Official Journal of the European Union

C 278

English edition

Information and Notices

Volume 64

12 July 2021

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 6 May 2021 — Bayer CropScience AG, Bayer AG v Association générale des producteurs de maïs et autres céréales cultivées de la sous-famille des panicoïdées (AGPM) and Others

(Case C-499/18 P) [1]

(Appeal — Regulation (EC) No 1107/2009 — Articles 4 and 21 — Criteria for approval — Review of approval — Plant protection products — Implementing Regulation (EU) No 485/2013 — Active substances clothianidin and imidacloprid — Seeds treated with plant protection products containing those active substances — Prohibition of non-professional use — Precautionary principle)

(2021/C 278/02)

Language of the case: English

Parties

Appellants: Bayer CropScience AG, Bayer AG (represented by: M. Zdzieborska, Solicitor, A. Robert, avocate, K. Nordlander, advokat, C. Zimmermann, avocat, and P. Harrison, Solicitor)

Other parties to the proceedings: Association générale des producteurs de maïs et autres céréales cultivées de la sous-famille des panicoïdées (AGPM), The National Farmers' Union (NFU) (represented initially by H. Mercer QC and J. Robb, Barrister, instructed by N. Winter, Solicitor, and subsequently by H. Mercer QC, J. Robb, Barrister, and K. Tandy, advocate), Association européenne pour la protection des cultures (ECPA) (represented initially by D. Abrahams, E. Mullier and I. de Seze, avocats, and subsequently by D. Abrahams and E. Mullier, avocats), Rapool-Ring GmbH Qualitätsraps deutscher Züchter, European Seed Association (ESA) (represented initially by P. de Jong, avocat, K. Claeyé, advocaat, and E. Bertolotto, avocate, and subsequently by P. de Jong, avocat, and K. Claeyé, advocaat), Agricultural Industries Confederation Ltd (represented initially by P. de Jong, avocat, K. Claeyé, advocaat, and E. Bertolotto, avocate, then by J. Gaul and P. de Jong, avocats, and by K. Claeyé, advocaat), European Commission (represented by: B. Eggers, P. Ondrůšek, X. Lewis and I. Naglis, acting as Agents), Union nationale de l'apiculture française (UNAF) (represented by: B. Fau and J.-F. Funke, avocats), Deutscher Berufs- und Erwerbsimkerbund eV, Österreichischer Erwerbsimkerbund (represented by: B. Tschida and A. Willand, Rechtsanwälte), Pesticide Action Network Europe (PAN Europe), Bee Life European Beekeeping Coordination (Bee Life), Buglife — The Invertebrate Conservation Trust, Stichting Greenpeace Council (Greenpeace) (represented by: B. Kloostra, advocaat), Kingdom of Sweden (represented initially by C. Meyer-Seitz, A. Falk, H. Shev, J. Lundberg and E. Karlsson, and subsequently by C. Meyer-Seitz, H. Shev and E. Karlsson, acting as Agents)

Intervener in support of the European Commission: Stichting De Bijenstichting (represented by: L. Smale, advocate)

Operative part of the judgment

The Court:

1. Declares that the appeal is inadmissible in so far as it was brought on behalf of Bayer AG;

2. Dismisses the appeal, in so far as it was brought by Bayer CropScience AG;

3. Orders Bayer CropScience AG and Bayer AG to bear their own costs and to pay those incurred by the European Commission, the Union nationale de l'apiculture française (UNAF), Deutscher Berufs- und Erwerbsimkerbund eV, Österreichischer Erwerbsimkerbund, Pesticide Action Network Europe (PAN Europe), Bee Life European Beekeeping Coordination (Bee Life), Buglife — The Invertebrate Conservation Trust and Stichting Greenpeace Council (Greenpeace);

4. Orders the National Farmers' Union (NFU) and Agricultural Industries Confederation Ltd, and also Stichting De Bijenstichting to bear their own costs;

5. Orders the Kingdom of Sweden to bear its own costs.

(1) OJ C 381, 22.10.2018.

Judgment of the Court (Third Chamber) of 20 May 2021 (request for a preliminary ruling from the Raad van State — Netherlands) — X v College van burgemeester en wethouders van de gemeente Purmerend

(Case C-120/19) (1)

(Reference for a preliminary ruling — Inland transport of dangerous goods — Directive 2008/68/EC — Article 5(1) — Concept of 'construction requirement' — Prohibition on laying down more stringent construction requirements — Authority of a Member State requiring a service station to be supplied with liquefied petroleum gas (LPG) only from road tankers fitted with a particular heat-resistant lining not provided for by the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) — Unlawfulness — Decision legally unchallengeable by a category of persons — Strictly limited possibility of obtaining the annulment of such a decision where there is clear conflict with EU law — Principle of legal certainty — Principle of effectiveness)

(2021/C 278/03)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: X

Defendant: College van burgemeester en wethouders van de gemeente Purmerend

Other party: Tamoil Nederland BV

Operative part of the judgment

1. Article 5(1) of Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the internal transport of dangerous goods, as amended by Commission Directive 2014/103/EU of 21 November 2014, must be interpreted as precluding the laying down of construction requirements that are more stringent than those set out in Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957, in the version in force on 1 January 2015, such as a requirement, imposed by the authorities of a Member State on a service station pursuant to an administrative decision in the form of an environmental licence, to be supplied with liquefied petroleum gas only from road tankers fitted with a particular heat-resistant lining such as that at issue in the main proceedings;

2. EU law, in particular the principle of effectiveness, does not preclude a procedural rule of national administrative law which provides that, in order for a requirement contrary to EU law, imposed by an administrative decision which in principle is legally unchallengeable by a category of persons, to be annulled on the ground that it would be unenforceable if it were implemented by a subsequent decision, the person must establish that the requirement at issue clearly could not, on the basis of a summary examination leaving no room for doubt, have been adopted in the light of EU law, subject, however, to the proviso, which it is for the referring court to verify, that that rule is not applied so strictly that in practice the possibility for an individual of obtaining the effective annulment of the requirement at issue would be illusory.

(1) OJ C 155, 6.5.2019.

Judgment of the Court (Fourth Chamber) of 20 May 2021 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Azienda Sanitaria Provinciale di Catania v Assessorato della Salute della Regione Siciliana

(Case C-128/19) ([1])

(Reference for a preliminary ruling — State aid — Agriculture sector — Slaughtering of animals affected by infectious diseases — Compensation for farmers — Notification and standstill requirements — Article 108(3) TFEU — Concepts of 'existing aid' and 'new aid' — Regulation (EC) No 659/1999 — Exemptions by categories of aid — Regulation (EU) No 702/2014 — De minimis aid — Regulation (EU) No 1408/2013)

(2021/C 278/04)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Azienda Sanitaria Provinciale di Catania

Defendant: Assessorato della Salute della Regione Siciliana

Intervener: AU

Operative part of the judgment

Article 108(3) TFEU must be interpreted as meaning that a measure introduced by a Member State to finance, for a period extending over several years and up to a maximum amount of EUR 20 million, both compensation to support farmers who have been obliged to slaughter animals affected by infectious diseases and payment of fees due to self-employed veterinary surgeons involved in remediation activities, must be subject to the preliminary-examination procedure laid down in that provision in the case where that measure is not covered by an authorisation decision of the European Commission to that effect, unless that measure fulfils the conditions laid down by 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 [TFEU], or the conditions laid down by Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the agriculture sector.

([1]) OJ C 182, 27.5.2019.

Judgment of the Court (Third Chamber) of 29 April 2021 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Banco de Portugal, Fundo de Resolução, Novo Banco SA, Sucursal en España v VR

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

(Reference for a preliminary ruling — Banking supervision — Reorganisation and winding up of credit institutions — Directive 2001/24/EC — Reorganisation measure adopted by an administrative authority in the home Member State of a credit institution — Transfer of rights, assets or liabilities to a 'bridge institution' — Transfer back to the credit institution subject to the reorganisation measure — Article 3 (2) — Lex concursus — Effect of a reorganisation measure in other Member States — Mutual recognition — Article 32 — Effects of a reorganisation measure on a pending lawsuit — Exception to the application of the lex concursus — Article 47, first paragraph, of the Charter of Fundamental Rights of the European Union — Effective judicial protection — Principle of legal certainty)

(2021/C 278/05)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Banco de Portugal, Fundo de Resolução, Novo Banco SA, Sucursal en España

Defendant: VR

Operative part of the judgment

Article 3(2) and Article 32 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions, read in the light of the principle of legal certainty and of the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding recognition, without further conditions, in legal proceedings on the merits pending in a Member State other than the home Member State relating to a liability which a credit institution had been relieved of by a first reorganisation measure taken in the latter Member State, the effects of a second reorganisation measure seeking to transfer back, with retroactive effect at a date prior to the opening of such proceedings, that liability to that credit institution, where such recognition has the result that the credit institution to which the liabilities had been transferred by the first measure can no longer be sued, with retroactive effect, the purposes of those proceedings, thereby calling into question judicial decisions already adopted in favour of the applicant who is the subject of those same proceedings.

(1) OJ C 363, 28.10.2019.

Judgment of the Court (Grand Chamber) of 12 May 2021 (request for a preliminary ruling from the Verwaltungsgericht Wiesbaden — Germany) — WS v Bundesrepublik Deutschland

(Case C-505/19) (1)

(Reference for a preliminary ruling — Convention implementing the Schengen Agreement — Article 54 — Charter of Fundamental Rights of the European Union — Article 50 — Ne bis in idem principle — Article 21 TFEU — Freedom of movement of persons — Interpol red notice — Directive (EU) 2016/680 — Lawfulness of the processing of personal data contained in such a notice)

(2021/C 278/06)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: WS

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1. Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 and which entered into force on 26 March 1995, and Article 21(1) TFEU, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the provisional arrest, by the authorities of a State that is a party to the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, or by those of a Member State, of a person in respect of whom the International Criminal Police Organisation (Interpol) has published a red notice, at the request of a third State, unless it is established, in a final judicial decision taken in a State that is a party to that agreement or in a Member State, that the trial of that person in respect of the same acts as those on which that red notice is based has already been finally disposed of by a State that is a party to that agreement or by a Member State respectively.

2. The provisions of 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, read in the light of Article 54 of the Convention implementing the Schengen Agreement, signed on 19 June 1990, and of Article 50 of the Charter of Fundamental Rights, must be interpreted as not precluding the processing of personal data appearing in a red notice issued by the International Criminal Police Organisation (Interpol) in the case where it has not been established in a final judicial decision taken in a State that is a party to the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, or in a Member State that the ne bis in idem principle applies in respect of the acts on which that notice is based, provided that such processing satisfies the conditions laid down by that directive, in particular in that it is necessary for the performance of a task carried out by a competent authority, within the meaning of Article 8(1) of that directive.

3. The fifth question referred for a preliminary ruling is inadmissible.

([1]) OJ C 357, 21.10.2019.

Judgment of the Court (Third Chamber) of 6 May 2021 — ABLV Bank AS (C-551/19 P), Ernests Bernis, Oļegs Fiļs, OF Holding SIA, Cassandra Holding Company SIA (C-552/19 P) v European Central Bank

(Joined Cases C-551/19 P and C-552/19 P) ([1])

(Appeal — Economic and monetary union — Banking union — Regulation (EU) No 806/2014 — Resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism (SRM) and a Single Resolution Fund — Article 18 — Resolution procedure — Conditions — Entity failing or likely to fail — Declaration by the European Central Bank (ECB) that an entity is failing or is likely to fail — Preparatory measure — Act not open to judicial review — Inadmissibility)

(2021/C 278/07)

Language of the case: English

Parties

Appellants: ABLV Bank AS (C-551/19 P), Ernests Bernis, Oļegs Fiļs, OF Holding SIA, Cassandra Holding Company SIA (C-552/19 P) (represented initially by O. Behrends and M. Kirchner, Rechtsanwälte, and subsequently by O. Behrends)

Other party to the proceedings: European Central Bank (represented initially by E. Koupepidou and G. Marafioti, acting as Agents, and also by J. Rodríguez Cárcamo, abogado, then by E. Koupepidou, G. Marafioti and R. Ugena, acting as Agents)

Intervener in support of the European Central Bank: European Commission (represented initially by D. Triantafyllou, A. Nijenhuis, K.-P. Wojcik and A. Steiblytė, and subsequently by D. Triantafyllou, A. Nijenhuis and A. Steiblytė, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeals;

2. Dismisses as being inadmissible the claim by the European Commission that the Court should replace the reasoning set out in paragraph 34 of the orders of the General Court of the European Union of 6 May 2019, ABLV Bank v ECB (T-281/18, EU:T:2019:296), and of 6 May 2019, Bernis and Others v ECB (T-283/18, not published, EU:T:2019:295), the subject of those appeals;

3. Orders ABLV Bank AS to pay the costs in Case C-551/19 P;

4. Orders Mr Ernests Bernis, Mr Oļegs Fiļs, OF Holding SIA and Cassandra Holding Company SIA to pay the costs in Case C-552/19 P;

5. Orders the European Commission to bear its own costs.

(1) OJ C 305, 9.9.2019.

Judgment of the Court (Fifth Chamber) of 20 May 2021 (request for a preliminary ruling from the Sąd Rejonowy dla Łodzi — Poland) — K.S. v A.B.

(Case C-707/19) (1)

(Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles — Directive 2009/103/EC — Article 3 — Compulsory cover of damage to property — Scope — Legislation of a Member State limiting the obligation to cover the costs of towing a vehicle involved in an accident to the costs incurred in the territory of that Member State and limiting the costs of parking to those made necessary by reason of a criminal investigation or for any other reason)

(2021/C 278/08)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Łodzi

Parties to the main proceedings

Applicant: K.S.

Defendant: A.B.

Operative part of the judgment

Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, must be interpreted:

— as precluding a provision of a Member State under which compulsory insurance against civil liability in respect of the use of motor vehicles covers compulsorily damage consisting of the costs of towing the damaged vehicle only in so far as that towing takes place in the territory of that Member State. That finding is without prejudice to the right of that Member State to limit the reimbursement of the costs of towing, without using criteria relating to its territory; and

— as not precluding a provision of a Member State under which that insurance covers compulsorily damage consisting of the costs of parking the damaged vehicle only if that parking was necessary in connection with a criminal investigation or for any other reason, provided that that limitation of cover applies without any difference in treatment depending on the Member State of residence of the owner or holder of the damaged vehicle.

(1) OJ C 27, 27.1.2020.

Judgment of the Court (First Chamber) of 12 May 2021 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Vereniging van Effectenbezitters v BP plc

(Case C-709/19) ([1])

(Reference for a preliminary ruling — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Article 7(2) — Jurisdiction in tort, delict or quasi-delict — Place where the harmful event occurred — Damage consisting in purely financial loss)

(2021/C 278/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Vereniging van Effectenbezitters

Defendant: BP plc

Operative part of the judgment

Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the direct occurrence in an investment account of purely financial loss resulting from investment decisions taken as a result of information which is easily accessible worldwide but inaccurate, incomplete or misleading from an international listed company does not allow the attribution of international jurisdiction, on the basis of the place of the occurrence of the damage, to a court of the Member State in which the bank or investment firm in which the account is held has its registered office, where that firm was not subject to statutory reporting obligations in that Member State.

([1]) OJ C 19, 20.1.2020.

