 66 of the Arbitration Act 1996, is a judgment falling outside the material scope of Regulation No 44/2001 by reason of the Article l(2)(d) arbitration exception, is such a judgment capable of constituting a relevant 'judgment' of the Member State in which recognition is sought for the purposes of Article 34(3) of the Regulation?

3. On the hypothesis that Article 34(3) of Regulation No 44/2001 does not apply, if recognition and enforcement of a judgment of another Member State would be contrary to domestic public policy on the grounds that it would violate the principle of res judicata by reason of a prior domestic arbitration award or a prior judgment entered in the terms of the award granted by the court of the Member State in which recognition is sought, is it permissible to rely on Article 34(1) of Regulation No 44/2001 as a ground of refusing recognition or enforcement or do Articles 34(3) and (4) of the Regulation provide the exhaustive grounds by which res judicata and/or irreconcilability can prevent recognition and enforcement of a Regulation judgment?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001, L 12, p. 1)

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 29 December 2020 — Amoena Ltd v The Commissioners for Her Majesty's Revenue & Customs

(Case C-706/20)

(2021/C 110/20)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Amoena Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Are the terms 'them', 'they' and 'their' in paragraph 53 of the judgment ([1]) to be taken as referring to the brassieres or to the breast forms?

2. Does the second sentence of paragraph 53 suggest a test different to that identified in paragraph 51 of the Amoena Decision, and derived from the HS explanatory note to heading 8473, by requiring that the brassieres (i.e. the potential accessory) must allow the breast forms to perform a function other than that for which 'they' (presumably, the breast forms) are designed, or instead only intend to apply the test identified in paragraph 51, which requires the brassieres to perform a service relative to the main function of the breast form?

(1) C-677/18, Amoena, judgment of 19/12/2019 (ECLI:EU:C:2019:1142)

Reference for a preliminary ruling from Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) made on 30 December 2020 — Gallaher Limited v The Commissioners for Her Majesty's Revenue & Customs

(Case C-707/20)

(2021/C 110/21)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: Gallaher Limited

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Whether Article 63 TFEU can be relied upon in relation to domestic legislation such as the Group Transfer Rules, which applies only to groups of companies?

2. Even if Article 63 TFEU cannot more generally be relied upon in relation to the Group Transfer Rules, can it nonetheless be relied upon:

   a) in relation to movements of capital from a parent company resident in an EU member state to a Swiss resident subsidiary, where the parent company has 100 % shareholdings in both the Swiss resident subsidiary and the UK resident subsidiary on which the tax charge is imposed?

   b) in relation to a movement of capital by a wholly-owned subsidiary resident in the UK to a wholly-owned Swiss resident subsidiary of the same parent company resident in an EU member state, given that the two companies are sister companies and not in a parent-subsidiary relationship?

3. Whether legislation, such as the Group Transfer Rules, which imposes an immediate tax charge on a transfer of assets from a UK resident company to a sister company which is resident in Switzerland (and does not carry on a trade in the UK through a permanent establishment), where both of those companies are wholly-owned subsidiaries of a common parent company, which is resident in another member state, in circumstances where such a transfer would be made on a tax neutral basis if the sister company were also resident in the UK (or carried on a trade in the UK through a permanent establishment), constitutes a restriction on the freedom of establishment of the parent company in Article 49 TFEU or, if relevant, a restriction on the freedom to move capital in Article 63 TFEU?

4. Assuming Article 63 TFEU can be relied upon:

   a) was the transfer of the Brands and related assets by GL to JTISA, for a consideration which was intended to reflect the market value of the Brands, a movement of capital for the purposes of Article 63 TFEU?

   b) did the movements of capital by JTIH to JTISA, its Swiss resident subsidiary, constitute direct investments for the purposes of Article 64 TFEU?

c) given that Article 64 TFEU only applies to certain types of capital movement, can Article 64 apply in circumstances where movements of capital can be characterized as both direct investments (which are referred to in Article 64 TFEU) and also as another type of capital movement not referred to in Article 64 TFEU?

