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Information and Notices

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(2021/C 228/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 22 April 2021 — thyssenkrupp Electrical Steel GmbH, thyssenkrupp Electrical Steel Ugo v European Commission

(Case C-572/18 P) [1]

(Appeal — Customs union — Regulation (EU) No 952/2013 — Article 211(6) — Authorisation for inward processing of certain grain-oriented electrical steel products — Risk of adverse effect on the essential interests of EU producers — Examination of the economic conditions — Implementing Regulation (EU) 2015/2447 — Article 259 — European Commission's conclusion on the economic conditions — Article 263 TFEU — Act not open to challenge)

(2021/C 228/02)

Language of the case: English

Parties

Appellants: thyssenkrupp Electrical Steel GmbH, thyssenkrupp Electrical Steel Ugo (represented by: M. Günes and L.C. Heinisch, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: J.-F. Brakeland and F. Clotuche-Duvieusart, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal in Case C-572/18 P;

2. Orders thyssenkrupp Electrical Steel GmbH and thyssenkrupp Electrical Steel Ugo, in addition to bearing their own costs, to pay those incurred by the European Commission.

[1] OJ C 436, 3.12.2018.

Judgment of the Court (Second Chamber) of 22 April 2021 — Council of the European Union v Kurdistan Workers' Party (PKK), European Commission, United Kingdom of Great Britain and Northern Ireland

(Case C-46/19 P) ([1])

(Appeal — Common Foreign and Security Policy — Combating terrorism — Restrictive measures taken against certain persons and entities — Freezing of funds — Common Position 2001/931/CFSP — Article 1(3), (4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Retention of an organisation on the list of persons, groups and entities involved in terrorist acts — Conditions — Decision by a competent authority — Ongoing risk of involvement in terrorist activities — Factual basis of the decisions to freeze funds — Decision to review the national decision on which the initial inclusion was based — Obligation to state reasons)

(2021/C 228/03)

Language of the case: English

Parties

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

Other parties to the proceedings: Kurdistan Workers' Party (PKK) (represented by: A.M. van Eik and T.M.D. Buruma, advocaten), European Commission (represented by: R. Tricot, T. Ramopoulos and J. Norris, acting as Agents), and United Kingdom of Great Britain and Northern Ireland (represented: initially by S. Brandon, acting as Agent, and by P. Nevill, Barrister, and subsequently by F. Shibli and S. McCrory, acting as Agents, and by P. Nevill, Barrister)

Interveners in support of the appellant: French Republic (represented by: A.L. Desjonquères, B. Fodda and J.-L. Carré, acting as Agents) and Kingdom of the Netherlands (represented by: M.K. Bulterman and J. Langer, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside points 1 to 11, 13 and 14 of the operative part of the judgment of the General Court of the European Union of 15 November 2018, *PKK* v *Council* (T-316/14, EU:T:2018:788);

2. Refers the case back to the General Court of the European Union;

3. Reserves the costs.

([1]) OJ C 103, 18.3.2019.

Judgment of the Court (First Chamber) of 22 April 2021 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — LH v Profi Credit Slovakia s.r.o.

(Case C-485/19) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2008/48/EC — Credit agreements for consumers — Directive 93/13/EEC — Unfair contract terms — Payment made under an unlawful term — Unjust enrichment of the lender — Right to restitution time-barred — Principles of Union law — Principle of effectiveness — Article 10(2) of Directive 2008/48 — Information to be included in a credit agreement — Elimination of certain national requirements on the basis of the case-law of the Court — Interpretation of the old version of the national legislation in accordance with that case-law — Temporal effects)

(2021/C 228/04)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: LH

Defendant: Profi Credit Slovakia s.r.o.

Operative part of the judgment

1. The principle of effectiveness must be interpreted as precluding national legislation which provides that an action brought by a consumer for repayment of sums wrongly paid in connection with the performance of a credit agreement may not be brought on the basis of unfair terms, within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, or terms contrary to the requirements of 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, is subject to a limitation period of three years which begins to run from the day on which the unjust enrichment occurred;

2. Article 10(2) and Article 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), are applicable to a credit agreement which was entered into before that judgment was handed down and before the national legislation was amended in order to comply with the interpretation adopted in that judgment.

(1) OJ C 305, 9.9.2019.

Judgment of the Court (Fifth Chamber) of 22 April 2021 — European Commission v Republic of Austria

(Case C-537/19) (1)

(Failure of a Member State to fulfil obligations — Directive 2004/18/EC — Public works contracts — Contract between a public body and a private undertaking for the lease of building not yet constructed — Article 1 — Realisation of a work corresponding to requirements specified by the tenant — Article 16 — Precluded)

(2021/C 228/05)

Language of the case: German

Parties

Applicant: European Commission (represented by: L. Haasbeek, M. Noll-Ehlers and P. Ondrůšek, acting as Agents)

Defendant: Republic of Austria (represented: initially by M. Fruhmann, and subsequently by J. Schmoll, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the European Commission to pay the costs.

(1) OJ C 295, 2.9.2019.

Judgment of the Court (First Chamber) of 22 April 2021 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — J.K. v Dyrektor Izby Administracji Skarbowej w Katowicach

(Case C-703/19) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 98(2) — Option for Member States to apply one or two reduced VAT rates to certain supplies of goods and services — Classification of a commercial activity as 'provision of services' — Annex III, point 12a — Implementing regulation (EU) No 282/2011 — Article 6 — Concept of 'restaurant and catering services' — Meals ready for immediate consumption on the vendor's premises or in a catering area — Meals ready for immediate consumption to be taken away)

(2021/C 228/06)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: J.K.

Defendant: Dyrektor Izby Administracji Skarbowej w Katowicach

Intervening party: Rzecznik Małych i Średnich Przedsiębiorców

Operative part of the judgment

Article 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/47/EC of 5 May 2009, read in conjunction with point 12a of Annex III to that directive and Article 6 of Council Regulation (EU) No 282/2011 of 15 March 2011 implementing Directive 2006/112, must be interpreted as meaning that the concept of 'restaurant and catering services' includes the supply of food accompanied by sufficient support services intended to enable the immediate consumption of that food by the end customer, which is a matter for the national court to determine. Where the end customer chooses not to benefit from the material and human resources made available by the taxable person to accompany the consumption of the food supplied, it must be concluded that no support services accompany the supply of that food.

([1]) OJ C 27, 27.1.2020.

Judgment of the Court (Fourth Chamber) of 22 April 2021 (request for a preliminary ruling from the Landesgericht Korneuburg — Austria) — WZ v Austrian Airlines AG

(Case C-826/19) ([1])

(Reference for a preliminary ruling — Air transport — Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights — Regulation (EC) No 261/2004 — Article 6 — Delayed flight — Article 8(3) — Diversion of a flight to an airport serving the same town, city or region — Concept of 'cancellation' — Extraordinary circumstances — Compensation to passengers in the event of cancellation or long delay of flights in arrival — Obligation to bear the cost of transferring passengers from the actual airport of arrival to the airport for which the booking was made)

(2021/C 228/07)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: WZ

Defendant: Austrian Airlines AG

Operative part of the judgment

1. Article 8(3) of Regulation (EC) No 261/04 of the European Parliament and 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, where a flight is diverted to an airport serving the same town as the airport for which the booking was made, the bearing of the cost of transferring the passenger between the two airports, provided for in that provision, is not subject to the condition that the first airport be situated in the territory of the same town, of the same city or of the region as the second airport.

2. Article 5(1)(c), Article 7(1) and Article 8(3) of Regulation No 261/2004 must be interpreted as meaning that a diverted flight landing at an airport which is not that for which the booking was made but which serves the same town, city or region is not capable of conferring on the passenger a right to compensation for cancellation of a flight. However, a passenger of a flight diverted to an alternative airport serving the same town, city or region as the airport for which the booking was made is entitled, as a rule, to compensation under that regulation when the passenger reaches his or her final destination three hours or more after the arrival time originally planned by the operating air carrier.

3. Articles 5 and 7 and Article 8(3) of Regulation No 261/2004 must be interpreted as meaning that, for the purposes of determining the extent of the delay in arrival incurred by a passenger on a diverted flight which landed at an airport which is not that for which the booking was made but which serves the same town, city or region, it is necessary to take as a reference the time at which the passenger actually reaches, at the end of the transfer, either the airport for which the booking was made or, as the case may be, another close-by destination agreed with the operating air carrier.

4. Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that, in order to be released from its obligation to pay compensation to passengers in the event of long delay of flights in arrival, an operating air carrier may rely on an extraordinary circumstance which affected not that delayed flight but a previous flight operated by that carrier using the same aircraft at aircraft turnaround three flights back in the rotation sequence of that aircraft, provided that there is a direct causal link between the occurrence of that circumstance and the long delay of a subsequent flight in arrival, which is for the national court to determine, taking into account, inter alia, the way in which the aircraft at issue is operated by the operating air carrier concerned.

5. Article 8(3) of Regulation No 261/2004 must be interpreted as meaning that, where a diverted flight lands at an airport which is not that for which the booking was made but which serves the same town, city or region, the operating air carrier must on its own initiative offer the passenger to bear the cost of transfer either to the destination airport for which the booking was made or, as the case may be, to another close-by destination agreed with the passenger.

