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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Eighth Chamber) of 6 July 2021 — Marina Karpeta-Kovalyova v European Commission

(Case C-717/20 P) [1]

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Civil service — Members of the contract staff — Spouse of a Greek diplomat who resided in Brussels prior to the recruitment — Definition of the place of recruitment and the centre of interests — Refusal to grant the appellant the expatriation allowance and related benefits — Appeal manifestly unfounded)

(2021/C 391/02)

Language of the case: English

Parties

Appellant: Marina Karpeta-Kovalyova (represented by: S. Pappas, avocat)

Other party to the proceedings: European Commission

Operative part of the order

1. The appeal is dismissed as manifestly unfounded.

2. Ms Marina Karpeta-Kovalyova shall bear her own costs.

[1] OJ C 329, 16.8.2021.

Request for a preliminary ruling from the Tribunale ordinario di Pordenone (Italy) lodged on 14 January 2021 — PH v Regione Autonoma Friuli Venezia Giulia

(Case C-24/21)

(2021/C 391/03)

Language of the case: Italian

Referring court

Tribunale ordinario di Pordenone

Parties to the main proceedings

Applicant: PH

Defendant: Regione Autonoma Friuli Venezia Giulia

Questions referred

1. Is the ban imposed by Article 2.1 of Legge Regionale Friuli Venezia Giulia n. 5/2011, which introduces coexistence measures that amount to a ban on cultivating maize variety MON 810 in the territory of the region of Friuli Venezia Giulia (Italy), consistent with or contrary to the overall scheme of Directive 2001/18, ([1]) particularly in the light of Regulation (EC) No 1829/2003 ([2]) and Recommendation 2[0]10/C 200/01 ([3])?

2. Does that ban also constitute a measure having equivalent effect and is it thus contrary to Articles 34, 35 and 36 TFEU?

([1]) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC — Commission Declaration (OJ 2001 L 106, p. 1).

([2]) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (Text with EEA relevance) (OJ 2003 L 268, p. 1).

([3]) Commission Recommendation of 13 July 2010 on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops (OJ 2010 C 200, p. 1).

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 22 February 2021 — Deutsche Lufthansa AG v NB

(Case C-108/21)

(2021/C 391/04)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: NB

Question referred

Does a strike by the air carrier's own employees that is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004 ([1])?

The case was removed from the Register of the Court of Justice by order of the President of the Court of 17 June 2021.

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

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 5 March 2021 — Deutsche Lufthansa AG v ED

(Case C-140/21)

(2021/C 391/05)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: ED

Question referred

Does a strike by the air carrier's own employees that is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004 ([1])?

The case was removed from the Register of the Court of Justice by order of the President of the Court of 18 June 2021.

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

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 15 March 2021 — PJ v Deutsche Lufthansa AG

(Case C-167/21)

(2021/C 391/06)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: PJ

Defendant: Deutsche Lufthansa AG

Question referred

Does a strike by the air carrier's own employees that is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

The case was removed from the Register of the Court of Justice by order of the President of the Court of 18 June 2021.

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

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 31 May 2021 — FH v SunExpress Günes Ekspres Havacilik A.S.

(Case C-337/21)

(2021/C 391/07)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant and appellant: FH

Defendant and respondent: SunExpress Günes Ekspres Havacilik A.S.

Question referred

Is Article 7 of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that, where flights with different air carriers are the subject of a single reservation made via an online agency, a right to compensation exists against the operating air carrier of the first leg of the journey where, although the delay in arrival of the flight of the first leg was less than 3 hours, this led to the connecting flight being missed and, as a result, the delay in arrival of the passenger at the final destination was in excess of 3 hours, and where the operating air carrier of the first leg was neither a party to the contract of carriage for the second leg nor aware that a connecting flight had been booked at the same time with a different air carrier?

By order of the President of the Court of Justice of 28 June 2021, the case was removed from the register of the Court.

([1]) Regulation 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 Sąd Rejonowy dla m. st. Warszawy w Warszawie (Poland) lodged on 7 June 2021 — J.K. v TP S.A.

(Case C-356/21)

(2021/C 391/08)

Language of the case: Polish

Referring court

Sąd Rejonowy dla m. st. Warszawy w Warszawie

Parties to the main proceedings

Applicant: J.K.

Defendant: TP S.A.

Question referred

Must Article 3(1)(a) and (c) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([1]) be construed as permitting the exclusion from the scope of Council Directive 2000/78/EC, and consequently also as permitting the exclusion from the application of the sanctions laid down in national law pursuant to Article 17 of Council Directive 2000/78/EC, of the freedom of choice of parties to a contract so long as that choice is not based on sex, race, ethnic origin or nationality, in a situation where the alleged discrimination consists in a refusal to enter into a civil-law contract under which work is to be carried out by a self-employed natural person when that refusal is based on the sexual orientation of the prospective counterparty?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 14 June 2021 — Hewlett Packard Development Company LP v Senetic Spółka Akcyjna

(Case C-367/21)

(2021/C 391/09)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Applicant: Hewlett Packard Development Company LP

Defendant: Senetic Spółka Akcyjna

Questions referred

1. Must the second sentence of Article 36 TFEU, read in conjunction with Article 15(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, ([1]) and in conjunction with the second sentence of Article 19(1) of the Treaty on European Union, be interpreted as precluding the practice of the national courts of the Member States, which is that the courts

   — when upholding claims by right holders to prohibit the importation, exportation and advertising of goods bearing the EU trade mark or to order their withdrawal from the market;

   — when ruling, in proceedings to secure claims, on the seizure of goods bearing the EU trade mark,

   refer in their rulings to 'goods which have not been put on the market within the European Economic Area by the right holder or with his consent', with the result that it is left to the enforcement authority, in view of the general wording of the ruling, to determine which items bearing the EU trade mark are subject to the injunctions and prohibitions granted (that is to say, which items have not been put on the market within the European Economic Area by the right holder or with his consent) [and the authority relies, in making the findings set out, on statements of the right holder or tools supplied by him (including IT tools and databases)], while the possibility of challenging the aforementioned findings of the enforcement authority before a court in declaratory proceedings is excluded or limited by the nature of the legal remedies available to the defendant in proceedings to secure claims and in enforcement proceedings?