5. If there was a restriction then, it being common ground that the restriction was in principle justified on overriding grounds in the public interest (namely, the need to preserve the balanced allocation of taxing rights), was the restriction necessary and proportionate within the meaning of the case law of the CJEU, in particular in circumstances in which the taxpayer in question has realized proceeds for the disposal of the asset equal to the full market value of the asset?

6. If there was a breach of the freedom of establishment and/or of the right to free movement of capital:

a) does EU law require that the domestic legislation be interpreted or disapplied in a manner which provides GL with an option to defer the payment of tax;

b) if so does EU law require that the domestic legislation be interpreted or disapplied in a manner which provides GL with an option to defer the payment of tax until the assets are disposed of outside the sub-group of which the company resident in the other Member State is parent (i.e. 'on a realization basis') or is an option to pay tax in instalments (i.e. 'on an instalment basis') capable of providing a proportionate remedy;

c) if, in principle, an option to pay tax by instalments is capable of being a proportionate remedy:

i) is that only the case if domestic law contained the option at the time of the disposals of assets, or is it compatible with EU law for such an option to be provided by way of remedy after the event (namely for the national court to provide such an option after the event by applying a conforming construction or disapplying the legislation);

ii) does EU law require national courts to provide a remedy which interferes with the relevant EU law freedom to the least possible extent, or is it sufficient for the national courts to provide a remedy which, whilst proportionate, departs from the existing national law to the minimum extent possible;

iii) what period of instalments is necessary; and

iv) is a remedy involving an instalment plan in which payments fall due prior to the date on which the issues between the parties are finally determined in breach of EU law, i.e. must the instalment due dates be prospective?

Reference for a preliminary ruling from County Court at Birkenhead (United Kingdom) made on 30 December 2020 — BT v Seguros Catalana Occidente, EB

(Case C-708/20)

(2021/C 110/22)

Language of the case: English

Referring court

County Court at Birkenhead

Parties to the main proceedings

Applicant: BT

Defendants: Seguros Catalana Occidente, EB

Questions referred

(a) Is it a requirement of Article 13(3) of the Judgments Regulation (EC) No. 1215/2012 ([1]) that the cause of action on which the injured party relies in asserting a claim against the policy holder/insured involves a matter relating to insurance?

(b) If the answer to (a) is 'yes', is the fact that the claim which the injured party seeks to bring against the policy holder/insured arises out of the same facts as, and is being brought in the same action as the direct claim brought against the insurer sufficient to justify a conclusion that the injured party's claim is a matter relating to insurance even though the cause of action between the injured party and the policy holder/insured is unrelated to insurance?

(c) Further and alternatively, if the answer to (a) is 'yes', is the fact that there is a dispute between the insurer and injured party concerning the validity or effect of the insurance policy sufficient to justify a conclusion that the injured party's claim is a matter relating to insurance?

(d) If the answer to (a) is 'no', is it sufficient that the joining of the policy holder/insured to the direct action against the insurer is permitted by the law governing the direct action against the insurer?

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

Reference for a preliminary ruling from Appeal Tribunal for Northern Ireland (United Kingdom) made on 30 December 2020 — CG v Department for Communities in Northern Ireland

(Case C-709/20)

(2021/C 110/23)

Language of the case: English

Referring court

Appeal Tribunal (Northern Ireland)

Parties to the main proceedings

Applicant: CG

Defendant: Department for Communities in Northern Ireland

Questions referred

1. Is Regulation 9(3)(c)(i) of The Universal Credit Regulations (Northern Ireland) 2016 which was inserted by The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019), which excludes from entitlement to Social Security benefits EU nationals with a domestic right of residence (Limited Leave to Remain) [in this case 'pre-settled status' under the Appendix EU of the UK Immigration Rules] unlawfully discriminatory (either directly or Indirectly) pursuant to Article 18 of the Treaty on the Functioning of the European Union and inconsistent with the UK's obligations under the European Communities Act 1972?

