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COURT OF JUSTICE

Request for a preliminary ruling from the Tribunal da Relação de Lisboa (Portugal) lodged on 26 May 2021 — Autoridade da Concorrência EDP — Energias de Portugal, S.A. and Others

(Case C-331/21)

(2021/C 452/02)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Lisboa

Parties to the main proceedings

Applicants: Autoridade da Concorrência, EDP — Energias de Portugal, S.A., EDP Comercial — Comercialização de Energia, S.A., Sonae Investimentos, SGPS, S.A., SONAE MC — Modelo Continente SGPS, Modelo Continente Hipermercados, S.A.

Other party: Ministério Público

Questions referred

1. Must Article 101 TFEU, on which Article 9 of the NRJC (Law 19/2012 of 8 May 2012) is based, be interpreted as meaning that it permits the classification of a non-competition clause such as those contained in clauses 12(1) and 12(2) … of the association agreement as an agreement restrictive by object which is concluded between an electricity supplier and a food retailer operating hypermarkets and supermarkets with a view to granting to customers, who sign up to a given energy tariff plan made available by the electricity supplier in mainland Portugal and are at the same time holders of a loyalty card offered by the food retailer, discounts which can be used only to buy products in the outlets operated by that retailer or by companies linked to it, in the case where that agreement includes other clauses providing that its purpose is to promote the pursuit of the activities carried on by the participating companies …and the benefits to consumers have been established … but no analysis has been carried out of the specific harmful effects which the aforementioned clauses 12(1) and 12(2) have on competition?

2. May Article 101(1) TFEU be interpreted as meaning that an agreement, which prohibits the pursuit of certain economic activities and provides for an alleged sharing of markets between two undertakings, may be regarded as being restrictive of competition by object, in the case where it is concluded between two entities which do not actually or potentially compete with each other on any of the markets affected by that obligation, even though the markets affected by that obligation may be regarded as liberalised or without insurmountable legal barriers to entry?

3. May Article 101(1) TFEU be interpreted as meaning that an electricity supplier and a food retailer operating hypermarkets and supermarkets which have concluded the aforementioned agreement with each other with a view to promoting each other's business activities and increasing each other's sales (and, in the case of the food retailer, the sales of companies in whose capital one of its parent companies has a majority shareholding) must be regarded as potential competitors, in the case where the food retailer and the aforementioned companies linked to it were not

engaged in the activity of electricity supplier, either on the geographical market in question or on any other market, at the time when the agreement was concluded, and it has not been shown in the proceedings that they intended to engage in that activity on that market or that they had taken any steps with a view to doing so?

4. Does the answer to the previous question remain unchanged if another company in whose capital a majority interest is held by a parent company of the food retailer that is a party to the agreement (where neither of those two entities has, however, been charged or convicted by the national competition authority or been a party to the proceedings before this court), which did not fall within the subjective scope of the non-competition obligation, held a 50 % interest in a third entity which pursued in Portugal activities in connection with the marketing of electricity that came to an end three and a half years prior to the conclusion of the agreement as a result of the dissolution of that entity?

5. Does the answer to the previous question remain unchanged in the case where the retailer that is a party to the agreement produces electricity via its mini-generation and micro-generation facilities on the roofs of its outlets, although it delivers all of the energy produced, at regulated prices, to the last-resort trader.

6. Does the answer to the fourth question remain unchanged in the event that the retailer that is a party to the agreement, eight years prior to the date thereof, concluded with a third party operating as a liquid fuel distributor, for the purpose of granting cross-discounts, another commercial cooperation agreement (still in force on the date of the former agreement) relating to the purchase of those products and of products sold in the retailer's hypermarkets and supermarkets, in the case where the undertaking that is the other party to the agreement, in addition to marketing liquid fuels, also markets electricity in mainland Portugal, and it has not been shown that, at the time when the agreement was concluded, the parties had any intention of extending that contract to the marketing of electricity or had taken any steps with a view to doing so?

7. Does the answer to the fourth question remain the same in the event that another company in whose capital a majority interest is held by a parent company of the food retailer that is a party to the agreement (where neither of those two entities has, however, been charged or convicted by the national competition authority or been a party to the proceedings before this court), which did not fall within the subjective scope of the non-competition obligation, produced electricity in a cogeneration facility, although it delivered all of the energy produced, at regulated prices, to the last-resort trader?

8. If the foregoing questions are answered in the affirmative, must Article 101(1) TFEU be interpreted as meaning that a clause may be regarded as being restrictive by object, where it prohibits such a food retailer, during the term of the agreement and in the year immediately thereafter, from pursuing activities in connection with the marketing of electricity, either by itself or through a company in whose capital a majority interest is held by one of its parent companies, and which clause is the subject of proceedings in the territory covered by the agreement?

9. Can the concept of 'potential competitor' for the purposes of Article 101(1) TFEU, Article 1(1)(c) of Commission Regulation (EU) No 330/210 ([1]) of 20 April 2010 on the application of Article 101(3) [TFEU] to categories of vertical agreements and concerted practices and paragraph 27 of the European Commission's Guidelines on Vertical Restraints (OJ 2010 C 130, p. 1) be interpreted as meaning that it includes an undertaking, bound by a non-competition clause, which is present on a product market that is completely separate from that of the other party to the agreement, in the case where the documents in the case file of the dispute brought before the national court contain no specific indication (such as projects, investments or other preparations) that, before and in the absence of that clause, the undertaking in question might enter the other party's market in the short term, and it has not been shown that, before and in the absence of that clause, that undertaking was perceived by the other party to the agreement as a potential competitor on the market concerned?

10. May Article 101(1) TFEU be interpreted as meaning that the mere fact that an association agreement, concluded between an undertaking engaged in the marketing of electricity and an undertaking engaged in the retail sale of food and non-food products for household consumption for the purposes of the cross-promotion of their respective activities (in which, inter alia, the first undertaking grants to its customers discounts on their electricity consumption which the second undertaking deducts from the price of the purchases made by such customers in its retail outlets), contains a clause whereby both parties undertake not to compete with each other or to conclude similar agreements with each other's competitors, means that the purpose of that clause is to restrict competition within the meaning of Article 101(1) TFEU, even if:

— the temporal scope of the clause in question (one-year term of the agreement plus one year) coincides with the period, laid down in the same agreement, during which the parties are not authorised to use business secrets or know-how acquired in the course of implementing their association in projects with third parties;

— the geographical scope of the clause is confined to the geographical scope of the agreement;

— the subjective scope of the clause is confined to the parties to the agreement, to undertakings in whose capital they hold a majority interest and to other undertakings in the same group which also own or operate retail sales outlets falling within the scope of that agreement;

— the subjective scope of the clause excludes the vast majority of the companies belonging to the same economic group as the parties, which, in consequence, are not bound by the clause and may compete with the other party to the agreement during and after the term of that agreement;

— the undertakings subject to the non-competition clause are present on completely separate product markets, and it has not been shown that, at the time when the agreement was concluded, they had pursued any projects or plans, made any investments or taken any other steps with a view to entering the other party's market?

11. Must the concept of 'vertical agreement' for the purposes of Article 101(1) TFEU, Article 1(1)(a) of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) [TFEU] to categories of vertical agreements and concerted practices and paragraph 25(c) of the European Commission's Guidelines on Vertical Restraints (OJ 2010 C 130, p. 1) be interpreted as meaning that it includes an agreement exhibiting the characteristics described in the foregoing questions, in which the parties are present on completely separate product markets and it has not been demonstrated that, prior to and in the absence of the agreement, they undertook any projects, investments or plans with a view to entering the other party's product market, but in which each party, for the purposes of that agreement, makes its commercial networks, sales teams and know-how available to the other party in order to promote, secure and grow the other party's customer base and business?

([1]) OJ 2010 L 102, p. 1.

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 5 July 2021 — Instituto do Cinema e do Audiovisual, I.P. v NOWO Communications, S.A.

(Case C-411/21)

(2021/C 452/03)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Instituto do Cinema e do Audiovisual, I.P.

Respondent: NOWO Communications, S.A.

Questions referred

1. Is Article 10(2) of Lei n.º 55/2012, de 6 de setembro (Law No 55/2012 of 6 September 2012), if interpreted as meaning that the fee for which it provides is to be used exclusively to finance the promotion and dissemination of Portuguese film and audiovisual works, liable to give rise to indirect discrimination against the provision of services between Member States as compared with the corresponding national provision of services, inasmuch as it makes the provision of services between Member States more difficult than the purely domestic provision of services within a Member State, thus infringing Article 56 TFEU?

2. Might the answer to be given to the first question referred be altered by the fact that other Member States of the European Union operate schemes which are identical or similar to that provided for in Law No 55/2012?

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 14 July 2021 — LD v ALB FILS KLINIKEN GmbH

(Case C-427/21)

(2021/C 452/04)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: LD

Defendant: ALB FILS KLINIKEN GmbH

Questions referred

1. Does Article 1(1) and (2) of Directive 2008/104/EC [1] apply if — as specified in Paragraph 4(3) of the Tarifvertrag für den Öffentlichen Dienst (collective agreement for the public service, 'the TVöD') — an employee's duties are assigned to a third party and this employee must, at the request of his or her current employer while the existing employment relationship with the latter continues, perform his or her contractually agreed work for said third party on a permanent basis and accept technical and organisational instructions from the third party?

2. If Question 1 is answered in the affirmative:

   Is it consistent with the protective purpose of Directive 2008/104 to exclude 'supply of staff' within the meaning of Paragraph 4(3) of the TVöD from the scope of the national protective provisions for personnel leasing, as point 2b of Paragraph 1(3) of the Gesetz zur Regelung der Arbeitnehmerüberlassung (Law on personnel leasing, 'the AÜG') does, meaning that these protective provisions are not applicable to cases involving supply of staff?