2. Must Articles 34, 35 and 36 of the Treaty on the Functioning of the European Union be interpreted as precluding the holder of the registration of a Community (now EU) trade mark from relying on the protection provided for in Articles 9 and 102 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (now Articles 9 and 130 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark) in a situation where:

   — the holder of the registration of the Community (EU) trade mark distributes, within and outside the European Economic Area, goods bearing that mark through authorised distributors, who may resell the goods bearing the trade mark to persons who are not the final recipients of those goods, belonging exclusively to the official distribution network — and at the same the authorised distributors are required to purchase the goods only from other authorised distributors or from the right holder;

   — the goods bearing the trade mark have no other markings or distinctive characteristics which would make it possible to determine where they have been put on the market by the right holder or with his consent;

   — the defendant acquired the goods bearing the mark in the European Economic Area;

   — the defendant collected statements from the sellers of goods bearing the mark to the effect that they may be marketed, in accordance with the law, in the European Economic Area;

   — the holder of the registration of the EU trade mark does not provide any IT tool (or other tool) or use a system of markings — which enables the potential purchasers of the goods bearing the mark to verify independently the legality of marketing those goods in the European Economic Area before purchasing them — and refuses to carry out such verification at the purchaser's request?

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

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 17 June 2021 — Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto and rakovoditel na Upravliavashtia organ na Operativna programa 'Regioni v rastezh' 2014-2020 v Obshtina Razlog

(Case C-376/21)

(2021/C 391/10)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto and rakovoditel na Upravliavashtia organ na Operativna programa 'Regioni v rastezh' 2014-2020

Defendant: Obshtina Razlog

Questions referred

1. Are Article 160(1) and Article 2 of Regulation 2018/1046 ([1]) and Article 102(1) and (2) of Regulation No 966/2012 to be interpreted as also applying to contracting authorities of Member States of the European Union where the public contracts that they award are financed by resources from the European Structural and Investment Funds?

2. If the first question is answered in the affirmative, are the principles of transparency, proportionality, equal treatment and non-discrimination enshrined in Article 160(1) of Regulation 2018/1046 and Article 102(1) of Regulation No 966/2012 to be interpreted as precluding a total restriction of competition in the award of a public contract by way of a negotiated procedure without prior publication where the subject matter of the public contract does not have special characteristics which objectively require it to be performed only by the economic operator invited to negotiate? In particular, are Article 160(1) and (2) of Regulation 2018/1046, read in conjunction with Article 164(1)(d) thereof, and Article 102(1) and (2) of Regulation No 966/2012, read in conjunction with Article 104(1)(d) thereof, to be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, following the discontinuation of a public procurement procedure on the ground that the sole tender submitted is unsuitable, the contracting authority may invite only one economic operator to participate in a negotiated procedure without prior publication where the subject matter of the public contract does not have special characteristics which objectively require it to be performed only by the economic operator invited to negotiate?

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

Request for a preliminary ruling from the Cour du travail de Mons (Belgium) lodged on 21 June 2021 — Ville de Mons, Zone de secours Hainaut — Centre v RM

(Case C-377/21)

(2021/C 391/11)

Language of the case: French

Referring court

Cour du travail de Mons

Parties to the main proceedings

Appellants, defendants in the original proceedings: Ville de Mons, Zone de secours Hainaut — Centre

Respondent, applicant in the original proceedings: RM

Question referred

Is Clause 4 of the Framework Agreement implemented by Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC [1] to be interpreted as not precluding national legislation which, for the calculation of the salary of professional firefighters employed on a full-time basis, accredits, in respect of the length of service for financial purposes, the services provided on a part-time basis as a volunteer firefighter according to the volume of work, that is to say the duration of the services actually provided, in line with the principle of '*pro rata temporis*', and not according to the period over which the services were provided?

[1] OJ 1998 L 14, p. 9.

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 22 June 2021 — Zenith Media Communications SRL v Consiliul Concurenței

(Case C-385/21)

(2021/C 391/12)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant and appellant: Zenith Media Communications SRL

Defendant and respondent: Consiliul Concurenței

Questions referred

Are Article 4(3) TEU and Article 101 TFEU to be interpreted as:

1. imposing an obligation upon a Member State's competition authority to interpret national law governing the fixing of fines in accordance with the principle of proportionality, in the sense that it is necessary to verify whether total turnover, as stated in the profit and loss account of the balance sheet for the previous financial year, faithfully reflects the economic and financial operations in accordance with the economic reality;

2. precluding, in the light of the principle of proportionality, the practice of a Member State's competition authority of imposing a fine in relation to the turnover stated in the profit and loss account of the balance sheet for the previous financial year, which includes the sums re-invoiced to final customers in connection with services for the purchase of media space by an intermediary, rather than just the commissions on the work of the intermediary;

3. precluding the interpretation of a rule of national law as meaning that responsibility for the correct recording in the accounts and the faithful presentation of the economic and financial operations in accordance with the economic reality lies with the undertaking that is fined and that a Member State's competition authority is bound by the manner in which the undertaking that is fined fulfils that obligation?

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 24 June 2021 — TJ v Inspectoratul General pentru Imigrări

(Case C-392/21)

(2021/C 391/13)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant (applicant at first instance): TJ

Respondent (defendant at first instance): Inspectoratul General pentru Imigrări

Questions referred

1. Is the expression 'special corrective appliances', used in Article 9 of Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment, ([1]) to be interpreted as excluding spectacles with corrective lenses?

2. Must the expression 'special corrective appliances', used in Article 9 of Council Directive 90/270/EEC, be understood solely to mean appliances used exclusively at the place of work and/or in the performance of employment duties?