2. If the answer to question 1 is in the affirmative, and Regulation 9(3)(c)(i) of The Universal Credit Regulations (Northern Ireland) 2016 is held to be indirectly discriminatory, is Regulation 9(3)(c)(i) of The Universal Credit Regulations (Northern Ireland) 2016 justified pursuant to Article 18 of the Treaty on the Functioning of the European Union and Inconsistent with the UK's obligations under the European Communities Act 1972?

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 31 December 2020 — RTL Television GmbH v Grupo Pestana S.G.P.S., S.A., SALVOR — Sociedade de Investimento Hoteleiro, S.A.

(Case C-716/20)

(2021/C 110/24)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: RTL Television GmbH

Defendants: Grupo Pestana S.G.P.S., S.A., SALVOR — Sociedade de Investimento Hoteleiro, S.A.

Questions referred

1. Must the concept of 'cable retransmission', as provided for in Article 1(3) of Council Directive 93/83/EEC of 27 September 1993, ([1]) be interpreted as meaning that it covers, in addition to the simultaneous transmission by one broadcasting organisation of a broadcast by another broadcasting organisation, the distribution to the public, on a simultaneous basis and entirely by cable, of a primary broadcast of television or radio programmes intended for reception by the public (whether or not the person performing that distribution to the public is a broadcasting organisation)?

2. Does the simultaneous distribution of the satellite broadcasts of a television channel, through television sets installed in hotel rooms, and by means of coaxial cable, constitute a retransmission of such broadcasts within the meaning of the concept provided for in Article 1(3) of Council Directive 93/83/EEC of 27 September 1993?

([1]) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

Appeal brought on 7 January 2021 by Federal Republic of Germany against the judgment of the General Court (Sixth Chamber) delivered on 28 October 2020 in Case T-594/18, Pharma Mar v Commission

(Case C-6/21 P)

(2021/C 110/25)

Language of the case: English

Parties

Appellant: Federal Republic of Germany (represented by: S. Heimerl, J. Möller, Agents)

Other parties to the proceedings: Pharma Mar, SA, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 28 October 2020 in Case T-594/18, Pharma Mar v Commission;

— uphold Commission Implementing Decision C(2018) 4831 final of 17 July 2018 refusing marketing authorisation under Regulation (EC) No 726/2004 ([1]) of the European Parliament and of the Council for 'Aplidin — plitidepsin', a medicinal product for human use and dismiss the action;

— in the alternative, refer the case back to the General Court; and

— order the applicant to bear the costs before the Court of Justice and the General Court.

Pleas in law and main arguments

The appellant considers that the General Court erred in law, first, by misinterpreting and misapplying Section 3.2.2. of the EMA policy on the handling of competing interests of 6 October 2016 ([2]) ('the EMA Policy'). In so doing, the General Court wrongly proceeded on the assumption that the university hospital where the two experts were employed was a pharmaceutical company within the meaning of Section 3.2.2. of the EMA policy.

Second, the court wrongly appraised the allocation of the burden of proof. In particular, it is erroneous to assume that it was for the Commission to adduce evidence proving that the cell therapy centre is a separate entity within the university hospital, and is therefore not under its control, in order to remove the doubt thus created. Rather, the applicant should have proved that the cell therapy centre is in fact under the control of the university hospital.

Third, the General Court erred in law by misinterpreting and misapplying Section 4.2.1.2. of the EMA policy on so-called rival products. On the one hand, the General Court erred in law in taking into account the activities of the second expert in relation to certain rival products and, on the other hand, it wrongly found, in the context of its erroneous appraisal of the evidence, that there are few, if any, alternative medicinal products for the treatment of multiple myeloma on the market.

Fourth, the General Court erred in law in failing to recognise that the second expert's participation in the Scientific Advisory Group for Oncology did not have a decisive impact on the conduct or outcome of the procedure.

