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COURT OF JUSTICE OF THE EUROPEAN UNION

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(2021/C 252/01)

Last publication

OJ C 242, 21.6.2021

Past publications

OJ C 228, 14.6.2021

OJ C 217, 7.6.2021

OJ C 206, 31.5.2021

OJ C 189, 17.5.2021

OJ C 182, 10.5.2021

OJ C 180, 10.5.2021

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Juge d'instruction du tribunal de grande instance de Paris (France) lodged on 29 October 2018 — Criminal proceedings against X

(Case C-690/18)

(2021/C 252/02)

Language of the case: French

Referring court

Juge d'instruction du tribunal de grande instance de Paris

Party to the main proceedings

X

Other parties: Consommation, logement et cadre de vie (CLCV), France Nature Environnement, Générations futures, Greenpeace France, ADR Europe Express, Union fédérale des consommateurs — Que choisir (UFC — Que choisir), AS and Others

By order of 6 May 2021, the Court (Seventh Chamber) ruled:

1. Article 3(10) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information [1] must be interpreted as meaning that software installed or acting on the electronic engine controller constitutes an 'element of design', within the meaning of that provision, where it acts on the operation of the emission control system and reduces its effectiveness.

2. Article 3(10) of Regulation No 715/2007 must be interpreted as meaning that the concept of an 'emission control system', within the meaning of that provision, covers both 'exhaust gas after-treatment' technologies and strategies that reduce emissions downstream, namely after their formation, and those which, like the exhaust gas recirculation system, reduce emissions upstream, namely during their formation.

3. Article 3(10) of Regulation No 715/2007 must be interpreted as meaning that a device which detects any parameter related to the conduct of the approval procedures provided for by that regulation in order to improve the performance of the emission control system during those procedures, and thus to obtain approval of the vehicle, constitutes a 'defeat device' within the meaning of that provision, even if such an improvement may also be observed, occasionally, under normal conditions of vehicle use.

4. Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device which systematically improves the performance of the vehicle emission control system during type-approval procedures in order to comply with the emission limits laid down by that regulation, and thus obtain the approval of those vehicles, cannot fall within the scope of the exception to the prohibition on such devices laid down in that provision, which relates to the protection of the engine against damage or accident and the safe operation of the vehicle, even if such a device helps to prevent the ageing or clogging up of the engine.

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[1] OJ 2007 L 171, p. 1.

Request for a preliminary ruling from the Juge d'instruction du tribunal de grande instance de Paris (France) lodged on 29 October 2018 — Criminal proceedings against Y

(Case C-691/18)

(2021/C 252/03)

Language of the case: French

Referring court

Juge d'instruction du tribunal de grande instance de Paris

Party to the main proceedings

Y

Other parties: BT, Consommation, logement et cadre de vie (CLCV), Générations futures, Greenpeace France, CU, Union fédérale des consommateurs — Que choisir (UFC — Que choisir)

By order of 6 May 2021, the Court (Seventh Chamber) ruled:

1. Article 3(10) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ([1]) must be interpreted as meaning that software installed or acting on the electronic engine controller constitutes an 'element of design', within the meaning of that provision, where it acts on the operation of the emission control system and reduces its effectiveness.

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4. Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device which systematically improves the performance of the vehicle emission control system during type-approval procedures in order to comply with the emission limits laid down by that regulation, and thus obtain the approval of those vehicles, cannot fall within the scope of the exception to the prohibition on such devices laid down in that provision, which relates to the protection of the engine against damage or accident and the safe operation of the vehicle, even if such a device helps to prevent the ageing or clogging up of the engine.

([1]) OJ 2007 L 171, p. 1.

Request for a preliminary ruling from the Juge d'instruction du tribunal de grande instance de Paris (France) lodged on 29 October 2018 — Criminal proceedings against Z

(Case C-692/18)

(2021/C 252/04)

Language of the case: French

Referring court

Juge d'instruction du tribunal de grande instance de Paris

Party to the main proceedings

Z

Other parties: DV, IA, ATPIC, EW and Others, Consommation, logement et cadre de vie (CLCV), Conseil national des associations familiales laïques (CNAFAL), FX, France Nature Environnement, Générations futures, GY, Greenpeace France, HZ and Others, Union fédérale des consommateurs — Que choisir (UFC — Que choisir)

By order of 6 May 2021, the Court (Seventh Chamber) ruled:

1. Article 3(10) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ([1]) must be interpreted as meaning that software installed or acting on the electronic engine controller constitutes an 'element of design', within the meaning of that provision, where it acts on the operation of the emission control system and reduces its effectiveness.

2. Article 3(10) of Regulation No 715/2007 must be interpreted as meaning that the concept of an 'emission control system', within the meaning of that provision, covers both 'exhaust gas after-treatment' technologies and strategies that reduce emissions downstream, namely after their formation, and those which, like the exhaust gas recirculation system, reduce emissions upstream, namely during their formation.

3. Article 3(10) of Regulation No 715/2007 must be interpreted as meaning that a device which detects any parameter related to the conduct of the approval procedures provided for by that regulation in order to improve the performance of the emission control system during those procedures, and thus to obtain approval of the vehicle, constitutes a 'defeat device' within the meaning of that provision, even if such an improvement may also be observed, occasionally, under normal conditions of vehicle use.

4. Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device which systematically improves the performance of the vehicle emission control system during type-approval procedures in order to comply with the emission limits laid down by that regulation, and thus obtain the approval of those vehicles, cannot fall within the scope of the exception to the prohibition on such devices laid down in that provision, which relates to the protection of the engine against damage or accident and the safe operation of the vehicle, even if such a device helps to prevent the ageing or clogging up of the engine.

([1]) OJ 2007 L 171, p. 1.

Appeal brought on 10 September 2020 by Comprojecto-Projectos e Construções, Lda. and Others against the order of the General Court (Ninth Chamber) delivered on 8 July 2020 in Case T-90/20 REC, Comprojecto-Projectos e Construções and Others v ECB and Banco do Portugal

(Case C-450/20 P)

(2021/C 252/05)

Language of the case: Portuguese

Parties

Appellants: Comprojecto-Projectos e Construções, Lda., Paulo Eduardo Matos Gomes de Azevedo, Julião Maria Gomes de Azevedo, Isabel Maria Matos Gomes de Azevedo (represented by: M. Ribeiro, advogado)

Other parties to the proceedings: European Central Bank, Banco do Portugal

By order of 5 May 2021, the Court of Justice (Seventh Chamber) dismissed the appeal as manifestly inadmissible.

Request for a preliminary ruling from the Audiencia Provincial de Las Palmas de Gran Canaria (Spain) lodged on 6 October 2020 — Banco de Santander S.A. v YC

(Case C-503/20)

(2021/C 252/06)

Language of the case: Spanish

Referring court

Audiencia Provincial de Las Palmas de Gran Canaria

Parties to the main proceedings

Appellant: Banco de Santander S.A.

Respondent: YC

By order of 25 March 2021, the Court of Justice (Sixth Chamber) stated that the first question is manifestly inadmissible, and its reply to the second question is that Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, [1] as amended by Council Directive 90/88/EEC of 22 February 1990 [2] and 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, [3] must be interpreted as meaning that it does not preclude national legislation, as interpreted in national case-law, which establishes the annual percentage rate of charge that may be placed on the consumer under a credit agreement in order to combat usury, provided that that legislation does not contravene the rules harmonised by those directives as regards, in particular, information obligations.

(1) OJ L 42, 12.2.1987, p. 48.
(2) OJ L 61, 10.3.1990, p. 14.
(3) OJ L 133, 22.5.2008, p. 66.

Appeal brought on 22 October 2020 by Hochmann Marketing GmbH against the order of the General Court (Sixth Chamber) delivered on 23 January 2020 in Case T-807/19, Hochmann Marketing GmbH v European Commission

(Case C-539/20 P)

(2021/C 252/07)

Language of the case: German

Parties

Appellant: Hochmann Marketing GmbH (represented by: J. Jennings, Rechtsanwalt)

Other party to the proceedings: European Commission

By order of 6 May 2021, the Court of Justice of the European Union (Eighth Chamber) dismissed the appeal as manifestly inadmissible and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona (Spain) lodged on 15 December 2020 — Administración General del Estado v Ayuntamiento de Les Cabanyes

(Case C-679/20)

(2021/C 252/08)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona

Parties to the main proceedings

Applicant: Administración General del Estado

Defendant: Ayuntamiento de Les Cabanyes

By order of 6 May 2021, the Court of Justice (Ninth Chamber) declared that it clearly had no jurisdiction to answer the questions referred for a preliminary ruling by the Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona by decision of 11 December 2020.

