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Information and Notices

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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2021/C 462/01)

Last publication

OJ C 452, 8.11.2021

Past publications

OJ C 431, 25.10.2021

OJ C 422, 18.10.2021

OJ C 412, 11.10.2021

OJ C 401, 4.10.2021

OJ C 391, 27.9.2021

OJ C 382, 20.9.2021

These texts are available on:

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

GENERAL COURT

Formation of Chambers and assignment of Judges to Chambers

(2021/C 462/02)

On 27 October 2021, the General Court decided, following the entry into office of Mr Kecsmár and Mr Gâlea as Judges of the General Court, to amend the decision on the formation of the Chambers of 30 September 2019, [1] as amended, [2] and the decision on the assignment of Judges to Chambers of 4 October 2019, [3] as amended, [4] for the period from 27 October 2021 to 31 August 2022 and to assign the Judges to Chambers as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Mr Jaeger, Ms Półtorak, Ms Porchia and Ms Stancu, Judges.

First Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

Formation A: Mr Jaeger and Ms Półtorak, Judges;

Formation B: Mr Jaeger and Ms Porchia, Judges;

Formation C: Mr Jaeger and Ms Stancu, Judges;

Formation D: Ms Półtorak and Ms Porchia, Judges;

Formation E: Ms Półtorak and Ms Stancu, Judges;

Formation F: Ms Porchia and Ms Stancu, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Ms Tomljenović, President of the Chamber, Mr Kreuschitz, Mr Schalin, Ms Škvařilová-Pelzl and Mr Nõmm, Judges.

Second Chamber, sitting with three Judges:

Ms Tomljenović, President of the Chamber;

Formation A: Mr Schalin and Ms Škvařilová-Pelzl, Judges;

Formation B: Mr Schalin and Mr Nõmm, Judges;

Formation C: Ms Škvařilová-Pelzl and Mr Nõmm, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr De Baere, President of the Chamber, Mr Kreuschitz, Mr Öberg, Ms Steinfatt, and Mr Kecsmár, Judges.

Third Chamber, sitting with three Judges:

Mr De Baere, President of the Chamber;

Formation A: Mr Kreuschitz and Ms Steinfatt, Judges;

Formation B: Mr Kreuschitz and Mr Kecsmár, Judges;

Formation C: Ms Steinfatt and Mr Kecsmár, Judges.

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[1] OJ 2019 C 372, p. 3.

[2] OJ 2020 C 68, p. 2, OJ 2020 C 114, p. 2, OJ 2020 C 371, p. 2, OJ 2021 C 110, p. 2, OJ 2021 C 297, p. 2, OJ 2021 C 368, p. 2, OJ 2021 C 412, p. 2, and OJ 2021 C 431, p. 2.

[3] OJ 2019 C 372, p. 3.

[4] OJ 2020 C 68, p. 2, OJ 2020 C 114, p. 2, OJ 2020 C 371, p. 2, OJ 2021 C 110, p. 2, OJ 2021 C 297, p. 2, OJ 2021 C 368, p. 2, OJ 2021 C 412, p. 2, and OJ 2021, C 431, p. 2.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Gervasoni, President of the Chamber, Mr Madise, Mr Nihoul, Ms Frendo and Mr Martín y Pérez de Nanclares, Judges.

Fourth Chamber, sitting with three Judges:

Mr Gervasoni, President of the Chamber;

Formation A: Mr Madise and Mr Nihoul, Judges;

Formation B: Mr Madise and Ms Frendo, Judges;

Formation C: Mr Madise and Mr Martín y Pérez de Nanclares, Judges;

Formation D: Mr Nihoul and Ms Frendo, Judges;

Formation E: Mr Nihoul and Mr Martín y Pérez de Nanclares, Judges;

Formation F: Ms Frendo and Mr Martín y Pérez de Nanclares, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Spielmann, President of the Chamber, Mr Öberg, Mr Mastroianni, Ms Brkan and Mr Gâlea, Judges.

Fifth Chamber, sitting with three Judges:

Mr Spielmann, President of the Chamber;

Formation A: Mr Öberg and Mr Mastroianni, Judges;

Formation B: Mr Öberg and Ms Brkan, Judges;

Formation C: Mr Öberg and Mr Gâlea, Judges;

Formation D: Mr Mastroianni and Ms Brkan, Judges;

Formation E: Mr Mastroianni and Mr Gâlea, Judges;

Formation F: Ms Brkan and Mr Gâlea, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Ms Marcoulli, President of the Chamber, Mr Frimodt Nielsen, Mr Schwarcz, Mr Iliopoulos and Mr Norkus, Judges.

Sixth Chamber, sitting with three Judges:

Ms Marcoulli, President of the Chamber;

Formation A: Mr Frimodt Nielsen and Mr Schwarcz, Judges;

Formation B: Mr Frimodt Nielsen and Mr Iliopoulos, Judges;

Formation C: Mr Frimodt Nielsen and Mr Norkus, Judges;

Formation D: Mr Schwarcz and Mr Iliopoulos, Judges;

Formation E: Mr Schwarcz and Mr Norkus, Judges;

Formation F: Mr Iliopoulos and Mr Norkus, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr da Silva Passos, President of the Chamber, Mr Valančius, Ms Reine, Mr Truchot and Mr Sampol Pucurull, Judges.

Seventh Chamber, sitting with three Judges:

Mr da Silva Passos, President of the Chamber;

Formation A: Mr Valančius and Ms Reine, Judges;

Formation B: Mr Valančius and Mr Truchot, Judges;

Formation C: Mr Valančius and Mr Sampol Pucurull, Judges;

Formation D: Ms Reine and Mr Truchot, Judges;

Formation E: Ms Reine and Mr Sampol Pucurull, Judges;

Formation F: Mr Truchot and Mr Sampol Pucurull, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Svenningsen, President of the Chamber, Mr Barents, Mr Mac Eochaidh, Ms Pynnä and Mr Laitenberger, Judges.

Eighth Chamber, sitting with three Judges:

Mr Svenningsen, President of the Chamber;

Formation A: Mr Barents and Mr Mac Eochaidh, Judges;

Formation B: Mr Barents and Ms Pynnä, Judges;

Formation C: Mr Barents and Mr Laitenberger, Judges;

Formation D: Mr Mac Eochaidh and Ms Pynnä, Judges;

Formation E: Mr Mac Eochaidh and Mr Laitenberger, Judges;

Formation F: Ms Pynnä and Mr Laitenberger, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Ms Costeira, President of the Chamber, Ms Kancheva, Mr Buttigieg, Ms Perišin and Mr Zilgalvis, Judges.

Ninth Chamber, sitting with three Judges:

Ms Costeira, President of the Chamber;

Formation A: Ms Kancheva and Ms Perišin, Judges;

Formation B: Ms Kancheva and Mr Zilgalvis, Judges;

Formation C: Ms Perišin and Mr Zilgalvis, Judges.

Tenth Chamber (Extended Composition), sitting with five Judges:

Mr Kornezov, President of the Chamber, Mr Buttigieg, Ms Kowalik-Bańczyk, Mr Hesse and Mr Petrlík, Judges.

Tenth Chamber, sitting with three Judges:

Mr Kornezov, President of the Chamber;

Formation A: Mr Buttigieg and Ms Kowalik-Bańczyk, Judges;

Formation B: Mr Buttigieg and Mr Hesse, Judges;

Formation C: Mr Buttigieg and Mr Petrlík, Judges;

Formation D: Ms Kowalik-Bańczyk and Mr Hesse, Judges;

Formation E: Ms Kowalik-Bańczyk and Mr Petrlík, Judges;

Formation F: Mr Hesse and Mr Petrlík, Judges.

The Second Chamber, composed of four Judges, will be extended by the addition of a fifth Judge from the Third Chamber. The Third Chamber, composed of four Judges, will be extended by the addition of a fifth Judge from the Fifth Chamber. The Ninth Chamber, composed of four Judges, will be extended by the addition of a fifth Judge from the Tenth Chamber.

The fifth Judges of the Second, Third and Ninth Chambers (Extended Composition) are the most senior Judges according to the order laid down in Article 8 of the Rules of Procedure, other than the President of the Chamber, from the Chambers having jurisdiction in the same area of specialisation and following numerically from the Second, Third and Ninth Chambers.

The General Court confirms its decision of 4 October 2019 that the First, Fourth, Seventh and Eighth Chambers shall hear cases brought under Article 270 TFEU and, where appropriate, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union, and that the Second, Third, Fifth, Sixth, Ninth and Tenth Chambers shall hear cases relating to intellectual property rights referred to in Title IV of the Rules of Procedure.

It also confirms that:

— the President and the Vice-President shall not be attached permanently to a Chamber;

— in the course of each judicial year, the Vice-President shall sit in each of the ten Chambers sitting with five Judges, on the basis of one case per Chamber in the following order:

  — the first case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the First Chamber, the Second Chamber, the Third Chamber, the Fourth Chamber and the Fifth Chamber;

  — the third case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the Sixth Chamber, the Seventh Chamber, the Eighth Chamber, the Ninth Chamber and the Tenth Chamber.

Where the Chamber in which the Vice-President sits is composed of:

— five Judges, the extended Chamber shall be composed of the Vice-President, Judges from the Chamber sitting with three Judges originally seised as well as one of the other Judges of the Chamber in question, determined on the basis of the reverse order to the order laid down in Article 8 of the Rules of Procedure;

— four Judges, the extended Chamber shall be composed of the Vice-President, Judges from the Chamber sitting with three Judges originally seised and the fourth Judge of the Chamber in question.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 9 September 2021 (request for a preliminary ruling from the Bundesverwaltungsgericht — Austria) — FN, GM, Adler Real Estate AG, HL, Petrus Advisers LLP v Übernahmekommission

(Case C-546/18) [1]

(Reference for a preliminary ruling — Company law — Takeover bids — Directive 2004/25/EC — Article 5 — Mandatory bid — Article 4 — Supervisory authority — Definitive decision establishing an infringement of the obligation to submit a takeover bid — Binding effect of that decision in the context of subsequent administrative-penalty proceedings conducted by the same authority — Principle of the effectiveness of EU law — General principles of EU law — Rights of the defence — Charter of Fundamental Rights of the European Union — Articles 47 and 48 — Right to silence — Presumption of innocence — Access to an independent and impartial tribunal)

(2021/C 462/03)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: FN, GM, Adler Real Estate AG, HL, Petrus Advisers LLP

Defendant: Übernahmekommission

Operative part of the judgment

Articles 4 and 17 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, read in the light of the rights of the defence guaranteed by EU law, in particular of the right to a hearing, and of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a practice of a Member State whereby a decision by means of which a breach of that directive was established and which has become definitive has a binding effect in subsequent proceedings for the imposition of a penalty for an administrative offence owing to an infringement of the provisions of Directive 2004/25/EC, in so far as the parties concerned by those proceedings were not able, during the earlier proceedings in which that breach was established, fully to exercise the rights of the defence, in particular the right to a hearing, or to assert the right to silence or to benefit from a presumption of innocence in respect of the facts that will subsequently be used in support of the accusation, or are not able to benefit from the right to an effective remedy against such a decision before a court having jurisdiction to resolve questions of fact and of law.

[1] OJ C 427, 26.11.2018.

Judgment of the Court (Fourth Chamber) of 9 September 2021 (request for a preliminary ruling from the Bundesverwaltungsgericht — Austria) — Adler Real Estate AG, Petrus Advisers LLP, GM v Finanzmarktaufsichtsbehörde (FMA)

(Case C-605/18) ([1])

(Reference for a preliminary ruling — Securities admitted to trading on a regulated market situated or operating within a Member State — Transparency requirement — Notification of 'major holdings' acquired in companies by 'persons acting in concert' — Directive 2004/109/EC — Article 3(1a), fourth subparagraph — Concept of 'more stringent requirements' — Directive 2004/25/EC — 'Supervision' by an authority appointed pursuant to Article 4 of that directive)

(2021/C 462/04)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Adler Real Estate AG, Petrus Advisers LLP, GM

Defendant: Finanzmarktaufsichtsbehörde (FMA)

Operative part of the judgment

Article 3(1a), fourth subparagraph, (iii), of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, must be interpreted as precluding legislation of a Member State which, first, makes shareholders, or natural persons or legal entities referred to in Article 10 or 13 of Directive 2004/109, as amended by Directive 2013/50, subject to requirements relating to notification of major holdings that are more stringent, within the meaning of that fourth subparagraph, than those provided for in Directive 2004/109, as amended by Directive 2013/50, and those more stringent requirements result from laws, regulations or administrative provisions adopted in relation, inter alia, to takeover bids; and, secondly, does not assign the power to ensure compliance with such requirements to an authority of that Member State appointed pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

([1]) OJ C 445, 10.12.2018.

Judgment of the Court (Tenth Chamber) of 9 September 2021 (request for a preliminary ruling from the Obvodní soud pro Prahu 9 — Czech Republic — XR v Dopravní podnik hl. m. Prahy, akciová společnost

(Case C-107/19) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2003/88/EC — Organisation of working time — Concepts of 'working time' and 'rest period' — Break during which the employee must remain ready to respond to a call-out within a two-minute time limit — Primacy of EU law)

(2021/C 462/05)

Language of the case: Czech

Referring court

Obvodní soud pro Prahu 9

Parties to the main proceedings

Applicant: XR

Defendant: Dopravní podnik hl. m. Prahy, akciová společnost

Operative part of the judgment

1. Article 2 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working times must be interpreted as meaning that the break granted to a worker during his or her daily working time, during which the worker must be ready to respond to a call-out within a time limit of two minutes if necessary, constitutes 'working time' within the meaning of that provision, where it is apparent from an overall assessment of all the relevant circumstances that the limitations imposed on that worker are such as to affect objectively and very significantly the worker's ability to manage freely the time during which his or her professional services are not required and to devote that time to his or her own interests;

2. The principle of primacy of EU law must be interpreted as precluding a national court, ruling following the setting aside of its judgment by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those assessments are not compatible with EU law.

(1) OJ C 131, 8.4.2019.

