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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 17 June 2021 (request for a preliminary ruling from the Ondernemingsrechtbank Antwerpen — Belgium) — Mircom International Content Management & Consulting (M.I.C.M.) Limited v Telenet BVBA

(Case C-597/19) [1]

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights — Directive 2001/29/EC — Article 3(1) and (2) — Concept of 'making available to the public' — Downloading of a file containing a protected work via a peer-to-peer network and the simultaneous provision for uploading pieces of that file — Directive 2004/48/EC — Article 3(2) — Misuse of measures, procedures and remedies — Article 4 — Persons entitled to apply for the application of measures, procedures and remedies — Article 8 — Right of information — Article 13 — Concept of 'prejudice' — Regulation (EU) 2016/679 — Point (f) of the first subparagraph of Article 6(1) — Protection of natural persons with regard to the processing of personal data — Lawfulness of processing — Directive 2002/58/EC — Article 15(1) — Legislative measures to restrict the scope of the rights and obligations — Fundamental rights — Articles 7 and 8, Article 17(2) and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union)

(2021/C 310/02)

Language of the case: Dutch

Referring court

Ondernemingsrechtbank Antwerpen

Parties to the main proceedings

Applicant: Mircom International Content Management & Consulting (M.I.C.M.) Limited

Defendant: Telenet BVBA

Intervening parties: Proximus NV, Scarlet Belgium NV

Operative part of the judgment

1. Article 3(1) and (2) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the uploading, from the terminal equipment of a user of a peer-to-peer network to such equipment of other users of that network, of pieces, previously downloaded by that user, of a media file containing a protected work, even though those pieces are usable in themselves only as from a certain download rate, constitutes making available to the public within the meaning of that provision. It is irrelevant that, due to the configurations of the BitTorrent client sharing software, that uploading is automatically generated by it, when the user, from whose terminal equipment that uploading takes place, has subscribed to that software by giving his or her consent to its application after having been duly informed of its characteristics;

2. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as meaning that a person who is the contractual holder of certain intellectual property rights, who does not however use them himself or herself, but merely claims damages for alleged infringers, may benefit, in principle, from the measures, procedures and remedies provided for in Chapter II of that directive, unless it is established, in accordance with the general obligation laid down in Article 3(2) of that directive and on the basis of an overall and detailed assessment, that his or her request is abusive. In particular, as regards a request for information based on Article 8 of that directive, it must also be rejected if it is unjustified or disproportionate, which is for the referring court to determine;

3. Point (f) of subparagraph 1 of Article 6(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), read in conjunction with Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that it precludes in principle, neither the systematic recording, by the holder of intellectual property rights as well as by a third party on his or her behalf, of IP addresses of users of peer-to-peer networks whose internet connections have allegedly been used in infringing activities, nor the communication of the names and of the postal addresses of those users to that rightholder or to a third party in order to enable it to bring a claim for damages before a civil court for prejudice allegedly caused by those users, provided, however, that the initiatives and requests to that effect of that rightholder or of such a third party are justified, proportionate and not abusive and have their legal basis in a national legislative measure, within the meaning of Article 15(1) of Directive 2002/58, which limits the scope of the rules laid down in Articles 5 and 6 of that directive, as amended.

([1]) OJ C 383, 11.11.2019.

Judgment of the Court (Grand Chamber) of 15 June 2021 (request for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Facebook Ireland Ltd, Facebook Inc., Facebook Belgium BVBA v Gegevensbeschermingsautoriteit

(Case C-645/19) ([1])

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Charter of Fundamental Rights of the European Union — Articles 7, 8 and 47 — Regulation (EU) 2016/679 — Cross-border processing of personal data — 'One-stop shop' mechanism — Sincere and effective cooperation between supervisory authorities — Competences and powers — Power to initiate or engage in legal proceedings)

(2021/C 310/03)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellants: Facebook Ireland Ltd, Facebook Inc., Facebook Belgium BVBA

Respondent: Gegevensbeschermingsautoriteit

Operative part of the judgment

1. Article 55(1), Articles 56 to 58 and Articles 60 to 66 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), read together with Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a supervisory authority of a Member State which, under the national legislation adopted in order to transpose Article 58(5) of that regulation, has the power to bring any alleged infringement of that regulation to the attention of a court of that Member State and, where necessary, to initiate or engage in legal proceedings, may exercise that power in relation to an instance of cross-border data processing even though it is not the 'lead supervisory authority', within the meaning of Article 56(1) of that regulation, with respect to that data processing, provided that that power is exercised in one of the situations where Regulation 2016/679 confers on that supervisory authority a competence to adopt a decision finding that such processing is in breach of the rules contained in that regulation and that the cooperation and consistency procedures laid down by that regulation are respected.

2. Article 58(5) of Regulation 2016/679 must be interpreted as meaning that, in the event of cross-border data processing, it is not a prerequisite for the exercise of the power of a supervisory authority of a Member State, other than the lead supervisory authority, to initiate or engage in legal proceedings, within the meaning of that provision, that the controller or processor with respect to the cross-border processing of personal data against whom such proceedings are brought has a main establishment or another establishment on the territory of that Member State.

3. Article 58(5) of Regulation 2016/679 must be interpreted as meaning that the power of a supervisory authority of a Member State, other than the lead supervisory authority, to bring any alleged infringement of that regulation to the attention of a court of that Member State and, where appropriate, to initiate or engage in legal proceedings, within the meaning of that provision, may be exercised both with respect to the main establishment of the controller which is located in that authority's own Member State and with respect to another establishment of that controller, provided that the object of the legal proceedings is a processing of data carried out in the context of the activities of that establishment and that that authority is competent to exercise that power, in accordance with the terms of the answer to the first question referred.

4. Article 58(5) of Regulation 2016/679 must be interpreted as meaning that, where a supervisory authority of a Member State which is not the 'lead supervisory authority', within the meaning of Article 56(1) of that regulation, has brought a legal action, the object of which is an instance of cross-border processing of personal data, before 25 May 2018, that is, before the date when that regulation became applicable, that action may, from the perspective of EU law, be continued on the basis of the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which remains applicable in relation to infringements of the rules laid down in that directive committed up to the date when that directive was repealed. That action may, in addition, be brought by that authority with respect to infringements committed after that date, on the basis of Article 58(5) of Regulation 2016/679, provided that that action is brought in one of the situations where, exceptionally, that regulation confers on a supervisory authority of a Member State which is not the 'lead supervisory authority' a competence to adopt a decision finding that the processing of data in question is in breach of the rules contained in that regulation with respect to the protection of the rights of natural persons as regards the processing of personal data, and that the cooperation and consistency procedures laid down by that regulation are respected, which it is for the referring court to determine.

5. Article 58(5) of Regulation 2016/679 must be interpreted as meaning that that provision has direct effect, with the result that a national supervisory authority may rely on that provision in order to bring or continue a legal action against private parties, even where that provision has not been specifically implemented in the legislation of the Member State concerned.

(1) OJ C 406, 2.12.2019.

Judgment of the Court (First Chamber) of 17 June 2021 (request for a preliminary ruling from the Sąd Apelacyjny w Warszawie — Poland) — Mittelbayerischer Verlag KG v SM

(Case C-800/19) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Article 7(2) — Special jurisdiction in matters relating to tort, delict or quasi-delict — Place where the harmful event occurred or may occur — Person claiming infringement of his personality rights resulting from the publication of an article online — Place in which the damage occurred — Centre of the interests of that person)

(2021/C 310/04)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Warszawie

Parties to the main proceedings

Applicant: Mittelbayerischer Verlag KG

Defendant: SM

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 courts of the place in which the centre of interests of a person claiming that his or her personality rights have been infringed by content published online on a website is situated have jurisdiction to hear, in respect of the entirety of the alleged damage, an action for damages brought by that person only if that content contains objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual.

([1]) OJ C 27, 27.1.2020.

Judgment of the Court (Fifth Chamber) of 17 June 2021 — Czech Republic v European Commission, Republic of Poland

(Case C-862/19 P) ([1])

(Appeal — European Social Fund (ESF) — European Regional Development Fund (ERDF) — Partial cancellation of assistance for operational programmes in the Czech Republic — Directive 2004/18/EC — Article 16(b) — Specific exclusion — Public service contracts relating to programme material intended for broadcasting)

(2021/C 310/05)

Language of the case: Czech

Parties

Appellant: Czech Republic (represented by: M. Smolek, O. Serdula, J. Vláčil and I. Gavrilová, acting as Agents)

Other parties to the proceedings: European Commission (represented by: P. Ondrůšek and P. Arenas, acting as Agents), Republic of Poland

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Czech Republic to bear its own costs and to pay those incurred by the European Commission.

(1) OJ C 27, 27.1.2020.