3. Does the obligation to provide a special corrective appliance, provided for by Article 9 of Council Directive 90/270/EEC, refer exclusively to the acquisition of the appliance by the employer, or may it be interpreted more broadly, namely to include an obligation upon the employer to reimburse the costs incurred by the worker in purchasing the appliance him or herself?

4. Is it consistent with Article 9 of Council Directive 90/270/EEC for an employer to cover such costs by means of a general increase in remuneration which is paid on a continuing basis and referred to as an 'increase for arduous working conditions'?

([1]) OJ 1990 L 156, p. 14.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 30 June 2021 — Staatssecretaris van Justitie en Veiligheid, E, C; Other parties: S, Staatssecretaris van Justitie en Veiligheid

(Case C-402/21)

(2021/C 391/14)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: Staatssecretaris van Justitie en Veiligheid, E, C

Other parties: S, Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Can Turkish nationals who have the rights referred to in Article 6 or Article 7 of Decision No 1/80 ([1]) still rely on Article 13 of Decision No 1/80?

2. Does it follow from Article 14 of Decision No 1/80 that Turkish nationals can no longer rely on Article 13 of Decision No 1/80 if, due to their personal conduct, they represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society?

3. Can the new restriction whereby the right of residence of Turkish nationals may be terminated even after 20 years on grounds of public policy be justified by reference to the changed social perceptions which gave rise to that new restriction? Is it sufficient that the new restriction serves the public policy objective, or is it also required that the restriction be suitable for achieving that objective and not go beyond what is necessary to attain it? Decision No 1/80 of 19 September 1980 on the development of the Association adopted by the Association Council

([1]) Decision No 1/80 of 19 September 1980 of the Association Council set up by the Agreement establishing an Association between the EEC and Turkey.

Request for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 5 July 2021 — FU, DRV Intertrans BV

(Case C-410/21)

(2021/C 391/15)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Appellants: FU, DRV Intertrans BV

Questions referred

1. Must Article 5 of Regulation (EC) No 987/2009 ([1]) 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 to be interpreted as meaning that:

   — if, following a request by the authorities of the Member State of employment for the retroactive withdrawal of the 'Al' certificates, the authorities of the Member State which issued those A1 certificates confine themselves to withdrawing those certificates provisionally, stating that they no longer have any binding force, so that the criminal proceedings in the Member State of employment can continue, and that a final decision will only be taken by the Member State that issued the A1 certificates once the criminal proceedings in the Member State of employment have been finally concluded, the presumption attached to the Al certificates that the workers concerned are properly affiliated to the social security system of that issuing Member State ceases to apply and those Al certificates are no longer binding on the authorities of the Member State of employment;

   — if the answer to that question is in the negative, the authorities of the Member State of employment may, in the light of the case-law of the Court of Justice of the European Union, disregard the Al certificates at issue on the grounds of fraud?

2. Must Article 13(1)(b)(i) of Regulation (EC) No 883/2004 ([2]) of 29 April 2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Articles (3)(1)(a) and 11(1) of Regulation (EC) No 1071/2009 ([3]) of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC and Article (4)(1)(a) of Regulation (EC) No 1072/2009 ([4]) of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market be interpreted as meaning that it necessarily follows from the fact that an undertaking which obtains a road transport authorisation in a Member State of the European Union pursuant to Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 and which therefore must have an effective and stable establishment in that Member State, that it has been irrefutably demonstrated that its registered office is established in that Member State, as referred to in Article 13(1) of the aforementioned Regulation No 883/2004/EC, for the purposes of determining the applicable social security system and that the authorities of the Member State of employment are bound by that determination?

([1]) OJ 2009 L 284, p. 1.
([2]) OJ 2004 L 166, p. 1.
([3]) OJ 2009 L 300, p. 51.
([4]) OJ 2009 L 300, p. 72.

Request for a preliminary ruling from the Curtea de Apel Craiova (Romania) lodged on 14 July 2021 — RS

(Case C-430/21)

(2021/C 391/16)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicant/Complainant: RS

Questions referred

1. Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, preclude a provision of national law, such as that contained in Article 148(2) of the Romanian Constitution, as interpreted by the Curtea Constituțională (Constitutional Court, Romania) in Decision No 390/2021, according to which national courts have no jurisdiction to examine the conformity with EU law of a provision of national law that has been found to be constitutional by a decision of the Constitutional Court?

2. Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, preclude a provision of national law, such as that contained in Article 99(ș) of Legea nr. 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the rules governing judges and prosecutors), which provides for the initiation of disciplinary proceedings and the application of disciplinary penalties in respect of a judge for failure to comply with a decision of the Constitutional Court, where that judge is called upon to acknowledge the primacy of EU law over the grounds of a decision of the Constitutional Court, that provision of national law depriving him or her of the possibility of applying a judgment of the Court of Justice of the European Union which he or she regards as taking precedence?

3. Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, preclude a national judicial practice which precludes a judge, on pain of incurring disciplinary liability, from applying the case-law of the Court of Justice of the European Union in criminal proceedings in relation to a complaint regarding the reasonable duration of criminal proceedings, governed by Article 488[1] of the Romanian Code of Criminal Procedure?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 16 July 2021 — Liberty Lines SpA v Ministero delle Infrastrutture e dei Trasporti

(Case C-437/21)

(2021/C 391/17)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Liberty Lines SpA

Respondent: Ministero delle Infrastrutture e dei Trasporti

Questions referred

Does [European Union] law, and in particular the principles of free movement of services and of opening up to competition as far as possible in the field of public service contracts, preclude a legal provision such as Article 47(11-*bis*) of decreto legge n. 50 del 24 aprile 2017 (Decree-Law No 50 of 24 April 2017), converted into legge 21 giugno 2017, n. 96 (Law No 96 of 21 June 2017), which:

— treats high-speed maritime passenger transport between the ports of Messina and Reggio Calabria as equivalent to rail transport by sea between the Italian mainland and Sicily, as provided for in Article 2(e) of decreto del Ministero dei trasporti e della navigazione n. 138 T del 31 ottobre 2000 (Decree No 138 T of the Italian Ministry of Transport and Navigation of 31 October 2000), or at least allows them to be treated as equivalent by law;

— reserves or appears capable of reserving for Rete ferroviaria italiana SpA the rail connection service by sea between Sicily and the Italian mainland, even where this involves the use of high-speed vessels?