[1] Directive of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

Action brought on 15 July 2021 — European Commission v Republic of Poland

(Case C-432/21)

(2021/C 452/05)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: C. Hermes, G. Gattinara and D. Milanowska, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— declare that the Republic of Poland has failed to fulfil its obligations:

  — under Article 6(1) and (2), Article 12(1)(a) to (d), Article 13(1)(a) and Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, [1] as well as Article 4(1), Article 5(a), (b) and (d) and Article 9(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, [2] since it has introduced into the national system provisions according to which forest management based on good practice does not infringe any provisions relating to the conservation of nature under the Birds Directive and the Habitats Directive;

and

— under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with the second subparagraph of Article 19(1) of the Treaty on European Union, Article 216(2) of the Treaty on the Functioning of the European Union, and Article 47 of the Charter of Fundamental Rights of the European Union, as well as Article 6(1)(b) and Article 9(2) of the Aarhus Convention of 25 June 1998 in respect of access to information concerning the environment, since it has ruled out the possibility of environmental organisations challenging forest management plans before a court;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

According to the Commission, Poland has failed to fulfil its obligations arising from the provisions of Council Directive 92/43/EEC ('the Habitats Directive'), European Parliament and Council Directive 2009/147/EC ('the Birds Directive'), and the Aarhus Convention.

In its first plea in law, the Commission submits that the introduction, in 2016, of the provision Article 14b(3) to the ustawa o lasach (Law on Forests) of 1991, according to which forest management based on good practice requirements does not infringe any provisions concerning the conservation of nature, amounts to incorrect transposition of those directives, since that provision disregards the obligation to establish rigorous systems for the protection of animal species and the obligation to conserve wild birds laid down therein. That new wording of the provision Article 14b(3) of the Law on Forests introduces a significant derogation from the provisions of those directives and creates no more than a legal illusion of compatibility with the obligations to protect species of wildlife laid down in Articles 12 and 13 of the Habitats Directive and Articles 5 and 9 of the Birds Directive. Furthermore, Article 6(1) of the Habitats Directive and Article 4(1) of the Birds Directive require the adoption of conservation measures for specific areas. The application of Article 14b(3) of the Law on Forests means that it is no longer necessary to adopt and implement conservation measures in Poland in relation to those specific areas.

In its second plea in law, the Commission submits that there is no guaranteed possibility for environmental organisations to challenge the decisions of the Minister for the Environment whereby forest management plans are approved, which is incompatible with the provisions of the Aarhus Convention. Article 6(3) of the Habitats Directive, read in conjunction with Article 9(2) of the Aarhus Convention, requires that decisions concerning plans and projects within the meaning of Article 6(3) of the Habitats Directive be capable of being challenged by environmental organisations before a court.

(1) OJ 1992 L 206, p. 7.
(2) OJ 2010 L 20, p. 7.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 15 July 2021 — flightright GmbH v American Airlines, Inc.

(Case C-436/21)

(2021/C 452/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant on a point of law: flightright GmbH

Defendant and respondent in the appeal on a point of law: American Airlines, Inc.

Questions referred

1. If a travel agency combines connecting flights from different air carriers into one transport operation, charges the passenger an overall price and issues a single electronic ticket for the journey, do these qualify as direct connecting flights within the meaning of Article 2(h) of the Regulation, or does there also need to be a specific legal relationship between the operating air carriers? (1)

2. If there needs to be a specific legal relationship between the operating air carriers:

   Is it sufficient if two successive connecting flights, to be operated by the same air carrier, are combined in a reservation of the kind described in Question 1?

3. If Question 2 is answered in the affirmative:

   Are Article 2 of the Agreement and the reference to Regulation (EC) No 261/2004 [2] in the Annex to Decision No 1/2006 of the Community/Switzerland Air Transport Committee of [18 October 2006] [3] (OJ 2006 L 298, p. 23) to be interpreted as meaning that the Regulation also applies to passengers boarding a flight to a third country at an airport in Switzerland?

[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).

[2] OJ 2002 L 114, p. 73.

[3] Decision No 1/2006 of the Community/Switzerland Air Transport Committee of 18 October 2006 amending the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport (OJ 2006 L 298, p. 23).

Request for a preliminary ruling from the Curtea de Apel Pitești (Romania) lodged on 19 July 2021 — SC Avicarvil Farms SRL v Ministerul Agriculturii și Dezvoltării Rurale, Agenția pentru Finanțarea Investițiilor Rurale, Agenția de Plăti și Intervenție în Agricultură, Agenția de Plăți și Intervenție în Agricultură — Centrul Județean Vâlcea

(Case C-443/21)

(2021/C 452/07)

Language of the case: Romanian

Referring court

Curtea de Apel Pitești

Parties to the main proceedings

Applicant: SC Avicarvil Farms SRL

Defendants: Ministerul Agriculturii și Dezvoltării Rurale, Agenția pentru Finanțarea Investițiilor Rurale, Agenția de Plăti și Intervenție în Agricultură, Agenția de Plăți și Intervenție în Agricultură — Centrul Județean Vâlcea

Question referred

Does Article 143 of Regulation No 1303/2013, [1] in conjunction with Article 310 TFEU (principle of sound financial management) and Article 40(3) of Regulation (EC) No 1698/2005 [2] [reproduced in Article 33(3) of Regulation (EU) No 1305/2013 [3]], together with the principles of the protection of legitimate expectations and of legal certainty, preclude an administrative practice of the national authorities involved in the implementation of a non-repayable financial support measure which, as a result of a calculation error found by the European Court of Auditors, have issued acts ordering a reduction in the amount of the financial support granted in the PNSR, approved by European Commission Decision C(2012) 3529 of 25 May 2012, before the adoption of a new European Commission decision excluding from financing amounts exceeding the additional costs and income foregone resulting from the commitments made, as a result of those calculation errors?

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

[2] Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).

[3] Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487).

Request for a preliminary ruling from the Tribunal Judicial da Comarca do Porto — Juízo Central Cível (Portugal) lodged on 21 July 2021 — Portugália — Administração de Patrimónios, SGPS, S.A. v Banco BPI

(Case C-448/21)

(2021/C 452/08)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca do Porto — Juízo Central Cível

Parties to the main proceedings

Applicant: Portugália — Administração de Patrimónios, SGPS, S.A.

Defendant: Banco BPI

Questions referred

For the purposes of Directive (EU) 2015/2366 ([1]) of the European Parliament and of the Council of 25 November 2015 ('the Directive'):

I. Does the execution, involving human intervention on the part of the payment service provider, of a payment order which is set down on paper, scanned and sent to the payment service provider by email from an email account created by the user, constitute a 'payment transaction' for the purposes of Article 73(1) of the Directive?

II. Must Article 73(1) of the Directive be interpreted as meaning that:

II.I. Without prejudice to the provisions of Article 71 or to duly notified reasonable suspicion of fraud, is a mere notification that a payment transaction was not authorised, without any supporting evidence, sufficient to give rise to an obligation (on the part of the payment service provider) to provide a refund (to the payer)?

II.II. If the answer to the preceding question is in the affirmative, is it possible to exclude the rule that a mere notification by the payer is sufficient by disapplying the rules on the burden of proof contained in Article 72 of the Directive by agreement between the parties (payer and service provider), as permitted by Article 61(1) of the Directive?

II.III. If the answer to the preceding question is in the affirmative, is the payment service provider under an obligation to reimburse the payer immediately only if the latter demonstrates that the transaction was not authorised in a situation where, following the exclusion of the application of Article 72 of the Directive, the applicable legislative or contractual rules require the payer to provide such evidence?

III. Does Article 61(1) of the Directive not only permit the disapplication of the provisions in Article 74 of the Directive but also, by agreement between the user (who is not a consumer) and the payment service provider, permit the rules that have been excluded to be replaced by ones that place a greater burden of liability on the payer, in particular as an exception to the provisions of Article 73 of the Directive?

([1]) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35).

Request for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 21 July 2021 — Towercast v Autorité de la concurrence, Ministère de l'Économie

(Case C-449/21)

(2021/C 452/09)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Towercast

Defendants: Autorité de la concurrence, Ministère de l'Économie

Question referred

Is Article 21(1) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]) to be interpreted as precluding a national competition authority from regarding a concentration which has no Community dimension within the meaning of Article 1 of that regulation, is below the thresholds for mandatory *ex ante* assessment laid down in national law, and has not been referred to the European Commission under Article 22 of Regulation No 139/2004, as constituting an abuse of a dominant position prohibited by Article 102 TFEU, in the light of the structure of competition on a market which is national in scope?

([1]) OJ 2004 L 24, p. 1.

Request for a preliminary ruling from the Tribunalul Olt (Romania) lodged on 23 July 2021 — OZ v Lyoness Europe AG

(Case C-455/21)

(2021/C 452/10)

Language of the case: Romanian

Referring court

Tribunalul Olt

Parties to the main proceedings

Appellant: OZ

Respondent: Lyoness Europe AG

Questions referred

1. Must Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) be interpreted as meaning that a natural person, who is a mechanical engineer specialising in hydraulic and pneumatic machinery (who does not engage in trade as an occupation and in particular in the purchase of goods and services for resale and/or in intermediation activities) and who concludes with a commercial company (a seller or supplier) a pre-formulated standard contract under which that natural person is entitled to participate in a shopping community set up by that company in the form of the Lyoness system (a system which promises economic returns in the form of refunds on purchases, commission and other promotional benefits), to purchase goods and services from traders who have a contractual relationship with that company (called 'Lyoness business partners'), and to act as an intermediary with other persons within the Lyoness system (known as 'potential loyalty customers'), be regarded as a 'consumer' within the meaning of that provision, notwithstanding the contractual term which provides that Swiss law alone is to apply to the contractual relationship between Lyoness and the customer, irrespective of the customer's place of domicile, in order to ensure effective consumer protection?

2. Must Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a person who has concluded with a seller or supplier a contract having a dual purpose, namely [where] the contract is concluded for purposes which partly fall within the scope of the trade, business or profession of that person and partly outside, and the trade, business or professional purpose of that natural person is not predominant in the overall context of the contract, can be regarded as a 'consumer' within the meaning of that provision?

3. If the answer to the previous question is in the affirmative, what are the main criteria to be applied in determining whether or not the trade, business or professional purpose of that natural person is predominant in the overall context of the contract?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Appeal brought on 22 July 2021 by the European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 12 May 2021 in Joined Cases T-816/17 and T-318/18, Luxembourg and Amazon v Commission

(Case C-457/21 P)

(2021/C 452/11)

Languages of the case: English and French

Parties

Appellant: European Commission (represented by: P.-J. Loewenthal, F. Tomat, Agents)

Other parties to the proceedings: Grand Duchy of Luxembourg, Amazon.com, Inc., Amazon EU Sàrl, Ireland

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber, Extended Composition) of 12 May 2021 in Joined Cases T-816/17 and T-318/18, Luxembourg and Others v. Commission;

— reject the first plea in Case T-816/17 and the second, fourth, fifth and eighth pleas in Case T-318/18;

— refer the case back to the General Court for reconsideration of the pleas not already assessed;

— alternatively, make use of its power under the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union to give final judgment in the matter; and

— reserve the costs of the present proceedings, if it refers the case back to the General Court, or order Luxembourg, Amazon EU S.à.r.l, and Amazon.com, Inc. to pay the costs of the proceedings, if it gives final judgment in the matter.