Judgment of the Court (Fourth Chamber) of 17 June 2021 (Request for a preliminary ruling from the Klagenævnet for Udbud — Denmark) — Simonsen & Weel A/S v Region Nordjylland og Region Syddanmark

(Case C-23/20) (1)

(Reference for a preliminary ruling — Public procurement — Framework contract — Directive 2014/24/EU — Article 5(5) — Article 18(1) — Articles 33 and 49 — Annexe V, part C, points 7, 8 and 10 — Commission Implementing Regulation (EU) 2015/1986 — Annexe II, sections II.1.5 and II.2.6 — Procurement procedures — Obligation to indicate, in the contract notice or the tender specifications, first, the estimated quantity or the estimated value and, second, the maximum quantity or the maximum value of the products to be supplied under a framework contract — Principles of transparency and equal treatment — Directive 89/665/EEC — Article 2d(1) — Procedures for review of the award of public contracts — Ineffectiveness of the contract — Exception)

(2021/C 310/06)

Language of the case: Danish

Referring court

Klagenævnet for Udbud

Parties to the main proceedings

Applicant: Simonsen & Weel A/S

Defendant: Region Nordjylland og Region Syddanmark

Intervener: Nutricia A/S

Operative part of the judgment

1. Article 49 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and points 7, 8 and 10(a) of Part C of Annex V to that directive, read in conjunction with Article 33 of that directive and the principles of equal treatment and transparency referred to in Article 18(1) thereof, must be interpreted as meaning that the contract notice must indicate the estimated quantity and/or value and a maximum quantity and/or value of the products to be supplied under a framework contract and that once that limit has been reached, that framework contract will no longer have any effect;

2. Article 49 of Directive 2014/24 and points 7 and 10(a) of Part C of Annex V to that directive, read in conjunction with Article 33 of that directive and the principles of equal treatment and transparency referred to in Article 18(1) thereof, must be interpreted as meaning that the contract notice must indicate the estimated quantity and/or value and a maximum quantity and/or value of the products to be supplied under a framework contract as a whole and that that notice can set additional requirements which the contracting authority may decide to add to that framework contract;

3. Article 2d(1)(a) of Council Directive 89/665/EEC of 21 December 1989, on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, must be interpreted as meaning that it does not apply where a contract notice has been published in the Official Journal of the European Union, even if, first, the estimated quantity and/or the estimated value of the products to be supplied under the envisaged contract is not set out in the contract notice but rather in the tender specifications and, second, neither that contract notice nor those tender specifications mention a maximum quantity or a maximum value of the products to be supplied under that framework contract.

(1) OJ C 95, 23.3.2020.

Judgment of the Court (First Chamber) of 17 June 2021 (request for a preliminary ruling from the Bundesfinanzgericht — Austria) — K (C-58/20), DBKAG (C-59/20) v Finanzamt Österreich, formerly Finanzamt Linz

(Joined Cases C-58/20 and C-59/20) (1)

(References for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 135(1) — Exemptions — Management of special investment funds — Outsourcing — Services provided by a third party)

(2021/C 310/07)

Language of the case: German

Referring court

Bundesfinanzgericht

Parties to the main proceedings

Applicants: K (C-58/20), DBKAG (C-59/20)

Defendant: Finanzamt Österreich, formerly Finanzamt Linz

Operative part of the judgment

Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the provision of services by third parties to management companies of special investment funds, such as tax-related responsibilities consisting in ensuring that the income received from the fund by the unit-holders is taxed in accordance with national law and the grant of a right to use software which is used exclusively to carry out calculations which are essential for risk management and performance measurement, fall within the scope of the exemption provided for in that provision if they are intrinsically connected to the management of such funds and if they are provided exclusively for the purpose of managing such funds, even if those services are not outsourced in their entirety.

(1) OJ C 191, 8.6.2020.

Judgment of the Court (Ninth Chamber) of 17 June 2021 — Republic of Lithuania v European Commission, Czech Republic

(Case C-153/20 P) ([1])

(Appeal — European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD) — Expenditure excluded from EU financing — Expenditure incurred by the Republic of Lithuania — Regulation (EU) No 65/2011 — Administrative checks — On-the-spot check — Quality of checks — Quality of the applicants — Artificial conditions — Expenditure incurred through projects)

(2021/C 310/08)

Language of the case: Lithuanian

Parties

Appellant: Republic of Lithuania (represented by: R. Dzikovič and K. Dieninio, acting as agents)

Other parties to the proceedings: European Commission (represented by: A. Sauka and A. Steiblytė, acting as agents), Czech Republic (represented by: M. Smolek, J. Pavliš and J. Vláčil, acting as agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Republic of Lithuania to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Czech Republic to bear its own costs.

([1]) OJ C 215, 29.6.2020.

Order of the Court (Ninth Chamber) of 5 May 2021 (request for a preliminary ruling from the Tribunal du travail de Liège — Belgium) — VT v Centre public d'action sociale de Liège (CPAS)

(Case C-641/20) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2008/115/EC — Return of illegally staying third-country nationals — Return decision — Judicial remedy — Provisional right of residence and social assistance during the period in which the appeal is pending)

(2021/C 310/09)

Language of the case: French

Referring court

Tribunal du travail de Liège

Parties to the main proceedings

Applicant: VT

Defendant: Centre public d'action sociale de Liège (CPAS)

Operative part of the order

Articles 5 and 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union, as well as Article 14(1)(b) of that directive, must be interpreted as precluding national legislation which does not confer automatic suspensory effect on an action brought by a third-country national against a return decision, within the meaning of Article 3(4) of that directive, concerning him, after the withdrawal by the competent authority of his refugee status pursuant to Article 11 of 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, and, correlatively, does not confer on that third-country national a provisional right to reside and to have his basic needs taken care of until a decision on that action is taken, in the exceptional case where that national, who is affected by a serious illness, may, as a result of that decision being enforced, be exposed to a serious risk of grave and irreversible deterioration in his state of health. In this context, the national court, hearing a dispute the outcome of which is linked to the possible suspension of the effects of the return decision, must hold that the action brought against that decision has automatic suspensory effect, where that action contains arguments, that do not appear to be manifestly unfounded, seeking to establish that the enforcement of that decision would expose the third-country national to a serious risk of grave and irreversible deterioration in his state of health.

([1]) OJ C 44, 8.2.2021.

Appeal brought on 16 December 2020 by Eleanor Sharpston against the order of the General Court (Second Chamber) delivered on 6 October 2020 in Case T-180/20, Sharpston v Council and Conference of the Representatives of the Governments of the Member States

(Case C-684/20 P)

(2021/C 310/10)

Language of the case: English

Parties

Appellant: Eleanor Sharpston (represented by: N. Forwood, Barrister-at-Law, J. Robb, Barrister, J. Flynn QC and H. Mercer QC)

Other parties to the proceedings: Council of the European Union, Conference of the Representatives of the Governments of the Member States

By order of 16 June 2021, the Court of Justice (First Chamber) decided that the appeal is dismissed as, in part, manifestly inadmissible and, in part, manifestly unfounded and ordered the appellant to bear her own costs.

Appeal brought on 16 December 2020 by Eleanor Sharpston against the order of the General Court (Second Chamber) delivered on 6 October 2020 in Case T-550/20, Sharpston v Council and the Representatives of the Governments of the Member States

(Case C-685/20 P)

(2021/C 310/11)

Language of the case: English

Parties

Appellant: Eleanor Sharpston (represented by: N. Forwood, Barrister-at-Law, J. Robb, Barrister, J. Flynn QC and H. Mercer QC)

Other parties to the proceedings: Council of the European Union, Representatives of the Governments of the Member States

By order of 16 June 2021, the Court of Justice (First Chamber) decided that the appeal is dismissed as, in part, manifestly inadmissible and, in part, manifestly unfounded and ordered the appellant to bear her own costs.

Request for a preliminary ruling from the Sąd Rejonowy w Nysie (Poland) lodged on 21 December 2020 — Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) v AP

(Case C-699/20)

(2021/C 310/12)

Language of the case: Polish

Referring court

Sąd Rejonowy w Nysie

Parties to the main proceedings

Applicant: Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB)

Defendant: AP

By order of 8 June 2021, the Court of Justice (Sixth Chamber) declared the request for a preliminary ruling from the Sąd Rejonowy w Nysie, II Wydział Karny (District Court, Nysa, 2nd Criminal Division) (Poland) to be manifestly inadmissible.