Appeal brought on 14 July 2021 by the European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 5 May 2021 in Case T-611/18, Pharmaceutical Works Polpharma v EMA

(Case C-438/21 P)

(2021/C 391/18)

Language of the case: English

Parties

Appellant: European Commission (represented by: L. Haasbeek, S. Bourgois, A. Sipos, Agents)

Other parties to the proceedings: Pharmaceutical Works Polpharma S.A., European Medicines Agency, Biogen Netherlands BV

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment under the appeal;

— reject the application at first instance; and

— order the Pharmaceutical Works Polpharma S.A. to pay the costs.

Pleas in law and main arguments

The present appeal is directed against paragraphs 181-218, paragraphs 224-238, 248-265, 273-275, 280-282, 288, 289 and 292 of the judgment under appeal, as well as its conclusions in paragraphs 295, 296 and the operative part.

The Commission raises four grounds of appeal:

1. The General Court manifestly distorted the facts, leading it to manifestly flawed legal conclusions, when basing its reasoning in the judgment under appeal on the incorrect premise that Fumaderm was assessed by the German Bundesinstitut für Arzneimittel und Mediczinprodukte ('BfArM') for the first and only time in 1994.

2. The General Court violated Article 6(1) of Directive 2001/83 ([1]), as interpreted by the case-law of the Court, by requiring — as part of the assessment by the EMA and the Commission of whether two medicinal products belong to the same global marketing authorisation ('GMA') — a (re-)assessment of the qualitative composition in terms of active substances of the initial medicinal product.

   First, the General Court unlawfully imported into the GMA assessment an assessment that forms part of the procedure granting the marketing authorisation for the initial medicinal product. Second, the General Court unlawfully created two diverging GMA concepts, depending on whether the GMA assessment is carried out by the Commission and the EMA or by a national competent authority.

3. The General Court violated the system of decentralised application of Union pharmaceuticals legislation as established by Regulation 726/2004 ([2]) and Directive 2001/83, the principles of conferral of powers and subsidiarity as laid down in Article 5 TEU, the principle of mutual trust, as well as Articles 6(1), 30 and 31 of Directive 2001/83, and Articles 57(1) and 60 of Regulation 726/2004 by concluding the Commission and the EMA have the competence and the obligation — within the framework of the assessment of whether two medicinal products belong to the same GMA — to carry out a re-assessment or verification of the previous assessment by a national competent authority of the qualitative composition in terms of active substances of one of those medicinal products.

4. The General Court exceeded the limits of judicial review by substituting its own scientific assessment for that of the competent regulatory authorities.

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001, L 311, p. 67).

([2]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004, L 136, p. 1).

Appeal brought on 14 July 2021 by Biogen Netherlands BV against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 5 May 2021 in Case T-611/18, Pharmaceutical Works Polpharma v EMA

(Case C-439/21 P)

(2021/C 391/19)

Language of the case: English

Parties

Appellant: Biogen Netherlands BV (represented by: C. Schoonderbeek, advocaat)

Other parties to the proceedings: Pharmaceutical Works Polpharma S.A., European Medicines Agency, European Commission

Form of order sought

The Appellant claims that the Court should:

— grant the appeal;

— set aside the judgment under the appeal.

Pleas in law and main arguments

First ground of appeal: the General Court misapplied Article 277 TFEU by failing to recognize that the plea of illegality raised against the Commission's decision of 30 January 2014 granting marketing authorisation for the medicinal product Tecfidera was inadmissible because that decision could have been challenged directly by Polpharma since it is a regulatory act that does not entail implementing measures and was of direct concern to Polpharma.

Second ground of appeal: in its assessment of the plea of illegality, the General Court misinterpreted and misapplied the concept of the global marketing authorisation laid down in Article 6(1) of Directive 2001/83/EC ([1]).

Third ground of appeal: the General Court misinterpreted the legal requirements for the authorisation of combination medicinal products in 1994 and failed to recognize the renewal of the Fumaderm authorisation in 2013 in its consideration of the issue.

Fourth ground of appeal: the General Court misinterpreted and misapplied the principle of mutual recognition of assessments and decisions adopted by national authorities by concluding that, in the case at hand, this principle did not apply to the EMA and Commission.

Fifth ground of appeal: the General Court misapplied the applicable standard of judicial review in relation to scientific assessments and scientific evidence by making its own assessment of the scientific data in the file.

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001, L 311, p. 67).

Appeal brought on 15 July 2021 by the European Medicines Agency against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 5 May 2021 in Case T-611/18, Pharmaceutical Works Polpharma v EMA

(Case C-440/21 P)

(2021/C 391/20)

Language of the case: English

Parties

Appellant: European Medicines Agency (represented by: S. Marino, S. Drosos, H. Kerr, Agents)

Other parties to the proceedings: Pharmaceutical Works Polpharma S.A., European Commission, Biogen Netherlands BV

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment under appeal;

— reject the application for annulment in Case T-611/18; and

— order the applicant at first instance to pay the costs related to Case T-611/18 and the costs related to the present appeal proceedings.

Pleas in law and main arguments

EMA's appeal consists of four grounds.

1. Under the first ground of appeal, EMA submits that the General Court committed a two-fold error, insofar as it failed to infer from the fact of the recent renewal of the marketing authorisation for a combination medicinal product that said renewal would have been undertaken against the evidence available at the time of the renewal and the regulatory standards applicable at the time of the renewal.

2. Under the second ground of appeal, EMA submits that the General Court erred in law, insofar as it considered that EMA and the Commission perform a particular function that required the latter to verify the therapeutic effect of one of the active substances of a nationally authorised combination product, when ascertaining the data protection rights of a centrally authorised monotherapy containing one of the active substances of the combination product.