Pleas in law and main arguments

The Commission puts forward two grounds of appeal against the judgment.

First ground of appeal: the General Court, in rejecting the Decision's (1) primary finding of advantage, infringed Article 107(1) TFEU, failed to state reasons, breached procedural rules and distorted the Decision. This ground of appeal is divided into two parts:

— First part: In paragraphs 162 to 251 of the judgment, the General Court erred in rejecting the Decision's functional analysis of Amazon Europe Technologies SCS ('LuxSCS') and its selection of LuxSCS as the tested party on the basis that LuxSCS held legal ownership of the Intangibles, made them available to Amazon EU S.à.r.l ('LuxOpCo'), and participated financially in their development. In so doing, it misinterpreted and misapplied the arm's length principle, which constitutes an infringement of Article 107(1) TFEU in relation to the condition of advantage, and failed to state reasons, due to contradictory and inadequate reasoning. The General Court also improperly invoked arguments on its own motion to reject the Decision's selection of LuxSCS as the tested party on the basis that there were no comparable independent companies with which to apply the transactional net margin method ('TNMM') to LuxSCS. In so doing, the General Court exceeded its competence of judicial review, which constitutes a breach of procedure and a breach of the Commission's rights of defence, and distorted the Decision.

— Second part: In paragraphs 257 to 295 of the judgment, the General Court erred in rejecting the Decision's calculation of the arm's length royalty due by LuxOpCo to LuxSCS on the basis that LuxSCS, as tested party, should have been entitled to the market value of the intangibles assets under licence and that LuxSCS did not perform low-value adding services. In so doing, the General Court misinterpreted and misapplied the ALP, breached procedural rules, distorted the Decision, and failed in its duty to state reasons.

Second ground of appeal: the General Court, in rejecting the Decision's first subsidiary finding of advantage, erred in the standard of proof for a finding of advantage, infringed Article 107(1) TFEU, failed to state reasons, and breached procedural rules. This ground of appeal is divided into three parts:

— First part: While the General Court endorsed the correct standard of proof for a finding of advantage in paragraphs 310 and 513 of the judgment, it actually applied a different, stricter standard to reject the Decision's first subsidiary finding of advantage in paragraphs 503 to 538 of the judgment. In so doing, the General Court erred in the standard of proof for a finding of advantage and failed to state reasons due to contradictory reasoning.

— Second part: In paragraphs 314 to 442 of the judgment, the General Court erroneously invoked functions performed by U.S.-based Amazon Group entities in support of its conclusion that the Commission exaggerated the complexity of functions performed by LuxOpCo in relation to the intangible assets under licence. It also failed to provide reasons why it considered the functions performed by LuxOpCo in relation to the Amazon brand and in relation to Amazon's European retail and service business not to be unique. In so doing, the General Court misinterpreted and misapplied the ALP, which constitutes an infringement of Article 107(1) TFEU in relation to the condition of advantage, and failed to state reasons due to inadequate reasoning.

— Third part: In paragraphs 499 to 537 of the judgment, the General Court improperly invoked arguments on its own motion to reject the Decision's first subsidiary finding of advantage on the basis that the Commission's reliance on the profit split method with a contribution analysis does not demonstrate that the tax ruling necessarily leads to an advantage. In so doing, the General Court exceeded its competence of judicial review, which constitutes a breach of procedure and a breach of the Commission's rights of defence.

(1) Commission Decision (EU) 2018/859 of 4 October 2017 on State aid SA.38944 (2014/C) (ex 2014/NN) implemented by Luxembourg to Amazon (OJ 2018, L 153, p. 1; 'the Decision').

Request for a preliminary ruling from the Tribunalul Prahova (Romania) lodged on 27 July 2021 — SC Cartrans Preda SRL v Direcția Generală Regională a Finanțelor Publice Ploiești — Administrația Județeană a Finanțelor Publice Prahova

(Case C-461/21)

(2021/C 452/12)

Language of the case: Romanian

Referring court

Tribunalul Prahova

Parties to the main proceedings

Applicant: SC Cartrans Preda SRL

Defendant: Direcția Generală Regională a Finanțelor Publice Ploiești — Administrația Județeană a Finanțelor Publice Prahova

Questions referred

1. For the purposes of granting a VAT exemption for transport operations and services relating to the importation of goods, in accordance with Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) are the provisions of Article 86(1)(b) and (2) to be interpreted as meaning that the recording of an import operation (for example, the raising of an entry summary declaration by the customs authority by means of the allocation of a number referred to as the MRN or Master Reference Number) always entails the inclusion, in the basis of calculation of the customs value, of the transport costs up to the first place of destination of the goods in the territory of the Member State of importation. Does the existence of an MRN, in relation to which there is no valid evidence of fraud, implicitly substantiate the fact that all the expenses provided for in Article 86(1)(a) and (b) have been included in the customs taxable basis?

2. Do the provisions of Articles 144 and 86(1)(b) and (2) of Directive [2006/112] preclude the Member State's taxation practice by which the VAT exemption for transport services relating to the importation of goods into the [European Union] is refused on the ground that no strictly formal proof of the inclusion of transport costs in the customs value has been provided, even where, first, other relevant documents accompanying the import — the summary declaration and the CMR consignment note showing delivery to the recipient — have been produced and, second, there is no evidence to cast doubt on the authenticity and reliability of the summary declaration or CMR consignment note?

3. With reference to the provisions of Article 57 TFEU, does the recovery of VAT and excise duties from the tax authorities of more than one Member State constitute an intra-Community supply of services or the activity of a general commission agent acting as an intermediary in a commercial transaction?

4. Is Article 56 TFEU to be interpreted as meaning that there is a restriction on the free movement of services where the recipient of a service supplied by a service provider established in a different Member State is required, under the legislation of the Member State in which the recipient is established, to withhold tax on the remuneration due for the service supplied, while there is no such requirement where the same service is provided under a contract with a service provider established in the same Member State as that in which the recipient is established?

5. Is the tax treatment in the State in which the payer of the income is resident a factor which renders the freedom to provide services less attractive or more difficult where, in order to avoid the levying of a 4 % withholding tax, the resident must confine itself to cooperation in the recovery of VAT and excise duties with entities which are also resident, to the exclusion of entities established in other Member States?

6. Can the fact that a tax of 4 % (or 16 % in some cases) of the gross amount is levied on the income received by a non-resident, while the corporation tax for a service provider resident in the same Member State is (if it makes a profit) levied at the rate of 16 % of the net amount, also be regarded as an infringement of Article 56 TFEU, since it constitutes another factor which renders the freedom of non-residents to provide the services in question less attractive or more difficult?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Appeal brought on 13 August 2021 by Harry Shindler and Others against the order of the General Court (Tenth Chamber, Extended Composition) made on 8 June 2021 in Case T-198/20, *Shindler and Others* v *Council*

(Case C-501/21 P)

(2021/C 452/13)

Language of the case: French

Parties

Appellants: Harry Shindler and Others (represented by: J. Fouchet, avocat)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellants claim that the Court should

Principally:

— set aside the order of 8 June 2021 (T-198/20);

— annul in full 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, and 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 and its annexes.

In the alternative:

— set aside the order of 8 June 2021 (T-198/20);

— annul in part 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, and the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, in so far as those acts, automatically and generally, without any test of proportionality, distinguish between European Union citizens and United Kingdom citizens from 1 February 2020, and thus annul in particular the sixth paragraph of the preamble and Articles 9, 10 and 127 of the withdrawal agreement;

— order the European Union to pay all of the costs of the proceedings, including legal fees of EUR 5 000.

Grounds of appeal and main arguments

A. Procedural irregularity in the order under appeal

The General Court infringed Article 130 of its Rules of Procedure in that it prescribed only one time limit, namely that given to the Council to submit its defence on the merits. It did not prescribe any time limit for the appellants, who had to wait for 'new time limits for further steps in the proceedings' before making observations on the plea of inadmissibility and on the merits.

Furthermore, the General Court decided not to make the defence on the merits available to the appellants, making it impossible for them to know when they had to submit their observations on admissibility.

Lastly, the General Court dismissed the application as inadmissible without a hearing and without ruling on two requests, namely for suspension of the proceedings and for reference of the file in the case to the Court of Justice, which, however, had a bearing on the further steps in the proceedings.

B. Infringement of EU law in relation to the admissibility of the application

(i) With regard to the requirement that decisions which form the subject matter of a direct action must be regulatory acts not entailing implementing measures

In the first place, the General Court found, wrongly, and without providing any explanation, that the withdrawal agreement was an international act, even though, in terms of its object and effects, that agreement remains part of internal EU law since it governs the future relations between the European Union and one of its Member States on the basis of the internal law established by the European Union over the course of more than 50 years (in the United Kingdom's case), continuing to make that law applicable.

Moreover, Article 4(4) and (5) of the withdrawal agreement limits the judicial sovereignty of the United Kingdom in order to allow a single judicial interpretation of the agreement by the Court of Justice of the European Union. Such a provision is not characteristic of an international agreement.

In the second place, were the Court of Justice also to take the view that the withdrawal agreement is an international act, the General Court failed to take account of Article 275 TFEU, under which the jurisdiction of the Court of Justice is excluded only for certain acts with respect to 'the provisions relating to the common foreign and security policy'. The General Court thus erroneously joined Articles 263 and 275 TFEU, which have as a consequence that the Court of Justice has jurisdiction over all regulatory acts which do not entail implementing measures, apart from acts adopted on the basis of the provisions relating to the common foreign and security policy. However, in the light of Articles 23 and 26 of the Treaty on European Union, the withdrawal agreement does not fall under the common foreign and security policy, whether in terms of its content or its procedures.

In the third place, the arguments accepted by the General Court imply in essence that the Court of Justice should refrain from exercising a power of review of the rule of law in respect of an international agreement. However, such a position is not acceptable, whether in political or in legal terms, because it means that the Council may, without being scrutinised, call into question the very application of the Treaties and the values which they establish.

