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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Seventh Chamber) of 11 February 2021 (request for a preliminary ruling from the Monomeles Protodikeio Lasithiou — Greece) — M.V. and Others v Organismos Topikis Aftodioikisis (OTA) 'Dimos Agiou Nikolaou'

(Case C-760/18) [1]

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term employment concluded by ETUC, UNICE and CEEP — Clause 5 — Measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships — Fixed-term employment contracts in the public sector — Successive contracts or extended initial contract — Equivalent legal measure — Absolute constitutional prohibition on conversion of fixed-term employment contracts to contracts of indefinite duration — Obligation to interpret in conformity with EU law)

(2021/C 128/02)

Language of the case: Greek

Referring court

Monomeles Protodikeio Lasithiou

Parties to the main proceedings

Applicants: M.V. and Others

Defendant: Organismos Topikis Aftodioikisis (OTA) 'Dimos Agiou Nikolaou'

Operative part of the judgment

1. Clause 1 and Clause 5(2) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded;

2. Clause 5(1) of the framework agreement on fixed-term work must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion.

[1] OJ C 103, 18.3.2019.

Judgment of the Court (Second Chamber) of 10 February 2021 — RFA International LP v European Commission

(Case C-56/19 P) [1]

(Appeal — Dumping — Imports of ferro-silicon originating in Russia — Regulation (EC) No 1225/2009 — Article 11(9) and (10) — Rejection of applications for a refund of anti-dumping duties paid — Constructed export price — Assessment as to whether the anti-dumping duties have been reflected in the resale prices and subsequent selling prices in the European Union — Obligation to apply the same methodology as in the investigation which led to the imposition of the anti-dumping duty — Change in circumstances — Deduction of anti-dumping duties paid — Conclusive evidence)

(2021/C 128/03)

Language of the case: English

Parties

Appellant: RFA International LP (represented by: B. Evtimov, advokat, M. Krestiyanova and E. Borovikov, avocats, N. Tuominen, avocată, and D. O'Keeffe, Solicitor)

Other party to the proceedings: European Commission (represented by: J.-F. Brakeland, A. Demeneix and P. Němečková, and subsequently by J.-F. Brakeland and P. Němečková, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders RFA International LP to pay the costs.

[1] OJ C 155, 6.5.2019.

Judgment of the Court (Fourth Chamber) of 11 February 2021 (requests for a preliminary ruling from the Raad van State, Grondwettelijk Hof — Belgium) — Katoen Natie Bulk Terminals NV, General Services Antwerp NV (C-407/19), Middlegate Europe NV (C-471/19) v Belgische Staat (C-407/19), Ministerraad (C-471/19)

(Joined Cases C-407/19 and C-471/19) [1]

(Reference for a preliminary ruling — Article 45 TFEU — Freedom of movement for workers — Article 49 TFEU — Freedom of establishment — Article 56 TFEU — Freedom to provide services — Carrying out of port activities — Dockers — Access to the profession and recruitment — Arrangements for the recognition of dockers — Dockers not part of the quota of workers provided for in national legislation — Limitation of the duration of the work contract — Mobility of dockers between different port areas — Workers carrying out logistical work — Safety certificate — Overriding reasons in the public interest — Safety in port areas — Protection of workers — Proportionality)

(2021/C 128/04)

Language of the case: Dutch

Referring courts

Raad van State, Grondwettelijk Hof

Parties to the main proceedings

Applicants: Katoen Natie Bulk Terminals NV, General Services Antwerp NV (C-407/19), Middlegate Europe NV (C-471/19)

Defendants: Belgische Staat (C-407/19), Ministerraad (C-471/19)

Interested parties: Katoen Natie Bulk Terminals NV, General Services Antwerp NV, Koninklijk Verbond der Beheerders van Goederenstromen (KVBG) CVBA, MVH Logistics en Stuwadoring BV

Operative part of the judgment

1. Articles 49 and 56 TFEU must be interpreted as not precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area — including activities which, strictly speaking, are unrelated to the loading and unloading of ships — to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation, provided that those conditions and arrangements, first, are based on objective, non-discriminatory criteria known in advance and allow dockers from other Member States to prove that they satisfy, in their State of origin, requirements equivalent to those applied to national dockers and, second, do not establish a limited quota of workers eligible for such recognition.

2. Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:

   — the recognition of dockers falls to an administrative committee composed jointly of members designated by employers' organisations and by workers' organisations;

   — that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers, it being understood that, for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, such that a new recognition procedure must be initiated for each new employment contract that they conclude, and

   — no maximum period within which that committee must act is prescribed.

3. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:

   — be declared medically fit for port work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;

   — pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;

   — attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and

   — pass the final test,

   in so far as the role conferred on the employers' organisation and, as the case may be, on the recognised dockers' unions in the designation of the bodies responsible for conducting such examinations or tests is not such as to call into question the transparent, objective and impartial nature of those examinations or tests.

4. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation.

5. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a collective labour agreement, provided that those conditions and arrangements prove necessary and proportionate to the objective of ensuring safety in each port area, which is for the national court to determine.

6. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a collective labour agreement, provided that the conditions for the issue of such a certificate are necessary and proportionate to the objective of ensuring safety in port areas and the procedure prescribed for its obtainment does not impose unreasonable and disproportionate administrative burdens.

(1) OJ C 288, 26.8.2019.
OJ C 348, 14.10.2019.

Judgment of the Court (Sixth Chamber) of 11 February 2021 (request for a preliminary ruling from the Court of Appeal — Ireland) — Criminal proceedings against K. M.

(Case C-77/20) (1)

(Reference for a preliminary ruling — Common fisheries policy — Regulation (EC) No 1224/2009 — Control system for ensuring compliance with the rules of the common fisheries policy — Use on board a fishing vessel of equipment which is capable of automatically grading fish by size — Article 89 — Measures to ensure compliance — Article 90 — Criminal sanctions — Principle of proportionality)

(2021/C 128/05)

Language of the case: English

Referring court

Court of Appeal

Parties in the main proceedings

K. M.

Other party: Director of Public Prosecutions

Operative part of the judgment

Articles 89 and 90 of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, read in the light of the principle of proportionality enshrined in Article 49(3) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, subject to the verifications which it is for the referring court to carry out, they do not preclude a national provision which, to penalise a breach of Article 32 of Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, as amended by Regulation (EU) No 227/2013 of the European Parliament and of the Council of 13 March 2013, provides for not only the imposition of a fine but also the mandatory forfeiture of the catches and the prohibited or non-compliant fishing gear found on board the vessel concerned.

(1) OJ C 137, 27.4.2020.

Appeal brought on 31 July 2020 by AL against the judgment of the General Court (Eighth Chamber) delivered on 10 June 2020 in Case T-83/19 AL v Commission

(Case C-356/20 P)

(2021/C 128/06)

Language of the case: French

Parties

Appellant: AL (represented by: S. Rodrigues, A. Blot, avocats)

Other party to the proceedings: European Commission

By Order of 10 December 2020, the Court (Sixth Chamber) dismissed the appeal as manifestly unfounded.

Request for a preliminary ruling from the Nederlandstalige Ondernemingsrechtbank Brussel (Belgium) lodged on 26 October 2020 — Q, R, S v United Airlines, Inc.

(Case C-561/20)

(2021/C 128/07)

Language of the case: Dutch

Referring court

Nederlandstalige Ondernemingsrechtbank Brussel

Parties to the main proceedings

Applicants: Q, R, S

Defendant: United Airlines, Inc.

Questions referred

1. Should Article 3(1)(a) and Article 7 of Regulation (EC) No 261/2004 ([1]) 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, as interpreted by the Court of Justice, be interpreted as meaning that passengers are entitled to financial compensation from a non-Community air carrier when they arrive at their final destination with a delay of more than three hours as a result of a delay of the last flight, the place of departure and the place of arrival of which are both situated in the territory of a third country, without a stopover in the territory of a Member State, in a series of connecting flights commencing at an airport situated in the territory of a Member State, all of which have been physically operated by that non-Community air carrier and all of which have been reserved in a single booking by the passengers with a Community air carrier which has not physically operated any of those flights?

2. If the first question is answered in the affirmative, does 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, as interpreted in the first question, infringe international law and, in particular, the principle of the exclusive and complete sovereignty of a State over its territory and airspace, in making EU law applicable to a situation taking place within the territory of a third country?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Rechtbank Den Haag, sitting in Haarlem (Netherlands) lodged on 2 November 2020 — F, A, G, H, I v Staatssecretaris van Justitie en Veiligheid

(Case C-579/20)

(2021/C 128/08)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in Haarlem

Parties to the main proceedings

Applicants: F, A, G, H, I

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Is Article 15(c) of the Qualification Directive ([1]) intended to provide protection only in the exceptional situation where the degree of indiscriminate violence in a situation of international or internal armed conflict reaches such a high level that there are substantial grounds for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the threat referred to in that provision? And does that exceptional situation fall under the 'most extreme cases of general violence' referred to in the judgment in *N.A. v. United Kingdom*? ([2])

   If the first part of the first question is answered in the negative:

2. Should Article 15(c) of the Qualification Directive be interpreted as meaning that a lesser degree of indiscriminate violence than the aforementioned exceptional situation, in conjunction with an applicant's personal and individual circumstances, may also lead to there being substantial grounds for believing that an applicant who returns to the country or region concerned faces a risk of being subject to the threat referred to in that provision?

   If the second question is answered in the affirmative:

3. In that situation, should a sliding scale be used which differentiates between possible degrees of indiscriminate violence and the associated degree of individual circumstances? And what are the personal and individual circumstances that can play a role in the assessment by the determining authority and the national court or tribunal?

   If the first question is answered in the affirmative:

4. Is Article 15 of the Qualification Directive satisfied where an applicant who finds himself in a situation involving a lesser degree of indiscriminate violence than that of the exceptional situation referred to, and who is able to prove that he is specifically affected thereby (inter alia) for reasons relating to his personal circumstances, is granted subsidiary protection solely on the basis of Article 15(a) or (b) of the Qualification Directive?

