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(2021/C 189/01)

Last publication

OJ C 182, 10.5.2021

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Past publications

OJ C 163, 3.5.2021

OJ C 148, 26.4.2021

OJ C 138, 19.4.2021

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Tenth Chamber) of 24 March 2021 (request for a preliminary ruling from the Symvoulio tis Epikrateias — Greece) — NAMA Symvouloi Michanikoi kai Meletites AE — LDK Symvouloi Michanikoi AE, NAMA Symvouloi Michanikoi kai Meletites AE, LDK Symvouloi Michanikoi AE v Archi Exetasis Prodikastikon Prosfigon (AEPP), Attiko Metro AE

(Case C-771/19) [1]

(Reference for a preliminary ruling — Procurement contracts in the water, energy, transport and telecommunications sectors — Directive 92/13/EEC — Review procedures — Pre-contractual stage — Assessment of bids — Rejection of a technical bid and acceptance of the bid of a competitor — Suspension of the implementation of that measure — Legitimate interest of the unsuccessful tenderer in challenging the legality of the bid of the successful tenderer)

(2021/C 189/02)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicants: NAMA Symvouloi Michanikoi kai Meletites AE — LDK Symvouloi Michanikoi AE, NAMA Symvouloi Michanikoi kai Meletites AE, LDK Symvouloi Michanikoi AE

Defendants: Archi Exetasis Prodikastikon Prosfigon (AEPP), Attiko Metro AE

Intervening parties: SALFO kai Synergates Anonymi Etairia Meletitikon Ypiresion Technikon Ergon — Grafeio Doxiadi Symvouloi gia Anaptyxi kai Oikistiki AE — TPF Getinsa Euroestudios SL, SALFO kai Synergates Anonymi Etairia Meletitikon Ypiresion Technikon Ergon, Grafeio Doxiadi Symvouloi gia Anaptyxi kai Oikistiki AE, TPF Getinsa Euroestudios SL

Operative part of the judgment

Article 1(1) and (3), Article 2(1)(a) and (b) and Article 2a(2) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, must be interpreted as meaning that a tenderer who has been excluded from a procurement procedure for the award of a public contract at a stage prior to the final contract award stage and whose request for suspension of the decision to exclude it from the procedure has been refused, may advance, in its request for suspension of the decision to admit the bid of another tenderer, introduced simultaneously, any plea based on the infringement of EU law concerning public procurement or of national rules

transposing that law, including pleas which have no connection with the shortcomings for which its own bid was excluded. That option is not affected by the fact that the application for an administrative review before an independent national authority, which must, under national law, first be brought by the tenderer against the decision to exclude it, has been rejected, provided that that rejection has not become definitive.

[1] OJ C 19, 20.1.2020.

Judgment of the Court (Tenth Chamber) of 24 March 2021 (requests for a preliminary ruling from the Corte suprema di cassazione — Italy) — Prefettura Ufficio territoriale del governo di Firenze v MI (C-870/19), TB (C-871/19)

(Joined Cases C-870/19 and C-871/19) [1]

(Reference for a preliminary ruling — Approximation of laws — Recording equipment in road transport — Regulation (EEC) No 3821/85 — Article 15(7) — Regulation (EC) No 561/2006 — Control proceedings — Administrative penalty — Failure to produce the record sheets for the tachograph relating to the current day and the previous 28 days — Single or multiple infringement)

(2021/C 189/03)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Prefettura Ufficio territoriale del governo di Firenze

Defendants: MI (C-870/19), TB (C-871/19)

Operative part of the judgment

Article 15(7) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, as amended by Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 and Article 19 of Regulation No 561/2006 must be interpreted as meaning that, should the driver of a road transport vehicle subject to an inspection fail to produce the record sheets of the recording equipment relating to several days of activity during the period covering the day of the inspection and the previous 28 days, the competent authorities of the Member State where the inspection was carried out must make a finding of a single infringement by that driver and impose on him or her only a single penalty for that infringement.

[1] OJ C 54, 17.2.2020.

Judgment of the Court (Fifth Chamber) of 24 March 2021 (request for a preliminary ruling from the Helsingin hallinto-oikeus — Finland) — Proceedings brought by A

(Case C-950/19) ([1])

(Reference for a preliminary ruling — Company law — Directive 2006/43/EC — Statutory audit of annual and consolidated accounts — Article 22a(1)(a) — Recruitment of a statutory auditor by an audited entity — Waiting period — Prohibition on taking up a key management post in the audited entity — Infringement — Gravity and duration of the infringement — Expression 'taking up a post' — Scope — Conclusion of an employment contract with the audited entity — Independence of statutory auditors — External appearance)

(2021/C 189/04)

Language of the case: Finnish

Referring court

Helsingin hallinto-oikeus

Parties to the main proceedings

A

Intervening party: Patentti- ja rekisterihallituksen tilintarkastuslautakunta

Operative part of the judgment

Article 22a(1)(a) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 must be interpreted as meaning that a statutory auditor, such as a key audit partner, appointed by an audit firm in the context of a statutory audit engagement, must be regarded as holding a key management position in an audited entity, within the meaning of that provision, as soon as he or she concludes an employment contract with the latter relating to that post, even if he or she has not yet begun to actually perform his or her duties in that post.