Appeal brought on 18 January 2021 by Tinnus Enterprises LLC against the judgment of the General Court (Tenth Chamber) delivered on 18 November 2020 in Case T-574/19, Tinnus Enterprises v EUIPO

(Case C-29/21 P)

(2021/C 252/09)

Language of the case: English

Parties

Appellant: Tinnus Enterprises LLC (represented by: A. Odle and R. Palijama, advocaten)

Other party to the proceedings: European Union Intellectual Property Office

By order of 5 May 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Tinnus Enterprises LLC should bear its own costs.

Appeal brought on 1 February 2021 by Embutidos Monells, SA against the judgment of the General Court (Fifth Chamber) delivered on 2 December 2020 in Case T-639/19, Sánchez Romero Carvajal Jabugo v EUIPO — Embutidos Monells (5MS MMMMM)

(Case C-59/21 P)

(2021/C 252/10)

Language of the case: Spanish

Parties

Appellant: Embutidos Monells, SA (represented by: L. Broschat García and L. Polo Flores, abogados)

Other parties to the proceedings: Sánchez Romero Carvajal Jabugo, S. A. U., European Union Intellectual Property Office

By order of 18 May 2021, the Court of Justice (Chamber determining whether appeals may proceed) ruled that the appeal should not be allowed to proceed and ordered Embutidos Monells, SA to bear its own costs.

Appeal brought on 2 February 2021 by BSH Hausgeräte GmbH against the judgment of the General Court (Tenth Chamber) delivered on 2 December 2020 in Case T-152/20, BSH Hausgeräte GmbH v European Union Intellectual Property Office

(Case C-67/21 P)

(2021/C 252/11)

Language of the case: German

Parties

Appellant: BSH Hausgeräte GmbH (represented by: S. Biagosch, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 12 May 2021, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to bear its own costs.

Appeal brought on 15 February 2021 by easyCosmetic Swiss GmbH against the judgment of the General Court (Single Judge) delivered on 9 December 2020 in Case T-858/19, easyCosmetic Swiss GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-93/21 P)

(2021/C 252/12)

Language of the case: German

Parties

Appellant: easyCosmetic Swiss GmbH (represented by: D. Terheggen, Rechtsanwalt, and S. E. Sullivan, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office, U.W.I. Unternehmensberatungs- und Wirtschaftsinformations GmbH

By order of 20 May 2021, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Juzgado Mercantil 7 de Barcelona (Spain) lodged on 11 March 2021 — AD and Others v PACCAR Inc, DAF TRUCKS NV, DAF Trucks Deutschland GmbH

(Case C-163/21)

(2021/C 252/13)

Language of the case: Spanish

Referring court

Juzgado Mercantil 7 de Barcelona

Parties to the main proceedings

Applicants: AD and Others

Defendants: PACCAR Inc, DAF TRUCKS NV, DAF Trucks Deutschland GmbH

Question referred

Must Article 5(1) of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union [1] be interpreted as meaning that the disclosure of relevant evidence refers exclusively to existing documents in the control of the defendant or a third party or, in contrast, can Article 5(1) also include the disclosure of documents that must be created *ex novo* by the party to whom the request for information is made by compiling or classifying information, knowledge or data held by it?

[1] OJ 2014 L 349, p. 1.

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 23 March 2021 — Nokia Technologies Oy v Daimler AG

(Case C-182/21)

(2021/C 252/14)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: Nokia Technologies Oy

Defendant: Daimler AG

Interveners in support of the defendant: Continental Automotive GmbH, Continental Automotive Hungary Kft., Bury Sp. z.o.o., TomTom Sales B.V., VALEO Telematik und Akustik GmbH (formerly Peiker acustic GmbH), Robert Bosch GmbH, Huawei Technologies Deutschland GmbH, TomTom International B.V., Sierra Wireless S.A.

Questions referred

A. Is there an obligation to license suppliers on a priority basis?

1. Can an undertaking at a downstream stage in the economic process rely on the plea of abuse of a dominant position within the meaning of Article 102 TFEU to dismiss a patent infringement action for a prohibitive injunction brought by the proprietor of a patent essential to a standard established by a standardisation body ('SEP') who has irrevocably undertaken to that body to grant a licence to any third party on FRAND terms, where the standard for which the patent at issue is essential, or parts thereof, are already implemented in an upstream product procured by the defendant in the patent infringement action, whose suppliers which are willing to obtain a licence are refused, by the patent proprietor, their own unrestricted licence for all types of use relevant under patent law on FRAND terms in respect of products implementing the standard?

   (a) Is this the case in particular if it is customary practice in the relevant industry of the final product distributor for the intellectual property right situation in respect of the patents used by the supplier part to be clarified by way of licensing through the suppliers?

   (b) Is there licensing priority for suppliers at *every* stage of the supply chain or only for the supplier immediately upstream of the distributor of the final product at the end of the value chain? Do customary trading practices also play a decisive role in that regard?

2. Does the prohibition of abuse under antitrust law require that the supplier be granted its own, unrestricted licence for all types of use relevant under patent law on FRAND terms for products implementing the standard in the sense that the end distributors (and, where relevant, the upstream customers) in turn no longer require their own, separate licence from the SEP holder in order to avoid patent infringement in the case of use of the supplier part concerned in accordance with its intended purpose?

3. If Question 1 is answered in the negative: Does Article 102 TFEU lay down specific qualitative, quantitative and/or other requirements for the criteria according to which the proprietor of a standard-essential patent decides the potential patent infringers at different levels of the same production and value chain against which it is to bring an action for a prohibitory injunction?

B. More precise clarification of the requirements established by the decision of the Court of Justice in the *Huawei* v *ZTE* case (judgment of 16 July 2015, C-170/13): [1]

1. Irrespective of the fact that the obligations to act (notice of infringement, licensing request, FRAND licence offer; licence offer to the supplier to be licensed on a priority basis) to be reciprocally complied with by the SEP holder and the SEP user must be discharged *prior to any litigation*, is it possible for obligations to act not fulfilled prior to any litigation to be discharged subsequently in the course of court proceedings in a manner that preserves the rights of the party concerned?

2. Can a meaningful licensing request by the patent user be assumed only if, on the basis of a comprehensive assessment of all the circumstances surrounding the matter, it is clearly and unequivocally apparent that the SEP user is willing and prepared to enter into a licensing agreement with the SEP holder on FRAND terms, irrespective of what form such FRAND terms (which, in the absence of a licence offer drawn up at that time, are not at all foreseeable yet) may take?

(a) Is it generally the case that an infringer that remains silent on a notice of infringement for several months thereby indicates that it is not interested in obtaining a licence, such that — despite the existence of a licence request expressed orally — there is no such request, with the consequence that the SEP holder's action for a prohibitory injunction must be allowed?

(b) Can a lack of a licence request be inferred from licence terms presented by the SEP user by way of a counter-offer, with the result that the action for a prohibitory injunction brought by the SEP holder is subsequently allowed without first assessing whether the SEP holder's own licence offer (which preceded the SEP user's counter-offer) complies with FRAND terms in the first place?

(c) Is such an inference precluded in any event if the licence terms of the counter-offer from which a lack of a licence request is to be inferred are terms in respect of which it is neither manifestly apparent nor established at the highest judicial level that they are incompatible with FRAND terms?

[1] C-170/13, EU:C:215:477.