6. Article 8(3) of Regulation No 261/2004 must be interpreted as meaning that breach by the operating air carrier of its obligation to bear the cost of transferring the passenger from the airport of arrival either to the airport for which the booking was made or to another destination agreed with the passenger does not confer on the latter a right to flat-rate compensation under Article 7(1) of that regulation. By contrast, that breach gives rise, for the benefit of the passenger, to a right to reimbursement of the amounts incurred by him or her and which, in the light of the specific circumstances of each case, prove necessary, appropriate and reasonable to remedy the shortcomings of the air carrier.

(1) OJ C 77, 9.3.2020.

Judgment of the Court (Grand Chamber) of 20 April 2021 (request for a preliminary ruling from the Prim'Awla tal-Qorti Ċivili — Ġurisdizzjoni Kostituzzjonali — Malta) — Repubblika v Il-Prim Ministru

(Case C-896/19) ([1])

(Reference for a preliminary ruling — Article 2 TEU — Values of the European Union — Rule of law — Article 49 TEU — Accession to the European Union — No reduction in the level of protection of the values of the European Union — Effective judicial protection — Article 19 TEU — Article 47 of the Charter of Fundamental Rights of the European Union — Scope — Independence of the members of the judiciary of a Member State — Appointments procedure — Power of the Prime Minister — Involvement of a judicial appointments committee)

(2021/C 228/08)

Language of the case: Maltese

Referring court

Prim'Awla tal-Qorti Ċivili — Ġurisdizzjoni Kostituzzjonali

Parties to the main proceedings

Applicant: Repubblika

Defendant: Il-Prim Ministru

Intervening party: WY

Operative part of the judgment

1. The second subparagraph of Article 19(1) TEU must be interpreted as meaning that it may be applied in a case in which a national court is seised of an action provided for by national law and seeking a ruling on the conformity with EU law of national provisions governing the procedure for the appointment of members of the judiciary of the Member State to which that court belongs. Article 47 of the Charter of Fundamental Rights of the European Union must be duly taken into consideration for the purposes of interpreting that provision.

2. The second subparagraph of Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister.

([1]) OJ C 77, 9.3.2020.

Judgment of the Court (First Chamber) of 22 April 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — ZM, in his capacity as liquidator in the insolvency of Oeltrans Befrachtungsgesellschaft mbH v E.A. Frerichs

(Case C-73/20) [1]

(Reference for a preliminary ruling — Regulation (EC) No 1346/2000 — Insolvency proceedings — Article 4 — Law applicable to insolvency proceedings — Law of the Member State within the territory of which the proceedings are opened — Article 13 — Acts detrimental to all the creditors — Exception — Conditions — Act subject to the law of a Member State other than the State of the opening of proceedings — Act which is not open to challenge on the basis of that law — Regulation (EC) No 593/2008 — Law applicable to contractual obligations — Article 12(1)(b) — Scope of the law applicable to the contract — Performance of the obligations arising from the contract — Payment made in performance of a contract subject to the law of a Member State other than the State of the opening of proceedings — Performance by a third party — Action for repayment of that payment in insolvency proceedings — Law applicable to that payment)

(2021/C 228/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: ZM, in his capacity as liquidator in the insolvency of Oeltrans Befrachtungsgesellschaft mbH

Defendant in the appeal on a point of law: E.A. Frerichs

Operative part of the judgment

Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings and Article 12(1)(b) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that the law applicable to the contract under the latter regulation also governs the payment made by a third party in performance of a contracting party's contractual payment obligation where, in insolvency proceedings, that payment is challenged as an act detrimental to all the creditors.

[1] OJ C 191, 8.6.2020.

Judgment of the Court (Eighth Chamber) of 22 April 2021 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — 'Lifosa' UAB v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

(Case C-75/20) [1]

(Reference for a preliminary ruling — Customs union — Community Customs Code — Regulation (EEC) No 2913/92 — Article 29(1) — Article 32(1)(e)(i) — Union Customs Code — Regulation (EU) No 952/2013 — Article 70(1) — Article 71(1)(e)(i) — Determination of the customs value — Transaction value — Adjustment — Price including delivery at the border)

(2021/C 228/10)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: 'Lifosa' UAB

Respondent: Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Third parties: Kauno teritorinė muitinė, 'Transchema' UAB

Operative part of the judgment

Article 29(1) and Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 70(1) and Article 71(1)(e)(i) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as meaning that, for the purpose of determining the customs value of imported goods, the costs actually incurred by the producer for their transport to the place where they have been brought into the customs territory of the European Union should not be added to the transaction value of the goods when, according to the agreed delivery terms, the obligation to cover those costs lies with the producer, even though those costs exceed the price actually paid by the importer, provided that that price corresponds to the real value of the goods, a matter which is for the referring court to establish.

(1) OJ C 137, 27.4.2020.

Order of the Court (Seventh Chamber) of 3 March 2021 (request for a preliminary ruling from the Audiencia Provincial de Zaragoza — Spain) — Ibercaja Banco, SA v TJ, UK

(Case C-13/19) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 99 of the Rules of Procedure of the Court of Justice — Consumer protection — Directive 93/13/EEC — Mortgage loan agreement — Unfair terms — Term limiting the variability of the interest rate (so-called 'floor' clause) — Novation agreement — Waiver of legal action against the terms of the contract — No binding character — Directive 2005/29/EC — Unfair business-to-consumer commercial practices — Article 6(1) and Article 7(1))

(2021/C 228/11)

Language of the case: Spanish

Referring court

Audiencia Provincial de Zaragoza

Parties to the main proceedings

Applicant: Ibercaja Banco, SA

Defendants: TJ, UK

Operative part of the order

1. Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a term of a contract concluded between a seller or supplier and a consumer, which is capable of being found to be unfair by a court, from being the subject of a novation agreement between that seller or supplier and that consumer, under which the consumer waives the effects which would result from a declaration that the term is unfair, provided that that waiver is the result of the free and informed consent of the consumer, which it is for the national court to determine. By contrast, a term under which that consumer waives, in respect of future disputes, legal proceedings based on the rights which he or she holds under Directive 93/13, is not binding on that consumer.

2. Article 3 of Directive 93/13 must be interpreted as meaning that a term in a mortgage loan agreement concluded between a seller or supplier and a consumer which seeks to amend a potentially unfair term of an earlier agreement concluded between them or provides that the consumer waives any right to bring legal proceedings against the seller or supplier may be regarded as not having been individually negotiated, where that consumer was not able to influence the content of the new term, which is for the national court to determine.

3. Articles 3 to 5 of Directive 93/13 must be interpreted as meaning that the requirement of transparency, responsibility for which lies on a seller or supplier under those provisions, implies that, when a novation agreement is concluded which, first, seeks to amend a potentially unfair term of a contract previously concluded and, second, provides for the consumer to waive any legal action against the seller or supplier, that consumer must be put in a position to understand all the decisive legal and economic consequences which would result for him or her from the conclusion of that novation agreement.

4. The tenth and thirteenth questions put by the Audiencia Provincial de Zaragoza (District Court of Zaragoza, Spain) are manifestly inadmissible.

([1]) OJ C 148, 29.4.2019.

Order of the Court (Eighth Chamber) of 3 March 2021 (request for a preliminary ruling from the Juzgado de lo Social No 41 de Madrid — Spain) — JL v Fondo de Garantía Salarial (Fogasa)

(Case C-841/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Directive 2006/54/EC — Articles 2(1) and 4 — Equal pay for male and female workers — Framework agreement on part-time work — Clause 4 — Part-time workers, primarily female — National guarantee institution for the payment of outstanding claims of relevant workers against their insolvent employers — Ceiling on the payment of those claims — Amount of the ceiling reduced for part-time workers in accordance with the hours worked by the latter in relation to the hours worked by full-time workers — Principle of pro rata temporis)

(2021/C 228/12)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 41 de Madrid

Parties to the main proceedings

Applicant: JL

Defendant: Fondo de Garantía Salarial (Fogasa)

Operative part of the order

Articles 2(1) and 4 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as not precluding national legislation which, as regards the payment by the liable national institution of the wages and compensation that have not been paid to workers due to the insolvency of their employer, provides for a ceiling to that payment for full-time workers which, in the case of part-time workers, is reduced pro rata temporis according to the hours worked by those workers in relation to those worked by full-time workers.

([1]) OJ C 45, 10.2.2020.

Order of the Court (Sixth Chamber) of 3 March 2021 (request for a preliminary ruling from the Pécsi Törvényszék — Hungary) — FGSZ Földgázszállító Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-507/20) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 90 — Reduction of the taxable amount — Total or partial non-payment of the price — Debt which has become definitively irrecoverable — Limitation period regarding applications for a subsequent reduction in the taxable amount of VAT — Date on which time starts to run)

(2021/C 228/13)

Language of the case: Hungarian

Referring court

Pécsi Törvényszék

Parties to the main proceedings

Applicant: FGSZ Földgázszállító Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Operative part of the order

Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with the principles of fiscal neutrality and effectiveness, must be interpreted as meaning that, where a Member State lays down a limitation period after which a taxable person, who has a debt which has become definitively irrecoverable, can no longer assert his right to obtain a reduction in the taxable amount, that limitation period must begin to run not from the date of performance of the payment obligation initially provided for, but from the date on which the debt became definitively irrecoverable.