3. Under the third ground of appeal, EMA submits that the General Court erred in its interpretation of Article 6(1), second subparagraph, of Directive 2001/83/EC ([1]), insofar as it considered that the Global Marketing Authorisation test involves the verification by the Commission of the therapeutic effect of one of the active substances of a nationally authorised combination product.

4. Under the fourth ground of appeal, EMA submits that the General Court exceeded the scope of its power of judicial review, insofar as it embarked on a *de novo* assessment of certain scientific evidence, and insofar as it reproached the Commission for not investigating the supposed doubts that purportedly surrounded this scientific evidence.

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001, L 311, p. 67).

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (Netherlands) lodged on 23 July 2021 — E, F v Staatssecretaris van Justitie en Veiligheid

(Case C-456/21)

(2021/C 391/21)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch

Parties to the main proceedings

Applicants: E, F

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Must Article 10(1)(d) of the Qualification Directive ([1]) be interpreted as meaning that western norms, values and actual conduct which third-country nationals adopt while staying in the territory of the Member State and participating fully in society for a significant part of the phase of their lives in which they form their identity are to be regarded as a common background that cannot be changed or characteristics that are so fundamental to identity that a person should not be forced to renounce them?

2. If the answer to the first question is in the affirmative, are third-country nationals who, irrespective of the reasons, have adopted comparable western norms and values through actual residence in the Member State during the phase of their lives in which they form their identity to be regarded as 'members of a particular social group' within the meaning of Article 10(1)(d) of the Qualification Directive? Is the question of whether there is a 'particular social group that has a distinct identity in the relevant country' to be assessed from the perspective of the Member State or must this, read in conjunction with Article 10(2) of the Qualification Directive, be interpreted as meaning that decisive weight is given to the ability of the foreign national to demonstrate that he or she is regarded in the country of origin as belonging to a particular social group or, at any rate, that this is attributed to him or her? Is the requirement that Westernisation can lead to refugee status only if it stems from religious or political motives compatible with Article 10 of the Qualification Directive, read in conjunction with the prohibition on refoulement and the right to asylum?

3. Is a national legal practice whereby a decision-maker, when assessing an application for international protection, weighs up the best interests of the child without first concretely determining (in each procedure) the best interests of the child compatible with EU law and, in particular, with Article 24(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), read in conjunction with Article 51(1) of the Charter? Is the answer to this question different if the Member State has to assess a request for the grant of residence on ordinary grounds and the best interests of the child must be taken into account in deciding on that request?

4. Having regard to Article 24(2) of the Charter, in which manner and at what stage of the assessment of an application for international protection must the best interests of the child, and, more specifically, the harm suffered by a minor as a result of his or her long residence in a Member State, be taken into account and weighed up? Is it relevant in that regard whether that actual residence was lawful? Is it relevant, when weighing up the best interests of the child in the above assessment, whether the Member State took a decision on the application for international protection within the time limits laid down in EU law, whether a previously imposed obligation to return was not complied with and whether the Member State did not effect removal after a return decision had been issued, as a result of which the minor's actual residence in the Member State was able to continue?

5. Is a national legal practice whereby a distinction is made between initial and subsequent applications for international protection, in the sense that ordinary grounds are disregarded in the case of subsequent applications for international protection, compatible with EU law, having regard to Article 7 of the Charter, read in conjunction with Article 24(2) thereof?

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

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 3 August 2021 — Criminal proceedings against SN and SD. Other parties: Governor of Cloverhill Prison, Ireland, Attorney General, Governor of Mountjoy prison

(Case C-479/21)

(2021/C 391/22)

Language of the case: English

Referring court

Supreme Court

Criminal proceedings against

SN and SD

Questions referred

1. Can the provisions of the Withdrawal Agreement, which provide for the continuance of the EAW ([1]) regime in respect of the United Kingdom, during the transition period provided for in that agreement, be considered binding on Ireland having regard to its significant AFSJ ([2]) content; and

2. Can the provisions of the Agreement on Trade and Cooperation which provide for the continuance of the EAW regime in respect of the United Kingdom after the relevant transition period, be considered binding on Ireland having regard to its significant AFSJ content?

(1) European Arrest Warrant.
(2) Area of freedom security and justice.

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 3 August 2021 — W O, J L v Minister for Justice and Equality

(Case C-480/21)

(2021/C 391/23)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: W O, J L

Defendant: Minister for Justice and Equality

Questions referred

1. Is it appropriate to apply the test set out in *LM* (1) and affirmed in *L and P* (2) where there is a real risk that the appellants will stand trial before courts which are not established by law?

2. Is it appropriate to apply the test set out in *LM* and affirmed in *L and P* where a person seeking to challenge a request under an EAW cannot meet that test by reason of the fact that it is not possible at that point in time to establish the composition of the courts before which they will be tried by reason of the manner in which cases are randomly allocated?

3. Does the absence of an effective remedy to challenge the validity of the appointment of judges in Poland, in circumstances where it is apparent that the appellants cannot at this point in time establish that the courts before which they will be tried will be composed of judges not validly appointed, amount to a breach of the essence of the right to a fair trial requiring the executing state to refuse the surrender of the appellants?

(1) Case C-216/18 PPU, ECLI:EU:C:2018:586.
(2) Cases C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033.

Appeal brought on 13 August 2021 by Health Information Management (HIM) against the judgment of the General Court (Tenth Chamber) delivered on 9 June 2021 in Case T-235/19, Health Information Management (HIM) v Commission

(Case C-500/21 P)

(2021/C 391/24)

Language of the case: French

Parties

Appellant: Health Information Management (HIM) (represented by: P. Zeegers, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— declare the present appeal admissible and well founded and, consequently;

— set aside paragraphs 93 to 97 and 117 to 185 of the judgment of the General Court of the European Union of 9 June 2021 delivered in Case T-235/19, *Health Information Management* v *Commission*;

— set aside points 1, 2, 3 and 5 of the operative part of the judgment under appeal;

— refer the case back to the General Court in order to enable that court to rule on the claim brought by the appellant in its application lodged on 4 April 2019;

— order the European Commission to pay the entirety of the costs and expenses, including the costs and fees of the appellant's adviser, the amount of which is provisionally fixed at EUR 15 000 excluding VAT.