Request for a preliminary ruling from the Landessozialgericht Nordrhein-Westfalen (Germany) lodged on 4 May 2021 — VA v Deutsche Rentenversicherung Bund

(Case C-283/21)

(2021/C 310/13)

Language of the case: German

Referring court

Landessozialgericht Nordrhein-Westfalen

Parties to the main proceedings

Applicant: VA

Defendant: Deutsche Rentenversicherung Bund

Intervener: RB

Questions referred

1. Is under the legislation of the Netherlands — as the Member State which is competent under Title II of Regulation (EC) No 883/2004] ([1]) — a child-raising period taken into account within the meaning of Article 44(2) of Regulation (EC) No 987/2009 ([2]) by virtue of the fact that the period of child-raising in the Netherlands, as a pure period of residence, gives rise to a pension entitlement?

If Question 1 is answered in the negative:

2. Is Article 44(2) of Regulation No 987/2009 — following on from the judgments of 23 November 2000 in Case C-135/99 [3] and of 19 July 2012 in Case C-522/10 [4] — to be interpreted broadly as meaning that the competent Member State must also take into account the child-raising period if the person raising the child has completed pension-relevant periods before and after the child-raising due to education or employment only in the scheme of that State, but did not pay contributions into that scheme immediately before or after the child-raising?

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[1] Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

[2] Regulation of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

[3] EU:C:2000:647, *Elsen*.

[4] EU:C:2012:475, *Reichel-Albert*.

Request for a preliminary ruling from the Landgericht Kleve (Germany) lodged on 14 May 2021 — AB and Others v Ryanair DAC

(Case C-307/21)

(2021/C 310/14)

Language of the case: German

Referring court

Landgericht Kleve

Parties to the main proceedings

Appellants: AB and Others

Respondent: Ryanair DAC

Question referred

Are Article 5(1)(c) and Article 7 of Regulation (EC) No 261/2004 [1] to be interpreted as meaning that the operating air carrier must pay compensation in the event of a flight cancellation of which the passenger was not informed at least two weeks prior to the scheduled time of departure, even though the air carrier sent that information in good time before the expiry of two weeks to the only email address communicated to it in the course of the booking, without, however, being aware that the booking had been made via an agent or its internet platform and that the email address communicated by the booking platform could be used at most to contact the agent, and not the passenger directly?

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

Request for a preliminary ruling from the Corte d'appello di Venezia (Italy) lodged on 21 May 2021 — Agecontrol SpA v ZR, Lidl Italia Srl

(Case C-319/21)

(2021/C 310/15)

Language of the case: Italian

Referring court

Corte d'appello di Venezia

Parties to the main proceedings

Appellant: Agecontrol SpA

Respondents: ZR, Lidl Italia Srl

Question referred

Must Article 5(4) of Commission Implementing Regulation (EU) No 543/2011, ([1]) read in conjunction with Article 5(1) and Article 8 of that regulation and with Articles 113 and 113a of Council Regulation (EU) No 1234/2007 ([2]) of 22 October 2007, be interpreted as meaning that an accompanying document must be issued indicating the name and the country of origin of fresh fruit and vegetables shipped pre-packed or in the original packaging provided by the producer, during transport from a seller company's distribution platform to a point of sale of the same company, irrespective of the fact that one side of the packaging features the information particulars required by Chapter I [of Title II] of Regulation (EU) No 543/2011 (including the name and country of origin of the goods) indelibly printed directly onto the package or on a label which is an integral part of the package or affixed to it, and irrespective of the fact that this information is also shown on the invoices issued by the supplier from which the goods were purchased by the seller company kept in that company's accounting offices and on a notice placed in an obvious position inside the means of transport in which the goods are being conveyed?

([1]) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1).

([2]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

Request for a preliminary ruling from the Tribunale di Rieti (Italy) lodged on 26 May 2021 — Criminal proceedings against G.B., R.H.

(Case C-334/21)

(2021/C 310/16)

Language of the case: Italian

Referring court

Tribunale di Rieti

Parties to the main proceedings

G.B., R.H.

Questions referred

1. Is Article 15(1) of Directive 2002/58, ([1]) read in the light of Articles 7, 8, 11 and 52(1) of the Charter of Fundamental Rights of the European Union and of the principles established by the Court of Justice of the European Union in its judgment of 2 March 2021 in Case C-746/18, to be interpreted as precluding national rules such as those laid down in Article 132(3) of Legislative Decree No 196/2003, which confer powers on the Public Prosecutor, which is a body whose independence and autonomy is fully guaranteed under the rules laid down in Title IV of the Italian Constitution, to require, by reasoned order, the delivery over of traffic data and location data for the purposes of criminal proceedings?

2. In the event that the first question is answered in the negative, can the Court provide further interpretative guidance concerning the possible non-retroactive application of the principles established in its judgment of 2 March 2021 in Case C-746/18, having regard to the overriding requirements of legal certainty in the sphere of the prevention, detection and combating of serious crime and threats to security?

3. Is Article 15(1) of Directive 2002/58, read in the light of Articles 7, 8, 11 and 52(1) of the Charter of Fundamental Rights of the European Union and of the principles established by the Court in its judgment of 2 March 2021 in Case C-746/18, to be interpreted as precluding national rules such as those laid down in Article 132(3) of Legislative Decree No 196/2003, read in the light of Article 267(2) of the Italian Code of Criminal Procedure, which enable the Public Prosecutor, in urgent cases, immediately to obtain telephone traffic data, with the subsequent scrutiny and supervision of the court before which the case is brought?

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

Appeal brought on 2 June 2021 by European Commission against the judgment of the General Court (Seventh Chamber) delivered on 24 March 2021 in Case T-374/20, KM v European Commission

(Case C-341/21 P)

(2021/C 310/17)

Language of the case: German

Parties

Appellant: European Commission (represented by: T. S. Bohr and B. Mongin, acting as Agents)

Other parties to the proceedings: KM, European Parliament, Council of the European Union

Form of order sought

The Commission claims that the Court should:

— set aside the judgment of the General Court of the European Union of 24 March 2021 (Seventh Chamber) in Case T-374/20, KM v Commission;

— dismiss the action;

— order the respondent to pay the costs of the proceedings at first instance;

— order the respondent to pay the costs of the proceedings on appeal.

Grounds of appeal and main arguments

In support of its appeal, the Commission puts forward three grounds of appeal.

In its first ground of appeal, the Commission alleges an error of law concerning the criteria for assessing the legality of decisions made by the legislature and a breach of the obligation to state reasons. The General Court departed from the principle that the assessment of the legality of an EU measure in relation to fundamental rights may not be based on claims relating to the consequences of that measure on a case by case basis; the illegality of a provision of the Staff Regulations may not be founded on the 'inappropriateness' of a decision of the legislature; the General Court misapplied the judgment of 19 December 2019 in case C-460/18 P, ([1]) not taking into account all aspects of established principles, that characterise the two situations under comparison.

By the second ground of appeal, the Commission claims an error of law in the interpretation of the principle of non-discrimination, according to which the situations in Articles 18 and 20 of Annex VIII of the Staff Regulations are comparable. The date of entering into marriage is not the only criterion which distinguishes Articles 18 and 20 of Annex VIII. That distinction is based on a number of elements that the General Court refused to take into account; the General Court should have considered the purpose of the condition of a minimum duration of marriage in Articles 18 and 20 of Annex VIII, which their differences should have made clear; the same conclusion holds for discrimination on grounds of age.

By the third ground of appeal, the Commission also alleges an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights ([2]) and several breaches of the obligation to state reasons. First, there is an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights, where the consequences of the death of the official for the surviving spouse are not to be distinguished according to whether the marriage was concluded before or after leaving the service; secondly, the General Court committed an error of law in the interpretation of the objective to prevent fraud and breached the obligation to state reasons.

([1]) Judgment of 19 December 2019, *HK v Commission*, ECLI:EU:C:2019:1119.
([2]) Charter of Fundamental Rights of the European Union (OJ 2012 C 326, p. 391).

Appeal brought on 7 June 2021 by the Council of the European Union against the judgment of the General Court (Seventh Chamber) delivered on 24 March 2021 in Case T-374/20, KM v European Commission

(Case C-357/21 P)

(2021/C 310/18)

Language of the case: German

Parties

Appellant: Council of the European Union (represented by: M. Bauer and M. Alver, acting as Agents)

Other parties to the proceedings: KM, European Commission, European Parliament

Form of order sought

The appellant submits that the Court should:

— uphold the appeal and set aside the judgment of the General Court of the European Union of 24 March 2021 (Seventh Chamber), KM v Commission, in Case T-374/20;

— give a final decision in the case and dismiss the action brought at first instance as unfounded;

— order the applicants at first instance to pay the costs incurred by the Council in the course of the present proceedings and the proceedings at first instance.

Pleas in law and main arguments

In support of its appeal, the Council puts forward four grounds of appeal.