Action brought on 1 April 2021 — European Commission v Republic of Poland

(Case C-204/21)

(2021/C 252/15)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P.J.O. Van Nuffel and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— declare that, by adopting and maintaining in force Article 42a § § 1 and 2 of the Ustawa prawo o ustroju sądów powszechnych (Law on the system of ordinary courts; 'the LSOC'), as well as Article 55 § 4 thereof; Article 26 § 3 of the Ustawa o Sądzie Najwyższym (Law on the Supreme Court), as well as Article 29 § § 2 and 3 thereof; and Article 5 § § 1a and 1b of the Ustawa o sądach administracyjnych (Law on the administrative courts), in the wording resulting from the Ustawa z dnia 20 grudnia 2019 r. — Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law of 20 December 2019 amending the Law on the system of ordinary courts, the Law on the Supreme Court and certain other laws; 'the amending law'), as well as Article 8 of the amending law, which means that it is not permissible for any national court to review compliance with the EU requirement of being an independent and impartial tribunal previously established by law, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), in the light of the case-law of the European Court of Human Rights concerning Article 6(1) of the [European Convention on Human Rights], as well as Article 267 TFEU and the principle of the primacy of EU law;

— declare that, by adopting and maintaining in force Article 26 § 2 and § § 4 to 6 of the Law on the Supreme Court, as well as Article 82 § § 2 to 5 thereof, in the wording resulting from the amending law, and Article 10 of the amending law, which place the examination of complaints and legal issues concerning the lack of independence of a court or judge under the exclusive jurisdiction of the Izba Kontroli Nadzwyczajnej i Spraw Publicznych Sądu Najwyższego (Extraordinary Review and Public Affairs Chamber of the Supreme Court), the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, as well as Article 267 TFEU and the principle of the primacy of EU law;

— declare that, by adopting and maintaining in force points 2 and 3 of Article 107 § 1 of the LSOC, as well as points 1 to 3 of Article 72 § 1 of the Law on the Supreme Court, in the wording resulting from the amending law, allowing the review of compliance with the EU requirement of being an independent and impartial tribunal previously established by law to be classified as a disciplinary offence, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, as well as Article 267 TFEU;

— declare that, by conferring decision-making powers in cases which have a direct impact on the status and tenure of office of judges and assessors (trainee judges) (such as allowing judges and assessors (trainee judges) to be criminally prosecuted or detained, cases relating to the employment and social insurance laws concerning Supreme Court judges, and cases relating to the retirement of a Supreme Court judge) on the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court), whose independence and impartiality are not guaranteed, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU;

— declare that, by adopting and maintaining in force Article 88a of the LSOC, Article 45 § 3 of the Law on the Supreme Court and Article 8 § 2 of the Law on the administrative courts, in the wording resulting from the amending law, the Republic of Poland has infringed the right to respect for private life and the right to the protection of personal data guaranteed by Article 7 and Article 8(1) of the Charter, as well as Article 6(1)(c) and (e), Article 6(3), and Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; ([1])

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

Due to the circumstances of its creation, its composition, and the powers conferred upon it, the Disciplinary Chamber of the Supreme Court does not constitute a judicial body that displays the characteristics of an independent tribunal within the meaning of Article 19(1) TEU, read in conjunction with Article 47 of the Charter. As a result, maintaining its jurisdiction in cases relating to other national judges, concerning the status of judges and the conditions under which the office of judge is to be exercised, infringes their independence, and is in breach of Article 19(1) TEU.

The amending law of 20 December 2019, by excluding the possibility for national courts to review compliance, by panels of judges ruling in cases concerning EU law, with the requirements of being an independent and impartial tribunal previously established by law within the meaning of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, infringes those provisions and disregards the mechanism for referring questions for a preliminary ruling provided for in Article 267 TFEU. This is because, according to the case-law of the Court of Justice, national courts are under an obligation to ensure that cases concerning rights which individuals derive from EU law are examined by an independent and impartial tribunal previously established by law. The classification of such a review as having the characteristics of a disciplinary offence is also in breach of EU law. Every national court, when adjudicating on EU law, must have the possibility to assess, of its own motion or at the request of a party, whether cases concerning EU law are examined by an independent tribunal within the meaning of EU law, without the threat of disciplinary proceedings being initiated in respect of the judges concerned. Conferring exclusive jurisdiction in relation to the examination of requests for the recusal of a judge from a particular case, or for the determination of an appropriate panel to rule on that case, based on an allegation of lack of independence of a judge or panel, on the Extraordinary Review and Public Affairs Chamber of the Supreme Court prevents other national courts from fulfilling the obligations mentioned above and from referring questions concerning the interpretation of that EU requirement to the Court of Justice for a preliminary ruling. Conversely, according to the case-law of the Court of Justice, every national court is entitled to refer questions for a preliminary ruling under Article 267 TFEU. Moreover, courts whose decisions are not subject to appeal are obliged to do so in the event of any issues of interpretation.

Obliging every judge to supply, within 30 days from his or her appointment to the office of judge, information regarding his or her membership of a professional body or association, the functions performed by him or her within non-commercial foundations, and his or her membership of a political party, as well as publishing that information in the Biuletyn Informacji Publicznej (Public Information Bulletin) before his or her appointment to the office of judge infringes a judge's fundamental right to respect for his or her private life and to the protection of his or her personal data, and is in breach of the provisions of the GDPR.

(1) OJ 2016 L 119, p. 1.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 31 March 2021 — Criminal proceedings against V. S.

(Case C-205/21)

(2021/C 252/16)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Applicant:

Ministerstvoto na vatreshnite raboti, Glavna direktsia za borba s organiziranata prestapnost

Accused:

V. S.

Questions referred

1. Is Article 10 of Directive 2016/680 (1) effectively transposed into national law — Article 25(3) and Article 25a of Zakon za ministerstvo na vatreshnite raboti (Bulgarian Law on the Ministry of Interior) — by the inclusion of a reference to the similar provision in Article 9 of Regulation 2016/679? (2)

2. Is the requirement set in Article 10(a) of Directive 2016/680 in conjunction with Article 52 and with Articles 3 and 8 of the Charter, that any limitation on integrity and protection of personal data must be provided for by law, fulfilled if contradictory national provisions exist in relation to the permissibility of processing of genetic and biometric data for the purposes of creating a police record?

3. Is a national law, namely Article 68(4) of the Bulgarian Law on the Ministry of Interior, which provides for the obligation of the court of first instance to order the forced collection of personal data (taking photographs for the file, taking fingerprints, and taking samples in order to create a DNA profile), compatible with Article 6(a) of Directive 2016/680 in conjunction with Article 48 of the Charter, if a person who is charged with a premeditated criminal offence requiring public prosecution refuses to voluntarily cooperate in the collection of these personal data, without the court being able to assess whether there are serious grounds for believing that the person has committed the criminal offence with which he or she is charged?

4. Is a national law, namely Article 68(1) to (3) of the Bulgarian Law on the Ministry of Interior, which provides, as a general rule, for the taking of photographs for the file, the taking of fingerprints, and the taking of samples in order to create a DNA profile for all persons who are charged with a premeditated criminal offence requiring public prosecution, compatible with Article 10, Article 4(1)(a) and (c), and Article 8(1) and (2) of Directive 2016/680?

([1]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

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

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 1 April 2021 — Autoridade Tributária e Aduaneira v DSR. — Montagem e Manutenção de Ascensores e Escadas Rolantes SA

(Case C-218/21)

(2021/C 252/17)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Autoridade Tributária e Aduaneira

Defendant: DSR. — Montagem e Manutenção de Ascensores e Escadas Rolantes SA

Questions referred for a preliminary ruling

1. Is it compatible with European Union law, in particular Annex IV to the [Sixth] VAT Directive, ([1]) for point 2.27 of List I annexed to the VAT Code to be applied in such a way that it is taken to mean that it includes the repair and maintenance of lifts carried out by the undertaking to which the facts … above relate and that it results in the application of the reduced rate of VAT?

2. Is it compatible with European Union law, in particular Annex IV to the [Sixth] VAT Directive, for that provision of the VAT Code to be applied in such a way that it also takes into account other provisions of national law, namely Article 1207, Article 204(1)(e) and (3), and Article 1421(2)(b) of the Civil Code (provisions governing the concepts of works contract and immovable property and the presumption that a lift is a common part of a building in co-ownership)?

([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 Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 29 March 2021 — VX v Autoridade Tributária e Aduaneira

(Case C-224/21)

(2021/C 252/18)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: VX

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Must Article 63 TFEU, read in conjunction with Article 65(1) TFEU, be interpreted as meaning that it precludes a personal income tax scheme which a Member State operates as part of direct taxation and which, in the case of non-resident taxable persons and earnings from capital gains realised through the sale of immovable property situated in that Member State, combines two legal regimes, under one of which (i), a special proportional flat rate of 28 % is applied to all earnings from capital gains (the tax base), calculated in accordance with the general rules for the determination (quantification, *quantum*) of such earnings, while, under the other (ii), the rules for residents apply, meaning that, once earnings realised from capital gains have been calculated in accordance with those general rules, account is taken of only half (50 %) of those earnings (the tax base) and those earnings (50 % of the capital gains) are — compulsorily — *cumulated* (by increment, aggregation) with the other income which the taxable person has earned worldwide that year, in order then to determine the tax rate applicable to the totality of those incomes on the basis of the general schedule applicable to residents (comprising rates, arranged by band, ranging from 14,5 % to 48 % which can be increased by a maximum rate of 5 % if the total amount of income exceeds certain thresholds), that tax rate being applicable, in the case of non-residents, exclusively to the abovementioned income, that is to say to capital gains from property, which are taken into account in the proportion of 50 % (whereas, in the case of residents, the rate so calculated is applied to the abovementioned income and the other income earned that year)?