Judgment of the Court (Third Chamber) of 29 April 2021 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Natumi GmbH v Land Nordrhein-Westfalen

(Case C-815/19) ([1])

(Reference for a preliminary ruling — Agriculture and fisheries — Organic production and labelling of organic products — Regulation (EC) No 834/2007 — Article 19(2) — Articles 21 and 23 — Regulation (EC) No 889/2008 — Article 27(1) — Article 28 — Annex IX, point 1.3 — Processing of organic food — Non-organic ingredients of agricultural origin — Lithothamnium calcareum alga — Powder obtained by cleaning, grinding and drying the sediment of that alga — Classification — Use in organic foodstuffs for the purpose of calcium enrichment — Authorisation — Conditions)

(2021/C 278/10)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Natumi GmbH

Defendant: Land Nordrhein-Westfalen

intervener: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control, as amended by Commission Implementing Regulation (EU) 2018/1584 of 22 October 2018, must be interpreted as precluding the use of a powder obtained from the cleaned, dried and ground sediment of the alga *Lithothamnium calcareum*, as a non-organic ingredient of agricultural origin, within the meaning of Article 28 of Regulation No 889/2008, as amended by Implementing Regulation 2018/1584, in the processing of organic foodstuffs, such as rice- and soya-based organic drinks, for the purpose of their enrichment with calcium.

(1) OJ C 77, 9.3.2020.

Judgment of the Court (Second Chamber) of 12 May 2021 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — CS, Finanzamt Österreich, Dienststelle Graz-Stadt, formerly Finanzamt Graz-Stadt v Finanzamt Österreich, Dienststelle Judenburg Liezen, formerly Finanzamt Judenburg Liezen, technoRent International GmbH

(Case C-844/19) (1)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 90 — Reduction of the taxable amount — Article 183 — Refund of excess VAT — Default interest — No national rule — Principle of fiscal neutrality — Direct effect of provisions of EU law — Principle that national law must be interpreted in conformity with EU law)

(2021/C 278/11)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: CS, Finanzamt Österreich, Dienststelle Graz-Stadt, formerly Finanzamt Graz-Stadt

Defendants: Finanzamt Österreich, Dienststelle Judenburg Liezen, formerly Finanzamt Judenburg Liezen, technoRent International GmbH

Operative part of the judgment

Article 90(1) and Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with the principle of fiscal neutrality, must be interpreted as meaning that a refund resulting from an adjustment of the taxable amount under Article 90(1) of that directive must, like a refund of excess value added tax under Article 183 of that directive, give rise to the payment of interest where it is not made within a reasonable period of time. It is for the referring court to do whatever lies within its jurisdiction to give full effect to those provisions by interpreting national law in conformity with EU law.

(1) OJ C 77, 9.3.2020.

Judgment of the Court (Ninth Chamber) of 29 April 2021 — Achemos Grupė UAB, Achema AB v European Commission, Republic of Lithuania, Klaipėdos Nafta AB

(Case C-847/19 P) ([1])

(Appeal — State aid — Decision not to raise any objections — Article 108 TFUE — Rights of the interested parties — Principle of sound administration — Diligent and impartial investigation — Scope of the review by the General Court — Obligation to state reasons)

(2021/C 278/12)

Language of the case: English

Parties

Appellants: Achemos Grupė UAB, Achema AB (represented by: R. Martens and V. Ostrovskis, advokatas)

Other parties to the proceedings: European Commission (represented initially by É. Gippini Fournier, N. Kuplewatzky and L. Armati, acting as Agents, and subsequently by E. Gippini Fournier, A. Bouchagiar and L. Armati, acting as Agents), Republic of Lithuania (represented by: R. Dzikovič and K. Dieninis, acting as Agents), Klaipėdos Nafta AB (represented by: K. Kačerauskas, and V. Vaitkutė Pavan, advokatai)

Operative part of the judgment

The Court:

1. Dismisses the main appeal;

2. Declares that there is no need to adjudicate on the cross-appeal;

3. Orders Achemos Grupė UAB and Achema AB to bear their own costs and to pay those incurred by the European Commission in respect of the main appeal;

4. Orders Achemos Grupė UAB, Achema AB and the European Commission to bear their own costs in respect of the cross-appeal;

5. Orders the Republic of Lithuania and Klaipėdos Nafta AB to bear their own costs in respect of both the main appeal and the cross-appeal.

([1]) OJ C 19, 20.1.2020.

Judgment of the Court (Eighth Chamber) of 20 May 2021 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — FORMAT Urządzenia i Montaże Przemysłowe v Zakład Ubezpieczeń Społecznych I Oddział w Warszawie

(Case C-879/19) ([1])

(Reference for a preliminary ruling — Social security — Determination of the legislation applicable — Regulation (EEC) No 1408/71 — Article 13(2)(a) — Article 14(2) — Person normally employed in the territory of two or more Member States — Single employment contract — Employer established in the worker's Member State of residence — Paid employment activity pursued exclusively in other Member States — Work performed in different Member States during successive periods — Conditions)

(2021/C 278/13)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: FORMAT Urządzenia i Montaże Przemysłowe

Defendant: Zakład Ubezpieczeń Społecznych I Oddział w Warszawie

Intervener: UA

Operative part of the judgment

Article 14(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, must be interpreted as not applying to a person who, under a single employment contract concluded with a single employer providing for the pursuit of professional activity in several Member States, works, for several successive months, solely in the territory of each of those Member States, where the duration of the uninterrupted periods of work completed by that person in each of those Member States exceeds 12 months, which it is for the referring court to verify.

(1) OJ C 54, 17.2.2020.

Judgment of the Court (Ninth Chamber) of 29 April 2021 — Fortischem a.s. v European Commission, AlzChem AG

(Case C-890/19 P) (1)

(Appeal — State aid — Advantage — Recovery — Economic continuity)

(2021/C 278/14)

Language of the case: English

Parties

Appellant: Fortischem a.s. (represented by: C. Arhold, Rechtsanwalt, and by P. Hodál and M. Staroň, avocats)

Other parties to the proceedings: European Commission (represented by: L. Armati, P. Arenas and G. Conte, acting as Agents), AlzChem AG (represented by: A. Borsos, avocat, and V. Dolka, dikigoros)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Fortischem a.s. to bear its own costs and to pay those incurred by the European Commission and by AlzChem AG.

(1) OJ C 54, 17.2.2020

Judgment of the Court (Third Chamber) of 20 May 2021 (request for a preliminary ruling from the Sąd Rejonowy w Białymstoku — Poland) — CNP spółka z ograniczoną odpowiedzialnością v Gefion Insurance A/S

(Case C-913/19) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Jurisdiction in insurance matters — Article 10 — Article 11(1)(a) — Ability to sue an insurer domiciled in a Member State in another Member State, in the case of actions brought by the policyholder, the insured person or a beneficiary, in the courts of the place where the person bringing the claim is domiciled — Article 13(2) — Action brought by the injured party directly against the insurer — Scope ratione personae — Concept of 'injured party' — Business active in the insurance sector — Special jurisdiction — Article 7(2) and (5) — Concept of 'branch', 'agency' or 'other establishment')

(2021/C 278/15)

Language of the case: Polish

Referring court

Sąd Rejonowy w Białymstoku

Parties to the main proceedings

Applicant: CNP spółka z ograniczoną odpowiedzialnością

Defendant: Gefion Insurance A/S

Operative part of the judgment

1. Article 13(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 10 thereof, must be interpreted as not applying in the case of a dispute between, on the one hand, a business which has acquired a claim originally held by an injured party against a civil liability insurance undertaking and, on the other hand, that same civil liability insurance undertaking, so that it does not preclude jurisdiction to hear and determine such a dispute from being founded on Article 7(2) or Article 7(5) of that regulation, as appropriate;

2. Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that an undertaking which adjusts losses in the context of motor liability insurance in one Member State pursuant to a contract concluded with an insurance undertaking established in another Member State, in the name and on behalf of that undertaking, must be regarded as being a branch, agency or other establishment, within the meaning of that provision, where that undertaking:

   — has the appearance of permanency, such as an extension of the insurance undertaking; and

   — has a management and is materially equipped to negotiate business with third parties, so that they do not have to deal directly with the insurance undertaking.

([1]) OJ C 54, 17.2.2020.

Judgment of the Court (First Chamber) of 20 May 2021 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'ALTI' OOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Plovdiv pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-4/20) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 205 — Persons liable for payment of VAT to the public exchequer — Joint and several liability of the recipient of a taxable supply which has exercised its right to deduct VAT knowing that the person liable for payment of that tax would not pay it — Obligation of such a recipient to pay the VAT not paid by the person liable for payment and the default interest due on account of that person's failure to pay the VAT)

(2021/C 278/16)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: 'ALTI' OOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Plovdiv pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Operative part of the judgment

Article 205 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the principle of proportionality, must be interpreted as not precluding national legislation pursuant to which the person held jointly and severally liable, for the purpose of that article, must pay, in addition to the value added tax (VAT) not paid by the person liable for payment of that tax, the default interest on that amount, due from the person liable for payment, where it is proved that, in exercising its right of deduction, it knew or should have known that the person liable for payment would not pay that VAT.

(1) OJ C 77, 9.3.2020.

Judgment of the Court (Fourth Chamber) of 20 May 2021 (request for a preliminary ruling from the Tallinna Ringkonnakohus — Estonia) — Sotsiaalministeerium v Riigi Tugiteenuste Keskus, formerly Innove SA

(Case C-6/20) (1)

(Reference for a preliminary ruling — Public supply contracts — Directive 2004/18/EC — Articles 2 and 46 — Project financed by the Fund for European Aid to the Most Disadvantaged — Criteria for the selection of tenderers — Regulation (EC) No 852/2004 — Article 6 — Requirement of a registration certificate or approval issued by the national food safety authority of the State in which the contract is to be performed)

(2021/C 278/17)

Language of the case: Estonian

Referring court

Tallinna Ringkonnakohus

Parties to the main proceedings

Applicant: Sotsiaalministeerium

Defendant: Riigi Tugiteenuste Keskus, formerly Innove SA

Interested party: Rahandusministeerium

Operative part of the judgment

1. Articles 2 and 46 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as precluding national legislation under which the contracting authority must require, in a contract notice and as a qualitative selection criterion, that tenderers furnish proof, at the time of submitting the tender, that they hold the registration certificate or approval required under the legislation applicable to the activity which is the subject of the public contract in question and that it be issued by the competent authority of the Member State in which the contract is to be performed, even where they already hold a similar registration certificate or approval in the Member State in which they are established;

2. The principle of the protection of legitimate expectations must be interpreted as meaning that it may not be relied on by a contracting authority which, in the context of a public procurement procedure, has, in order to comply with the national rules on foodstuffs, required tenderers to have, at the time of submitting their tender, a registration certificate or approval issued by the competent authority of the Member State in which the contract is to be performed.

(1) OJ C 87, 16.3.2020.

Judgment of the Court (Fourth Chamber) of 20 May 2021 (request for a preliminary ruling from the Schleswig-Holsteinisches Verwaltungsgericht — Germany) — L.R. v Bundesrepublik Deutschland

(Case C-8/20) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Border controls, asylum and immigration — Asylum policy — Directive 2013/32/EU — Common procedures for granting and withdrawing international protection — Application for international protection — Grounds of inadmissibility — Article 2(q) — Concept of 'subsequent application' — Article 33(2)(d) — Rejection by a Member State of an application for international protection as inadmissible due to the rejection of a previous application made by the person concerned in a third State with which the European Union has concluded an agreement on the criteria and mechanisms for establishing the State responsible for examining an application for asylum lodged in one of the States parties to that agreement — Final decision taken by the Kingdom of Norway)

(2021/C 278/18)

Language of the case: German

Referring court

Schleswig-Holsteinisches Verwaltungsgericht

Parties to the main proceedings

Applicant: L.R.

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 33(2)(d) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in conjunction with Article 2(q) thereof, must be interpreted as precluding legislation of a Member State which provides for the possibility of rejecting as inadmissible an application for international protection, within the meaning of Article 2(b) of that directive, made to that Member State by a third-country national or a stateless person whose previous application seeking the grant of refugee status, made to a third State implementing 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, in accordance with the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway — Declarations, had been rejected by that third State.

([1]) OJ C 87, 16.3.2020.

Judgment of the Court (Sixth Chamber) of 12 May 2021 — European Commission v Hellenic Republic

(Case C-11/20) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid declared unlawful and incompatible with the internal market — Article 108(2), second subparagraph, TFEU — Adverse weather conditions — Losses suffered by farmers — Compensation aid — Obligation of recovery — Duty to provide information — Non-implementation)

(2021/C 278/19)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Bouchagiar and T. Ramopoulos, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Tsaousi, E. Leftheriotou and A. Vasilopoulou, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by failing to take, within the prescribed periods, all the measures necessary to implement Commission Decision 2012/157/EU of 7 December 2011 concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009, and by failing to sufficiently inform the European Commission of the measures taken pursuant to that decision, the Hellenic Republic has failed to fulfil its obligations under Articles 2 to 4 of that decision and under the TFEU;

2. Orders the Hellenic Republic to pay the costs.

([1]) OJ C 68, 2.3.2020.

Judgment of the Court (Seventh Chamber) of 29 April 2021 (request for a preliminary ruling from the Sąd Okręgowy w Gdańsku — Poland) — I.W., R.W. v Bank BPH S.A.

(Case C-19/20) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Effects of a finding that a term is unfair — Mortgage loan agreement denominated in a foreign currency — Determination of the exchange rate between currencies — Novation agreement — Deterrent effect — Obligations of the national court — Article 6(1), and Article 7(1))

(2021/C 278/20)

Language of the case: Polish

Referring court

Sąd Okręgowy w Gdańsku

Parties to the main proceedings

Applicants: I.W., R.W.

Defendant: Bank BPH S.A.

Third party: Rzecznik Praw Obywatelskich

Operative part of the judgment

1. Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it is for the national court to find that a term in a contract concluded between a seller or supplier and a consumer is unfair, even if it has been contractually amended by those parties. Such a finding leads to the restoration of the situation that the consumer would have been in in the absence of the term found to be unfair, except where the consumer, by means of amendment of the unfair term, has waived such restoration by free and informed consent, which it is for the national court to ascertain. However, it does not follow from that provision that a finding that the original term is unfair would, in principle, lead to annulment of the contract, since the amendment of that term made it possible to restore the balance between the obligations and rights of those parties arising under the contract and to remove the defect which vitiated it;

2. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that, first, they do not preclude the national court from removing only the unfair element of a term in a contract concluded between a seller or supplier and a consumer where the deterrent objective pursued by that directive is ensured by national legislative provisions governing the use of that term, provided that that element consists of a separate contractual obligation, capable of being subject to an individual examination of its unfair nature. Second, those provisions preclude the referring court from removing only the unfair element of a term in a contract concluded between a seller or supplier and a consumer where such removal would amount to revising the content of that term by altering its substance, which it is for that court to determine;

3. Article 6(1) of Directive 93/13 must be interpreted as meaning that the consequences of a judicial finding that a term if a contract concluded between a seller or supplier and a consumer is unfair are covered by national law and the question of continuity of the contract should be assessed by the national court of its own motion in accordance with an objective approach on the basis of those provisions;

4. Article 6(1) of Directive 93/13, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it is for the national court, finding that a term in a contract concluded between a seller or supplier and a consumer, to inform the consumer, in the context of the national procedural rules after both parties have been heard, of the legal consequences entailed by annulment of the contract, irrespective of whether the consumer is represented by a professional representative.

(1) OJ C 191, 8.6.2020.