In its first ground of appeal the Council alleges an error of law regarding a difference in treatment for the purposes of the grant of a survivor's pension under Article 18 or Article 20 of Annex VIII to the Staff Regulations, of the surviving spouse of a former official who married before leaving the service, and the surviving spouse of a former official, who married after leaving the service. The General Court did not, however, assess the comparability of the situations at issue, having regard to all the elements which characterise them, in particular their respective legal situations, in the light of the subject matter and purpose of the EU act in question. The General Court thus erred in law, by declaring that the date on which the marriage was concluded is the only element which determines the application of Article 18 or Article 20 of Annex VIII of the Staff Regulations, while the difference in treatment is justified by the basic factual and legal difference between the status of an official, who is covered by any administrative status listed in Article 35 of the Staff Regulations, and that of a former official.

In the alternative, the Council raises the second and third grounds of appeal.

In its second ground of appeal, the Council puts forward an error of law with regard to the scope of judicial review by the General Court of decisions made by the EU legislature. The General Court referred to the existence of a 'simple' discretion on the part of the EU legislature, which implies the need to ensure, that it does not appear unreasonable for the EU legislature to consider that the difference in treatment introduced is necessary and appropriate in order to achieve the intended aim. The General Court failed to appreciate that the EU legislature, in the exercise of the powers conferred on it, has a broad discretion, in areas in which its action involves political, economic or social choices and in which it is called upon to undertake complex evaluations and assessments, which is the case for the arrangement of a social insurance scheme. Thus, the criterion to be applied is not whether a measure adopted in this area was the only or the best possible measure. The lawfulness of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institutions are seeking to pursue. By conducting a review that went beyond the manifestly inappropriate nature of the measure at issue, the General Court substituted its own assessment for that of the legislature and exceeded the limits of its power of judicial review.

In its third ground of appeal, the Council alleges that the General Court erred in law in its examination as to whether the difference in treatment is justified. First, that assessment is vitiated by an error of law in the definition of the scope of judicial review of decisions made by the EU legislature. Next, the General Court failed to appreciate the case-law which establishes that it is for the applicant to demonstrate the conflict of a legislative provision with primary law, and not a matter for the institution which drafted that act, to demonstrate its lawfulness. In addition, the General Court erred in law when assessing whether the difference in treatment is justified in the light of case-law which states a general presumption of fraud is not sufficient to justify a measure which undermines the objectives of the FEU Treaty, finding that Article 20 of Annex VIII of the Staff Regulations introduced a general and non-rebuttable presumption of fraud against marriages of less than five years. Lastly it follows that it is irrelevant in the present case that the judgment under appeal ruled on whether it was possible to bring objective evidence to rebut the presumption of fraud given that Article 20 of Annex VIII of the Staff Regulations does not set out a presumption of fraud or a presumption of the absence of fraud relating to a marriage.

Finally, in its fourth ground of appeal, the Council also alleges an error of law and a breach of the obligation to state reasons with regard to the conclusion of the General Court for the prohibition of discrimination on grounds of age. In the judgment under appeal, the General Court refers alternatively to the age of the surviving spouse, the age of the official or of the former official and fails to appreciate its obligation to state reasons. The finding of a particular disadvantage for persons of a certain age or a certain age group depends in particular on proof that the provision in question has an unfavourable effect on a significantly higher proportion of persons of a certain age in comparison to persons of another age; however, that proof is not provided in the present case. Even assuming that such a difference in treatment arises, indirectly based on the age of the former official at the time of the marriage, nevertheless the General Court also failed to examine whether that difference in treatment is consistent with Article 21(1) of the Charter of Fundamental Rights [1] and satisfied the criteria in Article 52(1) of the Charter.

[1] Charter of Fundamental Rights of the European Union (OJ 2012 C 326, p. 391).

Appeal brought on 14 June 2021 by SGI Studio Galli Ingegneria Srl against the judgment of the General Court (Ninth Chamber) delivered on 14 April 2021 in Case T-285/19, SGI Studio Galli Ingegneria v Commission

(Case C-371/21 P)

(2021/C 310/19)

Language of the case: Italian

Parties

Appellant: SGI Studio Galli Ingegneria Srl (represented by: F.S. Marini, V. Catenacci and R. Viglietta, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

set aside the judgment of the General Court (Ninth Chamber), published on 14 April 2021 and notified on the same date, in Case T-285/19, *SGI Studio Galli Ingegneria* v *Commission*, and, consequently, grant the forms of order sought by S.G.I. before the General Court, as outlined therein, and, accordingly:

— Find and declare that the appellant is not required to pay the sums claimed by the European Commission in Debit Note No 3241902288 received on 22 February 2019 and, most recently, in the note (Ref. Ares(2019)2858540) received on 29 April 2019, which are claimed in respect of recovery of aid and liquidated damages for Studio Galli Ingegneria's alleged failure to fulfil obligations under Grant Agreement No 619120 concerning the funding of the 'MARSOL' project.

— Find and declare that the shortcomings alleged by the Commission are non-existent.

— Find and declare that the pre-information letter of 19 December 2018, the OLAF investigation report, the debit note of 22 February 2019, the subsequent reminder of 2 April 2019 and the final note (Ref. Ares(2019)2858540) of 29 April 2019 re-determining the amount claimed and rejecting SGI's further requests are unlawful, invalid, and in any event unfounded.

— Find and declare that the debt claimed by the Commission is non-existent.

— Find and declare that the appellant is entitled to the aid that was paid by the Commission in accordance with Grant Agreement No 619120 concerning the 'MARSOL' project.

— In the alternative, find and declare that the amount to be recovered by the Commission may not exceed EUR 100 044,99, as set out in the third plea in law.

— In the further alternative, order the Commission to pay SGI the costs it incurred in executing the 'MARSOL' project, in accordance with the provisions on unjust enrichment.

Grounds of appeal and main arguments

1. **First ground of appeal. Unlawful nature of the judgment in so far as it rejected the first plea in law. Infringement/misapplication of Articles 41, 42 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). Infringement of the principle of contractual good faith also under Article 1134 of the Belgian Civil Code.**

   The appellant challenges the judgment of the General Court in so far as it declares that the Commission did not infringe the rights under Articles 41, 42 and 47 of the Charter and the principle of contractual good faith by failing to take account of the appellant's request for a stay of proceedings and for access to OLAF's investigation file. It claims, on the contrary, that since the company was not in a position to comment on OLAF's final report on account of continuing internal problems, the effectiveness of those rights were impaired, both during the administrative procedure and, consequently, before the General Court.

2. **Second ground of appeal. Unlawful nature of the judgment in so far as it rejected the second plea in law. Infringement/misapplication of Article 317 TFEU, Article 172a(1) of Regulation No 2342/2002,** [1] **Article 31(3)(a) and (c) of Regulation No 1906/2006,** [2] **Articles II.5 and II.14 of the general conditions of the grant agreement. Failure to observe the principles of the presumption of innocence, the burden of proof, and fairness as set out in Regulation (EU, Euratom) No 883/2013** [3] **of the European Parliament and of the Council of 11 September 2013. Error of assessment as regards the evidence in breach of Article 1315 of the Belgian Civil Code.**

   The appellant challenges the judgment in so far as, by rejecting the second plea in law, the General Court concluded that the appellant did not demonstrate the eligibility of the direct and indirect personnel costs, either before OLAF and the Commission, or before the General Court. The appellant claims, on the contrary, that the General Court failed to take into account the fact that OLAF's allegations were not related to the project at issue but to other funded projects, and thus it misapplied the principles of innocence and the burden of proof. In addition, the timesheets produced before the General Court should have been regarded as sufficient evidence, given the absence of other allegations and the confirmed conclusion of the project, to affirm the eligibility of the costs incurred and claimed from the Commission.

3. **Third ground of appeal. Unlawful nature of the judgment under appeal in so far as it rejected the third plea in law. Failure to observe the principles of proportionality, fairness and contractual good faith. Infringement of Article 5(4) TFEU. Infringement of Article II.22 of the Grant Agreement.**

   The appellant challenges the judgment in so far as, by rejecting the third plea in law, the General Court held that the Commission did not fail to observe the principle of proportionality by claiming all of the direct and indirect personnel costs. The appellant claims, on the contrary, that since the investigation procedure had identified inconsistencies concerning only two professionals assigned to the project, solely the costs relating to those two professionals should have been claimed. This is also the case in view of the confirmed completion of the project and the verification of the costs by an external expert, which was accepted by the Commission. Accordingly, again pursuant to the principle of proportionality, the General Court should have accepted the request in the alternative on the determination of the sum to be recovered.