Judgment of the Court (Third Chamber) of 9 September 2021 (Request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Federal Republic of Germany v SE

(Case C-768/19) (1)

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Directive 2011/95/EU — Third indent of Article 2(j) — Definition of 'family member' — Adult applying for international protection because of that adult's family relationship with a minor who has already obtained subsidiary protection — Relevant date for assessing 'minor' status)

(2021/C 462/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Federal Republic of Germany

Defendant: SE

Interested party: Vertreter des Bundesinteresses beim Bundesverwaltungsgerich

Operative part of the judgment

1. The third indent of Article 2(j) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as meaning that when an asylum seeker, who has entered the territory of the host Member State where that asylum seeker's minor unmarried child is present, is seeking to derive from the subsidiary protection status obtained by that child the right to asylum under that Member State's legislation granting such a right to persons falling within the third indent of Article 2(j) of Directive 2011/95, the relevant date for assessing whether the beneficiary of that protection is a 'minor', within the meaning of that provision, in order to determine the application for international protection brought by that asylum seeker, is the date on which the latter lodged, as the case may be informally, his or her application for asylum.

2. The third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) of that directive and Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the definition of 'family member' does not require the actual resumption of family life between the parent of the beneficiary of international protection and his or her child.

3. The third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) of that directive, must be interpreted as meaning that the rights that the family members of a beneficiary of subsidiary protection derive from the subsidiary protection status obtained by their child, in particular the advantages referred to in Articles 24 to 35 of that directive, persist after that beneficiary reaches the age of majority for the duration of the period of validity of the residence permit granted to them in accordance with Article 24(2) of that directive.

(1) OJ C 19, 20.1.2020.

Judgment of the Court (Fifth Chamber) of 9 September 2021 (Request for a preliminary ruling from the Audiencia Provincial de Barcelona — Spain) — Comité Interprofessionnel du Vin de Champagne v GB

(Case C-783/19) (1)

(Reference for a preliminary ruling — Agriculture — Protection of geographical indications and designations of origin for agricultural products and foodstuffs — Uniform and exhaustive nature — Regulation (EU) No 1308/2013 — Article 103(2)(a)(ii) — Article 103(2)(b) — Evocation — Protected Designation of Origin (PDO) 'Champagne' — Services — Comparability of products — Use of the trade name 'Champanillo')

(2021/C 462/07)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: Comité Interprofessionnel du Vin de Champagne

Defendant: GB

Operative part of the judgment

1. Article 103(2)(b) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, must be interpreted as meaning that it protects protected designations of origin (PDO) in respect of conduct relating to both products and services.

2. Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the 'evocation' referred to in that provision, first, does not require, as a prerequisite, that the product benefitting from a PDO and the product or service covered by the sign at issue are identical or similar and, secondly, is established when the use of a designation produces, in the mind of the average European consumer who is reasonably well-informed and reasonably observant and circumspect, a sufficiently direct and unequivocal link between that designation and the PDO. The existence of such a link may result from several elements, in particular, the partial incorporation of the protected designation, phonetic and visual similarity between the two designations and the resulting similarity, and even, in the absence of those elements, from the conceptual similarity between the PDO and the designation at issue and also from a similarity between the products covered by that PDO and the products or services covered by that designation.

3. Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the 'evocation' referred to in that provision is not subject to a finding of unfair competition, since that provision establishes a specific and related protection which applies regardless of the provisions of national law concerning unfair competition.

(1) OJ C 19, 20.1.2020.

Judgment of the Court (Fifth Chamber) of 9 September 2021 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — G. Sp. z o.o. v Dyrektor Izby Administracji Skarbowej w Bydgoszczy

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

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 69 — Chargeability of VAT — Intra-Community acquisition of motor fuels — Obligation to make early payment of VAT — Article 206 — Concept of 'interim payments' — Article 273 — Correct collection of VAT and prevention of evasion — Discretion of the Member States)

(2021/C 462/08)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: G. Sp. z o.o.

Defendant: Dyrektor Izby Administracji Skarbowej w Bydgoszczy

Operative part of the judgment

Articles 69, 206 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding a provision of national law which imposes an obligation to pay value added tax (VAT) on the intra-Community acquisition of motor fuels before that VAT becomes chargeable, within the meaning of Article 69 of Directive 2006/112.

([1]) OJ C 61, 24.2.2020.

Judgment of the Court (Fifth Chamber) of 9 September 2021 (Request for a preliminary ruling from the Cour de cassation — France) — Criminal proceedings against FO

(Case C-906/19) ([1])

(Reference for a preliminary ruling — Road transport — Harmonisation of certain provisions of social legislation — Regulation (EC) No 561/2006 — Article 3(a) — Non-application of the regulation to carriage by road by vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 km — Vehicle for mixed-use — Article 19(2) — Extraterritorial penalty — Infringement detected on the territory of a Member State committed on the territory of another Member State — Principle that offences and penalties must have a proper legal basis — Regulation (EEC) No 3821/85 — Recording equipment in road transport — Article 15(2) — Obligation to insert the driver card — Article 15(7) — Obligation to produce the driver card whenever an inspecting officer so requests — Failure to insert the driver card in the recording equipment on several of the 28 days preceeding the inspection day)

(2021/C 462/09)

Language of the case: French

Referring court

Cour de cassation

Party to the main criminal proceedings

FO

Operative part of the judgment

1. Article 3(a) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, must be interpreted as meaning that a driver who engages in carriage by road falling within the scope of that regulation is required to produce, whenever an inspecting officer so requests, the driver card, record sheets and any information in respect of the 28 days preceeding that day, in accordance with Article 15(2), (3) and (7) of Council Regulation (EEC) No 3821/85 on recording equipment in road transport, as amended by Regulation No 561/2006, even when, during that period, that driver has also engaged in, using the same vehicle, carriage of passengers on regular services where the route covered by the service does not exceed 50 km.

2. Article 19(2) of Regulation No 561/2006 must be interpreted as precluding the competent authorities of a Member State from imposing a penalty on a driver of a vehicle or a transport undertaking, in respect of an infringement of Regulation No 3821/85, as amended by Regulation No 561/2006, committed on the territory of another Member State or a third country, but detected on its territory and for which a penalty has not already been imposed.

([1]) OJ C 61, 24.2.2020.

Judgment of the Court (Grand Chamber) of 7 September 2021 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — 'Klaipėdos regiono atliekų tvarkymo centras' UAB

(Case C-927/19) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 58(3) and (4) — Article 60(3) and (4) — Annex XII — Conduct of procurement procedures — Selection of participants — Selection criteria — Methods of proof — Economic and financial standing of economic operators — Whether the leader of a temporary association of undertakings may rely on income received in relation to a previous public contract in the same area as the public contract at issue including where it did not itself exercise the activity which is the subject matter of the public contract at issue — Technical and professional ability of economic operators — Exhaustive nature of means of proof permitted by the directive — Article 57(4)(h), (6) and (7) — Award of public service contracts — Non-compulsory grounds for exclusion from participation in a procurement procedure — Inclusion on a list of economic operators excluded from procurement procedures — Joint liability of members of a temporary association of undertakings — Personal nature of the penalty — Article 21 — Protection of the confidentiality of information submitted to the contracting authority by an economic operator — Directive (EU) 2016/943 — Article 9 — Confidentiality — Protection of trade secrets — Applicability to procurement procedures — Directive 89/665/EEC — Article 1 — Right to an effective remedy)

(2021/C 462/10)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: 'Klaipėdos regiono atliekų tvarkymo centras' UAB

Intervening parties: 'Ecoservice Klaipėda' UAB, 'Klaipėdos autobusų parkas' UAB, 'Parsekas' UAB, 'Klaipėdos transportas' UAB

Operative part of the judgment

1. Article 58 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that the obligation on economic operators to demonstrate that they have a certain average annual turnover in the area covered by the public contract at issue constitutes a selection criterion relating to the economic and financial standing of those operators, within the meaning of paragraph 3 of that provision;

2. Article 58(3) in conjunction with Article 60(3) of Directive 2014/24 must be interpreted as meaning that, where the contracting authority has required that economic operators have achieved a certain minimum turnover in the area covered by the public contract in question, an economic operator may, in order to prove its economic and financial standing, rely on income received by a temporary group of undertakings to which it belonged only if it actually contributed, in the context of a specific public contract, to the performance of an activity of that group analogous to the activity which is the subject matter of the public contract for which that operator seeks to prove its economic and financial standing;

3. Article 58(4), Article 42 and Article 70 of Directive 2014/24 must be interpreted as meaning that they can apply simultaneously to a technical requirement set out in a call for tenders;

4. The fourth subparagraph of Article 1(1), Article 1(3) and (5) and Article 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, must be interpreted as meaning that a decision of a contracting authority refusing to disclose to an economic operator the information deemed confidential in the application file or in the tender of another economic operator is a measure amenable to review and that, where the Member State in which the public procurement procedure in question takes place has provided that any person wishing to challenge decisions taken by the contracting authority is required to seek administrative review before bringing an action before the courts, that Member State may also provide that judicial proceedings against that decision refusing access have to be preceded by such a prior administrative review procedure;

5. The fourth subparagraph of Article 1(1) and Article 1(3) and (5) of Directive 89/665, as amended by Directive 2014/23, and Article 21 of Directive 2014/24, read in the light of the general principle of EU law relating to good administration, must be interpreted as meaning that a contracting authority, when requested by an economic operator to disclose information deemed confidential contained in the tender of a competitor to which the contract has been awarded, is not required to communicate that information where its disclosure would infringe the rules of EU law relating to the protection of confidential information, even if that request is made in the context of an action brought by that operator challenging the lawfulness of the contracting authority's assessment of the competitor's tender. Where it refuses to disclose such information or where, while refusing such disclosure, it dismisses the application for administrative review lodged by an economic operator concerning the lawfulness of the assessment of the tender of the competitor concerned, the contracting authority is required to balance the applicant's right to good administration with its competitor's right to protection of its confidential information in order that the refusal or dismissal decision is supported by a statement of reasons and the unsuccessful tenderer's right to an effective remedy is not rendered ineffective;

6. The fourth subparagraph of Article 1(1) and Article 1(3) and (5) of Directive 89/665, as amended by Directive 2014/23, and Article 21 of Directive 2014/24, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the competent national court, hearing an action brought against a decision of a contracting authority refusing to disclose to an economic operator information deemed confidential in the documents submitted by the competitor to which the contract has been awarded or an action brought against the decision of a contracting authority dismissing an application for administrative review lodged against such a decision, is required to weigh the applicant's right to an effective remedy against its competitor's right to protection of its confidential information and trade secrets. To that end, that court, which must necessarily have at its disposal the information required, including confidential information and trade secrets, in order to be able to determine, with full knowledge of the facts, whether that information can be disclosed, must examine all the relevant matters of fact and of law. It must also be able to annul the refusal decision or the decision dismissing the application for administrative review if they are unlawful and, where appropriate, refer the case back to the contracting authority, or itself adopt a new decision if it is permitted to do so under national law;

7. Article 57(4) of Directive 2014/24 must be interpreted as meaning that a national court, hearing a dispute between an economic operator excluded from the award of a contract and a contracting authority, may depart from the latter's assessment of the lawfulness of the conduct of the economic operator to which the contract was awarded and, accordingly, draw all the necessary inferences in its decision. However, in accordance with the principle of equivalence, such a court may raise of its own motion the issue of an error of assessment made by the contracting authority only if permitted to do so under national law;

8. Article 63(1) of Directive 2014/24, read in conjunction with Article 57(4) and (6) of that directive, must be interpreted as precluding national legislation under which, where an economic operator which is a member of a group of economic operators has been guilty of serious misrepresentation in supplying the information required for the verification, as regards that group, of the absence of grounds for exclusion or the fulfilment of the selection criteria, without the other members of that group having been aware of that misrepresentation, all of the members of that group may be excluded from participation in any public procurement procedure.

(1) OJ C 77, 9.3.2020.

Judgment of the Court (Eighth Chamber) of 2 September 2021 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V. v Vodafone GmbH

(Case C-5/20) (1)

(Reference for a preliminary ruling — Electronic communications — Regulation (EU) 2015/2120 — Article 3 — Open internet access — Article 3(1) — End users' rights — Article 3(2) — Prohibition of agreements and commercial practices limiting the exercise of end users' rights — Article 3(3) — Obligation of equal and non-discriminatory treatment of traffic — Possibility of implementing reasonable traffic management measures — Additional 'zero tariff' option — Limitation on tethering)

(2021/C 462/11)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

Defendant: Vodafone GmbH

Interested party: Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

Operative part of the judgment

Article 3 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union must be interpreted as meaning that a limitation on tethering, on account of the activation of a 'zero tariff' option, is incompatible with the obligations arising from Article 3(3).

(1) OJ C 137, 27.4.2020.

Judgment of the Court (Third Chamber) of 9 September 2021 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — XY

(Case C-18/20) ([1])

(Reference for a preliminary ruling — Border controls, asylum and immigration — Asylum policy — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 40 — Subsequent application — New elements or findings — Concept — Circumstances already existing before the final closure of a procedure concerning an earlier application for international protection — Principle of res judicata — Fault of the applicant)

(2021/C 462/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: XY

Intervener: Bundesamt für Fremdenwesen und Asyl

Operative part of the judgment

1. Article 40(2) and (3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection must be interpreted as meaning that the concept of 'new elements or findings' which 'have arisen or been presented by the applicant', within the meaning of that provision, includes elements or findings which arose after the final closure of the procedure concerning the earlier application for international protection as well as elements or findings which already existed before the closure of that procedure but which were not relied on by the applicant.

2. Article 40(3) of Directive 2013/32 must be interpreted as meaning that the substantive examination of a subsequent application for international protection may be conducted in the context of the reopening of the procedure which was the subject matter of the first application, provided that the rules applying to that reopening are in accordance with Chapter II of Directive 2013/32 and that the lodging of that application is not subject to any time limits.

3. Article 40(4) of Directive 2013/32 must be interpreted as not allowing a Member State which has not adopted specific acts transposing that provision to refuse, under the general rules of national administrative procedure, to examine the merits of a subsequent application where the new elements or findings relied on in support of that application existed at the time of the procedure which dealt with the earlier application and were not presented in the context of that procedure because of a fault attributable to the applicant.

([1]) OJ C 161, 11.5.2020.

