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Information and Notices

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(2022/C 2/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 28 October 2021 (request for a preliminary ruling from the Sofiyski gradski sad — Bulgaria) — Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v ZV, AX, 'Meditsinski tsentar po dermatologia i estetichna meditsina PRIMA DERM' OOD

(Case C-319/19) [1]

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2014/42/EU — Scope — National legislation providing for the confiscation of illegally obtained assets in the absence of a criminal conviction)

(2022/C 2/02)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicant: Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo

Defendants: ZV, AX, 'Meditsinski tsentar po dermatologia i estetichna meditsina PRIMA DERM' OOD

Operative part of the judgment

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences.

[1] OJ C 279, 24.8.2020.

Judgment of the Court (Fourth Chamber) of 28 October 2021 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — Y v CAK

(Case C-636/19) ([1])

(Reference for a preliminary ruling — Cross-border healthcare — Concept of 'insured person' — Regulation (EC) No 883/2004 — Article 1(c) — Article 2 — Article 24 — Right to the benefits in kind provided by the Member State of residence at the expense of the Member State responsible for paying the pension — Directive 2011/24/EU — Article 3(b)(i) — Article 7 — Reimbursement of the costs of healthcare received in a Member State other than the Member State of residence and the Member State responsible for paying the pension — Conditions)

(2022/C 2/03)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: Y

Defendant: CAK

Operative part of the judgment

Article 3(b)(i) and Article 7(1) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, read in combination with Article 1(c) and Article 2 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, must be interpreted as meaning that the person in receipt of a pension under the legislation of a Member State, who has a right, under Article 24 of that regulation, as amended, to the benefits in kind provided by the Member State of his or her residence at the expense of the Member State responsible for paying his or her pension, must be regarded as an 'insured person', within the meaning of Article 7(1) of that directive, who is able to obtain reimbursement of the costs of the cross-border healthcare that he or she has received in a third Member State, without being affiliated to the compulsory sickness insurance scheme of the Member State responsible for paying his or her pension.

([1]) OJ C 383, 11.11.2019

Judgment of the Court (First Chamber) of 28 October 2021 — Vialto Consulting Kft. v European Commission

(Case C-650/19 P) ([1])

(Appeal — Action for damages — Non-contractual liability — Pre-Accession Assistance Instrument — Decentralised management — Investigation by the European Anti-Fraud Office (OLAF) — On-the-spot checks — Regulation (Euratom, EC) No 2185/96 — Article 7 — Access to computer data — Digital forensic operation — Legitimate expectations — Right to be heard — Non-material damage)

(2022/C 2/04)

Language of the case: Greek

Parties

Appellant: Vialto Consulting Kft. (represented by: D. Sigalas and S. Paliou, dikigoroi)

Other party to the proceedings: European Commission (represented by: D. Triantafyllou, J. Baquero Cruz and A. Katsimerou, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 26 June 2019, Vialto Consulting v Commission (T-617/17, not published, EU:T:2019:446) in so far as it rejected as unfounded the complaint raised by Vialto Consulting Kft. concerning the European Commission's infringement of the right to be heard;

2. Dismisses the appeal as to the remainder;

3. Refers the case back to the General Court of the European Union for a ruling on the conditions for incurring the non-contractual liability of the European Union relating to the existence of a causal link between the infringement by the European Commission of the right to be heard and the damage complained of, as well as the fact of damage;

4. Reserves the costs.

(1) OJ C 372, 4.11.2019.

Judgment of the Court (Tenth Chamber) of 28 October 2021 (request for a preliminary ruling from the Curtea de Apel Iaşi — Romania) — BX v Unitatea Administrativ Teritorială D.

(Case C-909/19) (1)

(Reference for a preliminary ruling — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Article 2(1) and (2) — Concepts of 'working time' and 'rest period' — Mandatory vocational training undertaken at the employer's request)

(2022/C 2/05)

Language of the case: Romanian

Referring court

Curtea de Apel Iaşi

Parties to the main proceedings

Applicant: BX

Defendant: Unitatea Administrativ Teritorială D.

Operative part of the judgment

Article 2(1) 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 must be interpreted as meaning that the period during which a worker attends vocational training required by his or her employer, which takes place away from his or her usual place of work, at the premises of the training services provider, during which he or she does not perform his or her normal duties, constitutes 'working time' within the meaning of that provision.