4. **Fourth ground of appeal. Unlawful nature of the judgment in so far as it rejected the fourth plea in law. Infringement and/or misapplication of Article 2(b) of Council Regulation No 58/2003** [4] **of 19 December 2002 and of the Grant Agreement. Failure to state reasons and contradictory nature of the judgment in so far as it conflicts with the earlier case-law of the General Court and the Court of Justice relating to unjust enrichment.**

   The appellant challenges the judgment in so far as, by rejecting the fourth plea in law, the General Court denied the appellant its right to deduct the aid granted in respect of direct and indirect personnel costs, which resulted in unjust enrichment of the Commission. Since the conditions for bringing a claim — namely the enrichment of one of the parties to the contract and the impoverishment of the other, and a causal link between that enrichment and impoverishment — are satisfied in the present case, the finding of the General Court is unlawful.

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(1) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

(2) Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) (OJ 2006 L 391, p. 1).

(3) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

(4) Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2003 L 11, p. 1).

GENERAL COURT

Judgment of the General Court of 16 June 2021 — Italy and Spain v Commission

(Cases T-695/17 and T-704/17) ([1])

(Rules on languages — Notice of open competitions for the recruitment of German-language translators, French-language translators, Italian-language translators and Dutch-language translators — Restriction of the choice of languages 2 and 3 in the competitions to German, English and French — Regulation No 1 — Article 1d(1) and (6), Article 27 and Article 28(f) of the Staff Regulations — Discrimination based on language — Interests of the service — Proportionality — Obligation to state reasons)

(2021/C 310/20)

Languages of the cases: Italian and Spanish

Parties

Applicant in Case T-695/17: Italian Republic (represented by: G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato)

Applicant in Case T-704/17: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent)

Defendant: European Commission (represented by: G. Gattinara, D. Milanowska, N. Ruiz García and L. Vernier, acting as Agents)

Re:

Application under Article 263 TFEU seeking the annulment of the notice of open competitions to draw up reserve lists for the recruitment of German-language translators (AD 5) (EPSO/AD/343/17), French-language translators (AD 5) (EPSO/AD/344/17), Italian-language translators (AD 5) (EPSO/AD/345/17) and Dutch-language translators (AD 5) (EPSO/AD/346/17) (OJ 2017 C 224 A, p. 1).

Operative part of the judgment

The Court:

1. Joins Cases T-695/17 and T-704/17 for the purposes of the judgment;

2. Annuls the notice of open competitions to draw up reserve lists for the recruitment German-language translators (AD 5) (EPSO/AD/343/17), French-language translators (AD 5) (EPSO/AD/344/17), Italian-language translators (AD 5) (EPSO/AD/345/17) and Dutch-language translators (AD 5) (EPSO/AD/346/17);

3. Orders the European Commission to bear its own costs and to pay the costs incurred by the Italian Republic in Case T-695/17 and those incurred by the Kingdom of Spain in Case T-704/17.

([1]) OJ C 424, 11.12.2017.

Judgment of the General Court of 16 June 2021 — Krajowa Izba Gospodarcza Chłodnictwa i Klimatyzacji v Commission

(Case T-126/19) ([1])

(Environment — Regulation (EU) No 517/2014 — Fluorinated greenhouse gases — Allocation of quotas for placing hydrofluorocarbons on the market — Plea of illegality — Article 16 of Regulation No 517/2014 and Annexes V and VI thereto — Principle of non-discrimination — Obligation to state reasons)

(2021/C 310/21)

Language of the case: Polish

Parties

Applicant: Krajowa Izba Gospodarcza Chłodnictwa i Klimatyzacji (Warsaw, Poland) (represented by: A. Galos, lawyer)

Defendant: European Commission (represented by: J.-F. Brakeland, A. Becker, K. Herrmann and M. Jáuregui Gómez, acting as Agents)

Interveners in support of the defendant: European Parliament (represented by: L. Visaggio, A. Tamás and W. Kuzmienko, acting as Agents) and Council of the European Union (represented by: K. Michoel and I. Tchórzewska, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of the Commission's decision of 11 December 2018 allocating the applicant a quota of 4 096 tonnes of CO_2 equivalent of hydrofluorocarbons for 2019.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Krajowa Izba Gospodarcza Chłodnictwa i Klimatyzacji to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Council of the European Union and the European Parliament to bear their own costs.

([1]) OJ C 148, 29.4.2019.

Judgment of the General Court of 16 June 2021 — Cyprus v EUIPO — Filotas Bellas & Yios (Halloumi Vermion)

(Case T-281/19 and T-351/19) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Halloumi χαλλούμι Vermion grill cheese M BELAS PREMIUM GREEK DAIRY SINCE 1927 — Earlier national certification word marks ΧΑΛΛΟΥΜΙ HALLOUMI — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001) — Relative ground for invalidity — Article 53(1)(a) and Article 8(1)(b) and (5) of Regulation No 207/2009 (now Article 60(1)(a) and Article 8(1)(b) and (5) of Regulation 2017/1001))

(2021/C 310/22)

Language of the case: English

Parties

Applicant: Republic of Cyprus (represented by: S. Malynicz QC, S. Baran, Barrister, and V. Marsland, Solicitor)

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: Filotas Bellas & Yios AE (Alexandreia Imathias, Greece)

Re:

Actions brought against the decisions of the Fourth Board of Appeal of EUIPO of 15 February 2019 (Case R 2298/2017-4) and 9 April 2019 (Case R 2297/2017-4), relating to invalidity proceedings between the Republic of Cyprus and Filotas Bellas & Yios.

Operative part of the judgment

The Court:

1. Dismisses the actions;

2. Orders the Republic of Cyprus to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 213, 24.6.2019.

Judgment of the General Court of 16 June 2021 — Lucaccioni v Commission

(Case T-316/19) (1)

(Civil service — Officials — Social security — Article 73 of the Staff Regulations — Common rules on the insurance of officials against the risk of accident and of occupational disease — Occupational disease — Article 9 — Claim for medical expenses — Article 23 — Consulting another doctor — Refusal to bring the matter before the medical committee pursuant to Article 22 — Failure to apply, by analogy, Article 22(1), second subparagraph — Rule of correspondence between the application and the complaint — Application of the law ratione temporis)

(2021/C 310/23)

Language of the case: Italian

Parties

Applicant: Arnaldo Lucaccioni (San Benedetto del Tronto, Italy) (represented by: E. Bonanni, lawyer)

Defendant: European Commission (represented by T. Bohr and L. Vernier, acting as agents, and A. Dal Ferro, lawyer)

Re:

ACTION brought under Article 270 TFUE, seeking, first, the annulment of the Commission decision of 2 August 2018 rejecting the applicant's requests of 23 March and 8 June 2018 to bring the matter before the medical committee pursuant to Article 22 of the Common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease and, second, compensation for the damage allegedly suffered by the applicant as a result of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action.

2. Orders Arnaldo Lucaccioni to pay the costs.

(1) OJ C 238, 15.7.2019.

Judgment of the General Court of 16 June 2021 — CE v Committee of the Regions

(Case T-355/19) (1)

(Civil service — Temporary staff — Article 2(c) of the CEOS — Contract of indefinite duration — Early termination with notice — Article 47(c)(i) of the CEOS — Breakdown in the relationship of trust — Terms of notice — Abuse of process — Right to be heard — Principle of sound administration — Rights of the defence — Manifest error of assessment)

(2021/C 310/24)

Language of the case: French

Parties

Applicant: CE (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: Committee of the Regions (represented by: S. Bachotet and M. Esparrago Arzadun, acting as Agents, and by B. Wägenbaur, lawyer)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of 16 April 2019 by which the Committee of the Regions terminated the applicant's employment contract and, in the alternative, annulment of the letter of 16 May 2019 by which it extended the date until which the applicant could recover her personal effects and access her e-mail during the period of notice and, second, compensation for the loss of the applicant's personal effects and access to her e-mail, and, second, for compensation for the material and non-material damage which the applicant allegedly suffered as a result of that decision.

Operative part of the judgment

The Court:

1. Annuls the decision of the Committee of the Regions of 16 April 2019 terminating CE's employment contract as regards the specific arrangements for giving notice;

2. Dismisses the action as to the remainder;

3. Orders each party to bear its own costs including those relating to the interlocutory proceedings.

(1) OJ C 255, 29.7.2019.

Judgment of the General Court of 16 June 2021 — PL v Commission

(Case T-586/19) (1)

(Civil service — Officials — Career development report — 2017 assessment exercise — Appointment of the assessor — Article 22a of the Staff Regulations — General implementing provisions for Article 43 of the Staff Regulations — Duty to have regard for the welfare of officials — Reasonable time — Principle of impartiality — Article 41 of the Charter of Fundamental Rights — Obligation to state reasons — Article 26 of the Staff Regulations — Rights of the defence)

(2021/C 310/25)

Language of the case: French

Parties

Applicant: PL (represented by: J.-N. Louis and J. Van Rossum, lawyers)

Defendant: European Commission (represented by: I. Melo Sampaio and L. Vernier, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of the Commission's decision of 12 October 2018 establishing the applicant's career development report in respect of 2017.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PL to pay the costs.