Judgment of the Court (Eighth Chamber) of 12 May 2021 (request for a preliminary ruling from the Tribunal de grande instance de Rennes — France) — PF, QG v Caisse d'allocations familiales (CAF) d'Ille-et-Vilaine

(Case C-27/20) (1)

(Reference for a preliminary ruling — Freedom of movement for workers — Equal treatment — Social advantages — Ceilings related to resources — Account taken of the resources received in the penultimate year preceding the period of payment of allowances — Worker returning to his Member State of origin — Reduction in the entitlement to family allowances)

(2021/C 278/21)

Language of the case: French

Referring court

Tribunal de grande instance de Rennes

Parties to the main proceedings

Applicants: PF, QG

Defendant: Caisse d'allocations familiales (CAF) d'Ille-et-Vilaine

Operative part of the judgment

Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as not precluding national legislation which uses, as the reference year for the calculation of family allowances to be allocated, the penultimate year preceding the payment period, so that, in the event of a substantial increase in the income received by a national official in the course of a secondment to an EU institution situated in another Member State, the amount of family allowances is, at the time of the return of that official to the Member State of origin, significantly reduced for two years.

(1) OJ C 95, 23.3.2020.

Judgment of the Court (First Chamber) of 29 April 2021 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — F. v Stadt Karlsruhe

(Case C-47/20) ([1])

(Reference for a preliminary ruling — Transport — Driving licences — Withdrawal of the licence in the territory of a Member State other than the issuing Member State — Renewal of the licence by the issuing Member State after the withdrawal decision — No automaticity of mutual recognition)

(2021/C 278/22)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: F.

Defendant: Stadt Karlsruhe

Operative part of the judgment

Article 2(1) and the second subparagraph of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as not precluding a Member State, in the territory of which the holder of a driving licence in categories A and B issued by another Member State has been deprived of the right to drive on account of unlawful conduct, which occurred during a temporary stay in that territory after the issue of the licence, from subsequently refusing to recognise the validity of that driving licence, after that licence has been renewed, pursuant to Article 7(3) of that directive, by the Member State where the holder of that licence normally resides, within the meaning of the first paragraph of Article 12 of that directive. It is, however, for the referring court to examine whether, in accordance with the principle of proportionality, the rules, provided for by the legislation of the first Member State, laying down the conditions with which the holder of the driving licence must comply in order to recover the right to drive in its territory, do not exceed the limits of what is appropriate and necessary to attain the objective pursued by Directive 2006/126, consisting in improving road safety.

([1]) OJ C 161, 11.5.2020.

Judgment of the Court (First Chamber) of 29 April 2021 (request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg — Germany) — AR v Stadt Pforzheim

(Case C-56/20) ([1])

(Reference for a preliminary ruling — Transport — Driving licences — Mutual recognition — Withdrawal of the licence in the territory of a Member State other than the issuing Member State — Affixing of an endorsement to the driving licence indicating that it is not valid within that Member State)

(2021/C 278/23)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: AR

Defendant: Stadt Pforzheim

Operative part of the judgment

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended by Commission Directive 2011/94/EU of 28 November 2011, must be interpreted as precluding a Member State which has adopted, under the second subparagraph of Article 11(4) of that directive, as amended by Directive 2011/94, a decision refusing to recognise the validity of a driving licence issued by another Member State on account of unlawful conduct on the part of its holder, which occurred during a temporary stay in the territory of the first Member State after the issue of that licence, from affixing to that licence also an endorsement indicating a prohibition, for that holder, on driving in that Member State, when that holder has not established his or her normal residence, within the meaning of the first subparagraph of Article 12 of Directive 2006/126, as amended by Directive 2011/94, in the territory of that Member State.

(1) OJ C 209, 22.6.2020.

Judgment of the Court (Sixth Chamber) of 20 May 2021 — Sigrid Dickmanns v European Union Intellectual Property Office (EUIPO)

(Case C-63/20 P) (1)

(Appeal — Civil service — Members of the temporary staff — Fixed-term contract with a termination clause — Not included on the reserve list for a competition — Purely confirmatory measure — Time for bringing a complaint)

(2021/C 278/24)

Language of the case: German

Parties

Appellant: Sigrid Dickmanns (represented by: H. Tettenborn, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: A. Lukošiūtė, acting as Agent, and B. Wägenbaur, Rechtsanwalt)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Ms Sigrid Dickmanns to pay the costs of the present proceedings.

(1) OJ C 201, 15.6.2020.

Judgment of the Court (Fourth Chamber) of 12 May 2021 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — YL v Altenrhein Luftfahrt GmbH

(Case C-70/20) (1)

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 17(1) — Air carrier liability in the event of accidents — Concept of 'accident' — Hard landing made within the normal operating range of an aircraft — Bodily injury allegedly sustained by a passenger during such a landing — No accident)

(2021/C 278/25)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: YL

Defendant: Altenrhein Luftfahrt GmbH

Operative part of the judgment

Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 must be interpreted as meaning that the concept of 'accident' laid down in that provision does not cover a landing that has taken place in accordance with the operating procedures and limitations applicable to the aircraft in question, including the tolerances and margins stipulated in respect of the performance factors that have a significant impact on landing, and taking into account the rules of the trade and best practice in the field of aircraft operation, even if the passenger concerned perceives that landing as an unforeseen event.

(1) OJ C 201, 15.6.2020.

Judgment of the Court (Seventh Chamber) of 12 May 2021 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Hauptzollamt B v XY

(Case C-87/20) (1)

(Reference for a preliminary ruling — Protection of species of wild fauna and flora by regulating trade therein — Regulations (EC) No 338/97 and (EC) No 865/2006 — Sturgeon caviar — Introduction into the customs territory of to the European Union for personal and household effects — Import permit — Derogation — Limit of 125 grams per person — Exceeded — Intention to give as a gift to a third party)

(2021/C 278/26)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt B

Defendant: XY

Operative part of the judgment

1. Article 7(3) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as amended by Commission Regulation (EU) No 1320/2014 of 1 December 2014, must be interpreted as meaning that sturgeon caviar, when brought into the customs territory of the European Union, may be regarded as a 'personal or household item' within the meaning of that provision, when it is intended to be offered as a gift to a third party, provided that there is no evidence of a commercial purpose, and may thus benefit from the derogation provided for in that provision from the obligation on the importer to present an import permit;

2. Article 57(5)(a) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules for the implementation of Council Regulation No 338/97, as amended by Commission Regulation (EU) 2015/870 of 5 June 2015 must be interpreted as meaning that, where the quantity of sturgeon caviar brought into the customs territory of the European Union exceeds the limit of 125 grams per person and the importer is not in possession of a permit issued for the purpose of the import, the entire quantity of sturgeon caviar so imported is to be confiscated by the competent customs authority.

(1) OJ C 175, 25.5.2020.

Judgment of the Court (Seventh Chamber) of 6 May 2021 — Bruno Gollnisch v European Parliament

(Case C-122/20 P) ([1])

(Appeal — Law governing the institutions — Rules governing the payment of expenses and allowances to Members of the European Parliament — Amendment of the voluntary additional pension scheme — Concept of 'individual decision taken with regard to a Member of the Parliament' — Article 72 of the Implementing Measures for the Statute for Members of the Parliament — Sixth paragraph of Article 263 TFEU — Time limit for bringing proceedings)

(2021/C 278/27)

Language of the case: French

Parties

Appellant: Bruno Gollnisch (represented by: B. Bonnefoy-Claudet, avocat)

Other party to the proceedings: European Parliament (represented by: M. Ecker and Z. Nagy, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mr Bruno Gollnisch to pay the costs

([1]) OJ C 175, 25.5.2020.

Judgment of the Court (Sixth Chamber) of 12 May 2021 (request for a preliminary ruling from the Juzgado de lo Social No 3 de Barcelona — Spain) — YJ v Instituto Nacional de la Seguridad Social (INSS)

(Case C-130/20) ([1])

(Reference for a preliminary ruling — Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Article 4(1) — Discrimination on ground of sex — National legislation providing for a pension maternity supplement to be granted to women who have had a certain number of children — Exclusion from entitlement to that pension supplement of women who have requested early retirement — Scope of Directive 79/7EEC)

(2021/C 278/28)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 3 de Barcelona

Parties to the main proceedings

Applicant: YJ

Defendant: Instituto Nacional de la Seguridad Social (INSS)

Operative part of the judgment

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security does not apply to national legislation which provides that women who have had at least two biological or adopted children are entitled to a pension maternity supplement in the event of retirement at the statutory age or early retirement on certain grounds laid down by law, but not if the person concerned voluntarily takes early retirement.

([1]) OJ C 201, 15.6.2020.

Judgment of the Court (First Chamber) of 6 May 2021 (request for a preliminary ruling from the Consiglio di Giustizia amministrativa per la Regione Siciliana — Italy) — Analisi G. Caracciolo srl v Regione Siciliana — Assessorato regionale della salute — Dipartimento regionale per la pianificazione, Regione Sicilia — Assessorato della salute — Dipartimento per le attività sanitarie e osservatorio, Accredia — Ente Italiano di Accreditamento, Azienda sanitaria provinciale di Palermo

(Case C-142/20) [1]

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 765/2008 — Requirements for accreditation and market surveillance relating to the marketing of products — Single national accreditation body — Issuing of the accreditation certificate to conformity assessment bodies — Accreditation body having its seat in a third State — Article 56 TFEU — Article 102 TFEU — Articles 20 and 21 of the Charter of Fundamental Rights of the European Union — Validity)

(2021/C 278/29)

Language of the case: Italian

Referring court

Consiglio di Giustizia amministrativa per la Regione Siciliana

Parties to the main proceedings

Applicant: Analisi G. Caracciolo srl

Defendants: Regione Siciliana — Assessorato regionale della salute — Dipartimento regionale per la pianificazione, Regione Sicilia — Assessorato della salute — Dipartimento per le attività sanitarie e osservatorio, Accredia — Ente Italiano di Accreditamento, Azienda sanitaria provinciale di Palermo

Intervening party: Perry Johnson Laboratory Accreditation Inc.

Operative part of the judgment

1. Article 4(1) and (5) as well as Article 7(1) of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Council Regulation (EEC) No 339/93 must be interpreted as precluding the interpretation of national legislation according to which accreditation may be performed by bodies other than the single national accreditation body, within the meaning of that regulation, which have their seat in a third State, even where those bodies ensure compliance with international standards and demonstrate, inter alia by means of mutual recognition arrangements, that they have a qualification equivalent to that of the said single accreditation body.

2. Consideration of the second question referred for a preliminary ruling has revealed nothing capable of affecting the validity of the provisions of Chapter II of Regulation No 765/2008 in the light of Articles 56 and 102 TFEU as well as Articles 20 and 21 of the Charter of Fundamental Rights of the European Union.

[1] OJ C 209, 22.6.2020.

Judgment of the Court (Eighth Chamber) of 12 May 2021 — Claudio Necci v European Commission, European Parliament, Council of the European Union

(Case C-202/20 P) ([1])

(Appeal — Civil service — Former member of the contract staff — Social security — Joint Sickness Insurance Scheme (JSIS) — Article 95 of the Conditions of Employment of Other Servants of the European Union (CEOS) — Continued membership after retirement — Condition of having been employed for more than three years — Request to join the JSIS following a transfer of pension rights — Equating the credited years of pensionable service with years of service — Rejection of the request — Action for annulment — Act having an adverse effect — Order of the General Court declaring the action inadmissible — Order set aside)

(2021/C 278/30)

Language of the case: French

Parties

Appellant: Claudio Necci (represented initially by S. Orlandi and T. Martin, avocats, and subsequently by S. Orlandi, avocat)

Other parties to the proceedings: European Commission (represented by: B. Mongin and T.S. Bohr, acting as Agents), European Parliament (represented by: J. Van Pottelberge and I. Terwinghe, acting as Agents), Council of the European Union (represented by: M. Bauer and M. Alver, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the order of the General Court of the European Union of 25 March 2020, Necci v Commission (T-129/19, not published, EU:T:2020:131);

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

3. Reserves the costs.

([1]) OJ C 304, 14.9.2020.

Judgment of the Court (Third Chamber) of 20 May 2021 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Renesola UK Ltd v The Commissioners for Her Majesty's Revenue and Customs

(Case C-209/20) ([1])

(Reference for a preliminary ruling — Customs union — Assessment of validity — Implementing Regulation (EU) No 1357/2013 — Determination of the country of origin of solar modules assembled in a third country from solar cells manufactured in another third country — Regulation (EEC) No 2913/92 — Community Customs Code — Article 24 — Origin of goods whose production involved more than one third country — Concept of 'last substantial processing or working')

(2021/C 278/31)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Appellant: Renesola UK Ltd

Respondent: The Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

Examination of the first question referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Commission Implementing Regulation (EU) No 1357/2013 of 17 December 2013 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

(1) OJ C 262, 10.8.2020.

Judgment of the Court (Eighth Chamber) of 20 May 2021 (request for a preliminary ruling from the Augstākā tiesa (Senāts) — Latvia) — 'BTA Baltic Insurance Company' AAS v Valsts ieņēmumu dienests

(Case C-230/20) (1)

(Reference for a preliminary ruling — Regulation (EEC) No 2913/92 — Community Customs Code — Article 195 — Article 232(1)(a) — Article 221(3) — Common Customs Tariff — Recovery of the amount of the customs debt — Communication of the amount of duty to the debtor — Limitation period — Action taken against the guarantor to enforce the guarantee — Enforcement for the purposes of payment — Reasonable period)

(2021/C 278/32)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Appellant: 'BTA Baltic Insurance Company' AAS

Respondent: Valsts ieņēmumu dienests

Operative part of the judgment

1. Article 195 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, must be interpreted as meaning that the guarantor of a customs debt referred to in that article cannot be regarded as a 'debtor' within the meaning of Article 221(3) of Regulation No 2913/92, as amended by Regulation No 1186/2009, and, therefore, the limitation period of three years from the date on which the customs debt was incurred laid down in that provision does not apply to that guarantor.

2. Article 232(1)(a) of Regulation No 2913/92, as amended by Regulation No 1186/2009, must be interpreted as meaning that the obligation on the Member States, laid down in that provision, to avail themselves of all options open to them under the legislation in force to secure payment of duties applies not only to the debtor, but also to the guarantor, and that the latter can therefore be regarded, pursuant to Article 232(1)(a), as the person subject to enforcement and to whom the Member State's rules on enforcement, including those on time limits, apply.

3. The rule implied by the principle of legal certainty which requires a reasonable limitation period to be observed must be interpreted as meaning that it applies to the action brought against the guarantor in order to secure the recovery of a customs debt.

(1) OJ C 255, 3.8.2020.

Judgment of the Court (Fifth Chamber) of 29 April 2021 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of a European arrest warrant issued against X

(Case C-665/20 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for optional non-execution — Article 4(5) — Requested person has been finally judged in a third State in respect of the same acts — Sentence has been served or may no longer be executed under the law of the sentencing country — Implementation — Margin of discretion of the executing judicial authority — Concept of 'same acts' — Remission of sentence granted by a non-judicial authority as part of a general leniency measure)

(2021/C 278/33)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

X

Operative part of the judgment

1. Article 4(5) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where a Member State chooses to transpose that provision into its domestic law, the executing judicial authority must have a margin of discretion in order to determine whether or not it is appropriate to refuse to execute a European arrest warrant on the ground referred to in that provision.

2. Article 3(2) and Article 4(5) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the concept of 'same acts', contained in both provisions, must be interpreted uniformly.

3. Article 4(5) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, which makes the application of the ground for optional non-execution laid down in that provision subject to the condition that, where there has been a sentence, the sentence has been served, is currently being served or may no longer be executed under the law of the sentencing country, must be interpreted as meaning that that condition is satisfied where the requested person has been finally sentenced, for the same acts, to a term of imprisonment, of which part has been served in the third State in which the sentence was handed down, whilst the remainder of that sentence has been remitted by a non-judicial authority of that State, as part of a general leniency measure that also applies to persons convicted of serious acts and is not based on objective criminal policy considerations. It is for the executing judicial authority, when exercising the discretion it enjoys, to strike a balance between, on the one hand, preventing impunity and combating crime and, on the other, ensuring legal certainty for the person concerned.