(1) OJ C 201, 15.6.2020.

Judgment of the Court (Fifth Chamber) of 28 October 2021 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — Eco Fox Srl (C-915/19), Alpha Trading SpA unipersonale (C-916/19), Novaol Srl (C-917/19) v Fallimento Mythen SpA (C-915/19), Ministero dell'Economia e delle Finanze, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero delle Politiche agricole, alimentari a forestali, Minsitero dello Svilluppo economico (C-915/19 to C-917/19), Agenzia delle Dogane e dei Monopoli (C-915/19)

(Joined Cases C-915/19 to C-917/19) [1]

(Reference for a preliminary ruling — State aid — Biodiesel market — Aid scheme establishing biodiesel quotas exempt from excise duty — Amendment of the authorised aid scheme — Amendment of the quota allocation criteria — Obligation of prior notification to the European Commission — Regulation (EC) No 659/1999 — Article 1(c) — Concept of 'new aid' — Regulation (EC) No 794/2004 — Article 4(1) — Concept of 'alterations to existing aid')

(2022/C 2/06)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Eco Fox Srl (C-915/19), Alpha Trading SpA unipersonale (C-916/19), Novaol Srl (C-917/19)

Defendants: Fallimento Mythen SpA (C-915/19), Ministero dell'Economia e delle Finanze, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero delle Politiche agricole, alimentari e forestali, Ministero dello Sviluppo economico (C-915/19 to C-917/19), Agenzia delle Dogane e dei Monopoli (C-915/19)

Interveners: Oil B. Srl unipersonale, Novaol Srl (C-915/19), Fallimento Mythen SpA, Ital Bi-Oil Srl, Cereal Docks SpA, Agenzia delle Dogane e dei Monopoli (C-916/19 and C-917/19)

Operative part of the judgment

Articles 107 and 108 TFEU and the provisions of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 [TFEU], as amended by Council Regulation (EU) No 734/2013 of 22 July 2013, and of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Regulation (EC) No 659/1999 must be interpreted as meaning that an amendment to a preferential tax scheme for biodiesel authorised by the European Commission is not to be regarded as new aid subject to the notification requirement under Article 108(3) TFEU where that amendment consists of a change, with retroactive effect, to the criteria for allocation of biodiesel quotas benefiting from a preferential rate of excise duty under that scheme, in so far as that amendment does not affect the constituent elements of the aid scheme concerned, as assessed by the Commission for the purposes of its evaluation of the compatibility of the previous versions of that scheme with the internal market.

[1] OJ C 95, 23.3.2020.

Judgment of the Court (Ninth Chamber) of 28 October 2021 (request for a preliminary ruling from the Administrativen sad Varna — Bulgaria) — 'Varchev Finans' EOOD v Komisia za finansov nadzor

(Case C-95/20) ([1])

(Reference for a preliminary ruling — Directive 2014/65/EU — Markets in financial instruments — Delegated Regulation (EU) 2017/565 — Investment firms — Article 56 — Assessment of appropriateness and related record-keeping obligations — Article 72 — Retention of records — Methods of retention — Information concerning client categorisation — Information on costs and associated charges relating to investment services)

(2022/C 2/07)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: 'Varchev Finans' EOOD

Defendant: Komisia za finansov nadzor

Intervener: Okrazhna prokuratura — Varna

Operative part of the judgment

Article 56(2) and Article 72(2) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, read in conjunction with Annex I to that delegated regulation, must be interpreted as meaning that investment firms are not required to record the suitability and appropriateness assessments undertaken for each client with respect to investment products and services and the information provided to each client on the costs and charges relating to the investment services in separate single registers, in the form, in particular, of a database, and the manner in which those records are kept may be freely chosen, provided, however, that it meets all of the requirements laid down in Article 72(1) of that delegated regulation.

([1]) OJ C 175, 25.5.2020.