Judgment of the Court (Fourth Chamber) of 2 September 2021 — European Commission v Kingdom of Sweden

(Case C-22/20) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Articles 4, 5, 10 and 15 — Urban waste-water treatment — Secondary or equivalent treatment of urban waste water from agglomerations of certain dimensions — More stringent treatment of discharges into sensitive areas — Article 4(3) TEU — Verification of data provided by the Member States — Obligation of sincere cooperation)

(2021/C 462/13)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: E. Manhaeve, C. Hermes, K. Simonsson and E. Ljung Rasmussen, acting as Agents)

Defendant: Kingdom of Sweden (represented by: O. Simonsson, R. Shahsavan Eriksson, C. Meyer-Seitz, M. Salborn Hodgson, H. Shev and H. Eklinder, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that the Kingdom of Sweden has failed to fulfil its obligations under Article 4 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008, read in conjunction with Article 10 of Directive 91/271, as amended by Regulation No 1137/2008, by not ensuring that, before it is discharged, urban waste water from the agglomerations Lycksele, Malå and Pajala is subject to secondary treatment or an equivalent treatment, and

   declares that the Kingdom of Sweden has failed to fulfil its obligations under Article 4(3) TEU, since it did not, during the pre-litigation procedure, provide the European Commission with the information necessary for it to assess whether the waste water treatment plants for the agglomerations Habo and Töreboda satisfy the requirements of Directive 91/271, as amended by Regulation No 1137/2008;

2. Dismisses the action as to the remainder;

3. Orders the European Commission and the Kingdom of Sweden to bear their own costs.

([1]) OJ C 87, 16.3.2020.

Judgment of the Court (Sixth Chamber) of 9 September 2021 (requests for a preliminary ruling from the Landgericht Ravensburg — Germany) — UK v Volkswagen Bank GmbH (C-33/20), RT, SV, BC v Volkswagen Bank GmbH, Skoda Bank, succursale de Volkswagen Bank GmbH (C-155/20), JL, DT v BMW Bank GmbH, Volkswagen Bank GmbH (C-187/20)

(Joined Cases C-33/20, C-155/20 and C-187/20) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2008/48/EC — Consumer credit — Article 10(2) — Information which must be included in the agreement — Obligation to state the type of credit, the duration of the credit agreement, the rate of interest on arrears and the mechanism for adjusting the rate of interest on arrears applicable at the time of conclusion of the credit agreement — Change in the default interest rate in the light of a change in the base interest rate determined by the central bank of a Member State — Compensation due in the event of early repayment of the loan — Obligation to specify the method of calculating the change to the default interest rate and the compensation — No obligation to mention the possibilities for terminating the credit agreement provided for by national rules but not by Directive 2008/48 — Article 14(1) — Right of withdrawal exercised by the consumer on the basis of a failure to make a compulsory indication under Article 10(2) — Exercise outside the time limit — Prohibition on the creditor raising a plea of forfeiture or the plea of abuse of rights)

(2021/C 462/14)

Language of the case: Germany

Referring court

Landgericht Ravensburg

Parties to the main proceedings

Applicants: UK (C-33/20), RT, SV, BC (C-155/20), JL, DT (C-187/20)

Defendants: Volkswagen Bank GmbH (C-33/20), Volkswagen Bank GmbH, Skoda Bank, succursale de Volkswagen Bank GmbH (C-155/20), BMW Bank GmbH, Volkswagen Bank GmbH (C-187/20)

Operative part of the judgment

1. Article 10(2)(a), (c) and (e) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as meaning that where that is the case, the credit agreement must state, in a clear and concise manner, that it is a 'linked credit agreement' within the meaning of Article 3(n) of that directive and that it is concluded for a fixed period.

2. Article 10(2) of Directive 2008/48 must be interpreted as not requiring a 'linked credit agreement' within the meaning of Article 3(n) of that directive, which serves exclusively to finance an agreement for the supply of goods and which provides that the amount of credit is to be paid to the seller of those goods, to state that the consumer is released from his or her obligation to pay the purchase price to the extent of the amount disbursed and that the seller, provided that the purchase price has been paid in full, must return the goods purchased to him or her.

3. Article 10(2)(l) of Directive 2008/48 must be interpreted as meaning that the credit agreement must state, in the form of a specific percentage, the rate of interest on arrears applicable at the time of the conclusion of that agreement and must describe in concrete terms the mechanism for adjusting the rate of interest on arrears. In the event that the parties to the credit agreement in question have agreed that the rate of interest on arrears will be adjusted in accordance with the change in the base interest rate determined by the central bank of a Member State and published in an official journal which is easily accessible, a reference in that agreement to that base interest rate shall be sufficient, provided that the method of calculating the rate of interest on arrears in relation to the base interest rate is set out in that agreement. In this respect, two conditions must be met. First, the presentation of the method of calculation must be easily understandable for an average consumer who does not have specialised knowledge in the financial field and must enable him or her to calculate the rate of interest on arrears on the basis of the information provided in that agreement. Second, the frequency of the change in the base interest rate, which is determined by national provisions, must also be presented in the credit agreement in question.

4. Article 10(2)(r) of Directive 2008/48 must be interpreted as meaning that the credit agreement must, for the purpose of calculating the compensation due in the event of early repayment of the loan, indicate the method of calculating that compensation in a manner which is concrete and easily understandable to an average consumer, so that the consumer can determine the amount of compensation due in the event of early repayment on the basis of the information provided in that agreement.

5. Article 10(2) of Directive 2008/48 must be interpreted as not requiring the credit agreement to list all the situations in which the parties to the credit agreement are granted a right of termination not by that directive but solely by national legislation.

6. Article 14(1) of Directive 2008/48 must be interpreted as precluding the creditor from invoking a plea of forfeiture where the consumer exercises his or her right of withdrawal in accordance with that provision, where some of the mandatory information referred to in Article 10(2) of that directive was not included in the credit agreement and was not duly communicated subsequently, irrespective of whether that consumer had no knowledge of the existence of his or her right of withdrawal without being responsible for that lack of knowledge.

7. Directive 2008/48 must be interpreted as precluding the creditor from being entitled to claim that the consumer has abused his or her right of withdrawal, provided for in Article 14(1) of that directive, where some of the mandatory information referred to in Article 10(2) of that directive was not included in the credit agreement nor was it duly communicated subsequently, irrespective of whether that consumer had no knowledge of the existence of his or her right of withdrawal.

8. Article 10(2)(t) of Directive 2008/48 must be interpreted as meaning that the credit agreement must contain essential information about all the out-of-court claims or redress procedures available to the consumer and, where appropriate, the cost of each of them, the fact that the complaint or redress must be submitted by post or by electronic means, the physical or electronic address to which that complaint or redress must be sent and the other formal conditions to which that complaint or redress is subject. With regard to that information, a mere reference in the credit agreement to a set of rules of procedure which can be accessed on the internet or to another act or document on the details of out-of-court claims and redress procedures is not sufficient.

(1) OJ C 161, 11.5.2020.
OJ C 230, 13.7.2020.
OJ C 255, 3.8.2020.

Judgment of the Court (Eighth Chamber) of 2 September 2021 (request for a preliminary ruling from the Verwaltungsgericht Köln — Germany) — Telekom Deutschland GmbH v Bundesrepublik Deutschland, represented by the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

(Case C-34/20) (1)

(Reference for a preliminary ruling — Electronic communications — Regulation (EU) 2015/2120 — Article 3 — Open internet access — Article 3(1) — End users' rights — Article 3(2) — Prohibition of agreements and commercial practices limiting the exercise of end users' rights — Article 3(3) — Obligation of equal and non-discriminatory treatment of traffic — Possibility of implementing reasonable traffic management measures — Additional 'zero tariff' option — Limitation on bandwidth)

(2021/C 462/15)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: Telekom Deutschland GmbH

Defendant: Bundesrepublik Deutschland, represented by the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

Operative part of the judgment

Article 3 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union must be interpreted as meaning that a limitation on bandwidth, on account of the activation of a 'zero tariff' option, applied to video streaming, irrespective of whether it is streamed by partner operators or other content providers, is incompatible with the obligations arising from Article 3(3).

(1) OJ C 137, 27.4.2020.

Judgment of the Court (Fourth Chamber) of 2 September 2021 (request for a preliminary ruling from the Procura della Repubblica di Trento — Italy) — Proceedings relating to the recognition and execution of a European Investigation Order (EIO) concerning XK

(Case C-66/20) ([1])

(Reference for a preliminary ruling — Article 267 TFEU — Definition of 'court or tribunal of a Member State' — Criteria — Procura della Repubblica di Trento (Public Prosecutor's Office, Trento, Italy) — Inadmissibility of the request for a preliminary ruling)

(2021/C 462/16)

Language of the case: Italian

Referring court

Procura della Repubblica di Trento

Parties to the main proceedings

XK

Intervening party: Finanzamt für Steuerstrafsachen und Steuerfahndung Münster

Operative part of the judgment

The request for a preliminary ruling from the Procura della Repubblica di Trento (Public Prosecutor's Office, Trento, Italy), made by decision of 15 January 2020, is inadmissible.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Fifth Chamber) of 9 September 2021 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — XY v Hauptzollamt B

(Case C-100/20) ([1])

(Reference for a preliminary ruling — Taxation — Taxation of energy products and electricity — Directive 2003/96/EC — Article 17(1)(a) — Tax reductions on the consumption of energy products and electricity in favour of energy-intensive businesses — Optional reduction — Arrangements governing the repayment of tax levied in breach of provisions of national law adopted on the basis of a power granted to the Member States in that directive — Payment of interest — Principle of equal treatment)

(2021/C 462/17)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: XY

Respondent: Hauptzollamt B

Operative part of the judgment

EU law must be interpreted as requiring that, in the event of refund of the amount of electricity tax wrongly levied on account of the incorrect application of a national provision adopted on the basis of a power granted to the Member States by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, interest be paid on that amount.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Ninth Chamber) of 2 September 2021 — European Commission v Portuguese Republic

(Case C-169/20) ([1])

(Failure of a Member State to fulfil obligations — Article 110 TFEU — Internal taxation — Discriminatory taxation — Prohibition — Second-hand vehicles imported from other Member States — Component of the registration tax calculated on the basis of carbon dioxide emissions — Failure to take into account the depreciation of the vehicle)

(2021/C 462/18)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: initially, M. França and C. Perrin, and, subsequently, G. Braga da Cruz and C. Perrin, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, N. Vitorino, A. Pimenta, P. Barros da Costa and S. Jaulino, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by excluding the depreciation of the environmental component in the calculation of the applicable value of second-hand vehicles put into circulation in the Portuguese territory and purchased in another Member State when calculating the vehicle tax as provided for by the Código do imposto sobre veículos (code covering vehicle tax), as amended by the lei 71/2018 (Law No 71/2018), the Portuguese Republic has failed to fulfil its obligations under Article 110 TFEU;

2. Orders the Portuguese Republic to pay the costs.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Grand Chamber) of 2 September 2021 — European Commission v Council of the European Union

(Case C-180/20) ([1])

(Action for annulment — Decisions (EU) 2020/245 and 2020/246 — Position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part — Agreement, certain provisions of which may be linked with the common foreign and security policy (CFSP) — Adoption of the Rules of Procedure of the Partnership Council, of the Partnership Committee, subcommittees and other bodies — Adoption of two separate decisions — Choice of legal basis — Article 37 TEU — Article 218(9) TFEU — Voting rules)

(2021/C 462/19)

Language of the case: English

Parties

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

Defendant: Council of the European Union (represented by: P. Mahnič, M. Balta and M. Bishop, acting as Agents)

Intervener in support of the applicant: Czech Republic (represented by: K. Najmanová, M. Švarc, J. Vláčil and M. Smolek, acting as Agents)

Intervener in support of the defendant: French Republic (represented by: T. Stehelin, J. L. Carré and by A. L. Desjonquères, acting as Agents)

Operative part of the judgment

The Court:

1. Annuls Council Decision (EU) 2020/245 of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of that Agreement with the exception of Title II thereof, and Council Decision (EU) 2020/246 of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of Title II of that Agreement;

2. Orders that the effects of Decisions 2020/245 and 2020/246 be maintained;

3. Orders the Council of the European Union to pay the costs;

4. Orders the French Republic and the Czech Republic to bear their own costs.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Fourth Chamber) of 2 September 2021 (request for a preliminary ruling from the Cour de cassation — France) — DM, LR v Caisse régionale de Crédit agricole mutuel (CRCAM) — Alpes-Provence

(Case C-337/20) ([1])

(Reference for a preliminary ruling — Approximation of laws — Payment services in the internal market — Directive 2007/64/EC — Articles 58 and 60 — Payment service user — Notification of unauthorised payment transactions — Liability of the payment service provider for those transactions — Action for liability brought by the guarantor of a payment service user)

(2021/C 462/20)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: DM, LR

Defendant: Caisse régionale de Crédit agricole mutuel (CRCAM) — Alpes-Provence

Operative part of the judgment

1. Article 58 and Article 60(1) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC must be interpreted as precluding a payment service user from being able to trigger the liability of the provider of those services on the basis of a liability regime other than that provided for by those provisions, in the case where that user has failed to fulfil his or her obligation to notify laid down in that Article 58;

2. Article 58 and Article 60(1) of Directive 2007/64 must be interpreted as not precluding the guarantor of a payment service user from relying, by reason of a failure on the part of the payment service provider to fulfil its obligations relating to an unauthorised transaction, on the civil liability of such a provider, which is entitled to the guarantee, in order to challenge the amount of the guaranteed debt, in accordance with a contractual liability regime under the general law.

(1) OJ C 339, 12.10.2020.

Judgment of the Court (Grand Chamber) of 2 September 2021 (request for a preliminary ruling from the Corte costituzionale — Italy) — O.D. and Others v Istituto nazionale della previdenza sociale (INPS)

(Case C-350/20) (1)

(Reference for a preliminary ruling — Directive 2011/98/EU — Rights for third-country workers who hold single permits — Article 12 — Right to equal treatment — Social security — Regulation (EC) No 883/2004 — Coordination of social security systems — Article 3 — Maternity and paternity benefits — Family benefits — Legislation of a Member State excluding third-country nationals holding a single permit from entitlement to a childbirth allowance and a maternity allowance)

(2021/C 462/21)

Language of the case: Italian

Referring court

Corte costituzionale

Parties to the main proceedings

Applicants: O.D., R.I.H.V., B.O., F.G., M.K.F.B., E.S., N.P, S.E.A.