([1]) OJ C 128, 12.4.2021.

Request for a preliminary ruling from the Sąd Apelacyjny w Warszawie (Poland) lodged on 11 September 2020 — A.K. v Skarb Państwa

(Case C-428/20)

(2021/C 278/34)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Warszawie

Parties to the main proceedings

Applicant: A.K.

Defendant: Skarb Państwa

Question referred

Under Article 2 of Directive 2005/14/EC of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, [1] is a Member State, which has established a transitional period within which to adapt minimum guarantees, under an obligation to increase guarantees to at least a half of the amounts provided for in Article 1(2) of Directive 84/5/EEC, as amended, within 30 months of the expiry of the time limit for implementing that directive:

— in respect of all motor insurance contracts in force after the expiry of those 30 months, including contracts concluded before 11 December 2009 but still in force after that date — in cases of damage occurring after 11 December 2009,

— or only in respect of new motor insurance contracts concluded after 11 December 2009?

[1] OJ 2005 L 149, p. 14.

Request for a preliminary ruling from the Tribunalul Neamț (Romania) lodged on 3 November 2020 — Ministerul Public — D.N.A. — Serviciul Teritorial Bacău v XXX and YYY

(Case C-580/20)

(2021/C 278/35)

Language of the case: Romanian

Referring court

Tribunalul Neamț

Parties to the main proceedings

Accused persons: XXX and YYY

Other party to the proceedings: Ministerul Public — D.N.A. — Serviciul Teritorial Bacău

By order of 11 May 2021, the Court (Sixth Chamber) declared that the request for a preliminary ruling from the Tribunalul Neamț (Regional Court, Neamț, Romania), made by decision of 14 October 2020, is manifestly inadmissible.

Request for a preliminary ruling from the Oberlandesgericht Stuttgart (Germany) lodged on 26 March 2021 — PayPal (Europe) Sàrl et Cie, SCA v PQ

(Case C-190/21)

(2021/C 278/36)

Language of the case: German

Referring court

Oberlandesgericht Stuttgart

Parties to the main proceedings

Appellant: PayPal (Europe) Sàrl et Cie, SCA

Respondent: PQ

Questions referred

1. Is a claim in tort, considered in isolation and given an independent meaning, to be regarded as a contractual claim pursuant to Article 7, point 1, of Regulation (EU) No 1215/2012 ([1]) in the case where the claim in tort competes somehow with a contractual claim, but its existence does not depend upon the interpretation of the contract?

2. If Question 1 is answered in the negative: Where a payment service provider remits electronic money from a customer's account to the payment account of a gaming operator held with the same payment service provider and the involvement of the payment service provider in payments to the gaming operator might be perceived as being tortious in nature, is the place where the harmful event occurred within the meaning of Article 7, point 2, of Regulation (EU) No 1215/2012 to be found in:

2.1 The place where the payment service provider has its seat, as the place of the e-money transaction?

2.2 The place where a claim for reimbursement of expenses accrues to the payment service provider against the customer who instructed the payment as a result of the transaction (provided that it is lawful)?

2.3 The place where the customer who instructed the payment is resident?

2.4 The place where the customer's bank account, for which the payment service provider holds a direct debit mandate which allows it to top up the e-money account, is held?

2.5 The place where the money remitted by the payment service provider to the player's betting account with the gaming operator is lost during gaming, that is to say, the place in which the gaming operator has its seat?

2.6 The place where the customer plays the prohibited game (provided that this is also where the customer is resident)?

2.7 None of these places?

2.8 If Question 2.2 is answered in the affirmative and it is the place where a claim for reimbursement of expenses accrues to the payment service provider against the customer as a result of the transaction: Where does the claim for reimbursement of expenses accrue against the customer who instructed the payment? Can the place of performance of the framework contract for payment services or the place in which the debtor is resident be taken to be the place where that debt is located?

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

Request for a preliminary ruling from the Tribunal Administratif de Dijon (France) lodged on 31 March 2021 — Mr X v Préfet de Saône-et-Loire

(Case C-206/21)

(2021/C 278/37)

Language of the case: French

Referring court

Tribunal administratif de Dijon

Parties to the main proceedings

Applicant: Mr X

Defendant: Préfet de Saône-et-Loire

Question referred

In requiring sickness insurance cover and sufficient resources not to become a burden on the social assistance system, do Articles 7(1)(b) and 8(4) of Directive 2004/38/EC of 29 April 2004 ([1]) introduce indirect discrimination … to the detriment of persons who, due to their disability, are not in a position to work or who can work only in a limited capacity and who can therefore find themselves without sufficient resources to meet their needs without significant or even unreasonable reliance on the social assistance system of the host Member State where they reside?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 19 April 2021 –Bundesrepublik Deutschland represented by the Bundesministerium des Innern, für Bau und Heimat v MA, PB

(Case C-245/21)

(2021/C 278/38)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant in the appeal on a point of law: Bundesrepublik Deutschland

Respondents in the appeal on a point of law: MA, PB

Questions referred

1. Does suspension by the authorities of the implementation of a transfer decision, which is revocable only on account of the fact that transfers are (temporarily) impossible in fact due to the COVID-19 pandemic, fall within the scope of Article 27(4) of the Dublin III Regulation ([1]) during appeal proceedings?

2. If Question 1 is answered in the affirmative: Does such a suspension decision interrupt the time limit for transfer pursuant to Article 29(1) of the Dublin III Regulation?

3. If Question 2 is answered in the affirmative: Does this also apply if, prior to the outbreak of the COVID-19 pandemic, a court had dismissed an application by the asylum seeker pursuant to Article 27(3)(c) of the Dublin III Regulation for implementation of the transfer decision to be suspended pending the outcome of the appeal proceedings?

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

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 21 April 2021 — Bundesrepublik Deutschland represented by the Bundesministerium des Innern, für Bau und Heimat v LE

(Case C-248/21)

(2021/C 278/39)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant in the appeal on a point of law: Bundesrepublik Deutschland

Respondent in the appeal on a point of law: LE

Questions referred

1. Does suspension by the authorities of the implementation of a transfer decision, which is revocable only on account of the fact that transfers are (temporarily) impossible in fact due to the COVID-19 pandemic, fall within the scope of Article 27(4) of the Dublin III Regulation ([1]) during appeal proceedings?

2. If Question 1 is answered in the affirmative: Does such a suspension decision interrupt the time limit for transfer pursuant to Article 29(1) of the Dublin III Regulation?

3. If Question 2 is answered in the affirmative: Does this also apply if, prior to the outbreak of the COVID-19 pandemic, a court had dismissed an application by the asylum seeker pursuant to Article 27(3)(c) of the Dublin III Regulation for implementation of the transfer decision to be suspended pending the outcome of the appeal proceedings?

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

Request for a preliminary ruling from the Tribunale ordinario di Roma (Italy) lodged on 22 April 2021 — DG v Ministero dell'Interno — Dipartimento per le Libertà Civili e l'Immigrazione — Direzione Centrale dei Servizi Civili per L'Immigrazione e l'Asilo — Unità Dublino

(Case C-254/21)

(2021/C 278/40)

Language of the case: Italian

Referring court

Tribunale ordinario di Roma

Parties to the main proceedings

Applicant: DG

Defendant: Ministero dell'Interno — Dipartimento per le Libertà Civili e l'Immigrazione — Direzione Centrale dei Servizi Civili per L'Immigrazione e l'Asilo — Unità Dublino

Questions referred

1. Does the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union require that Articles 4 and 19 of that charter, in the circumstances referred to in the main proceedings, also provide protection against the risk of indirect *refoulement* following a transfer to a Member State of the European Union which has no systemic flaws within the meaning of Article 3(2) of the Dublin Regulation ([1]) (in the absence of other Member States responsible on the basis of the criteria set out in Chapters III and IV) and which has already examined and rejected the first application for international protection?

2. Should the court of the Member State where the second application for international protection was lodged, hearing an appeal pursuant to Article 27 of the Dublin Regulation — and thus having jurisdiction to assess the transfer within the European Union but not to adjudicate on the application for protection — conclude that there is a risk of indirect *refoulement* to a third country, where the concept of 'internal protection' within the meaning of Article 8 of Directive 2011/95/EU ([2]) has been assessed differently by the Member State where the first application for international protection was lodged?

3. Is the assessment of the [risk of] indirect *refoulement*, following the different interpretation by two Member States of the need for 'internal protection', compatible with the second part of Article 3(1) of the Dublin Regulation and with the general principle that third-country nationals may not decide in which Member State of the European Union the application for international protection is to be lodged?

4. In the event that the previous questions are answered in the affirmative:

   (a) Does the assessment of the existence of the [risk of] indirect *refoulement*, made by the court of the Member State in which the applicant lodged the second application for international protection following the rejection of the first application, require the application of the clause provided for in Article 17(1), defined by the Regulation as a 'discretionary clause'?

   (b) Which criteria must the court seised [pursuant to] Article 27 of the Regulation apply in order to assess the risk of indirect *refoulement*, other than those identified in Chapters III and IV, given that that risk has already been ruled out by the country that examined the first application for international protection?

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

([2]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Oberlandesgericht München (Germany) lodged on 22 April 2021 — KP v TV, Gemeinde Bodman-Ludwigshafen

(Case C-256/21)

(2021/C 278/41)

Language of the case: German

Referring court

Oberlandesgericht München

Parties to the main proceedings

Applicant: KP

Defendants: TV, Gemeinde Bodman-Ludwigshafen

Question referred

Must Article 124(d) and Article 128 of Regulation (EU) 2017/1001 ([1]) be interpreted as meaning that the EU trade mark court has jurisdiction to rule on the invalidity of an EU trade mark asserted by a counterclaim within the meaning of Article 128 of that regulation even after the action for infringement based on that EU trade mark for the purposes of Article 124(a) has been validly withdrawn?

([1]) Regulation of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 22 April 2021 — Keskinäinen Vakuutusyhtiö Fennia v Koninklijke Philips N.V.

(Case C-264/21)

(2021/C 278/42)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Appellant: Keskinäinen Vakuutusyhtiö Fennia

Respondent: Koninklijke Philips N.V.

Questions referred

1. Does the concept of producer within the meaning of Article 3(1) of the Product Liability Directive [1] presuppose that a person who puts his name, trade mark or other distinguishing feature on the product, or who has allowed them to be put on the product, also presents himself as the producer of the product in some other manner?

2. If the answer to the first question is in the affirmative: Based on what considerations is his presentation as a producer of the product to be evaluated? Is it relevant to that evaluation that the product was manufactured by a subsidiary of the trade mark proprietor and distributed by another subsidiary?

[1] Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1999 L 141, p. 20).

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 29 April 2021 — Secrétariat général de l'Enseignement catholique ASBL (SeGEC), Fédération des Établissements libres subventionnés indépendants ASBL (FELSI), Groupe scolaire Don Bosco à Woluwe-Saint-Lambert ASBL, École fondamentale libre de Chênée ASBL, Collège Saint-Guibert de Gembloux ASBL, Collège Saint-Benoît de Maredsous ASBL, Pouvoir Organisateur des Centres PMS libres à Woluwe ASBL v Institut des Comptes nationaux (ICN), Banque nationale de Belgique

(Case C-277/21)

(2021/C 278/43)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Secrétariat général de l'Enseignement catholique ASBL (SeGEC), Fédération des Établissements libres subventionnés indépendants ASBL (FELSI), Groupe scolaire Don Bosco à Woluwe-Saint-Lambert ASBL, École fondamentale libre de Chênée ASBL, Collège Saint-Guibert de Gembloux ASBL, Collège Saint-Benoît de Maredsous ASBL, Pouvoir Organisateur des Centres PMS libres à Woluwe ASBL

Defendants: Institut des Comptes nationaux (ICN), Banque nationale de Belgique

Questions referred

1. Is paragraph 20.309(h) of Annex A to Regulation (EC) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union ([1]) to be interpreted as meaning that regulation by which government competent in the field of education:

   — approves curricula,

   — determines both the structure of education and priority and specific duties, institutes monitoring of the conditions for pupil enrolment and exclusion, decisions of class councils and financial participation, arranges for schools to be grouped into structured networks and requires educational, teaching and institutional plans to be drawn up and activity reports to be delivered,

   — organises checks and inspections relating specifically to subjects taught, academic level and implementation of the language laws, but excluding teaching methods, and

   — imposes a minimum number of pupils per class, stream, level or other subdivision, unless an exemption is granted by a minister,

   must be regarded as 'excessive' within the meaning of that provision, to the extent that it effectively dictates or binds the general policy or programme of units working in the activity concerned?

2. Is paragraph 20.15 of Annex A to that regulation to be interpreted as including in the concept of general regulations specific rules which constitute 'staff regulations' applicable to the staff of non-profit institutions in the field of education which are financed by government?

([1]) OJ 2013 L 174, p. 1.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 April 2021 — Dansk Akvakultur, acting for AquaPri A/S v Miljø- og Fødevareklagenævnet

(Case C-278/21)

(2021/C 278/44)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Dansk Akvakultur, acting for AquaPri A/S

Defendant: Miljø- og Fødevareklagenævnet

Intervener: Landbrug & Fødevarer (in support of AquaPri A/S)

Questions referred

1. Is [the first sentence of] Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) ([1]) to be interpreted as being applicable to a situation such as that in the present case in which an authorisation is sought to continue operation of an existing fish farm, where the activity of the fish farm and the discharge of nitrogen and other nutrients remains unchanged in relation to the activity and discharge authorised in 2006, but where no assessment was made of the overall activity and the cumulative effects of all the fish farms in the area in connection with the previous authorisation of the fish farm, in so far as the relevant authorities assessed only the overall additional discharge of nitrogen etc. from the fish farm concerned?

2. Is it relevant, for the purpose of answering Question 1, that the national River Basin Management Plan 2015-2021 takes account of the presence of the fish farms in the area in so far as it sets aside a specific amount of nitrogen to ensure that the existing fish farms in the area can make use of their present discharge authorisations and that the actual discharge from the fish farms remains within the set limits?

3. If, in a situation such as that in the present case, an assessment must be carried out pursuant to [the first sentence of] Article 6(3) of the Habitats Directive, is the relevant authority required, in connection with that assessment, to take into account the limits on the discharge of nitrogen set aside in the River Basin Management Plan 2015-2021 and any other relevant information and assessments which might arise from the River Basin Management Plan or the Natura 2000 plan for the area?

(1) OJ 1992 L 206, p. 7.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 April 2021 — X v Udlændingenævnet

(Case C-279/21)

(2021/C 278/45)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: X

Defendant: Udlændingenævnet

Questions referred

1. Does the standstill clause in Article 13 of Decision No 1/80 (1) preclude the introduction and application of a national rule which, as a condition for the reunification of spouses, requires — unless there are particularly compelling reasons in a specific case — that a language test in the host Member State's official language be successfully taken by the spouse/cohabitant who, as a Turkish worker in the EU Member State concerned, is covered by the Association Agreement and by Decision No 1/80, in a situation such as that in the main proceedings, in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a test in the language of the Member State concerned be successfully taken as a precondition for the acquisition of that right?

2. Does the specific prohibition of discrimination laid down in Article 10(1) of Decision No 1/80 cover a national rule which, as a condition for the reunification of spouses, requires — unless there are particularly compelling reasons in a specific case — that a language test in the host Member State's official language be successfully taken by the spouse/cohabitant who, as a Turkish worker in the EU Member State concerned, is covered by the Association Agreement and by Decision No 1/80, in a situation such as that in the main proceedings, in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a test in the language of the Member State concerned be successfully taken as a precondition for the acquisition of that right?