([1]) OJ C 77, 9.3.2020.

Judgment of the Court (Grand Chamber) of 23 March 2021 (request for a preliminary ruling from the Attunda tingsrätt — Sweden) — Airhelp Ltd v Scandinavian Airlines System SAS

(Case C-28/20) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Common rules on compensation and assistance to passengers in the event of cancellation or long delay of flights — Exemption from the obligation to pay compensation — Concept of 'extraordinary circumstances' — Pilots' strike organised within a legal framework — Circumstances that are 'internal' and 'external' to the operating air carrier's activity — Articles 16, 17 and 28 of the Charter of Fundamental Rights of the European Union — No impairment of the air carrier's freedom to conduct a business, right to property and right of negotiation)

(2021/C 189/05)

Language of the case: Swedish

Referring court

Attunda tingsrätt

Parties to the main proceedings

Applicant: Airhelp Ltd

Defendant: Scandinavian Airlines System SAS

Operative part of the judgment

Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that strike action which is entered into upon a call by a trade union of the staff of an operating air carrier, in compliance with the conditions laid down by national legislation, in particular the notice period imposed by it, which is intended to assert the demands of that carrier's workers and which is followed by a category of staff essential for operating a flight does not fall within the concept of an 'extraordinary circumstance' within the meaning of that provision.

(1) OJ C 85, 23.3.2020.

Judgment of the Court (Fifth Chamber) of 24 March 2021 (request for a preliminary ruling from the High Court of Justice) (England & Wales), Family Division — United Kingdom) — SS v MCP

(Case C-603/20 PPU) (1)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Article 10 — Jurisdiction in matters of parental responsibility — Abduction of a child — Jurisdiction of the courts of a Member State — Territorial scope — Removal of a child to a third State — Habitual residence acquired in that third State)

(2021/C 189/06)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Family Division

Parties to the main proceedings

Applicant: SS

Defendant: MCP

Operative part of the judgment

Article 10 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004, must be interpreted as meaning that it is not applicable to a situation where a finding is made that a child has, at the time when an application relating to parental responsibility is brought, acquired his or her habitual residence in a third State following abduction to that State. In that situation, the jurisdiction of the court seised will have to be determined in accordance with the applicable international conventions, or, in the absence of any such international convention, in accordance with Article 14 of that regulation.

(1) OJ C 28, 25.1.2021.

Request for a preliminary ruling from the Juzgado de lo Mercantil No 2 de Madrid (Spain) lodged on 15 January 2021 — ZA, AZ, BX, CV, DU and ET v Repsol Comercial de Productos Petrolíferos, S.A.

(Case C-25/21)

(2021/C 189/07)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 2 de Madrid

Parties to the main proceedings

Applicants: ZA, AZ, BX, CV, DU, ET

Defendant: Repsol Comercial de Productos Petrolíferos, S.A.

Questions referred

1. If the applicant establishes that its exclusive supply contract under a brand name (on a commission basis or an executed sale basis with a discounted reference resale price) with REPSOL falls within the territorial and temporal scope examined by the national competition authority, **must the contractual relationship be found to be covered by the decision of the Tribunal de Defensa de la Competencia (Competition Court, Spain) of 11 July 2001 (case 490/00 REPSOL) and/or by the decision of the Comisión Nacional de la Competencia (National Competition Commission, Spain) of 30 July 2009 (case 652/07 REPSOL/CEPSA/BP), the conditions laid down in Article 2 of Regulation (EC) No 1/2003** [1] **regarding the burden of proof of the infringement being deemed to be satisfied pursuant to those decisions?**

2. If the previous question is answered in the affirmative, and it is established in the specific case that the contractual relationship is covered by the decision of the Competition Court of 11 July 2001 (case 490/00 REPSOL) and/or the decision of the National Competition Commission of 30 July 2009 (case 652/07 REPSOL/CEPSA/BP), **must the necessary consequence be a declaration that the agreement is automatically void in accordance with Article 101(2) TFEU?**

[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Request for a preliminary ruling from the Landgericht Ravensburg (Germany) lodged on 28 January 2021 — F.F., B.A. v C. Bank AG, Bank D.K. AG

(Case C-47/21)

(2021/C 189/08)

Language of the case: German

Referring court

Landgericht Ravensburg

Parties to the main proceedings

Applicants: F.F., B.A.

Defendants: C. Bank AG, Bank D.K. AG

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?

   If so:

   (b) Does it follow from EU law, in particular from Article 10(2)(p) and Article 14(1) of Directive 2008/48, that, inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive 2008/48 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?

   Independently of the answers to Questions 1(a) and 1(b):

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

(a) Is Article 10(2)(p) of Directive 2008/48 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) Article 10(2)(r) of Directive 2008/48:

(aa) Is that provision to be interpreted as meaning that the information in the credit agreement concerning the compensation payable in the event of early repayment of the loan must be sufficiently precise to enable the consumer to calculate at least approximately the compensation payable in the event of early termination?

(should the previous question be answered in the affirmative)

(bb) Do Article 10(2)(r) and the second sentence of Article 14(1) of Directive 2008/48 preclude national legislation pursuant to which, in the case of incomplete information within the meaning of Article 10(2)(r) of that directive, the period for withdrawal nevertheless commences on conclusion of the agreement and only the creditor's right to compensation for early repayment of the credit is lost?