Grounds of appeal and main arguments

In support of the appeal, Health Information Management relies on three grounds: (i) infringement of the rights of the defence and of the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union; (ii) failure to fulfil the obligation to state reasons under the second paragraph of Article 296 TFEU; and (iii) infringement and misapplication of Article 272 TFEU and, consequently, infringement of the principles of impartiality and proportionality.

GENERAL COURT

Order of the President of the General Court of 22 July 2021 — CCPL and Others v Commission

(Case T-130/21 R)

(Interim relief — Competition — Agreements, decisions and concerted practices — Retail food packaging market — Decision imposing fines — Financial guarantee — 2006 Guidelines on the method for setting fines — Ability to pay — Application for suspension of operation of a measure — No prima facie case)

(2021/C 391/25)

Language of the case: Italian

Parties

Applicants: CCPL — Consorzio Cooperative di Produzione e Lavoro SC (Reggio Emilia, Italy), Coopbox Group SpA (Bibbiano, Italy) and Coopbox Eastern s.r.o. (Nové Mesto nad Váhom, Slovakia) (represented by: E. Cucchiara and E. Rocchi, lawyers)

Defendant: European Commission (represented by: P. Rossi and T. Baumé, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking suspension of the operation of Commission Decision C(2020) 8940 final of 17 December 2020 replacing the fines set by Commission Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement to the extent that it concerns CCPL — Consorzio Cooperative di Produzione e Lavoro SC, Coopbox Group SpA and Coopbox Eastern s.r.o. (Case AT.39563 — Retail food packaging), in so far as it requires the applicants to provide a financial guarantee or to make provisional payment of the fines imposed.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Order of the President of the General Court of 22 July 2021 — Aloe Vera of Europe v Commission

(Case T-189/21 R)

(Interim measures — Regulation (EC) No 1925/2006 — Substances prohibited, restricted or under Community scrutiny — Regulation (EU) 2021/468 — Prohibition of preparations from the leaf of Aloe species containing hydroxyanthracene derivatives — Application for suspension of operation of a measure — No urgency)

(2021/C 391/26)

Language of the case: English

Parties

Applicant: Aloe Vera of Europe BV (Amsterdam, Netherlands) (represented by: B. Van Vooren, lawyer)

Defendant: European Commission (represented by: W. Farrell and B. Rous Demiri, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for suspension of operation of Commission Regulation (EU) 2021/468 of 18 March 2021 amending Annex III to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards botanical species containing hydroxyanthracene derivatives (OJ 2021 L 96, p. 6), for a period of nine months from the date of the present order.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Order of the General Court of 27 July 2021 — Alliance française de Bruxelles-Europe and Others v Commission

(Case T-285/21 R)

(Application for interim relief — Public supply contracts — Provision of language training services — Application for interim measures — No urgency)

(2021/C 391/27)

Language of the case: French

Parties

Applicants: Alliance française de Bruxelles-Europe (Brussels, Belgium) and the 7 others applicants whose names are listed in the annex to the order (represented by: E. van Nuffel d'Heynsbroeck, lawyer)

Defendant: European Commission (represented by: B. Araujo Arce and M. Ilkova, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking, first, suspension of operation of the decision of the Commission of 19 April 2021 to award Lot No 4 (French language training) of the contract relating to framework contracts for language training for the institutions, bodies and agencies of the European Union (HR/2020/OP/0014) in first place to the consortium CLL Centre de Langues — Allingua and in second place to the consortium Alliance Europe Multilingue constituted by the applicants and, second, the grant of any other interim measure that the Court considers appropriate.

Operative part of the order

1. The application for interim measures is dismissed.

2. Costs are reserved.

Action brought on 20 July 2021 — TM v ECB

(Case T-440/21)

(2021/C 391/28)

Language of the case: English

Parties

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

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Executive Board of 15 December 2020 to appoint Ms P. for the position of Director General DG-IS instead of the Applicant;

— annul, if need be, the decision of the Executive Board, dated 11 May 2021, rejecting the Special Appeal submitted by the Applicant against the decision not to appoint him;

— compensate the Applicant for material damages suffered by the decision of 15 December 2020 with an amount of 73 679,47 euros;

— compensate the Applicant for moral prejudice with an amount of one symbolic euro.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment and a violation of Article 8a (c) of the Conditions of employment, and of Articles 1a.1.1(b), 1a.2.1.1 and 1a.2.6.1 of the Staff Regulations; Violation of the vacancy notice; Breach of the interest of the service.

2. Second plea in law, alleging an illegality of the recruitment procedure 2020-2738- EXT due to a breach of Article 1a.3.1.2 § 4 of the Staff Rules and misuse of powers.

3. Third plea in law, alleging a breach of Articles 1a.2.7.9, 1a.2.7.10 and 1a.2.7.11 of the Staff Rules; Lack of motivation; Breach of the principle of good administration.

Action brought on 2 August 2021 — Coulter Ventures v EUIPO — iWeb (R)

(Case T-457/21)

(2021/C 391/29)

Language of the case: English

Parties

Applicant: Coulter Ventures LLC (Columbus, Ohio, United States) (represented by: R. Dissmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: iWeb GmbH (Berlin, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark R — Application for registration No 13 750 849

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 2 June 2021 in Case R 2789/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs including the applicant's costs incurred in the proceedings before the EUIPO.