Defendant: Istituto nazionale della previdenza sociale (INPS)

Intervener: Presidenza dei Consiglio dei Ministri

Operative part of the judgment

Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.

(1) OJ C 329, 5.10.2020.

Judgment of the Court (Sixth Chamber) of 2 September 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Peek & Cloppenburg KG, legally represented by Peek & Cloppenburg Düsseldorf Komplementär BV v Peek & Cloppenburg KG, legally represented by Van Graaf Management GmbH

(Case C-371/20) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2005/29/EC — Unfair commercial practices — Commercial practices deemed to be unfair in all circumstances — Misleading commercial practices — First sentence of point 11 of Annex I — Advertising campaigns — Use of editorial content in the media to promote a product — Promotion financed by the trader itself — Concept of 'payment' — Promotion of sales of the products of the media operator company and of the trader — Advertorial)

(2021/C 462/22)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Peek & Cloppenburg KG, legally represented by Peek & Cloppenburg Düsseldorf Komplementär BV

Defendant: Peek & Cloppenburg KG, legally represented by Van Graaf Management GmbH

Operative part of the judgment

The first sentence of point 11 of Annex I to Directive 2005/29/EC of the European Parliament and of the Council on unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council must be interpreted as meaning that the promotion of a product by the publication of editorial content is 'paid for' by a trader, within the meaning of that provision, in the case where that trader provides consideration with an asset value for that publication, whether in the form of payment of a sum of money or in any other form, provided that there is a definite link between the payment thus made by that trader and that publication. That will, inter alia, be the case where that trader makes available, free of charge, images protected by copyright on which are visible the commercial premises and products which it offers for sale.

([1]) OJ C 348, 19.10.2020.

Judgment of the Court (First Chamber) of 2 September 2021 (request for a preliminary ruling from the Østre Landsret — Denmark) — B v Udlændingenævnet

(Case C-379/20) ([1])

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 — Article 13 — Standstill clause — New restriction — Family reunification of minor children of Turkish workers — Age condition — Requirement of compelling reasons in order to be granted family reunification — Overriding reason in the public interest — Successful integration — Proportionality)

(2021/C 462/23)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: B

Defendant: Udlændingenævnet

Operative part of the judgment

Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey must be interpreted as meaning that a national measure lowering from 18 to 15 years the age below which the child of a Turkish worker residing legally in the territory of the host Member State may submit an application for family reunification constitutes a 'new restriction' within the meaning of that provision. Such a restriction may, however, be justified by the objective of ensuring the successful integration of the third-country nationals concerned, on condition that the detailed rules for its implementation do not go beyond what is necessary to attain the objective pursued.

(1) OJ C 348, 19.10.2020.

Judgment of the Court (Ninth Chamber) of 2 September 2021 (request for a preliminary ruling from the Cour d'appel de Mons — Belgium) — TP v Institut des Experts en Automobiles

(Case C-502/20) (1)

(Reference for a preliminary ruling — Freedom of establishment — Freedom to provide services — Recognition of professional qualifications — Directive 2005/36/EC — Article 5(2) — Automotive expert established in one Member State who moves to the territory of the host Member State in order to pursue, on a temporary and occasional basis, his profession — Refusal of the professional body of the host Member State, in which he was previously established, to enter him in the register of temporary and occasional service providers — Concept of 'temporary and occasional provision of services')

(2021/C 462/24)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Appellant: TP

Respondent: Institut des Experts en Automobiles

Operative part of the judgment

Article 5(2) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, must be interpreted as precluding legislation of the host Member State, within the meaning of that provision, which, as interpreted by the competent authorities of that Member State, does not allow a professional established in another Member State to pursue, on a temporary and occasional basis, his or her profession in the territory of the host Member State, on the grounds that that professional has had, in the past, an establishment in that Member State, that the services that he or she provides are to a certain degree recurrent or that he or she has equipped him or herself, in that Member State, with infrastructure, such as an office.

(1) OJ C 35, 1.2.2021.

Appeal brought on 8 February 2021 by Likvidacijska masa iza Mesoprodukt d.o.o. and Gojko Čuljak against the order of the General Court (Second Chamber) delivered on 28 January 2021 in Case T-603/20, Likvidacijska masa iza Mesoprodukt d.o.o. and Gojko Čuljak v European Commission

(Case C-171/21 P)

(2021/C 462/25)

Language of the case: Croatian

Parties

Appellants: Likvidacijska masa iza Mesoprodukt d.o.o. and Gojko Čuljak (represented by: I. Žalac, odvjetnik)

Other party to the proceedings: European Commission

By order of 1 September 2021, the Court of Justice (Ninth Chamber) dismissed the appeal as manifestly unfounded, dismissed the application for legal aid lodged by Likvidacijska masa iza Mesoprodukt d.o.o. and Mr Gojko Čuljak, and ruled that Likvidacijska masa iza Mesoprodukt d.o.o. and Mr Čuljak are to bear their own costs.

Appeal brought on 31 March 2021 by 12seasons GmbH against the judgment of the General Court (Third Chamber) delivered on 20 January 2021 in Case T-329/19, 12seasons v EUIPO — Société immobilière et mobilière de Montagny (BE EDGY BERLIN)

(Case C-211/21 P)

(2021/C 462/26)

Language of the case: English

Parties

Appellant: 12seasons GmbH (represented by: M. Gail, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Société immobilière et mobilière de Montagny

By order of 1 September 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that 12seasons GmbH should bear its own costs.

Appeal brought on 12 May 2021 by Graanhandel P. van Schelven BV against the order of the General Court (Eighth Chamber) delivered on 24 March 2021 in Case T-306/19, Graanhandel P. van Schelven v Commission

(Case C-309/21 P)

(2021/C 462/27)

Language of the case: English

Parties

Appellant: Graanhandel P. van Schelven BV (represented by: C. Almeida, advocaat)

Other party to the proceedings: European Commission

Form of order sought

By order of 28 September 2021, the Court of Justice (Ninth Chamber) held that the appeal is dismissed as manifestly unfounded and that Graanhandel P. van Schelven BV shall bear its own costs.

Appeal brought on 14 June 2021 by Apologistics GmbH against the judgment of the General Court (Tenth Chamber) delivered on 21 April 2021 in Case T-282/20, Apologistics GmbH v European Union Intellectual Property Office

(Case C-369/21 P)

(2021/C 462/28)

Language of the case: German

Parties

Appellant: Apologistics GmbH (represented by: H. Hug, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office, Markus Kerckhoff

By order of 22 September 2021, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that the appellant shall bear its own costs.

Appeal brought on 8 July 2021 by repowermap.org against the judgment of the General Court (Tenth Chamber) delivered on 28 April 2021 in Case T-872/16, repowermap.org v EUIPO and Repower

(Case C-417/21 P)

(2021/C 462/29)

Language of the case: French

Parties

Appellant: repowermap.org (represented by: P. González-Bueno Catalán de Ocón, abogado, and W. Sakulin, advocaat)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) and Repower AG

By order of 8 September 2021, the Court of Justice (Chamber determining whether appeals may proceed) ruled that the appeal is not allowed to proceed.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 30 July 2021 — La Quadrature du Net, Fédération des fournisseurs d'accès à internet associatifs, Franciliens.net, French Data Network v Premier ministre, Ministère de la Culture

(Case C-470/21)

(2021/C 462/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: La Quadrature du Net, Fédération des fournisseurs d'accès à internet associatifs, Franciliens.net, French Data Network

Defendants: Premier ministre, Ministère de la Culture

Questions referred

1. Are the civil identity data corresponding to an IP address included among the traffic and location data to which, in principle, the requirement for prior review by a court or an independent administrative entity with binding power applies?

2. If the first question is answered in the affirmative, and having regard to the fact that the data relating to the civil identity of users, including their contact details, are not particularly sensitive data, is Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), ([1]) read in the light of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation which provides for the collection of those data, corresponding to the IP addresses of users, by an administrative authority, without prior review by a court or an independent administrative entity with binding power?

3. If the second question is answered in the affirmative, and having regard to the fact that the data relating to civil identity are not particularly sensitive data, that only those data may be collected and they may be collected solely for the purposes of preventing failures to fulfil obligations which have been defined precisely, exhaustively and restrictively by national law, and that the systematic review of access to the data of each user by a court or a third-party administrative entity with binding power would be liable to jeopardise the fulfilment of the public service task entrusted to the administrative authority which collects those data, which is itself independent, does the directive preclude the review from being performed in an adapted fashion, for example as an automated review, as the case may be under the supervision of a department within the body which offers guarantees of independence and impartiality in relation to the officials who have the task of collecting the data?

([1]) OJ 2002 L 201, p. 37.

Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Latvia) lodged on 30 August 2021 — SIA Mikrotīkls v Valsts ieņēmumu dienests

(Case C-542/21)

(2021/C 462/31)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicant at first instance and appellant: SIA Mikrotīkls

Defendant at first instance and respondent: Valsts ieņēmumu dienests

Question referred

Must the combined nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ([1]) as amended by Commission Implementing Regulation (EU) No 927/2012 ([2]) of 9 October 2012 and Commission Implementing Regulation No 1001/2013 ([3]) of 4 October 2013, be interpreted as meaning that subheading 8517 70 11 of the combined nomenclature can include router aerials configured for use in local area networks (LAN) and/or wide area networks (WAN)?

([1]) OJ 1987 L 256, p. 1.

([2]) Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2012 L 304, p. 1).

([3]) Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2013 L 290, p. 1).

Action brought on 7 September 2021 — European Commission v Council of the European Union

(Case C-551/21)

(2021/C 462/32)

Language of the case: English

Parties

Applicant: European Commission (represented by: A. Bouquet, B. Hofstötter, T. Ramopoulos, A. Stobiecka-Kuik, agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Article 2 of Council Decision (EU) 2021/1117 ([1]) of 28 June 2021 on the signing, on behalf of the European Union, and provisional application of the Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) and the designation by the Council through its President, of the Portuguese Ambassador as the person empowered to sign the Protocol, as was done on 29 June 2021, and

— order the Council to pay the costs.

Pleas in law and main arguments

With its first and main plea the Commission argues that the Council violated (a) the Commission's external representation powers under Article 17 TEU in conjunction with the inter-institutional balance and the principle of institutional conferral of powers as set out in Article 13(2) TEU, as well as (b) the requirement of the unity of external representation arising from the principle of sincere cooperation between the Union and its Member States. The Commission submits first that the Council committed an error in law violating the Commission's prerogatives by adopting Article 2 of Council Decision (EU) 2021/1117 of 28 June 2021, as amended, and by designating through its President, based on that provision, the Portuguese Ambassador as the person empowered to sign on behalf of the Union (and even to sign alone) the Implementing Protocol with Gabon, instead of the Commission. Second, the Commission submits that by doing so the Council created confusion with the external partners of the Union on which Union institution is to ensure the external representation of the Union since it designated the rotating Council Presidency in the person of the Portuguese Ambassador, and thereby provoked doubts on the legal nature of the Union's powers in its areas of competence to enter autonomously into international agreements as a fully-fledged international legal person and not as an agency of its Member States. In doing so, the Council undermined the effectiveness, credibility and reputation of the Union on the international plane.

With its Second Plea the Commission argues that the Council violated (a) the duty to state reasons and the publicity requirement, provided in Articles 296 and 297 TFEU, and (b) the principle of sincere cooperation between institutions of Article 13(2) TEU. The Commission submits first, that the Council failed to give reasons as to why it decided to designate the Portuguese Ambassador to sign on behalf of the Union and to properly render public such decision by way of publication or notification to the Commission, and, second, that the Council failed to consult with the Commission on its intention to designate the Portuguese Ambassador to sign on behalf of the Union.

([1]) OJ 2021, L 242, p. 3.

Appeal brought on 8 September 2021 by Global Silicones Council, Wacker Chemie AG, Momentive Performance Materials GmbH, Shin-Etsu Silicones Europe BV, Elkem Silicones France SAS against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 30 June 2021 in Case T-226/18, Global Silicones Council e.a. v Commission

(Case C-558/21 P)

(2021/C 462/33)

Language of the case: English

Parties

Appellants: Global Silicones Council, Wacker Chemie AG, Momentive Performance Materials GmbH, Shin-Etsu Silicones Europe BV, Elkem Silicones France SAS (represented by: A. Bartl, advokát, A. Kołtunowska, adwokat, R. Cana, avocat, E. Mullier, avocate)

Other parties to the proceedings: American Chemistry Council, Inc. (ACC), European Commission, Federal Republic of Germany, United Kingdom of Great Britain and Northern Ireland, European Parliament, Council of the European Union, European Chemicals Agency

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court in Case T-226/18;

— annul the contested act ([1]);

— alternatively, refer the case back to the General Court to rule on the appellants' application for annulment; and

— order the respondent to pay the costs of these proceedings, including the costs of the proceedings before the General Court.

Pleas in law and main arguments

In support of the appeal, the appellants rely on five pleas in law.

First plea in law, alleging errors in law and misinterpretation of Article 68(1) of the REACH Regulation ([2]) in concluding that the respondent did not breach Article 68(1) by failing to explicitly make an unacceptable risk finding.

Second plea in law, alleging errors in law by concluding that the respondent did not fail to state reasons as to why the risks associated with D4/D5 in wash-off products were unacceptable. The failure of the respondent to specifically articulate the reasons for that determination constitutes a failure to state reasons and does not allow for court review.

Third plea in law, alleging errors in law by concluding that uncertainty in the assessment of PBT/ vPvB substances justifies an approach whereby any emissions can be a proxy for risk. By equating any emissions with the risk (or even unacceptable risk) for the purposes of the REACH restriction the respondent breached Articles 68(1), Article 69 and Annex XV making a reference to Annex I of the REACH regulation and acted contrary to the settled case law of EU Courts that scientific risk assessment cannot be based on the zero-risk principle.

Fourth plea in law, alleging errors in law and misinterpretation of Annex XIII REACH in ruling that bioconcentration factor ('BCF') has a priority over other data, and specifically biomagnification factor ('BMF') or trophic magnification factor ('TMF').