([1]) OJ C 28, 25.1.2021.

Order of the Court (Tenth Chamber) of 3 March 2021 (request for a preliminary ruling from the Győri Törvényszék — Hungary) — Koppány 2007 Kft. v Vas Megyei Kormányhivatal

(Case C-523/20) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Social security — Regulation (EU) No 1231/2010 — Applicable legislation — A1 certificate — Article 1 — Extension of A1 certificate to nationals of third countries residing legally in the territory of a Member State — Legal residence — Concept)

(2021/C 228/14)

Language of the case: Hungarian

Referring court

Győri Törvényszék

Parties to the main proceedings

Applicant: Koppány 2007 Kft.

Defendant: Vas Megyei Kormányhivatal

Operative part of the order

Article 1 of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, must be interpreted as meaning that nationals of third countries who reside temporarily and have a residence permit in a Member State, and who have a document stating their place of accommodation issued by the immigration authority and work in different Member States for an employer established in that Member State, may rely on the coordination rules laid down by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004, in order to determine the social security legislation to which they are subject, provided that they are legally residing and working in the territory of the Member States.

([1]) OJ C 28, 25.1.2021.

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 11 November 2020 — NT, RV, BS, ER v British Airways plc

(Case C-592/20)

(2021/C 228/15)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicants: NT, RV, BS, ER

Defendant: British Airways plc

The Court of Justice (Ninth Chamber) held, by order of 22 April 2021, that Article 2(b) and Article 7(1) 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 ([1]) are to be interpreted as meaning that, in the context of connecting flights, comprised of two legs of a journey and booked under a single reservation, a passenger who suffers a delay in reaching his or her destination of 3 hours or more, the cause of that delay arising in the cancellation of the second leg, which ought to have been operated by an operating air carrier other than the one with whom the passenger has a contract of carriage, may bring an action for compensation pursuant to Article 7(1) of that regulation against the former air carrier and require it to pay the amount of compensation provided for in that provision according to the total distance of the journey, including its connecting flight, from the first point of departure until the final destination of the second leg.

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

Appeal brought on 16 December 2020 by smart things solutions GmbH against the judgment of the General Court (Second Chamber) delivered on 15 October 2020 in Case T-48/19, smart things solutions v EUIPO — Samsung Electronics (smart:)things)

(Case C-681/20 P)

(2021/C 228/16)

Language of the case: English

Parties

Appellant: smart things solutions GmbH (represented by: R. Dissmann, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Samsung Electronics GmbH

By order of 24 March 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that smart things solutions GmbH should bear its own costs.

Appeal brought on 26 January 2021 by Allergan Holdings France against the judgment of the General Court (Third Chamber) delivered on 18 November 2020 in Case T-664/19, Allergan Holdings France v EUIPO — Dermavita (JUVEDERM ULTRA)

(Case C-41/21 P)

(2021/C 228/17)

Language of the case: English

Parties

Appellant: Allergan Holdings France (represented by: T. de Haan, avocat, and J. Day, Solicitor)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Dermavita Co. Ltd

By order of 29 April 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Allergan Holdings France should bear its own costs.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña (Spain) lodged on 29 January 2021 — Prestige and Limousine, S.L. v Área Metropolitana de Barcelona

(Case C-50/21)

(2021/C 228/18)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Applicant: Prestige and Limousine, S.L.

Defendant: Área Metropolitana de Barcelona

Questions referred

1. Do Article 49 and Article 107(1) TFEU preclude national laws — statutory and regulatory provisions — which, without any reasonable justification, limit PHV ([1]) licences to one for every 30 taxi licences or fewer?

2. Do Article 49 and Article 107(1) TFEU preclude a rule of national law which, without any reasonable justification, requires a second licence and the fulfilment of additional requirements for PHVs wishing to provide urban services?

([1]) Private hire vehicle.

Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 29 January 2021 — Konsorcjum: ANTEA POLSKA S.A., 'Pectore-Eco' sp. z o.o., Instytut Ochrony Środowiska — Państwowy lnstytut Badawczy v Państwowe Gospodarstwo Wodne Wody Polskie

(Case C-54/21)

(2021/C 228/19)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Applicant: Konsorcjum: ANTEA POLSKA S.A., 'Pectore-Eco' sp. z o.o., Instytut Ochrony Środowiska — Państwowy lnstytut Badawczy

Defendant: Państwowe Gospodarstwo Wodne Wody Polskie

Questions referred

1. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 18(1) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC ([1]) ('Directive 2014/24/EU') permit Article 21(1) of Directive 2014/24/EU and Article 2(1) of 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 ([2]) ('Directive 2016/943'), including in particular the terms 'is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible' and 'has commercial value because it is secret' and the indication that 'the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential', to be interpreted in such a manner that an economic operator can reserve, as a trade secret, any information on the ground that it does not wish to disclose that information to competing economic operators?

2. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 18(1) of Directive 2014/24/EU permit Article 21(1) of Directive 2014/24/EU and Article 2(1) of Directive 2016/943 to be interpreted in such a manner that economic operators competing for a public contract may reserve the documents referred to in Articles 59 and 60 of Directive 2014/24/EU and in Annex XII to Directive 2014/24/EU in whole or in part as trade secrets, including in particular the description of their experience, the list of references, the list of persons proposed to perform the contract and their professional qualifications, the names and capacities of the entities whose capacities they rely on or of their subcontractors, where those documents are required in order to prove fulfilment of the conditions for participation in the procedure or for the purpose of conducting an evaluation in accordance with the criteria for the evaluation of tenders or for ascertaining the compliance of the tender with the other requirements of the contracting authority contained in the procedure documentation (contract notice, tender specifications)?

3. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 18(1) of Directive 2014/24/EU, read in conjunction with Articles 58(1), 63(1) and 67(2)(b) thereof, permit the contracting authority to accept the economic operator's declaration that it has at its disposal the personal resources required by the contracting authority or declared by the economic operator, the entities on whose resources it wishes to rely or their subcontractors, which it must demonstrate to the contracting authority in accordance with applicable laws, and at the same time the economic operator's declaration that the mere disclosure to competing economic operators of the details of those persons or entities (their names, experience and qualifications) may result in their being 'poached' by those economic operators, with the result that it is necessary to treat that information as a trade secret? In the light of the foregoing, may such an impermanent link between the economic operator and those persons and entities be regarded as evidence of the availability of the resource in question and, in particular, may the economic operator be awarded additional points under the tender evaluation criteria?

4. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 18(1) of Directive 2014/24/EU permit Article 21(1) of Directive 2014/24/EU and Article 2(1) of Directive 2016/943 to be interpreted in such a manner that economic operators competing for a public contract may reserve as trade secrets documents required for the purpose of examining the compliance of their tender with the requirements of the contracting authority contained in the tender specifications (including the description of the subject matter of the contract) or for the purpose of evaluating the tender under the tender evaluation criteria, particularly where those documents relate to the fulfilment of the requirements of the contracting authority laid down in the tender specifications, in applicable laws or in other documents which are generally available or accessible to interested parties, and in particular where that evaluation does not take place according to objectively comparable schemes and mathematically or physically measurable and comparable indicators, but rather according to an individual assessment by the contracting authority? Consequently, are Article 21(1) of Directive 2014/24/EU and Article 2(1) of Directive 2016/943 to be interpreted as meaning that a declaration made by an economic operator in the context of its tender that it will perform the subject matter of the contract in accordance with the contracting authority's requirements included in the tender specifications, compliance with which is monitored and assessed by the contracting authority, can be regarded as a trade secret of the economic operator in question, even though it is for the economic operator to choose the methods intended to achieve the result required by the contracting authority (the subject matter of the contract)?

5. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 18(1) of Directive 2014/24/EU, read in conjunction with Article 67(4) thereof, which provides that award criteria must not have the effect of conferring an unrestricted freedom of choice on the contracting authority, must ensure the possibility of effective competition and must allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria, permit the contracting authority to establish a tender evaluation criterion, including in particular a criterion evaluated according to the contracting authority's own judgment, even though it is known at the time at which the criterion is established that economic operators will designate the part of their tender relating to that criterion as a trade secret, to which the contracting authority does not object, with the result that competing economic operators, being unable to verify their competitors' tenders and compare them with their own tenders, may have the impression that the contracting authority examines and evaluates tenders in an entirely discretionary manner?

6. Are the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 18(1) of Directive 2014/24/EU, read in conjunction with Article 67(4) thereof, which provides that award criteria must not have the effect of conferring an unrestricted freedom of choice on the contracting authority, must ensure the possibility of effective competition and must allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria, to be interpreted as permitting the contracting authority to establish a tender evaluation criterion such as, in the present case, the criterion concerning the 'concept of the study' and the criterion concerning the 'description of the manner of performance of the contract'?