Plea in law

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

Action brought on 6 August 2021 — France v Commission

(Case T-475/21)

(2021/C 391/30)

Language of the case: French

Parties

Applicant: French Republic (represented by: F. Alabrune, T. Stéhelin, A-L. Desjonquères and G. Bain, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in part Commission Implementing Decision (EU) 2021/988 of 16 June 2021 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it applies a correction amounting to EUR 45 869 990,19 in respect of the 'Voluntary Coupled Support' for the reasons 'Mesure 24 — année de demande 2017 (année financière 2018)' and 'Mesure 24 — année de demande 2017 (année financière 2019)' for the financial years 2018 and 2019;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

According to the applicant, the Commission erred in law by misinterpreting Article 52(2) of Regulation No 1307/2013, ([1]) stating that legumes grown as part of a mixture including grasses could not be eligible for a voluntary coupled support scheme.

In the first place, Article 52(2) of Regulation No 1307/2013 permits Member States to set up coupled support schemes for all common and established practices in a Member State in the protein crops sector, which includes legumes grown for their high protein content.

In the second place, Article 52(2) of Regulation No 1307/2013 must be interpreted as meaning that the protein crops sector includes the practice, common in particular in France, of growing mixtures of fodder legumes and grasses in which the former are predominant.

Accordingly, the Commission erred in law in stating, when adopting the contested decision, that the growing of mixtures of fodder legumes and grasses in which the former are predominant cannot be eligible for the voluntary coupled support provided for by Article 52 of Regulation No 1307/2013.

([1]) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

Action brought on 6 August 2021 — TransnetBW v ACER

(Case T-476/21)

(2021/C 391/31)

Language of the case: English

Parties

Applicant: TransnetBW GmbH (Stuttgart, Germany) (represented by: T. Burmeister, and P. Kistner, lawyers)

Defendant: European Union Agency for the Cooperation of Energy Regulators

Form of order sought

The applicant claims that the Court should:

— annul the decision of the ACER Board of Appeal of 28 May 2021, Case number A-001-2021 (cons.), concerning the appeal against the ACER Decision No. 30/2020 on the Redispatch and Countertrading Cost Sharing Methodology for the Capacity Calculation Region Core (the Contested Decision);

— order ACER to pay TransnetBW GmbH's 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 scope of the RDCT Cost Sharing Methodology as confirmed by the Contested Decision is unlawful. The RDCT Cost Sharing Methodology as confirmed by the Contested Decision unlawfully extends the application of the polluter pays principle to the sharing of costs for remedial actions exercised on basically all transmission network elements in the Capacity Calculation Region Core, albeit this is by law designed to be an exemption from the general obligation of network owners to maintain and expand their networks according to the market need (owner pays principle).

2. Second plea in law, alleging that the determination of a common loop flow threshold of 10 % in the RDCT Cost Sharing Methodology as confirmed by the Contested Decision is unlawful. ACER had no competence to determine a common loop flow threshold and respectively the ACER Board of Appeal had no competence to confirm the common loop flow threshold. The common loop flow threshold was set at a too low level of 10 % and was based on insufficient and contested data.

3. Third plea in law, alleging that the penalisation of loop flows above threshold is unlawful. The penalization of loop flows above threshold in comparison to internal flows has no legal basis, violates the polluter pays principle, the principle of non-discrimination as well as the principle of proportionality and sets wrong incentives.

4. Fourth plea in law, alleging that the ACER Board of Appeal unlawfully did carry out only a limited review of the complex technical and economic assessments, which were to be made by ACER in the course of the approval procedure of the RDCT Cost Sharing Methodology, which violates the mandatory intensity of review by the ACER Board of Appeal as defined by the Court in its ruling in the Aquind Case (General Court, Decision of 18 November 2020, Case No. T-735/18).

Action brought on 9 August 2021 — British Airways v Commission

(Case T-480/21)

(2021/C 391/32)

Language of the case: English

Parties

Applicant: British Airways plc (Harmondsworth, United Kingdom) (represented by: A. Lyle-Smythe and R. O'Donoghue, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order the Commission to pay forthwith the Default Interest Amount, corresponding to default interest on the amount of EUR 104 040 000 at the ECB refinancing rate plus 3,5 % for the period from 14 February 2011 to 8 February 2016 (less the amount already paid by way of 'guaranteed return') or, alternatively, at such rate as the Court sees fit.

— order the Commission to pay compound interest (or, alternatively, default interest) on the Default Interest Amount (or such other amount as the Court orders the Commission to pay in accordance with subparagraph above) at the rate of the ECB refinancing rate plus 3,5 %, or such other rate as the Court sees fit.

— annul the decision of the Commission refusing to pay the abovementioned sums in its letters dated 30 April and 2 July 2021, and to declare it as void and of no effect ex tunc.

— order the Commission to pay the applicant's legal and other expenses.

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 British Airways is entitled to recover the Default Interest Amount by an action under the first paragraph of Article 266 TFEU, since the Commission was obliged to pay that amount in order to comply with the judgment of the General Court in Case T-48/11.

2. Second plea in law, alleging that British Airways is entitled, in the alternative, to recover the Default Interest Amount by an action for non-contractual liability under the second paragraph of Article 266, Article 268 and Article 340 TFEU.

3. Third plea in law, alleging that British Airways is in any event entitled to payment of the compound interest pursuant to the first paragraph of Article 266 or, alternatively, the second paragraph thereof, Article 268 and Article 340 TFEU, on the sum that should have been paid to it on 8 February 2016.

4. Fourth plea in law, alleging that the Commission's refusal to pay the Default Interest Amount and compound interest, recorded in its letters of 30 April 2021 ([1]) and 2 July 2021 ([2]), is based on an infringement of the Treaties (i.e. Article 266 TFEU) and/or the general principle of EU law, that EU institutions must give restitution following a judgment annulling a measure. The applicant thus alleges that the decision shall be annulled pursuant to Article 263 TFEU.