Fifth plea in law, alleging errors in law and misinterpretation of Annex XIII REACH by determining that the respondent was not required to take into account the hybrid nature of D4 and D5 when concluding the substances fulfil the very Persistent ('vP') and very Bioaccumulative ('vB') criteria of Annex XIII REACH.

(1) Commission Regulation (EU) 2018/35 of 10 January 2018 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 octamethylcyclotetrasiloxane ('D4') and decamethylcyclopentasiloxane ('D5') (OJ 2018 L 6, p. 45).

(2) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1, corrigendum OJ 2007 L 136, p. 3).

Appeal brought on 8 September 2021 by Global Silicones Council, Dow Silicones UK Ltd, Elkem Silicones France SAS, Evonik Operations GmbH, Momentive Performance Materials GmbH, Shin-Etsu Silicones Europe BV, Wacker Chemie AG against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 30 June 2021 in Case T-519/18, Global Silicones Council e.a. v ECHA

(Case C-559/21 P)

(2021/C 462/34)

Language of the case: English

Parties

Appellants: Global Silicones Council, Dow Silicones UK Ltd, Elkem Silicones France SAS, Evonik Operations GmbH, Momentive Performance Materials GmbH, Shin-Etsu Silicones Europe BV, Wacker Chemie AG (represented by: R. Cana, avocat, E. Mullier, avocate, Z. Romata, Solicitor)

Other parties to the proceedings: American Chemistry Council, Inc. (ACC), European Chemicals Agency, Federal Republic of Germany, European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court in Case T-519/18;

— annul the contested decision (1);

— alternatively, refer the case back to the General Court to rule on the appellants' application for annulment;

— order the respondent to pay the costs of these proceedings, including the costs of the proceedings before the General Court, and those of the interveners.

Pleas in law and main arguments

In support of the appeal, the appellants rely on the following pleas in law:

First, the General Court erred in law and misinterpreted Annex XIII to the REACH Regulation (2) and Commission Regulation 253/2011 (3) in ruling that BCF data has 'priority' or 'greater weight' than other data for the assessment of B/vB properties and that the respondent did not make a manifest error of assessment in considering that the BCF values had greater weight.

Second, the General Court erred in law and misinterpreted Annex XIII to the REACH Regulation in ruling that the respondent did not manifestly err by failing to take into account the relevance of the hybrid nature of D4, D5 and D6, and distorted the appellants' pleas and the evidence put forward in this context, breaching the appellants' right to be heard.

Third, the General Court erred in law and misinterpreted Annex XIII to the REACH Regulation in ruling that the respondent did not manifestly err by failing to take into account data obtained under relevant conditions and distorted the appellants' pleas and the evidence put forward in this context, breaching the appellants' right to be heard.

Fourth, the General Court erred in law in the assessment of the evidence and distorted the evidence before it.

(1) Decision of ECHA of 27 June 2018 including octamethylcyclotetrasiloxane (D4), decamethylcyclopentasiloxane (D5) and dodecamethylcyclohexsiloxane (D6) in the Candidate List for eventual inclusion in Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1, corrigendum OJ 2007 L 136, p. 3).

(2) Commission Regulation (EU) 2018/35 of 10 January 2018 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 octamethylcyclotetrasiloxane ('D4') and decamethylcyclopentasiloxane ('D5') (OJ 2018 L 6, p. 45).

(3) Commission Regulation (EU) No 253/2011 of 15 March 2011 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XIII (OJ 2011 L 69, p. 7).

Appeal brought on 17 September 2021 by Irish Wind Farmers' Association Clg, Carrons Windfarm Ltd, Foyle Windfarm Ltd, Greenoge Windfarm Ltd against the judgment of the General Court (First Chamber) delivered on 7 July 2021 in Case T-680/19, Irish Wind Farmers' Association and Others v Commission

(Case C-578/21 P)

(2021/C 462/35)

Language of the case: English

Parties

Appellants: Irish Wind Farmers' Association Clg, Carrons Windfarm Ltd, Foyle Windfarm Ltd, Greenoge Windfarm Ltd (represented by: M. Segura Catalán, abogada, and M. Clayton, avocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— order the Commission to pay the costs of the proceedings at first instance and the proceedings of appeal.

Pleas in law and main arguments

The appeal is based on two grounds.

By their first ground, the appellants consider that the General Court misinterpreted Article 108 TFEU and Article 4 of Regulation 2015/1589 (1) by holding that the assessment of the concerned aid measure did not require the Commission to open the formal investigation procedure given the absence of serious difficulties as regards its classification as state aid and its compatibility with the internal market.

The first ground is divided into six branches.

First branch: the General Court erred in law as regards the scope of the Commission's duty to examine facts and points of law in case of unlawful aid.

Second branch: The General Court erred in law in setting a differentiated treatment of the information submitted by Member States and by complainants.

Third branch: The General Court erred in law in the assessment of the duration of the preliminary examination.

Fourth branch: The General Court erred in law in setting the burden of proof to be met by the complainants.

Fifth branch: The General Court erred in law in disregarding the relevance of the system in the United Kingdom for the case at hand.

Sixth branch: The General Court drew an erroneous conclusion from the technical nature of the method for assessing the NAV of fossil fuel electricity generation facilities.

By their second ground, the appellants consider that the General Court distorted the clear sense of evidence put forward by the applicants.

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

Appeal brought on 21 September 2021 by Ryanair DAC, Laudamotion GmbH against the order of the General Court (Third Chamber) delivered on 12 July 2021 in Case T-866/19, Ryanair and Laudamotion v Commission

(Case C-581/21 P)

(2021/C 462/36)

Language of the case: English

Parties

Appellants: Ryanair DAC, Laudamotion GmbH (represented by: E. Vahida, avocat, S. Rating, abogado, and I.-G. Metaxas-Maranghidis, dikigoros)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the order under appeal;

— refer the case back to the General Court for reconsideration;

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The appellants advance two grounds of appeal.

The General Court infringed EU law and distorted the facts (1) in considering that the priority of the Slot Regulation (1) is relevant to determining whether the Traffic Distribution Rules (2) entail implementing measures, and (2) by disregarding the normal course of events in determining the artificial nature of a request by the appellants for an implementing measure from the slot coordinator.

In addition, the appellants submit that the General Court has failed to state reasons to support its findings in the order under appeal.

(1) Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ 1993 L 14, p. 1).

(2) Commission Implementing Decision (EU) 2019/1585 of 24 September 2019 on the establishment of traffic distribution rules pursuant to Article 19 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council for the airports Amsterdam Schiphol and Amsterdam Lelystad (notified under document C(2019) 6816) (OJ 2019 L 246, p. 24).

Appeal brought on 23 September 2021 by Ryanair DAC, Laudamotion GmbH against the judgment of the General Court (Tenth Chamber, Extended Composition) delivered on 14 July 2021 in Case T-677/20, Ryanair and Laudamotion v Commission (Austrian Airlines; Covid-19)

(Case C-591/21 P)

(2021/C 462/37)

Language of the case: English

Parties

Appellants: Ryanair DAC, Laudamotion GmbH (represented by: V. Blanc, E. Vahida and F.-C. Laprévote, avocats, D. Pérez de Lamo and S. Rating, abogados, I.-G. Metaxas-Maranghidis, dikigoros)

Other parties to the proceedings: European Commission, Federal Republic of Germany, Republic of Austria, Austrian Airlines AG

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— declare in accordance with Articles 263 and 264 TFEU the Commission Decision C(2020) 4684 final of 6 July 2020 on State aid SA.57539 (2020/N) — Austria — COVID-19 — Aid to Austrian Airlines void;

— order the Commission to bear its own costs and pay those incurrent by Ryanair, and order the interveners at first instance and in this appeal (if any) to bear their own costs.

Alternatively:

— set aside the judgment under appeal;

— refer the case back to the General Court for reconsideration;

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

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

First plea in law: the General Court erred in law and manifestly distorted the facts in rejecting the appellants' claim that the Commission failed to review a possible 'spill-over' of aid to or from Lufthansa.

Second plea in law: the General Court erred in law in rejecting the appellants' claim that the Commission breached the requirement that aid granted under Article 107(2)(b) TFEU is not to make good the damage suffered by a single victim.

Third plea in law: the General Court erred in law in rejecting the appellants' claim that the non-discrimination principle has been unjustifiably violated.

Fourth plea in law: the General Court erred in law and manifestly distorted the facts in rejecting the appellants' claim on the infringement of the freedom of establishment and the free provision of services.

Fifth plea in law: the General Court erred in law and manifestly distorted the facts in the application of Article 107(2)(B) TFEU and the proportionality principle in relation to damage caused to Austrian Airlines by the COVID-19 pandemic.

Sixth plea in law: the General Court erred in law and manifestly distorted the facts regarding the failure to open a formal investigation procedure.

Seventh plea in law: the General Court erred in law and manifestly distorted the facts regarding the Commission's failure to state reasons.

GENERAL COURT

Judgment of the General Court of 22 September 2021 — DEI v Commission

(Joint Cases T-639/14 RENV, T-352/15 and T-740/17) ([1])

(State aid — Tariff for electricity supply — Fixing of the tariff invoiced to Alouminion by decision of an arbitration tribunal — Decision to take no further action on the complaint — Decision finding that there is no aid — Act open to challenge — Interested person status — Interest in bringing proceedings — Locus standi — Admissibility — Imputability to the State — Advantage — Private operator principle — Serious difficulties)

(2021/C 462/38)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: in Case T-639/14 RENV: E. Bourtzalas, A. Oikonomou, E. Salaka, C. Synodinos, H. Tagaras and D. Waelbroeck; in Case T-352/15: E. Bourtzalas, C. Synodinos, E. Salaka, H. Tagaras and D. Waelbroeck, and in Case T-740/17: E. Bourtzalas, E. Salaka, C. Synodinos, H. Tagaras, D. Waelbroeck, A. Oikonomou and V.-K.-L. Moumoutzi, lawyers)

Defendant: European Commission (represented by: in Case T-639/14 RENV: É. Gippini Fournier and A. Bouchagiar and, in Cases T-352/15 and T-740/17: A. Bouchagiar and P. J. Loewenthal, acting as Agents)

Intervener in support of the defendant: Mytilinaios AE — Omilos Epicheiriseon, formerly Alouminion tis Ellados VEAE (Marousi, Greece) (represented by: N. Korogiannakis, N. Keramidas, E. Chrysafis and D. Diakopoulos, lawyers)

Re:

In Case T-639/14 RENV, application under Article 263 TFEU seeking annulment of the Commission's letter COMP/E3/ON/AB/ark *2014/61460 of 12 June 2014 informing DEI of the closure of its complaints, in Case T-352/15, application under Article 263 TFEU seeking annulment of Commission Decision C(2015) 1942 final of 25 March 2015 (Case SA.38101 (2015/NN) (ex 2013/CP) — Greece — Alleged State aid to Alouminion SA in the form of electricity tariffs below cost following an arbitration decision), and, in Case T-740/17, application under Article 263 TFEU seeking annulment of Commission Decision C(2017) 5622 final of 14 August 2017 (Case SA.38101 (2015/NN) (ex 2013/CP) — Greece — Alleged State aid to Alouminion SA in the form of electricity tariffs below cost following an arbitration decision).

Operative part of the judgment

The Court:

1. In Case T-639/14 RENV, annuls the Commission's letter COMP/E3/ON/AB/ark *2014/61460 of 12 June 2014 informing Dimosia Epicheirisi Ilektrismou AE (DEI) of the closure of its complaints;

2. In Case T-352/15, annuls Commission Decision C(2015) 1942 final of 25 March 2015 (Case SA.38101 (2015/NN) (ex 2013/CP) — Greece — Alleged State aid to Alouminion SA in the form of electricity tariffs below cost following an arbitration decision);

3. In Case T-740/17, annuls Commission Decision C(2017) 5622 final of 14 August 2017 (Case SA.38101 (2015/NN) (ex 2013/CP) — Greece — Alleged State aid to Alouminion SA in the form of electricity tariffs below cost following an arbitration decision);

4. Orders the European Commission to bear its own costs and to pay those incurred by DEI in Joined Cases T-639/14 RENV, T-352/15 and T-740/17, and also in Case C 228/16 P;

5. Orders Mytilinaios AE — Omilos Epicheiriseon to bear its own costs.

(1) OJ C 395, 10.11.2014.

Judgment of the General Court of 22 September 2021 — NLMK v Commission

(Case T-752/16) (1)

(Dumping — Imports of certain cold-rolled flat steel products originating in China and Russia — Definitive anti-dumping duty — Article 18 of Regulation (EC) No 1225/2009 (now Article 18 of Regulation (EU) 2016/1036) — Use of facts available — Article 3(2) and (5) of Regulation No 1225/2009 (now Article 3(2) and (5) of Regulation 2016/1036) — Determination of injury — Article 3(7) of Regulation No 1225/2009 (now Article 3(7) of Regulation 2016/1036) — Causal link — Article 2(9) and Article 9(4) of Regulation No 1225/2009 (now Article 2(9) and Article 9(4) of Regulation 2016/1036) — Elimination of injury — Rights of the defence — Equality of arms — Principle of good administration — Obligation to state reasons — Proportionality — Manifest errors of assessment)

(2021/C 462/39)

Language of the case: English

Parties

Applicant: Novolipetsk Steel PJSC (NLMK) (Lipetsk, Russia) (represented by: D. O'Keeffe, Solicitor, N. Tuominen and M. Krestiyanova, lawyers)

Defendant: European Commission (represented by: J.-F. Brakeland, K. Blanck and E. Schmidt, acting as Agents)

Intervener in support of the defendant: Eurofer, European Steel Association, ASBL, (Luxembourg, Luxembourg) (represented by: O. Prost, A. Coelho Dias and S. Seeuws, lawyers)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ 2016 L 210, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Novolipetsk Steel PJSC (NLMK) to bear, in addition to its own costs, those incurred by the European Commission;

3. Orders Eurofer, European Steel Association, ASBL, to bear its own costs.

(1) OJ C 14, 16.1.2017.