7. Is Article 1(1) and (3) of Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts ([3]) ('the Review Procedures Directive'), requiring the Member States to ensure that economic operators have effective remedies against decisions taken by contracting authorities and that review procedures are available to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement, to be interpreted as meaning that a finding by the adjudicating authority that documents reserved by the economic operators in a particular procedure are not trade secrets, which results in the contracting authority being obliged to disclose them and to make them available to competing economic operators — if such an effect is not directly provided for in applicable laws — imposes an obligation on the adjudicating authority to make a ruling enabling the economic operator in question to lodge an appeal again — within the scope arising from the content of those documents which the economic operator did not know beforehand, as a result of which it was not in a position to make effective use of a legal remedy — against an action with respect to which it would not be entitled to lodge an appeal on account of the expiry of the period for doing so, for instance by declaring invalid the examination and evaluation of tenders to which the documents in question reserved as trade secrets pertained?

([1]) OJ 2014 L 94, p. 65.
([2]) OJ 2016 L 157, p. 1.
([3]) OJ 2007 L 335, p. 31.

Appeal brought on 2 February 2021 by Laure Camerin against the order of the General Court (Seventh Chamber) delivered on 24 November 2020 in Case T-367/19, Camerin v Commission

(Case C-63/21 P)

(2021/C 228/20)

Language of the case: French

Parties

Appellant: Laure Camerin (represented by: M. Casado García-Hirschfeld, avocate)

Other party to the proceedings: European Commission

Form of order sought

— Annul the order of the General Court delivered on 24 November 2020 in Case T-367/19;

— Order the Commission to pay all the costs, including those incurred before the General Court.

Grounds of appeal and main arguments

The appeal seeks the annulment of the order under appeal in so far as the General Court declared that there was no longer any need to adjudicate and declared the inadmissibility of the application which sought partial annulment of the decision of the PMO of 17 April 2019 and compensation for the non-material damage that the applicant claims to have suffered as a result of the irregularities allegedly committed by the PMO, which make it impossible for the applicant to live in dignity.

In her appeal, the appellant disputes, in particular paragraphs 50 to 52 and 54 of the order under appeal and paragraphs 57 to 62, 67 and 73 to 74 of that order.

In support of the appeal, the appellant puts forward a single ground of appeal, alleging distortion of the facts and manifest errors of assessment resulting in an incorrect statement of reasons in law.

Appeal brought on 12 February 2021 by Vincent Thunus, Jaime Barragán, Marc D'hooge, Alexandra Felten, Christophe Nègre, Patrick Vanhoudt against the judgment of the General Court (First Chamber) delivered on 2 December 2020 in Case T-247/19, Thunus and Others v EIB

(Case C-90/21 P)

(2021/C 228/21)

Language of the case: French

Parties

Appellants: Vincent Thunus, Jaime Barragán, Marc D'hooge, Alexandra Felten, Christophe Nègre, Patrick Vanhoudt (represented by: L. Levi, avocate)

Other party to the proceedings: European Investment Bank

Form of order sought

— Set aside the judgment of the General Court of 2 December 2020 in Case T-247/19;

— Consequently, uphold the appellants' claims at first instance and, accordingly:

— Annul the decision contained in the appellants' payslips for the month of February 2018, a decision fixing the annual adjustment of the basic salary limited to 0,7 % for the year 2018, and, therefore, annul the similar decisions contained in the subsequent payslips;

— Order the defendant to pay compensation for material damage (i) for the outstanding salary corresponding to the application of the annual adjustment for 2018, that is, an increase of 1,4 % for the period from 1 January 2018 to 31 December 2018; (ii) for the outstanding salary corresponding to the consequences of applying the annual adjustment of 0,7 % for 2018 on the amount of the salaries which will be paid from January 2018; (iii) for default interest on outstanding salaries due until full payment of the amounts due, the rate of default interest to be applied having to be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable during the relevant period, plus three percentage points;

— Order the defendant to pay all of the costs.

Grounds of appeal and main arguments

1. Infringement of the right of consultation of the College of staff representatives — Distortion of the file.

2. Infringement of the obligation to state reasons — Distortion of the file — Infringement by the court of its obligation to state reasons.

3. Infringement of the duty of care and of the principle of proportionality.

Appeal brought on 12 February 2021 by Vincent Thunus, Jaime Barragán, Marc D'hooge, Alexandra Felten, Christophe Nègre, Patrick Vanhoudt against the judgment of the General Court (First Chamber) delivered on 2 December 2020 in Case T-318/19, Thunus and Others v EIB

(Case C-91/21 P)

(2021/C 228/22)

Language of the case: French

Parties

Appellants: Vincent Thunus, Jaime Barragán, Marc D'hooge, Alexandra Felten, Christophe Nègre, Patrick Vanhoudt (represented by: L. Levi, avocate)

Other party to the proceedings: European Investment Bank

Form of order sought

— Set aside the judgment of the General Court of 2 December 2020 in Case T-318/19;

— Consequently, uphold the appellants' claims at first instance and, accordingly:

— Declare the action admissible and well-founded, including the plea of illegality which it contains;

— Consequently:

— annul the decision contained in the appellants' pay slips for the month of February 2019, a decision fixing the annual adjustment of the basic salary limited to 0,8 % for the year 2019, and, therefore, annul the similar decisions contained in the subsequent payslips;

— accordingly, order the defendant to pay compensation for material harm (i) for the outstanding salary corresponding to the application of the annual adjustment for 2019, that is, an increase of 1,2 %, for the period from 1 January 2019 to 31 December 2019; (ii) for the outstanding salary corresponding to the consequences of applying the annual adjustment of 0,8 % for 2019 on the amount of the salaries which will be paid from January 2019; (iii) for default interest on outstanding salaries due until full payment of the amounts due, the rate of default interest to be applied having to be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable during the relevant period, plus three percentage points;

— Order the defendant to pay all of the costs.

Grounds of appeal and main arguments

1. Infringement of the rules on the competence of the author of the act — Infringement of Article 18 of the Rules of Procedure of the EIB — Distortion of the file — Infringement by the court of its obligation to state reasons.

2. Infringement of the right of consultation of the College of staff representatives — Distortion of the file.

3. Infringement of the obligation to state reasons — Distortion of the file — Infringement by the court of its obligation to state reasons.

4. Infringement of the duty of care and of the principle of proportionality.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 25 February 2021 — BT v Laudamotion GmbH

(Case C-111/21)

(2021/C 228/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: BT

Defendant: Laudamotion GmbH

Questions referred

1. Does the psychological impairment of a passenger, which is caused by an accident and has clinical significance, constitute a 'bodily injury' within the meaning of Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air concluded on 28 May 1999 in Montreal, signed on 9 December 1999 by the European Community and approved on its behalf by Council Decision 2001/539/EC [1] of 5 April 2001?

2. If Question 1 is answered in the negative:

   Does Article 29 of that convention preclude a claim for compensation which would exist under the applicable national law?

[1] : Council Decision 2001/539/EC of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ 2001 L 194, p. 38).

Request for a preliminary ruling from the Curtea de Apel Bucureşti (Romania) lodged on 3 March 2021 — Direcția Generală Regională a Finanțelor Publice Bucureşti — Administrația Sector 1 a Finanțelor Publice v VB, Direcția Generală Regională a Finanțelor Publice Bucureşti — Serviciul Soluționare Contestații 1

(Case C-146/21)

(2021/C 228/24)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Appellant: Direcția Generală Regională a Finanțelor Publice Bucureşti — Administrația Sector 1 a Finanțelor Publice

Respondents: VB, Direcția Generală Regională a Finanțelor Publice Bucureşti — Serviciul Soluționare Contestații 1

Question referred

In circumstances such as those in the main proceedings, do Directive 2006/112/EC [1] and the principle of neutrality preclude national legislation or a tax practice in accordance with which the reverse charge mechanism (simplification measures), which is mandatory for the sale of standing timber, is not applicable to a person who has been the subject of an inspection and who has been registered for VAT purposes following that inspection, on the grounds that the person subject to the inspection had neither applied for nor obtained registration for VAT purposes either before the transactions were carried out or by the date on which the upper limit [for exemption] was exceeded?

[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 Fővárosi Törvényszék (Hungary) lodged on 11 March 2021 — GM v Országos Idegenrendészeti Főigazgatóság and Others

(Case C-159/21)

(2021/C 228/25)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: GM

Defendants: Országos Idegenrendészeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ

Questions referred

1. Must Article 11(2), Article 12(1)(d) and (2), Article 23(1)(b) and Article 45(1) and (3) to (5) of the Asylum Procedure Directive [1] — in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') — be interpreted as meaning that, where the exception for reasons of national security referred to in Article 23(1) of that directive applies, the Member State authority that has adopted a decision to refuse or withdraw international protection based on a reason of national security and the national security authority that has determined that the reason is confidential must ensure that it is guaranteed that in all circumstances the applicant, a refugee or a foreign national beneficiary of subsidiary protection status, or that person's legal representative, is entitled to have access to at least the essence of the confidential or classified information or data underpinning the decision based on that reason and to make use of that information or those data in proceedings relating to the decision, where the responsible authority alleges that their disclosure would conflict with the reason of national security?

2. If the answer is in the affirmative, what precisely should be understood by the 'essence' of the confidential reasons on which that decision is based, for the purposes of applying Article 23(1)(b) of the Asylum Procedure Directive in the light of Articles 41 and 47 of the Charter?