(1) OJ C 363, 28.10.2019.

Judgment of the General Court of 16 June 2021 — Health Product Group v EUIPO — Bioline Pharmaceutical (Enterosgel)

(Case T-678/19) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Figurative mark Enterosgel — No bad faith — Article 51(1)(b) of Regulation (EC) No 40/94 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2021/C 310/26)

Language of the case: English

Parties

Applicant: Health Product Group sp. z o.o. (Warsaw, Poland) (represented by: M. Kondrat, M. Stępień and A. Przytuła, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Bioline Pharmaceutical AG (Baar, Switzerland) (represented by: T. Grucelski, H. Gajek and M. Furmańska, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 August 2019 (Case R 482/2018-4), relating to invalidity proceedings between Health Product Group and Bioline Pharmaceutical.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Health Product Group sp. z o.o. to pay the costs.

([1]) OJ C 399, 25.11.2019.

Judgment of the General Court of 16 June 2021 — RA v Court of Auditors

(Case T-867/19) ([1])

(Civil service — Officials — Promotion — 2016 promotion exercise — Decision not to promote the applicant to grade AD 11 — Absence of staff report — Comparison of merits — Compliance with a judgment of the General Court — Adoption of a new decision not to promote — Obligation to state reasons — Article 45 of the Staff Regulations — Manifest error of assessment)

(2021/C 310/27)

Language of the case: French

Parties

Applicant: RA (represented by: S. Orlandi, lawyer)

Defendant: European Court of Auditors (represented by: C. Lesauvage and A.-M. Feipel Cosciug, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of 27 February 2019 by which the Court of Auditors decided not to promote the applicant to Grade AD 11 and, second, compensation for the damage which the applicant allegedly suffered as a result of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders RA to pay the costs.

(1) OJ C 68, 2.3.2020.

Judgment of the General Court of 16 June 2021 — Davide Groppi v EUIPO — Viabizzuno (Table lamp)

(Case T-187/20) (1)

(Community design — Invalidity proceedings — Registered Community design representing a table lamp — Earlier Community design — Ground for invalidity — No individual character — Article 6 of Regulation (EC) No 6/2002)

(2021/C 310/28)

Language of the case: Italian

Parties

Applicant: Davide Groppi Srl (Piacenza, Italy) (represented by: F. Boscariol de Roberto, D. Capra and V. Malerba, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Viabizzuno Srl (Bentivoglio, Italy)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 23 January 2020 (Case R 126/2019-3), relating to invalidity proceedings between Viabizzuno and Davide Groppi.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders David Groppi Srl to pay the costs.

(1) OJ C 191, 8.6.2020.

Judgment of the General Court of 16 June 2021 — Chanel v EUIPO — Innovative Cosmetic Concepts (INCOCO)

(Case T-196/20) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark INCOCO — Earlier national word marks COCO — 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 310/29)

Language of the case: French

Parties

Applicant: Chanel (Neuilly sur-Seine, France) (represented by: J. Passa, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Innovative Cosmetic Concepts LLC (Clifton, New Jersey, United States) (represented by: I. Temiño Ceniceros, J. Oria Sousa-Montes and P. Revuelta Martos, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 16 January 2020 (Case R 194/2019-1), relating to opposition proceedings between Chanel and Innovative Cosmetic Concepts.

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 16 January 2020 (Case R 194/2019-1);

2. Orders EUIPO and Innovative Cosmetic Concepts LLC to pay the costs.

(1) OJ C 201, 15.6.2020.

Judgment of the General Court of 16 June 2021 — Fidia farmaceutici v EUIPO — Ioulia and Irene Tseti Pharmaceutical Laboratories (HYAL)

(Case T-215/20) (1)

(EU trade mark — Invalidity proceedings — EU word mark HYAL — Article 51(1)(a) of Regulation (EC) No 40/94 (now Article 59(1)(a) of Regulation (EU) 2017/1001) — Absolute ground for refusal — Article 7(1)(c) of Regulation No 40/94 (now Article 7(1)(c) of Regulation 2017/1001) — Right to be heard — Audi alteram partem rule — Obligation to state reasons — Sound administration and equal treatment — Article 165(1) of Regulation 2017/1001)

(2021/C 310/30)

Language of the case: English

Parties

Applicant: Fidia farmaceutici SpA (Abano Terme, Italy) (represented by: R. Kunz-Hallstein and H.P. Kunz-Hallstein, lawyers)

Defendant: European Union Intellectual Property Office (represented by: E. Sliwinska, V. Ruzek and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ioulia and Irene Tseti Pharmaceutical Laboratories SA (Athens, Greece) (represented by: C. Chrysanthis, P.-V. Chardalia and A. Vasilogamvrou, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 24 January 2020 (Case R 613/2019-5), relating to invalidity proceedings between Ioulia and Irene Tseti Pharmaceutical Laboratories and Fidia farmaceutici.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Fidia farmaceutici SpA to pay the costs.

(1) OJ C 201, 15.6.2020.

Judgment of the General Court of 16 June 2021 — Smiley Miley v EUIPO — Cyrus Trademarks (MILEY CYRUS)

(Case T-368/20) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark MILEY CYRUS — Earlier EU figurative mark CYRUS — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 310/31)

Language of the case: English

Parties

Applicant: Smiley Miley, Inc. (Nashville, Tennessee, United States) (represented by: J.B. Devaureix, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Cyrus Trademarks Ltd (Road Town, British Virgin Islands)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 April 2020 (Case R 2520/2018-4), relating to opposition proceedings between Cyrus Trademarks and Smiley Miley.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 April 2020 (Case R 2520/2018-4);

2. Orders EUIPO to pay the costs.

(1) OJ C 255, 3.8.2020.

Judgment of the General Court of 16 June 2021 — KT v EIB

(Case T-415/20) (1)

(Civil service — EIB staff — Disciplinary proceedings — Summary dismissal for grave misconduct — Rights of the defence — Hearing of witnesses — Delegation of power — Preparation of the contested decision — Reasonable period of time — Impartiality — Protection of personal data — Proportionality)

(2021/C 310/32)

Language of the case: French

Parties

Applicant: KT (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (represented by: K. Carr and M. Loizou, acting as Agents, and by A. Duron, lawyer)

Re:

Application based on Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union seeking the annulment of the decision of the EIB of 24 March 2020 imposing on the applicant, as a disciplinary penalty, summary dismissal for grave misconduct, without notice and with a severance grant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders KT to bear her own costs and to pay those incurred by the European Investment Bank (EIB).

(1) OJ C 297, 7.9.2020.

Judgment of the General Court of 16 June 2021 — Magnetec v EUIPO (CoolTUBE)

(Case T-481/20) (1)

(EU trade mark — Application for the EU word mark CoolTUBE — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2021/C 310/33)

Language of the case: German

Parties

Applicant: Magnetec — Gesellschaft für Magnettechnologie mbH (Langenselbold, Germany) (represented by: M. Kloth, R. Briske and D. Habel, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 15 May 2020 (Case R 1755/2019-1), concerning an application for registration of the word sign CoolTUBE as an EU trade mark.

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 15 May 2020 (Case R 1755/2019-1);

2. Orders EUIPO to bear its own costs and to pay those incurred by Magnetec — Gesellschaft für Magnettechnologie mbH, including the costs necessarily incurred for the purposes of the appeal proceedings before the Board of Appeal.

(1) OJ C 304, 14.9.2020.

Judgment of the General Court of 16 June 2021 — Rezon v EUIPO (imot.bg)

(Case T-487/20) (1)

(EU trade mark — Application for the EU figurative mark imot.bg — Absolute grounds for refusal — Lack of distinctiveness — Descriptiveness — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 — Obligation to state reasons — First sentence of Article 94(1) of Regulation 2017/1001 — Partial confirmatory decision)

(2021/C 310/34)

Language of the case: Bulgarian

Parties

Applicant: Rezon OOD (Sofia, Bulgaria) (represented by: M. Yordanova Harizanova, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard Monguiral and P. Angelova Georgieva, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 2 June 2020 (Case R 2270/2019-1), concerning an application for registration of the figurative sign imot.bg as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Rezon OOD to pay the costs.

([1]) OJ C 329, 5.10.2020.