In the fourth place, the Council and France are of the opinion that the withdrawal agreement automatically removes the appellants' EU citizenship, which means that, from that point of view, it has no need of any implementing measure in order to bring about its effects, bearing in mind that, contrary to the view of the General Court, the appellants' action should not be reduced solely to the question of their right to vote.

(ii) As regards the criterion of individual concern

In the first place, the General Court erred in law by failing to take account of the specifics of Ms G.'s situation as one of the 800 elected representatives in France, a limited class, who were unable to stand in France's 2020 municipal elections.

In the second place, the General Court committed a serious error in its analysis by stating that the decision to sign the withdrawal agreement affects the appellants 'by reason of their objective status as United Kingdom nationals', whereas the appellants contest the withdrawal agreement as British citizens living on the territory of the European Union, having regard to the effects of the withdrawal agreement on their situation.

In the third place, the General Court bases its decision solely on the fact that the appellants cannot vote in municipal elections, even though that is only one of the consequences of which the appellants complain.

Appeal brought on 13 August 2021 by David Price against the order of the General Court (Tenth Chamber, Extended Composition) delivered on 8 June 2021 in Case T-231/20, Price v Council

(Case C-502/21 P)

(2021/C 452/14)

Language of the case: French

Parties

Appellant: David Price (represented by: J. Fouchet, avocat)

Other party to the proceedings: Council of the European Union

Form of order sought

Principally:

— Annul the order of 8 June 2021 (T-231/20);

— Annul, in whole, 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 and 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 and its annexes, with variation, if necessary, of the retroactive effect of that annulment.

Alternatively:

— Annul the order of 8 June 2021 (T-231/20);

— Annul, in part, 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 and the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, in so far as those acts distinguish systematically and indiscriminately, without any review of proportionality, citizens of the European Union from nationals of the United Kingdom from 1 February 2020, and thus annul, inter alia, the sixth paragraph of the preamble and Articles 9, 10 and 127 of the withdrawal agreement;

— Order the European Union to pay all the costs of the proceedings, including legal fees in the amount of EUR 5 000.

Grounds of appeal and main arguments

A. Procedural irregularity of the order under appeal

The General Court infringed Article 130 of its Rules of Procedure, in so far as it only started one period running, that allowing the Council to present its defence on the substance. It did not grant any period to the appellant, who had to wait for 'new time limits for further steps in the proceedings' before expressing his views on both the objection of inadmissibility and the substance.

Furthermore, the Court decided not to communicate to the appellant the defence on the substance, making it impossible for him to know when he should express his views on admissibility.

Lastly, the General Court dismissed the application as inadmissible without a hearing and without ruling on two requests, for a stay of proceedings and for the file to be sent to the Court of Justice, which had a bearing on further steps in the proceedings.

B. Infringement of EU law as regards the admissibility of the application

(i) In the light of the criterion requiring that the decisions which are the subject of direct actions be regulatory acts which do not entail implementing measures

In the first place, the General Court wrongly, and without explanation, held that the withdrawal agreement was an international act although, by its subject matter and effects, that agreement still comes within the scope of the internal law of the European Union, since it governs the future relationship between the European Union and one of its Member States, on the basis of the internal law established by the European Union for more than fifty years (as far as the United Kingdom is concerned) and continues to render it applicable.

Furthermore, Article 4 of the withdrawal agreement, in its paragraphs 4 and 5, limits the judicial sovereignty of the United Kingdom in order to allow for a uniform interpretation of the case-law on the withdrawal agreement by the Court of Justice of the European Union. Such a provision is not typical of an international agreement.

In the second place, assuming that the Court of Justice also considers the withdrawal agreement to be an international act, the General Court failed to take account of Article 275 TFEU, which precludes the jurisdiction of the Court of Justice only in respect of certain acts concerning 'the provisions relating to the common foreign and security policy'. The General Court therefore incorrectly combined Articles 263 and 275 TFEU, which imply that the Court of Justice has jurisdiction over any regulatory acts which do not entail implementing measures, with the exception of acts adopted on the basis of the provisions relating to the common foreign and security policy. In the light of Articles 23 and 26 of the Treaty on European Union, the withdrawal agreement does not come, as regards either its content or its procedure, within the scope of the common foreign and security policy.

In the third place, the arguments accepted by the General Court imply, in essence, that the Court of Justice should refrain from exercising a review of the rule of law of an international agreement. Such a position is neither politically nor legally acceptable, as it means that the Council can, without any review, call into question the actual application of the Treaties and the values which they establish.

In the fourth place, the Council and France take the view that the withdrawal agreement automatically revokes the appellant's EU citizenship, which means that it does not, from that point of view, need any implementing measure to produce its effects, it being borne in mind that the action must not, contrary to the view of the General Court, be reduced to the sole question of the appellant's voting rights.

(ii) In the light of the criterion of individual concern

In the first place, at the time he lodged his application, the appellant was part of a small minority of Britons who should have been granted the right to vote in the second round of the municipal elections.

In the second place, the General Court made a serious error of analysis in stating that the decision to sign the withdrawal agreement affects the appellant 'by reason of his objective status as a national of the United Kingdom', although the appellant challenges the withdrawal agreement as a British citizen residing in the European Union, having regard to the effects of the withdrawal agreement on his position.

In the third place, the General Court relies only on the appellant's inability to vote in the municipal elections, although that consequence is only one of those complained of by the appellant.

C. The error of law as regards the refusal to refer a case from the General Court to the Court of Justice pursuant to Article 256(3) TFEU

Article 256(3) TFEU, read independently of the other paragraphs, allows for a dialogue between the EU Courts. Where a case is likely to affect the unity or consistency of EU law, contrary to what the General Court stated, the latter may refer a case to the Court of Justice.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 31 August 2021 — ANAS SpA v Ministero delle Infrastrutture e dei Trasporti

(Case C-545/21)

(2021/C 452/15)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: ANAS SpA

Defendant: Ministero delle Infrastrutture e dei Trasporti

Questions referred

1. Must Article 70(1)(b) of Council Regulation (EC) No 1083/2006, ([1]) Article 27(c) of Commission Regulation (EC) No 1828/2006, ([2]) Article 1 of the PFI Convention referred to in the Council Act of 26 July 1995, Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 ([3]) and Article (3)(2)(b) of Directive (EU) 2017/1371 ([4]) be interpreted as meaning that conduct which is likely, in the abstract, to favour an economic operator during a contract award procedure is always categorised as an 'irregularity' or as 'fraud', thus constituting a legal basis for the recovery of the aid, even when there is no complete proof that such conduct has actually taken place, or there is no complete proof that it was decisive in the selection of the beneficiary?

2. Does Article 45(2)(d) of Directive 2004/18/EC ([5]) preclude a legal provision such as Article 38(1)(f) of Legislative Decree No 163/2006, which does not allow the exclusion from a tender of an economic operator who has attempted to influence the decision-making process of the contracting authority, particularly when the attempt consisted of bribing certain members of the tender evaluation committee?

3. If the answer to one or both of the above questions is in the affirmative, must the rules referred to always be interpreted as requiring the Member State to recover the aid and the Commission to make a 100 % financial correction, despite the fact that the aid was used for its intended purpose, for a project eligible for EU funding and which was actually implemented?

4. If the answer to question 3 is negative, or that no recovery of the aid or 100 % financial correction is necessary, do the provisions referred to in question 1, and compliance with the principle of proportionality, make it possible to establish the recovery of the aid and the financial correction taking into account the financial damage actually caused to the general budget of the European Union? More specifically, in a situation such as the one at issue in these proceedings, can the 'financial implications', within the meaning of Article 98(3) of Regulation (EC) No 1083/2006, be established on a flat-rate basis, by applying the criteria set out in the table under paragraph 2 of Commission Decision No 9527 of 19 December 2013? ([6])

([1]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

([2]) Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (OJ 2006 L 371, p. 1).

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

([4]) Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29).

([5]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

([6]) Commission Decision of 19 December 2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.

GENERAL COURT

Judgment of the General Court of 15 September 2021 — ADR Center v Commission

(Case T-364/15) ([1])

(Financial aid — General Programme 'Fundamental Rights and Justice' for the period 2007-2013 — Specific Programme 'Civil Justice' — Action for annulment — Enforceable decision — Grant agreements — Recovery of part of the financial contribution paid — Action for a declaratory judgment — Arbitration clause — Force majeure — Eligible costs — Proportionality — Obligation to state reasons)

(2021/C 452/16)

Language of the case: English

Parties

Applicant: ADR Center Srl (Rome, Italy) (represented by: A. Guillerme and T. Bontinck, lawyers)

Defendant: European Commission (represented by: J. Estrada de Solà and M. Ilkova, acting as Agents)

Re:

Application seeking, first, annulment, under Article 263 TFEU, of Commission Decision C(2015) 3117 final of 4 May 2015 relating to the recovery of part of the financial contribution paid to the applicant pursuant to two grant agreements concluded under the Specific Programme 'Civil Justice' and, second, a declaration that the costs which the Commission declared ineligible in that decision are eligible.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ADR Center Srl to pay the costs in the main proceedings and in the proceedings for interim measures.

([1]) OJ C 302, 14.9.2015.

Judgment of the General Court of 15 September 2021 — Laboratoire Pareva and Biotech3D v Commission

(Joined Cases T-337/18 and T-347/18) ([1])

(Biocidal products — Active substance PHMB (1415; 4.7) — Refusal of approval for product-types 1, 5 and 6 — Conditional approval for product-types 2 and 4 — Risks to human health and the environment — Regulation (EU) No 528/2012 — Article 6(7)(a) and (b) of Delegated Regulation (EU) No 1062/2014 — Harmonised classification of the active substance under Regulation (EC) No 1272/2008 — Prior consultation of the ECHA — Manifest error of assessment — Read-across — Right to be heard)

(2021/C 452/17)

Language of the case: English

Parties

Applicant in cases T-337/18 and T-347/18: Laboratoire Pareva (Saint-Martin-de-Crau, France) (represented by: K. Van Maldegem, S. Englebert, P. Sellar and M. Grunchard, lawyers)

Applicant in case T-347/18: Biotech3D Ltd & Co. KG (Gampern, Austria) (represented by: K. Van Maldegem, S. Englebert, P. Sellar and M. Grunchard, lawyers)

Defendant: European Commission (represented by: R. Lindenthal and K. Mifsud-Bonnici, acting as Agents)

Interveners in support of the defendant: French Republic (represented by: A.-L. Desjonquères, J. Traband, E. Leclerc and W. Zemamta, acting as Agents), European Chemicals Agency (ECHA) (represented by: M. Heikkilä, C. Buchanan and T. Zbihlej, acting as Agents)

Re:

Applications pursuant to Article 263 TFEU seeking annulment of, in Case T 337/18, Commission Implementing Decision (EU) 2018/619 of 20 April 2018 not approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 1, 5 and 6 (OJ 2018 L 102, p. 21), and, in Case T 347/18, Commission Implementing Regulation (EU) 2018/613 of 20 April 2018 approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 2 and 4 (OJ 2018 L 102, p. 1).