   It is to be noted that a non-resident taxable person must opt for one or other of the available regimes on the income tax return which he or she is in any event obliged to submit in the Member State [in question] (Portugal), whether he or she chooses to be taxed under the general regime for non-residents [set out in point (i) above] or elects to be taxed under the regime applicable to residents [as set out in point (ii) above], and on which he or she must tick one of those two options. It must be observed that the obligation for non-residents to file a return (submission of a form 3 income tax return) existed even before the adoption of the legislative amendment whereby the possibility of opting for the regime applicable to residents was included on the official form

   It may be noted that, when opting to be taxed under the regime applicable to residents, a non-resident must specify (on the return itself) the total amount of all the income he has earned worldwide during the year.

2. Must Article 63 TFEU, read in conjunction with Article 65(1) TFEU, be interpreted as meaning that it precludes a personal income tax scheme which a Member State operates as part of direct taxation and under which, while, in the case of (a) residents, earnings from capital gains, reduced by 50 % (the tax base), are compulsorily cumulated with any other income which the taxable person may have earned worldwide during the same year (with no opt-out option), the sum thereof determining the resident's total annual income, to which the progressive tax rates, arranged by band, that comprise the general schedule are applied (after personal reductions and deductions have been made), in the case (b) of non-residents, a special flat rate is applied to total earnings from capital gains (the tax base) (once the value of those earnings has been determined in accordance with the same rules as apply to residents)?

It should be noted that, in case (a), the progressive rates range between 14,5 % and 48 %, and the upper marginal rate can be increased by up to 5 % if the total amount of income exceeds a certain threshold, while, in case (b), the special rate is 28 %.

Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Latvia) lodged on 21 April 2021 — SIA Piltenes meži v Lauku atbalsta dienests

(Case C-251/21)

(2021/C 252/19)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicant at first instance and appellant in cassation: SIA Piltenes meži

Other party: Lauku atbalsta dienests

Questions referred

1. Do payments for micro-reserves created in a forest area in pursuance of the objectives of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [1] fall within the scope of Article 30(6) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005? [2]

2. Is the award of compensation for micro-reserves created in pursuance of the objectives of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds subject to the restrictions which Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union [3] lays down in respect of payments for undertakings in difficulty?

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[1] OJ 2010 L 20, p. 7.
[2] OJ 2013 L 347, p. 487.
[3] OJ 2014 L 193, p. 1.

Request for a preliminary ruling from the Okrazhen sad Vidin (Bulgaria) lodged on 23 April 2021 — Corporate Commercial Bank AD, in insolvency v Elit Petrol AD

(Case C-260/21)

(2021/C 252/20)

Language of the case: Bulgarian

Referring court

Okrazhen sad Vidin

Parties to the main proceedings

Applicant: Corporate Commercial Bank AD, in insolvency

Defendant: Elit Petrol AD

Questions referred

1. Is Article 63 TFEU, which governs the free movement of capital and payments, to be interpreted as covering the declaration of a set-off in a relationship with a banking institution where a commercial company which is a debtor of the bank discharges its liabilities by way of set-off against reciprocal claims against the same bank which are certain, of a fixed amount and due?

2. Is Article 63 TFEU to be interpreted as meaning that an amendment of the conditions for the validity of set-offs already lawfully declared in a relationship between a commercial company and a banking institution, by which the set-offs declared are declared to be invalid on the basis of new conditions which apply retroactively to the set-offs already declared, constitutes a restriction within the meaning of Article 63(1) TFEU if it has the effect of restricting the possibility to discharge liabilities towards other companies in which persons from other Member States of the European Union hold share capital or stock or from which such persons hold bonds?

3. Is Article 63 TFEU to be interpreted as permitting national legislation which retroactively amends the conditions for the validity of set-offs already lawfully declared in a relationship between a commercial company and a banking institution and which declares the declared set-offs to be invalid on the basis of new conditions applied retroactively to the set-offs already invoked?

4. Are Article 4(2)(a) and Articles 26, 27, 114 and 115 TFEU, which govern the internal market of the European Union, to be interpreted as meaning that, also in cases in which the legal relationships exist only between legal entities of the same nationality and can therefore be categorised as domestic legal relationships without a direct cross-border link to the internal market of the European Union, those provisions permit national legislation which retroactively amends the conditions for the validity of set-offs already lawfully declared in a relationship between a commercial company and a banking institution in a Member State by declaring the declared set-offs to be invalid on the basis of new conditions applied retroactively to the set-offs already invoked?

5. Are Article 2 TEU, read in conjunction with Article 19(1) thereof, and the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union to be interpreted as permitting the adoption of national legislation which amends the conditions under which set-offs can be validly declared in a relationship with a banking institution by expressly giving retroactive effect to the new conditions and declaring set-offs lawfully invoked in an earlier period to be invalid, while, in the Member State concerned, insolvency proceedings concerning the banking institution have been opened and court proceedings for a declaration of invalidity of set-offs invoked against the bank which were subject to different legal conditions at the time they were invoked are pending?

6. Is the principle of legal certainty, as a general principle of EU law, to be interpreted as permitting national legislation which amends the conditions under which set-offs can be validly declared in a relationship with a banking institution by expressly giving retroactive effect to the new conditions and declaring set-offs lawfully invoked in an earlier period to be invalid, while, in the Member State concerned, insolvency proceedings concerning the banking institution have been opened and court proceedings for a declaration of invalidity of set-offs invoked against the bank which were subject to different legal conditions at the time they were invoked are pending?

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 23 April 2021 — A v B

(Case C-262/21 PPU)

(2021/C 252/21)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: A

Defendant: B

Questions referred

1. Must Article 2(11) of Council Regulation (EC) No 2201/2003 ([1]) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ('the Brussels II bis Regulation'), relating to the wrongful removal of a child, be interpreted as meaning that a situation in which one of the parents, without the other parent's consent, removes the child from his or her place of residence to another Member State, which is the Member State responsible under a transfer decision taken by an authority in application of Regulation (EU) No 604/2013 ([2]) of the European Parliament and of the Council ('the Dublin III Regulation'), must be classified as wrongful removal?

2. If the answer to the first question is in the negative, must Article 2(11) of the Brussels II bis Regulation, relating to wrongful retention, be interpreted as meaning that a situation in which a court of the child's State of residence has annulled the decision taken by an authority to transfer examination of the file, but in which the child whose return is ordered no longer has a currently valid residence document in his or her State of residence, or the right to enter or to remain in the State in question, must be classified as wrongful retention?

3. If, in the light of the answer to the first or the second question, the Brussels II bis Regulation must be interpreted as meaning that there is a wrongful removal or retention of the child, and that he or she should therefore be returned to his or her State of residence, must Article 13(b) of the 1980 Hague Convention be interpreted as precluding the child's return, either

   (i) on the ground that there is grave risk, within the meaning of that provision, that the return of an unaccompanied infant whose mother has personally taken care of him or her would expose that child to physical or psychological harm or otherwise place the child in an intolerable situation; or

   (ii) on the ground that the child, in his or her State of residence, would be taken into care and placed in a hostel either alone or with his or her mother, which would indicate that there is a grave risk, within the meaning of that provision, that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation: or

   (iii) on the ground that, without a currently valid residence document, the child would be placed in an intolerable situation within the meaning of that provision?