3. Must Articles 14(4)(a) and 17(1)(d) of the Qualification Directive [2] and Article 45(1)(a) and (3) to (4) and recital 49 of the Asylum Procedure Directive be interpreted as meaning that they preclude national legislation according to which refugee or foreign national beneficiary of subsidiary protection status may be withdrawn or excluded by a non-reasoned decision which is based solely on automatic reference to the — likewise non-reasoned — binding and mandatory report of the national security authority and finds that there is a danger to national security?

4. Must recitals 20 and 34, Article 4 and Article 10(2) and (3)(d) of the Asylum Procedure Directive and Articles 14(4)(a) and 17(1)(d) of the Qualification Directive be interpreted as meaning that they preclude national legislation according to which that national security authority examines the ground for exclusion and takes a decision on the substance in a procedure that does not comply with the substantive and procedural provisions of the Asylum Procedure Directive and the Qualification Directive?

5. Must Article 17(1)(b) of the Qualification Directive be interpreted as meaning that it precludes an exclusion based on a circumstance or crime that was already known before the judgment or final decision granting refugee status was adopted but which was not the basis of any ground for exclusion in relation to either the grant of refugee status or to subsidiary protection?

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(1) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

(2) 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 (recast) (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 16 March 2021 — Procureur général près la cour d'appel d'Angers v KL

(Case C-168/21)

(2021/C 228/26)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant in the appeal on a point of law: Procureur général près la cour d'appel d'Angers

Respondent in the appeal on a point of law: KL

Questions referred

1. Must Articles 2(4) and 4(1) of Framework Decision 2002/584 [1] be interpreted as meaning that the condition of double criminality is met in a situation, such as that at issue in the main proceedings, in which surrender is sought for acts which, in the issuing State, have been categorised as devastation and looting and which consist of acts of devastation and looting such as to cause a breach of the public peace when, in the executing State, there are criminal offences of theft accompanied by damage or offences of causing destruction or damage that do not require that element of a breach of the public peace?

2. In the event that the first question is answered in the affirmative, must Articles 2(4) and 4(1) of Framework Decision 2002/584 be interpreted as meaning that the courts in the executing State may refuse to execute a European arrest warrant issued for the enforcement of a sentence where they find that the judicial authorities in the issuing State imposed that sentence on the person concerned for the commission of a single offence covering various acts and where only some of those acts constitute a criminal offence in the executing State? Does a distinction need to be made depending on whether or not the trial court in the issuing State considered those various acts to be divisible or indivisible?

3. Does Article 49(3) of the Charter of Fundamental Rights require the judicial authorities in the executing Member State to refuse to execute a European arrest warrant where, first, that warrant was issued in order to enforce a single sentence imposed for a single offence and, second, where, given that some of the acts for which that sentence was imposed do not constitute an offence under the law of the executing Member State, a surrender can only be ordered in relation to some of those acts?

([1]) Council Framework Decision 2002/584/JHA 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 Landgericht Köln (Germany) lodged on 19 March 2021 — EF v Deutsche Lufthansa AG

(Case C-172/21)

(2021/C 228/27)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant and appellant: EF

Defendant and respondent: Deutsche Lufthansa AG

Questions referred

1. Is a corporate fare which is more favourable than the standard fare (*in casu*, EUR 152.00 instead of EUR 169.00), and which is based on a framework agreement between an air carrier and another undertaking and which can be booked only for employees of the undertaking concerned for the purposes of business trips, a reduced fare not available directly or indirectly to the public within the meaning of the first sentence of Article 3(3) of Regulation (EC) No 261/2004? ([1])

2. If Question 1 is answered in the affirmative, is such a corporate fare not also part of a frequent flyer programme or other commercial programme of an air carrier or tour operator within the meaning of the second sentence of Article 3(3) of Regulation (EC) No 261/2004?

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

Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 23 March 2021 — Maxxus Group GmbH & Co. KG v Globus Holding GmbH & Co. KG

(Case C-183/21)

(2021/C 228/28)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: Maxxus Group GmbH & Co. KG

Defendant: Globus Holding GmbH & Co. KG

Question referred

Are Directive 2008/95/EC, ([1]) in particular in Article 12, and

Directive (EU) 2015/2436, ([2]) in particular in Articles 16, 17 and 19,

to be interpreted as meaning that the *effet utile* of those provisions prohibits an interpretation of national procedural law which

1. imposes on the applicant in civil proceedings for cancellation of a national registered trade mark on grounds of revocation for non-use a burden of raising and presenting an issue, as distinguished from the burden of proof; and

2. requires the applicant, in the context of that burden of raising and presenting an issue,

   a. to make, in such proceedings, substantiated submissions regarding the defendant's non-use of the trade mark, to the extent that it is possible for the applicant to do so; and

   b. to carry out, for that purpose, its own research into the market, in a manner which is appropriate to the request for cancellation and to the specific nature of the trade mark concerned.

([1]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25).

([2]) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336, p. 1).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 25 March 2021 — FAWKES Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-187/21)

(2021/C 228/29)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: FAWKES Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must Article 30(2)(a) and (b) of Council Regulation (EEC) No 2913/92 ([1]) of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that only the values listed in the database created from the customs clearances of the Member State's own customs authority may and must be taken into account as the customs value?

2. If the first question is answered in the negative, is it necessary, for the purposes of determining the customs value in accordance with Article 30(2)(a) and (b), to approach the customs authorities of other Member States in order to obtain the customs value of similar goods listed in their databases, and/or is it necessary to consult a Community database and obtain the customs values listed in it?

3. May Article 30(2)(a) and (b) of Regulation No 2913/92 be interpreted as meaning that, for the purposes of determining the customs value, account may not be taken of transaction values relating to transactions performed by the applicant for customs clearance himself, even if those values have not been challenged either by the national customs authority or by the national authorities of other Member States?

4. Must the requirement of 'at or about the same time', laid down in Article 30(2)(a) and (b) of Regulation No 2913/92, be interpreted as meaning that it may be limited to a period of +/- 45 days before and after customs clearance?

(1) OJ 1992 L 302, p. 1, Special edition in Hungarian Chapter 02 Volume 004 P. 307.

Request for a preliminary ruling from the Kúria (Hungary) lodged on 25 March 2021 — Megatherm-Csillaghegy Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-188/21)

(2021/C 228/30)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Megatherm-Csillaghegy Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must the principle of the neutrality of value added tax, as well as recital 30 and Articles 63, 167, 168, 178 to 180, 182 and 273 of the VAT Directive, (1) be interpreted as meaning that they preclude the last sentence of Article 137(3) of az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on Value Added Tax), in the version in force between 1 January 2015 and 31 December 2017, whereby, 'even in the case where the tax authority revokes the taxable person's tax identification number without having suspended it, the taxable person shall lose his or her right to deduct tax on the date on which the decision revoking that number becomes final', and Article 137 thereof, in the version in force between 1 January 2018 and 26 November 2020, whereby, 'if the national tax and customs authority revokes the taxable person's tax identification number, the taxable person shall lose the right to deduct tax on the date on which the decision revoking that number becomes final'?

2. Must Article 273 of the VAT Directive be interpreted as meaning that loss of the right to deduct tax as a mandatory legal consequence goes (disproportionately) beyond what is necessary in order to attain the objective of collecting tax and combating tax evasion?

(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 College van Beroep voor het bedrijfsleven (Netherlands) lodged on 26 March 2021 — R. en R. v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-189/21)

(2021/C 228/31)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: R. en R.

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Question referred

Must management requirement (SMR) 10, as laid down in Annex II to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, ([1]) which refers to Article 55, first and second sentences, of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, ([2]) be interpreted as meaning that that management requirement also covers the situation in which use is made of a plant protection product which is not authorised in the Member State concerned pursuant to that latter regulation?

([1]) OJ 2013 L 347, p. 549.
([2]) OJ 2009 L 309, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 29 March 2021 — Staatssecretaris van Financiën, other party: X

(Case C-194/21)

(2021/C 228/32)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Other party: X

Questions referred

1. Must Articles 184 and 185 of the VAT Directive 2006 ([1]) be interpreted as meaning that a taxable person who, at the time of acquiring goods or services, has failed to deduct input tax ('the initial deduction') within the applicable national time limit in accordance with the intended use for tax purposes, is entitled, when an adjustment is made — on the occasion of the subsequent first use of those goods or services — to make that deduction if the actual use at the time of the adjustment does not differ from the intended use?

2. Is the answer to Question 1 affected by the fact that the failure to make the initial deduction does not involve fraud or abuse of rights and that no detrimental impact on the treasury has been established?

([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 Rayonen sad Lukovit (Bulgaria) lodged on 26 March 2021 — LB v Smetna palata na Republika Bulgaria

(Case C-195/21)

(2021/C 228/33)

Language of the case: Bulgarian

Referring court

Rayonen sad Lukovit

Parties to the main proceedings

Applicant: LB

Defendant: Smetna palata na Republika Bulgaria

Questions referred

1. Must Article 58(4) of Directive 2014/24/EU ([1]) be interpreted as meaning that the requirements imposed by the selection criteria on the professional ability of the staff of economic operators in respect of a specialised contract in the construction sector may be stricter than the minimum requirements for training and professional qualifications laid down by the specific national law (Article 163a(4) of the ZUT) without being a priori restrictive of competition, and, more specifically, does the prescribed condition of 'proportionality' of the participation requirements imposed in relation to the subject matter of the contract a) require the national court to carry out an assessment of proportionality on the basis of the evidence gathered and the specific parameters of the contract, even in cases where the national law defines a large number of professionals who are in principle qualified to carry out the activities under the contract, or b) permit judicial review to be limited only to an examination of whether the participation requirements are too restrictive in relation to those provided for in principle in the specific national law?