Operative part of the judgment

The Court:

1. Joins Cases T-337/18 and T-347/18 for the purposes of the present judgment;

2. Dismisses the actions;

3. In Case T-337/18, orders Laboratoire Pareva to bear its own costs and to pay those incurred by the European Commission, including those incurred in the proceedings for interim measures registered under number T-337/18 R and T-337/18 R II;

4. In Case T-347/18, orders Laboratoire Pareva and Biotech3D Ltd & Co. KG to bear their own costs and to pay those incurred by the Commission, including those incurred in the proceedings for interim measures registered under number T-347/18 R, and orders Laboratoire Pareva also to pay the costs incurred in the proceedings for interim measures registered under number T-347/18 R II;

5. Orders the French Republic and the European Chemicals Agency (ECHA) to each bear their own costs.

([1]) OJ C 285, 13.8.2018.

Judgment of the General Court of 15 September 2021 — INC and Consorzio Stabile Sis v Commission

(Case T-24/19) ([1])

(State aid — Italian motorways — Prolongation of concessions for the execution of works — Services of general economic interest — Cap on toll charges — Decision not to raise any objections — Article 106(2) TFEU — Actions brought by competitors of the beneficiary — Abandonment by the Member State of the plan to grant aid — Plan not capable of being implemented as approved — Annulment not procuring any advantage to the applicants — No longer any legal interest in bringing proceedings — No need to adjudicate)

(2021/C 452/18)

Language of the case: English

Parties

Applicants: INC SpA (Turin, Italy), Consorzio Stabile Sis SCpA (Turin) (represented by: H.-G. Kamann, F. Louis and G. Tzifa, lawyers)

Defendant: European Commission (represented by: L. Haasbeek, D. Recchia and S. Noë, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Commission Decision C(2018) 2435 final of 27 April 2018 on State aid granted for the purposes of the Italian motorways investment plan (Cases SA.49335 (2017/N) and SA.49336 (2017/N)).

Operative part of the judgment

The Court:

1. Declares that there is no longer any need to adjudicate on the action brought by INC SpA and by Consorzio Stabile Sis SCpA;

2. Orders the European Commission to bear its own costs and to pay half of the costs incurred by INC and by Consorzio Stabile Sis;

3. Orders INC and Consorzio Stabile Sis to bear half of their own costs.

(1) OJ C 93, 11.3.2019.

Judgment of the General Court of 8 September 2021 — Achema and Achema Gas Trade v Commission

(Case T-193/19) (1)

(State aid — Aid to Litgas for the supply of a minimum quantity of LNG to the LNG terminal at the sea port of Klaipėda — Decision not to raise objections — Safeguarding procedural rights — EU framework for State aid in the form of public service compensation — Service of general economic interest — Compensation for a service of general economic interest — Boil-off costs — Balancing costs — Security of supply — Article 14 of Directive 2004/18/EC — Body of consistent evidence)

(2021/C 452/19)

Language of the case: English

Parties

Applicants: Achema AB (Jonava, Lithuania), Achema Gas Trade UAB (Jonava) (represented by: J. Ruiz Calzado, J. Wileur and N. Solárová, lawyers)

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

Interveners in support of the defendant: Republic of Lithuania (represented by: K. Dieninis and R. Dzikovič, acting as Agents), Ignitis UAB, formerly Lietuvos energijos tiekimas UAB (Vilnius, Lithuania) (represented by: K. Kačerauskas, lawyer)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2018) 7141 final of 31 October 2018 in State aid case SA.44678 (2018/N) — modification of aid for LNG terminal in Lithuania.

Operative part of the judgment

The Court:

1. Annuls Commission Decision C(2018) 7141 final of 31 October 2018 in State aid case SA.44678 (2018/N) relating to modification of aid for LNG terminal in Lithuania, in so far as the Commission decided not to raise objections to the State aid resulting from the 2016 amendments;

2. Dismisses the action as to the remainder;

3. Orders Achema AB, Achema Gas Trade UAB, the European Commission, the Republic of Lithuania and Ignitis UAB to bear their own costs.

(1) OJ C 206, 17.6.2019.

Judgment of the General Court of 15 September 2021 — Daimler v Commission

(Case T-359/19) ([1])

(Environment — Regulation (EC) No 443/2009 — Implementing Regulation (EU) No 725/2011 — Implementing Decision (EU) 2015/158 — Implementing Decision (EU) 2019/583 — Carbon dioxide emissions — Test method — Passenger cars)

(2021/C 452/20)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: N. Wimmer, C. Arhold and G. Ollinger, lawyers)

Defendant: European Commission (represented by: K. Talabér-Ritz and A. Becker, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Implementing Decision (EU) 2019/583 of 3 April 2019 confirming or amending the provisional calculation of the average specific emissions of CO2 and the specific emissions targets for manufacturers of passenger cars for the calendar year 2017 and for certain manufacturers belonging to the Volkswagen pool for the calendar years 2014, 2015 and 2016 pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council (OJ 2019 L 100, p. 66), in so far as it excludes, as regards the applicant, the average specific emissions of CO2 through CO2 savings attributed to eco-innovations.

Operative part of the judgment

The Court:

1. Annuls Article 1(1), read in conjunction with Annex I, Tables 1 and 2, columns D and I, of Commission Implementing Decision (EU) 2019/583 of 3 April 2019 confirming or amending the provisional calculation of the average specific emissions of CO2 and the specific emissions targets for manufacturers of passenger cars for the calendar year 2017 and for certain manufacturers belonging to the Volkswagen pool for the calendar years 2014, 2015 and 2016 pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council, in so far as it specifies, in relation to Daimler AG, the average specific emissions of CO2 through CO2 savings achieved through eco-innovations;

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

([1]) OJ C 263, 5.8.2019.

Judgment of the General Court of 15 September 2021 — Ghaoud v Council

(Case T-700/19) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Libya — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Restrictions on entry into and transit through the territory of the European Union — List of persons subject to restrictions on entry into and transit through the territory of the European Union — Retention of the applicant's name on the lists — Obligation to state reasons — Error of assessment — Death of the applicant)

(2021/C 452/21)

Language of the case: English

Parties

Applicant: Tareg Ghaoud, as heir of Abdel Majid Al-Gaoud (Dubai, United Arab Emirates) (represented by: S. Bafadhel, Barrister)

Defendant: Council of the European Union (represented by: P. Mahnič and V. Piessevaux, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment (i) of Council Implementing Decision (CFSP) 2019/1299 of 31 July 2019 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya (OJ 2019 L 204, p. 44), and of Council Implementing Decision (CFSP) 2020/1137 of 30 July 2020 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya (OJ 2020 L 247, p. 40), in so far as they maintain the name of Mr Abdel Majid Al-Gaoud on the lists in Annexes II and IV to Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP (OJ 2015 L 206, p. 34), and (ii) of Council Implementing Regulation (EU) 2019/1292 of 31 July 2019 implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya (OJ 2019 L 204, p. 1), and of Council Implementing Regulation (EU) 2020/1130 of 30 July 2020 implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya (OJ 2020 L 247, p. 14), in so far as they maintain the name of Mr Abdel Majid Al-Gaoud on the list in Annex III to Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 (OJ 2016 L 12, p. 1).

Operative part of the judgment

The Court:

1. Annuls Council Implementing Decision (CFSP) 2019/1299 of 31 July 2019 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya, and Council Implementing Decision (CFSP) 2020/1137 of 30 July 2020 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya, in so far as they maintain the name of Mr Abdel Majid Al-Gaoud on the lists in Annexes II and IV to Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya and repealing Decision 2011/137/CFSP;

2. Annuls Council Implementing Regulation (EU) 2019/1292 of 31 July 2019 implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya, and Council Implementing Regulation (EU) 2020/1130 of 30 July 2020 implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya, in so far as they maintain the name of Mr Abdel Majid Al-Gaoud on the list in Annex III to Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011;

3. Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Tareg Ghaoud, as heir of Mr Abdel Majid Al-Gaoud.

([1]) OJ C 406, 2.12.2019.

Judgment of the General Court of 15 September 2021 — Ashworth and Others v Parliament

(Joined Cases T-720/19 to T-725/19) ([1])

(Law governing the institutions — Rules governing the payment of expenses and allowances to Members of the Parliament — Amendment of the additional voluntary pension scheme — Notice fixing additional voluntary pension rights — Plea of illegality — Competence of the Bureau of the Parliament — Rights acquired or in the process of being acquired — Proportionality — Equal treatment — Legal certainty)

(2021/C 452/22)

Language of the case: French

Parties

Applicants: Richard Ashworth (Lingfield, United Kingdom) and the five other applicants whose names are listed in the annex to the judgment (represented by: A. Schmitt and A. Grosjean, lawyers)

Defendant: European Parliament (represented by: N. Görlitz, M. Ecker and S. Seyr, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Parliament's decisions contained in the notices fixing the applicants' additional voluntary pension rights in so far as they introduce, for pensions established after 1 January 2019, a special levy of 5 % of the nominal amount of the pension, payable directly to the additional voluntary pension fund, pursuant to the decision of the Bureau of the European Parliament of 10 December 2018 amending the Implementing Measures for the Statute for Members of the European Parliament (OJ 2018 C 466, p. 8).

Operative part of the judgment

The Court:

1. Joins Cases T-720/19 to T-725/19 for the purposes of the judgment;

2. Dismisses the actions;

3. Orders Mr Richard Ashworth and the other applicants whose names are listed in the annex to pay the costs.

(1) OJ C 413, 9.12.2019.