3. If the answer to Question 2 is in the negative, does the general prohibition of discrimination laid down in Article 9 of the Association Agreement then preclude a national rule, such as that mentioned, in a situation such as that in the main proceedings, in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a language test in the official language of the host Member State be successfully taken as a precondition for the acquisition of that right, when such a requirement is not imposed on nationals of the Nordic Member State concerned (in this case, Denmark) and of the other Nordic countries, or on others who are nationals of an EU country (and is thus not imposed on EU/EEA nationals)?

4. If the answer to Question 3 is in the affirmative, can the general prohibition of discrimination laid down in Article 9 of the Association Agreement be relied on directly before national courts?

(1) Decision No 1/80 of the Association Council of 19 September 1980 on the development of the EEC-Turkey Association.

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 30 April 2021 — P.I. v Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos

(Case C-280/21)

(2021/C 278/46)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: P.I.

Respondent: Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos

Question referred

Is opposition to an illegally operating and corruptly influential group which oppresses an applicant for asylum through the machinery of the State and against which it is impossible to mount a legitimate defence due to extensive corruption in the State to be regarded as equivalent to attributed political opinion within the meaning of Article 10 of Directive 2011/95/EU? ([1])

([1]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 5 May 2021 — FC v FTI Touristik GmbH

(Case C-287/21)

(2021/C 278/47)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: FC

Defendant: FTI Touristik GmbH

Questions referred

1. Must Article 12(2) of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements ([1]) ('the Directive') be interpreted as meaning that termination of the package by the traveller on the basis of 'unavoidable and extraordinary circumstances' is in principle permitted only immediately prior to the start of the trip or may that termination occur, in an individual case, also three to four months in advance?

2. Should a declaration of termination in principle be permitted without any limitation in time, the following questions are also asked:

   (a) is it sufficient, for the prospective analysis to be made from the perspective of a traveller with regard to the planned travel period as part of an *ex ante* assessment, that the abovementioned circumstances and the adverse effect resulting therefrom can already be predicted with a reasonable degree of probability and, in the case of a risk situation that has already occurred, that a significant improvement cannot be expected with a high degree of probability; and

(b) does a termination which may have been declared prematurely not come at the expense of the traveller if circumstances already existing at the time of the declaration of termination reveal only immediately prior to the planned start of the trip that the trip cannot ultimately be carried out by the organiser or it would have been unreasonable for the traveller to participate in it?

3. When assessing the existence of unavoidable and extraordinary circumstances at the place of destination or in its immediate vicinity and the significant effect on the performance of the package resulting therefrom, does it depend:

(a) solely on objective circumstances, or are subjective circumstances on the part of the traveller also to be taken into account, in the present case, for example, the special purpose of the trip and the bringing along of two small children; and

(b) in assessing the probable risk situation during the travel period, besides the outbound and return journey, is the destination Sardinia and not the rest of Italy of primary importance?

4. Is a right of termination free of charge not available if the circumstances on which the traveller relies already existed at the time of booking or were at least foreseeable, or can this at least lead to the application of a stricter standard in assessing the reasonableness of an adverse effect?

5. Should the preconditions for termination free of charge not be met, must agreed 'reasonable standardised termination fees' within the meaning of Article 12(1) of the Directive solely be within the limits of the percentages customary in the sector, based on empirical rates, or is it always necessary to examine the expected cost savings and income from alternative deployment of the travel services in the specific individual case, disclosing the calculation bases used by the organiser?

6. When assessing the reasonableness of termination fees agreed at a flat rate, may recourse be had to national law if that law allows the amount to be fixed at the discretion of a court in the event of an anticipated disproportionate procedural burden?

7. Does the last sentence of Article 12(1) of the Directive, according to which, at the traveller's request, the organiser is to provide a justification for the amount of the termination fees, also apply to a termination fee agreed at a flat percentage rate, and what are the legal consequences of the organiser's failure to fulfil, or failure sufficiently to fulfil, that obligation?

8. Does the organiser bear the burden of assertion and proof in respect of the appropriateness of a termination fee agreed at a flat percentage rate or is it always incumbent on the traveller to object and to provide evidence of what the organiser usually saves depending on the time of the termination and on what it can usually gain through alternative sale of the travel services?

([1]) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).

Appeal brought on 5 May 2021 by Universität Koblenz-Landau against the judgment of the General Court (Tenth Chamber, Extended Composition) of 24 February 2021 in Case T-108/18, Universität Koblenz-Landau v European Education and Culture Executive Agency

(Case C-288/21 P)

(2021/C 278/48)

Language of the case: German

Parties

Appellant: Universität Koblenz-Landau (represented by: C. von der Lühe, Rechtsanwalt, R. Di Prato, Rechtsanwältin)

Other party to the proceedings: European Education and Culture Executive Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 24 February 2021 in Case T-108/18 and declare that the claims for repayment asserted against the appellant by decision of the respondent of 21 December 2017 (No OF/2016/0720) and of 7 February 2018 (No OF/2016/0720) do not exist;

— in the alternative, set aside the judgment of the General Court of the European Union referred to above and refer the case back to the General Court of the European Union;

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

Grounds of appeal and main arguments

In support of the appeal, the appellant raises three grounds of appeal.

1. **First ground of appeal:** Objection of a procedural nature regarding the failure to reopen the oral part of the procedure

   The appellant contends that new facts alleged by the applicant, which only became known to it after the end of the oral part of the procedure and which it could not have brought into the proceedings until that time, invalidated the arguments on which the contested decision is based in material respects, as that decision is based on facts that have not been confirmed by the findings of the national criminal investigation body.

   Furthermore, the applicant's request for the reopening of the oral part of the procedure because of hitherto unknown new facts, which are of legal importance to the outcome of the dispute in that they are capable of influencing it in the applicant's favour, was rejected on the basis of an error of assessment.

2. **Second ground of appeal:** Misinterpretation of the scope of the principle of the right to a fair hearing

   The General Court disregarded the fact that the defendant made a decision on the appropriate use of funds to the detriment of the applicant due to the fact that, without fault on the part of the applicant, it was objectively impossible on the date of the contested decision of the defendant for the documents proving appropriate use of funds to be submitted.

3. **Third ground of appeal:** Infringement of the principle of the protection of legitimate expectations and misinterpretation of the scope of the principle of proportionality

   The General Court did not, or did not without making an error of law, assess the legitimate expectations on the part of the applicant as a result of the defendant's written confirmation of the proper implementation of the funded projects at issue.

   The General Court did not establish that a material deviation subsequently came to light in respect of the facts on which the statement of the defendant confirming the correct use of funds is based, only such a deviation being capable of calling into question an initially positive assessment of the implementation processes and the suitability thereof.

   Lastly, the failure to clarify in full the indications of a possible deviation in the facts using all of the sources of information available to the defendant and the General Court, before the most drastic of all possible measures was taken by the defendant (in this case the full recovery of all funds approved and granted), was incompatible with the principle of proportionality.

Request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 7 May 2021 — Starkinvest SRL

(Case C-291/21)

(2021/C 278/49)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicant: Starkinvest SRL

Questions referred

1. Does a judgment which has been served, ordering a party to make a penalty payment in the event of breach of a prohibitory order, constitute a decision requiring the debtor to pay the creditor's claim within the meaning of Article 7 (2) of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure? ([1])

2. Does a judgment ordering a party to make a penalty payment, although enforceable in the country of origin, fall within the meaning of 'judgment' in Article 4 of Regulation No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order where there has been no final determination of the amount in accordance with Article 55 of Regulation (EU) No 1215/12 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters? ([2])

([1]) Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ 2014 L 189, p. 59).
([2]) OJ 2012 L 351, p. 1.

Request for a preliminary ruling from the Tribunale Ordinario di Firenze (Italy) lodged on 10 May 2021 — XXX.XX v Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione — Unità Dublino

(Case C-297/21)

(2021/C 278/50)

Language of the case: Italian

Referring court

Tribunale Ordinario di Firenze

Parties to the main proceedings

Applicant: XXX.XX

Defendant: Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione — Unità Dublino

Questions referred

1. Must Article 17(1) of Regulation (EU) No 604/2013 ([1]) be interpreted, in accordance with Articles 19 and 47 of the [Charter of Fundamental Rights of the European Union] and Article 27 of Regulation (EU) No 604/2013, as meaning that the court of the Member State, hearing an appeal against the decision of the Dublin Unit, may establish the responsibility of the Member State which would have to carry out the transfer under Article 18(1)(d), if it determines the existence, in the Member State responsible, of a risk of infringement of the principle of *non-refoulement* by returning the applicant to his country of origin, where the applicant's life would be in danger and where he would be at risk of inhuman and degrading treatment?

2. In the alternative, must Article 3(2) of Regulation (EU) No 604/2013 be interpreted in accordance with Articles 19 and 47 of the [Charter] and Article 27 of Regulation (EU) No 604/2013, as meaning that the court may establish the responsibility of the Member State required to carry out the transfer under Article 18(1)(d) of that regulation, where it is established that:

   (a) there is a risk in the Member State responsible of infringing the principle of *non-refoulement* by returning the applicant to his country of origin, where his life would be in danger and where he would be at risk of inhuman or degrading treatment?

(b) it is impossible to carry out the transfer to another Member State designated on the basis of the criteria set out in Chapter III of Regulation (EU) No 604/2013?

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

Action brought on 11 May 2021 — European Commission v Italian Republic

(Case C-303/21)

(2021/C 278/51)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: W. Roels and A. Spina, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that, by excluding non-Italian EU citizens who do not intend to settle in Italy from the scheme providing for the purchase of their first house or flat, other than a luxury house or flat, in the Italian territory, at a reduced rate, the Italian Republic has failed to fulfil its obligations under Articles 18 and 63 of the Treaty on the Functioning of the European Union;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

A reduced rate of stamp duty for the purchase in Italy of a property for residential use ('first home') is applied under certain conditions, including the condition that the property be situated in the municipality where the taxpayer resides or where the taxpayer intends to establish his or her residence within 18 months from the purchase of the property. For the purposes of the application of that tax relief, that condition applies without distinction to both Italian citizens and citizens of other Member States. Nevertheless, according to the provisions at issue in the present action, that requirement is not necessary only for citizens of Italian nationality who, for work reasons, have moved abroad.

According to the Commission, by establishing, for the purposes of that tax relief, that the taxpayers' Italian citizenship is the determining factor behind the distinction between Italian citizens and citizens of other Member States, the national legislation in question entails direct discrimination on grounds of nationality which is prohibited by Article 18 TFEU.

Furthermore, the Commission considers that, since the purchase of a property in the territory of a Member State by a non-resident is an investment in real estate which falls within the category of the movement of capital between Member States, the preferential treatment of the citizens of one Member State provided for by the national legislation in question constitutes a restriction on the free movement of capital which is prohibited by Article 63(1) TFEU and which cannot be objectively justified under Article 65(1) and (3) TFEU.

Action brought on 3 June 2021 — European Commission v Slovak Republic

(Case C-342/21)

(2021/C 278/52)

Language of the case: Slovak

Parties

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

Defendants: Slovak Republic

Form of order sought

The applicant claims that the Court should:

— Declare that, by systematically and persistently exceeding the PM10 daily limit values from 2005 in zone SKBB01 Banská Bystrica Region (Banskobystrický kraj) (with the exception of the year 2016) and in the agglomeration SKKO0.1 Košice (with the exception of the years 2009, 2015 and 2016), the Slovak Republic has failed to fulfil its obligations under Article 13(1) of Directive 2008/50/EC [1] of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe in conjunction with Annex XI to that directive;

— Declare that, by failing to lay down appropriate measures in air quality plans so that the exceedance period can be kept as short as possible in zone SKBB01 Banská Bystrica Region, the agglomeration SKKO0.1 Košice and zone SKKO02 Košice Region (Košický kraj), the Slovak Republic has failed to fulfil its obligations under Article 23(1), second subparagraph, of Directive 2008/50/EC in conjunction with Annex XV to that directive;

— order Slovak Republic to pay the costs.

Pleas in law and main arguments

Directive 2008/50/EC lays down a daily limit threshold applicable for concentrations of PM10 particles (50 μg/m^3). The daily concentration value cannot be exceeded more than 35 times per calendar year. The Slovak Republic has systematically and persistently infringed Article 13(1) of Directive 2008/50 in the Banská Bystrica Region and in the Košice agglomeration, as is apparent from the annual report on air quality submitted by the Slovak Republic under Article 27 of the Directive.

Article 23(1) of Directive 2008/50/EC further provides that where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value, Member States are to ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value specified in Annex XI. In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible. The Commission submits that the Slovak Republic has failed to fulfil its obligation to draw up, in the event that the limit values are exceeded, air quality plans so far as concerns the zones of Banská Bystrica Region and Košice Region and the agglomeration of Košice, which would provide for appropriate measures so that the exceedance period could be kept as short as possible. First, that infringement results from the very fact that in those two zones and one agglomeration the Slovak Republic systematically and persistently infringed Article 13(1) by exceeding the daily PM10 limit values. Furthermore, the infringement of Article 23(1) of the directive also results from the inappropriate nature of the air quality plans, the inadequacy of the air quality strategy, inadequate additional measures and inadequacies in the Slovak legislation.

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

GENERAL COURT

Judgment of the General Court of 24 March 2021 — Picard v Commission

(Case T-769/16) ([1])

(Civil service — Members of the contract staff — Reform of the Staff Regulations in 2014 — Transitional measures relating to certain methods for calculating pension rights — Change in the rules following the signature of a new contract as a member of the contract staff — Definition of 'being in service')

(2021/C 278/53)

Language of the case: French

Parties

Applicant: Maxime Picard (Hettange-Grande, France) (represented by: M.-A. Lucas and M. Bertha, lawyers)

Defendant: European Commission (represented by: B. Mongin and G. Gattinara, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment, first, of the reply of the manager of the Pensions Sector of the Commission's Office for Administration and Payment of Individual Entitlements (PMO) of 4 January 2016 and, second, in so far as necessary, the decision of 25 July 2016 of the Director of Directorate E of the Commission's Directorate-General Human Resources dismissing the applicant's complaint of 1 April 2016 against the decision or lack of decision resulting from the reply of 4 January 2016.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Maxime Picard to pay the costs.*

([1]) OJ C 14, 16.1.2017.

Judgment of the General Court of 2 June 2021 — Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo v Commission

(Case T-223/18) ([1])

(State aid — Healthcare services — Direct grants to public hospitals in the Lazio Region (Italy) — Decision finding that there is no State aid — Action for annulment — Regulatory act not entailing implementing measures — Direct concern — Admissibility — Obligation to state reasons — Concept of economic activity)

(2021/C 278/54)

Language of the case: Italian

Parties

Applicant: Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo (Albano Laziale, Italy) (represented by: F. Rosi, lawyer)

Defendant: European Commission (represented by: K. Herrmann and F. Tomat, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2017) 7973 final of 4 December 2017 on State aid SA.39913 (2017/NN) — Italy — Alleged compensation of public hospitals in the Lazio Region.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo to bear its own costs and to pay those incurred by the European Commission.

([1]) OJ C 190, 4.6.2018.