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004, L 136, p. 1).

([2]) EMA, European Medicines Agency policy on the handling of competing interests of scientific committees' members and experts, 6 October 2016, EMA/626261/2014,Rev. 1.

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 18 January 2021 — Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL), Istituto nazionale della previdenza sociale (INPS) v Ryanair DAC

(Case C-33/21)

(2021/C 110/26)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellants: Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL), Istituto nazionale della previdenza sociale (INPS)

Respondent: Ryanair DAC

Question referred

Can the concept of a person 'employed principally in the territory of the Member State in which he resides' contained in Article 14(2)(a)(ii) [of Regulation (EEC) No 1408/71, ([1]) as amended] be interpreted in the same way as that which (concerning judicial cooperation in civil matters, jurisdiction and individual contracts of employment (Regulation (EC) No 44/2001) ([2])) Article 19(2)(a) [of the latter Regulation] defines as the 'place where the employee habitually carries out his work', including in the aviation and airline crew sector (Council Regulation (EEC) No 3922/91), ([3]) as expressed in the case-law of the Court of Justice of the European Union referred to in the grounds?

([1]) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2).

([2]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

([3]) Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation (OJ 1991 L 373, p. 4).

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 27 January 2021 — FCC Česká republika, s.r.o.

(Case C-43/21)

(2021/C 110/27)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Complainant in the appeal proceedings in cassation: FCC Česká republika, s.r.o.

Defendants in the appeal proceedings in cassation: Městská část Praha-Ďáblice, Spolek pro Ďáblice

Other party to the proceedings: Ministerstvo životního prostředí

Question referred

Should Article 3(9) of Directive 2010/75/EU ([1]) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) be interpreted such that a 'substantial change' of a plant includes an extension of the duration of waste disposal at a landfill without the maximum approved dimensions of the landfill or its total potential capacity changing at the same time?

([1]) OJ 2010 L 334, p. 17.

GENERAL COURT

Judgment of the General Court of 10 February 2021 — Şanli v Council

(Case T-585/18) ([1])

(Common foreign and security policy — Restrictive measures taken against certain persons and entities with a view to combating terrorism — Freezing of funds — List of persons, groups and entities subject to the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Action for annulment and compensation — Failure to comply with formal requirements — Article 76(d) of the Rules of Procedure — Inadmissibility)

(2021/C 110/28)

Language of the case: Dutch

Parties

Applicant: Dalokay Şanli (Rotterdam, Netherlands) (represented by: D. Gürses and J. M. Langenberg, lawyers)

Defendant: Council of the European Union (represented by: S. Van Overmeire and B. Driessen, acting as Agents)

Re:

First, action under Article 263 TFEU seeking annulment of Council Decision (CFSP) 2018/1084 of 30 July 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/475 (OJ 2018 L 194, p. 144), and of Council Implementing Regulation (EU) 2018/1071 of 30 July 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2018/468 (OJ 2018 L 194, p. 23), in so far as they concern the applicant and, second, action under Article 268 TFEU seeking compensation in respect of the harm suffered as a result of the unlawfulness of those measures.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Dalokay Şanli to pay the costs.

([1]) OJ C 436, 3.12.2018.

Judgment of the General Court of 10 February 2021 — Spadafora v Commission

(Case T-130/19) ([1])

(Civil service — Officials — Vacancy notice — Post of head of unit — Rejection of application — Middle managers — Principle of impartiality — Responsibility)

(2021/C 110/29)

Language of the case: Italian

Parties

Applicant: Sergio Spadafora (represented by: G. Belotti, lawyer)

Defendant: European Commission (represented by: B. Mongin and T. Bohr, acting as Agents, and by A. Dal Ferro, lawyer)

Intervener in support of the defendant: CC (represented by: S. Orlandi, lawyer)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of the European Anti-Fraud Office (OLAF) of 18 May 2018 appointing CC as head of the [*confidential*] unit of the [*confidential*] Directorate and, second, an order that the Commission pay compensation in respect of the material and non-material damage allegedly suffered by the applicant as a result of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Sergio Spadafora to bear his own costs and pay those incurred by the European Commission and CC.