Judgment of the General Court of 15 September 2021 — Albéa Services v EUIPO — dm-drogerie markt (ALBÉA)

(Case T-852/19) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark ALBÉA — Earlier international registration designating the European Union — Word mark Balea — Relative ground for refusal — Likelihood of confusion — Distinctiveness of the earlier international registration designating the European Union — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 452/23)

Language of the case: English

Parties

Applicant: Albéa Services (Gennevilliers, France) (represented by: J.-H. de Mitry, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany) (represented by: O. Bludovsky, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 23 September 2019 (Case R 1480/2019-2), relating to opposition proceedings between dm-drogerie markt and Albéa Services.

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 23 September 2019 (Case R 1480/2019-2) to the extent that it annulled the decision of the Opposition Division, except in so far as it annulled the decision of the Opposition Division as regards 'cosmetics' in Class 3;

2. Dismisses the remainder of the action;

3. Orders EUIPO to bear its own costs and to pay those incurred by Albéa Services;

4. Orders dm-drogerie markt GmbH & Co. KG to bear its own costs.

(1) OJ C 68, 2.3.2020.

Judgment of the General Court of 8 September 2021 — Qx World v EUIPO — Mandelay (EDUCTOR)

(Case T-85/20) ([1])

(EU trade mark — Invalidity proceedings — EU word mark EDUCTOR — Earlier non-registered mark EDUCTOR — Article 53(1)(b) of Regulation (EC) No 207/2009 (now Article 60(1)(b) of Regulation (EU) 2017/1001) — Article 8(3) of Regulation No 207/2009 (now Article 8(3) of Regulation 2017/1001) — Article 71(1) of Regulation 2017/1001 — Article 72(1) of Regulation 2017/1001 — Article 95(1) of Regulation 2017/1001 — Article 16(1) of Delegated Regulation (EU) 2018/625 — Article 6bis of the Paris Convention)

(2021/C 452/24)

Language of the case: English

Parties

Applicant: Qx World Kft. (Budapest, Hungary) (represented by: Á. László and A. Cserny, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Mandelay Magyarország Kereskedelmi Kft. (Mandelay Kft.) (Szigetszentmiklós, Hungary) (represented by: V. Luszcz, C. Sár and É. Ulviczki, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 2 December 2019 (Case R 1311/2019-5), relating to invalidity proceedings between Qx World and Mandelay.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 December 2019;

2. Orders Qx World Kft., EUIPO and Mandelay Magyarország Kereskedelmi Kft. (Mandelay Kft.) each to bear their own costs.

([1]) OJ C 114, 6.4.2020.

Judgment of the General Court of 8 September 2021 — Qx World v EUIPO — Mandelay (SCIO)

(Case T-86/20) ([1])

(EU trade mark — Invalidity proceedings — EU word mark SCIO — Earlier non-registered mark SCIO — Article 53(1)(b) of Regulation (EC) No 207/2009 (now Article 60(1)(b) of Regulation (EU) 2017/1001) — Article 8(3) of Regulation No 207/2009 (now Article 8(3) of Regulation 2017/1001) — Article 71(1) of Regulation 2017/1001 — Article 72(1) of Regulation 2017/1001 — Article 95(1) of Regulation 2017/1001 — Article 16(1) of Delegated Regulation (EU) 2018/625 — Article 6bis of the Paris Convention)

(2021/C 452/25)

Language of the case: English

Parties

Applicant: Qx World Kft. (Budapest, Hungary) (represented by: Á. László and A. Cserny, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Mandelay Magyarország Kereskedelmi Kft. (Mandelay Kft.) (Szigetszentmiklós, Hungary) (represented by: V. Luszcz, C. Sár and É. Ulviczki, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 2 December 2019 (Case R 1312/2019-5), relating to invalidity proceedings between Qx World and Mandelay.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 December 2019;

2. Orders Qx World Kft., EUIPO and Mandelay Magyarország Kereskedelmi Kft. (Mandelay Kft.) each to bear their own costs.

(1) OJ C 114, 6.4.2020.

Judgment of the General Court of 15 September 2021 — Kazembe Musonda v Council

(Case T-95/20) (1)

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/26)

Language of the case: French

Parties

Applicant: Jean-Claude Kazembe Musonda (Lubumbashi, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: J.-P. Hix and S. Lejeune, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Jean-Claude Kazembe Musonda to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 — Kande Mumpompa v Council

(Case T-97/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/27)

Language of the case: French

Parties

Applicant: Alex Kande Mumpompa (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: J.-P. Hix and S. Lejeune, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Alex Kande Mupompa to pay the costs.

([1]) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 –Ilunga Luyoyo v Council

(Case T-101/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/28)

Language of the case: French

Parties

Applicant: Ferdinand Ilunga Luyoyo (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: M.-C. Cadilhac and H. Marcos Fraile, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Ferdinand Ilunga Luyoyo to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 –Kampete v Council

(Case T-102/20) (1)

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/29)

Language of the case: French

Parties

Applicant: Ilunga Kampete (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: H. Marcos Fraile and M.-C. Cadilhac, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Ilunga Kampete to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 –Mutondo v Council

(Case T-103/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/30)

Language of the case: French

Parties

Applicant: Kalev Mutondo (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: H. Marcos Fraile and M.-C. Cadilhac, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Kalev Mutondo to pay the costs.

([1]) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 — Ramazani Shadary v Council

(Case T-104/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/31)

Language of the case: French

Parties

Applicant: Emmanuel Ramazani Shadary (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: J.-P Hix and S. Lejeune, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Emmanuel Ramazani Shadary to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 — Ruhorimbere v Council

(Case T-105/20) (1)

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/32)

Language of the case: French

Parties

Applicant: Éric Ruhorimbere (Mbuji-Mayi, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

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

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Éric Ruhorimbere to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 –Amisi Kumba v Council

(Case T-106/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/33)

Language of the case: French

Parties

Applicant: Gabriel Amisi Kumba (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: H. Marcos Fraile and M.-C. Cadilhac, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Gabriel Amisi Kumba to pay the costs.

([1]) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 — Boshab v Council

(Case T-107/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/34)

Language of the case: French

Parties

Applicant: Évariste Boshab (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan)

Defendant: Council of the European Union (represented by: J.-P. Hix and S. Lejeune, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Évariste Boshab to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court 15 September 2021 — Numbi v Council

(Case T-109/20) (1)

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/35)

Language of the case: French

Parties

Applicant: John Numbi (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: M.-C. Cadilhac and H. Marcos Fraile, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr John Numbi to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 — Kanyama v Council

(Case T-110/20) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo — Freezing of funds — Restriction on admission to the territory of the Member States — Retention of the applicant's name on the lists of persons subject to restrictive measures — Obligation to state reasons — Right to be heard — Proof that inclusion and retention on the lists is well founded — Manifest error of assessment — Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures — Right to private and family life — Presumption of innocence — Proportionality — Plea of illegality)

(2021/C 452/36)

Language of the case: French

Parties

Applicant: Célestin Kanyama (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, A. Giullerme and T. Payan, lawyers)

Defendant: Council of the European Union (represented by: M.-C. Cadilhac and H. Marcos Fraile, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment, first, of Council Decision (CFSP) 2019/2109 of 9 December 2019 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2019 L 318, p. 134), and, second, Council Implementing Decision (EU) 2019/2101 of 9 December 2019 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2019 L 318, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Célestin Kanyama to pay the costs.

([1]) OJ C 129, 20.4.2020.

Judgment of the General Court of 15 September 2021 — France v ECHA

(Case T-127/20) ([1])

(REACH — Substance evaluation — Aluminium chloride — Aluminium chloride, basic — Aluminium sulphate — ECHA decisions requesting further information — Article 46(1) of Regulation (EC) No 1907/2006 — Appeal brought before the Board of Appeal — Multiple grounds for the decision of the Board of Appeal — Grounds capable of justifying the decision — Inoperative nature of the pleas directed against the other grounds)

(2021/C 452/37)

Language of the case: French

Parties

Applicant: French Republic (represented by: T. Stehelin, W. Zemamta and A.-L. Desjonquères, acting as Agents)

Defendant: European Chemicals Agency (represented by: M. Heikkilä, M. Goodacre and W. Broere, acting as Agents)

Intervener in support of the applicant: Federal Republic of Germany (represented by: D. Klebs, S. Heimerl and S. Costanzo, acting as Agents)

Intervener in support of the defendant: Kemira Oyj (Helsinki, Finland), Grace Silica GmbH (Düren, Germany) (represented by: J.-P. Montfort and T. Delille, lawyers)

Re:

Application under Article 263 TFEU seeking the annulment of the decision of the Board of Appeal of ECHA of 17 December 2019 annulling three decisions of ECHA of 21 December 2017 requesting the registrants concerned to carry out new tests in the context of the evaluation of aluminium chloride, aluminium chloride, basic and aluminium sulphate (joined cases A-003-2018, A-004-2018 and A-005-2018).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the French Republic to bear its own costs and to pay those incurred by the European Chemicals Agency (ECHA), Kemira Oyj and Grace Silica GmbH;

3. Orders the Federal Republic of Germany to bear its own costs.

([1]) OJ C 191, 8.6.2020.

Judgment of the General Court of 15 September 2021 — Residencial Palladium v EUIPO — Palladium Gestión (PALLADIUM HOTELS & RESORTS)

(Case T-207/20) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark PALLADIUM HOTELS & RESORTS — Admissibility criteria for an application for a declaration of invalidity — Article 53(4) of Regulation (EC) No 207/2009 (now Article 60(4) of Regulation (EU) 2017/1001) — Article 56(3) of Regulation No 207/2009 (now Article 63(3) of Regulation 2017/1001))

(2021/C 452/38)

Language of the case: Spanish

Parties

Applicant: Residencial Palladium, SL (Ibiza, Spain) (represented by: D. Solana Giménez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Palladium Gestión, SL (Ibiza) (represented by: J. Rojo García-Lajara, lawyer), authorised to replace Fiesta Hotels & Resorts, SL

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 12 February 2020 (Case R 231/2019-4), relating to invalidity proceedings between Residencial Palladium and Fiesta Hotels & Resorts.

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 12 February 2020 (Case R 231/2019-4);

2. Dismisses the action as to the remainder;

3. Orders EUIPO to bear its own costs and to pay those incurred by Residencial Palladium, SL;

4. Orders Palladium Gestión to bear its own costs.

(1) OJ C 201, 15.6.2020.