2. Must the provisions of Title II 'Administrative measures and penalties' of Regulation No 2988/95 ([2]) be interpreted as meaning that the same infringement of the Zakon za obshtestvenite porachki (Law on public procurement) transposing Directive 2014/24/EU (including the infringement in the determination of the selection criteria for which the complainant was penalised) may give rise to different legal consequences depending on whether the infringement was committed without fault or intentionally or was caused by negligence?

3. Do the principles of legal certainty and effectiveness, having regard to the objective of Article 8(3) of Regulation No 2988/95 and recitals 43 and 122 to Regulation No 1303/13, ([3]) permit the various national authorities called on to protect the financial interests of the European Union to assess the same facts differently in the procurement procedure, in that, more specifically, the managing authority of the operational programme finds no infringement in the determination of the selection criteria, whereas the Chamber of Audit, upon subsequent control and without there being any special or new circumstances, finds that those criteria are restrictive of competition and imposes an administrative penalty on the contracting authority on account of that finding?

4. Does the principle of proportionality preclude a provision of national law, such as that in Article 247(1) of the Law on public procurement, which provides that a contracting authority which formally infringes the prohibition laid down in Article 2(2) of that law is to be punished by way of a pecuniary penalty of 2 % of the value of the contract, including VAT, but not exceeding 10 000 leva (BGN), without it being necessary to establish the seriousness of the infringement and its actual or potential impact on the interests of the European Union?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

([2]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

([3]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).

Request for a preliminary ruling from the Okrazhen sad Burgas (Bulgaria) lodged on 31 March 2021 — Criminal proceedings against 'DELTA STROY 2003' EOOD

(Case C-203/21)

(2021/C 228/34)

Language of the case: Bulgarian

Referring court

Okrazhen sad Burgas

Party to the main proceedings

'DELTA STROY 2003' EOOD

Questions referred

1. Are Articles 4 and 5 of Framework Decision 2005/212/JHA and Article 49 of the Charter of Fundamental Rights of the European Union to be interpreted as permitting legislation of a Member State under which, in proceedings such as those in the main proceedings, the national court may impose a penalty on a legal person for a specific criminal offence the commission of which has not yet been established because it is the subject of parallel criminal proceedings which have not been definitively concluded?

2. Are Articles 4 and 5 of Framework Decision 2005/212/JHA and Article 49 of the Charter of Fundamental Rights of the European Union to be interpreted as permitting legislation of a Member State under which, in proceedings such as those in the main proceedings, the national court may impose a penalty on a legal person by fixing the amount of that penalty at the amount of the proceeds which would have been obtained from a specific criminal offence the commission of which has not yet been established because it is the subject of parallel criminal proceedings which have not been definitively concluded?

Appeal brought on 19 April 2021 by the European Parliament against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 3 February 2021 in Case T-17/19, European Parliament v Giulia Moi

(Case C-246/21 P)

(2021/C 228/35)

Language of the case: Italian

Parties

Appellant: European Parliament (represented by: S. Seyr, M. Windisch, T. Lazian, acting as Agents)

Other party to the proceedings: Giulia Moi

Form of order sought

The appellant submits that the Court should:

— set aside the judgment under appeal;

— give final judgment in the dispute submitted to the General Court, by granting the form of order sought by the European Parliament during the proceedings at first instance;

— order the applicant to pay all the costs incurred at first instance and on appeal.

Grounds of appeal and main arguments

— First ground of appeal, alleging that the General Court misused its powers and ruled *ultra petita* since it included, in the subject matter of the dispute, the decision of the President of the European Parliament finding the existence of a situation of harassment and annulled that decision (paragraphs 34, 37, 38 and 76 of the judgment under appeal);

— Second ground of appeal, alleging that the General Court infringed the Parliament's rights of defence (paragraphs 35 and 36 of the judgment under appeal);

— Third ground of appeal, alleging that the General Court infringed Article 263(6) TFEU since it failed to observe the time limit for bringing an action for annulment fixed in that article and included in the subject matter of the dispute the decision, which had in the meantime become final, of the President of the European Parliament finding the existence of a situation of harassment (paragraphs 76 and 77 of the judgment under appeal);

— Fourth ground of appeal, alleging that the General Court infringed Article 232 TFEU since it did not take account of the power of the Parliament to organise freely the way in which it operates, as provided in the internal rules on the procedure relating to harassment involving Members of the European Parliament and in the Parliament's Rules of Procedure, in particular in Articles 166 and 167, applicable at the material time, on the imposition of penalties (paragraphs 12, 13, 63, 66, 129 and 132 of the judgment under appeal).

Order of the President of the Second Chamber of the Court of 4 March 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Proceedings brought by All in One Star Ltd

(Case C-469/19) ([1])

(2021/C 228/36)

Language of the case: German

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

([1]) OJ C 328, 30.9.2019.

Order of the President of the Court of 26 February 2021 (request for a preliminary ruling from the Landgericht Düsseldorf — Germany) — EZ v Iberia Lineas Aereas de Espana, Sociedad Unipersonal

(Case C-606/20) ([1])

(2021/C 228/37)

Language of the case: German

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

([1]) OJ C 62, 22.2.2021.

GENERAL COURT

Judgment of the General Court of 14 April 2021 — Crédit Lyonnais v ECB

(Case T-504/19) ([1])

(Economic and monetary policy — Prudential supervision of credit institutions — Article 4(1)(d) and Article 4(3) of Regulation (EU) No 1024/2013 — Calculation of the leverage ratio — ECB's partial refusal to authorise the exclusion of exposures meeting certain conditions — Article 429(14) of Regulation (EU) No 575/2013 — Failure to examine all the relevant aspects of the individual case — Res judicata — Article 266 TFEU)

(2021/C 228/38)

Language of the case: French

Parties

Applicant: Crédit Lyonnais (Lyon, France) (represented by: A. Champsaur and A. Delors, lawyers)

Defendant: European Central Bank (represented by: J. Poscia, R. Ugena and F. Bonnard, acting as Agents, and H.-G. Kamann, lawyer)

Re:

Application under Article 263 TFEU seeking the annulment of Decision ECB-SSM-2019-FRCAG-39 adopted by the ECB on 3 May 2019, pursuant to Article 4(1)(d) and Article 10 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63), and Article 429(14) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1, corrigenda OJ 2013 L 208, p. 68, and OJ 2013 L 321, p. 6), in so far as it refuses to authorise the applicant to exclude certain exposures from the calculation of the leverage ratio.

Operative part of the judgment

The Court:

1. Annuls decision ECB-SSM-2019-FRCAG-39 adopted by the ECB on 3 May 2019 in so far as it refused to authorise Crédit Lyonnais to exclude from the calculation of the leverage ratio 34 % of its exposures to the Caisse des dépôts et consignations;

2. Orders the ECB to pay the costs.

([1]) OJ C 312, 16.9.2019.

Order of the General Court of 9 April 2021 — Laroni v Parliament

(Case T-415/19) ([1])

(Law governing the institutions — Single statute for Members of the European Parliament — Members of the European Parliament elected for 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 — Change in the amount of pensions for Members of the Italian national Parliament — Corresponding change, by the European Parliament, in the amount of pensions for certain former Members of the European Parliament elected in Italy — Death of the applicant — Proceedings not resumed by the successors — No need to adjudicate)

(2021/C 228/39)

Language of the case: Italian

Parties

Applicant: Nereo Laroni (Venice, Italy) (represented by: M. Merola, lawyer)

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

Re:

Application under Article 263 TFEU for annulment of the note of 11 April 2019 of the Parliament concerning adjustment of the amount of the pension which the applicant receives following the entry into force on 1 January 2019 of Resolution No 14/2018 of the Ufficio di Presidenza della Camera dei deputati.

Operative part of the order

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

2. Each party shall bear its own costs.

([1]) OJ C 295, 2.9.2019.

Order of the General Court of 8 April 2021 — CRII-GEN and Others v Commission

(Case T-496/20) ([1])

(Action for annulment — Plant protection products — Active substance glyphosate — Request for review for the purpose of withdrawing or amending the approval — Article 21 of Regulation (EC) No 1107/2009 — Rejection — Act not open to challenge)

(2021/C 228/40)

Language of the case: French

Parties

Applicants: Comité de recherche et d'information indépendantes sur le génie génétique (CRII-GEN) (Paris, France), and the 6 other applicants whose names are listed in the annex to the order (represented by: C. Lepage, lawyer)

Defendant: European Commission (represented by: X. Lewis, G. Gattinara, I. Nagalis and G. Koleva, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Commission's decision of 17 June 2020 rejecting the applicants' request, made under Article 21 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1), to withdraw or amend the approval of active substance glyphosate.

Operative part of the order

1. The action is dismissed.

2. There is no longer any need to adjudicate on the application for leave to intervene submitted by Bayer Agriculture BV.