([1]) 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 (OJ 2011 L 337, p. 9).

([2]) ECtHR, 17 July 2008, CE:ECHR:2008:0717JUDO02590407.

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Amsterdam (Netherlands) lodged on 24 November 2020 — E.K. v Staatssecretaris van Justitie en Veiligheid

(Case C-624/20)

(2021/C 128/09)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Amsterdam

Parties to the main proceedings

Applicant: E.K.

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Is it within the competence of the Member States to determine whether the right of residence on the basis of Article 20 TFEU is in itself of a temporary or a non-temporary nature, or should it be interpreted in conformity with Union law?

2. If interpretation must be in conformity with Union law, does a distinction [then] exist, when applying Directive 2003/109/EC, ([1]) between the various dependents' residence rights to which third-country nationals are entitled on the basis of Union law, including the dependent's right of residence granted to a family member of a Union citizen on the basis of the Residence Directive and the right of residence on the basis of Article 20 TFEU?

3. Is the right of residence on the basis of Article 20 TFEU, which by its nature depends on the existence [of] a relationship of dependency between the third-country national and the Union citizen and is therefore finite, of a temporary nature?

4. If the right of residence on the basis of Article 20 TFEU is of a temporary nature, must Article 3(2)(e) of the Directive [then] be interpreted as precluding national legislation which only excludes residence permits issued under national law from acquiring long-term residence status within the meaning of the Directive?

(1) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Appeal brought on 23 November 2020 by Arkadiusz Kaminski against the judgment of the General Court (Second Chamber) delivered on 23 September 2020 in Case T-677/19, Polfarmex v EUIPO — Kaminski

(Case C-626/20 P)

(2021/C 128/10)

Language of the case: English

Parties

Appellant: Arkadiusz Kaminski (represented by: E. Pijewska, M. Mazurek, W. Trybowski, radcowie prawni)

Other parties to the proceedings: European Union Intellectual Property Office, Polfarmex S.A

By order of 28 January 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Mr Arkadiusz Kaminski should bear his own costs.

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 7 December 2020 — European arrest warrant issued against X; other Party to the proceedings: Openbaar Ministerie

(Case C-665/20)

(2021/C 128/11)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

European arrest warrant issued against: X

Other Party to the proceedings: Openbaar Ministerie

Questions referred

1. Should Article 4(5) of Framework Decision 2002/584/JHA (1) be interpreted as meaning that, where a Member State chooses to transpose that provision into domestic law, the executing judicial authority must have a certain discretion as to whether or not it is appropriate to refuse to execute the EAW?

2. Should the concept of 'the same acts' in Article 4(5) of Framework Decision 2002/584/JHA be interpreted in the same way as in Article 3(2) of Framework Decision 2002/584/JHA and, if not, how should that concept be interpreted in the former provision?

3. Should the condition laid down in Article 4(5) of Framework Decision 2002/584/JHA that the 'sentence has been served … or may no longer be executed under the law of the sentencing country' be interpreted as covering a situation in which the requested person has been finally sentenced, for the same acts, to a custodial sentence that he or she has served in part in the sentencing country and the remainder of which has been remitted by a non-judicial authority of that country, as part of a general leniency measure that also applies to convicted persons who have committed serious acts, such as the requested person, and is not based on rational criminal policy considerations?

(1) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 10 December 2020 — Airbnb Ireland UC v Région de Bruxelles-Capitale

(Case C-674/20)

(2021/C 128/12)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicant: Airbnb Ireland UC

Defendant: Région de Bruxelles-Capitale

Questions referred

1. Must Article 1(5)(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (1) be interpreted as meaning that national legislation under which the providers of an intermediation service which, by means of an electronic platform, is intended to connect, for remuneration, potential guests with professional or non-professional hosts offering short-term accommodation are required to provide, on a written request by the tax authorities and on pain of being fined, 'the particulars of the operator and the details of the tourist accommodation establishments, and the number of overnight stays and of accommodation units operated during the year ended', with the aim of identifying persons liable for a regional tax on tourist accommodation establishments and their taxable income, falls within the 'field of taxation' and must, therefore, be regarded as excluded from the scope of that directive?

2. If the reply to the first question is in the affirmative, must Articles 1 to 3 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (2) be interpreted as meaning that that directive applies to national legislation such as that described in the first question referred? In the alternative, must Article 56 of the Treaty on the Functioning of the European Union be interpreted as applying to such legislation?

3. Must Article 15(2) of Directive 2000/31/EC be interpreted as applying to national legislation such as that described in the first question referred and as authorising such legislation?

(1) OJ 2000 L 178, p. 1.
(2) OJ 2006 L 376, p. 36.

Request for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 21 December 2020 — Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU v Vlaamse Regering

(Case C-694/20)

(2021/C 128/13)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU

Defendant: Vlaamse Regering

Question referred

Does Article 1(2) of Council Directive (EU) 2018/822 ([1]) of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements infringe the right to a fair trial as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union and the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union, in that the new Article 8ab(5) which it inserted in Council Directive 2011/16/EU ([2]) of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, provides that, where a Member State takes the necessary measures to give intermediaries the right to waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State, that Member State is obliged to require the intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer, of their reporting obligations, in so far as the effect of that obligation is to oblige a lawyer acting as an intermediary to share with another intermediary, not being his client, information which he obtains in the course of the essential activities of his profession, namely, representing or defending clients in legal proceedings and giving legal advice, even in the absence of pending legal proceedings?

([1]) OJ 2018 L 139, p. 1.
([2]) OJ 2011 L 64, p. 1.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 23 December 2020 — Staatssecretaris van Justitie en Veiligheid v C, B

(Case C-704/20)

(2021/C 128/14)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Staatssecretaris van Justitie en Veiligheid

Respondents: C, B

Question referred

Does European Union law, more particularly Article 15(2) of the Return Directive (2008/115/EC; OJ 2008 L 348) [1] and Article 9 of the Reception Directive (2013/33/EU; OJ 2013 L 180), [2] read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union (OJ 2007 C 303/01), require a court of its own motion (*ex officio*) to assess whether all the conditions pertaining to detention have been met, including those where the foreign national has not disputed that compliance occurred, despite having had the opportunity to do so?

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

[2] 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 (OJ 2013 L 180, p. 96).

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 24 December 2020 — GJ v Ryanair DAC

(Case C-712/20)

(2021/C 128/15)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: GJ

Defendant: Ryanair DAC

Question referred

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

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[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 Centrale Raad van Beroep (Netherlands) lodged on 24 December 2020 — Raad van bestuur van de Sociale verzekeringsbank, Y v X, Raad van bestuur van de Sociale verzekeringsbank

(Case C-713/20)

(2021/C 128/16)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Appellants: Raad van bestuur van de Sociale verzekeringsbank, Y

Respondents: X, Raad van bestuur van de Sociale verzekeringsbank

Questions referred

1. Must Article 11(3)(a) of Regulation (EC) No 883/2004 ([1]) be interpreted as meaning that a worker who resides in a Member State, and works in the territory of another Member State on the basis of a temporary agency contract, under which the employment relationship ends as soon as the temporary assignment ends and is then resumed again, remains subject to the legislation of the latter Member State during the intervening periods, so long as he has not temporarily ceased that work?

2. What factors are relevant for assessing whether or not there is a temporary cessation of activity in such cases?

3. How much time must elapse before a worker who is no longer in a contractual employment relationship is to be regarded as having temporarily ceased his activity in the country of employment, unless there are concrete indications to the contrary?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 29 December 2020 — Insolvency proceedings concerning the assets of Galapagos S.A.; other parties: DE, as insolvency administrator of Galapagos S.A., Galapagos BidCo. S.a.r.l, Hauck Aufhäuser Fund Services S.A. and Prime Capital S.A.

(Case C-723/20)

(2021/C 128/17)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Debtor: Galapagos S.A.

Other parties: DE, as insolvency administrator of Galapagos S.A., Galapagos BidCo. S.a.r.l., Hauck Aufhäuser Fund Services S.A., Prime Capital S.A.

Questions referred

1. Is Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings ([1]) ('the European Insolvency Regulation') to be interpreted as meaning that a debtor company the statutory seat of which is situated in a Member State does not have the centre of its main interests in a second Member State in which the place of its central administration is situated, as can be determined on the basis of objective factors ascertainable by third parties, in the case where, in circumstances such as those in the main proceedings, the debtor company has moved that place of central administration from a third Member State to the second Member State at a time when a request to have the main insolvency proceedings opened in respect of its assets has been lodged in the third Member State and a decision on that request has not yet been delivered?

2. If Question 1 is answered in the negative: Is Article 3(1) of the European Insolvency Regulation to be interpreted as meaning that:

   (a) the courts of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to have insolvency proceedings opened retain international jurisdiction to open those proceedings if the debtor moves the centre of its main interests to the territory of another Member State after lodging the request but before the decision opening insolvency proceedings is delivered, and

(b) such continuing international jurisdiction of the courts of one Member State excludes the jurisdiction of the courts of another Member State in respect of further requests to have the main insolvency proceedings opened received by a court of that other Member State after the debtor has moved its centre of main interests to that other Member State?

(1) OJ 2015 L 141, p. 19.

Request for a preliminary ruling from the Judecătoria Miercurea Ciuc (Romania) lodged on 4 January 2021 — Pricoforest SRL v Inspectoratul de Stat pentru Controlul în Transportul Rutier (ISCTR)

(Case C-13/21)

(2021/C 128/18)

Language of the case: Romanian

Referring court

Judecătoria Miercurea Ciuc

Parties to the main proceedings

Applicant: Pricoforest SRL

Defendant: Inspectoratul de Stat pentru Controlul în Transportul Rutier (ISCTR)

Questions referred

1. Is the concept of 'radius of up to 100 km' referred to in Article 13(1)(b) of Regulation No 561/2006 (1) to be interpreted as meaning that a straight line drawn on the map between the base of the undertaking and the destination must be less than 100 km or as meaning that the distance actually travelled by the vehicle must be less than 100 km?