Judgment of the General Court of 15 September 2021 — Arnaoutakis and Others v Parliament

(Case T-240/20 to T-245/20) (1)

(Law governing the institutions — Rules governing the payment of expenses and allowances to Members of the European Parliament — Amendment of the voluntary additional pension scheme — Refusal to grant a voluntary additional pension — Plea of illegality — Competence of the Bureau of the Parliament — Rights acquired and future entitlements — Proportionality — Equal treatment — Legal certainty)

(2021/C 452/39)

Language of the case: French

Parties

Applicants: Stavros Arnaoutakis (Heraklion, Greece) and the five other applicants whose names appear in the annex to the judgment (represented by: A. Schmitt and A. Grosjean, lawyers)

Defendants: European Parliament (represented by: N. Görlitz, M. Ecker and S. Seyr, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the Parliament's decision rejecting the application made by the applicants to be granted a voluntary additional pension in accordance with the Decision of the Bureau of the European Parliament of 10 December 2018 amending the Implementing Measures for the Statute for Members of the European Parliament (OJ 2018 C 466, p. 8) on the ground that they have not reached the required age of 65.

Operative part of the judgment

The Court:

1. Joins Cases T-240/20 to T-245/20 for the purpose of the judgment;

2. Dismisses the actions;

3. Orders Mr Stavros Arnaoutakis and the other applicants whose names appear in the annex to pay the costs.

(1) OJ C 215, 29.6.2020.

Judgment of the General Court of 15 September 2021 — MHCS v EUIPO — Lidl Stiftung (Shade of the colour orange)

(Case T-274/20) (1)

(EU trade mark — Invalidity proceedings — Figurative EU mark depicting a shade of the colour orange — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Examination of the facts of the EUIPO's own motion — Article 95(1) of Regulation 2017/1001 — Nature of the mark — Colour mark — Right to be heard — Article 94 of Regulation 2017/1001)

(2021/C 452/40)

Language of the case: English

Parties

Applicant: MHCS (Épernay, France) (represented by: O. Vrins and B. Raus, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Kefferpütz and K. Wagner, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 24 February 2020 (Case R 2392/2018-1), relating to invalidity proceedings between Lidl Stiftung & Co. & MHCS.

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 24 February 2020 (Case R 2392/2018-1);

2. Orders EUIPO to pay, in addition to its own costs, half of the costs incurred by MHCS;

3. Orders Lidl Stiftung & Co. KG to pay, in addition to its own costs, half of the costs incurred by MHCS.

(1) OJ C 247, 27.7.2020.

Judgment of the General Court of 15 September 2021 — Laboratorios Ern v EUIPO — Le-Vel Brands (Le-Vel)

(Case T-331/20) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark Le-Vel — Earlier national word mark LEVEL — Relative ground for refusal — No likelihood of confusion — No similarity of the goods and services — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 452/41)

Language of the case: English

Parties

Applicant: Laboratorios Ern, SA (Barcelona, Spain) (represented by: S. Correa Rodríguez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Vuijst and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Le-Vel Brands, LLC (Frisco, Texas, United States)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 20 March 2020 (Case R 2113/2019-4), relating to opposition proceedings between Laboratorios Ern and Le-Vel Brands.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Laboratorios Ern, SA, to pay the costs.

(1) OJ C 247, 27.7.2020.

Judgment of the General Court of 1 September 2021 — KN v EESC

(Case T-377/20) ([1])

(Law governing the institutions — Member of the EESC — OLAF investigation into allegations of psychological harassment — Decision to discharge a member from his or her supervisory and personnel management activities — Action for annulment — Challengeable act — Admissibility — Measure taken in the interest of the service — Legal basis — Rights of the defence — Refusal to grant access to the annnexes to the OLAF report — Disclosure of the substance of the witness statements in the form of a summary — Liability)

(2021/C 452/42)

Language of the case: French

Parties

Applicant: KN (represented by: M. Casado García-Hirschfeld and M. Aboudi, lawyers)

Defendant: European Economic and Social Committee (represented by: M. Pascua Mateo, K. Gambino, X. Chamodraka, A. Carvajal García-Valdecasas and L. Camarena Januzec, acting as Agents, and by A. Duron, lawyer)

Re:

First, application under Article 263 TFEU seeking annulment of the decision of the EESC of 9 June 2020 and, second, application under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders KN to pay the costs, including those relating to the proceedings for interim measures.

([1]) OJ C 279, 24.8.2020.

Judgment of the General Court of 15 September 2021 — LF v Commission

(Case T-466/20) ([1])

(Civil service — Members of the contract staff — Remuneration — Expatriation allowance — Article 4(1)(b) of Annex VII to the Staff Regulations — Refusal to grant the expatriation allowance — Habitual residence — Duties performed in an international organisation established in the State of employment)

(2021/C 452/43)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: T. Bohr and A.-C. Simon, acting as Agents)

Re:

Application under Article 270 TFEU for annulment of the decision of the Commission's Office for the Administration and Payment of Individual Entitlements (PMO) of 11 September 2019, by which the applicant was refused entitlement to the expatriation allowance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders LF to bear his own costs and to pay those incurred by the European Commission.

(1) OJ C 313, 21.9.2020.

Judgment of the General Court of 15 September 2021 — Celler Lagravera v EUIPO — Cyclic Beer Farm (Cíclic)

(Case T-673/20) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Cíclic — Earlier EU word mark CYCLIC — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2021/C 452/44)

Language of the case: Spanish

Parties

Applicant: Celler Lagravera, SLU (Alfarràs, Spain) (represented by: J. Rivas Zurdo, lawyer)

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: Cyclic Beer Farm, SL (Barcelona, Spain)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 18 August 2020 (Case R 465/2020-5) relating to opposition proceedings between Cyclic Beer Farm and Celler Lagravera.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Celler Lagravera, SLU to pay the costs.

(1) OJ C 19, 18.1.2021.

Judgment of the General Court of 15 September 2021 — Freshly Cosmetics v EUIPO — Misiego Blázquez (IDENTY BEAUTY)

(Case T-688/20) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark IDENTY BEAUTY — Earlier national figurative mark IDENTITY THE IMAGE CLUB — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2021/C 452/45)

Language of the case: Spanish

Parties

Applicant: Freshly Cosmetics, SL (Reus, Spain) (represented by: P. Roiger Bellostes, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO) (represented by: A. Crawcour and D. Hanf, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Francisco Misiego Blázquez (Madrid, Spain) (represented by: M. Salas Martín, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 11 September 2020 (Case R 205/2020-4), relating to opposition proceedings between Mr Misiego Blázquez and Freshly Cosmetics.

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Freshly Cosmetics, SL to pay the costs.

([1]) OJ C 19, 18.1.2021.

Judgment of the General Court of 15 September 2021 — Beelow v EUIPO (made of wood)

(Case T-702/20) ([1])

(EU trade mark — Application for EU word mark made of wood — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001 — No distinctive character — Article 7(1)(b) of Regulation 2017/1001)

(2021/C 452/46)

Language of the case: German

Parties

Applicant: Timo Beelow (Wuppertal, Germany) (represented by: J. Vogtmeier, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 September 2020 (Case R 108/2020-2), concerning an application for registration of the word sign made of wood as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Timo Beelow to pay the costs.

([1]) OJ C 28, 25.1.2021.

Order of the General Court of 9 September 2021 — GABO:mi v Commission

(Case T-881/19) ([1])

(Arbitration clause — Sixth and Seventh Framework Programmes for research, technological development and demonstration activities (2002-2006 and 2007-2013) — 'Horizon 2020' Framework Programme for Research and Innovation (2014-2020) — Grant agreements — Set-off of claims — Identification of the defendant — Failure to comply with procedural requirements — Article 76(d) of the Rules of Procedure — Manifest inadmissibility)

(2021/C 452/47)

Language of the case: English

Parties

Applicant: GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG (Munich, Germany) (represented by: C. Mayer, lawyer)

Defendant: European Commission (represented by: L. André, M. Ilkova, L. Mantl, and A. Katsimerou, acting as Agents)

Re:

Application under Article 272 TFEU seeking an order that the Commission reimburse the eligible costs incurred by the applicant, first, between August 2015 and April 2016 and, secondly, during the period of the preliminary insolvency proceedings, namely EUR 1 680 681,82, plus interest of EUR 76 552,60, in respect of the grant agreements awarded under the sixth and seventh framework programmes for research, technological development and demonstration activities and the 'Horizon 2020' Framework Programme for Research and Innovation.

Operative part of the order

1. The action is dismissed as inadmissible.

2. GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG shall pay the costs.

(1) OJ C 87, 16.3.2020.

Order of the General Court of 6 September 2021 — MKB Multifunds v Commission

(Case T-277/20) (1)

(Action for annulment — State aid — Private equity fund — Complaint — Measures allegedly constituting State aid related to Dutch Venture Initiative — Decision adopted at the end of the preliminary procedure for reviewing aid — Decision finding that there is no State aid — Status as an interested party — Safeguarding of procedural rights — Inadmissibility)

(2021/C 452/48)

Language of the case: Dutch

Parties

Applicant: MKB Multifunds BV (Zierikzee, Netherlands) (represented by: J. van de Hel and R. Rampersad, lawyers)

Defendant: European Commission (represented by: V. Bottka and S. Noë, acting as Agents)

Intervener in support of the defendant: Kingdom of the Netherlands (represented by: M. Bulterman and C. Schillemans, acting as Agents)

Re:

Application under Article 263 TFEU seeking, in essence, annulment of Commission Decision C(2020) 1109 final of 27 February 2020 concerning State aid SA.55704 (2019/FC) — the Netherlands, relating to alleged State aid granted to Dutch Venture Initiative.

Operative part of the order

1. The action is dismissed as manifestly inadmissible.

2. MKB Multifunds BV shall bear its own costs and pay those incurred by the European Commission.

3. The Kingdom of the Netherlands shall bear its own costs.

(1) OJ C 247, 27.7.2020.

Order of the General Court of 5 August 2021 — DK Company v EUIPO — Hunter Boot (DENIM HUNTER)

(Case T-387/20) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2021/C 452/49)

Language of the case: English

Parties

Applicant: DK Company A/S (Ikast, Denmark) (represented by: S. Hansen, lawyer)

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: Hunter Boot Ltd (Edinburgh, United Kingdom)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 3 April 2020 (Case R 849/2018-2), relating to opposition proceedings between Hunter Boot and DK Company.