Judgment of the General Court of 22 September 2021 — Severstal v Commission

(Case T-753/16) ([1])

(Dumping — Imports of certain cold-rolled flat steel products originating in China and Russia — Definitive anti-dumping duty — Article 18 of Regulation (EC) No 1225/2009 (now Article 18 of Regulation (EU) 2016/1036) — Use of facts available — Article 2(3), (4), (9), (10) and (12) of Regulation No 1225/2009 (now Article 2(3), (4), (9), (10) and (12) of Regulation 2016/1036) — Calculation of the normal value, the export price and the dumping margin — Article 3(2) and (5) of Regulation No 1225/2009 (now Article 3(2) and (5) of Regulation 2016/1036) — Determination of the existence of injury — Article 3(7) of Regulation No 1225/2009 (now Article 3(7) of Regulation 2016/1036) — Causal link — Article 2(9) and Article 9(4) of Regulation No 1225/2009 (now Article 2 (9) and Article 9(4) of Regulation 2016/1036) — Injury elimination — Rights of the defence — Principle of good administration — Proportionality — Manifest errors of assessment)

(2021/C 462/40)

Language of the case: English

Parties

Applicant: PAO Severstal (Cherepovets, Russia) (represented by: D. O'Keeffe, Solicitor, N. Tuominen and M. Krestiyanova, lawyers)

Defendant: European Commission (represented by: J.-F. Brakeland, K. Blanck and E. Schmidt, acting as Agents)

Intervener in support of the defendant: Eurofer, European Steel Association, ASBL, (Luxembourg, Luxembourg) (represented by: O. Prost, A. Coelho Dias and S. Seeuws, lawyers)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ 2016 L 210, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PAO Severstal to bear, in addition to its own costs, those incurred by the European Commission;

3. Orders Eurofer, European Steel Association, ASBL, to bear its own costs.

([1]) OJ C 14, 16.1.2017.

Judgment of the General Court of 22 September 2021 — Altice Europe v Commission

(Case T-425/18) ([1])

(Competition — Concentrations — Telecommunications sector — Decision imposing fines for putting into effect a concentration before it has been notified and authorised — Article 4(1), Article 7(1) and Article 14 of Regulation (EC) No 139/2004 — Legal certainty — Legitimate expectations — Principle of legality — Presumption of innocence — Proportionality — Gravity of the infringements — Implementation of the infringements — Exchange of information — Amount of fines — Unlimited jurisdiction)

(2021/C 462/41)

Language of the case: English

Parties

Applicant: Altice Europe NV (Amsterdam, Netherlands) (represented by: R. Allendesalazar Corcho and H. Brokelmann, lawyers)

Defendant: European Commission (represented by: M. Farley and F. Jimeno Fernández, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by: S. Petrova and O. Segnana, acting as Agents)

Re:

Application based on Article 263 TFEU seeking, primarily, annulment of Commission Decision C(2018) 2418 final of 24 April 2018 imposing fines for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of Regulation (EC) No 139/2004 (Case M.7993 — Altice/PT Portugal), and, in the alternative, annulment or reduction of the fines imposed on the applicant.

Operative part of the judgment

The Court:

1. Sets the amount of the fine imposed on Altice Europe NV by Article 4 of European Commission Decision C(2018) 2418 final of 24 April 2018 imposing a fine for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of Regulation (EC) No 139/2004 (Case M.7993 — Altice/PT Portugal) for infringement of Article 4(1) of that regulation at EUR 56 025 000;

2. Dismisses the action as to the remainder;

3. Orders Altice Europe to bear its own costs and to pay four fifths of the costs of the Commission;

4. Orders the Council of the European Union to bear its own costs.

([1]) OJ C 341, 24.9.2018.

Judgment of the General Court of 22 September 2021 — Healios v EUIPO — Helios Kliniken (Healios)

(Case T-591/19) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark Healios — Earlier EU word mark HELIOS — Likelihood of confusion — Similarity of the signs — 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) — Genuine use of the earlier mark — Article 42(2) of Regulation No 207/2009 (now Article 47(2) of Regulation 2017/1001))

(2021/C 462/42)

Language of the case: English

Parties

Applicant: Healios KK (Tokyo, Japan) (represented by: P. Venohr, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Helios Kliniken GmbH (Berlin, Germany) (represented by: B. Michaelis, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 12 June 2019 (Case R 341/2018-5), relating to opposition proceedings between Helios Kliniken and Healios.

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 12 June 2019 (Case R 341/2018-5) in so far as it concerns the goods and services in Classes 1, 5 and 44 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and corresponding to the following description for each of those classes:

   — Class 1: 'Stem cells for scientific purposes', 'Stem cells for research purposes';

— Class 5: 'Veterinary preparations', 'Stem cells for medical purposes; Cellular function activating agents for medical purposes; Stem cells for veterinary purposes', 'Surgical implants grown from stem cells';

— Class 44: 'Medical services relating to the removal, treatment and processing of stem cells; Medical services relating to the removal, treatment and processing of human blood, umbilical cord blood, human cells, stem cells and bone marrow';

2. Dismisses the action as to the remainder;

3. Orders each party to bear its own costs.

(1) OJ C 363, 28.10.2019.

Judgment of the General Court of 15 September 2021 — CAPA and Others v Commission

(Case T-777/19) (1)

(State aid — Individual aid in favour of the operation of offshore wind farms — Obligation to purchase electricity at a price higher than the market price — Preliminary examination procedure — Decision not to raise objections — Action for annulment — Article 1(h) of Regulation (EU) 2015/1589 — Status as an interested party — Fishing undertakings — Erection of wind farms in fishing zones — No competitive relationship — No risk of effects on the interests of fishing undertakings by the grant of the aid in dispute — Lack of direct individual concern — Inadmissibility)

(2021/C 462/43)

Language of the case: French

Parties

Applicants: Coopérative des artisans pêcheurs associés (CAPA) Sarl (Le Tréport, France) and the ten other applicants whose names are set out in the annex to the judgment (represented by: M. Le Berre, lawyer)

Defendant: European Commission (represented by: B. Stromsky and A. Bouchiagar, acting as Agents)

Interveners in support of the applicants: Comité régional des pêches maritimes et des élevages marins des Hauts-de-France (CRPMEM) (Boulogne-sur-Mer, France), Fonds régional d'organisation du marché du poisson (FROM NORD) (Boulogne-sur-Mer), Organisation de producteurs CME Manche-Mer du Nord (OP CME Manche-Mer du Nord) (Le Portel, France) (represented by: A. Durand, lawyer)

Interveners in support of the defendant: French Republic (represented by: E. de Moustier, P. Dodeller and T. Stehelin, acting as Agents), Ailes Marines SAS (Puteaux, France) (represented by: M. Petite and A. Lavenir, lawyers), Éoliennes Offshore des Hautes Falaises SAS (Paris, France), Éoliennes Offshore du Calvados SAS (Paris), Parc du Banc de Guérande SAS (Paris) (represented by: J. Derenne and D. Vallindas, lawyers), Éoliennes en Mer Dieppe Le Tréport SAS (Dieppe, France), Éoliennes en Mer Îles d'Yeu et de Noirmoutier SAS (Nantes, France) (represented by: C. Lemaire and A. Azzi, lawyers)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2019) 5498 final of 26 July 2019 on State aid SA.45274 (2016/NN), SA.45275 (2016/NN), SA.45276 (2016/NN), SA.47246 (2017/NN), SA.47247 (2017/NN) and SA.48007 (2017/NN), implemented by the French Republic in favour of six offshore wind farms (Courseulles-sur-Mer, Fécamp, Saint-Nazaire, Îles d'Yeu, Noirmoutier, Dieppe et Le Tréport, Saint-Brieuc).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Coopérative des artisans pêcheurs associés (CAPA) Sarl and the other applicants whose names are set out in the annex to pay the costs;

3. Orders David Bourel and the other applicants in Case T-777/19 R, whose names are set out in the annex to pay the costs of the proceedings for interim measures;

4. Orders the French Republic, the Comité régional des pêches maritimes et des élevages marins des Hauts-de-France (CRPMEM), the Fonds régional d'organisation du marché du poisson (FROM NORD), the Organisation de producteurs CME Manche-Mer du Nord (OP CME Manche-Mer du Nord), Ailes Marines SAS, Éoliennes Offshore des Hautes Falaises SAS, Éoliennes Offshore du Calvados SAS, Parc du Banc de Guérande SAS, Éoliennes en Mer Dieppe Le Tréport SAS and Éoliennes en Mer Îles d'Yeu et de Noirmoutier SAS to bear their own costs.

(1) OJ C 27, 27.1.2020.

Judgment of the General Court of 22 September 2021 — Collibra v EUIPO — Dietrich (COLLIBRA and collibra)

(Case T-128/20 and T-129/20) (1)

(EU trade mark — Opposition proceedings — Applications for the EU word mark COLLIBRA and figurative mark collibra — Earlier national word mark Kolibri — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Right to be heard — Second sentence of Article 94(1) of Regulation 2017/1001)

(2021/C 462/44)

Language of the case: English

Parties

Applicant: Collibra (Brussels, Belgium) (represented by: A. Renck, I. Junkar and A. Bothe, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Hans Dietrich (Starnberg, Germany) (represented by: T. Träger, lawyer)

Re:

TWO ACTIONS brought against two decisions of the First Board of Appeal of EUIPO of 13 December 2019 (Cases R 737/2019-1 and R 738/2019-1), relating to opposition proceedings between Mr Dietrich and Collibra.

Operative part of the judgment

The Court:

1. Joins Cases T-128/20 and T-129/20 for the purposes of the judgment;

2. Dismisses the actions;

3. Orders Collibra to pay the costs.

(1) OJ C 129, 20.4.2020.

Judgment of the General Court of 22 September 2021 — Marina Yachting Brand Management v EUIPO — Industries Sportswear (MARINA YACHTING)

(Case T-169/20) ([1])

(EU trade mark — Proceedings for the revocation of decisions or for the cancellation of entries — Cancellation of an entry in the register which contains an obvious error attributable to EUIPO — Trade mark involved in insolvency proceedings — Registration of the transfer of the mark — Effects vis-à-vis third parties of bankruptcy or similar proceedings — Competence of EUIPO — Duty of diligence — Articles 20, 24, 27 and 103 of Regulation (EU) 2017/1001 — Articles 3, 7 and 19 of Regulation (EU) 2015/848)

(2021/C 462/45)

Language of the case: English

Parties

Applicant: Marina Yachting Brand Management Co. Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl, C. Eckhartt and P. Böhner, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Industries Sportswear Co. Srl (Venice, Italy) (represented by: P. Cervato, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 10 February 2020 (Joined Cases R 252/2019-2 and R 253/2019-2), relating to proceedings between Industries Sportswear and Marina Yachting Brand Management regarding the cancellation of entries.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Marina Yachting Brand Management Co. Ltd to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Industries Sportswear Co. Srl.

([1]) OJ C 191, 8.6.2020.

Judgment of the General Court of 22 September 2021 — Henry Cotton's Brand Management v EUIPO — Industries Sportswear (Henry Cotton's)

(Case T-173/20) ([1])

(EU trade mark — Proceedings for the revocation of decisions or for the cancellation of entries — Cancellation of an entry in the register which contains an obvious error attributable to EUIPO — Trade marks involved in insolvency proceedings — Registration of the transfers of the marks — Effects vis-à-vis third parties of bankruptcy or similar proceedings — Competence of EUIPO — Duty of diligence — Articles 20, 24, 27 and 103 of Regulation (EU) 2017/1001 — Articles 3, 7 and 19 of Regulation (EU) 2015/848)

(2021/C 462/46)

Language of the case: English

Parties

Applicant: Henry Cotton's Brand Management Co. Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl, C. Eckhartt and P. Böhner, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Industries Sportswear Co. Srl (Venice, Italy) (represented by: P. Cervato, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 10 February 2020 (Joined Cases R 254/2019-2 and R 255/2019-2), relating to proceedings between Industries Sportswear and Henry Cotton's Brand Management regarding the cancellation of entries in the register.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Henry Cotton's Brand Management Co. Ltd to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Industries Sportswear Co. Srl.

([1]) OJ C 191, 8.6.2020.

Judgment of the General Court of 22 September 2021 — Sociedade da Água de Monchique v EUIPO — Ventura Vendrell (chic ÁGUA ALCALINA 9,5 PH)

(Case T-195/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark chic ÁGUA ALCALINA 9,5 PH — Earlier EU word mark CHIC BARCELONA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2021/C 462/47)

Language of the case: Portuguese

Parties

Applicant: Sociedade da Água de Monchique, SA (Caldas de Monchique, Portugal) (represented by: M. Osório de Castro, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, I. Ribeiro da Cunha and J. Crespo Carrillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Pere Ventura Vendrell (Sant Sadurni d'Anoia, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 20 January 2020 (Case R 2524/2018-4), relating to opposition proceedings between Mr Ventura Vendrell and Sociedade da Água de Monchique.

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 20 January 2020 (Case R 2524/2018-4);

2. Orders EUIPO to pay the costs.

([1]) OJ C 201, 15.6.2020.

Judgment of the General Court of 22 September 2021 — Al-Imam v Council

(Case T-203/20) ([1])

(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Right of the defence — Right to effective judicial protection — Error of assessment — Proportionality — Right to property — Damage to reputation)

(2021/C 462/48)

Language of the case: French

Parties

Applicant: Maher Al-Imam (Damascus, Syria) (represented by: M. Brillat, lawyer)

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

Re:

First, application under Article 263 TFEU seeking annulment of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1), Council Implementing Decision (CFSP) 2020/212 of 17 February 2020 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 43 I, p. 6), Council Implementing Regulation (EU) 2020/211 of 17 February 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 43 I, p. 1), Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), and Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1), in so far as those acts are directed against the applicant and, second, application under Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicant as a result of those acts.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr. Maher Al-Imam to pay the costs.

([1]) OJ C 201, 15.6.2020.

Judgment of the General Court of 22 September 2021 — Moviescreens Rental v EUIPO — the airscreen company (AIRSCREEN)

(Case T-250/20) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark airscreen — Absolute grounds for refusal — No descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Distinctive character — Article 7(1)(b) of Regulation No 40/94 (now Article 7(1)(b) of Regulation 2017/1001))

(2021/C 462/49)

Language of the case: German

Parties

Applicant: Moviescreens Rental GmbH (Damme, Germany) (represented by: D. Schulz and P. Stelzig, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: the airscreen company GmbH & Co. KG (Münster, Germany) (represented by: O. Spieker, A. Schönfleisch and N. Willich, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 12 February 2020 (Case R 2527/2018-4), relating to invalidity proceedings between Moviescreens Rental and the airscreen company.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Moviescreens Rental GmbH to pay the costs.