Judgment of the General Court of 2 June 2021 — Franz Schröder v EUIPO — RDS Design (MONTANA)

(Case T-854/19) ([1])

(EU trade mark — Invalidity proceedings — EU word mark MONTANA — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Right to be heard — Article 94(1) of Regulation 2017/1001 — Examination of the facts by EUIPO of its own motion — Admission of evidence submitted for the first time before the Board of Appeal — Article 95(1) and (2) of Regulation 2017/1001)

(2021/C 278/55)

Language of the case: English

Parties

Applicant: Franz Schröder GmbH & Co. KG (Delbrück, Germany) (represented by: L. Pechan and N. Fangmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: RDS Design ApS (Allerød, Denmark) (represented by: J. Viinberg, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 October 2019 (Case R 2393/2018-4), relating to invalidity proceedings between Franz Schröder and RDS Design.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Franz Schröder GmbH & Co. KG to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders RDS Design ApS to bear its own costs.

([1]) OJ C 54, 17.2.2020.

Judgment of the General Court of 2 June 2021 — Franz Schröder v EUIPO — RDS Design (MONTANA)

(Case T-855/19) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Figurative mark MONTANA — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Right to be heard — Article 94(1) of Regulation 2017/1001 — Examination of the facts by EUIPO of its own motion — Admission of evidence submitted for the first time before the Board of Appeal — Article 95(1) and (2) of Regulation 2017/1001)

(2021/C 278/56)

Language of the case: English

Parties

Applicant: Franz Schröder GmbH & Co. KG (Delbrück, Germany) (represented by: L. Pechan and N. Fangmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: RDS Design ApS (Allerød, Denmark) (represented by: J. Viinberg, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 October 2019 (Case R 1006/2019-4), relating to invalidity proceedings between Franz Schröder and RDS Design.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Franz Schröder GmbH & Co. KG to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders RDS Design ApS to bear its own costs.

([1]) OJ C 54, 17.2.2020.

Judgment of the General Court of 2 June 2021 — Franz Schröder v EUIPO — RDS Design (MONTANA)

(Case T-856/19) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Word mark MONTANA — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Right to be heard — Article 94(1) of Regulation 2017/1001 — Examination of the facts by EUIPO of its own motion — Admission of evidence submitted for the first time before the Board of Appeal — Article 95(1) and (2) of Regulation 2017/1001)

(2021/C 278/57)

Language of the case: English

Parties

Applicant: Franz Schröder GmbH & Co. KG (Delbrück, Germany) (represented by: L. Pechan and N. Fangmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: RDS Design ApS (Allerød, Denmark) (represented by: J. Viinberg, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 October 2019 (Case R 2394/2018-4), relating to invalidity proceedings between Franz Schröder and RDS Design.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Franz Schröder GmbH & Co. KG to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders RDS Design ApS to bear its own costs;

([1]) OJ C 54, 17.2.2020.

Judgment of the General Court of 2 June 2021 — adp Gauselmann v EUIPO — Gameloft (GAMELAND)

(Case T-17/20) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark GAMELAND — Earlier EU word mark Gameloft — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Genuine use of the earlier mark — Article 47(2) of Regulation 2017/1001 — Restriction of the services covered in the trade mark application)

(2021/C 278/58)

Language of the case: English

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: K. Mandel, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Gameloft SE (Paris, France) (represented by M. Decker, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 5 November 2019 (Case R 2502/2018 5) relating to opposition proceedings between Gameloft and adp Gauselmann.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders adp Gauselmann GmbH to pay the costs.

([1]) OJ C 68, 2.3.2020.

Judgment of the General Court of 2 June 2021 — Himmel v EUIPO — Ramirez Monfort (Hispano Suiza)

(Case T-177/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Hispano Suiza — Earlier EU word mark HISPANO SUIZA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 278/59)

Language of the case: English

Parties

Applicant: Erwin Leo Himmel (Walchwil, Switzerland) (represented by: A. Gomoll, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Gonzalo Andres Ramirez Monfort (Barcelona, Spain)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 21 January 2020 (Case R 67/2019-1), relating to opposition proceedings between Mr Himmel and Mr Ramirez Monfort.

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 21 January 2020 (Case R 67/2019-1);

2. Orders EUIPO to pay the costs.

([1]) OJ C 191, 8.6.2020.

Judgment of the General Court of 2 June 2021 — Schneider v EUIPO — Raths (Teslaplatte)

(Case T-183/20) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Teslaplatte — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

(2021/C 278/60)

Language of the case: German

Parties

Applicant: Christian Schneider (Leverkusen, Germany) (represented by: R. Buttron, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Oliver Raths (Männedorf, Switzerland) (represented by: G. Jacobs and M. Maybaum, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 15 January 2020 (Case R 247/2019-2), relating to invalidity proceedings between Mr Raths and Mr Schneider.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Christian Schneider to pay the costs.

(1) OJ C 191, 8.6.2020.

Order of the General Court of 25 May 2021 — Rochem Group v EUIPO — Rochem Marine (R.T.S. ROCHEM Technical Services)

(Case T-233/20) (1)

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2021/C 278/61)

Language of the case: English

Parties

Applicant: Rochem Group AG (Zug, Switzerland) (represented by: K. Guridi Sedlak, lawyer)

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: Rochem Marine Srl (Genoa, Italy) (represented by: R. Gioia and L. Mansi, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 20 February 2020 (Case R 1544/2019-1), relating to invalidity proceedings between Rochem Marine and Rochem Group.

Operative part of the order

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

2. The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay those incurred by Rochem Group AG and Rochem Marine Srl.

(1) OJ C 215, 29.6.2020.

Order of the General Court of 25 May 2021 — Rochem Group v EUIPO — Rochem Marine (ROCHEM)

(Case T-261/20) (1)

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2021/C 278/62)

Language of the case: English

Parties

Applicant: Rochem Group AG (Zug, Switzerland) (represented by: K. Guridi Sedlak, lawyer)

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: Rochem Marine Srl (Genoa, Italy) (represented by: R. Gioia and L. Mansi, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 2 March 2020 (Case R 1547/2019-1), relating to invalidity proceedings between Rochem Marine and Rochem Group.

Operative part of the order

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

2. The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay those incurred by Rochem Group AG and Rochem Marine Srl.

(1) OJ C 222, 6.7.2020.

Order of the General Court of 25 May 2021 — Rochem Group v EUIPO — Rochem Marine (ROCHEM)

(Case T-262/20) (1)

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2021/C 278/63)

Language of the case: English

Parties

Applicant: Rochem Group AG (Zug, Switzerland) (represented by: K. Guridi Sedlak, lawyer)

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: Rochem Marine Srl (Genoa, Italy) (represented by: R. Gioia and L. Mansi, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 2 March 2020 (Case R 1546/2019-1), relating to invalidity proceedings between Rochem Marine and Rochem Group.

Operative part of the order

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

2. The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay those incurred by Rochem Group AG and Rochem Marine Srl.

(1) OJ C 222, 6.7.2020.

Order of the General Court of 25 May 2021 — Rochem Group v EUIPO — Rochem Marine (R.T.S. ROCHEM Technical Services)

(Case T-263/20) ([1])

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2021/C 278/64)

Language of the case: English

Parties

Applicant: Rochem Group AG (Zug, Switzerland) (represented by: K. Guridi Sedlak, lawyer)

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: Rochem Marine Srl (Genoa, Italy) (represented by: R. Gioia and L. Mansi, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 2 March 2020 (Case R 1545/2019-1), relating to invalidity proceedings between Rochem Marine and Rochem Group.

Operative part of the order

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

2. The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay those incurred by Rochem Group AG and Rochem Marine Srl.

([1]) OJ C 215, 29.6.2020.

Order of the General Court of 17 May 2021 — Electrodomésticos Taurus v EUIPO — Shenzhen Aukey E-Business (AICOOK)

(Case T-328/20) ([1])

(Action for annulment — EU trade mark — Opposition proceedings — Application of a declaratory nature — Application for directions to be issued — Inadmissibility)

(2021/C 278/65)

Language of the case: Spanish

Parties

Applicant: Electrodomésticos Taurus, SL (Oliana, Spain) (represented by: E. Manresa Medina, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Shenzhen Aukey E-Business Co. Ltd (Shenzhen, China)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 March 2020 (Case R 2212/2019-5), relating to opposition proceedings between Electrodomésticos Taurus and Shenzhen Aukey E-Business.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Electrodomésticos Taurus, SL shall pay the costs.

(1) OJ C 240, 20.7.2020.

Order of the General Court of 20 May 2021 — LG and Others v Commission

(Case T-482/20) (1)

(Action for annulment — Protection of the European Union's financial interests — OLAF investigation — Legal professional privilege — Act not open to challenge — Preparatory act — Inadmissibility)

(2021/C 278/66)

Language of the case: English

Parties

Applicants: LG and the five other applicants whose names are listed in the annex (represented by: A. Sigal and M. Teder, lawyers)

Defendant: European Commission (represented by: T. Adamopoulos and J. Baquero Cruz, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the decision that the European Anti-Fraud Office (OLAF) allegedly adopted tacitly in an email of 26 May 2020, by which OLAF allegedly rejected the claim for protection of the confidentiality of communications between lawyers and their clients regarding communications between the applicants and their lawyers.

Operative part of the order

1. The action is dismissed as inadmissible.

2. LG and the other applicants whose names are listed in the annex shall bear their own costs.

3. The European Commission shall bear its own costs.

(1) OJ C 348, 19.10.2020.

Order of the President of the General Court of 26 May 2021 — OHB System v Commission

(Case T-54/21 R)

(Interim relief — Public works contracts, public supply contracts and public service contracts — Procurement of Galileo transition satellites — Rejection of a tender — Application for interim measures — Prima facie case — Urgency — Balancing of competing interests)

(2021/C 278/67)

Language of the case: German

Parties

Applicant: OHB System AG (Bremen, Germany) (represented by: W. Würfel and F. Hausmann, lawyers)

Defendant: European Commission (represented by: G. Wilms, J. Estrada de Solà, L. Mantl and L. André, acting as Agents)

Re:

Application pursuant to Article 278 TFEU for, first, suspension of the operation of the decisions of the European Space Agency (ESA) of 19 and 22 January 2021, acting in the name and on behalf of the Commission, to reject the applicant's tender for public contract 2018/S 091-206089 and to award that public contract to two other tenderers, and, second, for the Commission to be ordered to provide access to the tender documentation.

Operative part of the order

1. The application for interim relief is dismissed.

2. The orders of 31 January 2021, OHB System v Commission (T-54/21 R), and of 26 February 2021, OHB System v Commission (T-54/21 R), are set aside.

3. The costs are reserved, with the exception of those incurred by Airbus Defence and Space GmbH. It shall bear the costs in relation to its application to intervene.

Order of the President of the General Court of 26 May 2021 — Darment v Commission

(Case T-92/21 R)

(Application for interim relief — Environment — Fluorinated greenhouse gases — Regulation (EU) No 517/2014 — Placing of hydrofluorocarbons on the market — Decision imposing a penalty on an undertaking that exceeded the quota allocated to it — Application for interim measures — No urgency)

(2021/C 278/68)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: B. De Meester and K. Talabér-Ritz, acting as Agents)

Re:

Application under Article 279 TFEU seeking, first, an order requiring the Commission to cease applying to the applicant, as regards the year 2021 and subsequent allocation periods, a penalty under Article 25(2) of Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ 2014 L 150, p. 195), and, secondly, an order requiring the Commission to allocate to the applicant a quota for the bulk import of hydrofluorocarbons for the 2021 allocation period and subsequent allocation periods.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 27 April 2021 — SE v Commission

(Case T-223/21)

(2021/C 278/69)

Language of the case: English

Parties

Applicant: SE (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision rejecting his application to post COM/2020/1474, which he became aware of at the latest on 15 September 2020;

— annul the decision of 28 October 2020 rejecting his request under Article 90(1) of the Staff Regulations pertaining to his eligibility for promotion and to be assigned or re-graded to a new post;

— as far as necessary, annul the decisions of 18 January 2021 and 3 March 2021 respectively rejecting the applicant's complaints of 16 September 2020 and 2 November 2020;

— order the compensation of his material prejudice resulting from the loss of a chance to be appointed/assigned to post COM/2020/1474 as from 1 September 2020, as estimated in this application;

— order the compensation of his material prejudice resulting from the loss of a chance to be promoted from 16 May 2020, as estimated in this application;

— order the compensation of his material prejudice resulting from the loss of a chance to become a permanent official based on participation in internal competitions restricted to temporary agents 2(b) AD level, as estimated in this application;

— order the defendant to pay the entire costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two sets of pleas in law, amounting to eight pleas in total.

The first set of pleas in law refers to the applicant's action in so far as it is directed against the rejection of his application to post COM/2020/1474, whereas the second set of pleas concerns his action in so far as it is directed against the decision denying him the possibility of being promoted, re-graded, re-classified and/or appointed to another post.

1. First plea in law (first set of pleas), alleging a failure to notify the decision and failure to provide reasons.

   — It is argued that the applicant never received a formal notification regarding the outcome of his application to the vacancy COM/2020/1474, contrary to the obligation provided by Article 25(2) of the Staff Regulations and to the duty of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the EU. He learned on 15 September 2020 that another person started her service on that post as a temporary agent 2(b). That decision was also never properly motivated.

2. Second plea in law (first set of pleas), alleging that the rejection of the application for post COM/2020/1474 is illegal as it is based on an irregular interpretation of Article 8(2) and Article 10(3) of the Conditions of Employment of Other Servants of the EU (CEOS) — Violation of Article 8(2) and Article 10(3) CEOS, of the applicant's contract and of the interest of the service.

   — From the various exchange of emails, it appears that the administration is under the mistaken belief that it is not possible for a temporary agent at the Commission to obtain a second contract as a temporary agent in the Commission during his/her career and that under Article 8(2) CEOS a temporary agent (TA2(b)) can have only one contract. However, the applicant argues that there is nothing in the CEOS that supports this view.

3. Third plea in law (first set of pleas), alleging a failure to follow established administrative practices, unequal treatment and age discrimination.

   — The applicant argues that there are several instances in which temporary agents 2b have been re-assigned to different posts carrying different tasks and responsibilities without the need of a new contract, such as under the Junior Professionals Program (JPP).

4. Fourth plea in law (first set of pleas), alleging lack of transparency, denial of the right to be heard, and denial of an effective remedy.

   — The administration, it is argued, has not been transparent with the handling of this procedure. It has engaged in dubious procedural practices, which resulted in the denial of the applicant's right to be heard and the opportunity to have an effective remedy.

5. First plea in law (second set of pleas), alleging irregular interpretation of Article 8(2) and Article 10(3) CEOS — Violation of Article 8(2) and Article 10(3) CEOS, of the applicant's contract and of the interest of the service.

   — It is argued that the administration's position denying the applicant's promotion, re-grading, reclassification and appointment to another post is manifestly erroneous and lacks a legal basis for the reasons explained in relation to the first contested decision.

6. Second plea in law (second set of pleas), alleging unequal treatment and age discrimination between temporary agents 2(b) in the Commission.

   — With regard to the applicant's eligibility to apply and be assigned to other posts for members of the temporary staff, and specifically for vacancies of temporary staff under Article 2(b) CEOS, the applicant alleges that the administration has discriminatory practices between JPP candidates who are also temporary agents 2(b) and the applicant, also a temporary agent 2(b).

7. Third plea in law (second set of pleas), alleging the unequal treatment between temporary agents 2(b) of different Union entities.

   — The possibility of promotion for temporary agents 2(b) has been expressly recognised by other EU institutions and bodies. By failing to organise promotion exercises and by not providing for the same right to promotion to temporary agents 2(b), the European Commission treats such temporary agents in a less favourable manner than other institutions and bodies.

8. Fourth plea in law (second set of pleas), alleging unequal treatment between temporary agents 2(b) and other temporary agents in the Commission.