4. If, in the light of the answer to the third question, it is possible to interpret the grounds of refusal in Article 13(b) of the 1980 Hague Convention as meaning that there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, must Article 11(4) of the Brussels II bis Regulation, in conjunction with the concept of the child's best interests, referred to in Article 24 of the Charter of Fundamental Rights of the European Union and in that regulation, be interpreted as meaning that, in a situation in which neither the child nor the mother has a currently valid residence document in the child's State of residence, and in which therefore have neither the right to enter nor the right to remain in that State, the child's State of residence must make adequate arrangements to secure that the child and his or her mother can lawfully remain [Or. 14] in the Member State in question? If the child's State of residence has such an obligation, must the principle of mutual trust between Member States be interpreted as meaning that the State which returns the child may, in accordance with that principle, presume that the child's State of residence will fulfil those obligations, or do the child's interests make it necessary to obtain from the authorities of the State of residence details of the specific measures that have been or will be taken for the child's protection, so that the Member State which surrenders the child may assess, in particular, the adequacy of those measures in the light of the child's interests?

5. If the child's State of residence does not have the obligation, referred to above in the fourth question, to take adequate measures, is it necessary, in the light of Article 24 of the Charter of Fundamental Rights, to interpret Article 20 of the 1980 Hague Convention, in the situations referred to in the third question, points (i) to (iii), [Or. 15] as meaning that that provision precludes the return of the child because the return of the child might be considered to be contrary, within the meaning of that provision, to the fundamental principles relating to the protection of human rights and fundamental freedoms?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

([2]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 23 April 2021 — Norra Stockholm Bygg AB v Per Nycander AB

(Case C-268/21)

(2021/C 252/22)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Norra Stockholm Bygg AB

Defendant: Per Nycander AB

Other party to the proceedings: Entral AB

Questions referred

1. Does Article 6(3) and (4) of the General Data Protection Regulation [1] also impose a requirement on national procedural legislation relating to disclosure obligations?

2. If Question 1 is answered in the affirmative, does the General Data Protection Regulation mean that regard must also be had to the interests of the data subjects when a decision on disclosure must be made which involves the processing of personal data? In such circumstances, does EU law establish any requirements concerning how, in detail, that decision should be made?

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

Request for a preliminary ruling from the Budapest Környéki Törvényszék (Hungary) lodged on 28 April 2021 — WD v Agrárminiszter

(Case C-273/21)

(2021/C 252/23)

Language of the case: Hungarian

Referring court

Budapest Környéki Törvényszék

Parties to the main proceedings

Applicant: WD

Defendant: Agrárminiszter

Question referred

By its single question, the referring court seeks clarification as to whether Article 32(2)(a) and (b) of Regulation (EU) No 1307/2013 ([1]) must be interpreted as meaning that an area, classified in the land registry as 'aerodrome withdrawn from agricultural use', and where there is no activity associated with an aerodrome, must be considered as predominantly used for agricultural activities if animals are kept for farming purposes in that area.

([1]) 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).

Appeal brought on 3 May 2021 by European Commission against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 24 February 2021 in Case T-161/18, Braesch and Others v Commission

(Case C-284/21 P)

(2021/C 252/24)

Language of the case: English

Parties

Appellant: European Commission (represented by: A. Bouchagiar and K. Blanck, Agents)

Other parties to the proceedings: Anthony Braesch, Trinity Investments DAC, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP, Bybrook Capital Badminton Fund LP

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— rule itself on the application at first instance and reject the application as inadmissible; and

— order the other parties to the proceedings to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits a single ground of appeal.

According to the appellant, the General Court breached Article 108(2) TFEU and Article 1(h) of the State Aid Procedural Regulation ([1]) by erroneously qualifying the applicants at first instance as 'parties concerned' or 'interested parties'.

On that basis, the General Court erroneously concluded that the applicants at first instance had standing to bring proceedings under the fourth limb of Article 263 TFEU against the Commission's Decision C(2017) 4690 final of 4 July 2017 on State Aid SA.47677 (2017/N) authorising compatible state aid by Italy in favour of Banca Monte dei Paschi di Siena.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015, L 248, p. 9).

Action brought on 4 May 2021 — European Commission v French Republic

(Case C-286/21)

(2021/C 252/25)

Language of the case: French

Parties

Applicant: European Commission (represented by: O. Beynet, M. Noll-Ehlers, acting as Agents)

Defendant: French Republic

Form of order sought

The Commission claims that the Court should:

— first, declare that, by systematically and persistently exceeding the daily limit value for fine particulate matter (PM10) from 1 January 2005 in the Paris agglomeration and air quality zone (FR04A01/FR11ZAG01) and from 1 January 2005 until 2016 inclusive in the Martinique/Fort-de-France zone (FR39N10/FR02ZAR01), the French Republic has continuously failed to fulfil its obligations under Article 13(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, [1] read in conjunction with Annex XI to that directive;

— secondly, declare that the French Republic has failed, in those two zones from 11 June 2010, to fulfil its obligations under the second subparagraph of Article 23(1) of Directive 2008/50/EC, read in conjunction with Annex XV to that directive, and in particular its obligation to ensure that the exceedance period is kept as short as possible.

Pleas in law and main arguments

As regards Paris, the daily limit value was not complied with uninterruptedly from 2005 until the latest data available, that is, in 2019. Furthermore, the compliance gap regarding the exceedances of the daily limit value in the Paris zone is substantial (since the number of exceedances is double the permitted number of exceedances) and has not improved since 2015. As regards the Martinique zone, the daily limit value was not complied with continuously until 2016 (with the exception of 2008).

In the two zones of Paris and Martinique, the limit values for PM10 were exceeded when the time limit for responding to the reasoned opinion expired. At that time, France should have established and notified plans. Analysis shows that France has not adopted such plans. The measures taken (at national and regional level) by France failed to ensure that the exceedance period is kept as short as possible, as required by the provisions of Directive 2008/50/EC.

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

GENERAL COURT

Judgment of the General Court of 12 May 2021 — Sun Stars & Sons v EUIPO — Carpathian Springs (AQUA CARPATICA)

(Case T-637/19) [1]

(EU trade mark — Opposition proceedings — Application for the three-dimensional EU trade mark AQUA CARPATICA — Earlier three-dimensional EU and national trade marks VODAVODA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 252/26)

Language of the case: English

Parties

Applicant: Sun Stars & Sons Pte Ltd (Singapore, Singapore) (represented by: M. Maček and C. Saettel, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Carpathian Springs SA (Vatra Dornei, Romania) (represented by: D. Bogdan, G. Bozocea and M. Stănescu, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 6 August 2019 (Case R 317/2018-4), relating to opposition proceedings between Sun Stars & Sons and Carpathian Springs.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sun Stars & Sons Pte Ltd to pay the costs.

[1] OJ C 399, 25.11.2019.

Judgment of the General Court of 12 May 2021 — Sun Stars & Sons v EUIPO — Valvis Holding (AC AQUA AC)

(Case T-638/19) [1]

(EU trade mark — Opposition proceedings — Application for the three-dimensional EU trade mark AC AQUA AC — Earlier three-dimensional EU and national trade marks VODAVODA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 252/27)

Language of the case: English

Parties

Applicant: Sun Stars & Sons Pte Ltd (Singapore, Singapore) (represented by: M. Maček and C. Saettel, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Valvis Holding SA (Bucharest, Romania) (represented by: D. Bogdan, G. Bozocea and M. Stănescu, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 6 August 2019 (Case R 649/2018-4), relating to opposition proceedings between Sun Stars & Sons and Valvis Holding.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Valvis Holding SA to pay the costs.

([1]) OJ C 399, 25.11.2019.

Judgment of the General Court of 12 May 2021 — Metamorfoza v EUIPO — Tiesios kreivės (MUSEUM OF ILLUSIONS)

(Case T-70/20) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark MUSEUM OF ILLUSIONS — Earlier EU figurative mark MUSEUM OF ILLUSIONS — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 95 of Regulation 2017/1001)

(2021/C 252/28)

Language of the case: English

Parties

Applicant: Metamorfoza d.o.o. (Zagreb, Croatia) (represented by: A. Bijelić, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Tiesios kreivės (Vilnius, Lithuania)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 December 2019 (Case R 663/2019-2), relating to opposition proceedings between Tiesios kreivės and Metamorfoza.

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 December 2019 (Case R 663/2019-2);

2. Orders each party to bear its own costs.

([1]) OJ C 103, 30.3.2020.