2. Are the provisions of Article 13(1)(b) of Regulation No 561/2006 to be interpreted as meaning that the carrying out of transport operations within the scope of that provision, some of which remain within a radius of 100 km from the base of the undertaking and others of which exceed that radius, in a period of one month, in the context of the exemption of the situation referred to in Article 13(1)(b) of Regulation No 561/2006 from application of that regulation pursuant to a provision of national law, results in the exemption of all relevant transport operations from application of the regulation, or only those which [do not] […] exceed the radius of 100 km or none of them?

(1) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 12 January 2021 — Uniqa Versicherungen AG v VU

(Case C-18/21)

(2021/C 128/19)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Uniqa Versicherungen AG

Defendant: VU

Question referred

Are Articles 20 and 26 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ([1]) to be interpreted as meaning that those provisions preclude an interruption of the 30-day period for lodging a statement of opposition to a European order for payment, as provided for in Article 16(2) of that regulation, by Paragraph 1(1) of the Austrian Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz (Federal Law on accompanying measures for COVID-19 in the administration of justice), pursuant to which all procedural periods in proceedings in civil cases for which the event triggering the period occurs after 21 March 2020 or which have not yet expired by that date are to be interrupted until the end of 30 April 2020 and are to begin to run anew from 1 May 2020?

([1]) OJ 2006 L 399, p. 1.

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Haarlem (Netherlands) lodged on 13 January 2021 — I, S v Staatssecretaris van Justitie en Veiligheid

(Case C-19/21)

(2021/C 128/20)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Haarlem

Parties to the main proceedings

Applicants: I, S

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Must Article 27 of the Dublin Regulation ([1]) be interpreted as requiring the requested Member State, whether or not in conjunction with Article 47 of the Charter, to provide the applicant residing in the requesting Member State and seeking transfer pursuant to Article 8 (or Article 9 or 10) of the Dublin Regulation, or the applicant's family member referred to in Article 8, 9 or 10 of the Dublin Regulation, with an effective remedy before a court or tribunal against the refusal of the request to take charge?

2. If the answer to Question 1 is in the negative and Article 27 of the Dublin Regulation does not provide a basis for an effective remedy, must Article 47 of the Charter — read in conjunction with the fundamental right to family unity and the best interests of the child (as laid down in Articles 8 to 10 and recital 19 of the Dublin Regulation) — be interpreted as requiring the requested Member State to provide the applicant residing in the requesting Member State and seeking transfer pursuant to Articles 8 to 10 of the Dublin Regulation or the member of the applicant's family referred to in Articles 8 to 10 of the Dublin Regulation, with an effective remedy before a court or tribunal against the refusal of the request to take charge?

3. If Question 2 or Question 2 (second part) is answered in the affirmative, in what way and by which Member State should the requested Member State's decision to refuse the request and the right to appeal against it to be communicated to the applicant or the applicant's family member?

([1]) 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 (OJ 2013 L 180, p. 31).

Request for a preliminary ruling from the Gericht Erster Instanz Eupen (Belgium) lodged on 14 January 2021 — IO v Wallonische Region

(Case C-23/21)

(2021/C 128/21)

Language of the case: German

Referring court

Gericht Erster Instanz Eupen

Parties to the main proceedings

Applicant: IO

Defendant: Walloon Region

Questions referred

1. Does national legislation which, as applied by the Walloon Region, makes the use without any re-registration requirement of a foreign vehicle provided to a manager (or freelancer) who is resident in Belgium by an undertaking (with or without legal personality) established in an EU Member State other than Belgium contingent upon that manager (or freelancer) carrying in the vehicle an attestation of the undertaking (with or without legal personality) or evidence of engagement (that is, an attestation within the meaning of Article 3(2), point 6, of the Royal Decree of 20 July 2001), conflict with the relevant provisions of EU law, in particular Article 49 (freedom of establishment) and Article 56 (freedom to provide services) of the Treaty on the Functioning of the European Union (TFEU)?

2. Is the requirement that, in order to be able to use a company vehicle registered abroad and made available to him or her, a partner and manager living in Belgium must receive a salary or income from the undertaking, consistent with the relevant provisions of EU law and in particular Articles 49 (freedom of establishment) and 56 (freedom of movement of services) TFEU?

3. Is national legislation, as described above and applied by the Walloon Region, justified by requirements of public security or other protective measures and is compliance with the national legislation, interpreted as meaning that both evidence of engagement and an attestation of the provision of the vehicle must be carried in the vehicle, necessary in order to attain the objective pursued or could the objective have been attained by other, less strict and formalistic means?

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 22 January 2021 — Sense Visuele Communicatie en Handel vof (also trading under the name De Scharrelderij) v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-36/21)

(2021/C 128/22)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Appellant: Sense Visuele Communicatie en Handel vof (also trading under the name De Scharrelderij)

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Question referred

Does EU law preclude an assessment on the basis of the principle of the protection of legitimate expectations under national law of whether a national administrative body has created expectations contrary to a provision of EU law and has thus acted unlawfully under national law in failing to compensate the injured party for the damage suffered as a result, where the injured party cannot successfully invoke the principle of the protection of legitimate expectations under EU law because it involves an unambiguous provision of EU law?

Request for a preliminary ruling from the Landgericht Ravensburg (Germany) lodged on 22 January 2021 — VK v BMW Bank GmbH

(Case C-38/21)

(2021/C 128/23)

Language of the case: German

Referring court

Landgericht Ravensburg

Parties to the main proceedings

Applicant: VK

Defendant: BMW Bank GmbH

Questions referred

1. Statutory presumption in accordance with Article 247(6), second paragraph, third sentence, and Article 247(12), first paragraph, third sentence, of the Einführungsgesetz zum Bürgerlichen Gesetzbuche (Introductory Law to the German Civil Code, 'the EGBGB')

   (a) Inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive 2008/48/EC [1] satisfy the requirements of Article 247(6), second paragraph, first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12), first paragraph, second sentence, point 2(b), of the EGBGB, are Article 247(6), second paragraph, third sentence, and Article 247(12), first paragraph, third sentence, of the EGBGB incompatible with Article 10(2)(p) and Article 14(1) of Directive 2008/48/EC?

   If so:

   (b) Does it follow from EU law, in particular from Article 10(2)(p) and Article 14(1) of Directive 2008/48/EC, that, inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive 2008/48/EC satisfy the requirements of Article 247(6), second paragraph, first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12), first paragraph, second sentence, point 2(b), of the EGBGB, Article 247(6), second paragraph, third sentence, and Article 247(12), first paragraph, third sentence, of the EGBGB must be disapplied?

   If the answer to Question 1(b) is in the negative:

2. Mandatory information required under Article 10(2) of Directive 2008/48/EC

   (a) Is Article 10(2)(p) of Directive 2008/48/EC to be interpreted as meaning that the amount of interest payable per day, which must be specified in the credit agreement, must be calculated from the contractual borrowing rate specified in the agreement?

(b) Is Article 10(2)(l) of Directive 2008/48/EC to be interpreted as meaning that the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement must be specified as an absolute number or, at the very least, that the current reference interest rate (in this case, the base rate in accordance with Paragraph 247 of the Bürgerliches Gesetzbuch (German Civil Code, 'the BGB')), from which the interest rate applicable in the case of late payments is obtained by adding a premium (in this case, a premium of five percentage points in accordance with Paragraph 288(1), second sentence, of the BGB), must be specified as an absolute number, and must the consumer be informed of the reference interest rate (base rate) and the variability of that rate?

(c) Is Article 10(2)(t) of Directive 2008/48/EC to be interpreted as meaning that the essential formal requirements for a complaint and/or redress in the out-of-court complaint and/or redress procedure must be specified in the text of the credit agreement?

If at least one of the above Questions 2(a) to (c) is answered in the affirmative:

(d) Is Article 14(1), second sentence, point (b), of Directive 2008/48/EC to be interpreted as meaning that the period of withdrawal does not begin until the information required under Article 10(2) of Directive 2008/48/EC has been provided fully and correctly?

If not:

(e) What are the relevant criteria for determining whether the period of withdrawal is to begin in spite of the fact that that information is incomplete or incorrect?

If the above Question 1(a) and/or at least one of Questions 2(a) to (c) is answered in the affirmative:

3. Forfeiture of the right of withdrawal in accordance with Article 14(1), first sentence, of Directive 2008/48/EC:

(a) Is the right of withdrawal in accordance with Article 14(1), first sentence, of Directive 2008/48/EC subject to forfeiture?

If so:

(b) Is forfeiture a time limit on the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does forfeiture depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive 2008/48/EC and thus trigger the period of withdrawal preclude the application of the rules of forfeiture in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Grundgesetz (Basic Law)?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

4. Assumption of an abuse of the consumer's right of withdrawal under Article 14(1), first sentence, of Directive 2008/48/EC:

(a) Is it possible to abuse the right of withdrawal under Article 14(1), first sentence, of Directive 2008/48/EC?

If so:

(b) Is the assumption of an abuse of the right of withdrawal a limitation of the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does the assumption of an abuse of the right of withdrawal depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive 2008/48/EC and thus trigger the period of withdrawal preclude the assumption of an abuse of rights in the exercise of the right of withdrawal in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

([1]) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch (Netherlands) lodged on 26 January 2021 — X v Staatssecretaris van Justitie en Veiligheid

(Case C-39/21)

(2021/C 128/24)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats's-Hertogenbosch

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Having regard to Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 6 of the Charter and Article 53 of the Charter and in the light of Article 15(2)(b) of the Return Directive, ([1]) Article 9(3) of the Reception Directive ([2]) and Article 28(4) of the Dublin III Regulation, ([3]) are the Member States permitted to structure the judicial procedure for challenging the detention of a foreign national ordered by the authorities in such a way as to prohibit the courts from carrying out an ex officio review and assessment of all aspects of the lawfulness of the detention and, where a court finds of its own motion that the detention is unlawful, from ordering that the unlawful detention be ended and the foreign national released immediately? If the Court of Justice of the European Union finds that such national legislation is incompatible with EU law, does that then also mean that, if the foreign national applies to the court for his or her release, that court is always required to carry out an active and thorough ex officio review and assessment of all the facts and factors relevant to the lawfulness of the detention?