   — With regard to promotion or re-classification, the administration's failure to organise promotion exercises or allow individual promotions leads to an unequal treatment between the applicant, as a temporary agent 2(b), as compared with other categories of temporary agents, and in particular temporary agents 2(a) and 2(c).

Action brought on 30 April 2021 — Praesidiad/EUIPO — Zaun (Post)

(Case T-231/21)

(2021/C 278/70)

Language of the case: English

Parties

Applicant: Praesidiad Holding (Zwevegem, Belgium) (represented by: M. Rieger-Janson and D. Op de Beeck, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zaun Ltd (Wolverhampton, United Kingdom)

Details of the proceedings before EUIPO

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

Design at issue: European Union design No 127 204-0001 (Post)

Contested decision: Decision of the Third Board of Appeal of EUIPO of 15 February 2021 in Case R 2068/2019-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— maintain the decision of the Invalidity Division of EUIPO of 19 July 2019 rejecting the application for declaration of invalidity of the contested design;

— order EUIPO (and, if the other party to the proceedings before EUIPO intervenes, the other party as intervener) to pay the costs of the proceedings and pay those of the design holder.

Pleas in law

— The Board misapplied the judgment of DOCERAM in its interpretation of Article 8(1) of Council Regulation (EC) No 6/2002 as it failed to properly identify the product;

— The Board misapplied the judgment of DOCERAM in its interpretation of Article 8(1) of Council Regulation (EC) No 6/2002 as it failed to take into account evidence of objective circumstances indicative of considerations other than technical function;

— The Board misapplied the judgment of DOCERAM in its interpretation of Article 8(1) of Council Regulation (EC) No 6/2002 as it failed to apply the objective circumstances test, instead indicating that subjective evidence of the design circumstances was required;

— The Board failed to give reasons, contrary to Article 62 of Council Regulation (EC) No 6/2002, as to why the evidence of the design holder was dismissed as irrelevant and/or unfounded;

— The Board wrongly imposed the evidential burden of proof on the design holder, rather than the invalidity applicant.

Action brought on 7 May 2021 — SN v Parliament

(Case T-249/21)

(2021/C 278/71)

Language of the case: English

Parties

Applicant: SN (represented by: P. Eleftheriadis, Solicitor)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— annul in whole the Decision of the Secretary-General of the European Parliament dated 21 December 2020,

— annul in whole the Debit Note addressed to the Applicant, for the amount of 196 199,84 Euros, Nº 7010000021, dated 15 January 2021 and

— order the European Parliament to pay the applicant's costs in the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Parliament acted without regard to Article 137 of Staff Regulations of Officials and the Conditions of Employment of Other Servants the European Economic Community and the European Atomic Energy Community. ([1])

2. Second plea in law, alleging that the European Parliament misdirected itself in law and failed to apply the correct standard of 'undue payment' under Articles 32 and 68 of Decision of the Bureau of 19 May and 9 July 2008, concerning implementing measures for the Statute for Members of the European Parliament. ([2])

3. Third plea in law, alleging that the European Parliament failed to have regard to a Member's right to freedom and independence, under Articles 2 and 21 of the Statute for Members of the European Parliament. ([3])

4. Forth plea in law, alleging failure to give reasons under Article 296 TFEU in dismissing sixty eight out of seventy eight documents submitted by the Member, as 'inadmissible' evidence, failure to give reasons for considering that the whole salary was 'unduly paid', even though only six months of the thirty month contract were fully investigated, and failure to give reasons for contradicting OLAF's findings, which exonerated the Applicant of any dishonesty.

5. Fifth plea in law, alleging manifest errors of fact.

([1]) Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 1962 P 45, p. 1385)
([2]) Decision of the Bureau of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament (2009/C 159/01) (OJ 2009 C 159, p. 1)
([3]) Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom) (OJ 2005 L 262, p. 1).

Action brought on 10 May 2021 — Zdút v EUIPO — Nehera and Others (nehera)

(Case T-250/21)

(2021/C 278/72)

Language of the case: English

Parties

Applicant: Ladislav Zdút (Bratislava, Slovakia) (represented by: Y. Echevarría García, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Isabel Nehera (Sutton, Ontario, Canada), Jean-Henri Nehera (Burnaby, British Columbia, Canada), Natasha Sehnal (Montferrier-sur-Lez, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word figurative nehera mark in black — European Union trade mark No 11 794 112

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 10 March 2021 in Case R 1216/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs including those incurred in the proceedings before EUIPO.

Plea in law

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

Action brought on 15 May 2021 — Domator24.com Paweł Nowak v EUIPO — Siwek and Didyk (Chairs)

(Case T-256/21)

(2021/C 278/73)

Language in which the application was lodged: Polish

Parties

Applicant: Domator24.com Paweł Nowak (Zielona Góra, Poland) (represented by: T. Gawliczek, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Piotr Siwek (Gdańsk, Poland) and Sebastian Didyk (Gdańsk)

Details of the proceedings before EUIPO

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

Design at issue: European Union design No 3 304 021-0001 (chairs)

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 15 March 2021 in Case R 1275/2020-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the unsuccessful party to pay the costs incurred by the applicant in the proceedings before the General Court of the European Union and — pursuant to Article 190(2) of the Rules of Procedure of the General Court — any costs necessarily incurred by the applicant for the purposes of the proceedings before the Board of Appeal of EUIPO;

— in the event of intervention in the proceedings by other parties, order those parties to bear their own costs.

Pleas in law relied on

— Infringement of Article 25(1)(b) of Council Regulation (EC) No 6/2002, read in conjunction with Article 7(1) thereof, through an assumption that the design lacked individual character at the date of filing;

— Infringement of Article 25(1)(b) of Council Regulation (EC) No 6/2002, read in conjunction with Article 7(1) thereof, through an assumption that the earlier design relied on as evidence in the present case could reasonably have become known in the normal course of business to the circles specialised in the gaming sector;

— Infringement of the rules relating to the burden of proof;

— Infringement of the principle of free evaluation of evidence;

— Infringement of Article 25(1)(b) of Council Regulation (EC) No 6/2002, read in conjunction with Article 6(1)(b) and (2) thereof;

— Infringement of Article 25(1)(b) of Council Regulation (EC) No 6/2002, read in conjunction with Article 6(1)(b) thereof.

Action brought on 13 May 2021 — Yanukovych v Council

(Case T-262/21)

(2021/C 278/74)

Language of the case: English

Parties

Applicant: Viktor Fedorovych Yanukovych (Rostov on Don, Russia) (represented by: B. Kennelly, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant seeks the annulment of Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine ([1]) and Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine ([2]) ('the Ninth Amending Instruments' or '2021 Sanctions'), insofar as they concern the applicant.

The applicant also seeks his costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council did not and could not verify that the decision(s) of the Ukrainian authorities on which it relied when listing the applicant were adopted in accordance with his fundamental EU rights of defence and to effective judicial protection.

2. Second plea in law, alleging that the Council made manifest errors of assessment in determining that the designation criterion had been satisfied. In particular, the Council accepted the material supplied by the Ukrainian Prosecutor General's Office without any proper examination and/or without taking account of the inaccuracies identified by the applicant. The Council should have undertaken additional checks and requested further evidence from the Ukrainian authorities in light of the observations the applicant submitted and the exculpatory evidence he produced, but the Council's limited enquiries fell short of what was required. In consequence, there is no sufficiently solid factual basis for the 2021 Sanctions.

3. Third plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU have been breached, in that, amongst other things, the restrictive measures are an unjustified, unnecessary and disproportionate restriction on those rights, because: (i) there is no suggestion that any funds allegedly misappropriated by the applicant are considered to have been transferred outside Ukraine; (ii) Ukrainian domestic measures would plainly be adequate and sufficient; and (iii) restrictive measures have now been in place for seven years and have been imposed on the basis of a pre-trial investigation which is in reality deceased or at the very least in total stagnation.

(1) OJ 2021, L 77, p. 29.
(2) OJ 2021, L 77, p. 2.

Action brought on 13 May 2021 — Yanukovych v Conseil

(Case T-263/21)

(2021/C 278/75)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Saint Petersburg, Russia) (represented by: B. Kennelly, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant seeks the annulment of Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (1) and Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (2) ('the Ninth Amending Instruments' or '2021 Sanctions'), insofar as they concern the applicant.

The applicant also seeks his costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council did not and could not verify that the decision(s) of the Ukrainian authorities on which it relied when listing the applicant were adopted in accordance with his fundamental EU rights of defence and to effective judicial protection.

2. Second plea in law, alleging that the Council made manifest errors of assessment in determining that the designation criterion had been satisfied. In particular, the Council accepted the material supplied by the Ukrainian Prosecutor General's Office without any proper examination and/or without taking account of the inaccuracies identified by the applicant. The Council should have undertaken additional checks and requested further evidence from the Ukrainian authorities in light of the observations the applicant submitted and the exculpatory evidence he produced, but the Council's limited enquiries fell short of what was required. In consequence, there is no sufficiently solid factual basis for the 2021 Sanctions.

3. Third plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU have been breached, in that, amongst other things, the restrictive measures are an unjustified, unnecessary and disproportionate restriction on those rights, because: (i) there is no suggestion that any funds allegedly misappropriated by the applicant are considered to have been transferred outside Ukraine; (ii) Ukrainian domestic measures would plainly be adequate and sufficient; and (iii) restrictive measures have now been in place for seven years on the basis of a pre-trial investigation which is in reality deceased or at the very least in total stagnation.

(1) OJ 2021, L 77, p. 29.
(2) OJ 2021, L 77, p. 2.

Action brought on 19 May 2021 — Estetica Group Iwona Michalak v EUIPO (PURE BEAUTY)

(Case T-270/21)

(2021/C 278/76)

Language of the case: Polish

Parties

Applicant: Estetica Group Iwona Michalak (Warsaw, Poland) (represented by: P. Gutowski, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark PURE BEAUTY — Application No 18 160 933

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 March 2021 in Case R 1456/2020-5

Form of order sought

The applicant claims that the Court should:

— alter the contested decision by declaring that, in relation to the mark applied for, there is no absolute ground for refusal as referred to in Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement by the Board of Appeal of the principles of equal treatment and the protection of legitimate expectations through a failure to take into consideration the previous decision-making practice of the Office permitting the registration of word or figurative marks with a similar degree of fancifulness to the mark applied for, although there were no special circumstances that would justify a departure from that practice in the present case.

Action brought on 19 May 2021 — Puigdemont i Casamajó and Others v Parliament

(Case T-272/21)

(2021/C 278/77)

Language of the case: English

Parties

Applicants: Carles Puigdemont i Casamajó (Waterloo, Belgium), Antoni Comín i Oliveres (Waterloo), Clara Ponsatí i Obiols (Waterloo) (represented by: P. Bekaert, J. Costa i Rosselló, G. Boye and S. Bekaert, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— annul the European Parliament decisions of 9 March 2021 on the request for waiver of the immunity of Mr Carles Puigdemont i Casamajó (P9_TA(2021)0059 — [2020/2024(IMM)]), Mr Antoni Comín i Oliveres (P9_TA(2021)0060 — [2020/2025(IMM)]) and Ms Clara Ponsatí Obiols (P9_TA(2021)0061 — [2020/2031(IMM)]),

— order the defendant to pay all costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Parliament did not fulfill its obligation to state sufficient and adequate reasons for the contested decisions, thereby breaching the obligation to state reasons under the second paragraph of Article 296 TFEU, and Article 41(2)(c) of the Charter, in connection to the right of effective judicial protection enshrined in Article 47 of the Charter.

2. Second plea in law, alleging breach of Rule 9(1) of the Rules of Procedure of the European Parliament, in connection with Articles 20, 21 and 47 of the Charter, as regards the right to a tribunal previously established by law, since the request for waiver was not addressed at Parliament by a competent authority of a Member State.

3. Third plea in law, alleging breach of the right to have their affairs handled impartially and fairly laid down in Article 41 (1) of the Charter, which amounts also to a violation of Article 39(2) of the Charter, in connection with a failure to state reasons as regards several procedural decisions, thereby breaching the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter, and a breach of Article 15 TFEU and Article 47 of the Charter.

4. Fourth plea in law, alleging a breach of the right to be heard laid down in Article 41(2)(b) of the Charter, in connection with the right to access to documents in accordance with Article 42 of the Charter, and the rights of defence and effective judicial protection.

5. Fifth plea in law, alleging a breach of the principles of legal certainty and sincere cooperation, arising from the lack of clarity of the contested decisions as regards the scope of the waivers decided, in connection with the right to effective judicial protection and the right of defence laid down in Articles 47 and 48 of the Charter.

6. Sixth plea in law, alleging breach of the immunities provided for in Article 343 TFEU and Article 9 of Protocol No. 7, in conjunction with Articles 6, 39(2) and 45 of the Charter, Article 21 TFEU, and Rule 5(2) of the Rules of Procedure, since Parliament has either completely disregarded the criteria provided for by law in order to decide on a request for waiver of the immunity, or made a manifest error of assessment as regards such criteria provided for by law.

7. Seventh plea in law, alleging a breach of the principle of sound administration as enshrined in Article 41 of the Charter, and of the principle of equality as enshrined in Articles 20 and 21 of the Charter, in connection with Articles 343 of the TFEU, Article 9 of Protocol No. 7, and Articles 6, 39(2) and 45 of the Charter, since Parliament has either departed from the additional criteria provided for by its own precedent in order to decide on a request for the waiver of immunity or made a manifest error of assessment.

8. Eights plea in law. Violation of the principle of sound administration and the principle of equal treatment, in connection with Articles 6, 20, 21, 39(2) and 45 of the Charter, as regards precedents that show that Parliament does not waive immunity for the purpose of arresting Members without a conviction, and as regards the application of Rule 9(7) of the Rules of Procedure.

Action brought on 19 May 2021 — The Topps Company v EUIPO — Trebor Robert Bilkiewicz (Shape of a baby's bottle)

(Case T-273/21)

(2021/C 278/78)

Language of the case: English

Parties

Applicant: The Topps Company, Inc. (Wilmington, Delaware, United States) (represented by: D. Wieddekind and D. Wiemann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Trebor Robert Bilkiewicz (Gdansk, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union tridimensional mark (Shape of a baby's bottle) — European Union trade mark No 1 400 407

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 10 March 2021 in Case R 1326/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the Board of Appeal of EUIPO to pay the costs.

Pleas in law

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 May 2021 — Moio v EUIPO — Paul Hartmann (moio.care)

(Case T-276/21)

(2021/C 278/79)

Language in which the application was lodged: German

Parties

Applicant: Moio GmbH (Fürth, Germany) (represented by: E. Grande García, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Paul Hartmann AG (Heidenheim, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for European Union figurative mark moio.care — Application for registration No 17 938 097

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 March 2021 in Case R 1034/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, in so far as it adversely affects the applicant;

— in the alternative, annul the contested decision, in so far as a likelihood of confusion under Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council was established in relation to the earlier EU mark No 16 395 055, 'Molicare';

— in the further alternative, annul the contested decision, in so far as a likelihood of confusion was established for the goods claimed in Class 5 and the goods *Data processing equipment; Peripheral devices for data reproduction; Mobile apps; Mobile data receivers; Mobile data communications apparatus; Transmitters [telecommunication]; Sensory software; Telecommunications software* in Class 9;

— order EUIPO to pay the costs.

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 20 May 2021 — Daimler v EUIPO (Representation of three-pronged elements on a black background I)

(Case T-277/21)

(2021/C 278/80)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: N. Siebertz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark (Representation of three-pronged elements on a black background I) — Application for registration No 18 206 090

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 March 2021 in Case R 1895/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings and those incurred in the appeal proceedings.