Judgment of the General Court of 12 May 2021 — Tornado Boats International v EUIPO — Haygreen (TORNADO)

(Case T-167/20) [1]

(EU trade mark — Invalidity proceedings — Figurative EU mark TORNADO — Absolute ground for invalidity — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2021/C 252/29)

Language of the case: English

Parties

Applicant: Tornado Boats International ApS (Lystrup, Denmark) (represented by: M. Hoffgaard Rasmussen, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: David Haygreen (Colwyn Bay, United Kingdom) (represented by: R. Harrison, Solicitor)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 17 January 2020 (Case R 1169/2018-1), relating to proceedings for a declaration of invalidity between Mr Haygreen and Tornado Boats International.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tornado Boats International ApS to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders Mr David Haygreen to bear his own costs.

(1) OJ C 175, 25.5.2020.

Judgment of the General Court of 12 May 2021 — Bavaria Weed v EUIPO (BavariaWeed)

(Case T-178/20) [1]

(EU trade mark — Application for the EU figurative mark BavariaWeed — Absolute ground for refusal — Trade mark contrary to public policy — Article 7(1)(f) of Regulation (EU) 2017/1001 — Article 7(2) of Regulation 2017/1001)

(2021/C 252/30)

Language of the case: German

Parties

Applicant: Bavaria Weed GmbH (Herrsching am Ammersee, Germany) (represented by: J. Wolhändler, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 22 January 2020 (Case R 1458/2019-5), relating to an application for registration of the figurative sign BavariaWeed as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Bavaria Weed GmbH to pay the costs.

([1]) OJ C 191, 8.6.2020.

Order of the General Court of 8 April 2021 — Target Ventures Group v EUIPO — Target Partners (TARGET VENTURES)

(Case T-274/19) ([1])

(EU trade mark — Cancellation proceedings — Declaration of surrender of the contested trade mark — No need to adjudicate)

(2021/C 252/31)

Language of the case: English

Parties

Applicant: Target Ventures Group Ltd (Road Town, British Virgin Islands) (represented by: T. Dolde and P. Homann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Target Partners GmbH (Munich, Germany) (represented by: A. Klett and C. Mikyska, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 February 2019 (Case R 1685/2017-2), relating to cancellation proceedings between Target Ventures Group and Target Partners.

Operative part of the order

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

2. Target Ventures Group Ltd and Target Partners GmbH shall bear their own costs and shall each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 213, 24.6.2019.

Order of the General Court of 6 May 2021 — Groupe Canal + v Commission

(Case T-358/19) ([1])

(Competition — Agreements, decisions and concerted practices — Television distribution — Decision making commitments binding — Withdrawal of the contested act — No need to adjudicate)

(2021/C 252/32)

Language of the case: French

Parties

Applicant: Groupe Canal + SA (Issy-les-Moulineaux, France) (represented by: P. Wilhelm, P. Gassenbach and O. de Juvigny, lawyers)

Defendant: European Commission (represented by: A. Dawes, C. Urraca Caviedes and L. Wildpanner, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Commission Decision of 7 March 2019 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40023 — Cross-border access to pay-TV), making legally binding the commitments given by The Walt Disney Company, The Walt Disney Company Limited, Universal Studios International B.V., Universal Studios Limited and Comcast Corporation, CPT Holdings Inc., Colgems Productions Limited, Sony Corporation, Warner Bros. International Television Distribution Inc., Warner Media LLC, Sky UK Limited and Sky Limited.

Operative part of the order

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

2. There is no longer any need to adjudicate on the application to intervene submitted by the French Republic.

3. The European Commission shall pay the costs, including those incurred by Groupe Canal +, with the exception of those relating to the application to intervene.

4. Groupe Canal +, the Commission and the French Republic shall each bear their own costs relating to the application to intervene.

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[1] OJ C 270, 12.8.2019.

Order of the General Court of 4 May 2021 — Asoliva and Anierac v Commission

(Case T-822/19) [1]

(Action for annulment — Agriculture — Classification into one of three categories of virgin olive oil — Implementing measures — Lack of individual concern — Inadmissibility)

(2021/C 252/33)

Language of the case: Spanish

Parties

Applicants: Asociación Española de la Industria y Comercio Exportador de Aceite de Oliva (Asoliva) (Madrid, Spain), Asociación Nacional de Industriales Envasadores y Refinadores de Aceites Comestibles (Anierac) (Madrid) (represented by V. Rodríguez Fuentes, lawyer)

Defendant: European Commission (represented by: M. Konstantinidis, F. Castilla Contreras and M. Morales Puerta, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Article 1(1)(b) of Commission Implementing Regulation (EU) 2019/1604 of 27 September 2019 amending Regulation (EEC) No 2568/91 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis (OJ 2019 L 250, p. 14).

Operative part of the order

1. The action is dismissed as inadmissible.

2. Asociación Española de la Industria y Comercio Exportador de Aceite de Oliva (Asoliva) et Asociación Nacional de Industriales Envasadores y Refinadores de Aceites Comestibles (Anierac) shall pay the costs.

([1]) OJ C 27, 27.1.2020.

Order of the General Court of 26 April 2021 — Jouvin v Commission

(Case T-472/20 and T-472/20 AJ II) ([1])

(Action for annulment — Competition — Agreements, decisions and concerted practices — Market for the collection, tracking and distribution of parcels — Decision rejecting a complaint — Action manifestly lacking any foundation in law — Application for legal aid submitted after an action had been brought)

(2021/C 252/34)

Language of the case: French

Parties

Applicant: Frédéric Jouvin (Clichy, France) (represented by: L. Bôle-Richard, lawyer)

Defendant: European Commission (represented by: B. Ernst, A. Keidel and A. Boitos, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2020) 3503 final of 28 May 2020 rejecting the complaint submitted by the applicant concerning alleged infringements of Article 101 TFEU.

Operative part of the order

1. The action is dismissed as manifestly lacking any foundation in law.

2. The application for legal aid is rejected.

3. Mr Frédéric Jouvin shall pay the costs.

([1]) OJ C 423, 7.12.2020.

Order of the President of the General Court of 5 May 2021 — Ovsyannikov v Council

(Case T-714/20 R)

(Application for interim measures — Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — Application for the suspension of operation of measures — No urgency)

(2021/C 252/35)

Language of the case: Spanish

Parties

Applicant: Dmitry Vladimirovich Ovsyannikov (Moscow, Russia) (represented by: J. Iriarte Ángel and E. Delage González, lawyers)

Defendant: Council of the European Union (represented by: H. Marcos Fraile and P. Mahnič, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking the suspension of operation of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), of Council Decision (CFSP) 2017/2163 of 20 November 2017 amending Decision 2014/145 (OJ 2017 L 304, p. 51), of Council Implementing Regulation (EU) 2017/2153 of 20 November 2017 implementing Regulation (EU) No 269/2014 (OJ 2017 L 304, p. 3), of Council Decision (CFSP) 2020/399 of 13 March 2020 amending Decision 2014/145 (OJ 2020 L 78, p. 44), of Council Implementing Regulation (EU) 2020/398 of 13 March 2020 implementing Regulation (EU) No 269/2014 (OJ 2020 L 78, p. 1), of Council Decision (CFSP) 2020/1269 of 10 September 2020 amending Decision 2014/145 (OJ 2020 L 298, p. 23), of Council Implementing Regulation (EU) 2020/1267 of 10 September 2020 implementing Regulation (EU) No 269/2014 (OJ 2020 L 298, p. 1), of Council Decision (CFSP) 2020/1368 of 1 October 2020 amending Decision 2014/145 (OJ 2020 L 318, p. 5), and of Council Implementing Regulation (EU) 2020/1367 of 1 October 2020 implementing Regulation (EU) No 269/2014 (OJ 2020 L 318, p. 1), in so far as those measures concern the applicant.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 25 March 2021 — McCord v Commission

(Case T-161/21)

(2021/C 252/36)

Language of the case: English

Parties

Applicant: Raymond Irvine McCord (Belfast, United Kingdom) (represented by: C. O'Hare, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— pursuant to Article 263 to the Treaty on the Functioning of the European Union, annul the decision and/or draft Regulation on 29 January 2021 of the European Commission to trigger Article 16 of the Northern Ireland Protocol of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01) ('the Withdrawal Agreement') and;

— pursuant to Article 263 to the Treaty on the Functioning of the European Union, annul the decision of the European Commission not to have a published policy or an order that the European Commission develops and publishes a policy on the circumstances in which the Commission will trigger Article 16 of the Northern Ireland Protocol;

— pursuant to Article 265 to the Treaty on the Functioning of the European Union, declare that the European Commission has failed to act to have a published policy or an order that the European Commission develops and publishes a policy on the circumstances in which the Commission will trigger Article 16 of the Northern Ireland Protocol;

— order against the Commission for the Applicant's costs of this application, to include all preparatory legal costs.