Judgment of the Court (Grand Chamber) of 26 October 2021 (request for a preliminary ruling from the Högsta domstolen — Sweden) — Republiken Polen v PL Holdings Sàrl

(Case C-109/20) ([1])

(Reference for a preliminary ruling — Agreement between the Government of the Kingdom of Belgium and the Government of the Grand Duchy of Luxembourg, of the one part, and the Government of the People's Republic of Poland, of the other, concerning the reciprocal promotion and protection of investments, signed on 19 May 1987 — Arbitration proceedings — Dispute between an investor from one Member State and another Member State — Arbitration clause provided for in that agreement contrary to EU law — Invalidity — Ad hoc arbitration agreement between the parties to that dispute — Participation in the arbitration proceedings — Tacit expression by that other Member State of its intention to conclude that arbitration agreement — Unlawfulness)

(2022/C 2/08)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Republiken Polen

Defendant: PL Holdings Sàrl

Operative part of the judgment

Articles 267 and 344 TFEU must be interpreted as precluding national legislation which allows a Member State to conclude an ad hoc arbitration agreement with an investor from another Member State that makes it possible to continue arbitration proceedings initiated on the basis of an arbitration clause whose content is identical to that agreement, where that clause is contained in an international agreement concluded between those two Member States and is invalid on the ground that it is contrary to those articles.

(1) OJ C 161, 11.5.2020.

Judgment of the Court (Fifth Chamber) of 28 October 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Ferrari SpA v Mansory Design Holding GmbH, WH

(Case C-123/20) (1)

(Reference for a preliminary ruling — Regulation (EC) No 6/2002 — Community designs — Articles 4, 6 and 11 — Infringement proceedings — Unregistered Community design — Appearance of a part of a product — Conditions for protection — Component part of a complex product — Individual character — Act of making available to the public)

(2022/C 2/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Ferrari SpA

Defendant: Mansory Design Holding GmbH, WH

Operative part of the judgment

Article 11(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted as meaning that the making available to the public of images of a product, such as the publication of photographs of a car, entails the making available to the public of a design of a part of that product, within the meaning of Article 3(a) of that regulation, or of a component part of that product, as a complex product, within the meaning of Article 3(c) and Article 4 (2) of that regulation, provided that the appearance of that part or component part is clearly identifiable at the time the design is made available.

In order for it to be possible to examine whether that appearance satisfies the condition of individual character referred to in Article 6(1) of that regulation, it is necessary that the part or component part in question constitute a visible section of the product or complex product, clearly defined by particular lines, contours, colours, shapes or texture.

(1) OJ C 215, 29.6.2020.

Judgment of the Court (Ninth Chamber) of 28 October 2021 (requests for a preliminary ruling from the Finanzgericht Hamburg — Germany) — KAHL GmbH & Co. KG (C-197/20) and C.E. Roeper GmbH (C-216/20) v Hauptzollamt Hannover (C-197/20), Hauptzollamt Hamburg (C-216/20)

(Joined Cases C-197/20 and C-216/20) ([1])

(Reference for a preliminary ruling — Customs union — Common Customs Tariff — Tariff classification — Combined Nomenclature — Tariff subheadings 1521 90 91 and 1521 90 99 — Interpretation of the Explanatory Notes to subheading 1521 90 99 — Beeswax melted down and solidified prior to import)

(2022/C 2/10)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: KAHL GmbH & Co. KG (C-197/20) and C.E. Roeper GmbH (C-216/20)

Defendants: Hauptzollamt Hannover (C-197/20) and Hauptzollamt Hamburg (C-216/20)

Operative part of the judgment

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, in the versions resulting from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 and from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015, must be interpreted as meaning that beeswax which has been melted down, and from which foreign bodies have been mechanically removed in part during the melting process, then solidified to form blocks or slabs, falls under subheading 1521 90 99 of that nomenclature, which refers to 'other' waxes, and not under subheading 1521 90 91 of that nomenclature, which refers to 'raw' waxes.

([1]) OJ C 279, 24.8.2020.

Judgment of the Court (Seventh Chamber) of 28 October 2021 (requests for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Proceedings brought byA Oy (C-221/20), B Oy (C-223/20)

(Joined Cases C-221/20 and C-223/20) ([1])

(Reference for a preliminary ruling — Taxation — Directive 92/83/EEC — Excise duty — Beer — Article 4(2) — Possibility to apply reduced rates of excise duty to beer brewed by independent small breweries — Treatment as a single independent small brewery or as two or more small breweries — Obligation to transpose)

(2022/C 2/11)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicants: A Oy (C-221/20), B Oy (C-223/20)

Intervening parties: Veronsaajien oikeudenvalvontayksikkö

Operative part of the judgment

The second sentence of Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that a Member State which applies the possibility, provided for in Article 4(1) thereof, of applying reduced rates of excise duty to beer brewed by independent small breweries is not, however, obliged to treat as a single independent small brewery two or more small cooperating breweries whose combined annual production does not exceed 200 000 hectolitres.