(1) OJ C 139, 15.4.2019.

Judgment of the General Court of 10 February 2021 — Şanli v Council

(Case T-157/19) (1)

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — List of the persons, groups and entities subject to the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Obligation to state reasons)

(2021/C 110/30)

Language of the case: Dutch

Parties

Applicant: Dalokay Şanli (Rotterdam, Netherlands) (represented by: D. Gürses and J. M. Langenberg, lawyers)

Defendant: Council of the European Union (represented by: S. Van Overmeire and B. Driessen, acting as Agents)

Intervener in support of the defendant: Kingdom of the Netherlands (represented by: M. Bulterman, J. Langer and J. Hoogveld, acting as Agents)

Re:

First, application under Article 263 TFEU for annulment of Council Decision (CFSP) 2019/25 of 8 January 2019 amending and updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/1084 (OJ 2019 L 6, p. 6), and of Council Implementing Regulation (EU) 2019/24 of 8 January 2019 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2018/1071 (OJ 2019 L 6, p. 2) in so far as they concern the applicant and, second, application under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of those measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2019/25 of 8 January 2019 amending and updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/1084, and Council Implementing Regulation (EU) 2019/24 of 8 January 2019 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2018/1071, in so far as they concern Mr Dalokay Şanli;

2. Dismisses the action as to the remainder;

3. Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Şanli;

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

([1]) OJ C 172, 20.5.2019.

Judgment of the General Court of 10 February 2021 — Biochange Group v EUIPO — mysuperbrand (medical beauty research)

(Case T-98/20) ([1])

(EU trade mark — Invalidity proceedings — EU word mark medical beauty research — Absolute grounds for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Lack of distinctive character — Article 7(1)(b) of Regulation No 40/94 (now Article 7(1)(b) of Regulation 2017/1001) — Consideration of the facts — Article 95(1) of Regulation 2017/1001)

(2021/C 110/31)

Language of the case: German

Parties

Applicant: Biochange Group GmbH (Bad Schlema, Germany) (represented by: C. König, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: mysuperbrand GmbH, formerly Laubender GmbH (Vienna, Austria) (represented by: M. Woller, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 8 November 2019 (Case R 114/2019-2) relating to invalidity proceedings between Laubender and Biochange Group.

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 November 2019 (Case R 114/2019-2) as regards 'baby food' in Class 5 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended;

2. Dismisses the action as to the remainder;

3. Orders Biochange Group GmbH, EUIPO and mysuperbrand GmbH each to bear their own costs.

(1) OJ C 114, 6.4.2020.

Judgment of the General Court of 10 February 2021 — Bachmann v EUIPO (LIGHTYOGA)

(Case T-153/20) (1)

(EU trade mark — Application for EU word mark LIGHTYOGA — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2021/C 110/32)

Language of the case: German

Parties

Applicant: Gabriele Bachmann (Bad Grönenbach, Germany) (represented by: C. Weil, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 16 December 2019 (Case R 2346/2019 2), concerning an application for registration of the word sign LIGHTYOGA as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Gabriele Bachmann to pay the costs.

(1) OJ C 191, 8.6.2020.

Judgment of the General Court of 10 February 2021 — Bachmann v EUIPO (LICHTYOGA)

(Case T-157/20) (1)

(EU trade mark — Application for EU word mark LICHTYOGA — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2021/C 110/33)

Language of the case: German

Parties

Applicant: Gabriele Bachmann (Bad Grönenbach, Germany) (represented by: C. Weil, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 9 December 2019 (Case R 2317/2019-2), concerning an application for registration of the word sign LICHTYOGA as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Gabriele Bachmann to pay the costs.

(1) OJ C 191, 8.6.2020.