Pleas in law and main arguments

In support of the action, the applicant puts forward that the decision and/or draft regulation to invoke Article 16 of the Northern Ireland Protocol of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [1], by the European Commission was disproportionate and unlawful. He further states that the Commission needs to publish its policy in relation to the triggering of Article 16 of the Northern Ireland Protocol of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community in the future.

[1] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2019 CI 384, p. 1).

Action brought on 28 April 2021 — Illumina v Commission

(Case T-227/21)

(2021/C 252/37)

Language of the case: English

Parties

Applicant: Illumina, Inc. (Wilmington, Delaware, United States) (represented by: D. Beard, QC, and P. Chappatte, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 19 April 2021 (case COMP/M.10188), pursuant to Article 22(3) of Regulation 139/2004/EC on the control of concentrations between undertakings [1], to accept the request dated 9 March 2021 for a referral under Article 22(1) of the Merger Regulation made by the Autorité de la Concurrence, France, and assert jurisdiction to examine the concentration of Illumina, Inc. and GRAIL, Inc. under the Merger Regulation;

— annul the five further joinder decisions issued by the Commission to each of the Netherlands, Belgium, Greece, Iceland and Norway permitting them to join the request for a referral;

— annul the request for a referral;

— if and insofar as it is necessary to do so, annul the decision of the Commission dated 11 March 2021 which informed Illumina that the Commission had received a request for referral and had the legal consequence, pursuant to Article 22 (4), second sentence of the Merger Regulation, that Illumina was prohibited from implementing the concentration pursuant to Article 7 of the Merger Regulation;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the decision of the Commission to examine the concentration is outside its competence. In particular, the decision:

   — erred in its identification of the objective of the Merger Regulation;

— failed to recognise that referrals of cases under Article 22 of the Merger Regulation (and Article 9 thereof) are exceptional and the powers should be construed narrowly;

— erred in its assessment of the legislative background to Article 22 of the Merger Regulation;

— erred in its interpretation of the text of Article 22 of the Merger Regulation;

— was interpreted by the Commission contrary to the principles of subsidiarity, legal certainty and proportionality.

2. Second plea in law, alleging that the decision of the Commission to examine the concentration is invalid because the request for a referral submitted by the French competition authority was out of time and/or the decision is contrary to legal certainty and good administration by reason of delays by the Commission. In particular:

— The Commission erred in law in the interpretation and application of the notion of 'made known' contained in Article 22(1) of the Merger Regulation for the purposes of calculating the date on which the 15 working day period commenced and wrongly failed to find that the request was out time, such that the Commission had no power to take the decision.

— Further or alternatively, if and insofar it was the invitation letter under Article 22(5) of the Merger Regulation by which the concentration was 'made known' to the French authorities (and/or other Member States), the delay by the Commission in issuing the invitation letter was contrary to the fundamental principle of legal certainty and the obligation to act within a reasonable time under the principle of good administration.

3. Third plea in law, alleging that the change of policy in the decision of the Commission to examine the concentration is contrary to Illumina's legitimate expectations and legal certainty, since Commissioner Vestager, on 11 September 2020, made a precise and unconditional statement that there would be a change of the Commission's policy in relation to Article 22 cases after the issuance of new guidance. Yet the invitation letter was sent prior to the publication of new guidance, at a time when the Commission's stated policy was to discourage referral requests from Member States that lacked jurisdiction under their own national laws. The Commission therefore pursued its new policy prior to publishing its new Article 22 guidance, contrary to Illumina's legitimate expectations and legal certainty.

4. Fourth plea in law, alleging that the Commission made errors of fact and assessment which undermine the basis for the decision of the Commission to examine the concentration. In particular:

— there were key factual errors in the invitation letter and the request for a referral and/or there was an unfair procedure/failure to respect the rights of defence which render the decision and/or the request unlawful;

— the Commission erred in finding an effect on trade between Member States because it lacked a proper evidential base;

— the Commission erred in finding that the concentration threatens to significantly affect competition because it lacked a proper evidential base.

(1) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

Action brought on 4 May 2021 — Fidelity National Information Services v EUIPO — IFIS (FIS)

(Case T-237/21)

(2021/C 252/38)

Language of the case: English

Parties

Applicant: Fidelity National Information Services, Inc. (Jacksonville, Florida, United States) (represented by: P. Wilhelm, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Banca IFIS SpA (Mestre, Italy)

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 FIS — Application for registration No 13 232 236

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 26 February 2021 in Case R 1460/2020-1

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision;

— order the EUIPO and the other party to the proceedings before the Board of Appeal to pay the costs incurred by the applicant in connection with this appeal.

Plea in law

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

Action brought on 5 May 2021 — Varabei v Council

(Case T-245/21)

(2021/C 252/39)

Language of the case: English

Parties

Applicant: Mikalai Mikalevich Varabei (Novopolotsk, Belarus) (represented by: G. Kremslehner, H. Kühnert, lawyers, and M. Lester QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul with immediate effect Council Decision (CFSP) 2021/353 of 25 February 2021 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus [1] and Council Implementing Regulation (EU) 2021/339 of 25 February 2021 implementing Article 8a of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus [2].

— order the Council to bear its own costs and to pay the costs of the Applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law alleging manifest errors of assessment. The applicant invokes that the Council has not explained how the applicant's business interests demonstrate either that the applicant benefits from or that that he supports the Lukashenka regime. To the contrary, the applicant's interests in the petroleum, coal transit and banking sectors are not of a type or magnitude that would indicate that the applicant supports or benefits from the regime in any way.

In addition, the applicant claims that his listing cannot be sustained on the basis that he is the co-owner of Bremino Group. The latter has not received any selective tax benefits nor other forms of support from the Belarusian administration.

(1) OJ L 68, 26.2.2021, p. 189.
(2) OJ L 68, 26.2.2021, p. 29.

Action brought on 7 May 2021 — Fibrecycle v EUIPO (BACK-2-NATURE)

(Case T-248/21)

(2021/C 252/40)

Language of the case: English

Parties

Applicant: Fibrecycle Pty Ltd (Helensvale, Australia) (represented by: T. Stein, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the word mark BACK-2-NATURE — International registration designating the European Union No 1 485 655

Contested decision: Decision of the Second Board of Appeal of EUIPO of 3 March 2021 in Case R 1699/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the applicant.

Plea in law

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

Action brought on 11 May 2021 — Aquino v Parliament

(Case T-253/21)

(2021/C 252/41)

Language of the case: French

Parties

Applicant: Roberto Aquino (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

accordingly,

— annul the decision of 7 July 2020 by which the Director-General of the Directorate-General for Personnel annulled the election of the president of the Staff Committee and decided to rerun that election;

— annul the constitutive meeting of 14 September 2020 and the elections which were held during that meeting and, in particular, the election of the president of the Staff Committee;

— annul the decision of 5 February 2021 rejecting the complaint filed by the applicant on 6 October 2020;

— order the defendant to pay compensation for the non-material harm suffered, *ex aequo et bono* at EUR 2 000;

— order the defendant to pay the entirety of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement by the defendant of its duty to ensure that officials and those elected by them have complete freedom to choose their representatives in accordance with established rules. The applicant also alleges infringement of Article 4 of the Staff Committee's Rules of Procedure and of the duty of due diligence.

2. Second plea in law, alleging infringement of the right to a hearing and of Article 41 of the Charter of Fundamental Rights of the European Union.

Action brought on 10 May 2021 — Armadora Parleros v Commission

(Case T-254/21)

(2021/C 252/42)

Language of the case: Spanish

Parties

Applicant: Armadora Parleros, SL (Santa Eugenia de Ribeira, Spain) (represented by: J. Navas Marqués, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the European Commission has infringed Article 118 of Regulation No 1224/2009 regulating the common fisheries policy (CFP), through a failure to act, by not carrying out an adequate control and monitoring as to whether that regulation has been correctly applied by the Kingdom of Spain, which may constitute an act adversely affecting the applicant ARMADORA PARLEROS, S.L.;

— declare that the infringement by the Commission has caused damage to the applicant ARMADORA PARLEROS, S.L., consisting in loss of profit from mackerel and hake fishing during the period from 2006 to 2020;

— order the European Commission to pay the commercial entity ARMADORA PARLEROS, S.L. the sum of NINE MILLION, EIGHT HUNDRED AND EIGHTY-ONE THOUSAND, FOUR HUNDRED AND THIRTY-FOUR EURO AND SIXTY-ONE CENTS (EUR 9 881 434,61) as compensation for damage, together with interest at the statutory rates, and capitalisation of the above interest;

— order the European Commission to pay all the legal costs incurred.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law.