(c) Is Article 10(2)(l) of Directive 2008/48 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?

(d) Is Article 10(2)(t) of Directive 2008/48 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 2(d) is answered in the affirmative:

(e) Is Article 14(1), second sentence, point (b), of Directive 2008/48 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 has been provided fully and correctly?

If not:

(f) 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 2(d) is answered in the affirmative:

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

(a) Is the right of withdrawal in accordance with Article 14(1), first sentence, of Directive 2008/48 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 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:

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

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 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?

5. Irrespective of the answers to the above questions:

(a) Is it compatible with EU law, in particular with the right of withdrawal under Article 14(1), first sentence, of Directive 2008/48 if, under national law, in the case of a credit agreement linked to a contract of sale, following the effective exercise of the consumer's right of withdrawal under Article 14(1) of Directive 2008/48,

(aa) a consumer's claim against the creditor for repayment of the loan instalments paid does not arise until he or she has in turn returned the object purchased to the creditor or provided proof that he or she has dispatched it to the creditor?

(bb) an action brought by the consumer for repayment of the loan instalments paid by the consumer, after having returned the object purchased, is to be dismissed as currently unfounded if the creditor has not delayed in accepting the object purchased?

If not:

(b) Does it follow from EU law that the national rules described in (a)(aa) and/or (a)(bb) must be disapplied?

Irrespective of the answers to Questions 1 to 5 above:

6. Inasmuch as it also refers to orders for reference in accordance with the second paragraph of Article 267 TFEU, is Paragraph 348a(2), point 1, of the Zivilprozessordnung (German Code of Civil Procedure) incompatible with the right conferred on the national courts to request a preliminary ruling pursuant to the second paragraph of Article 267 TFEU and must it therefore be disapplied to orders for reference?

(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 Bundesgerichtshof (Germany) lodged on 2 February 2021 — Leinfelder Uhren München GmbH & Co. KG v E. Leinfelder GmbH, TL, SW, WL

(Case C-62/21)

(2021/C 189/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant in the appeal on a point of law: Leinfelder Uhren München GmbH & Co. KG

Defendants and respondents in the appeal on a point of law: E. Leinfelder GmbH, TL, SW, WL

Questions referred

1. Does the circumstance that an application for revocation of an EU trade mark on the grounds of non-use may be submitted by any natural or legal person and any body having the capacity to sue and be sued, as provided for in Article 56(1)(a) of Regulation No 207/2009 [1] and Article 63(1)(a) of Regulation 2017/1001, [2] lead to the ineffectiveness of a contractual agreement by which a third party undertakes vis-à-vis the proprietor of an EU trade mark not to file an application for the revocation of that EU trade mark on the grounds of non-use with the European Union Intellectual Property Office?

2. Does the circumstance that an application for revocation of an EU trade mark on the grounds of non-use may be submitted by any natural or legal person and any body having the capacity to sue and be sued, as provided for in Article 56(1)(a) of Regulation No 207/2009 and Article 63(1)(a) of Regulation 2017/1001, have the effect that a final judgment of a court of a Member State requiring the defendant to withdraw an application for the revocation of an EU trade mark on the grounds of non-use filed by him or her directly or via a person instructed by him or her is to be disregarded in revocation proceedings before the European Union Intellectual Property Office and the Courts of the European Union?

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).
(2) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León (Spain) lodged on 11 February 2021 — Gerencia Regional de Salud de Castilla y León v Delia

(Case C-86/21)

(2021/C 189/10)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla y León

Parties to the main proceedings

Appellant: Gerencia Regional de Salud de Castilla y León

Respondent: Delia

Questions referred

1. Do Article 45 TFEU and Article 7 of Regulation No [492]/2011 ([1]) preclude a national provision such as Article 6(2)(c) of Decree 43/2009 of 2 July 2009, which prohibits the recognition of periods of service in a particular occupational category in a public health service of another Member State of the European Union?

2. If the answer to question 1 is affirmative, could the recognition of periods of service in the public health system of a Member State be made conditional on the prior adoption of general approval criteria for the career systems of staff of the health services of Member States of the European Union?

([1]) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 25 February 2021 — X BV v Classic Coach Company vof, Y, Z

(Case C-112/21)

(2021/C 189/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X BV

Respondents: Classic Coach Company vof, Y, Z

Questions referred

1. For the purposes of determining whether there is an 'earlier right' of a third party as referred to in Article 6(2) of the repealed Directive 2008/95/EC ([1])

   (a) is it sufficient that, prior to the filing of the trade mark, that third party had made use in the course of trade of a right which is recognised by the laws of the Member State in question; or

   (b) is there a requirement that that third party, on the basis of that earlier right, under the applicable national legislation, is entitled to prohibit the use of the trade mark by the trade mark holder?

2. In answering Question 1, is it also relevant whether the trade mark holder has an even earlier right (recognised by the laws of the Member State in question) in relation to the sign registered as a trade mark and, if so, is it relevant whether the trade mark holder may, on the basis of that even earlier recognised right, prohibit the use by the third party of the alleged 'earlier right'?