2. Having regard to Article 24(2) of the Charter, read in conjunction with Article 3(9) of the Return Directive, Article 21 of the Reception Directive and Article 6 of the Dublin III Regulation, does the answer to Question 1 differ if the foreign national detained by the authorities is a minor?

3. Does the right to an effective remedy guaranteed by Article 47 of the Charter, read in conjunction with Article 6 of the Charter and Article 53 of the Charter and in the light of Article 15(2)(b) of the Return Directive, Article 9(3) of the Reception Directive and Article 28(4) of the Dublin III Regulation, mean that, where a foreign national requests a court of any instance to end the detention and order his or her release, that court must give an adequate substantive statement of reasons for any decision on that request, if the remedy is otherwise structured in the same manner as it is in this Member State? If the Court of Justice considers a national legal practice in which the court of second, and therefore highest, instance may confine itself to ruling without giving any substantive reasons to be incompatible with EU law, having regard to the way in which the legal remedy is otherwise structured in this Member State, does that then mean that such a power for the court of second and therefore highest instance in asylum and ordinary immigration cases must also be regarded as being incompatible with EU law, in the light of the vulnerable position of the foreign national, the considerable importance of immigration procedures and the fact that, in contrast to all other administrative procedures, in terms of legal protection, those procedures contain the same weak procedural guarantees for the foreign national as the detention procedure? Having regard to Article 24(2) of the Charter, are the answers to these questions different if the foreign national challenging a decision of the authorities concerning matters of immigration law is a minor?

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

([2]) 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 (OJ 2013 L 180, p. 96).

([3]) 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 (OJ 2013 L 180, p. 31).

Request for a preliminary ruling from the Ustavno sodišče Republike Slovenije (Slovenia) lodged on 28 January 2021 — Banka Slovenije v Državni zbor Republike Slovenije

(Case C-45/21)

(2021/C 128/25)

Language of the case: Slovenian

Referring court

Ustavno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Banka Slovenije

Other party to the proceedings: Državni zbor Republike Slovenije

Questions referred

(a) Are Article 123 of the Treaty on the Functioning of the European Union and Article 21 of Protocol No 4 to be interpreted as prohibiting a national central bank that is a member of the European System of Central Banks from incurring liability to pay compensation from its own resources to former holders of financial instruments that have been cancelled by decision of the central bank in the exercise of its own statutory power to adopt extraordinary measures in the public interest in order to avert threats to the stability of the financial system, in the event that it transpires in the course of subsequent legal proceedings that, in the context of the cancellation of financial instruments, there was a failure to observe the principle that no holder of a financial instrument should, as a result of an extraordinary measure, be placed in a worse position than he would have been in had the measure not been adopted, where, in that context, the national central bank is liable (i) for loss that was foreseeable from the facts and circumstances obtaining at the time of the central bank's decision and of which the bank was aware or ought to have been aware, and (ii) for loss resulting from the conduct of individuals who acted in the exercise of such powers of the central bank and on instructions from it where, in that context, having regard to the facts and circumstances of which they were aware or ought to have been aware in accordance with the powers conferred, those individuals did not act with the diligence of a prudent expert?

(b) Are Article 123 of the Treaty on the Functioning of the European Union and Article 21 of Protocol No 4 to be interpreted as prohibiting a national central bank that is a member of the European System of Central Banks from paying special monetary compensation from its own resources to some of the former holders of financial instruments that have been cancelled (in accordance with the criterion of the asset situation) on account of the cancellation of instruments decided upon by the bank in the exercise of its own statutory power to adopt extraordinary measures in the public interest in order to avert threats to the stability of the financial system, where, in that context, entitlement to receive compensation arises from the mere fact of cancellation of the financial instrument, regardless of whether or not there has been a breach of the principle that no holder of a financial instrument should, as a result of an extraordinary measure, be placed in a worse position than he would have been in had that measure not been adopted?

(c) Are Article 130 of the Treaty on the Functioning of the European Union and Article 7 of Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank to be interpreted as meaning that a national central bank cannot be required to pay compensation for losses arising as a result of the exercise of its statutory powers in such sums as might impair the bank's ability to perform its own tasks effectively? In that context, are the legal conditions under which such liability is incurred relevant to establishing whether the principle of the financial independence of the national central bank has been infringed?

(d) Are Articles 53 to 62 of Directive 2013/36/EU ([1]) or Articles 44 to 52 of Directive 2006/48/EC, ([2]) which protect the confidentiality of confidential information received or generated in the context of the prudential supervision of banks, to be interpreted in the sense that those two directives also protect the confidentiality of information received or generated in the context of the implementation of measures the purpose of which was to rescue banks in order to ensure the stability of the financial system, where the threats to the solvency and liquidity of the banks could not be eliminated by means of normal prudential supervision measures and where such measures were regarded as reorganisation measures within the meaning of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions? ([3])

(e) In the event that Question (d) is answered in the affirmative, are Articles 53 to 62 of Directive 2013/36/EU or Articles 44 to 52 of Directive 2006/48/EC, which concern the protection of confidential information received or generated in the context of the prudential supervision of banks, to be interpreted as meaning that, for the purposes of the protection which they afford, the later directive, Directive 2013/36/EU, is relevant even with regard to information received or generated during the period when Directive 2006/48/EC was applicable, where such information is to be disclosed during the period when Directive 2013/36/EU is applicable?

(f) In the event that Question (d) is answered in the affirmative, is the first subparagraph of Article 53(1) of Directive 2013/36/EU (or the first subparagraph of Article 44(1) of Directive 2006/48/EC, depending on the answer to the preceding question) to be interpreted as meaning that information held by a national central bank in its capacity as supervisory body that has become public information subsequently to the time of its generation, or information which could constitute a professional secret but which is five or more years old and which, on account of the passage of time, is in principle regarded as historical information that is no longer confidential, is no longer confidential information to which the obligation of professional secrecy applies? In the case of historical information five or more years old, does the maintenance of confidentiality depend on whether confidentiality can be justified on grounds other than the commercial situation of the bank under supervision or that of other undertakings?

(g) In the event that Question (d) is answered in the affirmative, is the third subparagraph of Article 53(1) of Directive 2013/36/EU [or the third subparagraph of Article 44(1) of Directive 2006/48/EC, depending on the answer to Question (e)] to be interpreted as meaning that confidential documents which do not concern third parties involved in attempts to rescue a credit institution but which are legally relevant for the purposes of the court's decision in a civil damages action against the competent prudential supervisory body should automatically be disclosed, even prior to the commencement of legal proceedings, to all potential plaintiffs and their representatives, without there first being established a specific procedure for determining the lawfulness of the disclosure of each individual document to each individual or entity having standing, and without there first being any weighing of the interests at stake in each specific case? Does that apply even in the case of information concerning credit institutions which have not been declared bankrupt or are not being compulsorily wound up but which have received assistance from the State in the procedure in which financial instruments held by shareholders or subordinated creditors of the credit institution were cancelled?

(h) In the event that Question (d) is answered in the affirmative, is the second subparagraph of Article 53(1) of Directive 2013/36/EU [or the second subparagraph of Article 44(1) of Directive 2006/48/EC, depending on the answer to Question (e)] to be interpreted as permitting the publication on the Internet, in a manner accessible to all, of confidential documents or summaries of confidential documents which do not concern third parties involved in attempts to rescue a credit institution but which are legally relevant for the purposes of the court's decision in a civil damages action against the competent prudential supervisory body, in the event that those documents contain information concerning credit institutions which have not been declared bankrupt or are not being compulsorily wound up but which have received help from the State in a procedure in which financial instruments held by shareholders or subordinated creditors of the credit institution were cancelled, where provision is made for the redacting of all confidential information prior to publication on the Internet?

([1]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

([2]) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ 2006 L 177, p. 1).

([3]) OJ 2001 L 125, p. 15.

Request for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 28 January 2021 — Aktsiaselts M.V.WOOL v Põllumajandus- ja Toiduamet

(Case C-51/21)

(2021/C 128/26)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Aktsiaselts M.V.WOOL

Defendant: Põllumajandus- ja Toiduamet (formerly Veterinaar- ja Toiduamet)

Questions referred

1. Must the second microbiological criterion 'Absence in 25 g' set out in Article 3(1) of Regulation No 2073/2005 ([1]) and point 1.2 of the table in Chapter 1 of Annex I thereto be interpreted, having regard to that regulation, the protection of public health and the objectives pursued by Regulations No 178/2002 ([2]) and No 882/2004, ([3]) as meaning that in the case where the food business operator has been unable to demonstrate to the satisfaction of the competent authority that ready-to-eat foods able to support the growth of *L. monocytogenes*, other than those intended for infants and for special medical purposes, will not exceed the limit of 100 cfu/g during their shelf-life, the microbiological criterion 'Absence in 25 g' then also applies in any event to products placed on the market during their shelf-life?

2. If Question 1 is answered in the negative: Must the second microbiological criterion 'Absence in 25 g' set out in Article 3 (1) of Regulation No 2073/2005 and point 1.2 of the table in Chapter 1 of Annex I thereto be interpreted, having regard to that regulation, the protection of public health and the objectives pursued by Regulations No 178/2002 and No 882/2004, as meaning that, irrespective of whether the food business operator is able to demonstrate to the satisfaction of the competent authority that the food will not exceed the limit of 100 cfu/g during the shelf-life, two alternative microbiological criteria then apply to that food, namely (1) the criterion 'Absence in 25 g' while the food is under the control of the food business operator, and (2) the criterion '100 cfu/g' after the food has left the control of the food business operator?