Judgment of the General Court of 10 February 2021 — EAB v EUIPO (RADIOSHUTTLE)

(Case T-341/20) (1)

(EU trade mark — Application for EU word mark RADIOSHUTTLE — Absolute ground for refusal — Not distinctive — Article 7(1)(b) of Regulation (EU) 2017/1001 — Restriction of the goods designated in the trade mark application)

(2021/C 110/34)

Language of the case: Swedish

Parties

Applicant: EAB AB (Smålandsstenar, Sweden) (represented by: J. Norderyd and C. Sundén lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 23 March 2020 (Case R 1428/2019-1) regarding an application for registration of the word mark RADIOSHUTTLE as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders EAB AB to pay the costs.

(1) OJ C 255, 3.8.2020.

Action brought on 21 December 2020 — PV v Commission

(Case T-89/20)

(2021/C 110/35)

Language of the case: French

Parties

Applicant: PV (represented by: D. Birkenmaier, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

accordingly:

— annul all these aspects of the second disciplinary procedure CMS 17/025, the revocation decision adopted by the tripartite appointing authority on 21 October 2019, and the rejection of complaint R/360/19 of 25 March 2020 brought under Article 90(2) of the Staff Regulations;

— annul the rejection of request for assistance D/456/19 of 12 December 2019 brought under Article 24 of the Staff Regulations and the rejection of complaint R/71/20 of 20 May 2020 brought under Article 90(2) of the Staff Regulations;

— annul the decision on deductions from salary of 15 September 2016 (Ref Ares(2016)5348994) and the rejection of complaint R/519/19 of 22 January 2020 brought under Article 90(2) of the Staff Regulations on the basis of the general principle of law '*fraus omnia corrompit*', since no time limit may apply thereto;

— annul the full factitious account of debts of 21 September 2016 (Ref Ares(2016)5486800) and the rejection of complaint R/537/19 of 29 January 2020 brought under Article 90(2) of the Staff Regulations, following delaying tactics and fraudulent misconduct, in accordance with the general principle of law '*fraus omnia corrompit*', since no time limit may apply thereto;

award the following compensation on the basis of Articles 268 and 340 TFEU:

— order compensation for non-material harm in the amount of EUR 146 000 and for material harm in the amount of EUR 359 481,29 flowing from those contested decisions, estimated to amount to a total of EUR 505 481,29, subject to reassessment, together with compensatory and default interest until the compensation is paid in full;

and in any event,

— order the defendant to pay all the costs, including those relating to legal aid.

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 infringement of Articles 1, 3 and 4, and Article 31(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), and of Article 1e(2) and Article 12a of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), in so far as those provisions prohibit psychological harassment and enshrine the right to be heard.

2. Second plea in law, alleging infringement of the Charter, of Article 9(3) of Annex IX to the Staff Regulations and of the principle of law '*ne bis in idem*'.

3. Third plea in law, alleging infringement of the general principle of law of the defence of non-performance and of the principle of legality.

4. Fourth plea in law, alleging infringement of Article 48(1) of the Charter and of the second paragraph of Article 3 of the 2019 GIPs for disciplinary matters on account of breach of the presumption of innocence.

5. Fifth plea in law, alleging criminal seizure of the disciplinary file CMS 17/025 by a Belgian investigating judge for 'forgery of public documents', with the result that the contested allegations of misconduct are no longer established in law.

6. Sixth plea in law, alleging absence of consent in respect of the new employment relationship following the first removal from post as from 26 July 2016 and re-engagement as from 16 September 2017, and infringement of Article 15 of the Charter.

7. Seventh plea in law, alleging infringement of Article 41 of the Charter and of Article 11a of the Staff Regulations concerning conflicts of interest, as well as infringement of the principles of impartiality and equality of arms.

8. Eighth plea in law, alleging infringement of Article 41(1) of the Charter and of the principle of sound administration by exceeding reasonable time limits for the disciplinary procedure CMS 17/025.