Order of the General Court of 8 June 2021 — Shindler and Others v Council

(Case T-198/20) ([1])

(Action for annulment — Area of freedom, security and justice — Agreement on the withdrawal of the United Kingdom from the European Union and from Euratom — Council Decision on the conclusion of the Agreement on withdrawal — United Kingdom nationals — Loss of EU citizenship — Act not of individual concern — Non-regulatory act — Inadmissibility)

(2021/C 310/35)

Language of the case: French

Parties

Applicants: Harry Shindler (Porto d'Ascoli, Italy) and the nine other applicants, whose names are included in the annex to the order (represented by: J. Fouchet, lawyer)

Defendant: Council of the European Union (represented by: M. Bauer, R. Meyer and J. Ciantar, acting as Agents)

Re:

Application under Article 263 TFEU for annulment, in whole or in part, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7) and of Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the applications for leave to intervene submitted by the European Commission and by British in Europe.

3. Mr Harry Shindler and the other applicants whose names are included in the annex are ordered to pay, in addition to their own costs, those incurred by the Council of the European Union, with the exception of those relating to the applications for leave to intervene.

4. Mr Shindler and the other applicants whose names are included in the annex, the Council, the Commission and British in Europe shall bear their own costs relating to the applications to intervene.

(1) OJ C 201, 15.6.2020.

Order of the General Court of 8 June 2021 — Price v Council

(Case T-231/20) (1)

(Action for annulment — Area of freedom, security and justice — Agreement on the withdrawal of the United Kingdom from the European Union and from Euratom — Council Decision on the conclusion of the Agreement on withdrawal — United Kingdom nationals — Loss of EU citizenship — Act not of individual concern — Non-regulatory act — Inadmissibility)

(2021/C 310/36)

Language of the case: French

Parties

Applicant: David Price (Le Dorat, France) (represented by: J. Fouchet, lawyer)

Defendant): Council of the European Union (represented by: M. Bauer, R. Meyer and M. Joséphidès, Agents)

Re:

Application under Article 263 TFEU for annulment in part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7) and of Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the application for leave to intervene submitted by the European Commission.

3. Mr David Price is ordered to bear, in addition to his own costs, those incurred by the Council of the European Union, including those regarding the application for interim measures, with the exception of those related to the application for leave to intervene.

4. Mr Price, the Council and the Commission shall each bear their own costs relating to the application for leave to intervene.

(1) OJ C 209, 22.6.2020.

Order of the General Court of 8 June 2021 — Silver and Others v Council

(Case T-252/20) ([1])

(Action for annulment — Area of freedom, security and justice — Agreement on the withdrawal of the United Kingdom from the European Union and from Euratom — Council Decision on the conclusion of the Agreement on withdrawal — United Kingdom nationals — Loss of EU citizenship — Act not of individual concern — Non-regulatory act — Inadmissibility)

(2021/C 310/37)

Language of the case: English

Parties

Applicants: Joshua Silver (Bicester, United Kingdom) and the six other applicants whose names are set out in the annex (represented by: P. Tridimas, Barrister, D. Harrison and A. von Westernhagen, Solicitors)

Defendant: Council of the European Union (represented by: M. Bauer, R. Meyer and J. Ciantar, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking partial annulment of Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the applications to intervene submitted by the European Commission, British in Europe, Plaid Cymru — The Party of Wales, European Democracy Lab, ECIT and European Alternatives Ltd.

3. Mr Joshua Silver and the other applicants whose names are set out in the annex shall, in addition to bearing their own costs, pay those incurred by the Council of the European Union, with the exception of those relating to the applications to intervene.

4. Mr Silver and the other applicants whose names are set out in the annex, the Council, the Commission, British in Europe, Plaid Cymru — The Party of Wales, European Democracy Lab, ECIT and European Alternatives Ltd shall each bear their own costs relating to the applications to intervene.

([1]) OJ C 215, 29.6.2020.

Order of the General Court of 16 June 2021 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT8)

(Case T-420/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark GT8 — Earlier EU figurative mark GT — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 8(5) of Regulation No 207/2009 (now Article 8 (5) of Regulation 2017/1001) — Relevant public — Level of attention — Action manifestly well founded)

(2021/C 310/38)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz QC and M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and V. Ruzek, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 (Case R 1611/2019-4), relating to opposition proceedings between Sony Interactive Entertainment Europe and Huawei Technologies.

Operative part of the order

1. The decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 April 2020 (Case R 1611/2019-4) is annulled.

2. EUIPO shall bear its own costs and pay those incurred by Sony Interactive Entertainment Europe Ltd.

(1) OJ C 287, 31.8.2020.

Order of the General Court of 16 June 2021 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT3)

(Case T-421/20) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark GT3 — Earlier EU figurative mark GT — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 8(5) of Regulation No 207/2009 (now Article 8 (5) of Regulation 2017/1001) — Relevant public — Level of attention — Action manifestly well founded)

(2021/C 310/39)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz QC and M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and V. Ruzek, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 (Case R 1609/2019-4), relating to opposition proceedings between Sony Interactive Entertainment Europe and Huawei Technologies.

Operative part of the order

1. The decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 April 2020 (Case R 1609/2019-4) is annulled.

2. EUIPO shall bear its own costs and pay those incurred by Sony Interactive Entertainment Europe Ltd.

(1) OJ C 287, 31.8.2020.

Order of the General Court of 16 June 2021 — Sony Interactive Entertainment Europe Ltd v EUIPO — Huawei Technologies (GT5)

(Case T-422/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark GT5 — Earlier EU figurative mark GT — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001) — Relevant public — Level of attention — Action manifestly well founded)

(2021/C 310/40)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz QC and M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and V. Ruzek, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 (Case R 1600/2019-4), relating to opposition proceedings between Sony Interactive Entertainment Europe and Huawei Technologies.

Operative part of the order

1. The decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 April 2020 (Case R 1600/2019-4) is annulled.

2. EUIPO shall bear its own costs and pay those incurred by Sony Interactive Entertainment Europe Ltd.

([1]) OJ C 287, 31.8.2020.

Order of the General Court of 16 June 2021 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT9)

(Case T-423/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark GT9 — Earlier EU figurative mark GT — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001) — Relevant public — Level of attention — Action manifestly well founded)

(2021/C 310/41)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz QC and M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and V. Ruzek, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 April 2020 (Case R 1610/2019 4), relating to opposition proceedings between Sony Interactive Entertainment Europe and Huawei Technologies.

Operative part of the order

1. The decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 April 2020 (Case R 1610/2019-4) is annulled.

2. EUIPO shall bear its own costs and pay those incurred by Sony Interactive Entertainment Europe Ltd.

(1) OJ C 287, 31.8.2020.

Order of the General Court of 14 June 2021 — TrekStor GmbH v EUIPO — Zagg (Protective cover for computer hardware)

(Case T-512/20) (1)

(Community design — Invalidity proceedings — Registered Community design representing a protective cover for computer hardware — Ground for invalidity — Unauthorised use of a work protected under the copyright law of a Member State — Article 25(1)(f) of Regulation (EC) No 6/2002 — Request that witnesses be heard — Action manifestly lacking any foundation in law)

(2021/C 310/42)

Language of the case: English

Parties

Applicant: TrekStor GmbH (Bensheim, Germany) (represented by: O. Spieker, A. Schönfleisch and N. Willich, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zagg Inc. (Midvale, Utah, United States) (represented by: T. Schmitz and M. Breuer, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 8 June 2020 (Case R 294/2019-3), relating to invalidity proceedings between TrekStor and Zagg.

Operative part of the order

1. The action is dismissed.

2. TrekStor GmbH shall pay the costs.

(1) OJ C 378, 9.11.2020.

Order of the General Court of 16 June 2021 — Sony Interactive Entertainment Europe v EUIPO — Huawei Technologies (GT10)

(Case T-558/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark GT10 — Earlier EU figurative mark GT — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001) — Relevant public — Level of attention — Action manifestly well founded)

(2021/C 310/43)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz QC and M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and V. Ruzek, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 July 2020 (Case R 2554/2019 4), relating to opposition proceedings between Sony Interactive Entertainment Europe and Huawei Technologies.

Operative part of the order

1. The decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 July 2020 (Case R 2554/2019-4) is annulled.

2. EUIPO shall bear its own costs and pay those incurred by Sony Interactive Entertainment Europe Ltd.

([1]) OJ C 371, 3.11.2020.

Order of the General Court of 14 June 2021 — TrekStor v EUIPO — Zagg (Protective cover for computer hardware)

(Case T-564/20) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a protective cover for computer hardware — Ground for invalidity — Unauthorised use of a work protected under the copyright law of a Member State — Article 25(1)(f) of Regulation (EC) No 6/2002 — Request that witnesses be heard — Action manifestly lacking any foundation in law)

(2021/C 310/44)

Language of the case: English

Parties

Applicant: TrekStor GmbH (Bensheim, Germany) (represented by: O. Spieker, A. Schönfleisch and N. Willich, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zagg Inc. (Midvale, Utah, United States) (represented by: T. Schmitz and M. Breuer, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 17 June 2020 (Case R 296/2019-3), relating to invalidity proceedings between TrekStor and Zagg.