([1]) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ 2005 L 338, p. 1).
([2]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).
([3]) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1).

Request for a preliminary ruling from the Cour d'appel de Liège (Belgium) lodged on 28 January 2021 — Pharmacie populaire — La Sauvegarde SCRL v État belge

(Case C-52/21)

(2021/C 128/27)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Appellant: Pharmacie populaire — La Sauvegarde SCRL

Respondent: État belge

Question referred

Is Article 56 of the Treaty on the Functioning of the European Union to be interpreted as precluding legislation, or a national practice, under which companies established in one Member State which use services of companies established in another Member State are required, in order to avoid a corporation tax levy of 100 % or 50 % of the sums invoiced by the latter, to complete and submit to the tax authorities individual fee forms and summary statements relating to those expenses whereas, if they use the services of resident companies, they are under no such obligation in order to avoid that levy?

Request for a preliminary ruling from the Cour d'appel de Liège (Belgium) lodged on 28 January 2021 — Pharma Santé — Réseau Solidaris SCRL v État belge — SPF Finances

(Case C-53/21)

(2021/C 128/28)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Appellant: Pharma Santé — Réseau Solidaris SCRL

Respondent: État belge — SPF Finances

Question referred

Is Article 56 of the Treaty on the Functioning of the European Union to be interpreted as precluding legislation, or a national practice, under which companies established in one Member State which use services of companies established in another Member State are required, in order to avoid a corporation tax levy of 100 % or 50 % of the sums invoiced by the latter, to complete and submit to the tax authorities individual fee forms and summary statements relating to those expenses whereas, if they use the services of resident companies, they are under no such obligation in order to avoid that levy?

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 28 January 2021 — Direktor na Agentsia 'Mitnitsi' v 'IMPERIAL TOBACCO BULGARIA' EOOD

(Case C-55/21)

(2021/C 128/29)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant in cassation: Direktor na Agentsia 'Mitnitsi'

Respondent in cassation: 'IMPERIAL TOBACCO BULGARIA' EOOD

Questions referred

1. Are Article 11 of Council Directive 2008/118/EC ([1]) of 16 December 2008 and Article 17(1)(b) of Council Directive 2011/64/EU ([2]) of 21 June 2011 to be interpreted as imposing on Member States an obligation to adopt rules for the reimbursement of excise duty, including on manufactured tobacco that has been released for consumption and destroyed under customs supervision?

2. If the first question is answered in the affirmative, can the persons concerned rely on the direct effect of the provisions of the directives and the principles of EU law where a Member State has failed to comply with its obligation to adopt such rules?

3. If the first two questions are answered in the affirmative, does the direct effect of the abovementioned provisions confer entitlement, on the basis of the facts established in the present case, to reimbursement of the excise duty paid on the basis solely of the request and without any further formal requirements?

(1) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).
(2) Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24).

Request for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės (Lithuania) lodged on 29 January 2021 — 'ARVI' ir ko UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-56/21)

(2021/C 128/30)

Language of the case: Lithuanian

Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės

Parties to the main proceedings

Applicant: 'ARVI' ir ko UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Questions referred

1. Is national legislation under which a VAT payer can have the right to opt to charge VAT in respect of VAT-exempt immovable property only if the property is transferred to a taxable person who has registered as a VAT payer as at the time of conclusion of the transaction compatible with the interpretation of Article 135 and Article 137 of the Directive (1) and the principles of fiscal neutrality and effectiveness?

2. If the answer to the first question is in the affirmative, is an interpretation of the provisions of national law that the supplier of immovable property must adjust the deduction of the VAT borne on the acquisition of the immovable property transferred, when he has opted to charge VAT in respect of the supply of the immovable property and such option is impossible under the national requirements owing to a single condition, that is to say, owing to the purchaser not having the status of registered VAT payer, consistent with the provisions of the Directive governing the supplier's right to deduct VAT and adjustment of the deduction and with the principles of neutrality of VAT and effectiveness?

3. Is an administrative practice under which, in circumstances such as those in the main proceedings, the supplier of immovable property is required to adjust the deduction of input tax on the acquisition/production of the immovable property, since the transaction for the sale of that property is regarded as a VAT-exempt supply of immovable property owing to the absence of a right to opt to charge VAT (the purchaser not having a VAT identification number at the time of conclusion of the transaction), although at the time of conclusion of the transaction the purchaser of the immovable property had applied for registration as a VAT payer, and was registered as a VAT payer one month after the conclusion of the transaction, consistent with the provisions of the Directive governing the supplier's right to deduct VAT and adjustment of the deduction and with the principle of neutrality of VAT? In such a case is it important to determine whether the purchaser of the immovable property who registered as a VAT payer after the transaction really used the acquired property in activities subject to VAT and there is no evidence of fraud or abuse?

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

Request for a preliminary ruling from the Cour administrative d'appel de Versailles (France) lodged on 2 February 2021 — JP v Ministre de la Transition écologique, Premier ministre

(Case C-61/21)

(2021/C 128/31)

Language of the case: French

Referring court

Cour administrative d'appel de Versailles

Parties to the main proceedings

Appellant: JP

Respondents: Ministre de la Transition écologique, Premier ministre

Questions referred

1. Must the applicable rules of EU law resulting from the provisions of Article 13(1) […] and of Article 23(1) […] of Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe [(OJ 2008 L 152 p. 1)] [1] be interpreted as entitling individuals, in the event of a sufficiently serious breach by an EU Member State of the obligations resulting from those rules, to claim compensation from the Member State concerned for damage to their health in cases where there is a direct and certain causal link with the deterioration in air quality?

2. On the assumption that the provisions referred to above may indeed give rise to such an entitlement to compensation for damage to health, to what conditions is that entitlement subject, in particular with regard to the date on which the existence of the failure attributable to the Member State concerned must be assessed?

[1] OJ 2008 L 152, p. 1.

Appeal brought on 2 February 2021 by SGL Carbon SE against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-639/18, SGL Carbon SE v Commission

(Case C-65/21 P)

(2021/C 128/32)

Language of the case: English

Parties

Appellant: SGL Carbon SE (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 ([1]) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.

Sixth plea in law, alleging that the General Court was wrong in law to conclude that the Commission's error could be excused by reference to the precautionary principle because it is settled case law that the principle cannot be invoked during the classification of a substance.

([1]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008, L 353, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 3 February 2021 — Iveco Orecchia SpA v APAM Esercizio SpA

(Case C-68/21)

(2021/C 128/33)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Iveco Orecchia SpA

Respondent: APAM Esercizio SpA

Questions referred

1. Is it compatible with EU law, and in particular with the provisions of Directive 2007/46/EC ([1]) (laid down in Articles 10, 19 and 28 of that directive) and the principles of equal treatment and impartiality, open competition and sound administration, for — with specific reference to the supply through public procurement of replacement parts for buses intended for public service — a contracting authority to be allowed to accept replacement parts intended for a particular vehicle, made by a manufacturer other than the vehicle manufacturer, and therefore not approved together with the vehicle, falling into one of the categories of components covered by the technical rules listed in Annex IV to that directive (List of requirements for the purpose of EC type-approval of vehicles) and put to tender without being accompanied by the type-approval certificate and without any information on the actual type-approval, and indeed on the assumption that type-approval is not needed, as only a declaration of equivalence to the type-approved original made by the tenderer is sufficient?

2. Is it compatible with EU law, and in particular Article 3(27) of Directive 2007/46/EC to allow — in relation to the supply through public procurement of replacement parts for buses intended for public service — an individual tenderer to describe itself as 'manufacturer' of a specific non-original replacement part intended for a particular vehicle, especially where it falls into one of the categories of components covered by the technical rules listed in Annex IV (List of requirements for the purpose of EC type-approval of vehicles) to Directive 2007/46/EC, or must that tenderer prove — for each of the replacement parts thus subject to tender and in order to certify their equivalence to the technical specifications of the tender — that it is the entity who is responsible to the approval authority for all aspects of the type-approval and for ensuring conformity of production and the related level of quality and is directly involved in at least some of the stages of the construction of the component which is the subject of the approval, and if so, by what means is such proof to be provided?

(1) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

Action brought on 3 February 2021 — European Commission v Hellenic Republic

(Case C-70/21)

(2021/C 128/34)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Konstantinidis and N. Noll-Ehlers, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court of Justice should

— declare that:

— by systematically and consistently exceeding the limit values for PM_{10} concentrations as regards the daily limit value since 2005 in the EL0004 conurbation of Thessaloniki, the Hellenic Republic has failed to fulfil its obligations under the combined provisions of Article 13 of and Annex XI to Directive 2008/50/EC; (1)

— by failing to adopt, from 11 June 2010, appropriate measures to ensure compliance with the limit values for PM_{10} concentrations in the EL0004 conurbation of Thessaloniki, the Hellenic Republic has failed to fulfil its obligations under Article 23(1) of Directive 2008/50/EC (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 take the appropriate measures to ensure that the duration of the exceedance of limit values is as short as possible;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

By its first plea in law, the Commission submits that Directive 2008/50/EC on ambient air quality and cleaner air for Europe requires that Member States limit the exposure of citizens to small particles known as particulate matter (PM_{10}). The Commission claims that since 2005, when compliance with daily and annual limit values for PM_{10} became mandatory (pursuant, initially, to Article 5(1) of Directive 1999/30/EC then to Article 13 of Directive 2008/50/EC), the Hellenic Republic, on the basis of its annual air quality reports, has failed consistently to ensure consistent compliance with daily limit values in the EL0004 conurbation of Thessaloniki.