Plea in law

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

Action brought on 20 May 2021 — Daimler v EUIPO (Representation of three-pronged elements on a black background II)

(Case T-278/21)

(2021/C 278/81)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: N. Siebertz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark (Representation of three-pronged elements on a black background II) — Application for registration No 18 206 086

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 March 2021 in Case R 1896/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings and those incurred in the appeal proceedings.

Plea in law

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

Action brought on 20 May 2021 — Daimler v EUIPO (Representation of three-pronged elements on a black background IV)

(Case T-279/21)

(2021/C 278/82)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: N. Siebertz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark (Representation of three-pronged elements on a black background IV) — Application for registration No 18 206 087

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 March 2021 in Case R 1898/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings and those incurred in the appeal proceedings.

Plea in law

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

Action brought on 20 May 2021 — Daimler v EUIPO (Representation of three-pronged elements on a black background III)

(Case T-280/21)

(2021/C 278/83)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: N. Siebertz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark (Representation of three-pronged elements on a black background III) — Application for registration No 18 206 085

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 March 2021 in Case R 1897/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings and those incurred in the appeal proceedings.

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 21 May 2021 — Pejovič v EUIPO — ETA živilska industrija (TALIS)

(Case T-283/21)

(2021/C 278/84)

Language of the case: English

Parties

Applicant: Edvin Pejovič (Pobegi, Slovenia) (represented by: U. Pogačnik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ETA živilska industrija d.o.o. (Kamnik, Slovenia)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark TALIS — European Union trade mark No 15 632 871

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 March 2021 in Case R 888/2020-4

Form of order sought

The applicant claims that the Court should:

— uphold the present application;

— reform the contested decision in such manner to uphold the applicant's appeal and reform the decision issued in cancellation procedure No 26 909 C of 17 March 2020 in such manner, to uphold the application for a declaration of invalidity of the contested trade mark TALIS and to declare the contested trade mark invalid in its entirety;

— in the alternative, annul the contested decision;

— remit the case back to the EUIPO for further deliberation;

— order EUIPO to pay all costs.

Pleas in law

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

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 63(1)(b) in conjunction with Article 46(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 May 2021 — Pejovič v EUIPO — ETA živilska industrija (RENČKI HRAM)

(Case T-284/21)

(2021/C 278/85)

Language of the case: English

Parties

Applicant: Edvin Pejovič (Pobegi, Slovenia) (represented by: U. Pogačnik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ETA živilska industrija d.o.o. (Kamnik, Slovenia)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark RENČKI HRAM — European Union trade mark No 15 297 336

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 March 2021 in Case R 1050/2020-4

Form of order sought

The applicant claims that the Court should:

— uphold the present application;

— reform the contested decision in such manner to uphold the applicant's appeal and reform the decision issued in cancellation procedure No. 34 709 C of 12 May 2020 in such manner to uphold the application for a declaration of invalidity of the contested trade mark RENČKI HRAM and to declare the contested trade mark invalid in its entirety;

— in the alternative, to annul the contested decision;

— remit the case back to the EUIPO for further deliberation;

— order EUIPO to pay all costs.

Pleas in law

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

— Infringement of Article 59(1)(b) Infringement of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 63(1)(b) in conjunction with Article 46(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 May 2021 — Alliance française de Bruxelles-Europe and Others v Commission

(Case T-285/21)

(2021/C 278/86)

Language of the case: French

Parties

Applicant: Alliance française de Bruxelles-Europe (Brussels, Belgium) and seven other applicants (represented by: E. van Nuffel d'Heynsbroeck, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— order, until the order terminating the procedure for interim relief is issued, the suspension of the operation of the European Commission's decision to award lot 4 (French language) of the contract relating to Framework Contracts on Language Training for the Institutions, Bodies and Agencies of the European Union (No HR/2020/OP/0014), in first place, to the consortium CLL Centre de Langues — Allingua and, in second place, to the consortium Alliance Europe Multilingue, comprised of the applicants, and adopt any other necessary measure, including indicating the effect of that suspension on any contract concluded in breach of the standstill period laid down by Article 175 of the Financial Regulation;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a failure to provide sufficient reasons, in breach of Article 170(3) of the Financial Regulation. In that regard, the applicants claim that an examination of the reasons provided concerning the qualities of the tender submitted by the applicants and the characteristics and advantages of the tender of the highest-ranked tenderer does not show any correlation between the assessment and the rating awarded, and that it is therefore not possible to understand why the applicants' tender is rated lower than the tender of the highest-ranked tenderer.

2. Second plea in law, alleging failure to exercise its discretion effectively in that the European Commission refused to weigh up parts of the technical proposal of the applicants' tender which were accessible via a coded hypertext link incorporated into their tender, on the ground that those parts could have been submitted or modified after the deadline for submitting tenders had expired, without determining specifically whether there was such a risk.

3. Third plea in law, raised in the alternative, alleging a manifest failure of assessment, in that there is no clear correlation between the assessment of the intrinsic qualities of the tender submitted by the applicants and the rating assigned to the quality criteria.

Action brought on 21 May 2021 — Pejovič v EUIPO — ETA živilska industrija (RENŠKI HRAM)

(Case T-286/21)

(2021/C 278/87)

Language of the case: English

Parties

Applicant: Edvin Pejovič (Pobegi, Slovenia) (represented by: U. Pogačnik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ETA živilska industrija d.o.o. (Kamnik, Slovenia)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark RENŠKI HRAM — European Union trade mark No 15 297 302

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 March 2021 in Case R 679/2020-4

Form of order sought

The applicant claims that the Court should:

— uphold the present application;

— reform the contested decision in such manner to uphold the applicant's appeal and reform the decision issued in cancellation procedure No 26 907 C of 17 March 2020 in such manner, to uphold the application for a declaration of invalidity of the contested trade mark RENŠKI HRAM and to declare the contested trade mark invalid in its entirety;

— in the alternative, annul the contested decision;

— remit the case back to the EUIPO for further deliberation;

— order EUIPO to pay all costs.

Pleas in law

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

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 63(1)(b) in conjunction with Article 46(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 May 2021 — Pejovič v EUIPO — ETA živilska industrija (SALATINA)

(Case T-287/21)

(2021/C 278/88)

Language of the case: English

Parties

Applicant: Edvin Pejovič (Pobegi, Slovenia) (represented by: U. Pogačnik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ETA živilska industrija d.o.o. (Kamnik, Slovenia)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark SALATINA — European Union trade mark No 15 940 141

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 March 2021 in Case R 889/2020-4

Form of order sought

The applicant claims that the Court should:

— uphold the present application;

— reform the contested decision in such manner to uphold the applicant's appeal and reform the decision issued in cancellation procedure No 26 905 C of 17 March 2020 in such manner, to uphold the application for a declaration of invalidity of the contested trade mark SALATINA and to declare the contested trade mark invalid in its entirety;

— in the alternative, annul the contested decision;

— remit the case back to the EUIPO for further deliberation;

— order EUIPO to pay all costs.

Pleas in law

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

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council on grounds of bad faith;

— Infringement of Article 63(1)(b) in conjunction with Article 46(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 May 2021 — ALO jewelry CZ v EUIPO — Cartier International (ALOve)

(Case T-288/21)

(2021/C 278/89)

Language of the case: English

Parties

Applicant: ALO jewelry CZ s. r. o. (Prague, Czech Republic) (represented by: K. Čermák, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cartier International AG (Steinhausen, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark ALOve — Application for registration No 16 724 701

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 March 2021 in Case R 2679/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Plea in law

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

Action brought on 25 May 2021 — Bastion Holding and Others v Commission

(Case T-289/21)

(2021/C 278/90)

Language of the case: English

Parties

Applicants: Bastion Holding BV (Amsterdam, Netherlands) and 35 other applicants (represented by: B. Braeken and X.Y.G. Versteeg, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— principally, annul Commission decision C(2021) 1872 final of 15 March 2021 concerning the third amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (SA.62241 (2021/N)) — the Netherlands, in so far it relates to the maximum amount of EUR 600 000 for large undertakings;

— alternatively, annul the said decision in its entirety;

— additionally, order the Commission to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the failure of the Commission to open a formal investigation procedure by wrongly deciding that the State aid measure raises no doubts as to its compatibility with the internal market.

   — Under this ground the applicants argue, first, that the State aid measure is not suitable to pursue its objective, which is to remedy a serious disturbance in the Dutch economy, by compensating the fixed costs of undertakings that have suffered a loss of turnover of 30 % as a result of the COVID-19 outbreak and the governmental measures subsequently imposed. The maximum amount of aid is, in the applicants' view, inappropriate to attain the objective pursued by the State aid measure. The State aid measure grants a maximum of EUR 600 000 to large undertakings. Such an amount is insufficient to remedy a serious disturbance in the Dutch economy by ensuring that undertakings remain economically viable. Especially for large undertakings such as the applicants, EUR 600 000 is not enough to effectively respond to the loss of turnover suffered as a result of the COVID-19 outbreak.

   — Second, the applicants maintain that the State aid measure is disproportionate. The current scheme goes beyond what is necessary in order to prevent liquidity shortages faced by SMEs and support their fixed costs. In fact, the disproportionate amount granted to SMEs allows them to be more competitive, as they are not as restricted by their fixed costs. Additionally, SMEs that received aid are not required as much as the applicants to revert [1] to their equity capital in order to remain competitive. The applicants receive a maximum amount of EUR 600 000 to keep thirty-three hotels running. SMEs, on the other hand, are eligible to receive almost the same amount of aid to tackle the liquidity shortages of only a small or medium-sized hotel.

2. Second plea in law, alleging procedural shortcomings by the Commission, as the contested decision contains an inadequate statement of reasons.

   — The second ground for annulment relates to procedural shortcomings of the contested decision. The decision, according to the applicants, contains an inadequate statement of reasons, since it does not address the (justification of the) disproportionate difference in maximised aid between SMEs and larger undertakings in any shape or form. Nor does it address the appropriateness of the measure itself, or the fact that SMEs were eligible to receive aid under two previous aid measures. By its decision, the Commission has thus not enabled the applicants to ascertain the reasons for deciding that the State aid measure was deemed compatible with the internal market. This violates Article 296 TFEU.

[1] Editorial note: the application refers to the companies concerned being required to 'consult' their equity capital.

Action brought on 25 May 2021 — Muschaweck v EUIPO — Conze (UM)

(Case T-293/21)

(2021/C 278/91)

Language in which the application was lodged: German

Parties

Applicant: Ulrike Muschaweck (Munich, Germany) (represented by: C. Konle, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Joachim Conze (Munich, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'UM' — EU trade mark No 9 305 731

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 15 March 2021 in Case R 2260/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and annul the decision of the Cancellation Division of EUIPO of 6 August 2019 in so far as it was decided that EU trade mark No 9 305 731 is to remain registered for the other services, namely for:

Class 44: Medical services in the field of hernia surgery;

— uphold the application for a declaration of revocation of EU trade mark No 9 305 731 in its entirety;

— thus declare EU trade mark No 9 305 731 to be revoked with effect from 20 June 2017 for all goods and services, namely for:

Class 10: Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials;

Class 41: Education and entertainment; providing of training; sporting and cultural activities; all of the aforesaid services being in the field of medical services;

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; all of the aforesaid services being in the field of medical services.

Class 44: Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services;

— order EUIPO to pay the costs.

Pleas in law

— The contested decision is vitiated by procedural errors of law: no effective representation of the other party; the submission made by the proprietor of the trade mark is out of time;

— The contested decision is vitiated by substantive errors of law: no authorisation of the original proprietor of the trade mark to use the mark; no genuine use of EU trade mark UM; use of EU trade mark UM bearing the additional text 'Dr. Muschaweck'.

Action brought on 24 May 2021 — Joules v EUIPO — Star Gold (Jules Gents)

(Case T-294/21)

(2021/C 278/92)

Language of the case: English

Parties

Applicant: Joules Ltd (Market Harborough, United Kingdom) (represented by: P. Martini-Berthon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Star Gold GmbH (Pforzheim, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark Jules Gents — Application for registration No 15 719 305

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 15 March 2021 in Case R 1123/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— order EUIPO to pay the costs incurred by the applicant, including the costs of proceedings before the Board of Appeal.

Pleas in law

— Infringement of Article 71(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and Article 6 of the European Convention on Human Rights;

— Infringement of Articles 71(1) and 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, Article 27(2) of Commission Delegated Regulation (EU) 2018/625 and Article 6 of the European Convention on Human Rights;

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

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

Action brought on 27 May 2021 — Bodegas Beronia v EUIPO — Bodegas Carlos Serres (ALEGRA DE BERONIA)

(Case T-298/21)

(2021/C 278/93)

Language in which the application was lodged: Spanish

Parties

Applicant: Bodegas Beronia, SA (La Rioja, Spain) (represented by: J. Mora Cortés, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Bodegas Carlos Serres, SL (La Rioja)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU word mark ALEGRA DE BERONIA — Application for registration No 18 012 451

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 March 2021 in Case R 2013/2020-1

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision, in so far as the appeal in Case R 2013/2020-1 was dismissed and registration of EU trade mark No 18 012 451 ALEGRA DE BERONIA (word mark) was refused in respect of all the goods at issue;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

Action brought on 31 May 2021 — Falke v Commission

(Case T-306/21)

(2021/C 278/94)

Language of the case: German

Parties

Applicant: Falke KGaA (Schmallenberg, Germany) (represented by: M. Vetter, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, pursuant to the first paragraph of Article 264 TFEU, the decision of the defendant of 20 November 2020 (State aid No SA.59289), as amended by the decision of the defendant of 12 February 2021 (State aid No SA.61744);

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

Pleas in law and main arguments

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

1. The German aid scheme 'Bundesregelung Fixkostenhilfe 2020' approved by the defendant is incompatible with the internal market, as it distorts competition without that being exceptionally justified in the present case. The defendant made a manifest error of assessment by deciding that an aid scheme requiring a company-wide decrease in turnover of at least 30 % was compatible with the internal market pursuant to Article 107(3)(b) TFEU. The application of the aid scheme at the level of the company would make companies, such as the applicant, which have several business areas that have been affected to varying degrees by the COVID-19 pandemic, with the store-based business having sustained a loss in turnover significantly exceeding 30 % due to closure, ineligible to apply solely because another business area does not sustain any losses in turnover and the calculation of an arithmetic mean of the turnover of different business areas leads to the 30 % threshold not being reached. Consequently, those companies, unlike companies with only one business area, might receive aid only for a fraction of the eligible period or none at all and would have to cross-finance the uncovered fixed costs of their closed business area from their other business areas. That leads to a distortion in competition both in relation to competitors in the business area affected by the pandemic and in relation to competitors in the business area unaffected by the pandemic.

2. The defendant infringed the applicant's procedural rights under Article 108(2) TFEU by not giving the applicant the opportunity to raise its doubts as to the compatibility of the aid scheme with the internal market in the preliminary review procedure.

Order of the General Court of 28 May 2021 — Poupart v Commission

(Case T-376/20) ([1])

(2021/C 278/95)

Language of the case: French

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

([1]) OJ C 262, 10.8.2020.

Order of the General Court of 28 May 2021 — Corman v Commission

(Case T-25/21) ([1])

(2021/C 278/96)

Language of the case: French

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

([1]) OJ C 72, 1.3.2021.

Order of the General Court of 27 May 2021 — Suez v Commission

(Case T-121/21) ([1])

(2021/C 278/97)

Language of the case: French

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

([1]) OJ C 138, 19.4.2021.

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

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

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