Operative part of the order

1. The action is dismissed.

2. TrekStor GmbH shall pay the costs.

(1) OJ C 378, 9.11.2020.

Order of the General Court of 14 June 2021 — TrekStor v EUIPO — Zagg (Protective cover for computer hardware)

(Case T-565/20) (1)

(Community design — Invalidity proceedings — Registered Community design representing a protective cover for computer hardware — Ground for invalidity — Unauthorised use of a work protected under the copyright law of a Member State — Article 25(1)(f) of Regulation (EC) No 6/2002 — Request that witnesses be heard — Action manifestly lacking any foundation in law)

(2021/C 310/45)

Language of the case: English

Parties

Applicant: TrekStor GmbH (Bensheim, Germany) (represented by: O. Spieker, A. Schönfleisch and N. Willich, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zagg Inc. (Midvale, Utah, United States) (represented by: T. Schmitz and M. Breuer, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 17 June 2020 (Case R 297/2019-3), relating to invalidity proceedings between TrekStor and Zagg.

Operative part of the order

1. The action is dismissed.

2. TrekStor GmbH shall pay the costs.

(1) OJ C 378, 9.11.2020.

Order of the General Court of 8 June 2021 — One Voice v ECHA

(Case T-663/20) ([1])

(Action for annulment — REACH — Substance homosalate — Exclusive use for the manufacture of cosmetic products — Compliance check of registrations — Article 41(1) of Regulation (EC) No 1907/2006 — Time limit for bringing an action — Article 21(5) of Regulation (EC) No 771/2008 — Article 59 of the Rules of Procedure — Inadmissibility)

(2021/C 310/46)

Language of the case: French

Parties

Applicant: One Voice (Strasbourg, France) (represented by: A. Ghersi, lawyer)

Defendant: European Chemicals Agency (represented by: W. Broere and L. Bolzonello, acting as Agents, and by S. Raes, lawyer)

Re:

Application under Article 263 TFEU seeking the annulment of Decision A-009-2018 of the Board of Appeal of ECHA of 18 August 2020, relating to the compliance check of a registration dossier for homosalate.

Operative part of the order

1. The action is dismissed as inadmissible.

2. One Voice is ordered to pay the costs.

([1]) OJ C 9, 11.1.2021.

Order of the General Court of 8 June 2021 — One Voice v ECHA

(Case T-664/20) ([1])

(Action for annulment — REACH — Substance 2-ethylhexyl salicylate — Exclusive use for the manufacture of cosmetic products — Compliance check of registrations — Article 41(1) of Regulation (EC) No 1907/2006 — Time limit for bringing an action — Article 21(5) of Regulation (EC) No 771/2008 — Article 59 of the Rules of Procedure — Inadmissibility)

(2021/C 310/47)

Language of the case: French

Parties

Applicant: One Voice (Strasbourg, France) (represented by: A. Ghersi, lawyer)

Defendant: European Chemicals Agency (represented by: W. Broere and L. Bolzonello, acting as Agents, and by S. Raes, lawyer)

Re:

Application under Article 263 TFEU seeking the annulment of Decision A-010-2018 of the Board of Appeal of ECHA of 18 August 2020, relating to the compliance check of a registration dossier for 2-ethylhexyl salicylate.

Operative part of the order

1. The action is dismissed as inadmissible.

2. One Voice is ordered to pay the costs.

(1) OJ C 9, 11.1.2021.

Action brought on 2 June 2021 — SY v Commission

(Case T-312/21)

(2021/C 310/48)

Language of the case: German

Parties

Applicant: SY (represented by: T. Walberer, lawyer)

Defendant: European Commission

Form of order sought

Pursuant to Article 270 TFEU, Article 91(1) of the Staff Regulations, and Articles 263 and 265 TFEU, the applicant claims that the Court should:

— annul the reserve list of the competition EPSO/AD/374/19-1; the decisions to recruit the candidates included on that reserve list; the decisions of the Selection Board of 21 April 2021 and 14 January 2021 not to include the applicant on the reserve list in the field of Competition Law; the Addendum to the Notice of Competition EPSO/AD/374/19-1 of 5 November 2020; and the applicant's invitation of 20 November 2020;

— in the alternative, annul the decisions of the Selection Board of 21 April 2021 and 14 January 2021 relating to the applicant and, in the judgment, provide the defendant with the necessary detailed guidelines for the lawful restoration of the applicant to his legal position prior to the infringement of his rights, which would enable the defendant to include the applicant in the reserve list, either immediately or after a reassessment of his performance; and annul the Addendum to the Notice of Competition EPSO/AD/374/19-1 of 5 November 2020; and the applicant's invitation of 20 November 2020;

— declare that the defendant infringed Article 265 TFEU by failing to issue a decision in respect of the applicant's administrative complaint of 17 January 2021;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: The retroactive amendment of the selection procedure is unlawful, because it lacks a legal basis, and due to countervailing rights as well as infringement of legal clarity, the obligation to state reasons, and rights of participation.

2. Second plea in law: The prohibition of discrimination was infringed in relation to the applicant's pre-existing condition, due to the defendant's failure to provide him with special accommodations for the assessment.

3. Third plea in law: Because of a time delay, the applicant was discriminated against compared to the participants in the fully remote Assessment Centre.

4. Fourth plea in law: The applicant was discriminated against compared to the staff members of the defendant.

Action brought on 8 June 2021 — Castel Frères v EUIPO — Shanghai Panati (Representation of Chinese characters)

(Case T-323/21)

(2021/C 310/49)

Language of the case: English

Parties

Applicant: Castel Frères (Blanquefort, France) (represented by: T. de Haan, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Shanghai Panati Co. (Shanghai, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Representation of Chinese characters) — European Union trade mark No 6 785 109

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 March 2021 in Case R 753/2020-5

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision;

— order EUIPO and the intervener to bear the costs, including those incurred by the applicant before the Office's Fifth Board of Appeal.

Plea in law

— Infringement of Articles 58(1)(a) and 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 June 2021 — Wizz Air Hungary v Commission

(Case T-332/21)

(2021/C 310/50)

Language of the case: English

Parties

Applicant: Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) (Budapest, Hungary) (represented by: E. Vahida, S. Rating and I.-G. Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 2 October 2020 on State aid SA.56810 (2020/N) — *Romania — COVID-19: Aid to TAROM* ([1]); and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

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

2. Second plea in law, alleging that the defendant violated specific provisions of the TFEU and the general principles of European law that have underpinned the liberalisation of air transport in the EU since the late 1980s (*i.e.*, non-discrimination, the free provision of services — applied to air transport through Regulation (EC) No 1008/2008 [2] — and free establishment).

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

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

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[1] OJ 2021 C 94, p. 1.

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

Action brought on 14 June 2021 — Ryanair v Commission

(Case T-333/21)

(2021/C 310/51)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 29 December 2020 on State Aid SA.59188 (2020/NN) — Italy — *Alitalia COVID-19 Damage Compensation II* [1]; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant misused its powers and misapplied Article 107(2)(b) TFEU by prioritizing the review of the aid and freezing its investigation of unlawful rescue aid granted to Alitalia in 2017 and 2019.

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

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

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

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

(1) OJ 2021 C 134, p. 2.
(2) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance) (OJ 2008 L 293, p. 3–20).

Action brought on 15 June 2021 — PJ v EIT

(Case T-335/21)

(2021/C 310/52)

Language of the case: French

Parties

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

Defendant: European Institution of Innovation & Technology

Form of order sought

The applicant claims that the Court should:

— annul the executive director's decision of 13 October 2020 refusing her the benefit of teleworking from her place of origin;

— in so far as necessary, annul the executive director's decision of 9 March 2021 rejecting the applicant's complaint lodged on 10 November 2020;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the duty of impartiality, objectivity and neutrality of the authority empowered to conclude contracts of employment, and the adoption of internal rules by an authority lacking competence to do so.

2. Second plea in law, alleging infringement of the right to be heard.

3. Third plea in law, alleging a failure to state reasons.

4. Fourth plea in law, alleging infringement of internal rules, and arbitrary and unreasonable interpretation of such rules, as well as a lack of predictability and of legal certainty.

5. Fifth plea in law, alleging infringement of the duty to care towards staff, a failure to take into account the interests of both the institution and the applicant, and the disproportionate nature of the decision in view of the actual interest of the institution.

6. Sixth plea in law, alleging infringement of the right to respect for private and family life set out in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter') as well as the right to a work-life balance set out in Article 33 of the Charter.

7. Seventh plea in law, alleging infringement of the effective right to employment and failure to provide fair working conditions.

8. Eighth plea in law, alleging a failure to take into consideration a *force majeure* event.

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