(1) Directive of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 2 March 2021 — Proximus NV v Gegevensbeschermingsautoriteit

(Case C-129/21)

(2021/C 189/12)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellant: Proximus NV

Respondent: Gegevensbeschermingsautoriteit

Questions referred

1. Must Article 12[(2)] of Directive 2002/58, [1] read in conjunction with Article 2[(f)] thereof and Article 95 of the General Data Protection Regulation [2] be interpreted as permitting a national supervisory authority to require a subscriber's 'consent' within the meaning of the General Data Protection Regulation as the basis for the publication of the subscriber's personal data in public directories and directory enquiry services, published both by the operator itself and by third-party providers, in the absence of national legislation to the contrary?

2. Must the right to erasure contained in Article 17 of the General Data Protection Regulation be interpreted as precluding a national supervisory authority from categorising a request by a subscriber to be removed from public directories and directory enquiry services as a request for erasure within the meaning of Article 17 of the General Data Protection Regulation?

3. Must Article 24 and Article 5[(2)] of the General Data Protection Regulation be interpreted as precluding a national supervisory authority from concluding from the obligation of accountability laid down therein that the controller must take appropriate technical and organisational measures to inform third-party controllers, namely, the telephone service provider and other providers of directories and directory enquiry services which have received data from that first controller, of the withdrawal of the data subject's consent in accordance with Article 6 in conjunction with Article 7 of the General Data Protection Regulation?

4. Must Article 17[(2)] of the General Data Protection Regulation be interpreted as precluding a national supervisory authority from ordering a provider of public directories and directory enquiry services which has been requested to cease disclosing data relating to an individual to take reasonable steps to inform search engines of that request for erasure?

(1) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ 2002 L 201, p. 37).

(2) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Request for a preliminary ruling from the Tribunal Constitucional (Portugal) lodged on 3 March 2021 — Autoridade Tributária e Aduaneira v VectorImpacto — Automóveis Unipessoal Lda.

(Case C-136/21)

(2021/C 189/13)

Language of the case: Portuguese

Referring court

Tribunal Constitucional

Parties to the main proceedings

Appellant: Autoridade Tributária e Aduaneira

Respondent: VectorImpacto — Automóveis Unipessoal Lda

Question referred

Can Article 110 TFEU, either on its own or in conjunction with Article 191 TFEU, particularly paragraph 2 thereof, be interpreted as not precluding a rule of national law which fails to take account of the environmental component when applying reductions reflecting the average depreciation in the value of vehicles in the national market to the tax levied on second-hand vehicles with a permanent registration plate issued by other Member States of the European Union, thereby enabling the amount of tax calculated in accordance with this provision to be more than the tax levied on equivalent domestic second-hand vehicles?

Request for a preliminary ruling from the Tribunal d'arrondissement (Luxembourg) lodged on 8 March 2021 — Christian Louboutin v Amazon Europe Core Sàrl, Amazon EU Sàrl, Amazon Services Europe Sàrl

(Case C-148/21)

(2021/C 189/14)

Language of the case: French

Referring court

Tribunal d'arrondissement

Parties to the main proceedings

Applicant: Mr Christian Louboutin

Defendants: Amazon Europe Core Sàrl, Amazon EU Sàrl, Amazon Services Europe Sàrl

Questions referred

1. Is Article 9(2) of Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark [1] to be interpreted as meaning that the use of a sign identical with a trade mark in an advertisement displayed on a website is attributable to the website operator or to entities economically linked with it owing to the combination on that website of the operator's or its economically linked entities' own offers and those of third-party sellers, by the incorporation of those advertisements in the operator's or its economically linked entities own commercial communication?

   Is such incorporation strengthened by the fact that:

   — the advertisements are presented uniformly on the website?

— the operator's own advertisements and those of economically linked entities and the advertisements of third-party sellers are displayed without distinction as to their origin, but clearly display the logo of the operator or of economically linked entities, in the advertising categories of third-party websites in the form of 'pop-ups'?

— the operator or economically linked entities offer a comprehensive service to third-party sellers, including providing assistance in preparing the advertisements and setting selling prices, stocking the goods and shipping them?

— the website of the operator and economically linked entities is designed in such a way as to be presented in the form of shops and labels such as 'best sellers', 'most sought after' or 'most popular', without apparent distinction, at first sight, between the operator's and economically linked entities' own goods and third-party sellers' goods?

2. Is Article 9(2) of Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark to be interpreted as meaning that the use of a sign identical with a trade mark in an advertisement displayed on an online store is, in principle, attributable to its operator or to economically linked entities if, in the perception of a reasonably well informed and reasonably observant internet user, that operator or an economically linked entity has played an active role in the preparation of that advertisement or if that advertisement is perceived as forming part of that operator's own commercial communication?

Is such a perception influenced by:

— the fact that that operator and/or economically linked entities is a well-known distributor of a vast range of goods, including goods in the category of those featured in the advertisement; or

— the fact that the advertisement thus displayed shows a heading in which the service mark of that operator or economically linked entities is reproduced, that mark being well known as a distributor's mark; or

— the fact that that operator or economically linked entities offer, together with that display, services traditionally offered by distributors of goods in the same category as that to which the goods featured in the advertisement belongs?

3. Must Article 9(2) of Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark be interpreted as meaning that the shipment, in the course of trade and without the consent of the proprietor of a trade mark, to the final consumer of goods bearing a sign identical with the mark, constitutes use attributable to the shipper only if the shipper has actual knowledge that the sign has been affixed to the goods?