3. The Comité de recherche et d'information indépendantes sur le génie génétique (CRII-GEN) and the other applicants whose names are listed in the annex shall pay the costs, with the exception of those incurred by Bayer Agriculture relating to its application for leave to intervene.

4. Bayer Agriculture shall bear its own costs relating to the application for leave to intervene.

(1) OJ C 329, 5.10.2020.

Action brought on 22 March 2021 — RG v Council

(Case T-157/21)

(2021/C 228/41)

Language of the case: English

Parties

Applicant: RG (represented by: R. Purcell, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Order the annulment of the Council decision (EU) 2020/2252 of 29 December 2020 (1) on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (2), to the extent that the decision provisionally applies Title VII of part Three of the Trade and Cooperation Agreement to Ireland;

— Order the Council to bear the costs of the proceedings

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that Council acts without competence, in infringing an essential procedural requirement, and in violation of the Treaties, in making a decision that purported to bind Ireland in the area of freedom, security, and justice ('AFSJ') without an 'opt-in' pursuant to Protocol 21.

— The Protocol is part of the primary law of the Union. It also reflects a key democratic provision within Irish constitutional law;

— The text of Protocol 21, and its corresponding provision in the Irish Constitution, demonstrate that Ireland retains exclusive competence in the AFSJ;

— The TCA is an international agreement within the meaning of the Protocol. An opt-in is therefore required, for the AFSJ measures therein to be binding on Ireland;

— CJEU case-law supports the proposition that the Title on Surrender is a non-incidental measure which has the AFSJ as its proper legal basis.

(1) OJ 2020, L 444, p. 2
(2) OJ 2020, L 444, p. 14

Action brought on 29 March 2021 — Ubisoft Entertainment v EUIPO — Huawei Technologies (FOR HONOR)

(Case T-171/21)

(2021/C 228/42)

Language of the case: English

Parties

Applicant: Ubisoft Entertainment (Carentoir, France) (represented by: J. Bourgeois, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Huawei Technologies Co. Ltd (Shenzhen, Chine)

Details of the proceedings before EUIPO

Applicant of the trademark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark FOR HONOR — Application for registration No 14 744 338

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 January 2021 in Case R 1297/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to bear all costs and to reimburse the applicant of all costs supported for the opposition action and appeal action including appeal taxes.

Plea in law

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

— Misapplication of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 31 March 2021 — Valve v Commission

(Case T-172/21)

(2021/C 228/43)

Language of the case: English

Parties

Applicant: Valve Corp. (Bellevue, Washington, United States) (represented by: L. Kjølbye, S. Völcker, and G. Caldini, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 20 January 2021 relating to proceedings under Article 101 of the TFEU and Article 53 of the EEA Agreement (Cases AT.40413 — Focus Home, AT.40414 — Koch Media, AT.40420 — ZeniMax, AT.40422 — Bandai Namco and AT.40424 — Capcom — C(2021) 75 final), in whole or in part; and

— order the European Commission 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 errors of law and fact in the application of Article 101(1) TFEU in relation to the finding of agreements/concerted practices between Valve and each of the five video game publishers, resulting from the European Commission's unjustified expansion of the relevant case law to encompass conduct that falls short of 'concertation' and wrong assessment of the conduct at issue.

2. Second plea in law, alleging errors of law and fact in the application of Article 101(1) TFEU in relation to the Commission's finding that the alleged agreements/concerted practices between Valve and each of the five video game publishers restrict competition 'by object' within the meaning of Article 101(1) TFEU, resulting from the Commission's failure to appreciate the novelty of the conduct at issue, and wrong assessment of the relevant legal and economic context, namely the relevance of the Copyright Directive, the role of Valve as a two-sided platform, and the nature of the products and services at issue (digital videogames).

Action brought on 16 April 2021 — Polynt v ECHA

(Case T-207/21)

(2021/C 228/44)

Language of the case: English

Parties

Applicant: Polynt SpA (Scanzorosciate, Italy) (represented by: C. Mereu, P. Sellar, and S. Abdel-Qader, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— declare this application admissible and well-founded;

— annul the contested decision;

— order ECHA to pay the costs of the proceedings.

Pleas in law and main arguments

By its action, the applicant seeks the annulment of the decision of the Board of Appeal of the European Chemicals Agency of 9 February 2021 by which it upholds the ECHA decision requesting to carry out additional tests as part of the evaluation of the substance Hexahydro-4-methylphthalic anhydride (case A-015-2019) pursuant to Article 40 of Regulation (CE) nº 1907/2006 of the European Parliament and the Council ([1]) ('REACH Regulation'). In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the Board of Appeal erred in law when it reviewed the lawfulness of ECHA's decision TPE-D-2114483466-38-01/F of 4 September 2019 on a testing proposal for the substance Hexahydro-4-methylphthalic anhydride (EC number 243-072-0 and CAS number 19438-60-9) ('4-MHHPA');

2. Second plea in law, alleging that the Board of Appeal erred in law when it concluded that the examination of testing proposals is the same as for the examination of a Compliance Check;

3. Third plea in law, alleging that the Board of Appeal failed to apply the correct legal test and to consider the Applicant's arguments, reversed the burden of proof in relation to the requirements of Column 2 of the Section 8.7.3. of the Annex X to the REACH Regulation and failed to address the appellant's arguments regarding the findings of the WHO Concise International Chemical Assessment Document 75;;

4. Fourth plea in law, alleging that the Board of Appeal violated/misapplied Articles 91 to 93 of the REACH Regulation;

5. Fifth plea in law, alleging that the Board of Appeal failed to address the applicant's pleas in relation to the violation of Article 13 of the TFEU, Article 25 of the REACH Regulation and the principles of protection of animal welfare, proportionality and sound administration.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006, L 396, p. 1)

Action brought on 16 April 2021 — Dorit v EUIPO — Erwin Suter (DORIT)

(Case T-208/21)

(2021/C 228/45)

Language in which the application was lodged: German

Parties

Applicant: Dorit-DFT Fleischereimaschinen GmbH (Ellwangen, Germany) (represented by: E. Strauß, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Erwin Suter AG, Maschinenfabrik Retus (Kölliken, Switzerland)

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: International registration designating the European Union in respect of the word mark DORIT — International registration No 878 792

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 February 2021 in Case R 127/2020-5

Form of order sought

The applicant claims that the Court should:

— alter the contested decision and allow the application for cancellation of the contested mark;

— in the alternative, annul the contested decision;

— order the other party to the proceedings to pay the costs of the proceedings before EUIPO and, if appropriate, order EUIPO to pay the costs of the present proceedings.

Plea in law

— Infringement of Article 60(1)(c) in conjunction with Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 19 April 2021 — Vintae Luxury Wine Specialists v EUIPO — R. Lopez de Heredia Viña Tondonia (LOPEZ DE HARO)

(Case T-210/21)

(2021/C 228/46)

Language in which the application was lodged: Spanish

Parties

Applicant: Vintae Luxury Wine Specialists SLU (Logroño, Spain) (represented by: L. Broschat García and L. Polo Flores, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: R. Lopez de Heredia Viña Tondonia SA (Haro, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark LOPEZ DE HARO — Application for registration No 17 909 326

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 February 2021 in Case R 1741/2020-5

Forms of order sought

The applicant claims that the Court should:

— annul the contested decision;

— grant EU trade mark application No 17 909 326 LÓPEZ DE HARO (figurative mark) for goods in Class 33;

— order any party opposing the present action to pay the costs.

Plea in law

Infringement of Article 8(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council.

Action brought on 16 April 2021 — Mlékárna Hlinsko v Commission

(Case T-213/21)

(2021/C 228/47)

Language of the case: English

Parties

Applicant: Mlékárna Hlinsko a.s. (Hlinsko, Czech Republic) (represented by: S. Sobolová and O. Billard, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the ban on the provision of grants imposed by the letter of the defendant dated 22 October 2020, ARES (2020) 5759350;

— order the defendant to pay the applicant's 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 applicant's fundamental rights have been violated, both directly and indirectly, by the defendant, because the applicant has never been able to exercise its right to be heard in the course of the inquiry leading up to the adoption of the contested measure.

2. Second plea in law, alleging that the defendant has no competence to audit specific grants and to decide on specific applications for grants from the European Structural and Investment Funds, because the defendant is entitled only to examine the general conformity of the management and control systems implemented by the Member States, but has no authority at all to conduct a detailed audit and decide on specific grant applications submitted by individual companies.

3. Third plea in law, alleging that the defendant has no competence to interpret and apply Member States' internal law, because its competences are strictly limited by the principle of conferral set out in Articles 5 and 13 of the Treaty on European Union; any derogation from that principle must be appraised strictly, and the combination of the principle of conferral and the provisions of the Treaties clearly implies that the defendant is not competent to apply a Member State's internal law. In any case, the Czech law provisions relied upon by the defendant are not controllable under Regulation (EU) No 1303/2013, ([1]) which is the legal basis of the audit procedure leading up to the adoption of the contested measure.

4. Fourth plea in law, alleging that the defendant did not prove the content of Czech law and erred in its interpretation and application. Instead of proving the content of Czech law, as required by the jurisprudence of the Court of Justice, the defendant grossly misinterpreted Czech law and in particular Section 4c of the Conflict of Interest Act, ([2]) deliberately ignoring the case law of Czech courts as well as the final, binding and enforceable decision of the Czech authorities relating to the subject matter of the audit procedure leading up to the adoption of the contested measure.