([1]) Letter from the Commission of 30 April 2021 addressed to the applicant
([2]) Letter from the Commission of 2 July 2021 addressed to the applicant, Ref. ARES(2021)4317994

Action brought on 10 August 2021 — Neoperl v EUIPO (Representation of a cylindrical sanitary insert part)

(Case T-487/21)

(2021/C 391/33)

Language of the case: German

Parties

Applicant: Neoperl AG (Reinach, Switzerland) (represented by: H. Börjes Pestalozza and U. Kaufmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for an EU position mark (Representation of a cylindrical sanitary insert part)

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 3 June 2021 in Case R 2327/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of the first sentence of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 August 2021 — Aquind and Others v ACER

(Case T-492/21)

(2021/C 391/34)

Language of the case: English

Parties

Applicants: Aquind Ltd (London, United Kingdom), Aquind Energy Sàrl (Luxembourg, Luxembourg), Aquind SAS (Rouen, France) (represented by: S. Goldberg, L. Van den Hende, L. Malý and E. White, lawyers)

Defendant: European Union Agency for the Cooperation of Energy Regulators

Form of order sought

The applicants claim that the Court should:

— annul the defendant's Board of Appeal decision of 4 June 2021; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant's Board of Appeal erred in finding that the appeal before it was inadmissible. It is argued that the defendant remained competent to replace its annulled decision ([1]) with a new one and to grant the exemption to AQUIND Interconnector under Article 17 of Regulation (EC) No 714/2009 ([2]). Furthermore, it is alleged that the defendant's Board of Appeal failed to fulfill its obligation to ensure full and complete compliance with the Judgment of the General Court of 18 November 2020 ([3]).

2. Second plea in law, alleging that the defendant's Board of Appeal infringed requirements in Articles 25(3) and 28(4) of Regulation (EU) No 2019/942 ([4]) and in the Rules of Procedure of the defendant's Board of Appeal. It is argued that the defendant's Board of Appeal did not follow the correct procedure with one of its members not attending the hearing, the oral proceedings not constituting evidence, and no deliberation meeting minutes having been published.

([1]) Decision A-001-2018, of 17 October 2018, of the defendant's Board of Appeal.
([2]) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Text with EEA relevance) (OJ 2009 L 211, p. 15-35).
([3]) Judgment of 18 November 2020, *Aquind v ACER*, T-735/18, EU:T:2020:542.
([4]) Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (Text with EEA relevance) (OJ 2019 L 158, p. 22-53).

Action brought on 6 August 2021 — Ryanair and Malta Air v Commission

(Case T-494/21)

(2021/C 391/35)

Language of the case: English

Parties

Applicants: Ryanair DAC (Swords, Ireland) and Malta Air ltd. (Pietà, Malta) (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 applicants claim that the Court should:

— annul the defendant's decision of 5 April 2021 on State aid SA.59913 (2021/N) — *France — COVID-19 — Recapitalisation of Air France and the Air France — KLM Holding*; ([1]) and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant wrongly excluded KLM form the scope of the contested decision.

2. Second plea in law, alleging that the defendant misapplied the Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak.

3. Third plea in law, alleging that the defendant misapplied Article 107(3)(b) TFUE.

4. Forth plea in law, alleging that the contested decision violates specific provisions of the TFEU and the general principles of European Law that have underpinned the liberalisation of EU air transport since the late 1980s (i.e., nondiscrimination, free provision of services ([2]) and free establishment).

5. Fifth plea in law, alleging that the defendant failed to initiate a formal investigation procedure despite the serious difficulties and violated the applicants' procedural rights.

6. Sixth plea in law, alleging that the defendant violated its duty to state reasons.

7. Seventh plea in law, alleging that the contested decision failed to meet the requirements of Article 342 TFUE and of the Regulation 1/58 pertaining to the language of official acts of EU institutions. ([3])

([1]) OJ 2021 C 240, p. 13.
([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).
([3]) EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community (OJ 1958 17, p. 385-386).

Action brought on 16 August 2021 — Lotion v EUIPO (BLACK IRISH)

(Case T-498/21)

(2021/C 391/36)

Language of the case: English

Parties

Applicant: Lotion LLC (Woodland Hills, California, United States) (represented by: A. Deutsch, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark BLACK IRISH — Application for registration No 18 189 156

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 June 2021 in Case R 199/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the contested application for the contested goods and those goods currently claimed in the application;

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

Pleas in law

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

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

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

— Infringement of general principles of European Union law, in particular the principle of equal treatment and the principle of sound administration.

Action brought on 14 August 2021 — Ryanair v Commission

(Case T-499/21)

(2021/C 391/37)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 23 April 2021 on State aid SA.62304 (2021/N) — *Portugal — COVID-19: Damage compensation to TAP Portugal*; ([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 a manifest error 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 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.

(1) OJ 2021 C 240, p. 33.
(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 16 August 2021 — Philip Morris Products v EUIPO (TOGETHER. FORWARD.)

(Case T-500/21)

(2021/C 391/38)

Language of the case: English

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark TOGETHER. FORWARD. — Application for registration No 18 288 035

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 2nd June 2021 in Case R 417/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and to pay those of the applicant.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and consequently paragraph 2 of said article 7 by erroneously assessing the perception of the relevant consumers;

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by with respect to the trademark at issue.

Action brought on 16 August 2021 — Philip Morris Products v EUIPO (Device of a combination of lines in black and white forming the angle of a cube)

(Case T-501/21)

(2021/C 391/39)

Language of the case: English

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union figurative mark (Device of a combination of lines in black and white forming the angle of a cube) — Application for registration No 18 252 130

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 3 June 2021 in Case R 79/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and to pay those of the applicant.

Plea in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by erroneously assessing the perception of the relevant consumers;

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council with respect to the trademark at issue.

Action brought on 16 August 2021 — Philip Morris Products v EUIPO (Device of a combination of lines in black and white forming a square)

(Case T-502/21)

(2021/C 391/40)

Language of the case: English

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union figurative mark (Device of a combination of lines in black and white forming a square) — Application for registration No 18 252 146

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 May 2021 in Case R 78/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and to pay those of the applicant.

Plea in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by erroneously assessing the perception of the relevant consumers;

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council with respect to the trademark at issue.

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