By its second plea in law, the Commission claims that the second subparagraph of Article 23(1) of Directive 2008/50/EC imposes a clear and urgent obligation on Member States in the event that limit values are exceeded to adopt air quality plans setting out appropriate measures to ensure that the duration of any exceedance is as short as possible. The Commission submits that the Hellenic Republic failed to draw up an appropriate air quality plan in respect of the EL0004 conurbation of Thessaloniki, in breach of the obligation laid down in Article 23(1) of Directive 2008/50/EC.

(1) 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 (OJ 2008 L 152, p. 1).

Appeal brought on 3 February 2021 by Química del Nalón SA, formerly Industrial Química del Nalón SA against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-635/18, Industrial Química del Nalón SA v Commission

(Case C-73/21 P)

(2021/C 128/35)

Language of the case: English

Parties

Appellant: Química del Nalón SA, formerly Industrial Química del Nalón SA (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently, is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 (1) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.

Sixth plea in law, alleging that the General Court was wrong in law to conclude that the Commission's error could be excused by reference to the precautionary principle because it is settled case law that the principle cannot be invoked during the classification of a substance.

(1) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008, L 353, p. 1).

Appeal brought on 4 February 2021 by Deza a.s. against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-638/18, Deza a.s. v Commission

(Case C-74/21 P)

(2021/C 128/36)

Language of the case: English

Parties

Appellant: Deza a.s. (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently, is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 (1) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.

Sixth plea in law, alleging that the General Court was wrong in law to conclude that the Commission's error could be excused by reference to the precautionary principle because it is settled case law that the principle cannot be invoked during the classification of a substance.

(1) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008, L 353, p. 1).

Appeal brought on 3 February 2021 by Bilbaína de Alquitranes, SA against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-645/18, Bilbaína de Alquitranes SA v Commission

(Case C-75/21 P)

(2021/C 128/37)

Language of the case: English

Parties

Appellant: Bilbaína de Alquitranes, SA (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently, is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 (1) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.

Sixth plea in law, alleging that the General Court was wrong in law to conclude that the Commission's error could be excused by reference to the precautionary principle because it is settled case law that the principle cannot be invoked during the classification of a substance.

(1) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008, L 353, p. 1).

GENERAL COURT

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

(Case T-488/18) ([1])

(Civil service — Recruitment — Open competition EPSO/AD/338/17 — Decision of the selection board to exclude the applicant from the next phase of the competition — Principle of non-discrimination on the ground of disability — Access to documents — Refusal of access to the questions asked during a test — Secrecy of the selection board's proceedings — Regulation (EU) No 1049/2001 — Open competition EPSO/AD/356/18 — Reserve list — Action for annulment — No interest in bringing proceedings — Inadmissibility — Liability)

(2021/C 128/38)

Language of the case: Italian

Parties

Applicant: XC (represented by: C. Bottino, lawyer)

Defendant: European Commission (represented by: A. Spina and L. Vernier, acting as Agents, and by A. Dal Ferro, lawyer)

Re:

First, application based on Article 270 TFEU seeking annulment of the decision of the selection board of open competition EPSO/AD/338/17 of 4 December 2017 to exclude the applicant from the next phase of the competition, second application based on Article 263 TFEU seeking annulment of Commission Decision C(2018) 3969 of 19 June 2018 on access to documents, third, application based on Article 270 TFEU seeking annulment of the reserve list of open competition EPSO/AD/356/18, published on 22 May 2019, and, fourth, application based on Article 270 TFEU seeking compensation for various losses allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders XC to pay the costs.

([1]) OJ C 270, 12.8.2019.

Judgment of the General Court of 10 February 2021 — Santini and Others v Parliament

(Joined Cases T-345/19, T-346/19, T-364/19 to T-366/19, T-372/19 to T-375/19, and T-385/19) ([1])

(Institutional law — Single statute for Members of the European Parliament — Members of the European Parliament elected in Italian constituencies — Adoption by the Ufficio di Presidenza della Camera dei deputati (Office of the President of the Italian Chamber of Deputies, Italy) of Resolution No 14/2018, on pensions — Alteration of the amount of the pensions of Italian national Members of Parliament — Corresponding alteration by the European Parliament of the amount of the pensions of certain former Members of the European Parliament elected in Italy — Competence of the author of the act — Obligation to state reasons — Acquired rights — Legal certainty — Legitimate expectations — Right to property — Proportionality — Equal treatment — Non-contractual liability — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2021/C 128/39)

Language of the case: Italian

Parties

Applicants: Giacomo Santini (Trento, Italy) and the nine other applicants whose names are listed in the annex to the judgment (represented by: M. Paniz, lawyer)

Defendant: European Parliament (represented by: S. Seyr and S. Alves, acting as Agents)

Re:

First, application under Article 263 TFEU seeking annulment of the letters of 11 April 2019, as well as, in respect of the applicant in Case T-375/19, the letter of 8 May 2019, drawn up, in the case of each applicant, by the Parliament and concerning the adjustment of the amount of the pensions received by the applicants following the entry into force, on 1 January 2019, of Resolution No 14/2018 of the Ufficio di Presidenza della Camera dei deputati (Office of the President of the Italian Chamber of Deputies, Italy) and, secondly, application under Article 268 TFEU seeking compensation for the damage which the applicants claim to have suffered as a result of those measures.

Operative part of the judgment

The Court:

1. Dismisses the actions;

2. Orders Mr Giacomo Santini and the other applicants whose names are listed in the annex to bear their own costs and to pay the costs incurred by the European Parliament.

([1]) OJ C 263, 5.8.2019.

Judgment of the General Court of 10 February 2021 — Forte v Parliament

(Case T-519/19) ([1])

(Institutional law — Single statute for Members of the European Parliament — Members of the European Parliament elected in Italian constituencies — Adoption by the Ufficio di Presidenza della Camera dei deputati (Office of the President of the Italian Chamber of Deputies, Italy) of Decision No 14/2018, on pensions — Adjustment of the amount of pensions for Italian national deputies — Corresponding amendment by the European Parliament of the amount of the pensions of certain former Members of the European Parliament elected in Italy — Competence of the author of the act — Obligation to state reasons — Acquired rights — Legal certainty — Legitimate expectations — Right to property — Proportionality — Equal treatment)

(2021/C 128/40)

Language of the case: Italian

Parties

Applicant: Mario Forte (Naples, Italy) (represented by: C. Forte and G. Forte, lawyers)

Defendant: European Parliament (represented by: S. Seyr and S. Alves, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of the note of 11 June 2019 prepared by the Parliament relating to the adjustment of the amount of the pension received by the applicant upon the entry into force, on 1 January 2019, of Decision No 14/2018 of the Ufficio di Presidenza della Camera dei deputati.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Mario Forte to bear his own costs and to pay those incurred by the European Parliament.

([1]) OJ C 305, 9.9.2019.

Judgment of the General Court of 10 February 2021 — Sophia Group v Parliament

(Case T-578/19) ([1])

(Public service contracts — Tender procedure — Provision of assistance services for buildings — Rejection of a tenderer's offer — Award of the contract to another tenderer — Selection criteria — Award criteria — Most economically advantageous tender — Use of labels and certifications in the formulation of award criteria — Obligation to state reasons)

(2021/C 128/41)

Language of the case: French

Parties

Applicant: Sophia Group (Saint-Josse-ten-Noode, Belgium) (represented by: Y. Schneider and C.-H. de la Vallée Poussin, lawyers)

Defendant: European Parliament (represented by: L. Tapper Brandberg and B. Simon, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of the decision of the Parliament of 30 July 2019 to award Lot No 1 of the tender for the 'Provision of Buildings HelpDesk services' (Call for tenders 06A 0010/2019/M011) to another tenderer.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sophia Group to pay the costs, including those relating to the interim proceedings.

([1]) OJ C 363, 28.10.2019.

Judgment of the General Court of 10 February 2021 — Herlyn and Beck v EUIPO — Brillux (B.home)

(Case T-821/19) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark B.home — Earlier international word mark B-Wohnen — 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 128/42)

Language of the case: German

Parties

Applicants: Sonja Herlyn (Grünwald, Germany) and Christian Beck (Grünwald) (represented by: H. Hofmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Brillux GmbH & Co. KG (Münster, Germany) (represented by: R. Schiffer, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 24 September 2019 (Case R 373/2019-5), concerning opposition proceedings between, on the one hand, Brillux and, on the other hand, Ms Herlyn and Mr Beck.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ms Sonja Herlyn and Mr Christian Beck to pay the costs.

([1]) OJ C 27, 27.1.2020.

Judgment of the General Court of 10 February 2021 — El Corte Inglés v EUIPO — MKR Design (PANTHÉ)

(Case T-117/20) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark PANTHÉ — Earlier national word and figurative marks PANTHER and earlier EU figurative mark P PANTHER — 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) — Proof of genuine use of the earlier mark)

(2021/C 128/43)

Language of the case: English

Parties

Applicant: El Corte Inglés (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: MKR Design Srl (Milan, Italy) (represented by: G. Dragotti, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 5 December 2019 (Case R 378/2019-5), relating to opposition proceedings between El Corte Inglés and MKR Design.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders El Corte Inglés, SA, to pay the costs.

(1) OJ C 129, 20.4.2020.