(1) OJ C 262, 10.8.2020.

Judgment of the General Court of 22 September 2021 — JR v Commission

(Case T-435/20) (1)

(Civil service — Officials — Recruitment — Internal competition COM/03/AD/18 (AD 6) — Decision not to include the applicant's name on the reserve list for the competition — Obligation to state reasons — Secrecy of the selection board's proceedings — Weighting of the component parts of a test laid down in the notice of competition)

(2021/C 462/50)

Language of the case: French

Parties

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

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

Re:

Application under Article 270 TFEU for the annulment of the decision of 15 April 2020 of the selection board for the internal competition COM/03/AD/18 (AD 6) — Administrators, rejecting the applicant's request for review of the decision of that selection board of 16 December 2019 not to include the applicant's name on the reserve list for that competition and, if needed, for the annulment of that latter decision.

Operative part of the judgment

The Court:

1. Annuls the decision of 15 April 2020 of the selection board for the internal competition COM/03/AD/18 (AD 6) — Administrators not to include JR on the reserve list for the recruitment of administrators at grade AD 6 in the field of European public administration.

2. Orders the Commission to pay the costs.

(1) OJ C 297, 7.9.2020.

Order of the General Court of 13 September 2021 — Katjes Fassin v EUIPO — Haribo The Netherlands & Belgium (WONDERLAND)

(Case T-616/19 REV) ([1])

(Procedure — Application for revision — EU trade mark — Opposition proceedings — Action against a decision of EUIPO partially refusing to register a mark — Withdrawal of the opposition before service of the order dismissing the action — Fact unknown to the applicant and to the General Court — Revision of the order — No need to adjudicate)

(2021/C 462/51)

Language of the case: German

Parties

Applicant: Katjes Fassin GmbH & Co. KG (Emmerich am Rhein, Germany) (represented by: T. Schmitz, S. Stolzenburg-Wiemer, M. Breuer and I. Dimitrov, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Haribo The Netherlands & Belgium BV (Breda, Netherlands) (represented by: A. Tiemann and C. Elkemann, lawyers)

Re:

APPLICATION for revision of the order of 10 July 2020, *Katjes Fassin* v *EUIPO — Haribo The Netherlands & Belgium (WONDERLAND)* (T-616/19, not published, EU:T:2020:334).

Operative part of the order

1. The application for revision of the order of 10 July 2020, Katjes Fassin v EUIPO — Haribo The Netherlands & Belgium (WONDERLAND) (T-616/19, not published, EU:T:2020:334), is granted.

2. There is no longer any need to adjudicate on the action in Katjes Fassin v EUIPO — Haribo The Netherlands & Belgium (WONDERLAND) (T-616/19).

3. Each party shall bear its own costs relating to the annulment proceedings in Katjes Fassin v EUIPO — Haribo The Netherlands & Belgium (WONDERLAND) (T-616/19).

4. The European Union Intellectual Property Office (EUIPO) shall bear its own costs relating to the revision procedure.

5. EUIPO shall pay half of the costs of Katjes Fassin GmbH & Co. KG relating to the revision procedure.

6. Katjes Fassin shall bear half of its own costs relating to the revision procedure.

7. The registrar shall annex the original of the present order to the original of the order of 10 July 2020, Katjes Fassin v EUIPO — Haribo The Netherlands & Belgium (WONDERLAND) (T-616/19, not published, EU:T:2020:334).

8. The registrar shall make note of the present order in the margin of the order of 10 July 2020, Katjes Fassin v EUIPO — Haribo The Netherlands & Belgium (WONDERLAND) (T-616/19, not published, EU:T:2020:334).

([1]) OJ C 363, 28.10.2019.

Order of the General Court of 14 September 2021 — Far Polymers and Others v Commission

(Case T-722/20) ([1])

(Action for annulment — Dumping — Imports of certain polyvinyl alcohols originating in China — Definitive anti-dumping duty — Lack of direct concern — Lack of individual concern — Legislative act involving implementing measures — Inadmissibility)

(2021/C 462/52)

Language of the case: Italian

Parties

Applicants: Far Polymers Srl (Filago, Italy), Gamma Chimica SpA (Milan, Italy), Carbochem Srl (Castiglione Olona, Italy), Jeniuschem Srl (Gallarate, Italy) (represented by: G. Abbatescianni and E. Patti, lawyers)

Defendant: European Commission (represented by: K. Blanck, F. Tomat, M. Gustafsson and G. Luengo, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ 2020 L 315, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible;

2. There is no longer any need to adjudicate on the applications to intervene submitted by Kuraray Europe GmbH, Sekisui Specialty Chemicals Europe SL and Wegochem Europe BV;

3. Far Polymers Srl, Gamma Chimica SpA, Carbochem Srl and Jeniuschem Srl shall pay the costs, except for those relating to the applications to intervene;

4. Far Polymers, Gamma Chimica, Carbochem, Jeniuschem, the European Commission, Kuraray Europe, Sekisui Specialty Chemicals Europe and Wegochem Europe shall bear their own costs relating to the applications to intervene.

([1]) OJ C 35, 1.2.2021.

Order of the General Court of 20 August 2021 — PepsiCo v EUIPO (Smartfood)

(Case T-224/21) ([1])

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

(2021/C 462/53)

Language of the case: English

Parties

Applicant: PepsiCo, Inc. (Raleigh, North Carolina, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 12 February 2021 (Case R 1947/2020-4) concerning the application for registration of the figurative mark in colour Smartfood.

Operative part of the order

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

2. PepsiCo, Inc. shall pay the costs.

(1) OJ C 228, 14.6.2021.

Action brought on 1 September 2021 — Bastion Holding and Others v Commission

(Case T-513/21)

(2021/C 462/54)

Language of the case: English

Parties

Applicants: Bastion Holding BV (Amsterdam, Netherlands) and 35 other applicants (represented by: B. Braeken, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission decision C(2021) 4735 final of 22 June 2021 in State aid case SA.63257 (2021/N) — The Netherlands COVID-19: Fourth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241);

— order the Commission to bear the costs.

Pleas in law and main arguments

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

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

   — It is argued that the State aid measure raises serious doubts as to its compatibility with the internal market since it is inappropriate to obtain its objective and disproportionate to that aim.

   — First, the applicants argue that the State aid measure is disproportionate to the objective it aims to achieve. The current scheme goes beyond what is necessary in order to prevent liquidity shortages faced by SMEs and support their fixed costs. In fact, the disproportionate amount granted to SMEs allows them to be more competitive as they are not as restricted by their fixed costs. Additionally, SMEs that received aid are not required as much as the applicants to revert to their equity capital in order to remain competitive. The applicants are eligible only to receive a maximum amount of EUR 1 200 000 in total to keep thirty-three hotels running. Most of Bastion's competitors are eligible to receive aid of up to EUR 550 000 per individual hotel under the current scheme simply because they are franchise and/or because they outsource many related hotel services to other undertakings and have less money on their balance sheet. The State aid measure thus grants a comparatively much higher amount of State aid to undertakings that qualify as an SME than the amount of State aid granted to large undertakings, despite the fact that large undertakings have more substantial fixed costs and a (relatively) higher loss of turnover. This grants SMEs an unfair competitive advantage vis-à-vis larger undertakings like the applicants.

— Second, the applicants argue that the State aid measure is not appropriate to pursue its objective, which is to remedy a serious disturbance in the Dutch economy by compensating the fixed costs of undertakings that have suffered a loss of turnover of 30 % as a result of the COVID-19 outbreak and the subsequently imposed governmental measures. The maximum amount of aid is inappropriate to attain the objective pursued by the State aid measure. The State aid measure grants a maximum of EUR 1 200 000 to large undertakings. Such an amount is insufficient to remedy a serious disturbance in the Dutch economy by ensuring that undertakings remain economically viable. Especially for large undertakings, such as the applicants, that maximum amount of EUR 1 200 000 is not enough to effectively respond to the loss of turnover suffered as a result of the COVID-19 outbreak.

— In particular, the current scheme is, in the applicants' view, inappropriate to remedy the disturbance in the hotel sector. As emphasised in much international and national research, the hotel sector is one of the sectors that has been affected most severely by the COVID-19 crisis and the subsequent tight governmental measures. The average decrease in turnover in the hotel sector is significantly higher than in other sectors. The average decease in turnover in the accommodation and food sectors amounted to 33,9 % over 2020, whereas the turnover of the applicants decreased 60 % in the second quarter of 2021 in comparison to the second quarter of 2019. The applicants, being a large undertaking, thus suffered a loss of turnover significantly higher than the average loss of turnover suffered by undertakings active in the (already) worst hit sectors of food and accommodation. The State aid measure does not take this into account at all. Instead, it applies a one-size-fits-all system that is evidently not appropriate to the highly complex situation.

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

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

Action brought on 27 August 2021 — Neratax v EUIPO — Piraeus Bank and Others (ELLO ERMOL, Ello creamy, ELLO, MORFAT Creamy and MORFAT)

(Case T-528/21)

(2021/C 462/55)

Language of the case: English

Parties

Applicant: Neratax LTD (Nicosia, Cyprus) (represented by: V. Katsavos, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Piraeus Bank SA (Athens, Greece), National Bank of Greece (Athens), Eurobank Ergasias SA (Athens)

Details of the proceedings before EUIPO

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

Trade marks at issue: European Union word marks ELLO, MORFAT and European Union figurative marks ELLO ERMOL, Ello Creamy, MORFAT Creamy — European Union trade marks Nos 12 549 499 (ELLO), 12 549 821 (MORFAT), 14 715 783 (ELLO ERMOL), 14 722 243 (Ello creamy), 14 715 726 (MORFAT Creamy)

Procedure before EUIPO: Cancellation proceedings

Contested decisions: Decisions of the Fourth Board of Appeal of EUIPO of 23 June 2021 in Cases R 1295/2020-4, R 1296/2020-4, R 1298/2020-4, R 1299/2020-4, R 1302/2020-4

Form of order sought

The applicant claims that the Court should:

— legally cancel, revoke and annul the contested decisions;

— for the rightful ownership of the trademarks of the application to be upheld and recognized as the applicant's intellectual property;

— order the opposing parties to pay the costs incurred in the course of the present proceedings.

Pleas in law

— Infringement of Articles 101 to 106 TFEU;

— Infringement of Articles 19 to 29 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of recital 7 and Article 17(3) of Commission Delegated Regulation (EU) 2018/625.

Action brought on 31 August 2021 — QN v Commission

(Case T-531/21)

(2021/C 462/56)

Language of the case: English

Parties

Applicant: QN (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision not to promote the applicant, which results from the publication on 12 November 2020 of Administrative Notice N° 32-2020 closing the 2020 promotion exercise and presenting a promotion list on which the applicant's name does not appear;

— annul also, in so far as necessary, the decision of 1 June 2021 taken by the defendant, rejecting the complaint lodged by the applicant against the non–promotion decision;

— order the compensation of the moral prejudice suffered by the applicant;

— order the defendant, pursuant to Article 89 of the Rules of Procedure of the General Court, to produce an anonymised copy of the minutes of the meeting with the Joint Promotion Committee and of the minutes of the meeting between the representatives of the Central Staff Committee and the Director general of DG TAXUD,

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 45 of the Staff Regulations and of Article 4(1) of Commission decision C(2013) 8968 final of 16 December 2013.

2. Second plea in law, alleging violation of the principle of equal treatment — Breach of Article 41(1) of the Charter of Fundamental Rights of the EU — Infringement of the rules of objectivity and impartiality.

3. Third plea in law, alleging violation of the duty to state reasons — Breach of Article 41(2) of the Charter of Fundamental Rights of the EU together with a breach of Article 296(2) of the TFEU.

Action brought on 9 September 2021 — Worldwide Brands v EUIPO — Guangdong Camel Apparel (CAMEL CROWN)

(Case T-562/21)

(2021/C 462/57)

Language of the case: English

Parties

Applicant: Worldwide Brands, Inc. Zweigniederlassung Deutschland (Cologne, Germany) (represented by: J. Gracia Albero and R. Ahijón Lana, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Guangdong Camel Apparel Co. Ltd (Foshan City, China)

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 word mark CAMEL CROWN — Application for registration No 17 882 201

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 June 2021 in Joined Cases R 159/2020-5 and R 184/2020-5

Form of order sought

The applicant claims that the Court should:

— partially annul the contested decision to the extent that it partially upheld the appeal filed by the intervener and partially rejected the appeal filed by this party, allowing the registration of the contested trademark for the indicated goods in classes 24 and 28;

— order the defendant to bear the costs of the present proceedings, including the costs deriving from the proceedings before the Opposition Division and the Fifth Board of Appeal.

Plea in law

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

Action brought on 13 September 2021 — Copal Tree Brands v EUIPO — Sumol + Compal Marcas (COPAL TREE)

(Case T-572/21)

(2021/C 462/58)

Language of the case: English

Parties

Applicant: Copal Tree Brands, Inc. (Oakland, California, United States) (represented by: B. Niemann Fadani, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sumol + Compal Marcas SA (Carnaxide, Portugal)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark COPAL TREE — Application for registration No 17 955 496

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 July 2021 in Case R 1580/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 2 June 2020 in Opposition No B3076122;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 14 September 2021 — Santos v EUIPO (Shape of a citrus press)

(Case T-574/21)

(2021/C 462/59)

Language of the case: French

Parties

Applicant: Santos (Vaulx-en-Velin, France) (represented by: C. Bey, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union tridimensional mark, claiming the colours Pantone Yellow 1235C, NCS Green S 30 50 G 50 Y (Shape of a citrus press) — Application for registration No 18 005 754

Contested decision: Decision of the First Board of Appeal of EUIPO of 9 July 2021 in Case R 281/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

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

Action brought on 13 September 2021 — Tinnus Enterprises v EUIPO — Mystic Products and Koopman International (Fluid distribution equipment)

(Case T-575/21)

(2021/C 462/60)

Language of the case: English

Parties

Applicant: Tinnus Enterprises LLC (Plano, Texas, United States) (represented by: T. Wuttke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Mystic Products Import & Export, SL (Badalona, Spain), Koopman International BV (Amsterdam, Netherlands)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 431 829-0002

Contested decision: Decision of the Third Board of Appeal of EUIPO of 1 July 2021 in Case R 1006/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— alter the contested decision to:

  — allow the applicant's appeal,

  — dismiss in its entirety the invalidity applicants' applications to declare the contested design invalid,

  — order the invalidity applicants to pay the applicant's costs in front of the Board of Appeal and the Invalidity Division;

— order the invalidity applicants to pay the applicant's fees and costs.