Is such a shipper the user of the sign concerned if the shipper itself or an economically linked entity has informed the final consumer that it will undertake the shipment after it or an economically linked entity has stocked the goods for that purpose?

Is such a shipper the user of the sign concerned if the shipper itself or an economically linked entity has previously made an active contribution to the display, in the course of trade, of an advertisement for the goods bearing that sign or has taken the final consumer's order on the basis of that advertisement?

(1) OJ 2017 L 154, p. 1.

Request for a preliminary ruling from the Tribunal Administratif (Luxembourg) lodged on 5 March 2021 — A, B and C, legally represented by his parents v Ministre de l'Immigration et de l'Asile

(Case C-153/21)

(2021/C 189/15)

Language of the case: French

Referring court

Tribunal Administratif

Parties to the main proceedings

Applicants: A, B and C, legally represented by his parents

Defendant: Ministre de l'Immigration et de l'Asile

Question referred

Can Article 33(2)(a) of Directive 2013/32/EU on common procedures for granting and withdrawing international protection, [1] read in conjunction with Article 23 of Directive 2011/95/EU 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, [2] and with Article 24 of the Charter of Fundamental Rights of the European Union, be interpreted as permitting a declaration of inadmissibility in respect of an application for international protection made by the parents of a minor, in the name and on behalf of that minor, in a Member State (in this case Luxembourg) other than that which has previously granted international protection to the parents, brothers and sisters of the child, but not to the child himself (in this case Greece), on the ground that the authorities of the country which granted international protection to the parents, brothers and sisters, prior to their departure from that country and prior to the birth of the child, have guaranteed that, on arrival of the child and return of the other family members, the child will be granted a residence permit and will have the same benefits available to him as are granted to beneficiaries of international protection, though without stating that he will be granted international protection in his own right?

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

Request for a preliminary ruling from the Administratīvā rajona tiesa (Latvia) lodged on 12 March 2021 — SIA BALTIJAS STARPTAUTISKĀ AKADĒMIJA v Latvijas Zinātnes padome

(Case C-164/21)

(2021/C 189/16)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: SIA BALTIJAS STARPTAUTISKĀ AKADĒMIJA

Defendant: Latvijas Zinātnes padome

Questions referred

1. Can a (private law) organisation which has various principal activities, including research, but most of whose revenue comes from providing educational services for consideration, be classed as an entity within the meaning of Article 2(83) of Regulation No 651/2014? [1]

2. Is it justified to apply a requirement regarding the proportion of financing (revenues and costs) obtained from economic and non-economic activities in order to determine whether the entity satisfies the requirement in Article 2(83) of Regulation No 651/2014 that the primary goal of the entity's activities must be to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer? If the answer is that it is justified, what would be an appropriate proportion of financing from economic and non-economic activities to use in determining the primary goal of the entity's activities?

3. Is it justified, pursuant to Article 2(83) of Regulation No 651/2014, to apply a requirement that the revenues obtained from the principal activity should be re-invested in the principal activities of the entity in question, and must other aspects be assessed in order to determine properly the primary goal of the activities of the institution submitting the project proposal? Would the use made of the revenues obtained (whether they are reinvested in the principal activities or, for example, in the case of a private founder, paid out as dividends to the shareholders) alter that assessment, even in a situation in which most of the revenues come from fees for educational services?

4. Is the legal status of the members of the institution submitting the project proposal — that is to say, whether it is a company formed under commercial law in order to carry on an economic activity (an activity for consideration) with the objective of making a profit [Article 1 of the Komerclikums (Commercial Code)] or whether its members or shareholders are natural or legal persons whose objective is to make a profit (including through the provision of educational services for consideration) or were founded for non-profit purposes (in the case of an association or foundation, for example) — decisive in determining whether the institution satisfies the definition in Article 2(83) of Regulation No 651/2014?

5. Are the proportion of domestic students and students from EU Member States as compared with the proportion of foreign students (from third States) and the fact that the goal of the principal activity pursued by the institution submitting the project proposal is to provide students with higher education and qualifications that are competitive in the international labour market in accordance with current international requirements (paragraph 5 of the applicant's statutes) decisive in assessing whether the activities of the institution submitting the project proposal are economic in nature?

([1]) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ 2014 L 187, p. 1).

GENERAL COURT

Judgment of the General Court of 24 February 2021 — Braesch and Others v Commission

(Case T-161/18) ([1])

(Action for annulment — State aid — Aid for the precautionary restructuring of Banca Monte dei Paschi di Siena — Preliminary examination stage — Decision declaring the aid compatible with the internal market — Plea of inadmissibility — Status as an interested party — Interest in bringing proceedings — Locus standi — Admissibility)

(2021/C 189/17)

Language of the case: English

Parties

Applicants: Anthony Braesch (Luxembourg, Luxembourg), Trinity Investments DAC (Dublin, Ireland), Bybrook Capital Master Fund LP (Grand Cayman, Cayman Islands), Bybrook Capital Hazelton Master Fund LP (Grand Cayman), Bybrook Capital Badminton Fund LP (Grand Cayman) (represented by: M. Siragusa, A. Champsaur, G. Faella and L. Prosperetti, lawyers)

Defendant: European Commission (represented by: K. Blanck and A. Bouchagiar, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Decision C(2017) 4690 final of 4 July 2017 on State Aid SA.47677 (2017/N) — Italy — New aid and amended restructuring plan of Banca Monte dei Paschi di Siena.