9. Ninth plea in law, alleging infringement of the general principle of law '*fraus omnia corrompit*' by using a false signature in the last decision on deductions from salary of 15 September 2016, thereby invalidating the factitious debt of EUR 58 837,20.

10. Tenth plea in law, alleging embezzlement, manifest fraud and fraudulent misconduct on the part of the PMO, as well as infringement of the principle of legality and legal certainty and of the general principle of law '*fraus omnia corrompit*'.

Action brought on 25 January 2021 — PO v Commission

(Case T-36/21)

(2021/C 110/36)

Language of the case: French

Parties

Applicant: PO (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Declare the present action admissible and well-founded;

Accordingly,

— annul the decision of 29 April 2020 informing the applicant that his request for review of the decision not to include his name on the 'reserve list' for External Competition EPSO/AD/338/17 had been rejected;

— in so far as necessary, annul the Commission's decision of 14 October 2020 rejecting the applicant's complaint;

— remedy the material and non-material damage suffered by the applicant;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 21 of the Charter of Fundamental Rights of the European Union (the 'Charter'), an infringement of Article 1d of the Staff Regulations of Officials of the European Union (the 'Regulations'), an infringement of Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16), an infringement of Article 2 of the United Nations Convention, an infringement of the principle of non-discrimination and a failure to provide reasonable accommodation;

2. Second plea in law, alleging a breach of the obligation to state reasons;

3. Third plea in law, alleging a breach of the duty to have regard for the welfare of staff.

Action brought on 25 January 2021 — PP and Others v Parliament

(Case T-39/21)

(2021/C 110/37)

Language of the case: French

Parties

Applicants: PP, PQ, PR, PS and PT (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded;

— annul the contested decisions;

— annul, in so far as necessary, the decisions rejecting the complaints made by applicants under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations');

— order the Parliament to pay compensation for non-material damage assessed *ex aequo et bono* at EUR 1 000 per person;

— order the Parliament to pay compensation for material damage corresponding to 25 % of their salary and pay compensatory interest and default interest;

— order the defendant to pay all of the costs.

Pleas in law and main arguments

In support of the action against the decision of the Parliament of 31 March 2020 relating to temporary part-time work away from the place of employment for family reasons relating to COVID-19 ('the decision on 75 % part-time work relating to COVID') and each individual decision in that respect affecting the applicants, the latter rely on four pleas in law.

1. First plea in law, relating to a plea of illegality in that the contested decisions were taken pursuant to unlawful internal rules.

2. Second plea in law, divided into two parts:

   — first part, alleging infringement of Article 4 of Annex VII to the Staff Regulations, and alleging a manifest error of assessment in that the defendant manifestly misconstrued the concept of expatriation;

   — second part, alleging infringement of Articles 62 and 69 of the Staff Regulations and infringement of the principles of legality and legal certainty.

3. Third plea in law, alleging infringement of the principle of equal treatment and non-discrimination, and failure to have due regard to the principle of sound administration and the duty to have regard for the welfare of officials.

4. Fourth plea in law, alleging infringement of Article 85 of the Staff Regulations regarding recovery of overpayments.

Finally, the applicants seek compensation for the non-material and material damage which they claim to have suffered as a result of the contested decisions.

Action brought on 5 February 2021 — Masterbuilders, Heiermann, Schmidtmann v EUIPO — Cirillo (POMODORO)

(Case T-76/21)

(2021/C 110/38)

Language of the case: English

Parties

Applicant: Masterbuilders, Heiermann, Schmidtmann GbR (Tübingen, Germany) (represented by: H. Hillers, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Francesco Cirillo (Berlin, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark POMODORO — European Union trade mark No 10 926 152

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 30 November 2020 in Case R 715/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the European Union trade mark (EUTM) proprietor's appeal of 17 April 2020 in its entirety;

— order EUIPO to pay the costs.