(1) OJ C 262, 10.8.2020.

Judgment of the Court (First Chamber) of 28 October 2021 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt B v X-Beteiligungsgesellschaft mbH

(Case C-324/20) (1)

(Reference for a preliminary ruling — Directive 2006/112/EC — Value added tax (VAT) — Supply of services — Articles 63 — Chargeability of VAT — Articles 64(1) — Concept of 'supplies which give rise to successive payments' — One-time supply remunerated by means of payment in instalments — Articles 90(1) — Reduction of the taxable amount — Concept of 'non-payment of the price')

(2022/C 2/12)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Finanzamt B

Respondent: X-Beteiligungsgesellschaft mbH

Operative part of the judgment

1. Article 64(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a service supplied on a single occasion remunerated by way of instalment payments does not fall within the scope of that provision.

2. Article 90(1) of Directive 2006/112 must be interpreted as meaning that, in the case of an agreement on payment in instalments, the fact that an instalment of the remuneration has not been paid before its term cannot be regarded as non-payment of the price, within the meaning of that provision, and, as a result, cannot lead to a reduction of the taxable amount.

(1) OJ C 313, 21.9.2020.

Judgment of the Court (Second Chamber) of 28 October 2021 (request for a preliminary ruling from the Verwaltungsgericht Wien — Austria) — IE v Magistrat der Stadt Wien

(Case C-357/20) [1]

(Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection for animal species — Annex IV(a) — European hamster (Cricetus cricetus) — Resting places and breeding sites — Deterioration or destruction)

(2022/C 2/13)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Applicant: IE

Defendant: Magistrat der Stadt Wien

Operative part of the judgment

1. Article 12(1)(d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the term 'breeding site', referred to in that provision, also includes the surroundings of that site where those surroundings are necessary for the protected animal species listed in Annex IV (a) to that directive, such as the European hamster (Cricetus cricetus), to reproduce successfully;

2. Article 12(1)(d) of Directive 92/43 must be interpreted as meaning that the breeding sites of a protected animal species must enjoy protection for as long as is necessary in order for that animal species successfully to reproduce, as a result of which that protection also extends to breeding sites which are no longer occupied where there is a sufficiently high probability that that animal species will return to those sites;

3. Article 12(1)(d) of Directive 92/43 must be interpreted as meaning that the concepts of 'deterioration' and 'destruction', referred to in that provision, must be interpreted as meaning, respectively, the progressive reduction of the ecological functionality of a breeding site or resting place of a protected animal species and the total loss of that functionality, irrespective of whether or not such harm is intentional.

[1] OJ C 359, 26.10.2020.

Judgment of the Court (Tenth Chamber) of 28 October 2021 (request for a preliminary ruling from the Tribunale di Milano — Italy) — Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Avvocati per niente onlus (APN), Associazione NAGA — Organizzazione di volontariato per l'Assistenza Socio-Sanitaria e per i Diritti di Cittadini Stranieri, Rom e Sinti v Presidenza del Consiglio dei Ministri — Dipartimento per le politiche della famiglia, Ministero dell'Economia e delle Finanze

(Case C-462/20) [1]

(Reference for a preliminary ruling — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Article 11 — Directive 2011/98/EU — Rights of third-country workers who hold a single permit — Article 12 — Directive 2009/50/EC — Rights of third-country nationals who hold an EU Blue Card — Article 14 — Directive 2011/95/EU — Rights of beneficiaries of international protection — Article 29 — Equal treatment — Social security — Regulation (EC) No 883/2004 — Coordination of social security systems — Article 3 — Family benefits — Social assistance — Social protection — Access to goods and services — Legislation of a Member State excluding third-country nationals from eligibility for a 'family card')

(2022/C 2/14)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicants: Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Avvocati per niente onlus (APN), Associazione NAGA — Organizzazione di volontariato per l'Assistenza Socio-Sanitaria e per i Diritti di Cittadini Stranieri, Rom e Sinti

Defendants: Presidenza del Consiglio dei Ministri — Dipartimento per le politiche della famiglia, Ministero dell'Economia e delle Finanze

Operative part of the judgment

Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, and Article 14(1)(e) of Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, must be interpreted as not precluding legislation of a Member State which excludes third-country nationals covered by those directives from eligibility for a card granted to families allowing access to discounts or price reductions when purchasing goods and services supplied by public or private entities which have entered into an agreement with the government of that Member State.

Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as not precluding such legislation either, in so far as such a card does not come, according to the national legislation of that Member State, within the concepts of 'social security', 'social assistance' or 'social protection'.

Article 29 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as precluding such legislation if that card comes within an assistance scheme established by the public authorities to which recourse may be had by an individual who does not have resources sufficient to meet his or her own basic needs and those of his or her family.

Article 11(1)(f) of Directive 2003/109, Article 12(1)(g) of Directive 2011/98 and Article 14(1)(g) of Directive 2009/50 must be interpreted as precluding such legislation.

[1] OJ C 433, 14.10.2020.

Judgment of the Court (First Chamber) of 26 October 2021 (requests for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of European arrest warrants issued against HM (C-428/21 PPU), TZ (C-429/21 PPU)

(Joined Cases C-428/21 PPU and C-429/21 PPU) [1]

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 27(3)(g) and Article 27(4) — Request for consent for prosecution for offences other than those on which surrender was based — Article 28(3) — Request for consent for subsequent surrender of the person concerned to another Member State — Article 47 of the Charter of Fundamental Rights of the European Union — Right to effective judicial protection — Right of the person concerned to be heard by the executing judicial authority — Procedures)

(2022/C 2/15)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

HM (C-428/21 PPU), TZ (C-429/21 PPU)

Intervener: Openbaar Ministerie

Operative part of the judgment

Article 27(3)(g), Article 27(4) and Article 28(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of the right to effective judicial protection guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a person who has been surrendered to the issuing judicial authority in execution of a European arrest warrant has the right to be heard by the executing judicial authority where that latter authority has received a request for consent from the issuing judicial authority under those provisions of that framework decision; that hearing may take place in the issuing Member State, the judicial authorities of that State being required in that case to ensure that the right to be heard of the person concerned is exercised effectively, without the direct participation of the executing judicial authority. However, it is for the executing judicial authority to ensure that it possesses sufficient information, in particular as regards the position of the person concerned, to enable it to take its decision with full knowledge of the facts — and in full compliance with the rights of the defence of that person — in relation to the request for consent made under Article 27(4) or Article 28(3) of Framework Decision 2002/584, and to request, if necessary, that the issuing judicial authority provide it as a matter of urgency with supplementary information.

[1] OJ C 368, 13.9.2021.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 February 2021 — Iveco Orecchia SpA v Brescia Trasporti SpA

(Case C-84/21)

(2022/C 2/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Iveco Orecchia SpA

Respondent: Brescia Trasporti SpA

Questions referred

1. Is it compatible with EU law, and in particular with the provisions of Directive 2007/46/EC ([1]) (laid down in Articles 10, 19 and 28 of that directive) and the principles of equal treatment and impartiality, open competition and sound administration, for — with specific reference to the supply through public procurement of replacement parts for buses intended for public service — a contracting authority to be allowed to accept replacement parts intended for a particular vehicle, made by a manufacturer other than the vehicle manufacturer, and therefore not approved together with the vehicle, falling into one of the categories of components covered by the technical rules listed in Annex IV to that directive (List of requirements for the purpose of EC type-approval of vehicles) and put to tender without being accompanied by the type-approval certificate and without any information on the actual type-approval, and indeed on the assumption that type-approval is not needed, as only a declaration of equivalence to the type-approved original made by the tenderer is sufficient?

2. Is it compatible with EU law, and in particular Article 3(27) of Directive 2007/46/EC to allow — in relation to the supply through public procurement of replacement parts for buses intended for public service — an individual tenderer to describe itself as 'manufacturer' of a specific non-original replacement part intended for a particular vehicle, especially where it falls into one of the categories of components covered by the technical rules listed in Annex IV (List of requirements for the purpose of EC type-approval of vehicles) to Directive 2007/46/EC, or must that tenderer prove — for each of the replacement parts thus subject to tender and in order to certify their equivalence to the technical specifications of the tender — that it is the entity who is responsible to the approval authority for all aspects of the type-approval and for ensuring conformity of production and the related level of quality and is directly involved in at least some of the stages of the construction of the component which is the subject of the approval, and if so, by what means is such proof to be provided?