Operative part of the judgment

The Court:

1. Rejects the plea of inadmissibility;

2. Reserves the costs.

([1]) OJ C 190, 4.6.2018.

Judgment of the General Court of 10 March 2021 — AM v EIB

(Case T-134/19) ([1])

(Civil service — EIB staff — Remuneration — Admissibility — Time limit for submitting a request to initiate the conciliation procedure — Act adversely affecting an official — Geographical mobility allowance — Transfer to an external office — Refusal to grant the allowance — Action for annulment and for damages)

(2021/C 189/18)

Language of the case: French

Parties

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

Defendant: European Investment Bank (EIB) (represented by: G. Faedo and M. Loizou, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Application based on Article 270 TFEU and on Article 50a of the Statute of the Court of Justice of the European Union seeking, first, the annulment of the decisions of the EIB of 30 June and 11 December 2017 and, in so far as necessary, of the decision of the President of the EIB of 20 November 2018 confirming those decisions, by which it refused to grant the applicant the geographical mobility allowance and, second, compensation for the material and non-material damage allegedly suffered by the applicant further to those decisions.

Operative part of the judgment

The Court:

1. Annuls the decisions of the European Investment Bank (EIB) of 30 June and 11 December 2017 in so far as they refuse AM the geographical mobility allowance;

2. Dismisses the action as to the remainder;

3. Orders the EIB to bear its own costs and to pay those incurred by AM.

(1) OJ C 155, 6.5.2019.

Judgment of the General Court of 17 March 2021 — Alvargonzález Ramos v EUIPO — Ursus-3 Capital, A.V. (URSUS Kapital)

(Case T-114/20) (1)

(EU trade mark — Revocation proceedings — EU figurative mark URSUS Kapital — Genuine use of the mark — Partial revocation — Article 18(1) and Article 58(1)(a) of Regulation (EU) 2017/1001 — Proof of genuine use — Assessment of the evidence — Classification of the services)

(2021/C 189/19)

Language of the case: Spanish

Parties

Applicant: Pablo Erik Alvargonzález Ramos (Madrid, Spain) (represented by: E. Sugrañes Coca, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Ursus-3 Capital, A.V., SA (Madrid)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 10 December 2019 (Case R 711/2019-5), relating to revocation proceedings between Ursus-3 Capital, A.V. and Mr Alvargonzález Ramos.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Pablo Erik Alvargonzález Ramos to pay the costs.

(1) OJ C 129, 20.4.2020.

Action brought on 26 February 2021 — Swissgrid v Commission

(Case T-127/21)

(2021/C 189/20)

Language of the case: English

Parties

Applicant: Swissgrid AG (Aarau, Switzerland) (represented by: P. De Baere, P. L'Ecluse, K. T'Syen and V. Lefever, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

By its action, the applicant seeks the annulment of the decision of the Commission, contained in its letter of 17 December 2020, by which it informs the transmission system operators (TSOs) that the applicant is not qualified to participate in European platforms for the exchange of standard product for balancing energy, including the Trans European Replacement Reserves Exchange (TERRE), and orders the TERRE TSOs to exclude the applicant from the TERRE platform by 1 March 2020 at the latest. In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the contested decision incorrectly applies Article 1(6) of Commission Regulation (EU) 2017/2195 of 23 November 2017 ([1]).

   — The contested decision violates Article 1(6) of Regulation 2017/2195 in that it holds that, for the applicant to be able to participate in the European platforms for the exchange of standard products for balancing energy, the applicant's participation should be 'necessary' to remedy a system security problem resulting from unscheduled physical power flows, while the relevant criterion is whether the exclusion of Switzerland 'may lead to unscheduled physical power flows via Switzerland endangering the system security of the region'.

   — The contested decision violates Article 1(6) of Regulation (EU) 2017/2195 because it reads the alternative conditions of Article 1(6) of Regulation (EU) 2017/2195 as cumulative conditions.

2. Second plea in law, alleging that the contested decision incorrectly applies Article 1(7) of Regulation (EU) 2017/2195

   — The contested decision violates Article 1(7) of Regulation (EU) 2017/2195 because it reads the second sentence of Article 1(7) of Regulation (EU) 2017/2195 as requiring the conclusion of an intergovernmental agreement on electricity cooperation with the EU within the meaning of the first alternative condition under Article 1(6) of Regulation (EU) 2017/2195;

   — The contested decision breaches Article 1(7) of Regulation (EU) 2017/2195 because it is not properly based on the opinions given by ACER and by all transmission system operators (TSOs).

3. Third plea in law, alleging that the contested decision breaches Article 41(2)(a) of the Charter of Fundamental Rights of the European Union and the applicant's rights of defence, because the European Commission failed to consider and respond to the arguments put forward by the applicant in its letters to the European Commission of 29 September 2020 and 8 December 2020.

4. Fourth plea in law, alleging that the contested decision breaches Article 41(2) (c) of the Charter of Fundamental Rights of the European Union and Article 296 TFEU, because it (i) fails to give appropriate reasons for the European Commission decision to disregard the (a) arguments put forward by the applicant in its letters to the European Commission of 29 September 2020 and 8 December 2020, (b) all TSOs' opinion and (c) ACER opinion; and (ii) contains contradictory and inadequate reasoning.