Operative part of the order

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

2. DK Company A/S shall bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 262, 10.8.2020.

Order of the General Court of 10 September 2021 — Kühne v Parliament

(Case T-691/20) ([1])

(Action for annulment — Civil service — Officials — Mobility regime — Request concerning the mobility obligation — Act not open to challenge — Inadmissibility)

(2021/C 452/50)

Language of the case: German

Parties

Applicant: Verena Kühne (Berlin, Germany) (represented by: O. Schmechel, lawyer)

Defendant: European Parliament (represented by: L. Darie and B. Schäfer, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of the Parliament's letter of 17 April 2020, supplemented on 21 April 2020, rejecting the applicant's request concerning the application of the mobility rules.

Operative part of the order

1. The action is dismissed as inadmissible;

2. Ms. Verena Kühne shall pay the costs.

([1]) OJ C 28, 25.1.2021.

Order of the President of the General Court of 17 September 2021 — Firearms United Network and Others v Commission

(Case T-187/21 R)

(Application for interim relief — REACH — Amendment of Annex XVII to Regulation (EC) No 1907/2006 — Restriction on lead and lead compounds — Use of lead shot — Protection of wetlands — Application for suspension of operation of a measure — No urgency)

(2021/C 452/51)

Language of the case: Polish

Parties

Applicants: Firearms United Network (Warsaw, Poland), Tomasz Walter Stępień (Żelechów, Poland), Michał Budzyński (Cegłów, Poland), Andrzej Marcjanik (Złotokłos, Poland) (represented by: E. Woźniak, lawyer)

Defendant: European Commission (represented by: K. Herrmann and K. Mifsud-Bonnici, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for suspension of operation of Commission Regulation (EU) 2021/57 of 25 January 2021 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as regards lead in gunshot in or around wetlands (OJ 2021 L 24, p. 19).

Operative part of the order

1. The application for interim relief is dismissed.

2. The costs are reserved.

Action brought on 13 July 2021 — Trasta Komercbanka v ECB

(Case T-427/21)

(2021/C 452/52)

Language of the case: English

Parties

Applicant: Trasta Komercbanka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay financial compensation in respect of the harm which the applicant has suffered as a result of the defendant's decision to revoke the applicant's license on 11 July 2016 (notified to the applicant on 13 July 2016);

— determine that the material damage amounts to at least EUR 162 million together with a compensatory interest starting at 11 July 2016 until delivery of the judgment in the present case and with corresponding default interest from the date of delivery of judgment until its payment in full; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed to properly notify the licence withdrawal decision to the applicant's authorized representatives.

2. Second plea in law, alleging that the procedure leading to the licence withdrawal decision did not involve a proper representation of the applicant.

3. Third plea in law, alleging that the licence withdrawal decision is vitiated by a number of other serious procedural irregularities.

4. Fourth plea in law, alleging that the defendant acted outside its area of competence when issuing the licence withdrawal decision, in particular with regard to money laundering matters and the enforcement of national law.

5. Fifth plea in law, alleging that the defendant erroneously assumed grounds for a licence withdrawal and provided an insufficient statement of reason in this regard.

6. Sixth plea in law, alleging that defendant's illegal conduct caused significant damage to the applicant, including as a result of the applicant's liquidation.

Action brought on 13 July 2021 — Fursin and Others v ECB

(Case T-428/21)

(2021/C 452/53)

Language of the case: English

Parties

Applicants: Ivan Fursin (Kyiv, Ukraine) and 6 other applicants (represented by: O. Behrends, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— order the defendant to pay financial compensation in respect of the harm which the applicants have suffered as a result of the defendant's decision to revoke the license of Trasta Komercbanka AS on 11 July 2016 (notified on 13 July 2016);

— determine that the material damage amounts to at least EUR 25 million [1] together with a compensatory interest starting at 11 July 2016 until delivery of the judgment in the present case and with corresponding default interest from the date of delivery of judgment until its payment in full; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed to properly notify the licence withdrawal decision to Trasta Komercbanka AS' authorized representatives.

2. Second plea in law, alleging that the procedure leading to the licence withdrawal decision did not involve a proper representation of Trasta Komercbanka AS.

3. Third plea in law, alleging that the licence withdrawal decision is vitiated by a number of other serious irregularities.

4. Fourth plea in law, alleging that the defendant acted outside its area of competence when issuing the licence withdrawal decision, in particular with regard to money laundering matters and the enforcement of national law.

5. Fifth plea in law, alleging that the defendant erroneously assumed grounds for a licence withdrawal and provided an insufficient statement of reason in this regard.

6. Sixth plea in law, alleging that the defendant's illegal conduct caused significant damage to the applicants, including as a result of Trasta Komercbanka AS' liquidation.

(1) The amounts are attributable to each of the applicants in the amounts of their shareholding of Trasta Komercbanka AS, as set out in the licence withdrawal decision of 3 March 2016.

Action brought on 6 August 2021 — Equinoccio-Compañía de Comercio Exterior v Commission

(Case T-493/21)

(2021/C 452/54)

Language of the case: English

Parties

Applicant: Equinoccio-Compañía de Comercio Exterior, SL (Madrid, Spain) (represented by: R. Sciaudone and D. Luff, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the countersignature of the European Union Delegation in Ankara of the liquidation of the financial guarantee (the 'contested act') invoked by the Turkish Ministry of Science, Industry and Technology — DG for EU and Foreign Affairs — Directorate of EU Financial Programmes;

— order the Commission 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 infringement of the duty of care, impartiality, equality of arms and Article 78 of the Financial Regulation. (1)

   — According to this plea, the Commission did not verify the decision to liquidate the guarantee taken by the Turkish authorities. Indeed, the Commission asked the Turkish authorities to check the decision themselves. This conduct, the applicant argues, also infringes Articles 78 of the said Financial Regulation and Article 82 of Delegated Regulation No 1268/2012. (2) According to these provisions, the EU authorising officer should personally check documents.

2. Second plea in law, alleging infringement of the duty to state reasons.

   — It is argued by the applicant that the contested act did not provide the applicant with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect that may permit it to challenge its legality before the European Union judicature and, second, to enable that same judicature to review the legality of that act.

3. Third plea in law, alleging infringement of the right to be heard.

   — The applicant points out that it was not part of the administrative procedure that the Commission carried out to decide whether or not to instruct the European Delegation in Ankara to countersign the liquidation of the guarantee.

4. Fourth plea in law, alleging infringement of the principle of proportionality.

   — It is argued that the Commission infringed the principle of proportionality by failing to balance the contracting authority's request and the sums owed to the applicant.

5. Fifth plea in law, alleging manifest error of assessment of the conditions to liquidate the guarantee.

— The contested act, in the applicant's opinion, is vitiated by a manifest error of assessment of the conditions, all related to the alleged breach of the service contract, to liquidate the guarantee.

(1) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

(2) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Action brought on 7 September 2021 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — Papouis Dairies (fino)

(Case T-558/21)

(2021/C 452/55)

Language of the case: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: C. Milbradt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Papouis Dairies LTD (Nicosia)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark fino Cyprus Halloumi Cheese — Application for registration No 11 180 791

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 29 April 2021 in Case R 578/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the EUIPO to bear their own costs and pay those of the Applicant.

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 8 September 2021 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — Papouis Dairies (Papouis Halloumi)

(Case T-565/21)

(2021/C 452/56)

Language of the case: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: C. Milbradt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Papouis Dairies LTD (Nicosia)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark in colour containing the word element Papouis Halloumi Papouis Dairies LTD PAP since 1967 — Application for registration No 11 176 344

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 29 April 2021 in Case R 575/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the EUIPO to bear their own costs and pay those of the Applicant.

Plea in law

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

Action brought on 20 September 2021 — Euranimi v Commission

(Case T-598/21)

(2021/C 452/57)

Language of the case: English

Parties

Applicant: European Association of Non-Integrated Metal Importers & distributors (Euranimi) (Brussels, Belgium) (represented by: M. Campa, D. Rovetta, P. Gjørtler and V. Villante, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021, amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products (OJ 2021, L 225I, p. 1);

— order the European Commission to bear the costs of the applicant's legal costs in the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breaches the article 19 of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 march 2015 on common rules for imports [1] by committing a manifest error of assessment in the determination of serious injury and likelihood of serious injury;

2. Second plea in law, alleging that the Commission's assessments of the relevant market data and the counterfactual related to terminating the safeguards are manifestly erroneous. Considering the exceptional world market situation, the Commission also breaches its duty to take into account the post investigating period (IP) year 2021 situation.

[1] OJ L 83, p. 16, 27.3.2015

Action brought on 20 September 2021 — bett1.de v EUIPO — XXXLutz Marken (Body-Star)

(Case T-599/21)

(2021/C 452/58)

Language in which the application was lodged: German

Parties

Applicant: bett1.de GmbH (Berlin, Germany) (represented by: O. Brexl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: XXXLutz Marken GmbH (Wels, Austria)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark Body-Star — EU trade mark No 17 711 748

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 July 2021 in Case R 1712/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 21 September 2021 — WP and Others v Commission

(Case T-604/21)

(2021/C 452/59)

Language of the case: French

Parties

Applicants: WP, WQ, WR (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the PMO.4 of 16 November 2020 rejecting the application lodged on 14 September 2020 in the name of the deceased to seek recovery of his national pension rights that were transferred to the EU pension scheme, together with any interest accrued on those rights for all those years, until repaid in full;

— annul, in so far as necessary, the express decision of 15 June 2021 rejecting the complaint of 15 February 2021 lodged in the name of the deceased, whose continuation by the estate was notified on 25 May 2021;

— 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 was unjustly enriched.
2. Second plea in law, alleging infringement of the principle of equal treatment in that the application of the principle of unjust enrichment as affirmed by the case-law differs from the implementation of that principle by other institutions in otherwise identical situations.

Order of the General Court of 7 September 2021 — Bunzl and Others v Commission

(Case T-475/19) ([1])

(2021/C 452/60)

Language of the case: English

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

([1]) OJ C 312, 16.9.2019.

Order of the General Court of 7 September 2021 — BT Group and Communications Global Network Services v Commission

(Case T-482/19) ([1])

(2021/C 452/61)

Language of the case: English

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

([1]) OJ C 312, 16.9.2019.

Order of the General Court of 7 September 2021 — Stagecoach Group v Commission

(Case T-754/19) ([1])

(2021/C 452/62)

Language of the case: English

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

([1]) OJ C 27, 27.1.2020.

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