Action brought on 29 December 2020 — Stockdale v Council and Others

(Case T-776/20)

(2021/C 128/44)

Language of the case: French

Parties

Applicant: Robert Stockdale (Bristol, United Kingdom) (represented by: N. de Montigny, lawyer)

Defendants: Council of the European Union, European Commission, European External Action Service, EU Special Representative in Bosnia and Herzegovina

Form of order sought

The applicant claims that the Court should:

principally:

— as to the dismissal decision, declare it unlawful;

— as to the rights arising from the private law contract:

  — reclassify the contractual relationship as a contract of employment of indefinite duration;

  — rule that the applicant was subject to discrimination as to the ground for dismissal relied on and order, in that respect, the defendants to pay EUR 10 000 in respect of psychological damage assessed *ex aequo et bono*;

  — declare that the defendants breached their contractual obligations and, in particular, of the obligation to serve valid prior notice in the context of the termination of a contract of indefinite duration;

  — rule that the applicant was subject to unequal and unlawful treatment and, consequently, order the defendants to reinstate him or, alternatively, to pay him compensation assessed on the basis of the loss of the benefit of the execution of the worker's contract if it had continued until its foreseeable end;

  — consequently, order the defendants to pay the applicant compensation for unfair dismissal to be determined in due course and provisionally set at EUR 393 850,08 *ex aequo et bono*;

  — order the defendants to pay interest on the abovementioned amounts;

— as to the other rights based on discriminatory treatment between the applicant and other EU servants:

  — declare that the applicant should have been recruited as a member of the temporary staff of one of the first three defendants and declare that the first three defendants treated the applicant in a discriminatory manner, without objective justification, concerning his remuneration, pension rights and related benefits, and the guarantee of subsequent employment;

— order the first three defendants to compensate the applicant for the loss of remuneration, pension, allowances and benefits caused by the infringements of EU law referred to in the present application;

— order them to pay him interest on those amounts;

— fix a time limit for the parties to set that allowance, taking account of the grade and step in which the applicant should have been recruited, the average increase in remuneration, the development of his career, the allowances which he should then have received under those temporary staff contracts, and compare the results obtained with the remuneration actually received by the applicant;

— order the defendants to pay the costs.

alternatively:

— order the institutions to compensate the applicant for non-contractual liability resulting from the failure to respect his fundamental rights in an amount provisionally set at EUR 400 000 *ex aequo et bono*.

Pleas in law and main arguments

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

1. First plea in law, based on the defendants' contractual liability and non-contractual liability for the following reasons:

   — infringement of the substantive law applicable to the applicant's contract;

   — discrimination in the decision to dismiss him on the basis of his nationality and unequal treatment in the dismissal procedure as a British national within the European Union, as well as infringement of the right to be heard;

   — abuse of rights in the successive use of fixed-term contracts and infringement of the principle of proportionality, as well as infringement of the principle of equal treatment and non-discrimination;

   — legal uncertainty and infringement of the right to good administration, infringement of the European Code of Good Administrative Behaviour and infringement of the right to free movement of workers.

2. Second plea in law, alleging the unlawfulness of the decision to dismiss the applicant. That plea is divided into two complaints.

   — First complaint, alleging infringement of the law applicable to his contract of employment (classification of the contract, rules on dismissal, unequal treatment in relation to other British staff working for the European Union, etc.). Alternatively, the applicant submits that the same principles, enshrined in European law instruments, are intended to apply in order to achieve the same results.

   — Second complaint, alleging the existence of discrimination between workers within the institutions, in particular having regard to the rights afforded to members of the temporary staff (non-payment of various allowances, pension fund contributions, reimbursement of expenses, etc.)

3. Third plea in law, alleging the existence of non-contractual liability on the part of the institutions of the European Union, raised by the applicant if his head of claims relating to the contractual liability of the defendants were to be regarded as inadmissible or unfounded.

Action brought on 17 January 2021 — VI v Commission

(Case T-20/21)

(2021/C 128/45)

Language of the case: English

Parties

Applicant: VI (represented by: G. Pandey, D. Rovetta and V. Villante, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 7 October 2020 of the European Personnel Selection Office (EPSO), received by the applicant on 7 October 2020, which rejected the applicant's complaint, lodged on 27 May 2020, including the rejection of applicant's request for EUR 50 000 compensation;

— annul the decision of 27 February 2020 of EPSO/Selection Board rejecting the applicant's request for review of the decision of the Selection Board not to admit her to the next phase of the competition;

— annul the decision of the EPSO/Selection Board of 26 June 2019 not to include the applicant in the reserve list for the purposes of the competition EPSO/AD/363/18 (AD7) — Administrators in the field of Customs;

— annul the notice of Open Competition EPSO/AD/363/18 — Administrators (AD 7) — Administrators in the field of Customs, published on 11 October 2018, ([1]) and in its entirety the reserve list and the names of the candidates placed on it as result of the aforementioned competition;

— order the defendant to pay compensation in the amount of EUR 70 000 for the damages incurred because of the above unlawful contested decisions;

— order the defendant 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 manifest error of assessment of the applicant's professional experience — The lack of review of a request under Article 90(1) Staff Regulations — Abuse of discretion by the Selection Board and breach of Article 27 of the Staff Regulations because of a manifestly inadequate selection of a member of the Board to interview the applicant — Improper review of answers provided to the questions by the applicant — Breach of the obligation to carry out a comparative and objective assessment of candidates, and breach of the principles of equal treatment and equal opportunity.

2. Second plea in law, alleging an improper review of answers provided by the applicant to the questions posed by a member of the Selection Board — Breach of Annex I point 1 and Annex II point 2 of the notice of competition — Manifest error of assessment of the answers provided by the applicant.

3. Third plea in law, alleging the breach of the duty to state reasons and of Article 296 TFEU.

4. Fourth plea in law, alleging a lack of stability in the composition of the selection board during the oral test of the competition — Lack of sufficient coordination measures implemented to ensure a consistent and objective assessment, equal opportunities and equal treatment of candidates.

5. Fifth plea in law, alleging the breach of Articles 1, 2, 3 and 4 of Regulation No 1 of 1958 ([2]) — Breach of Articles 1d and 28 of the Staff Regulations as well as of Article 1(1)(f) of Annex III thereto — Breach of the principles of equal treatment and non-discrimination.

([1]) OJ 2018 C 368A, p. 1.

([2]) Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition, Series I 1952-1958, p. 59), as lastly modified by Council Regulation (EU) No 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 1).

Action brought on 14 January 2021 — Equinoccio-Compañía de Comercio Exterior v Commission

(Case T-22/21)

(2021/C 128/46)

Language of the case: English

Parties

Applicant: Equinoccio-Compañía de Comercio Exterior, SL (Madrid, Spain) (represented by: D. Luff and R. Sciaudone, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's letter of 4 November 2020 (Ref. Ares(2020)6365704) relating to the liquidation of the financial guarantee invoked by the Turkish Ministry of Science, Industry and Technology — DG for EU and Foreign Affairs — Directorate of EU Financial Programmes;

— order the 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 infringement of the duty of care, impartiality, equality of arms and Article 78 of the Financial Regulation. ([1])

   — It is argued that the Commission did not verify the decision to liquidate the guarantee taken by the Turkish authorities. Indeed, the Commission asked the Turkish authorities to check the decision themselves. This conduct infringes Article 78 of the Financial Regulation read together with Articles 80, 81 and 82 of the Delegated Regulation. ([2]) According to these provisions, the EU authorising officer should personally check documents.

2. Second plea in law, alleging infringement of the duty to state reasons.

   — The applicant argues that the contested decision did not provide it with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect that may permit it to challenge its legality before the European Union judicature and, second, to enable that same judicature to review the legality of that act.

3. Third plea in law, alleging infringement of the right to be heard.

— It is argued that the applicant was not part of the administrative procedure that the Commission carried out to decide whether to instruct or not the European Delegation in Ankara to countersign the liquidation of the guarantee.

4. Fourth plea in law, alleging infringement of the principle of proportionality.

— The applicant argues that the Commission infringed the principle of proportionality by failing to balance the Contracting Authority's request and the sums owed to the applicant.

5. Fifth plea in law, alleging manifest error of assessment of the conditions to liquidate the guarantee.

— It is argued that the contested decision is vitiated by a manifest error of assessment of the conditions, all related to the alleged breach of the service contract, applicable to the liquidation of the guarantee.

([1]) Council Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

([2]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Action brought on 21 January 2021 — L'Oréal v EUIPO — Debonair Trading Internacional (SO COUTURE)

(Case T-30/21)

(2021/C 128/47)

Language of the case: English

Parties

Applicant: L'Oréal (Clichy, France) (represented by: M. Treis and E. Strobel, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Debonair Trading Internacional Lda (Funchal, Portugal)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark SO COUTURE — Application for registration No 12 194 015

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 3 November 2020 in Case R 158/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and any intervener to pay the costs of this appeal.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council when conducting the global assessment and assessing the likelihood of confusion.

Action brought on 21 January 2021 — PZ v Commission

(Case T-49/21)

(2021/C 128/48)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the 2019 appraisal report covering the period from 1 January to 31 December 2019, communicated to the applicant on 19 February 2020;

— together with, and so far as necessary, annul the decision of 23 October 2020 (notified to the applicant on 30 October 2020) rejecting the applicant's complaint of 26 June 2020 and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest errors of assessment by the defendant.

2. Second plea in law, alleging breach of the duty to state reasons by the defendant.

3. Third plea in law, alleging breach of his right to be heard.

4. Forth plea in law, alleging lack of independence of the appraisal officer.

Action brought on 25 January 2021 — ClientEarth v Commission

(Case T-52/21)

(2021/C 128/49)

Language of the case: English

Parties

Applicant: ClientEarth AISBL (Brussels, Belgium) (represented by: O. Brouwer, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the implied decision of the defendant of 16 November 2020 to refuse access to certain requested documents related to fisheries controls pursuant to Regulation (EC) No 1049/2001 ([1]) and Regulation (EC) No 1367/2006; ([2])

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that, as a result of the failure to address to the applicant an express decision regarding its request for access, within the time-limits for processing of confirmatory applications contained in Articles 8(1) and 8(2) of Regulation 1049/2001, the defendant impliedly refused access within the meaning of Article 8(3) thereof. It is argued that this implied refusal decision was unmotivated and the applicant therefore submits that it should be annulled because of the Commission's breach of its obligation to state reasons under Article 8(1) of Regulation 1049/2001, Article 41(2), third indent, of the Charter of Fundamental Rights of the European Union, and Article 296 TFEU.