5. Fifth plea in law, alleging that the defendant erred also in the interpretation and application of EU law, because it wrongly concluded there was a breach of Article 61 of the Financial Regulation, ([3]) and did not reflect that the Czech rules on conflicts of interest are in conflict with the basic principles of EU law.

([1]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).

([2]) Czech Act No 159/2006, on Conflicts of Interest, as amended.

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

Action brought on 20 April 2021 — SB v eu-LISA

(Case T-217/21)

(2021/C 228/48)

Language of the case: French

Parties

Applicant: SB (represented by: H. Tagaras, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— uphold the application;

— annul the contested measures;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action for annulment of the decision of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) of 3 August 2020 dismissing the applicant at the end of his probationary period, the latter relies on six pleas in law.

1. First plea in law, alleging infringement of the duty to state reasons in so far as the probationary report, in particular, does not indicate any concrete fact whatsoever and merely refers to abstract assessments, not in any way substantiated by facts or references to the alleged failures of the applicant to achieve his objectives. The applicant also complains that the authority empowered to conclude contracts countersigned the probationary report without indicating which of the assessments of the authors of the report it endorsed.

2. Second plea in law, alleging infringement of the rule requiring 'normal conditions' for the course of the traineeship, in so far as the applicant is criticised for unsatisfactory performance of tasks which, he claims, were never assigned to him as well as for insufficient knowledge of the English language, despite the fact that the defendant had twice verified that knowledge prior to the applicant's recruitment.

3. Third plea in law, alleging infringement of the right to be heard, in so far as the applicant was not permitted to comment on the report of the formal dialogue with the reporting officer for his probationary period, and in so far as he was invited to a hearing by the authority empowered to conclude contracts only after it had taken the dismissal decision.

4. Fourth plea in law, alleging procedural irregularities consisting, inter alia, in (i) the failure to respect the time limit for the procedure for drawing up the probationary report, (ii) the presence of an unexpected person during the formal assessment dialogue, (iii) the failure to consult the applicant's direct supervisor and (iv) the lack of any reference in the probationary report about the assignment of new objectives to the applicant in the course of the probationary period.

5. Fifth plea in law, alleging infringement of the duty of care and of Article 84 of the Conditions of Employment of Other Servants, for having encouraged the applicant to make a great effort to improve near the end of his probationary period, so that he could be confirmed in his post, and then informing him that that improvement was too late, even though the administration was late in launching the procedures. In the same context, the applicant criticises the defendant for not extending his probationary period, which would have allowed his improvement to be 'measured', while also taking into account the constraints relating to the health crisis.

6. Sixth plea in law, alleging a manifest error of assessment and infringement of the principle of sound administration for the reasons set out above.

Action brought on 23 April 2021 — Agora Invest v EUIPO — Transportes Maquinaria y Obras (TRAMOSA)

(Case T-219/21)

(2021/C 228/49)

Language in which the application was lodged: Spanish

Parties

Applicant: Agora Invest, SA (Barcelona, Spain) (represented by: A. Alejos Cutuli, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Transportes Maquinaria y Obras, SA (Madrid, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark TRAMOSA — Application for registration No 17 236 531

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 February 2021 in Case R 566/2020-5

Forms of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject opposition B 3 029 199 to EU trade mark application No 17 236 531;

— grant EU trade mark No 17 236 531 TRAMOSA (with graphic representation);

— order the defendant to pay the costs.

Plea in law

Infringement of Article 8(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council.

Action brought on 25 April 2021 — Italy v Commission

(Case T-221/21)

(2021/C 228/50)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent; G. Rocchitta, C. Gerardis, and E. Feola, avvocati dello Stato)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision 2021/261 of 17 February 2021 in so far as it applies, in respect of Italy, the financial corrections relating to Surveys AA/2017/013 (Area-linked aid — Paying agencies: all — Financial year 2018 — EUR 67 368 272,99) and CEB/2018/057 (Financial year 2017 and late payments — Paying agencies: all — Net amount: EUR 74 978 660,98 — Gross amount: EUR 75 696 497,28);

— in the alternative, annul that [implementing] decision in so far as it applies a flat-rate correction of EUR 67 368 272,99 relating to Audit Survey AA/2017/013 (Area-linked aid — Paying agencies: all — Financial year 2018 — EUR 67 368 272,99) instead of the one-off correction fixed by the [Agenzia per le Erogazioni in Agricoltura (Italian Agricultural Payments Authority) (AGEA)] at EUR 27 848 824,26;

— in any event, 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 four pleas in law.

1. First plea in law, regarding Survey AA/2017/013, relating to area-linked aid, alleging infringement of Article 4[(1)](h) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608), with regard to the definition of 'permanent grassland' adopted at national level pursuant to [Decreto Ministeriale n. 6513 del 18 novembre 2014 (Ministerial Decree No 6513 of the Italian Minister for Agricultural, Food and Forestry Policy of 18 November 2014)].

2. Second plea in law, regarding Survey AA/2017/013, alleging infringement of Article 52(2) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), as well as Article 12(2) and (6) of Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ 2014 L 255, p. 18), with regard to the application of a flat rate despite the actual risk to the EU budget being calculable.

3. Third plea in law, regarding Survey AA/2017/013, alleging infringement of the second paragraph of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union, with regard to the application of the general clause of 'disproportionate effort', used as the basis for applying the flat-rate correction.

4. Fourth plea in law, regarding Survey CEB/2018/057, relating to late payments, alleging infringement of Article 5(4) of [Delegated] Regulation (EU) No 907/2014, with regard to assumed late payments relating to the 2015 single application even though there are 'exceptional management conditions' connected with the application of the 2015-2020 [Common Agricultural Policy] reform.

Action brought on 26 April 2021 — Shopify v EUIPO — Rossi and Others (Shoppi)

(Case T-222/21)

(2021/C 228/51)

Language of the case: English

Parties

Applicant: Shopify Inc. (Ottawa, Ontario, Canada) (represented by: S. Völker and M. Pemsel, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Massimo Carlo Alberto Rossi (Fiano, Italy), Salvatore Vacante (Berlin, Germany), Shoppi Ltd (London, United Kingdom)

Details of the proceedings before EUIPO

Proprietors of the trade mark at issue: Other parties to the proceedings before the Board of Appeal

Trade mark at issue: European Union figurative mark Shoppi in dark blue, white, red, orange — European Union trade mark No 16 684 797

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 18 February 2021 in Case R 785/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the appeal of the other parties to the proceedings before the Second Board of Appeal of EUIPO against the Cancellation Division's decision of 6 February 2020 (invalidity number: 000034203 C);

— order EUIPO and the other parties to the proceedings before the Second Board of Appeal of EUIPO to pay the costs including the costs in the proceedings before the Board of Appeal.

Plea in law

— Infringement of Article 60(1)(a) in connection with Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 27 April 2021 — PepsiCo v EUIPO (Smartfood)

(Case T-224/21)

(2021/C 228/52)

Language of the case: English

Parties

Applicant: PepsiCo, Inc. (Raleigh, North Carolina, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union figurative mark Smartfood in colour — Application for registration No 18 170 180

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 February 2021 in Case R 1947/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the applicant.

Pleas in law

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

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

Action brought on 27 April 2021 — Ryanair v Commission

(Case T-225/21)

(2021/C 228/53)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 4 September 2020 on State Aid SA.58114 (2020/N) — Italy — *COVID-19 aid to Alitalia* ([1]); and

— 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 the defendant misused its powers and misapplied Article 107(2)(b) TFEU by prioritising the review of the aid and freezing its investigations of unlawful rescue aid granted to Alitalia in 2017 and 2019.

2. Second plea in law, alleging the defendant misapplied Article 107(2)(b) TFEU and committed manifest errors of assessment in its review of the proportionality of the aid to the damage caused by the COVID-19 crisis.

3. Third plea in law, alleging the defendant violated specific provisions of the TFEU and the general principles of European law that have underpinned the liberalisation of air transport in the EU since the late 1980s (*i.e.*, non-discrimination, the free provision of services — applied to air transport through Regulation 1008/2008 [2] — and free establishment).

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

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

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[1] OJ 2021 C 41, p. 6

[2] Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance) (OJ 2008 L 293, p. 3–20).

Action brought on 27 April 2021 — Retail Royalty v EUIPO — Fashion Energy (Device of an eagle)

(Case T-226/21)

(2021/C 228/54)

Language of the case: English

Parties

Applicant: Retail Royalty Co. (Las Vegas, Nevada, United States) (represented by: J. Bogatz and Y. Stone, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fashion Energy Srl (Milano, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Device of an eagle) — European Union trade mark No 5 066 113

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 10 February 2021 in Case R 2813/2019-5

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 Board of Appeal to pay the costs incurred by the applicant.

Pleas in law

— Infringement of Articles 58(1)(a), 58(2) and 18(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, and Article 19(1) of Commission Delegated Regulation (EU) 2018/625 in conjunction with Article 10(3) of Commission Delegated Regulation (EU) 2018/625;

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

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