Pleas in law

— Infringement of the principles set forth in the judgment of 24 March 2021, *Lego v EUIPO — Delta Sport Handelskontor (Building block from a toy building set)* (T-515/19, not published, EU:T:2021:155);

— Infringement of the principles set forth in the judgment of 8 March 2018, *DOCERAM* (C-395/16, EU:C:2018:172);

— Infringement of Article 8(1) of Council Regulation (EC) No 6/2002;

— Misinterpretation of patent application EP 3 005 948 A2 and the applicant's multiple design application No. 1 431 829-0001-0010.

Action brought on 13 September 2021 — Tinnus Enterprises v EUIPO — Mystic Products and Koopman International (Fluid distribution equipment)

(Case T-576/21)

(2021/C 462/61)

Language of the case: English

Parties

Applicant: Tinnus Enterprises LLC (Plano, Texas, United States) (represented by: T. Wuttke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Mystic Products Import & Export, SL (Badalona, Spain), Koopman International BV (Amsterdam, Netherlands)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 431 829-0006

Contested decision: Decision of the Third Board of Appeal of EUIPO of 1 July 2021 in Case R 1005/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— alter the contested decision to:

  — allow the applicant's appeal,

  — dismiss in its entirety the invalidity applicants' applications to declare the contested design invalid,

  — order the invalidity applicants to pay the applicant's costs in front of the Board of Appeal and the Invalidity Division;

— order the invalidity applicants to pay the applicant's fees and costs.

Pleas in law

— Infringement of the principles set forth in the judgment of 24 March 2021, *Lego v EUIPO — Delta Sport Handelskontor (Building block from a toy building set)* (T-515/19, not published, EU:T:2021:155);

— Infringement of the principles set forth in the judgment of 8 March 2018, *DOCERAM* (C-395/16, EU:C:2018:172);

— Infringement of Article 8(1) of Council Regulation (EC) No 6/2002;

— Misinterpretation of patent application EP 3 005 948 A2 and the applicant's multiple design application No. 1 431 829-0001-0010.

Action brought on 13 September 2021 — Tinnus Enterprises v EUIPO — Mystic Products and Koopman International (Fluid distribution equipment)

(Case T-577/21)

(2021/C 462/62)

Language of the case: English

Parties

Applicant: Tinnus Enterprises LLC (Plano, Texas, United States) (represented by: T. Wuttke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Mystic Products Import & Export, SL (Badalona, Spain), Koopman International BV (Amsterdam, Netherlands)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 431 829-0007

Contested decision: Decision of the Third Board of Appeal of EUIPO of 5 July 2021 in Case R 1010/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— alter the contested decision to:

  — allow the applicant's appeal,

  — dismiss in its entirety the invalidity applicants' applications to declare the contested design invalid,

  — order the invalidity applicants to pay the applicant's costs in front of the Board of Appeal and the Invalidity Division;

— order the invalidity applicants to pay the applicant's fees and costs.

Pleas in law

— Infringement of the principles set forth in the judgment of 24 March 2021, *Lego v EUIPO — Delta Sport Handelskontor (Building block from a toy building set)* (T-515/19, not published, EU:T:2021:155);

— Infringement of the principles set forth in the judgment of 8 March 2018, *DOCERAM* (C-395/16, EU:C:2018:172);

— Infringement of Article 8(1) of Council Regulation (EC) No 6/2002;

— Misinterpretation of patent application EP 3 005 948 A2 and the applicant's multiple design application No. 1 431 829-0001-0010.

Action brought on 13 September 2021 — Tinnus Enterprises v EUIPO — Mystic Products and Koopman International (Fluid distribution equipment)

(Case T-578/21)

(2021/C 462/63)

Language of the case: English

Parties

Applicant: Tinnus Enterprises LLC (Plano, Texas, United States) (represented by: T. Wuttke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Mystic Products Import & Export, SL (Badalona, Spain), Koopman International BV (Amsterdam, Netherlands)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1 431 829-0008

Contested decision: Decision of the Third Board of Appeal of EUIPO of 1 July 2021 in Case R 1009/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— alter the contested decision to:

  — allow the applicant's appeal,

  — dismiss in its entirety the invalidity applicants' applications to declare the contested design invalid,

  — order the invalidity applicants to pay the applicant's costs in front of the Board of Appeal and the Invalidity Division;

— order the invalidity applicants to pay the applicant's fees and costs.

Pleas in law

— Infringement of the principles set forth in the judgment of 24 March 2021, *Lego v EUIPO — Delta Sport Handelskontor (Building block from a toy building set)* (T-515/19, not published, EU:T:2021:155);

— Infringement of the principles set forth in the judgment of 8 March 2018, *DOCERAM* (C-395/16, EU:C:2018:172);

— Infringement of Article 8(1) of Council Regulation (EC) No 6/2002;

— Misinterpretation of patent application EP 3 005 948 A2 and the applicant's multiple design application No. 1 431 829-0001-0010.

Action brought on 15 September 2021 — lastminute v EUIPO — Scai (B Heroes)

(Case T-587/21)

(2021/C 462/64)

Language in which the application was lodged: Italian

Parties

Applicant: lastminute foundation (Chiasso, Switzerland) (represented by: C. De Marchi and D. Contini, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Scai Comunicazione Srl unipersonale (Potenza, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark B Heroes in magenta and grey — European Union trade mark No 17 582 891

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 July 2021 in Joined Cases R 1245/2020-5 and R 1279/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as the Board of Appeal upheld in part the appeal in Case R 1245/2020-5 and dismissed the appeal in Case R 1279/2020-5;

— accordingly, confirm that European Union trade mark No 17 582 891 remains registered in respect of all the goods and services in Classes 9, 35, 38, 41 and 42;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 14 September 2021 — Guangdong Camel Apparel v EUIPO — Worldwide Brands (CAMEL CROWN)

(Case T-590/21)

(2021/C 462/65)

Language of the case: English

Parties

Applicant: Guangdong Camel Apparel Co. Ltd (Foshan City, China) (represented by: C. Bercial Arias and F. Codevelle, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Worldwide Brands, Inc. Zweigniederlassung Deutschland (Cologne, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark CAMEL CROWN — Application for registration No 17 882 201

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 June 2021 in Joined Cases R 159/2020-5 and R 184/2020-5

Form of order sought

The applicant claims that the Court should:

— upheld the appeal;

— annul the contested decision;

— order EUIPO and the intervener, if it was the case, to bear the costs incurred by the applicant before the General Court.

Plea in law

— Infringement of Article 8(1)(b) Regulation (EU) 2017/1001 of the European Parliament and of the Council, by reason of the erroneous assessment of the existence of a likelihood of confusion between the marks.

Action brought on 16 September 2021 — Apart v EUIPO — S. Tous (Representation of the outline of a bear)

(Case T-591/21)

(2021/C 462/66)

Language of the case: English

Parties

Applicant: Apart sp. z o.o. (Suchy Las, Poland) (represented by: J. Gwiazdowska, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: S. Tous, SL (Manresa, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Representation of the outline of a bear) –European Union trade mark No 8 127 128

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 July 2021 in Case R 222/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision as a whole and alter the decision by invalidating the contested trademark no. 8 127 128;

— alternatively, annul the contested decision as a whole and refer of the case back to the Board of Appeal;

— order EUIPO and S.TOUS, S.L. to pay the costs of the appeal proceedings and those of the proceedings before the General Court.

Pleas in law

— Infringement of Article 7(1)(b) of Council Regulation (EC) No 207/2009;

— Infringement of Article 7(1)(e)(i) and (iii) of Council Regulation (EC) No 207/2009;

— Infringement of Article 7(1)(d) of Council Regulation (EC) No 207/2009;

— Infringement of Articles 94(1) and 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by lack of reasons on which the assumptions about the shape of the contested trade mark are based;

— Infringement of Articles 20, 41(1) and 2(a) and (c) of the Charter of Fundamental Rights of the European Union, in particular the right to be heard, the obligation of the administration ti give reasons for its decision, the principles of good administration, legal certainty and equal treatment.

Action brought on 17 September 2021 — Société Elmar Wolf v EUIPO — Fuxtec (Representation of a fox's head)

(Case T-596/21)

(2021/C 462/67)

Language in which the application was lodged: French

Parties

Applicant: Société Elmar Wolf (Wissembourg, France) (represented by: N. Boespflug, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fuxtec GmbH (Herrenberg, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of a figurative mark (Representation of a fox's head) — International registration designating the European Union No 1 339 239

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 July 2021 in Case R 2834/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it states that the mark applied for is similar to the earlier mark;

— order EUIPO to pay the costs;

— order the company Fuxtec GmbH to pay the costs occasioned by its intervention, if such intervention has taken place.

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 18 September 2021 — Basaglia v Commission

(Case T-597/21)

(2021/C 462/68)

Language of the case: Italian

Parties

Applicant: Giorgio Basaglia (Milan, Italy) (represented by: G. Balossi, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul European Commission Decision of 27 July 2021 C(2021) 5741 final pursuant to Article 4 of the Implementing Rules to Regulation (EC) No 1049/2001 ([1]), the Italian version of which was sent on 23 August 2021.

Pleas in law and main arguments

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

1. Single plea in law, alleging that the scope of the initial application had been unilaterally restricted.

— The applicant claims, in that regard, that (i) by the judgment of 23 September 2020 delivered in *Basaglia* v *Commission* (T-727/19, not published, EU:T:2020:446), the General Court had directed that the decision adopted by the European Commission unilaterally restricting the request for access to documents submitted by the applicant's legal representative should be annulled; (ii) in particular, the European Commission's conduct, whereby it had unilaterally limited that representative's right to access the documents requested, had been declared to be unlawful; and (iii) the Commission's new decision, adopted following the annulment of the previous decision, did not comply with the judgment of the General Court of 23 September 2020 and constituted another infringement of the applicant's right to access.

([1]) Commission Decision of 5 December 2001 amending its rules of procedure (OJ 2001 L 345, p. 94).

Action brought on 20 September 2021 — Kubara v EUIPO (good calories)

(Case T-602/21)

(2021/C 462/69)

Language of the case: Polish

Parties

Applicant: Kubara sp. z o.o. (Częstochowa, Poland) (represented by: A. Suskiewicz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark good calories — Application No 18 193 512

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 July 2021 in Case R 2167/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of the principle of the protection of legitimate expectations and of the principle of legal certainty arising from the registration by EUIPO of the signs 'Fit calories' and 'GREEN CALORIES' as EU trade marks;

— Failure on the part of the First Board of Appeal of EUIPO to conduct a full analysis of the list of goods and services for which registration of the trade mark at issue was refused.

Action brought on 22 September 2021 — Blueroots Technology v EUIPO — Rezk-Salama and Breitlauch (SKILLTREE STUDIOS)

(Case T-607/12)

(2021/C 462/70)

Language in which the application was lodged: German

Parties

Applicant: Blueroots Technology GmbH (Graz, Austria) (represented by: A. Huber-Erlenwein, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Christof Rezk-Salama (Trier, Germany), Linda Breitlauch (Trier)

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 SKILLTREE STUDIOS — EU trade mark No 13 271 821

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 July 2021 in Case R 2218/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision or amend it to the effect that trade mark No 13 271 821 'SKILLTREE STUDIOS' is declared invalid and cancelled in respect of Classes 9, 41 and 42.

Plea in law

— Infringement of Article 59(1)(a) in conjunction with Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 27 September 2021 — WV v CdT

(Case T-618/21)

(2021/C 462/71)

Language of the case: French

Parties

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

Defendant: Translation Centre for the Bodies of the European Union (CdT)

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible and well founded;

— annul the decision of 26 November 2020 by way of which the applicant's employment of indefinite duration was brought to an end, without notice, as at 31 December 2020;

— in so far as is necessary, annul the decision of 17 June 2021 inasmuch as it rejects the applicant's complaint of 26 February 2021 against the initial decision of 26 November 2020;

— order the defendant to pay compensation in respect of the material damage suffered by the applicant;

— order the defendant to pay compensation in respect of the non-material damage suffered by the applicant, estimated *ex aequo et bono* at EUR 15 000;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 16 and 48 of the Conditions of Employment of Other Servants of the European Union ('CEOS') in the light of the definition of the concept of 'paid leave' adopted by the CdT.

2. Second plea in law, alleging infringement of Articles 16 and 48 of the CEOS in the light of Article 34 of the Charter of Fundamental Rights of the European Union, of the duty to have regard for the welfare of officials, and of Article 59(4) of the Staff Regulations of Officials of the European Union.

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

Action brought on 29 September 2021 — Lemken v EUIPO (sky blue)

(Case T-621/21)

(2021/C 462/72)

Language of the case: German

Parties

Applicant: Lemken GmbH & Co. KG (Alpen, Germany) (represented by: I. Kuschel and W. von der Osten-Sacken, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU colour mark sky blue (RAL:5015) — Application for registration No 18 097 467

Contested decision: Decision of the First Board of Appeal of EUIPO of 15 July 2021 in Case R 2037/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of Article 7(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the requirement to state adequate reasons.

Order of the General Court of 27 August 2021 — Essentra and Others v Commission

(Case T-470/19) ([1])

(2021/C 462/73)

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 21 September 2021 — Daily Mail and General Trust plc and Others v Commission

(Case T-690/19) ([1])

(2021/C 462/74)

Language of the case: English

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

([1]) OJ C 432, 23.12.2019.

Order of the General Court of 27 August 2021 — Rentokil Initial and Rentokil Initial 1927 v Commission

(Case T-692/19) ([1])

(2021/C 462/75)

Language of the case: English

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

([1]) OJ C 432, 23.12.2019.

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