The applicant effectively complains of illegal conduct on the part of the European Commission. That relates, in particular, to the Commission's failure to carry out its duty of monitoring and control regarding the Kingdom of Spain in relation to the effective application of the CFP, and specifically of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1), and Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ 2009 L 343, p. 1). Particular reference is made in that respect to 'the failure to verify the engine power of the trawlers which operate in the waters of the Cantabrian and North-western regions'.

As a result of that failure to act, the applicant suffered damage between 2006 and 2020 due to the fact that it was not possible to make use of the vessel 'Vianto Tercero' which, due to an incorrect application of the CFP, had to be scrapped and, consequently, became completely unusable. That caused financial loss to the company ARMADORA PARLEROS, S.L.

Action brought on 14 May 2021 — Basaglia v Commission

(Case T-257/21)

(2021/C 252/43)

Language of the case: Italian

Parties

Applicant: Giorgio Basaglia (Milan, Italy) (represented by: G. Balossi, F. Fimmanò and G. Borriello, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should order the European Commission to pay compensation for the damage suffered by Mr Giorgio Basaglia for the reasons referred to in the application, by way of damages for non-contractual liability, in an amount not lower than EUR 5 013 328,64.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law and a chapter concerning the quantification of the damage suffered.

As regards the non-contractual liability in the present case, the applicant remarks that:

— by its judgment of 23 September 2020 (Case T-727/19, *Basaglia* v *Commission*), the Court annulled the decision of the European Commission rejecting the request for access to documents submitted by the applicant;

— that judgment, in particular, confirmed that the Commission's conduct was unlawful since it had unilaterally restricted the applicant's right to access the requested documents;

— clear damage resulted from that unlawful conduct in the criminal proceedings pending against the applicant and in the proceedings before the Court of Auditors concerning losses to the public purse — since in all three sets of proceedings it was impossible for the applicant to set out his defence in full; and

— there is a clear causal link between the misconduct and the alleged damage.

Action brought on 17 May 2021 — Neolith Distribution v EUIPO (Representation of an ornamental pattern)

(Case T-259/21)

(2021/C 252/44)

Language of the case: Spanish

Parties

Applicant: Neolith Distribution, SL (Madrid, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the European Union figurative mark (Representation of an ornamental pattern) — Application for registration No 18 162 188

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 March 2021 in Case R 2155/2020-4

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— issue a decision ordering EUIPO to accept that the registration of the application for the European Union pattern mark No 18 162 188 is valid in relation to all the goods in respect of which that mark seeks protection in Class 19;

— order the defendant to pay the costs of the proceedings before EUIPO and the General Court.

Plea in law

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

Action brought on 18 May 2021 — Ryanair v Commission

(Case T-268/21)

(2021/C 252/45)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 22 December 2020 on State Aid SA.59029 — – Italy — COVID-19 — *Compensation scheme for airlines with an Italian operating license* [1]; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that 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).

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

4. Fourth plea in law, alleging that the defendant violated its duty to state reasons.

(1) OJ 2021 C 77, p. 6-7.
(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).

Order of the General Court of 5 May 2021 — Anastasiou v Commission and ECB

(Case T-149/14) [1]

(2021/C 252/46)

Language of the case: English

The President of the First Chamber, Extended Composition has ordered that the case be removed from the register.

(1) OJ C 159, 26.5.2014.

Order of the General Court of 5 May 2021 — Pavlides v Commission and ECB

(Case T-150/14) [1]

(2021/C 252/47)

Language of the case: English

The President of the First Chamber, Extended Composition has ordered that the case be removed from the register.

[1] OJ C 159, 26.5.2014.

Order of the General Court of 5 May 2021 — Vassiliou v Commission and ECB

(Case T-151/14) [1]

(2021/C 252/48)

Language of the case: English

The President of the First Chamber, Extended Composition has ordered that the case be removed from the register.

[1] OJ C 159, 26.5.2014.

Order of the General Court of 5 May 2021 — Medilab v Commission and ECB

(Case T-152/14) [1]

(2021/C 252/49)

Language of the case: English

The President of the First Chamber, Extended Composition has ordered that the case be removed from the register.

[1] OJ C 159, 26.5.2014.

Order of the General Court of 28 April 2021 — Tsilikas v Commission

(Case T-514/16) [1]

(2021/C 252/50)

Language of the case: French

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

[1] OJ C 388, 3.11.2014 (case originally registered before the European Union Civil Service Tribunal under number F-74/14 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 6 May 2021 — Tsilikas v Commission

(Case T-534/16) ([1])

(2021/C 252/51)

Language of the case: French

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

([1]) OJ C 89, 16.3.2015 (case originally registered before the European Union Civil Service Tribunal under number F-11/15 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 30 April 2021 — Aycinena and Others v Commission

(Case T-537/16) ([1])

(2021/C 252/52)

Language of the case: French

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

([1]) OJ C 89, 16.3.2015 (case originally registered before the European Union Civil Service Tribunal under number F-14/15 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 27 April 2021 — Guillen Lazo v Parliament

(Case T-541/16) ([1])

(2021/C 252/53)

Language of the case: French

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

([1]) OJ C 127, 20.4.2015 (case originally registered before the European Union Civil Service Tribunal under number F-22/15 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 6 May 2021 — Miranda Garcia v European Court of Justice

(Case T-547/16) ([1])

(2021/C 252/54)

Language of the case: French

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

([1]) OJ C 190, 8.6.2015 (case originally registered before the European Union Civil Service Tribunal under number F-53/15 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 5 May 2021 — APG Intercon and Others v Council and Others

(Case T-147/18) ([1])

(2021/C 252/55)

Language of the case: English

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 5 May 2021 — Scordis, Papapetrou & Co and Others v Council and Others

(Case T-179/18) ([1])

(2021/C 252/56)

Language of the case: English

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 5 May 2021 — Papaconstantinou and Others v Council and Others

(Case T-188/18) ([1])

(2021/C 252/57)

Language of the case: English

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 5 May 2021 — Vital Capital Investments and Others v Council and Others

(Case T-196/18) ([1])

(2021/C 252/58)

Language of the case: English

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 12 May 2021 — JV Voscf and Others v Council and Others

(Case T-197/18) [1]

(2021/C 252/59)

Language of the case: English

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

[1] OJ C 190, 4.6.2018.

Order of the General Court of 5 May 2021 — Nessim Daoud and Others v Council and Others

(Case T-208/18) [1]

(2021/C 252/60)

Language of the case: English

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

[1] OJ C 211, 18.6.2018.

Order of the General Court of 20 April 2021 — Compass Overseas Holdings and Others v Commission

(Case T-702/19) [1]

(2021/C 252/61)

Language of the case: English

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

[1] OJ C 10, 13.1.2020.

Order of the General Court of 29 April 2021 — Applia v Commission

(Case T-139/20) [1]

(2021/C 252/62)

Language of the case: English

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

[1] OJ C 161, 11.5.2020.

Order of the General Court of 29 April 2021 — Applia v Commission

(Case T-140/20) ([1])

(2021/C 252/63)

Language of the case: English

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

([1]) OJ C 161, 11.5.2020.

Order of the General Court of 29 April 2021 — Applia v Commission

(Case T-141/20) ([1])

(2021/C 252/64)

Language of the case: English

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

([1]) OJ C 161, 11.5.2020.

Order of the General Court of 29 April 2021 — Applia v Commission

(Case T-142/20) ([1])

(2021/C 252/65)

Language of the case: English

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

([1]) OJ C 161, 11.5.2020.

Order of the General Court of 11 May 2021 — Da Silva Carreira v Commission

(Case T-260/20) ([1])

(2021/C 252/66)

Language of the case: French

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

([1]) OJ C 215, 29.6.2020.

Order of the General Court of 6 May 2021 — Precisis v EUIPO — Easee (EASEE)

(Case T-66/21) ([1])

(2021/C 252/67)

Language of the case: English

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

([1]) OJ C 88, 15.3.2021.

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