[1] Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (Text with EEA relevance) (OJ 2017 L 312, p. 6-53)

Action brought on 19 March 2021 — Saure v Commission

(Case T-151/21)

(2021/C 189/21)

Language of the case: German

Parties

Applicant: Hans-Wilhelm Saure (Berlin, Germany) (represented by: C. Partsch, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 27 January 2021 refusing to grant the applicant's requested access to Commission documents through the issuing of copies of all Commission communications

a) with the company BioNTech SE,

b) with the Federal Chancellery, Germany, regarding the company BioNTech SE and its products,

c) with the German Federal Minister for Health regarding the purchasing of vaccines to combat the coronavirus pandemic,

from 1 April 2020 and in particular as regards the quantity of vaccines offered by BioNTech and their delivery times;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: The applicant claims that he is entitled to access the European Commission documents at issue in accordance with Article 2(1) of Regulation (EC) No 1049/2001. [1]

2. Second plea in law: The applicant submits that Article 4(2), point 1, of Regulation (EC) No 1049/2001 does not preclude the right of access to the information at issue. Disclosure of the information would not undermine the commercial interests of a natural or legal person. According to the applicant, the requested information does not contain any trade secrets within the meaning of Directive (EU) 2016/943. [2]

3. Third plea in law: The applicant claims that Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 does not preclude the right of access to the information at issue. According to the applicant, only the current decision-making process is protected by that provision. The object of the applicant's request for access to documents is, however, documentation concerning the defendant's negotiations on vaccine deliveries. The applicant claims that those negotiations have already been completed. There is, moreover, an overriding public interest in the disclosure of the information at issue, since the EU's vaccine procurement has been discussed and reported for weeks at European level.

(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) Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ 2016 L 157, p. 1).

Action brought on 23 March 2021 — Saure v Commission

(Case T-154/21)

(2021/C 189/22)

Language of the case: German

Parties

Applicant: Hans-Wilhelm Saure (Berlin, Germany) (represented by: C. Partsch, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision refusing to grant the applicant's request to access Commission documents, reference GestDem 2021/0592, through the issuing of copies of

all minutes, summaries, memoranda, notes, files from meetings, negotiations, decisions, proposals, transcripts, emails, letters, records of telephone calls — in particular regarding advance purchase agreements — and specific contracts with pharmaceutical companies for the delivery of COVID-19 vaccines to combat the COVID-19 pandemic drawn up by the 'Steering Committee' and 'Joint Negotiations Team'. By 'advance purchase agreements' we understand every contract for the purchase, delivery, securing, reservation, or development of COVID-19 vaccines for EU Member States.

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: The applicant claims that he is entitled to access the European Commission documents at issue in accordance with Article 2(1) of Regulation (EC) No 1049/2001. [1] The Commission's refusal to grant access infringes that provision.

2. Second plea in law: It is submitted that none of the grounds for exclusion set out in Regulation (EC) No 1049/2001 is applicable to the applicant's right of access. The Commission has not submitted any grounds for exclusion and none is apparent.

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

Action brought on 22 March 2021 — BZ v ECB

(Case T-162/21)

(2021/C 189/23)

Language of the case: English

Parties

Applicant: BZ (represented by: H. Tettenborn, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Executive Board dated 17 November 2020 and 12 January 2021 regarding the implementation of the judgment of 28 May 2020 in Case T-483/16 RENV, in so far as that decision fixes an (insufficient) compensation of only EUR 50 000 and imposes a duty of confidentiality on the applicant concerning the ECB letter of 12 January 2021;

— grant the applicant compensation of EUR 30 000 for the moral and immaterial damages suffered by the applicant as a result of the failure of the ECB to adequately implement the judgment of 28 May 2020 in Case T-483/16 RENV;

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

Pleas in law and main arguments

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

1. First plea in law, alleging the violation of Article 266 TFEU, including the failure to: (a) remedy the past effects of the annulled decisions; (b) compensate the applicant fairly for all the disadvantages/implications caused to her; (c) properly inform her with regard to the implementing decision of the Executive Board of 17 November 2020 or, at least, regarding the essential parts of that decision; and (d) allow her to share the ECB letter of 12 January 2021 inside and outside the ECB.

2. Second plea in law, alleging the breach of the principles of transparency and good administration and of Article 41 of the Charter of Fundamental Rights of the EU.

3. Third plea in law, alleging the breach of the duty of care, staff welfare and of Articles 21 and 31 of the Charter of Fundamental Rights of the EU.

4. Fourth plea in law, alleging the breach of the duty to provide reasons, together with the violation of Article 41 of the Charter of Fundamental Rights of the EU.

Action brought on 26 March 2021 — QM v Europol

(Case T-164/21)

(2021/C 189/24)

Language of the case: French

Parties

Applicant: QM (represented by: N. de Montigny, lawyer)

Defendant: European Union Agency for Law Enforcement Cooperation (Europol)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 27 May 2020 not to extend the applicant's contract for an indefinite duration;

— annul, to the extent necessary, in so far as it adds further reasoning, the decision of 18 December 2020 rejecting the complaint;

— 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 that the authority authorised to conclude contracts of employment ('AACC') erred in the application of the criteria for assessing the candidate for renewal and, more specifically, in the interpretation of the concept of 'foreseeable future needs' which, at the time the decision was adopted, had never been agreed upon or even established.