Pleas in law

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

— First plea in law, alleging that the defendant was not allowed to take into account the EUTM proprietor's statement of grounds and evidence for his appeal because the EUTM proprietor did not file his statement of grounds within the non-extendable time-limit of four months;

— Second plea in law, alleging that the new evidence is inadmissible according to Article 27(4) of the Commission Delegated Regulation (EU) 2017/1430;

— Third plea in law, alleging that the statement of grounds and the new evidence did not establish proof of genuine use.

Action brought on 3 February 2021 — Ryanair and AMS v Commission

(Case T-79/21)

(2021/C 110/39)

Language of the case: English

Parties

Applicants: Ryanair DAC (Swords, Ireland), Airport Marketing Services Ltd (AMS) (Dublin, Ireland) (represented by: E. Vahida, F.-C. Laprévote, V. Blanc, S. Rating, and I. Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the defendant's decision (EU) of 2 August 2019 on State aid SA.47867 2018/C (ex 2017/FC) *granted by France to Ryanair and Airport Marketing Services*; ([1]) and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant violated Articles 41 and 47 of the EU Charter of Fundamental Rights, the principle of good administration and the applicants' rights of defense.

2. Second plea in law, alleging that the defendant violated Article 107(1) TFEU and the obligation to state reasons by stating, in a *corrigendum* to the contested decision, that the market economy operator test was inapplicable after having found it applicable in a previous decision.

3. Third plea in law, alleging that the defendant violated Article 107(1) TFEU because the application in the contested decision of the 'real need' test was flawed.

4. Fourth plea in law, alleging that the defendant violated Article 107(1) TFEU because it erroneously disregards the Montpellier region and the airport's need for the marketing services.

5. Fifth plea in law, alleging that the defendant violated Article 107(1) TFEU because it failed to identify Montpellier airport as a beneficiary of aid.

6. Sixth plea in law, alleging that the defendant violated Article 107(1) TFEU because it failed to show selectivity.

([1]) OJ 2020 L 388, p. 1.

Action brought on 9 February 2021 — Jieyang Defa Industry v EUIPO — Mattel (Dolls' head)

(Case T-84/21)

(2021/C 110/40)

Language of the case: English

Parties

Applicant: Jieyang Defa Industry Co. Ltd (Jiedong, China) (represented by: C. Bercial Arias, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mattel, Inc. (El Segundo, California, United States)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 2 459 701-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 14 December 2020 in Case R 2021/2019-3

Form of order sought

The applicant claims that the Court should:

— upheld the appeal and annul the contested decision;

— order EUIPO and the intervener, if it was the case, to bear the costs incurred by the applicant before the General Court.

Plea in law

— Infringement of Article 25(1)(b) in conjunction with Articles 4 and 6 of Council Regulation (EC) No 6/2002.

Action brought on 8 February 2021 — Distintiva Solutions v EUIPO — Makeblock (Makeblock)

(Case T-86/21)

(2021/C 110/41)

Language of the case: English

Parties

Applicant: Distintiva Solutions S. Coop. Pequeña (Vitoria-Gasteiz, Spain) (represented by: M. J. Sanmartín Sanmartín, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark Makeblock — European Union trade mark No 12 249 488

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 November 2020 in Case R 988/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and pay the costs of the applicant.

Pleas in law

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

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

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

Action brought on 12 February 2021 — Condor Flugdienst v Commission

(Case T-87/21)

(2021/C 110/42)

Language of the case: English

Parties

Applicant: Condor Flugdienst GmbH (Kelsterbach, Germany) (represented by: A. Israel, J. Lang and M. Negro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant infringed its obligation to initiate the formal investigation procedure under Article 108(2) TFEU.

2. Second plea in law, alleging that the defendant committed a manifest error of assessment by holding that the aid to Lufthansa is compatible with the internal market under Article 107(3) (b) TFEU.

3. Third plea in law, alleging that the defendant failed to fulfil its duty to state reasons.

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

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN