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Information and Notices

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These texts are available on:

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

GENERAL COURT

Election of the President of the Third Chamber

(2021/C 471/02)

On 8 October 2021, the General Court, following the departure from office of Judge Collins who was President of the Third Chamber, in accordance with Article 9(3) and Article 18(1) and (5) of the Rules of Procedure, elected Judge De Baere as President of the Third Chamber sitting with three and with five Judges for the period from 8 October 2021 to 31 August 2022.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 16 September 2021 — European Commission v Kingdom of Belgium, Magnetrol International, Ireland

(Case C-337/19 P) [1]

(Appeal — State aid — Aid scheme implemented by the Kingdom of Belgium — Excess profit exemption — Tax ruling — Consistent administrative practice — Regulation (EU) 2015/1589 — Article 1(d) — Concept of 'aid scheme' — Concept of 'act' — Concept of 'further implementing measures' — 'General and abstract' definition of beneficiaries — Cross-appeal — Admissibility — Fiscal autonomy of the Member States)

(2021/C 471/03)

Language of the case: English

Parties

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

Other parties to the proceedings: Kingdom of Belgium (represented by: J.-C. Halleux, C. Pochet and M. Jacobs, acting as Agents, and by M. Segura and M. Clayton, avocates), Magnetrol International (represented by: H. Gilliams and L. Goossens, advocaten), Ireland

Interveners in support of the defendants: Soudal NV, Esko-Graphics BVBA (represented by: H. Viaene, avocat), Flir Systems Trading Belgium BVBA (represented by: T. Verstraeten and C. Docclo, avocats, and by N. Reypens, advocaat), Anheuser-Busch InBev SA/NV, Ampar BVBA, Atlas Copco Airpower NV, Atlas Copco AB (represented by: A. von Bonin, Rechtsanwalt, W.O. Brouwer and A. Pliego Selie, advocaten, and by A. Haelterman, avocat), Wabco Europe BVBA (represented by: E. Righini and L. Villani, avvocati, S. Völcker, Rechtsanwalt, and by A. Papadimitriou, avocat), Celio International NV (represented by: H. Gilliams and L. Goossens, advocaten)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 14 February 2019, Belgium and Magnetrol International v Commission (T-131/16 and T-263/16, EU:T:2019:91);

2. Rejects the first and second pleas in law in Case T-131/16, and the first plea in law and the first part of the third plea in law in Case T-263/16;

3. Refers the case back to the General Court of the European Union for a ruling on the third to fifth pleas in law in Case T-131/16 and on the second plea in law, the second and third parts of the third plea in law, and the fourth plea in law in Case T-263/16;

4. Reserves the costs.

[1] OJ C 213, 24.6.2019.

Judgment of the Court (Fourth Chamber) of 16 September 2021 (request for a preliminary ruling from the Supreme Court of the United Kingdom — United Kingdom) — The Software Incubator Ltd v Computer Associates (UK) Ltd

(Case C-410/19) ([1])

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653/EEC — Article 1(2) — Definition of 'commercial agent' — Supply of computer software to customers by electronic means — Grant of a perpetual licence for use — Concepts of 'sale' and 'goods')

(2021/C 471/04)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: The Software Incubator Ltd

Defendant: Computer Associates (UK) Ltd

Operative part of the judgment

The concept of 'sale of goods' referred to in Article 1(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that it can cover the supply, in return for payment of a fee, of computer software to a customer by electronic means where that supply is accompanied by the grant of a perpetual licence to use that software.

([1]) OJ C 255, 29.7.2019.

Judgment of the Court (First Chamber) of 16 September 2021 — FVE Holýšov I s. r. o. and Others v European Commission, Czech Republic, Kingdom of Spain, Republic of Cyprus, Slovak Republic

(Case C-850/19 P) ([1])

(Appeal — State aid — Renewable energy support scheme — Decision declaring the aid scheme compatible with the internal market — Action for annulment)

(2021/C 471/05)

Language of the case: English

Parties

Appellants: FVE Holýšov I s. r. o., FVE Stříbro s. r. o., FVE Úsilné s. r. o., FVE Mozolov s. r. o., FVE Osečná s. r. o., Solarpark Rybníček s. r. o., FVE Kněžmost s. r. o., Hutira FVE — Omice a.s., Exit 90 SPV s. r. o., Onyx Energy s. r. o., Onyx Energy projekt II s. r. o., Photon SPV 1 s. r. o., Photon SPV 3 s. r. o., Photon SPV 4 s. r. o., Photon SPV 6 s. r. o., Photon SPV 8 s. r. o., Photon SPV 10 s. r. o., Photon SPV 11 s. r. o., Antaris GmbH, Michael Göde, NGL Business Europe Ltd, NIG NV, GIHG Ltd, Radiance Energy Holding Sàrl, ICW Europe Investments Ltd, Photovoltaik Knopf Betriebs-GmbH, Voltaic Network GmbH, WA Investments-Europa Nova Ltd (represented by: A. Reuter, H. Wendt, C. Bürger, T. Christner, A. Compes, T. Herbold and W. Schumacher, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: L. Armati, P. Němečková and T. Maxian Rusche, acting as Agents), Czech Republic (represented by: M. Smolek, J. Vláčil, T. Müller and I. Gavrilova, acting as Agents), Kingdom of Spain (represented by: S. Centeno Huerta, acting as Agent), Republic of Cyprus, Slovak Republic (represented by: B. Ricziová, acting as Agent)

Intervener in support of the appellants: Federal Republic of Germany (represented by: J. Möller and D. Klebs, acting as Agents)

Intervener in support of the European Commission: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

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

3. Orders FVE Holýšov I s. r. o., FVE Stříbro s. r. o., FVE Úsilné s. r. o., FVE Mozolov s. r. o., FVE Osečná s. r. o., Solarpark Rybníček s. r. o., FVE Kněžmost s. r. o., Hutira FVE — Omice a.s., Exit 90 SPV s. r. o., Onyx Energy s. r. o., Onyx Energy projekt II s. r. o., Photon SPV 1 s. r. o., Photon SPV 3 s. r. o., Photon SPV 4 s. r. o., Photon SPV 6 s. r. o., Photon SPV 8 s. r. o., Photon SPV 10 s. r. o., Photon SPV 11 s. r. o., Antaris GmbH, Michael Göde, NGL Business Europe Ltd, NIG NV, GIHG Ltd, Radiance Energy Holding Sàrl, ICW Europe Investments Ltd, Photovoltaik Knopf Betriebs-GmbH, Voltaic Network GmbH and WA Investments-Europa Nova Ltd to pay the costs relating to the main appeal;

4. Orders FVE Holýšov I s. r. o., FVE Stříbro s. r. o., FVE Úsilné s. r. o., FVE Mozolov s. r. o., FVE Osečná s. r. o., Solarpark Rybníček s. r. o., FVE Kněžmost s. r. o., Hutira FVE — Omice a.s., Exit 90 SPV s. r. o., Onyx Energy s. r. o., Onyx Energy projekt II s. r. o., Photon SPV 1 s. r. o., Photon SPV 3 s. r. o., Photon SPV 4 s. r. o., Photon SPV 6 s. r. o., Photon SPV 8 s. r. o., Photon SPV 10 s. r. o., Photon SPV 11 s. r. o., Antaris GmbH, Michael Göde, NGL Business Europe Ltd, NIG NV, GIHG Ltd, Radiance Energy Holding Sàrl, ICW Europe Investments Ltd, Photovoltaik Knopf Betriebs-GmbH, Voltaic Network GmbH and WA Investments-Europa Nova Ltd, and the European Commission to bear their own costs relating to the cross-appeal;

5. Orders the Federal Republic of Germany, the Republic of Poland, the Czech Republic, the Kingdom of Spain and the Slovak Republic to bear their own costs.

([1]) OJ C 68, 2.3.2020.

Judgment of the Court (Fourth Chamber) of 16 September 2021 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Balgarska natsionalna televizia v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia pri Tsentralno upravlenie na NAP

(Case C-21/20) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Scope — Article 2(1)(c) — Supply of services for consideration — Exclusion of audiovisual media services offered to viewers, that are financed by a public subsidy and do not entail any payment on the part of viewers — Article 168 — Right of deduction — Taxable person carrying out both taxable transactions and transactions not falling within the scope of VAT)

(2021/C 471/06)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Balgarska natsionalna televizia

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia pri Tsentralno upravlenie na NAP

Operative part of the judgment

1. Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the activity of a public national television provider, consisting in the supply of audiovisual media services to viewers, which is financed by the State in the form of subsidies, and for which no fees for the broadcasting are payable by the viewers, does not constitute a service supplied for consideration within the meaning of that provision.

2. Article 168 of Directive 2006/112 must be interpreted as meaning that the national public television provider is entitled to deduct the input value added tax (VAT) for purchases of goods and services used for the purposes of its activities which give rise to the right to deduct and that it is not entitled to deduct input VAT for purchases of goods and services used for the purposes of its activities which do not fall within the scope of VAT. It is for the Member States to determine the methods and criteria for apportioning input VAT between taxable transactions and transactions not falling within the scope of VAT, taking into account the aims and broad logic of that directive in compliance with the principle of proportionality.

([1]) OJ C 95, 23.3.2020.

Judgment of the Court (Fifth Chamber) of 9 September 2021 (request for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — AS 'LatRailNet', 'Latvijas dzelzceļš' VAS v Valsts dzelzceļa administrācija

(Case C-144/20) ([1])

(Reference for a preliminary ruling — Rail transport — Directive 2012/34/EU — Articles 32 and 56 — Railway infrastructure charging — Independence of the infrastructure manager — Functions of the regulatory body — Concept of 'optimal competitiveness of rail market segments' — Exclusive right to a rail segment — Public service operator)

(2021/C 471/07)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicants: AS 'LatRailNet', 'Latvijas dzelzceļš' VAS

Defendant: Valsts dzelzceļa administrācija

Operative part of the judgment

1. Article 56 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area must be interpreted as conferring on the regulatory body the power to adopt, on its own initiative, a decision requiring the undertaking performing the essential functions of the railway infrastructure manager, as referred to in Article 7(1) of that directive, to make certain changes to the infrastructure charging scheme, even though it does not imply discrimination against applicants.

2. Article 56 of Directive 2012/34 must be interpreted as meaning that the conditions to be introduced into a charging scheme which the regulatory body is empowered to impose on the undertaking performing the essential functions of the railway infrastructure manager must be motivated by the infringement of Directive 2012/34 and be limited to remedying situations of incompatibility and may not involve discretionary assessments by that body which affect that manager's discretion.

3. Article 32(1) of Directive 2012/34 must be interpreted as applying, including with regard to the criterion of optimal competitiveness of rail market segments, to rail market segments without competition, in particular where they are operated by a public service operator which under a public service contract has been granted an exclusive right within the meaning of Article 2(f) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

([1]) OJ C 201, 15.6.2020.

Judgment of the Court (Sixth Chamber) of 9 September 2021 (requests for a preliminary ruling from the Sofiyski Rayonen sad — Bulgaria) — 'Toplofikatsia Sofia' EAD, 'CHEZ Elektro Bulgaria' AD and 'Agentsia za control na prosrocheni zadalzhenia' EOOD (C-208/20); 'Toplofikatsia Sofia' EAD (C-256/20)

(Joined Cases C-208/20 and C-256/20) ([1])

(Reference for a preliminary ruling — Article 20(2)(a) TFEU — Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union — Regulation (EC) No 1206/2001 — Cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters — Article 1(1)(a) — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Article 5(1) — Outstanding debts — Legal decisions — Orders for payment — Service — Debtor residing at an unknown address in a Member State other than that of the court seised)

(2021/C 471/08)

Language of the case: Bulgarian

Referring court

Sofiyski Rayonen sad

Parties to the main proceedings

Applicants: 'Toplofikatsia Sofia' EAD, 'CHEZ Elektro Bulgaria' AD, and 'Agentsia za control na prosrocheni zadalzhenia' EOOD (C-208/20); 'Toplofikatsia Sofia' EAD (C-256/20)

Operative part of the judgment

1. Article 1(1)(a) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that it does not apply to a situation where the court of a Member State seeks the address, in another Member State, of a person on whom a judicial decision is to be served.

2. Article 5(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding an order for payment against a debtor from becoming enforceable, and as not obliging the court to annul such an order.

(1) OJ C 255, 3.8.2020.
OJ C 271, 17.8.2020.

Judgment of the Court (First Chamber) of 9 September 2021 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Proceedings brought by UM

(Case C-277/20) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Succession — Regulation (EU) No 650/2012 — Article 3(1)(b) — Concept of 'agreement as to succession' — Scope — Contract transferring ownership mortis causa — Article 83(2) — Choice of applicable law — Transitional provisions)

(2021/C 471/09)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: UM

Interested parties: HW, as administrator of the estate of ZL, Marktgemeinde Kötschach-Mauthen, Finanzamt Spittal Villach

Operative part of the judgment

1. Article 3(1)(b) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that a contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her to other parties to the contract is an agreement as to succession within the meaning of that provision;

2. Article 83(2) of Regulation No 650/2012 must be interpreted as meaning that it does not apply to the examination of the validity of a choice of applicable law, made before 17 August 2015, to govern only an agreement as to succession within the meaning of Article 3(1)(b) of that regulation, in respect of a particular asset of the deceased, and not the latter's succession as a whole.

(1) OJ C 313, 21.9.2020.

Judgment of the Court (Tenth Chamber) of 9 September 2021 (request for a preliminary ruling from the Audiencia Nacional — Spain) — GE Auto Service Leasing GMBH v Tribunal Económico Administrativo Central

(Case C-294/20) (1)

(Reference for a preliminary ruling — Harmonisation of the laws of the Member States relating to turnover taxes — Eighth Directive 79/1072/EEC — Articles 3, 6 and 7 — Arrangements for the refund of value added tax (VAT) — Taxable persons not established in the territory of the country — Refusal of refund of VAT paid — Documents constituting evidence of the right to a refund — Failure to submit supporting documents within the time limit)

(2021/C 471/10)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: GE Auto Service Leasing GMBH

Defendant: Tribunal Económico Administrativo Central

Operative part of the judgment

1. The provisions of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country and the principles of European Union law, in particular the principle of fiscal neutrality, must be interpreted as not precluding an application for a refund of value added tax (VAT) from being rejected where the taxable person has not, within the time limits laid down, submitted to the competent tax authority, even at the latter's request, all the documents and information required to prove his or her right to a refund of VAT, irrespective of the fact that those documents and information were submitted by that taxable person, on his or her own initiative, in the context of the complaint or the judicial review of the decision rejecting such a right to a refund, provided that the principles of equivalence and effectiveness are complied with, which is a matter for the referring court to verify.

2. European Union law must be interpreted as meaning that the fact that a taxable person claiming a refund of value added tax (VAT) does not produce during the administrative procedure the documents requested by the tax authorities, but does so spontaneously during subsequent procedures, does not constitute an abuse of rights.

([1]) OJ C 320, 28.9.2020.

Judgment of the Court (Eighth Chamber) of 16 September 2021 — European Commission v Italian Republic

(Case C-341/20) ([1])

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Directive 2003/96/EC — Taxation of energy products and electricity — Article 14(1)(c) — Exemption of energy products used as fuel for the purposes of navigation within EU waters — Exemption granted only to private pleasure craft which are the subject of a charter agreement)

(2021/C 471/11)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: F. Moro and A. Armenia, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and A. Maddalo, avvocato dello Stato)

Operative part of the judgment

The Court:

1. Declares that, in granting the benefit of exemption from excise duty to fuels used by private pleasure craft only in cases where those vessels are the subject of a charter agreement, regardless of the manner in which the vessels are in fact used, the Italian Republic has failed to fulfil its obligations under Article 14(1)(c) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity;

2. Orders the Italian Republic to pay the costs.

([1]) OJ C 339, 12.10.2020.

Judgment of the Court (Seventh Chamber) of 9 September 2021 (request for a preliminary ruling from the Finanzgericht Köln — Germany) — Phantasialand v Finanzamt Brühl

(Case C-406/20) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 98 — Option for the Member States to apply a reduced rate of VAT to certain supplies of goods and services — Annex III, point 7 — Admission fee for amusement parks and fairs — Principle of fiscal neutrality — Services provided by static and mobile fairground entertainers — Comparability — Context — Point of view of the average consumer — Expert opinion)

(2021/C 471/12)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Phantasialand

Defendant: Finanzamt Brühl

Operative part of the judgment

Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with point 7 of Annex III to that directive, must be interpreted as not precluding national legislation under which, first, services provided by mobile fairground entertainers and, second, those provided by static fairground entertainers in the form of amusement parks are subject to different rates of value added tax, one reduced and the other normal, provided that the principle of fiscal neutrality is respected. European Union law does not preclude the referring court, where it encounters particular difficulties in verifying compliance with the principle of fiscal neutrality, from requesting, in accordance with the conditions laid down in national law, an expert opinion intended to inform its judgment.

([1]) OJ C 423, 7.12.2020.

Judgment of the Court (Sixth Chamber) of 9 September 2021 (request for a preliminary ruling from the Oberlandesgericht Köln — Germany) — RK v CR

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

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Succession — Regulation (EU) No 650/2012 — Article 6(a) — Declining of jurisdiction — Article 7(a) — Jurisdiction — Examination by the court second seised — Article 22 — Choice of law applicable — Article 39 — Mutual recognition — Article 83(4) — Transitional provisions)

(2021/C 471/13)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Defendant and appellant: RK

Applicant and respondent: CR

Operative part of the judgment

1. Article 7(a) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that, in order for there to have been a declining of jurisdiction, within the meaning of Article 6(a) of that regulation, in favour of the courts of the Member State whose law was chosen by the deceased, it is not necessary for the court previously seised to have expressly declined jurisdiction, but that intention must be unequivocally apparent from the decision that it delivered in that regard.

2. Article 6(a), Article 7(a) and Article 39 of Regulation No 650/2012 must be interpreted as meaning that the court of the Member State seised following a declining of jurisdiction is not competent to examine whether the conditions set out in those provisions were satisfied in order for the court previously seised to decline jurisdiction.

3. Article 6(a) and Article 7(a) of Regulation No 650/2012 must be interpreted as meaning that the rules of jurisdiction set out in those provisions also apply in the event that, in his or her will, drawn up before 17 August 2015, the deceased had not chosen the law applicable to the succession, and that the designation of that law can be inferred from Article 83(4) of that regulation alone.

(1) OJ C 443, 21.12.2020.

Judgment of the Court (Seventh Chamber) of 9 September 2021 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Real Vida Seguros SA v Autoridade Tributária e Aduaneira

(Case C-449/20) (1)

(Reference for a preliminary ruling — Taxation — Article 63 TFEU — Free movement of capital — Income tax — Dividends attached to listed shares — Tax advantage reserved for dividends attached to shares listed on the national stock exchange — Difference in treatment — Objective distinguishing criterion — Restriction — Article 65 TFEU — Objectively comparable situations — Justification — Objective of a purely economic nature)

(2021/C 471/14)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Real Vida Seguros SA

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

Articles 63 and 65 TFEU must be interpreted as precluding a Member State's tax practice according to which, for the purposes of determining the basis of assessment of a taxpayer's income tax, the dividends attached to shares listed on that Member State's stock exchange account for only 50 % of their amount, whereas dividends attached to shares listed on the stock exchanges of the other Member States are taken into account in full.

(1) OJ C 433, 14.12.2020.

Order of the Court (First Chamber) of 3 September 2021 — Scandlines Danmark ApS, Scandlines Deutschland GmbH v European Commission, Kingdom of Denmark

(Case C-173/19 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — Action for annulment — State aid — Public financing of the Fehmarn Belt fixed rail-road link — Individual aid — Act not open to challenge — Purely confirmatory measure — Preparatory measure)

(2021/C 471/15)

Language of the case: English

Parties

Appellants: Scandlines Danmark ApS, Scandlines Deutschland GmbH (represented by: L. Sandberg-Mørch, advokat)

Other parties to the proceedings: European Commission (represented by: S. Noë, V. Bottka and L. Armati, acting as Agents), Kingdom of Denmark (represented by: J. Nymann-Lindegren, acting as Agent, and by R. Holdgaard, advokat)

Operative part of the order

1. The appeal is dismissed as being manifestly unfounded.

2. Scandlines Danmark ApS and Scandlines Deutschland GmbH shall pay, in addition to their own costs, those incurred by the European Commission.

3. The Kingdom of Denmark shall bear its own costs.

([1]) OJ C 148, 29.4.2019.

Order of the Court (Sixth Chamber) of 1 September 2021 (request for a preliminary ruling from the Zastępca notarialny w Krapkowicach Marcin Margoński, on behalf of Justyna Gawlica, Notariusz w Krapkowicach — Poland) — Proceedings brought by OKR

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

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Article 267 TFEU — Notary acting as a deputy for another notary — Definition of 'court or tribunal' — Criteria — Inadmissibility of the request for a preliminary ruling)

(2021/C 471/16)

Language of the case: Polish

Referring body

Zastępca notarialny w Krapkowicach Marcin Margoński, on behalf of Justyna Gawlica, Notariusz w Krapkowicach

Party to the main proceedings

Applicant: OKR

Operative part of the order

The request for a preliminary ruling from a Zastępca notarialny w Krapkowicach (notary acting as a deputy for another notary and practising in Krapkowice, Poland) is manifestly inadmissible.

([1]) OJ C 53, 15.2.2021.

Order of the Court (Tenth Chamber) of 3 September 2021 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Amoena Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-706/20) [1]

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 6212 and 9021 — Mastectomy bras — Implementing Regulation (EU) 2017/1167 — Notion of 'accessories' — Interpretation of the judgment of 19 December 2019, Amoena (C 677/18, EU:C:2019:1142))

(2021/C 471/17)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Amoena Ltd

Defendant: Commissioners for Her Majesty's Revenue and Customs

Operative part of the order

1. Paragraph 53 of the judgment of 19 December 2019, *Amoena* (C-677/18, EU:C:2019:1142), in the English-language version, must be interpreted as meaning that:

   — in the first sentence of that paragraph, the terms 'them' and 'their' refer to the breast forms and the term 'they' refers to the mastectomy bras;

   — in the second sentence of that paragraph, the term 'their' and the first two occurrences of the term 'they' refer to the mastectomy bras, whereas the last occurrence of the term 'they' refers to the breast forms.

2. In the second sentence of paragraph 53 of the judgment of 19 December 2019, Amoena (C-677/18, EU:C:2019:1142), the Court, in order to determine whether the mastectomy bras may be regarded as breast form 'accessories' for the purposes of Chapter 90 of the Combined Nomenclature, set out 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, as amended by Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 merely applied the test defined in paragraph 51 of that judgment, according to which interchangeable parts or devices which enable a machine to perform a particular service relative to its main function must be classified as 'accessories' for the purposes of that chapter.

[1] OJ C 110, 29.3.2021.

Order of the Court (Ninth Chamber) of 1 September 2021 — (request for a preliminary ruling from the Budai Központi Kerületi Bíróság — Hungary) — criminal proceedings against KI

(Case C-131/21) ([1])

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Charter of Fundamental Rights of the European Union — Ne bis in idem principal — Cumulation of penalties — Nature of a police sanction — Implementation of national law — Lack of connection to EU law — Clear lack of jurisdiction of the Court)

(2021/C 471/18)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Party in the main proceedings

KI

Operative part of the order

The Court of Justice of the European Union clearly lacks jurisdiction to reply to the question referred by the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary) by decision of 10 February 2021.

([1]) OJ C 182, 10.5.2021.

Appeal brought on 23 October 2020 by FL Brüterei M-V GmbH against the order of the General Court (Ninth Chamber, Extended Composition) made on 20 August 2020 in Case T-755/18, FL Brüterei M-V GmbH and Others v European Commission

(Case C-540/20 P)

(2021/C 471/19)

Language of the case: German

Parties

Appellant: FL Brüterei M-V GmbH (represented by: H. Schmidt, Rechtsanwalt)

Other party to the proceedings: Erdegut GmbH, Ökofarm Groß Markow GmbH, European Commission

By order of 24 September 2021, the Court of Justice of the European Union (Sixth Chamber) dismissed the appeal as being in part manifestly inadmissible and in part manifestly unfounded and ordered the appellant to bear its own costs.

Appeal brought on 22 March 2021 by Johann A. Löning against the order of the General Court (First Chamber) made on 20 January 2021 in Case T-543/20, Johann A. Löning v European Union, represented by the European Commission

(Case C-176/21 P)

(2021/C 471/20)

Language of the case: German

Parties

Appellant: Johann A. Löning (represented by: W. Mathes, Rechtsanwalt)

Other party to the proceedings: European Commission

By order of 3 September 2021, the Court of Justice of the European Union (Ninth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellant to bear his own costs.

Appeal brought on 12 April 2021 by sprd.net AG against the order of the General Court (Ninth Chamber) made on 12 February 2021 in Case T-19/20, sprd.net v EUIPO — Shirtlabor

(Case C-236/21 P)

(2021/C 471/21)

Language of the case: German

Parties

Appellant: sprd.net AG (represented by: J. Hellenbrand, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office, Shirtlabor GmbH

By order of 1 September 2021, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Visoki trgovački sud Republike Hrvatske (Croatia) lodged on 8 June 2021 — IC v PET-PROM d.o.o.

(Case C-361/21)

(2021/C 471/22)

Language of the case: Croatian

Referring court

Visoki trgovački sud Republike Hrvatske

Parties to the main proceedings

Applicant: IC

Defendant: PET-PROM d.o.o.

Questions referred

1. Is the rule laid down in the second part of the first sentence and in the second sentence of Article 177(3) of the Sudski poslovnik (Rules of Procedure of the Courts, *Narodne novine*, br. 37/14, 49/14, 8/15, 35/15, 123/15, 45/16, 29/17, 33/17, 34/17, 57/17, 101/18, 119/18, 81/19, 128/19, 39/20 and 47/20), which provides that ', a case before a court of second instance shall be deemed to be closed on the date on which the decision is sent from the court office, after the case has been returned by the Registration Service. The Registration Service shall be required to return the file to the court office as promptly as possible after receipt thereof. The decision shall then be notified within a further period of eight days', to be considered compatible with Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union?

2. Is Article 40 of the Zakon o sudovima (Law on judicial bodies), which provides that 'the legal position adopted at the meeting of all the judges or of a section of the Vrhovni sud Republike Hrvatske (Supreme Court, Croatia), of the Visoki trgovački sud Republike Hrvatske (Commercial Court of Appeal, Croatia), of the Visoki upravni sud Republike Hrvatske (Administrative Court of Appeal, Croatia), of the Visoki kazneni sud Republike Hrvatske (Criminal Court of Appeal, Croatia), of the Visoki prekršajni sud Republike Hrvatske (Higher Misdemeanour Court, Croatia) and of the meeting of a section of a Županijski sud (County Court, Croatia) shall be binding on all the chambers or judges at second instance of that section or court', compatible with Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union?

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 9 July 2021 — Orthomol pharmazeutische Vertriebs GmbH v Verband Sozialer Wettbewerb e.V.

(Case C-418/21)

(2021/C 471/23)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Defendant and appellant: Orthomol pharmazeutische Vertriebs GmbH

Applicant and respondent: Verband Sozialer Wettbewerb e.V.

Questions referred

1. Under what circumstances are there other medical nutrient requirements pursuant to the second alternative in Article 2(2)(g) of the FSG Regulation, ([1])

   namely:

   do they require — in addition to the limited, impaired or disturbed capacity to take, digest, absorb, metabolise or excrete ordinary food, as referred to in the first alternative — that there is an increased nutrient requirement brought about by illness, which is to be covered by the food,

   or is it sufficient if the patient […] generally benefits from the intake of that food because substances contained therein counteract the disorder or alleviate its symptoms?

2. In the event that the first question is answered in accordance with the latter alternative:

   Does 'generally accepted scientific data' within the meaning of Article 2(2) of the Delegated Regulation ([2]) in any event presuppose a randomised, placebo-controlled double-blind study which, although not related to the product in question itself, at least provides starting points for the claimed effects?

([1]) Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ 2013 L 181, p. 35).

([2]) Commission Delegated Regulation (EU) 2016/128 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for food for special medical purposes (OJ 2016 L 25, p. 30).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 13 July 2021 — Ocilion IPTV Technologies GmbH v Seven.One Entertainment Group GmbH and Puls 4 TV GmbH & Co. KG

(Case C-426/21)

(2021/C 471/24)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: Ocilion IPTV Technologies GmbH

Respondents in the appeal on a point of law: Seven.One Entertainment Group GmbH, Puls 4 TV GmbH & Co. KG

Questions referred

1. Is a national provision compatible with EU law if it permits, on the basis of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, ([1]) the operation of an online video recorder which is provided by a commercial provider and which

   (a) by virtue of the deduplication process implemented as a technical means, does not create an independent copy of the programmed broadcasting content for each recording initiated by a user, but, in so far as the content in question has already been stored on the initiative of another user who was the first user to record that content, merely makes a referencing — in order to avoid redundant data — which allows the subsequent user to access the content already stored;

   (b) has a replay function via which the entire television programme of all selected channels is recorded around the clock and made available for retrieval over a period of seven days, provided that the user makes a one-off selection to that effect in respect of the channels concerned by ticking a box in the menu of the online video recorder; and

   (c) also provides the user with access (either embedded in a cloud service of the provider or as part of the complete on-premises IPTV solution provided by the provider) to protected broadcasting content without the consent of the rightholders?

2. Is the term 'communication to the public' in Article 3(1) of Directive 2001/29 to be interpreted as meaning that such communication is carried out by a commercial provider of a complete (on-premises) IPTV solution, in the context of which it provides, in addition to software and hardware for receiving TV programmes via the internet, technical support and makes adjustments to the service on an ongoing basis, but that service is operated entirely on the customer's infrastructure, if the service provides the user with access not only to broadcasting content whose online use has been authorised by the respective rightholders, but also to protected content for which rights clearance has not been obtained, and the provider

   (a) can influence which TV programmes can be received by the end user via the service,

   (b) is aware that its service also enables the reception of protected broadcasting content without the consent of the rightholders, but

   (c) does not advertise that possibility of unauthorised use of its service, thereby creating a major incentive to purchase the product, but rather advises its customers at the time of conclusion of the contract that they must take care of the granting of rights on their own responsibility, and

   (d) does not provide, through its activity, special access to broadcasting content which, in the absence of its intervention, could not be received or could be received only with difficulty?

([1]) OJ 2001 L 167, p. 10.

Request for a preliminary ruling from the Kúria (Hungary) lodged on 22 July 2021 — CIG Pannónia Életbiztosító Nyrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-458/21)

(2021/C 471/25)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Appellant: CIG Pannónia Életbiztosító Nyrt.

Respondent: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Must Article 132(1)(c) of [Council] Directive 2006/112/EC [1] [of 28 November 2006 on the common system of value added tax] be interpreted as meaning that a service used by [an insurance company] is exempt from VAT where the purpose of the service is:

— to verify the accuracy of a diagnosis of a serious illness with which the insured has been diagnosed; and

— to seek the best medical care available to treat the insured; and

— where included in the cover offered by the insurance policy and at the request of the insured, to arrange provision of the medical care abroad?

[1] OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 2 August 2021 — Monz Handelsgesellschaft lnternational mbH & Co. KG v Büchel GmbH & Co. Fahrzeugtechnik KG

(Case C-472/21)

(2021/C 471/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Monz Handelsgesellschaft lnternational mbH & Co. KG

Respondent on a point of law: Büchel GmbH & Co. Fahrzeugtechnik KG

Questions referred

1. Is a component part incorporating a design a 'visible' component within the meaning of Article 3(3) of Directive 98/71/EC [1] if it is objectively possible to recognise the design when the component is mounted, or should visibility be assessed under certain conditions of use or from a certain observer perspective?

2. If the answer to Question 1 is that visibility under certain conditions of use or from a certain observer perspective is the decisive factor:

   (a) When assessing the 'normal use' of a complex product by the end user within the meaning of Article 3(3) and (4) of Directive 98/71, is it the use intended by the manufacturer of the component part or complex product that is relevant, or the customary use of the complex product by the end user?

   (b) What are the criteria for assessing whether the use of a complex product by the end user constitutes a 'normal use' within the meaning of Article 3(3) and (4) of Directive 98/71?

(1) Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ 1998 L 289, p. 28).

Request for a preliminary ruling from the Miskolci Törvényszék (Hungary) lodged on 3 August 2021 — IH v MÁV-START Vasúti Személyszállító Zrt.

(Case C-477/21)

(2021/C 471/27)

Language of the case: Hungarian

Referring court

Miskolci Törvényszék

Parties to the main proceedings

Applicant: IH

Defendant: MÁV-START Vasúti Személyszállító Zrt.

Questions referred

1. Must Article 5 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 time, (1) read in conjunction with Article 31(2) of the Charter [of Fundamental Rights of the European Union], be interpreted as meaning that the daily rest period provided for in Article 3 [of that directive] forms part of the weekly rest period?

2. Otherwise, must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that, in accordance with the objective pursued by the directive, the aforementioned article lays down only the minimum duration of the weekly rest period, which is to say that the weekly rest period must be at least 35 consecutive hours' long, provided that there are no objective, technical or work organisation conditions which preclude this?

3. Must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that, where the law of the Member State and the applicable collective agreement provide for the grant of a continuous weekly rest period of at least 42 hours, it is compulsory, following work which has been performed on the working day prior to the weekly rest period, also to grant the twelve-hour daily rest period guaranteed along with it under the relevant legislation of that Member State and the applicable collective agreement, provided that there are no objective, technical or work organisation conditions which preclude this?

4. Must Article 3 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that a worker is entitled to a minimum rest period which must be granted within the course of 24 hours even if, for any reason, he or she does not have to work in the following 24 hours?

5. If Question 4 is answered in the affirmative, must Articles 3 and 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that the daily rest period [must] be granted prior to the weekly rest period?

(1) OJ 2003 L 299, p. 9.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 5 August 2021 — Euler Hermes SA Magyarországi Fióktelepe v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-482/21)

(2021/C 471/28)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Euler Hermes SA Magyarországi Fióktelepe

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Do the principles of proportionality, fiscal neutrality and effectiveness –having regard, in particular, to the fact that a Member State may not charge an amount of VAT exceeding that actually received by the supplier of goods or services in respect of that supply of goods or services — and the exemption laid down in Article 135(1)(a) of the VAT Directive ([1]) — particularly as regards the requirement that that activity is to be treated as a single exempt transaction, by reference to the principles laid down in points 35, 37 and 53 of the Advocate General's Opinion in Case C-242/08, *Swiss Re* — and the obligation to guarantee the free movement of capital and services in the internal market preclude a practice of a Member State pursuant to which the reduction applicable to the taxable amount in the event of definitive non-payment, as provided for in Article 90(1) of the VAT Directive, is not applicable where an insurer, in the course of its commercial credit insurance business, paid an indemnity to the insured person in respect of the taxable amount and also in respect of the VAT due when the risk materialised (non-payment by the insured's client), meaning that, under the insurance contract, the debt, together with all associated rights of enforcement, was assigned to the insurer, in the following circumstances:

(i) at the time when the debts in question became irrecoverable, national law did not allow any reduction of the taxable amount in respect of an irrecoverable debt;

(ii) since the incompatibility of that prohibition with Union law was made clear, national positive law has consistently excluded outright the refund of VAT on an irrecoverable debt to the original supplier of the goods or services (the insured person) on the grounds that the insurer has reimbursed that amount of VAT to the supplier; and

(iii) the insurer is able to show that its claim against the debtor has become definitively irrecoverable?

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

Request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil (Slovenia) lodged on 9 August 2021 — SHARENGO najem in zakup vozil d.o.o. v Mestna občina Ljubljana

(Case C-486/21)

(2021/C 471/29)

Language of the case: Slovenian

Referring court

Državna revizijska komisija za revizijo postopkov oddaje javnih naročil

Parties to the main proceedings

Applicant: SHARENGO najem in zakup vozil d.o.o.

Defendant: Mestna občina Ljubljana

Questions referred

1. Is Regulation (EC) No 2195/2002 [of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV)], ([1]) as amended by Commission Regulation (EC) No 213/2008 [of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) ([2]) and Directives 2004/17/EC ([3]) and 2004/18/EC ([4]) of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV], to be interpreted as meaning that the hire of passenger cars without a driver falls not within Group 601 of the Common Procurement Vocabulary (CPV), but instead within Group 341 of the CPV, with the addition of code PA01-7 Hire, from the Supplementary Vocabulary, completing the description, which is unaffected by code PB04-7 Without driver from the Supplementary Vocabulary, the combination of the codes from Group 341 of the CPV with the code PA01-7 Hire from the Supplementary Vocabulary meaning that the hire of passenger cars without a driver should be considered a supply contract, not a service contract and, consequently, where the bulk of the investment from the economic operator in the execution of a project — one to create a public system for the hire and sharing of electric vehicles — consists in the supply of electric vehicles, and where that investment is even greater than the contracting authority's investment in the project, the 'services' element referred to in Article 5(1)(b) of Directive 2014/23/EU [of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts] ([5]) is not fulfilled and, therefore, the contract for the execution of such a project is not a 'services concession' within the meaning of Article 5(1)(b) of Directive 2014/23/EU?

2. Is the concept of 'the provision and management of services' in Article 5(1)(b) of Directive 2014/23/EU to be interpreted as meaning that:

   (a) the concept of 'the provision of services' in Article 5(1)(b) of Directive 2014/23/EU has the same meaning as the concept of 'the provision of services' in Article 2(1)(9) 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 ([6])], such that the concept of 'the provision of services' in Article 5(1)(b) of Directive 2014/23/EU means that, in the case of the creation of a public system for the hire and sharing of electric vehicles, the economic operator provides services ancillary to the hire and sharing of electric vehicles, and carries on activities which go beyond the hire and sharing of electric vehicles,

   and

   (b) the concept of 'the management of services' in Article 5(1)(b) of Directive 2014/23/UE means that the economic operator exercises the 'right to exploit the services', as mentioned further on in Article 5(1)(b) of Directive 2014/23/EU, in order to generate revenue, and therefore the concept of 'the management of services' in Article 1(b) of Directive 2014/23/EU means that, in the case of the creation of a public system for the hire and sharing of electric vehicles, an economic operator, by reason of the provision of services falling within the scope of the hire and sharing of electric vehicles and activities going beyond the hire and sharing of electronic vehicles, has the right to charge users for the provision of the services and is not required to pay parking fees to the municipality or to bear the costs of regular maintenance of parking spaces, such that it is legitimate for it to generate revenue on that basis?@

3. Is the concept of the 'total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the contracting authority or the contracting entity, in consideration for the … services being the object of the concession', in the first subparagraph of Article 8(2) of Directive 2014/23/EU, to be interpreted as meaning that the 'total turnover of the concessionaire' also includes payments made to the concessionaire by users and that, consequently, such payments also constitute 'consideration for the … services being the object of the concession'?

4. Is Article 8(1) of Directive 2014/23/EU to be interpreted as meaning that Directive 2014/23/EU applies where the value of the investments or the value of the investments and costs borne by the economic operator in connection with a services concession, or borne by the economic operator and by the contracting authority in connection with a services concession (manifestly) exceeds EUR 5 350 000, excluding VAT?

5. Is Article 38(1) of Directive 2014/23/EU to be interpreted as permitting a contracting authority to impose a condition of participation relating to professional activity, and to require economic operators to provide evidence of the fulfilment of that condition, including in accordance with Commission Implementing Regulation 2015/1986 ([7]) [of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 ([8])], and the corrigendum [to Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011], which sets out, in Annex XXI, the concession notice (standard form 24), which contains a Section III.1.1. Suitability to pursue the professional activity, including requirements relating to enrolment on professional or trade registers?

6. If question 5 is answered in the affirmative, is Article 38(1) of Directive 2014/23/EU, in the light of the principles of equal treatment and non-discrimination mentioned in Article 3(1) of Directive 2014/23/EU, to be interpreted as meaning that, in setting the condition of participation relating to professional activity, a contracting authority may use the national item NACE 77.110 for the description of the activity of Renting and leasing of cars and light motor vehicles, which has the same meaning as in Regulation 1893/2006 [of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains] in Annex I, NACE REV 2, ([9]) class 77.11 Renting and leasing of cars and light motor vehicles?

7. If question 5 is answered in the affirmative, is Article 38(1) of Directive 2014/23/EU, in particular in so far as it refers to the requirement of proportionality and in the light of the principles of equal treatment and non-discrimination mentioned in Article 3(1) of Directive 2014/23/EU, to be interpreted as meaning that a contracting authority may require that the condition of registration for the pursuit of the activity of renting and leasing of cars and light motor vehicles is fulfilled by each of the partners?

8. Is Article 2(1)(8) of Directive 2014/24/EU to be interpreted as meaning that it is a 'public supply contract' when (in relation to the economic operator's investment) an essential part of the future contractual relationship between the municipality and the economic operator relates to the hire and sharing of electronic vehicles intended for users of a public electronic vehicle hire and sharing system, where the municipality does not invest directly in the implementation of the project for the creation of a public system for the hire and sharing of electronic vehicles by paying money to the economic operator, but instead invests indirectly, through the waiving of parking fees for a period of 20 years and through the provision of regular maintenance of parking spaces, and where the value of that investment exceeds, in aggregate, the value indicated in Article 4(b) or (c) of Directive 2014/24/EU, having regard to Commission Delegated Regulation 2019/1828 [of 30 October 2019 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests ([10])], and where the investment from the municipality is, however, (substantially) less than both the economic operator's investment as a whole in the project for the creation of a public system for the hire and sharing of electric vehicles, and the economic operator's investment in the part of the project which relates to electronic vehicles, notwithstanding that users will pay the economic operator for the use of the electronic vehicles and that the economic operator's success in generating revenue will depend on user demand, which will be indicative of the financial success of the public system for the hire and sharing of electronic vehicles, for which reason the economic operator bears the operating risk in the implementation of the project, which is a characteristic of a 'services concession', within the meaning of Article 5(1)(b) of Directive 2012/23/EU, rather than of a 'public contract' within the meaning of Article 2(1)(5) of Directive 2014/24/EU?

9. Is the third subparagraph of Article 3(4) of Directive 2014/24/EU to be interpreted as constituting the legal basis for the application of the regime established by Directive 2014/24/EU for the purposes of the award of a future contract between the municipality and the economic operator for the project to create a public system for the hire and sharing of electric vehicles, inasmuch as that contract must be considered a mixed contract, containing elements of a public supply and service contract and of a services concession, given that the municipality's investment in the implementation of the project exceeds the threshold set in Article 4(c) of Directive 2014/24/EU, having regard to Delegated Regulation 2019/1828?

10. Are Article 58(1) and Article 58(2) of Directive 2014/24/EU, in the light of the principles of equal treatment and non-discrimination mentioned in Article 18(1) of Directive 2014/24/EU, to be interpreted as meaning that, that, in setting a condition of participation relating to professional activity, a contracting authority may use the national item NACE 77.110 for the description of the activity of Renting and leasing of cars and light motor vehicles, which has the same meaning as in Regulation 1893/2006, in Annex I, NACE Rev. 2, class 77.11 Renting and leasing of cars and light motor vehicles?

11. Are Article 58(1) of Directive 2014/24/EU, in particular in so far as it refers to the requirement of proportionality, and Article 58(2) of Directive 2014/24/EU, in the light of the principles of equal treatment and non-discrimination mentioned in Article 18(1) of Directive 2014/24/EU, to be interpreted as meaning that a contracting authority may require the condition of registration for the pursuit of the activity of Renting and leasing of cars and light motor vehicles to be fulfilled by each of the partners?

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(1) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (Text with EEA relevance) (OJ 2002 L 340, p. 1).

(2) Commission Regulation (EC) No 213/2008 of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV (OJ 2008 L 74, p. 1).

(3) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134,, p. 1).

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

(5) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1).

(6) 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 (OJ 2014 L 94, p. 65).

(7) Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 (OJ 2015 L 296, p. 1).

(8) Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005 (OJ 2011 L 222, p. 1).

(9) Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ 2006 L 393, p. 1).

(10) Commission Delegated Regulation (EU) 2019/1828 of 30 October 2019 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests (OJ 2019 L 279, p. 25).

Appeal brought on 9 August 2021 by Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo against the judgment delivered on 2 June 2021 by the General Court (Seventh Chamber) in Case T-223/18, *Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo* v *European Commission*

(Case C-492/21 P)

(2021/C 471/30)

Language of the case: Italian

Parties

Appellant: Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo (represented by: F. Rosi, avvocato)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment delivered by the General Court on 2 June 2021 in Case T-223/18 concerning the application under Article 263 TFEU seeking annulment of Commission Decision C(2017) 7973 final of 4 December 2017 concerning State Aid SA.39913 (2017/NN) Italy — Alleged compensation of public hospitals in the Lazio Region;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant claims infringement of the obligation to state reasons and of the obligation to conduct inquiries; the appellant also alleges an incorrect interpretation of the concept of activity on the basis of solidarity and the concept of an undertaking and economic activity under Article 106 TFEU, particularly by reference to the Italian legal regime laid down in Legislative Decree 229/1999, which shows that the system whereby the Italian State provides financing to the regions does not come within a system on the basis of solidarity, but rather an economic system in the terms used to refer to a scheme relating to services of general economic interest (SGEIs).

More specifically, the appellant disputes the General Court's definition of activity on the basis of solidarity set out in the judgment under appeal, which remained entirely generic and without reference to the rules in force in Italy in relation to the provision of health services. The General Court held that the judgment of the Court of Justice of 11 June 2020 in *Dovera* was applicable to the circumstances of the present case, without carrying out a detailed analysis of the Italian reform of 1999, and in particular without comparing it with the rules governing the provision of health services in the State of Slovakia.

In addition, the appellant disputes the finding that the concept of activity on the basis of universality can preclude the applicability of the regime laid down in Article 106 TFEU, having regard to the fact that a service provided, even if not entirely, on the basis of universality can be regarded as an economic activity in the same way as other services such as multimodal transport, electrical energy, water, telephone services, and so forth, even though it comes within the definition of an SGEI.

Likewise, the General Court does not specify that the State transfers to the regions an amount of financing and therefore requires the regions to pay the various public and private health service providers for their services on the basis of tariffs according to the choice of the patient/user.

Therefore, the regions enter into concession contracts for public services with all the operators under public ownership and private ownership, paying for services on the basis of a pre-established list of tariffs. Each health structure organises its own activity in a specific and independent manner in order to attract patients to its own structure.

In addition, patients can apply to health structures under public ownership or to those under private ownership in order to request the provision of a private service, thereby avoiding existing waiting lists in the aforementioned accredited scheme. The appellant therefore disputes the General Court's assertion at the beginning of the judgment: '*1. In Italy, the organisation of the health system is centred on the National Health Service ("the SSN"). In the context of the SSN, health services are financed directly by the social security contributions of the subscribers and by State resources, with the result that those services are provided free of charge or almost free of charge to all patients affiliated to the SSN by public bodies or private bodies under a contract. The management of the SSN is ensured mainly by the regions*'.

The latter argument does not correspond to the actual organisation of health services in Italy or to the rules currently in force; in addition, the General Court fails to clarify its assertion that 'health services are financed directly by the social security contributions of the subscribers and by State resources', which is an abstract representation lacking context.

In other words, the General Court failed to set out what are the *'social security contributions of the subscribers'* and what a *'State resource'* consists of. In particular, the General Court does not carry out a detailed analysis of the contents of the provisions governing SGEIs for the purposes of Article 106 TFEU and the judgment of the Court of Justice in the 2003 *Altmark* case.

First the Commission, and then the General Court, should have carried out a detailed analysis of the scheme, also having regard to Protocol 26 to the Treaty referring specifically to SGEIs and to the fact that no precise definition of this specific sector of services has been drawn up.

In conclusion, the judgment of the General Court under appeal is merely a transposition of the content of the contested Commission decision, which the General Court held was not vitiated by a failure to state reasons.

It is for this reason that the complaints set out in detail by the appellant that, contrary to the General Court's assertions, it challenged the Commission's decision on the ground that it was entirely generic and did not refer to the rules currently in force in Italy, are unaffected.

Nor is it possible simply to transpose the content of the judgment of the Court of Justice in *Dovera*.

Moreover, the substantive challenge raised by the appellant which was submitted for examination by, first, the Commission and then the General Court, concerns specifically the verification of the correspondence of the Italian health system to the provisions in Article 106 TFEU and therefore to the application of the SGEI scheme.

On that point, the appellant criticises the General Court on the ground that it failed to make a ruling and therefore failed to state reasons.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 12 August 2021 — L. GmbH v Federal Republic of Germany

(Case C-495/21)

(2021/C 471/31)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant on a point of law: L. GmbH

Respondent in the appeal on a point of law: Federal Republic of Germany

Questions referred

1. Can the principal intended action of a substance be pharmacological within the meaning of Article 1(2)(a) of Directive 93/42/EEC ([1]) even if it is not based on a receptor-mediated mode of action and the substance is not absorbed by the human body but remains on and reacts with the surface of, for example, the mucosa? On what criteria should a distinction be drawn between pharmacological and non-pharmacological means, in particular physico-chemical means, in such a case?

2. Can a product be regarded as a substance-based medical device within the meaning of Article 1(2)(a) of Directive 93/42/EEC if, according to current scientific knowledge, the mode of action of the product is open to debate and it is thus not possible to definitively determine whether the principal intended action is achieved by pharmacological or physico-chemical means?

3. In such a case, is the classification of the product as a medicinal product or as a medical device to be carried out on the basis of an overall assessment of its other properties and all other circumstances, or, in so far as it is intended to prevent, treat or alleviate diseases, is the product to be regarded as a medicinal product by presentation within the meaning of Article 1(2)(a) of Directive 2001/83/EC, ([2]) irrespective of whether or not a specific medicinal effect is being claimed?

4. Does the primacy of the regime governing medicinal products also apply in such a case in accordance with Article 2(2) of Directive 2001/83/EC?

([1]) Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1), as last amended by Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 (OJ 2007 L 247, p. 17).

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) in the version of Directive 2012/26/EU of the European Parliament and of the Council of 25 October 2012 (OJ 2012 L 299, p. 1) which is applicable here.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 12 August 2021 — H. Ltd. v Federal Republic of Germany

(Case C-496/21)

(2021/C 471/32)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant on a point of law: H. Ltd.

Respondent in the appeal on a point of law: Federal Republic of Germany

Questions referred

1. Can the principal intended action of a substance be pharmacological within the meaning of Article 1(2)(a) of Directive 93/42/EEC ([1]) even if it is not based on a receptor-mediated mode of action and the substance is not absorbed by the human body but remains on and reacts with the surface of, for example, the mucosa? On what criteria should a distinction be drawn between pharmacological and non-pharmacological means, in particular physico-chemical means, in such a case?

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3. In such a case, is the classification of the product as a medicinal product or as a medical device to be carried out on the basis of an overall assessment of its other properties and all other circumstances, or, in so far as it is intended to prevent, treat or alleviate diseases, is the product to be regarded as a medicinal product by presentation within the meaning of Article 1(2)(a) of Directive 2001/83/EC, ([2]) irrespective of whether or not a specific medicinal effect is being claimed?

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([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) in the version of Directive 2012/26/EU of the European Parliament and of the Council of 25 October 2012 (OJ 2012 L 299, p. 1) applicable here.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 17 August 2021 — Aquila Part Prod Com S.A. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-512/21)

(2021/C 471/33)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Aquila Part Prod Com S.A.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Is a practice of a tax authority pursuant to which that authority, automatically and without carrying out any checks, concludes from the fact that a natural person has acted knowingly, where that natural person has a legal relationship with a legal person which acts as a broker, is independent of the taxable person, which is the principal, and has its own legal personality, but that natural person does not have a relationship with the taxable person, that the taxable person has also acted knowingly, thereby ignoring the provisions of the contract concluded between the principal and the broker and also the provisions of foreign law governing the brokerage relationship, compatible with EU law, in particular Articles 9(1) and 10 of the VAT Directive, ([1]) and with the principle of fiscal neutrality?

2. Are Articles 167, 168(a) and 178(a) of the VAT Directive to be interpreted as meaning that, where a tax authority identifies the existence of a circular invoicing chain, that fact alone suffices as objective evidence of tax fraud or in such a case is the tax authority also required to indicate which member(s) of the chain committed the tax fraud and what their modus operandi was?

3. Are Articles 167, 168(a) and 178(a) of the VAT Directive, in the light of the principles of proportionality and reasonableness, to be interpreted as meaning that even if the tax authority considers, based on the specific circumstances of the case, that the taxable person should have been more diligent, that person cannot be required to verify facts which the tax authority was only able to discover after an inspection lasting approximately five years which necessitated numerous additional checks using instruments of public law, such that the protection of taxable persons' trade secrets was not an impediment to the checks? In the event that greater diligence is required, is it sufficient proof of due diligence that the taxable person's scrutiny extends to matters beyond those indicated in the *Mahagében* judgment in relation to possible trading partners, such that the taxable person has internal supply rules for the purpose of conducting checks on those trading partners, does not accept cash payments, includes clauses concerning the possible risks in the contracts it concludes, and also examines other matters during the transaction?

4. Are Articles 167, 168(a) and 178(a) of the VAT Directive to be interpreted as meaning that, if the tax authority finds that the taxable person actively participated in the tax fraud, it is sufficient in that regard that the evidence discovered by the tax authority shows that, using due diligence, the taxable person could have become aware of the fact that it was participating in a tax fraud, without that evidence showing that the taxable person knew that it was participating in a tax fraud because of its active conduct in that fraud? If active participation in a tax fraud, in other words, awareness of that participation, is proven, is the tax authority required to establish the fraudulent actions of the taxable person materialising in its concerted conduct with the members preceding it in the chain or is it sufficient for the tax authority to rely on objective evidence that the members of the chain knew one another?

5. Is a practice of a tax authority pursuant to which that authority bases its ruling on an alleged infringement of provisions governing the safety of the food supply chain which have no bearing on compliance by the taxable person with his tax obligations or on the circulation of his invoices, which the tax legislation does not provide for in any way in relation to the taxable person and which have no effect on the actual facts of the transactions inspected by the tax authority and on the taxable person's awareness examined in the tax proceedings, compatible with Articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial recognised as a general principle in Article 47 of the Charter of Fundamental Rights of the European Union, and with the principle of legal certainty?

   In the event the previous question is answered in the affirmative:

6. Is a practice of a tax authority whereby that authority, without the involvement of the official body responsible for the safety of the food supply chain, which has material and territorial competence, sets out in its ruling findings concerning the taxable person which come within that official body's sphere of competence, such that, based on infringements identified in relation to the safety of the food supply chain — a matter outside its sphere of competence — it draws tax consequences for the taxable person, without that person being able to dispute the finding that he infringed the provisions on food supply chain safety in proceedings which are separate from the tax proceedings and which respect the fundamental guarantees and the parties' rights, compatible with Articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial recognised as a general principle in Article 47 of the Charter, and with the principle of legal certainty?

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

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 20 August 2021 — Laudamotion GmbH v TG, QN, AirHelp Germany GmbH

(Case C-517/21)

(2021/C 471/34)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: Laudamotion GmbH

Defendants: TG, QN, AirHelp Germany GmbH

Questions referred

1. Is Article 3(2)(a) of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that the regulation applies to a passenger who checks in online but does not present himself or herself at the check-in counter at the times specified in that provision?

2. Taking into account the judgment in *Sturgeon and Others*, ([2]) is Article 5 of Regulation No 261/2004, in conjunction with Article 7 thereof, to be interpreted as meaning that — where the operating air carrier cannot avoid liability, as provided for in Article 5(3) of that regulation — the passenger has the right to compensation if:

   — the flight is delayed in arriving at the final destination by at least three hours,

   — it was already apparent prior to boarding that the flight would reach its final destination with a delay of at least three hours, and

   — the passenger did not appear for the boarding of that flight?

   If Question 2 is answered in the affirmative:

3. Is this also the case where the passenger, without the involvement of the operating air carrier, books an alternative flight with which he or she reaches another airport serving the same city or region (Article 8(3) of Regulation No 261/2004) as his or her originally booked flight only slightly later than he or she would have reached the final destination of that flight as scheduled?

   If Question 2 is answered in the affirmative:

4. Is this also the case where the passenger, at his or her request, is rebooked by the operating air carrier onto an alternative flight with which he or she reaches his or her final destination earlier than he or she would have with the delayed originally booked flight, but nevertheless later than he or she would have with the flight originally booked had it been on schedule (and the flight onto which the passenger was rebooked does not itself have a 'long delay')?

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

([2]) Judgment of 19 November 2009, C-402/07 and C-432/07, EU:C:2009:716.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 10 September 2021 — Staatssecretaris van Justitie en Veiligheid, other parties: E.N., S.S. and J.Y.

(Case C-556/21)

(2021/C 471/35)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie en Veiligheid

Other parties: E.N., S.S., J.Y.

Question referred

Must Articles 27(3) and 29 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180) ([1]) be interpreted as not precluding, where the legal system of the Member State provides for appellate jurisdiction in cases such as that at issue here, the appellate court, during the hearing of the case, from granting, at the request of the competent authority of the Member State, an interim measure suspending the transfer time limit?

([1]) p. 31.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 15 September 2021 — BNP Paribas SA v TR

(Case C-567/21)

(2021/C 471/36)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: BNP Paribas SA

Respondent: TR

Questions referred

1. Must Articles 33 and 36 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) be interpreted as meaning that, where the legislation of the Member State of origin of the judgment confers on that judgment authority such as to preclude a new action being brought by the same parties for determining the claims that could have been raised in the initial proceedings, the effects which that judgment has in the Member State in which enforcement is sought preclude a court of that latter State, whose legislation, as applicable *ratione temporis*, provided in employment law for a similar obligation of concentration of claims, from adjudicating on such claims?

2. If the first question is answered in the negative, must Articles 33 and 36 of Council Regulation No 44/2001 be interpreted as meaning that an action such as a claim of unfair dismissal in the United Kingdom has the same cause of action and the same subject matter as an action such as a claim of dismissal without actual and serious cause in French law, so that the employee's claims for damages for dismissal without actual and serious cause, compensation in lieu of notice, and compensation for dismissal before the French courts are inadmissible after the employee has obtained a decision in the United Kingdom declaring that there has been an unfair dismissal and making a compensatory award in that respect? Is it necessary in that regard to distinguish between, on the one hand, the damages for dismissal without actual and serious cause that might have the same cause of action and the same subject matter as the compensatory award and, on the other, the compensation for dismissal and compensation in lieu of notice which, in French law, are payable where the dismissal is based on an actual and serious cause, but are not payable in the event of dismissal based on serious misconduct?

3. Likewise, must Articles 33 and 36 of Council Regulation No 44/2001 be interpreted as meaning that an action such as a claim of unfair dismissal in the United Kingdom and an action for payment of bonuses or allowances provided for in the contract of employment have the same cause of action and the same subject matter when those actions are based on the same contractual relationship between the parties?

([1]) OJ 2001 L 12, p. 1.

Appeal brought on 17 September 2021 by Ana Carla Mendes de Almeida against the order of the General Court (Ninth Chamber) delivered on 8 July 2021 in Case T-75/21 Ana Carla Mendes de Almeida v Council of the European Union

(Case C-576/21 P)

(2021/C 471/37)

Language of the case: Portuguese

Parties

Appellant: Ana Carla Mendes de Almeida (represented by: R. Leandro Vasconcelos, M. Marques de Carvalho and P. Almeida Sande, advogados)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant submits that the Court should:

— set aside the decision of the General Court in Case T-75/21, contained in the order of that Court (Ninth Chamber) of 8 July 2021, which dismisses as inadmissible, since it is out of time, the action brought by the appellant, under Article 263 of the Treaty on the Functioning of the European Union (TFEU), against Council Implementing Decision (EU) 2020/1117 ([1]) of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office, in so far as it appoints Mr Moreira Alves d'Oliveira Guerra as European Prosecutor of the European Public Prosecutor's Office as temporary agent at grade AD 13 for a non-renewable period of three years from 29 July 2020;

— pursuant to Article 61 of the Statute of the Court of Justice, there being no grounds to consider that the state of the proceedings does not permit a decision by the Court of Justice, itself give final judgment on the dispute, since it has available to it all the legal and factual elements necessary to do so;

— give a ruling on costs, in accordance with Article 38 of the Statute of the Court of Justice, ordering the Council to bear its own costs and pay those incurred by the appellant, in the proceedings before the General Court and in the proceedings before the Court of Justice, in accordance with Article 138 of the Rules of Procedure of the Court of Justice.

Grounds of appeal and main arguments

In support of her appeal, the appellant relies on three grounds of appeal:

First ground of appeal: manifest error of assessment and error of law, in that the General Court found that the period for instituting proceedings begins to run from the date of publication of the contested decision in the Official Journal of the European Union, in breach of the general principle of EU law of the right to effective judicial protection and Article 47 of the Charter of Fundamental Rights of the European Union, ([2]) **together with the applicable rules under Regulation (EU) 2017/1939,** ([3]) **which ensure that the rights of candidates are protected, as follows from the general scheme thereof and the principle of the independence of the European Public Prosecutor's Office, enshrined in Article 6 of that regulation**

The appellant relies on a manifest error of assessment and an error of law in so far as the General Court found that the period for instituting proceedings begins to run from the date of publication of the contested decision in the Official Journal of the European Union. The appellant did not, at that date, have the elements allowing her to challenge the contested decision under Article 263 TFEU on the basis of the pleas in law relied on in the action brought before the General Court, which arise, first, from the letter from the Portuguese Government, sent to the Council of the European Union on 29 November 2019, disputing the classification made by the selection panel referred to in Article 14(3) of Regulation (EU) 2017/1939 of the candidates submitted by the Portuguese Government itself and indicating a separate preferred candidate and, second, from the fact that the Council accepted that letter. The General Court disregarded the existence of that letter, which forms the basis of the contested decision, contains two material errors and calls into question the structure of the procedure for the appointment of European Prosecutors and the independence thereof. The Council only disclosed the aforementioned letter to the appellant on 27 November 2020, expressly for the purposes of exercising its rights of defence. The appellant disputes the finding, made by the General Court in the order under appeal, that the period for instituting proceedings could begin to run prior to that date, as this constitutes an infringement of the general principle of the right to effective judicial protection and of Article 47 of the Charter of Fundamental Rights of the European Union, as well as of the principle of the independence of the European Public Prosecutor's Office, enshrined in Article 6 of Regulation (EU) 2017/1939.

Second ground of appeal: manifest error of assessment and error of law in so far as the General Court held that the Council communicated the individual grounds of the contested decision on 7 October 2020, in breach of the general principle of EU law of the right to effective judicial protection and of Article 47 of the Charter of Fundamental Rights of the European Union

The appellant relies on a manifest error of assessment and an error of law in so far as the General Court found that, in any event, the appellant was made aware of the contested decision by the letter of 7 October 2020, in which the Council communicated the individual grounds of that decision to the appellant. In that letter, however, the Council does not inform the appellant of the existence of the Portuguese Government's letter sent to the Council of the European Union on 29 November 2019, without which there would be no cause of action justifying the bringing of an action against the contested decision.

Third ground of appeal, in the alternative: failure to apply or excessively restrictive application of the case-law referring to excusable error and failure to consider the plea relating to the existence of unforeseen circumstances or *force majeure*

It is settled case-law that the full knowledge of the finality of a decision and of the time limit for bringing an action under Article 263 TFEU does not, in itself, prevent an individual from pleading excusable error to justify his or her action being out of time. The General Court failed to consider, in the order under appeal, the fact that the Council had concealed the letter from the Portuguese Government until it informed the appellant thereof on 27 November 2020. Such a situation is capable of constituting, in accordance with the case-law of the Court of Justice, an excusable error justifying the action being out of time. The General Court also disregarded the plea of unforeseen circumstances or *force majeure* as an argument that would permit a derogation from the application of provisions of EU law on procedural time limits.

(1) OJ 2020 L 244, p. 18.
(2) OJ 2000 C 364, p. 1.
(3) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1).

Order of the President of the Court of 24 August 2021 (request for a preliminary ruling from the l'Oberster Gerichtshof — Austria) — Puls 4 TV GmbH & Co. KG v YouTube LLC, Google Austria GmbH

(Case C-500/19) [1]

(2021/C 471/38)

Language of the case: German

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

(1) OJ C 295, 2.9.2019.

Order of the President of the Court of 1 September 2021 — European Commission v HSBC Holdings plc, HSBC Bank plc, HSBC Continental Europe, formerly HSBC France

(Case C-806/19 P) [1]

(2021/C 471/39)

Language of the case: English

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

(1) OJ C 432, 23.12.2019.

Order of the President of the Fourth Chamber of the Court of 13 August 2021 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Generálna prokuratura Slovenskej republiky v X.Y.

(Case C-919/19) [1]

(2021/C 471/40)

Language of the case: Slovak

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

(1) OJ C 87, 16.3.2020.

Order of the President of the Second Chamber of the Court of 1 September 2021 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Generálna prokuratura Slovenskej republiky v M.B.

(Case C-78/20) ([1])

(2021/C 471/41)

Language of the case: Slovak

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

([1]) OJ C 137, 27.4.2020.

Order of the President of the Fifth Chamber of the Court of 19 July 2021 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — ExxonMobil Production Deutschland GmbH v Bundesrepublik Deutschland, represented by the Umweltbundesamt

(Case C-126/20) ([1])

(2021/C 471/42)

Language of the case: German

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

([1]) OJ C 215, 29.6.2020.

Order of the President of the Court of 10 August 2021 (request for a preliminary ruling from the Landgericht Köln — Germany) — BQ (C-380/20), VR (C-381/20), AL (C-382/20), LK (C-383/20), DP (C-384/20) v Deutsche Lufthansa AG

(Joined Cases C-380/20 to C-384/20) ([1])

(2021/C 471/43)

Language of the case: German

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

([1]) OJ C 423, 7.12.2020.

Order of the President of the Ninth Chamber of the Court of 9 August 2021 (request for a preliminary ruling from the Schleswig-Holsteinisches Verwaltungsgericht — Germany) — C. v Bundesrepublik Deutschland

(Case C-435/20) ([1])

(2021/C 471/44)

Language of the case: German

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

([1]) OJ C 433, 14.12.2020.

Order of the President of the Court of 18 August 2021 (request for a preliminary ruling from the Curtea de Apel Braşov — Romania) — S.C. Techno-Gaz K.F.T. PAKS v U.A.T. Comuna Dalnic

(Case C-298/21) [1]

(2021/C 471/45)

Language of the case: Romanian

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

[1] OJ C 329, 16.8.2021.

GENERAL COURT

Judgment of the General Court of 29 September 2021 — Nec v Commission

(Case T-341/18) ([1])

(Competition — Agreements, decisions and concerted practices — Market for aluminium electrolytic capacitors and tantalum electrolytic capacitors — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Price coordination throughout the EEA — Attribution to the parent company of the infringement committed by its subsidiary — 2006 Guidelines on the method of setting fines — Gravity of the infringement — Increase in the amount of the fine for repeated infringement — Proportionality — Unlimited jurisdiction)

(2021/C 471/46)

Language of the case: English

Parties

Applicant: Nec Corp. (Tokyo, Japan) (represented by: O. Brouwer and A. Pliego Selie, lawyers, and by R. Bachour, Solicitor)

Defendant: European Commission (represented by: A. Cleenewerck de Crayencour, L. Wildpanner and F. van Schaik, acting as Agents)

Re:

Application under Article 263 TFEU for, primarily, annulment of Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors), in so far as that decision finds that the applicant personally participated in the infringement, and, in the alternative, annulment of the fines imposed on the applicant or a reduction in the amount of those fines.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Nec Corp. to bear its own costs and to pay the costs incurred by the European Commission.

([1]) OJ C 294, 20.8.2018.

Judgment of the General Court of 29 September 2021 — Nichicon Corporation v Commission

(Case T-342/18) ([1])

(Competition — Agreements, decisions and concerted practices — Market for aluminium electrolytic capacitors and tantalum electrolytic capacitors — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Price coordination throughout the EEA — Concerted practice — Exchanges of sensitive business information — Territorial jurisdiction of the Commission — Restriction of competition by object — Statement of objections — Point 13 of the 2006 Guidelines on the method of setting fines — Value of sales — Obligation to state reasons — Proportionality — Equal treatment — Single and continuous infringement — Gravity of the infringement — Public distancing — Mitigating circumstances — Unlimited jurisdiction)

(2021/C 471/47)

Language of the case: English

Parties

Applicant: Nichicon Corporation (Kyoto, Japan) (represented by: A. Ablasser-Neuhuber, F. Neumayr, G. Fussenegger and H. Kühnert, lawyers)

Defendant: European Commission (represented by: B. Ernst, T. Franchoo, C. Sjödin and F. van Schaik, acting as Agents)

Re:

Application under Article 263 TFEU for, primarily, annulment of Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors), in so far as it concerns the applicant, and, in the alternative, a reduction in the amount of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

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

(1) OJ C 294, 20.8.2018.

Judgment of the General Court of 29 September 2021 — Tokin v Commission

(Case T-343/18) (1)

(Competition — Agreements, decisions and concerted practices — Market for aluminium electrolytic capacitors and tantalum electrolytic capacitors — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Price coordination throughout the EEA — Statement of objections — 2006 Guidelines on the method of setting fines — Value of sales — Proportionality — Equal treatment — Gravity of the infringement — Mitigating circumstances)

(2021/C 471/48)

Language of the case: English

Parties

Applicant: Tokin Corp. (Sendai, Japan) (represented by: C. Thomas, lawyer, and T. Yuen, Solicitor)

Defendant: European Commission (represented by: A. Cleenewerck de Crayencour, F. van Schaik and L. Wildpanner, acting as Agents)

Re:

Application under Article 263 TFEU for, primarily, annulment of Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors), in so far as that decision imposes fines on the applicant, and, in the alternative, a reduction in the amount of those fines.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tokin Corp. to bear its own costs and to pay the costs incurred by the European Commission.

(1) OJ C 294, 20.8.2018.

Judgment of the General Court of 29 September 2021 — Rubycon and Rubycon Holdings v Commission

(Case T-344/18) ([1])

(Competition — Agreements, decisions and concerted practices — Market for aluminium electrolytic capacitors and tantalum electrolytic capacitors — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Price coordination throughout the EEA — Fines — Partial immunity from fines — Point 26 of the 2006 Leniency Notice — Reduction in the amount of the fine — Point 37 of the 2006 Guidelines on the method of setting fines — Ceiling of 10 % of turnover — Unlimited jurisdiction)

(2021/C 471/49)

Language of the case: English

Parties

Applicants: Rubycon Corp. (Ina, Japan), Rubycon Holdings Co. Ltd (Ina) (represented by: J. Rivas Andrés and A. Federle, lawyers)

Defendant: European Commission (represented by: B. Ernst, L. Wildpanner and F. van Schaik, acting as Agents)

Re:

Application under Article 263 TFEU for, first, annulment of Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors), in so far as it concerns the applicants, and, second, a reduction in the amount of the fines imposed on them.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Rubycon Corp. and Rubycon Holdings Co. Ltd to bear their own costs and to pay the costs incurred by the European Commission.

([1]) OJ C 294, 20.8.2018.

Judgment of the General Court of 29 September 2021 — Nippon Chemi-Con Corporation v Commission

(Case T-363/18) ([1])

(Competition — Agreements, decisions and concerted practices — Market for aluminium electrolytic capacitors and tantalum electrolytic capacitors — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Price coordination throughout the EEA — Concerted practice — Exchanges of sensitive business information — Territorial jurisdiction of the Commission — Rights of the defence and right to be heard — Inalterability of the measure — Single and continuous infringement — Restriction of competition by object — 2006 Guidelines on the method of setting fines — Value of sales — Obligation to state reasons — Proportionality — Equal treatment — Gravity of the infringement — Mitigating circumstances — Point 37 of the 2006 Guidelines on the method of setting fines — Unlimited jurisdiction)

(2021/C 471/50)

Language of the case: English

Parties

Applicant: Nippon Chemi-Con Corporation (Tokyo, Japan) (represented by: H.-J. Niemeyer, M. Röhrig, I.-L. Stoicescu and P. Neideck, lawyers)

Defendant: European Commission (represented by: A. Cleenewerck de Crayencour, B. Ernst, T. Franchoo, C. Sjödin and L. Wildpanner, acting as Agents)

Re:

Application under Article 263 TFEU for, primarily, annulment of Commission Decision C(2018) 1768 final of 21 March 2018 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.40136 — Capacitors), in so far as it concerns the applicant, and, in the alternative, annulment of the fine imposed on it by that decision or a reduction in the amount of that fine.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Nippon Chemi-Con Corporation to bear its own costs and to pay the costs incurred by the European Commission.

([1]) OJ C 294, 20.8.2018.

Judgment of the General Court of 29 September 2021 — TUIfly v Commission

(Case T-447/18) ([1])

(State aid — Agreements concluded by Kärntner Flughafen Betriebsgesellschaft with airlines Hapag Lloyd Express and TUIfly — Airport services — Marketing services — Decision declaring the aid incompatible with the internal market and ordering its recovery — Advantage — Private investor test — Article 41 of the Charter of Fundamental Rights — Right of access to the file — Right to be heard)

(2021/C 471/51)

Language of the case: German

Parties

Applicant: TUIfly GmbH (Langenhagen, Germany) (represented by: L. Giesberts and M. Gayger, lawyers)

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

Re:

Application under Article 263 TFEU seeking partial annulment of Commission Decision (EU) 2018/628 of 11 November 2016 on State aid SA.24221(2011/C) (ex 2011/NN) implemented by Austria for the Klagenfurt airport, Ryanair and other airlines using the airport (OJ 2018 L 107, p. 1), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

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

([1]) OJ C 301, 27.8.2018.

Judgment of the General Court of 29 September 2021 — Ryanair and Others v Commission

(Case T-448/18) ([1])

(State aid — Agreements concluded by Kärntner Flughafen Betriebsgesellschaft with Ryanair and its subsidiaries Airport Marketing Services and Leading Verge.com — Airport services — Marketing services — Decision declaring the aid incompatible with the internal market and ordering its recovery — Concept of State aid — Whether imputable to the State — Advantage — Private investor test — Recovery — Article 41 of the Charter of Fundamental Rights — Right of access to the file — Right to be heard)

(2021/C 471/52)

Language of the case: English

Parties

Applicants: Ryanair DAC (Swords, Ireland), Airport Marketing Services Ltd (Dublin, Ireland), FR Financing (Malta) Ltd (Douglas, Isle of Man) (represented by: E. Vahida and I.-G. Metaxas-Maranghidis, lawyers, and by B. Byrne, Solicitor)

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

Re:

Application under Article 263 TFEU seeking the partial annulment of Commission Decision (EU) 2018/628 of 11 November 2016 on State aid SA.24221(2011/C) (ex 2011/NN) implemented by Austria for the Klagenfurt airport, Ryanair and other airlines using the airport (OJ 2018 L 107, p. 1), in so far as it concerns the applicants.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ryanair DAC, Airport Marketing Services Ltd and FR Financing (Malta) Ltd to bear their own costs and to pay those incurred by the European Commission.

([1]) OJ C 319, 10.9.2018.

Judgment of the General Court of 29 September 2021 — TUIfly v Commission

(Case T-619/18) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a procedure for the review of State aid — Refusal to grant access — Exception relating to the protection of the purpose of inspections, investigations and audits — Exception relating to the protection of the commercial interests of a third party — Overriding public interest)

(2021/C 471/53)

Language of the case: German

Parties

Applicant: TUIfly GmbH (Langenhagen, Germany) (represented by: L. Giesberts and M. Gayger, lawyers)

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

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2018) 5432 final of 3 August 2018 refusing to grant the applicant access to documents relating to the administrative procedure concerning State aid SA.24221 (2011/C) (ex 2011/NN) implemented by Austria for the Klagenfurt airport, Ryanair and other airlines using the airport.

Operative part of the judgment

The Court:

1. Dismisses the action;

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

([1]) OJ C 436, 3.12.2018.

Judgment of the General Court of 6 October 2021 — Covestro Deutschland v Commission

(Case T-745/18) ([1])

(State aid — Aid scheme implemented by Germany in favour of certain large electricity consumers — Exemption from network charges for the period 2012 — 2013 — Decision declaring the aid scheme incompatible with the internal market and unlawful and ordering recovery of the aid granted — Action for annulment — Time limit for bringing an action — Admissibility — Definition of aid — State resources — Equal treatment — Legitimate expectations)

(2021/C 471/54)

Language of the case: German

Parties

Applicant: Covestro Deutschland AG (Leverkusen, Germany) (represented by: M. Küper, J. Otter, C. Anger and M. Goldberg, lawyers)

Defendant: European Commission (represented by: T. Maxian Rusche and K. Herrmann, acting as Agents)

Intervener in support of the applicant: Federal Republic of Germany (represented by: J. Möller, R. Kanitz, S. Heimerl and S. Costanzo, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision (EU) 2019/56 of 28 May 2018 of 7 May 2015 on the State aid SA.34045 (2013/C) (ex 2012/NN) implemented by Germany to baseload consumers under Paragraph 19 StromNEV (OJ 2019 L 14, p. 1).

Operative part of the judgment

1. The application is dismissed;

2. Covestro Deutschland AG is ordered to bear its own costs and those incurred by the European Commission;

3. The Federal Republic of Germany is ordered to bear its own costs.

([1]) OJ C 82 of 4.3.2019.

Judgment of the General Court of 6 October 2021 — Tempus Energy Germany and T Energy Sweden v Commission

(Case T-167/19) ([1])

(State aid — Polish electricity market — Capacity mechanism — Decision not to raise any objections — Aid scheme — Article 108(2) and (3) TFEU — Concept of doubts — Article 4(3) and (4) of Regulation (EU) 2015/1589 — Serious difficulties — Article 107(3)(c) TFEU — Guidelines on State aid for environmental protection and energy 2014-2020 — Failure to initiate the formal investigation procedure — Procedural rights of the interested parties — Obligation to state reasons)

(2021/C 471/55)

Language of the case: English

Parties

Applicants: Tempus Energy Germany GmbH (Berlin, Germany), T Energy Sweden AB (Gothenburg, Sweden) (represented by: D. Fouquet and J. Derenne, lawyers)

Defendant: European Commission (represented by: K. Herrmann and P. Němečková, acting as Agents

Interveners in support of the defendant: Republic of Poland (represented by: B. Majczyna, acting as Agent), PGE Polska Grupa Energetyczna S.A (Warsaw, Poland) (represented by: A. Ryan and A. Klosok, Solicitors, and by T. Janssens and K. Bojarojć-Bartnicka, lawyers), Enel X Polska z o.o. (Warsaw) (represented by: V. Cannizzaro, S. Ventura and L. Caroli, lawyers), Enspirion sp. z o.o. (Gdańsk, Poland) (represented by: A. Czech, lawyer)

Re:

Application under Article 263 TFEU for annulment of Commission Decision C(2018) 601 final of 7 February 2018 not to raise objections to the aid scheme for the capacity mechanism in Poland, on the ground that that scheme is compatible with the internal market pursuant to Article 107(3)(c) TFEU (State aid SA.46100 (2017/N)).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tempus Energy Germany GmbH and T Energy Sweden AB to bear their own costs and to pay those incurred by the European Commission, PGE Polska Grupa Energetyczna S.A., Enel X Polska z o.o. and Enspirion sp. z o.o.;

3. Orders the Republic of Poland to bear its own costs.

([1]) OJ C 155, 6.5.2019.

Judgment of the General Court of 6 October 2021 — AZ v Commission

(Case T-196/19) ([1])

(State aid — Aid scheme implemented by Germany for some large electricity consumers — Exemption from network charges in respect of the 2012-2013 period — Decision declaring the aid scheme incompatible with the internal market and unlawful, and ordering the recovery of the aid paid — Action for annulment — Period allowed for commencing proceedings — Admissibility — Concept of aid — State resources — Selectivity — Equal treatment — Legitimate expectations)

(2021/C 471/56)

Language of the case: German

Parties

Applicant: AZ (represented by: F. Wagner, D. Fouquet, T. Hartmann and M. Kachel, lawyers)

Defendant: European Commission (represented by: T. Maxian Rusche and K. Herrmann, acting as Agents, and G. Quardt and C. von Donat, lawyers)

Intervener in support of the applicant: Federal Republic of Germany (represented by: J. Möller, R. Kanitz, S. Heimerl and S. Costanzo, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision (EU) 2019/56 of 28 May 2018 on aid scheme SA.34045 (2013/c) (ex 2012/NN) implemented by Germany for baseload consumers under Paragraph 19 StromNEV (OJ 2019 L 14, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

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

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

([1]) OJ C 213, 24.6.2019.

Judgment of the General Court of 6 October 2021 — Infineon Technologies Dresden and Infineon Technologies v Commission

(Joined Cases T-233/19 and T-234/19) ([1])

(State aid — Aid scheme implemented by Germany for some large electricity consumers — Exemption from network charges in respect of the 2012-2013 period — Decision declaring the aid scheme incompatible with the internal market and unlawful, and ordering the recovery of the aid paid — Action for annulment — Period allowed for commencing proceedings — Admissibility — Concept of aid — State resources)

(2021/C 471/57)

Language of the case: German

Parties

Applicant in Case T-233/19: Infineon Technologies Dresden GmbH & Co. KG (Dresden, Germany) (represented by: L. Assmann and M. Peiffer, lawyers)

Applicant in Case T-234/19: Infineon Technologies AG (Neubiberg, Germany) (represented by: L. Assmann and M. Peiffer, lawyers)

Defendant: European Commission (represented by: T. Maxian Rusche and K. Herrmann, acting as Agents)

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

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision (EU) 2019/56 of 28 May 2018 on aid scheme SA.34045 (2013/c) (ex 2012/NN) implemented by Germany for baseload consumers under Paragraph 19 StromNEV (OJ 2019 L 14, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the actions;

2. Orders Infineon Technologies Dresden GmbH & Co. KG and Infineon Technologies AG to bear their own costs and to pay those incurred by the European Commission;

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

(1) OJ C 213, 24.6.2019.

Judgment of the General Court of 6 October 2021 — Wepa Hygieneprodukte and Others v Commission

(Case T-238/19) (1)

(State aid — Aid regime implemented by Germany for certain large electricity consumers — Exemption from network charges for the period 2012-2013 — Decision declaring the aid regime incompatible with the internal market and unlawful and ordering the recovery of the aid granted — Action for annulment — Time limit for bringing an action — Admissibility — Concept of 'aid' — State resources — Selectivity)

(2021/C 471/58)

Language of the case: German

Parties

Applicants: Wepa Hygieneprodukte GmbH (Arnsberg, Germany), Wepa Leuna GmbH (Leuna, Germany), Wepa Papierfabrik Sachsen GmbH (Arnsberg) (represented by: H. Janssen, A. Vallone and L. Kienzle, lawyers)

Defendant: European Commission (represented by: K. Herrmann and T. Maxian Rusche, acting as Agents)

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

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision (EU) 2019/56 of 28 May 2018 on aid scheme SA.34045 (2013/C) (ex 2012/NN) implemented by Germany for baseload consumers under Paragraph 19 StromNEV (OJ 2019 L 14, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Wepa Hygieneprodukte GmbH, Wepa Leuna GmbH and Wepa Papierfabrik Sachsen GmbH to each bear their own costs and to pay those incurred by the European Commission;

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

(1) OJ C 213, 24.6.2019.

Judgment of the General Court of 29 September 2021 — Parliament v Axa Assurances Luxembourg and Others

(Case T-384/19) ([1])

(Arbitration clause — 'Construction all-risk' insurance contract — Extension and renovation of the Konrad Adenauer building in Luxembourg — Damage caused by rainwater — Claim for reimbursement of costs and for payment of the indemnity — Scope of the insurance — Exclusion clause — Ancillary procedural obligations — Procedure by default in part)

(2021/C 471/59)

Language of the case: French

Parties

Applicant: European Parliament (represented by: E. Paladini and B. Schäfer, acting as Agents, and by C. Point and P. Hédouin, lawyers)

Defendants: Axa Assurances Luxembourg SA (Luxembourg, Luxembourg), Bâloise Assurances Luxembourg SA (Luxembourg), La Luxembourgeoise SA (Luxembourg) (represented by: C. Collarini and S. Denu, lawyers), Nationale-Nederlanden Schadeverzekering Maatschappij NV

Re:

Application under Article 272 TFEU seeking an order that the defendants reimburse the costs related to the water damage caused to the Konrad Adenauer building in Luxembourg following heavy rainfall on the site on 27 and 30 May 2016.

Operative part of the judgment

The General Court:

1. Orders Nationale-Nederlanden Schadeverzekering Maatschappij NV to reimburse the sum of EUR 79 653,89 to the European Parliament together with statutory interest for late payment relating thereto as from 22 December 2017, the rate of which is the sum of the interest rate applied by the European Central Bank (ECB) to its main refinancing operations and eight percentage points;

2. Dismisses the action as to the remainder;

3. Orders Nationale-Nederlanden Schadeverzekering Maatschappij to bear the costs of the default procedure concerning it;

4. Orders the Parliament, in addition to bearing its own costs, to pay two thirds of the costs incurred by Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA and La Luxembourgeoise SA.

([1]) OJ C 288, 26.8.2019.

Judgment of the General Court of 29 September 2021 — AlzChem Group v Commission

(Case T-569/19) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a procedure for the recovery of State aid following a decision declaring the aid incompatible with the internal market and ordering its recovery — Refusal to grant access — Exception relating to the protection of the purpose of inspections, investigations and audits — Overriding public interest — Principle of non-discrimination — Obligation to state reasons)

(2021/C 471/60)

Language of the case: English

Parties

Applicant: AlzChem Group AG (Trostberg, Germany) (represented by: A. Borsos and J. Guerrero Pérez, lawyers)

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

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2019) 5602 final of 22 July 2019 refusing to grant the applicant access to documents relating to the procedure for the recovery of State aid following a decision declaring the aid incompatible with the internal market and ordering its recovery.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders AlzChem Group AG to pay the costs.

(1) OJ C 363, 28.10.2019.

Judgment of the General Court of 6 October 2021 — Global Translation Solutions v Parliament

(Case T-7/20) (1)

(Public service contracts — Tendering procedure — Translation services — Rejection of a tenderer's bid — Award of the contract to another tenderer — Award criteria — Format in which a file submitted in a test is to be uploaded)

(2021/C 471/61)

Language of the case: English

Parties

Applicant: Global Translation Solutions ltd. (Valletta, Malta) (represented by: C. Mifsud-Bonnici, lawyer)

Defendant: European Parliament (represented by: E. Taneva and K. Wójcik, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the decision contained in the Parliament's letter of 28 October 2019 rejecting the tender submitted by the applicant for Lot 15 in tendering procedure TRA/EU19/2019 and of the decision contained in the Parliament's letter of 4 December 2019 awarding the contract to another tenderer.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Global Translation Solutions ltd. to pay the costs.

(1) OJ C 87, 16.3.2020.

Judgment of the General Court of 29 September 2021 — Enosi Mastichoparagogon Chiou v EUIPO (MASTIHACARE)

(Case T-60/20) ([1])

(EU trade mark — International Registration designating the European Union — Word mark MASTIHACARE — Absolute ground for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — Obligation to state reasons — Article 94(1) of Regulation 2017/1001)

(2021/C 471/62)

Language of the case: Greek

Parties

Applicant: Enosi Mastichoparagogon Chiou (Chios, Greece) (represented by: A.-E. Malami, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 25 November 2019 (Case R 692/2019-1), relating to the international registration of the word mark MASTIHACARE designating the European Union.

Operative part of the judgment

The General Court:

1. Dismisses the appeal;

2. Orders Enosi Mastichoparagogon Chiou to pay the costs.

([1]) OJ C 103, 30.3.2020.

Judgment of the General Court of 29 September 2021 — Società agricola Vivai Maiorana and Others v Commission

(Case T-116/20) ([1])

(Agriculture — Regulation (EU) 2016/2031 — Protective measures against pests of plants — List of Union regulated non-quarantine pests — Threshold above which the presence of a Union regulated non-quarantine pest on plants for planting has an unacceptable economic impact — Implementing Regulation (EU) 2019/2072 — Professional Associations — Action for annulment — Locus standi — Admissibility — Proportionality — Obligation to state reasons)

(2021/C 471/63)

Language of the case: Italian

Parties

Applicants: Società agricola Vivai Maiorana Ss (Curinga, Italy), Confederazione Italiana Agricoltori — CIA (Rome, Italy), MIVA — Moltiplicatori Italiani Viticoli Associati (Faenza, Italy) (represented by: E.Scoccini and G. Scoccini, lawyers)

Defendant: European Commission (represented by: B. Eggers and F. Moro, acting as Agents)

Interveners in support of the defendant: Council of the European Union (represented by: S. Emmerechts, A. Vitro and S. Barbagallo, acting as Agents), European Parliament (represented by: L. Knudsen and G. Mendola, acting as Agents)

Re:

Application for the annulment of parts A, B, C, F, I and J of annex IV to Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2019/2019 (JO 2019, L 319, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Società agricola Vivai Maiorana Ss, Confederazione Italiana Agricoltori — CIA and MIVA — Moltiplicatori Italiani Viticoli Associati to bear their own costs and to pay those incurred by the European Commission;

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

([1]) OJ C 129, 20.4.2020.

Judgment of the General Court of 6 October 2021 — LP v Parliament

(Case T-519/20) ([1])

(Civil service — Accredited parliamentary assistants — Refusal to offer employment — Conditions of employment — Character references — Manifest error of assessment — Due diligence)

(2021/C 471/64)

Language of the case: Dutch

Parties

Applicant: LP (represented by: J. Bosquet and G. Op de Beeck, lawyers)

Defendant: European Parliament (represented by: C. González Argüelles and J. Van Pottelberge, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of the decision of the Parliament of 22 October 2019 rejecting the applicant's application for employment.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders LP to pay the costs.

([1]) OJ C 348, 19.10.2020.

Judgment of the General Court of 29 September 2021 — Kočner v Europol

(Case T-528/20) ([1])

(Non-contractual liability — Expert reports carried out by Europol for the purposes of national criminal proceedings — Alleged unauthorised disclosure of data — Regulation (EU) 2016/794 — Article 50(1) — Non-material harm — Causal link)

(2021/C 471/65)

Language of the case: Slovakian

Parties

Applicant: Marián Kočner (Bratislava, Slovakia) (represented by: M. Mandzák and M. Para, lawyers)

Defendant: European Union Agency for Law Enforcement Cooperation (represented by: A. Nunzi, B. De Buck, T. Zwingler and A. van Oostenbrugge, acting as Agents, and by G. Ziegenhorn, M. Kottmann and S. Schulz-Große, lawyers)

Intervener in support of the defendant: Kingdom of Spain (represented by: J. Rodríguez de la Rúa Puig, acting as Agent)

Re:

Application under Article 268 TFEU seeking compensation for damage allegedly suffered by the applicant as a result of Europol's disclosure of personal data and Europol's inclusion of his name on the 'Mafia lists'.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Marián Kočner to bear his own costs and to pay those incurred by the European Union Agency for Law Enforcement Cooperation (Europol);

3. Orders the Kingdom of Spain to bear its own costs.

(1) OJ C 339, 12.10.2020.

Judgment of the General Court of 29 September 2021 — Univers Agro v EUIPO — Shandong Hengfeng Rubber & Plastic (AGATE)

(Case T-592/20) (1)

(EU trade mark — Invalidity proceedings — EU word mark AGATE — Absolute ground for refusal — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2021/C 471/66)

Language of the case: English

Parties

Applicant: Univers Agro EOOD (Sofia, Bulgaria) (represented by: C. Hernández-Martí Pérez, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Shandong Hengfeng Rubber & Plastic Co. Ltd (Dongying, China) (represented by: J. Erdozain López, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 27 July 2020 (Case R 725/2019-4), relating to invalidity proceedings between Shandong Hengfeng Rubber & Plastic and Univers Agro.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Agro EOOD to pay the costs.

(1) OJ C 390, 16.11.2020.

Judgment of the General Court of 22 September 2021 — Asian Gear v EUIPO — Multimox (Scooter)

(Case T-685/20) ([1])

(Community design — Invalidity proceedings — Registered community design representing a scooter — Earlier design — Ground for invalidity — Disclosure of the earlier design — Article 7 of Regulation (EC) No 6/2002)

(2021/C 471/67)

Language of the case: German

Parties

Applicant: Asian Gear BV (Pijnacker, Netherlands) (represented by: B. Gravendeel, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Multimox Holding BV (Rijen, Netherlands) (represented by: J. Schmidt, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 3 September 2020 (Case R 1042/2018-3) relating to invalidity proceedings between Asian Gear and Multimox Holding.

Operative part of the judgment

The General Court:

1. Dismisses the action;

2. Orders Asian Gear BV to pay the costs, including the costs necessarily incurred by Multimox Holding BV for the purposes of the proceedings before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 35, 1.2.2021.

Judgment of the General Court of 22 September 2021 — Asian Gear v EUIPO — Multimox (Scooter)

(Case T-686/20) ([1])

(Community design — Invalidity proceedings — Registered community design representing a scooter — Earlier design — Ground for invalidity — Disclosure of the earlier design — Article 7 of Regulation (EC) No 6/2002)

(2021/C 471/68)

Language of the case: German

Parties

Applicant: Asian Gear BV (Pijnacker, Netherlands) (represented by: B. Gravendeel, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Multimox Holding BV (Rijen, Netherlands) (represented by: J. Schmidt, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 3 September 2020 (Case R 1043/2018-3) relating to invalidity proceedings between Asian Gear and Multimox Holding.

Operative part of the judgment

The General Court:

1. Dismisses the action;

2. Orders Asian Gear BV to pay the costs, including the costs necessarily incurred by Multimox Holding BV for the purposes of the proceedings before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 35, 1.2.2021.

Judgment of the General Court of 6 October 2021 — Daw v EUIPO (Muresko)

(Case T-32/21) ([1])

(EU trade mark — EU word mark Muresko — Earlier national word marks Muresko — Claim for seniority of earlier national after registration of the EU trade mark marks — Articles 39 and 40 of Regulation (EU) 2017/1001 — Registration of earlier national marks having expired on the day of the claim)

(2021/C 471/69)

Language of the case: German

Parties

Applicant: Daw SE (Ober-Ramstadt, Germany) (represented by: A. Haberl, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 November 2020 (Case R 1686/2020-4), concerning a claim for seniority of identical earlier national marks for the EU word mark Muresko No 15465719.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Daw SE to pay the costs.

([1]) OJ C 88, 15.3.2021.

Order of the General Court of 24 September 2021 — Pilatus Bank v ECB

(Case T-139/19) ([1])

(Economic and monetary policy — Prudential supervision of credit institutions — Withdrawal of licence — Tasks conferred on the ECB — Action manifestly lacking any foundation in law)

(2021/C 471/70)

Language of the case: English

Parties

Applicant: Pilatus Bank plc (Ta'Xbiex, Malta) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: A. Karpf, E. Yoo and M. Puidokas, acting as Agents)

Re:

Action pursuant to Article 263 TFEU for annulment of the ECB's decision of 21 December 2018 declaring to the applicant that it was no longer competent to ensure its direct prudential supervision and to take measures concerning it.

Operative part of the order

1. The action is dismissed.

2. Pilatus Bank plc shall bear its own costs and pay those incurred by the European Central Bank (ECB).

(1) OJ C 139, 15.4.2019.

Order of the General Court of 22 September 2021 — Alteryx v EUIPO — Allocate Software (ALLOCATE)

(Case T-476/20) (1)

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

(2021/C 471/71)

Language of the case: English

Parties

Applicant: Alteryx, Inc. (Irvine, California, United States) (represented by: A. Poulter and M. Holah, Solicitors)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Allocate Software Ltd (London, United Kingdom) (represented by: M. Howe, QC, A. Chantrielle, Barrister, E. Powell and B. Milloy, Solicitors)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 May 2020 (Case R 1709/2019-4), relating to revocation proceedings between Allocate Software and Alteryx.

Operative part of the order

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

2. Alteryx, Inc. and Allocate Software Ltd shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 313, 21.9.2020.

Order of the General Court of 28 September 2021 — Airoldi Metalli v Commission

(Case T-611/20) (1)

(Action for annulment — Dumping — Imports of aluminium extrusions originating in China — Registration of imports — No interest in bringing proceedings — Inadmissibility)

(2021/C 471/72)

Language of the case: English

Parties

Applicant: Airoldi Metalli SpA (Molteno, Italy) (represented by: M. Campa, D. Rovetta, G. Pandey, V. Villante and M. Pirovano, lawyers)

Defendant: European Commission (represented by: G. Luengo and P. Němečková, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Implementing Regulation (EU) 2020/1215 of 21 August 2020 making imports of aluminium extrusions originating in the People's Republic of China subject to registration (OJ 2020 L 275, p. 16), in so far as it concerns the applicant.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Airoldi Metalli SpA shall pay the costs.

(1) OJ C 414, 30.11.2020.

Action brought on 15 September 2021 — Tinnus Enterprises v EUIPO — Mystic Products and Koopman International (Fluid distribution equipment)

(Case T-588/21)

(2021/C 471/73)

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 1 431 829-0005

Contested decision: Decision of the Third Board of Appeal of EUIPO of 12 July 2021 in Case R 1008/2018-3

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 20 September 2021 — TestBioTech v Commission

(Case T-605/21)

(2021/C 471/74)

Language of the case: English

Parties

Applicant: TestBioTech eV (Munich, Germany) (represented by: K. Smith, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 8 July 2021, refusing to revoke or to amend the defendant's implementing decision (EU) 2021/61 ([1]), by which Monsanto Europe SA has been permitted, under the GM Regulation ([2]), to market genetically modified maize MON 87427 x MON 87460 x MON 89034 x MIR162 x NK603 and its sub-combinations in the EU;

— order any other measure deemed appropriate; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant committed a manifest error of assessment in failing to give any or any adequate consideration to the potential impact of gene stacking on gene expression in combination with exposure to drought conditions and/or failed to require an adequate assessment under drought conditions to be conducted.

2. Second plea in law, alleging that the defendant committed a manifest error of assessment in failing to give any or any adequate consideration to the potential impact of gene stacking on gene expression in combination with herbicide applications and/or failed to require an adequate assessment under conditions of repeated and/or high application of herbicide.

3. Third plea in law, alleging that the defendant committed a manifest error of assessment in failing to give any or any adequate consideration to the potential impact of gene stacking on plant composition and agronomic characteristics in combination with exposure to drought conditions and herbicide applications.

([1]) OJ 2021 L 26, p. 12.

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

Action brought on 20 September 2021 — TestBioTech v Commission

(Case T-606/21)

(2021/C 471/75)

Language of the case: English

Parties

Applicant: TestBioTech eV (Munich, Germany) (represented by: K. Smith, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 8 July 2021, refusing to revoke or to amend the defendant's implementing decision (EU) 2021/66 ([1]), by which Monsanto Europe SA has been permitted, under the GM Regulation ([2]), to market genetically modified soybean MON 87751 x MON 87701 x MON 87708 x MON 89788 and its sub-combinations in the EU;

— order any other measure deemed appropriate; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant committed a manifest error of assessment in failing to give any or any adequate consideration to the potential impact of gene stacking on gene expression in combination with herbicide applications and/or failed to require an adequate assessment under real-world conditions of repeated and/or high application of the two herbicides to which the modified soybean expresses tolerance.

2. Second plea in law, alleging that the defendant committed a manifest error of assessment in failing to give any or any adequate consideration to the potential for toxicity, immunogenicity and/or allergenicity in the modified soybean as a result of synergistic effects between the proteins it is genetically modified to express, naturally occurring protease inhibitors in soybeans, exposure to herbicide and/or herbicide residue in the harvest and/or failed to require animal feeding trials of the stack to be conducted.

([1]) OJ 2021 L 26, p. 44.
([2]) Regulation of the European Parliament and of the Council (EC) No 1829/2003 of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1).

Action brought on 27 September 2021 — Automobiles Citroën v EUIPO Polestar (Device of two inverted chevrons)

(Case T-608/21)

(2021/C 471/76)

Language of the case: English

Parties

Applicant: Automobiles Citroën (Poissy, France) (represented by: C. Weyl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Polestar Holding AB (Götenborg, Sweden)

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 (Device of two inverted chevrons) — European Union trade mark No 16 898 173

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 July 2021 in Case R 502/2020-4

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 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 22 September 2021 — Privatbrauerei Eichbaum v EUIPO — Anchor Brewing Company (STEAM)

(Case T-609/21)

(2021/C 471/77)

Language of the case: English

Parties

Applicant: Privatbrauerei Eichbaum GmbH & Co. KG (Mannheim, Germany) (represented by: M. Schmidhuber and E. Levenson, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Anchor Brewing Company LLC (San Francisco, California, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark STEAM — European Union trade mark No 5 435 375

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 July 2021 in Case R 780/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision to the extent that it dismissed the appeal against the decision of the Cancellation Division relating to the goods 'beer, alcoholic beer' in Class 32 and;

— alter the contested decision by declaring the European trade mark registration STEAM No 5 435 375 revoked in its entirety and;

— order EUIPO to bear the costs of the proceedings.

Pleas in law

— Infringement of Article 58(1)(a) in conjunction with Article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1), first sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1), second sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 24 September 2021 — B&Bartoni v EUIPO — Hypertherm (Welding torches (part of -))

(Case T-617/21)

(2021/C 471/78)

Language of the case: English

Parties

Applicant: B&Bartoni spol. s r.o. (Dolní Cetno, Czech Republic) (represented by: E. Lachmannová, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Hypertherm, Inc. (Hanover, New Hampshire, United States)

Details of the proceedings before EUIPO

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

Design at issue: European Union design 1 292 122-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 16 July 2021 in Case R 2843/2019-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 4(2) of Council Regulation (EC) No 6/2002.

Action brought on 27 September 2021 — PricewaterhouseCoopers Belastingadviseurs v EUIPO — Haufe-Lexware (TAXMARC)

(Case T-619/21)

(2021/C 471/79)

Language of the case: English

Parties

Applicant: PricewaterhouseCoopers Belastingadviseurs NV (Amsterdam, Netherlands) (represented by: R. Stoop, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Haufe-Lexware GmbH & Co. KG (Freiburg, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark TAXMARC — Application for registration No 18 047 421

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 July 2021 in Case R 131/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of this application and order Haufe-Lexware to pay the costs of the proceedings before the Opposition Division and the Board of Appeal.

Pleas in law

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

— Infringement of Article 71(1)(b) of Commission Delegated Regulation (EU) 2018/625.

Action brought on 29 September 2021 — Puma v EUIPO — SMB Swisspour (PUMA)

(Case T-622/21)

(2021/C 471/80)

Language in which the application was lodged: German

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke and P. Trieb, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: SMB Swisspour GmbH (Wildau, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU word mark PUMA — Application for registration No 15 740 079

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 8 July 2021 in Case R 2493/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and refuse the application for the contested mark;

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

Plea in law

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

Action brought on 29 September 2021 — Puma v EUIPO — Vaillant (Puma)

(Case T-623/21)

(2021/C 471/81)

Language in which the application was lodged: German

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke and P. Trieb, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vaillant GmbH (Remscheid, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU word mark Puma — Application for registration No 17 867 529

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 8 July 2021 in Case R 1875/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and refuse the application for the contested mark;

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

Plea in law

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

Action brought on 28 September 2021 — Automobiles Citroën v EUIPO — Polestar (Device of two inverted chevrons)

(Case T-625/21)

(2021/C 471/82)

Language of the case: English

Parties

Applicant: Automobiles Citroën (Poissy, France) (represented by: C. Weyl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Polestar Holding AB (Götenborg, Sweden)

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 (Device of two inverted chevrons) — European Union trade mark No 16 896 532

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 July 2021 in Case R 504/2020-4

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 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 30 September 2021 — Segimerus v EUIPO — Karsten Manufacturing (MONSOON)

(Case T-627/21)

(2021/C 471/83)

Language in which the application was lodged: German

Parties

Applicant: Segimerus Ltd (London, United Kingdom) (represented by: G. Donath, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Karsten Manufacturing Corp. (Phoenix, Arizona, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark MONSOON — EU trade mark No 10 469 906

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 16 July 2021 in Case R 1125/2020-4

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

— Infringement of Article 34 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 29 September 2021 — Ereğli Demir ve Çelik Fabrikaları and Others v Commission

(Case T-629/21)

(2021/C 471/84)

Language of the case: English

Parties

Applicants: Ereğli Demir ve Çelik Fabrikaları TAŞ (Istanbul, Turkey), İskenderun Demir ve Çelik AŞ (Payas, Turkey), Erdemir Çelik Servis Merkezi Sanayi ve Ticaret AŞ (Gebze, Turkey) (represented by: J. Cornelis and F. Graafsma, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ 2021 L 238, p. 32); and

— order the European Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 2(10)(j) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([1]) by carrying out a currency conversion that is not required. The applicants further allege that the chapeau of Article 2(10) and Article 2(5) of Regulation (EU) 2016/1036 were also violated because the costs were not established on the basis of the records kept by the applicants.

2. Second plea in law, alleging a violation of Article 2(10)(j) of Regulation (EU) 2016/1036 as well as Article 2.4 of WTO Anti-Dumping Agreement and the principle of sound administration by rejecting an adjustment for hedging gains and losses.

3. Third plea in law, alleging a violation of Articles 2(5), 2(6) and the chapeau of Article 2(10) of Regulation (EU) 2016/1036 by double counting certain selling, general and administrative expenses for Isdemir domestic sales through Erdemir.

4. Fourth plea in law, alleging a violation of Article 2(6) of Regulation (EU) 2016/1036 and Article 2.2.2 of WTO Anti-Dumping Agreement by excluding foreign exchange gains and losses from the selling, general and administrative expenses.

(1) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (JO 2016 L 176, p. 21).

Action brought on 29 September 2021 — Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret v Commission

(Case T-630/21)

(2021/C 471/85)

Language of the case: English

Parties

Applicants: Çolakoğlu Metalurji AŞ (Istanbul, Turkey), Çolakoğlu Dış Ticaret AŞ (Istanbul) (represented by: J. Cornelis and F. Graafsma, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ 2021 L 238, p. 32); and

— order the European Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 2(10)(i) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (1) by making an adjustment for a (notional) commission to the export price and, more specifically,

   — A violation of Article 2(10)(i)) of Regulation (EU) 2016/1036 to the extent the adjustment made for commissions exceeds the actual commission paid to Çolakoğlu Dış Ticaret AŞ;

   — A violation of Article 2(10)(i) of Regulation (EU) 2016/1036 as Çolakoğlu Dış Ticaret AŞ does not receive a mark-up; and

   — A manifest error of assessment in treating Çolakoğlu Dış Ticaret AŞ as an agent working on a commission basis and consequent violation of Article 2(10)(i) of Regulation (EU) 2016/1036.

2. Second plea in law, alleging a violation of Article 2(10)(b) of Regulation (EU) 2016/1036 by requiring payment of import duties for accepting a duty drawback adjustment.

3. Third plea in law, alleging a manifest error of assessment in refusing to carry out a quarterly dumping margin calculation and consequent violation of the chapeau of Article 2(10) of Regulation (EU) 2016/1036.

4. Fourth plea in law, alleging a violation of Article 2(10)(j) of Regulation (EU) 2016/1036 by refusing to adjust for hedging gains and losses.

(1) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (JO 2016 L 176, p. 21).

Action brought on 1 October 2021 — Agreiter and Others v Commission

(Case T-632/21)

(2021/C 471/86)

Language of the case: German

Parties

Applicants: Karin Agreiter (Merano, Italy) and 33 other applicants (represented by: R. Holzeisen, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should annul the contested implementing decision, as subsequently amended and supplemented.

Pleas in law and main arguments

In support of the action against European Commission Implementing Decision of 23 July 2021 amending the conditional marketing authorisation granted by Decision C(2021) 94(final) for 'Spikevax — COVID-19 mRNA Vaccine (nucleoside modified)', a medicinal product for human use, the applicants rely on the following pleas in law.

1. First plea in law, alleging that the contested implementing decision infringes Article 2(1) and (2) of Regulation (EC) No 507/2006. (1) If children become infected with SARS-CoV-2, they are at zero risk and, on that ground alone, there can be no positive risk-benefit balance for healthy children. The use of the experimental substance in question, which is based on genetic engineering, therefore constitutes a serious infringement of EU law. Furthermore, neither the WHO nor the EU has duly recognised an emergency situation in the sense of a public health threat.

2. Second plea in law, alleging that the contested implementing decision infringes Article 4 of Regulation (EC) No 507/2006 due to:

   — the absence of a positive risk-benefit balance, as defined in point 28a of Article 1 of Directive 2001/83/EC; (2)

   — the failure to meet the requirement under Article 4(1)(b) of Regulation (EC) No 507/2006, since the applicant is not in a position to provide the comprehensive clinical data;

   — the failure to meet the requirement under Article 4(1)(c) of Regulation (EC) No 507/2006, since there are no unmet medical needs that will be fulfilled by the authorised medicinal product;

   — the failure to meet the requirement under Article 4(1)(d) of Regulation (EC) No 507/2006.

3. Third plea in law, alleging infringement of Regulation (EC) No 1394/2007, (3) Directive 2001/83/EC and Regulation (EC) No 726/2004. (4) The contested implementing decision infringes, inter alia, the provisions of EU law on the authorisation of 'advanced therapy medicinal products' and on the correct designation of product characteristics and a correct package leaflet. The contested implementing decision is also vitiated by a misuse of power by the Commission concerning the infringement of the child protection rules for clinical trials.

4. Fourth plea in law, alleging serious infringement of Articles 168 and 169 TFEU and Articles 3, 35 and 38 of the EU Charter.

(1) Commission Regulation (EC) No 507/2006 of 29 March 2006 on the conditional marketing authorisation for medicinal products for human use falling within the scope of Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ 2006 L 92, p. 6).
(2) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).
(3) Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ 2007 L 324, p. 121).
(4) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 1 October 2021 — Carlings v EUIPO — Margarete Steiff (STUHF)

(Case T-635/21)

(2021/C 471/87)

Language in which the application was lodged: German

Parties

Applicant: Carlings AS (Billingstad, Norway) (represented by: V. Töbelmann and J. Haesemann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Margarete Steiff GmbH (Giengen/Brenz, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark STUHF — Application for registration No 18 038 089

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 July 2021 in Case R 2024/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— order the other party to the proceedings before EUIPO to bear its own costs, to the extent that it participates in the proceedings.

Pleas in law

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

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

Action brought on 1st October 2021 — Eurol v EUIPO — Pernsteiner (eurol LUBRICANTS)

(Case T-636/21)

(2021/C 471/88)

Language of the case: English

Parties

Applicant: Eurol BV (Nijverdal, Netherlands) (represented by: M. Driessen and G. van Roeyen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: August Wolfgang Pernsteiner (Feldkirchen an der Donau, Austria)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark eurol LUBRICANTS — International registration designating the European Union No 1 219 171

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 July 2021 in Case R 2403/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order August Wolfgang Pernsteiner and EUIPO to bear the costs.

Pleas in law

— Infringement of Article 60(1)(a) in connection with Articles 8(2)(ii), 8(1)(a) and (b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, Article 16(6) of Directive (EU) 2015/2436 and Article 18(2) in connection with Article 42(2) and (3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and Article 10(2), (3) and (4) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 18(2)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in conjunction with Article 10(3) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 64(2) and (3) in conjunction with Article 47(2) and (3) and Article 8(2)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and Article 19 of Commission Delegated Regulation (EU) 2018/625;

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

Action brought on 4 October 2021 — Target Brands v EUIPO — The a.r.t. company b&s (ART CLASS)

(Case T-637/21)

(2021/C 471/89)

Language of the case: English

Parties

Applicant: Target Brands, Inc. (Minneapolis, Minnesota, United States) (represented by: R. Kunze, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: The a.r.t. company b&s, SA (Quel, Spain)

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 ART CLASS — Application for registration No 16 888 695

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 June 2021 in Case R 1597/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs of the proceedings, including those incurred before the Board of Appeal as well as the Opposition Division.

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 4 October 2021 — bet-at-home.com Entertainment v EUIPO (bet-at-home)

(Case T-640/21)

(2021/C 471/90)

Language of the case: German

Parties

Applicant: bet-at-home.com Entertainment GmbH (Linz, Austria) (Prozessbevollmächtigter: represented by: R. Paulitsch, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the EU figurative mark bet-at-home in the colours dark blue and green — Application No 18 157 957

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 August 2021 in Case R 2143/2020-1

Forms of order sought

The applicant claims that the Court should:

— amend the contested decision so that the figurative mark bet-at-home is accepted for registration also in Class 41 (Entertainment);

— order EUIPO to pay the costs of the proceedings, including the costs incurred in the appeal proceedings.

Pleas in law

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

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

Application brought on 4 October 2021 — dennree v EUIPO (BioMarkt)

(Case T-641/21)

(2021/C 471/91)

Language of the case: German

Parties

Applicant: dennree GmbH (Töpen, Germany) (represented by: K. Röttgen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the EU figurative mark BioMarkt in the colours green and brown — Application No 18 309 662

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 August 2021 in Case R 783/2021-5.

Form of order sought

The applicant claims that the Court should:

— set aside the partial refusal of the trade mark application and register the trade mark as it appears in the application.

Pleas in law

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

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

— Infringement of Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Order of the General Court of 23 September 2021 — El Corte Inglés v EUIPO — Unión Detallistas Españoles (unit)

(Case T-344/20) ([1])

(2021/C 471/92)

Language of the case: Spanish

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

([1]) OJ C 247, 27.7.2020.

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