2. Second plea in law, alleging an infringement of the right to be heard in an effective manner before the decision adversely affecting a particular person is adopted.

3. Third plea in law, alleging a breach of the duty of sound administration and of the applicant's legitimate right to be assessed on the basis of the established skills required for the post. The applicant criticises the decision on the ground that it was adopted on the basis of prejudice and fear but without an effective examination of his skills.

4. Fourth plea in law, alleging a manifest error of assessment by the AACC in assessing the applicant's profile and skills.

5. Fifth plea in law, alleging a misuse of rights and breach of the duty of care.

Action brought on 29 March 2021 — Amort and Others v Commission

(Case T-165/21)

(2021/C 189/25)

Language of the case: German

Parties

Applicant: Heidi Amort (Jenesien, Italy) and 31 other applicants (represented by: R. Holzeisen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul the contested implementing decision as amended and supplemented.

Pleas in law and main arguments

The action against Commission Implementing Decision (C(2021) 698 final) of 29 January 2021 granting a conditional marketing authorisation under Regulation (EC) No 746/2004 of the European Parliament and of the Council relating to the medicinal product for human use 'COVID-10 Vaccine AstraZeneca — COVID-19 Vaccine (ChAdOx1-S [recombinant])' is based on the following pleas in law.

1. First plea in law: the contested implementing decision infringes Article 2(1) and (2) of Regulation (EC) No 507/2006. [1] It has been scientifically proved that the worldwide panic resulting from the high mortality rate allegedly associated with the SARS-CoV-2 infection is unfounded. In addition, the WHO and the EU should not have duly recognised the emergency situation as a public health threat.

2. Second plea in law: the contested implementing decision infringes Article 4 of Regulation (EC) No 507/2006 on account of:

   — the absence of a positive risk-benefit balance under Article 1(28a) of Directive 2001/83/EC; [2]

   — the absence of the requirement under Article 4(1)(b) of Regulation (EC) No 507/2006, as it is unlikely that the applicant will be in a position to provide the comprehensive clinical data;

   — the absence of the requirement under Article 4(1)(c) of Regulation (EC) No 507/2006, as there is no medical need that can be met by the authorised medication;

   — the absence of the requirement under Article 4(1)(d) of Regulation (EC) No 507/2006.

3. Third plea in law: infringement of Regulation (EC) No 1394/2007, [3] Directive 2001/83/EC and Regulation (EC) No 726/2004. [4]

4. Fourth plea in law: gross infringement of Articles 168 and 169 TFEU and of Articles 3, 35 and 38 of the EU Charter.

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(1) Commission Regulation (EC) No 507/2006 of 29 March 2006 on the conditional marketing autorisation for medicinal products for human use falling within the scope of Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ 2006 L 92, p. 6).
(2) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).
(3) Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ 2007 L 324, p. 121).
(4) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 29 March 2021 — Autorità di sistema portuale del Mare Ligure occidentale and Others v Commission

(Case T-166/21)

(2021/C 189/26)

Language of the case: Italian

Parties

Applicants: Autorità di sistema portuale del Mare Ligure occidentale and 15 other applicants (represented by: F. Munari, I. Perego, G. Roberti and S. Zunarelli, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Articles 1, 2, 3 and 4 of the Commission's decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought against Commission Decision C(2020) 8498 final of 4 December 2020 on aid scheme SA.38399 2019/C (ex 2018/E) implemented by Italy — Taxation of ports in Italy.

That decision classified as State aid the exemption, which is established for the port system authorities in Italy, from corporate income tax.

In support of the action, the applicants rely on the following arguments and pleas in law.

1. First plea in law, alleging that the decision is incorrect and infringes Article 107(1) TFEU in so far as it asserts that the Port System Authorities perform an economic activity under the terms identified by the Commission. The applicants claim in that regard that the Commission erred in considering itself entitled to transpose the criteria developed in the practice and case-law relating to the ports of other Member States or to other types of infrastructure, also infringing the general principles of equal treatment and sound administration.

2. Second plea in law, alleging that the decision is incorrect and infringes Article 107(1) TFEU in so far as the Commission misinterpreted the pleadings raised by Italy concerning the absence of a market, since that sector is not open to competition by virtue of a choice of the national legislature.

3. Third plea in law, alleging that the Commission infringed Article 345 TFEU and Articles 3, 7 and 121 TFEU, and also failed to observe multiple principles of EU law, since it failed to appreciate that the Treaty does not affect the right of Member States to maintain public ownership of port assets and infrastructure and to entrust and reserve the regulation and management thereof exclusively to infra-State bodies such as the Port System Authorities.

4. Fourth plea in law, alleging that the decision is incorrect and infringes Article 107(1) TFEU in so far as:

   — it considered that there was a transfer of State resources;

   — it regarded the taxation regime applicable to the Port System Authorities as selective; and

   — it regarded the taxation regime applicable to Italian ports as liable to distort competition and trade between Member States.

5. The decision is also vitiated by a failure to investigate and to state reasons.

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