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

(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 5 February 2021 — Mendes de Almeida v Council

(Case T-75/21)

(2021/C 128/50)

Language of the case: Portuguese

Parties

Applicant: Ana Carla Mendes de Almeida (Sobreda, Portugal) (represented by: R. Leandro Vasconcelos and M. Marques de Carvalho, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Council Implementing Decision 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office, in so far as it appoints to the position of European Prosecutor of the European Public Prosecutor's Office as a temporary agent at grade AD 13 for a non-renewable period of three years, from 29 July 2020, José Eduardo Moreira Alves d'Oliveira Guerra, candidate nominated by Portugal;

— order the Council of the European Union to pay both parties' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rules applicable to the appointment of European Prosecutors, which guarantee the principle of the independence of the European Public Prosecutor's Office. The applicant submits that the Portuguese Government's objection — by letter sent to the Council of the European Union on 29 November 2019 — to the ranking, drawn up by the selection panel referred to in Article 14(3) of Regulation (EU) 2017/1939, of the candidates submitted by the Government itself, indicating a different candidate preferred by it, and the approval thereof by the Council, call into question the rules for the process for appointing European Prosecutors. The purpose of those rules is to ensure the independence of the European Public Prosecutor's Office and of the European Prosecutors. The legitimacy of the European Prosecutors is drawn from the EU institutions involved in the appointment procedure, in particular the Council of the European Union, but also the European Parliament, not from the involvement of the national governments. The abovementioned letter of the Portuguese Government and its approval by the Council seriously call into question the independence, and therefore the credibility, of the European Public Prosecutor's Office and of the European Prosecutors.

2. Second plea in law, alleging a manifest error in the grounds on which the decision is based. The applicant submits, in particular, that the letter of 29 November 2019, sent by the Portuguese Government to the Council, contained two serious errors, acknowledged moreover by the Portuguese Government itself. These were the reference to the Portuguese Government's preferred candidate, on six occasions, as 'the deputy prosecutor general, José Guerra', and the statement that that prosecutor held an investigating and prosecuting role in an important case concerning crimes against the European Union's financial interests. However, the prosecutor appointed by the contested act neither was nor is deputy prosecutor general, nor did he participate in the aforementioned case at the investigation stage. While it is true that the Council denies that those two errors were of relevance to its decision, it is also true that it never referred to them and corrected them, despite accepting the remaining arguments put forward by the Portuguese Government in the letter. In fact, the Council only addressed the issue of the errors after the facts under consideration became public, giving rise moreover to a considerable public clamour, both in Portugal and in Europe.

3. Third plea in law, alleging misuse of powers. The applicant submits that the objectives in view of which the Council of the European Union was conferred competences, in the framework of the selection and appointment process for European Prosecutors, consist in ensuring the independence of the Office, as well as appointing the most qualified national candidates whose independence to perform their duties as European Prosecutors is beyond doubt. The intervention of the Portuguese Government and the action of the Council pursued, or at least resulted in, ends different from those invoked. The selection and subsequent appointment, by means of the contested act, of the Portuguese Prosecutor, do not necessarily contribute to the appointment of the most qualified national candidates whose independence to perform their duties as European Prosecutors is beyond doubt, to the detriment of the objectives stemming from the abovementioned regulations and decisions, thereby undermining the legitimacy of the prosecutors appointed and the credibility of the Office itself.

Action brought on 12 February 2021 — Darment v. Commission

(Case T-92/21)

(2021/C 128/51)

Language of the case: English

Parties

Applicant: Darment Oy (Helsinki, Finland) (represented by: C. Ginter, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision to reduce the quota allocated to the applicant for the year 2021 for the placing of hydrofluorocarbons on the market about which the applicant was informed via F-Gas Portal System of the defendant on 15 December 2020 and by the email of 12 January 2021;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant infringed Article 266 TFEU by imposing the penalty on the applicant even though the Court annulled the defendant's decision finding that the applicant exceeded in 2017 its quota for the placing of HFC on the market and imposing the penalty on it;

2. Second plea in law, alleging that the defendant infringed Article 25(2) of Regulation (EU) 517/2014, ([1]) in conjunction with Article 42 of the Charter of Fundamental Rights of the EU, by continuing to impose the Penalty to the applicant.

([1]) Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 Text with EEA relevance (OJ 2014 L 150, p. 195)

Action brought on 19 February 2021 — Boshab v Council

(Case T-103/21)

(2021/C 128/52)

Language of the case: French

Parties

Applicant: Évariste Boshab (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 6 in Annex II to that Decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 6 in Annex I to that Regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of his rights of defence. The applicant raises a number of complaints with regard to infringement of the rights of the defence during the proceedings which led the Council to adopt and renew the restrictive measures against him and alleges, in particular, infringement of his right to be heard under acceptable conditions.

2. Second plea in law, alleging manifest error of assessment, in that the Council found the applicant to be involved in acts constituting serious human rights breaches in the Democratic Republic of the Congo. The applicant criticises the context of the review which preceded the renewal of restrictive measures against him and disputes any current involvement in the events underpinning the decision to include him in the list of persons covered by Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP (OJ 2010 L 336, p. 30).

Action brought on 19 February 2021 — Kande Mupompa v Council

(Case T-104/21)

(2021/C 128/53)

Language of the case: French

Parties

Applicant: Alex Kande Mupompa (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 7 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 7 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 –Kanyama v Council

(Case T-105/21)

(2021/C 128/54)

Language of the case: French

Parties

Applicant: Célestin Kanyama (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 4 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 4 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 –Kazembe Musonda v Council

(Case T-106/21)

(2021/C 128/55)

Language of the case: French

Parties

Applicant: Jean-Claude Kazembe Musonda (Lubumbashi, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 8 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 8 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Amisi Kumba v Council

(Case T-107/21)

(2021/C 128/56)

Language of the case: French

Parties

Applicant: Gabriel Amisi Kumba (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 2 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 2 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Ilunga Luyoyo v Council

(Case T-108/21)

(2021/C 128/57)

Language of the case: French

Parties

Applicant: Ferdinand Ilunga Luyoyo (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as it continues to include the applicant as entry No 3 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as it continues to include the applicant as entry No 3 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are in essence identical or similar to those relied on in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Mutondo v Council

(Case T-109/21)

(2021/C 128/58)

Language of the case: French

Parties

Applicant: Kalev Mutondo (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 11 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 11 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Kampete v Council

(Case T-110/21)

(2021/C 128/59)

Language of the case: French

Parties

Applicant: Ilunga Kampete (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 1 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 1 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Numbi v Council

(Case T-112/21)

(2021/C 128/60)

Language of the case: French

Parties

Applicant: John Numbi (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 5 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 5 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Team Beverage v EUIPO (Beverage Analytics)

(Case T-113/21)

(2021/C 128/61)

Language of the case: German

Parties

Applicant: Team Beverage AG (Bremen, Germany) (represented by: O. Spieker, A. Schönfleisch and N. Willich, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark Beverage Analytics — Application for registration No 18 101 437

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 11 December 2020 in Case R 727/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismisses the appeal brought by the applicant against the defendant's decision of 21 February 2020;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 February 2021 — Growth Finance Plus v EUIPO (doglover)

(Case T-114/21)

(2021/C 128/62)

Language of the case: German

Parties

Applicant: Growth Finance Plus AG (Gommiswald, Switzerland) (represented by: H. Twelmeier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark doglover — Application for registration No 18 107 487

Contested decision: Decision of the First Board of Appeal of EUIPO of 26 November 2020 in Case R 720/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 20 February 2021 — Growth Finance Plus v EUIPO (catlover)

(Case T-115/21)

(2021/C 128/63)

Language of the case: German

Parties

Applicant: Growth Finance Plus AG (Gommiswald, Switzerland) (represented by: H. Twelmeier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark catlover — Application for registration No 18 107 485

Contested decision: Decision of the First Board of Appeal of EUIPO of 26 November 2020 in Case R 717/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 18 February 2021 — Deichmann v EUIPO — Munich (Device of two crossed stripes placed on the side of a shoe)

(Case T-117/21)

(2021/C 128/64)

Language of the case: English

Parties

Applicant: Deichmann SE (Essen, Germany) (represented by: C. Onken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Munich, SL (La Torre de Claramunt, Spain)

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 (Representation of two crossed stripes placed on the side of a shoe — European Union trade mark No 2 923 852

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 7 December 2020 in Case R 2882/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the EUIPO to bear the costs.

Pleas in law

— Infringement of the first sentence of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the second sentence of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 59(1)(a) in conjunction with Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 22 February 2021 — Cilem Records International v EUIPO — KVZ Music (HALIX RECORDS)

(Case T-118/21)

(2021/C 128/65)

Language in which the application was lodged: German

Parties

Applicant: Cilem Records International UG (Augsburg, Germany) (represented by: E. Hecht, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: KVZ Music Ltd (Sofia, Bulgaria)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for registration of EU word mark HALIX RECORDS — Application for registration No 16 288 235

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 January 2021 in Case R 1060/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision of 28 January 2021 and EUIPO's decision of 25 May 2020 concerning EU trade mark No 016288235 and allow the applicant's opposition to registration of EU trade mark No 16288235 of 17 April 2017;

— in the alternative, annul the contested decision of 28 January 2021 and refer the proceedings back to the Board of Appeal for reconsideration;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 19 February 2021 — Ramazani Shadary v Council

(Case T-119/21)

(2021/C 128/66)

Language of the case: French

Parties

Applicant: Emmanuel Ramazani Shadary (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 10 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 10 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

Action brought on 19 February 2021 — Ruhorimbere v Council

(Case T-120/21)

(2021/C 128/67)

Language of the case: French

Parties

Applicant: Éric Ruhorimbere (Mbuji-Mayi, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2020/2033 of 10 December 2020, in so far as the applicant remains at No 9 in the annex to that decision;

— annul Council Implementing Regulation (EU) 2020/2021 of 10 December 2020, in so far as the applicant remains at No 9 in the annex to that regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, which are, in essence, identical or similar to those raised in Case T-103/21, *Boshab* v *Council*.

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