([1]) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

Appeal brought on 7 July 2021 by Comercializadora Eloro S.A. against the judgment of the General Court (Ninth Chamber) delivered on 28 April 2021 in Case T-310/20, Comercializadora Eloro v EUIPO — Zumex Group (JUMEX)

(Case C-415/21 P)

(2022/C 2/17)

Language of the case: Spanish

Parties

Appellant: Comercializadora Eloro S.A. (represented by: J.L. Gracia Albero, P. Merino Baylos and E. Cebollero González, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) and Zumex Group, S.A.

By order of 10 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered Comercializadora Eloro, S.A. to bear its own costs.

Appeal brought on 18 August 2021 by the European Commission against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 9 June 2021 in Case T-47/19, Dansk Erhverv v Commission

(Case C-508/21 P)

(2022/C 2/18)

Language of the case: English

Parties

Appellant: European Commission (represented by: B. Stromsky, T. Maxian Rusche, Agents)

Other parties to the proceedings: Dansk Erhverv, Danmarks Naturfredningsforening, Federal Republic of Germany, Interessengemeinschaft der Grenzhändler (IGG)

Form of order sought

The appellant claims that the Court should:

— set aside the operative part of the judgment under appeal;

— give judgment in Case T-47/19 Danske Erhverv v Commission, by annulling section 3.3 of the contested decision ([1]);

— order the applicant in first instance to bear the costs for the appeal;

— order each party and each intervener to bear its own costs for the proceedings at first instance.

Pleas in law and main arguments

First ground of appeal: The General Court has erred in law by finding that the success of the third part of the sole plea in law leads to the annulment of the contested decision in its entirety. That finding violates Article 264 TFEU, as interpreted by the Court of Justice in Commission v Department de Loiret and the principle of proportionality.

In Commission v Department de Loiret, the Court of Justice has interpreted Article 264 TFEU as follows: ([2])

'[…] the Court of First Instance may not, merely because it considers a plea relied on by the appellant in support of its action for annulment to be well founded, automatically annul the challenged act in its entirety. Annulment of the act in its entirety is not acceptable where it is obvious that that plea, directed only at a specific part of the challenged act, is such as to provide a basis only for partial annulment.'

In the present case, the third part of the single plea of the applicant at first instance was only directed against one of the three decisions that were bundled in the contested decision into one act. That was the decision finding that the non-imposition of a fine for not charging the deposit on beverage cans by the boarder shops did not involve the use of State resources, and therefore did not constitute State aid. The third part of the single plea of the applicant was not directed against the other decisions, which find that the non-charging of the deposit and the non-charging of VAT on the non-charged deposit did not involve the use of State resources, and therefore did not constitute State aid.

Second ground of appeal: The General Court failed to provide reasoning and provided contradictory reasoning when holding that the three decisions were inseparable one from the other.

Third ground of appeal: The General Court erred in law in holding that the three decisions are inseparable. Indeed, the three measures assessed in the three decisions are not linked. In particular, the non-imposition of the fine is not directly and automatically linked to the non-charging of the deposit and the non-charging of VAT. Imposing the fine may, or may not, change the behaviour of the boarder shops. The boarder shops may contest the imposition of the fine before the competent courts, and continue not to charge the deposit (and not to collect VAT on the non-charged deposit). And in any event, not charging the deposit does not lead to a loss of State resources, because the money is missing in an entirely privately run deposit scheme, with no control by the State.

([1]) Decision C(2018) 6315 final concerning State aid SA.44865 (2016/FC) — Germany — Alleged State aid to German beverage border shops.

([2]) Judgment in Commission v Département de Loiret, C-295/07 P, EU:C:2008:707, para 104.

Appeal brought on 18 August 2021 by Interessengemeinschaft der Grenzhändler (IGG) against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 9 June 2021 in Case T-47/19, Dansk Erhverv v Commission

(Case C-509/21 P)

(2022/C 2/19)

Language of the case: English

Parties

Appellants: Interessengemeinschaft der Grenzhändler (IGG) (represented by: M. Bauer, F. von Hammerstein, Rechtsanwälte)

Other parties to the proceedings: Dansk Erhverv, European Commission, Danmarks Naturfredningsforening, Federal Republic of Germany

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in its entirety;

— dismiss the application;

— order the applicant to pay the costs.

Pleas in law and main arguments

The judgment under appeal is vitiated by several errors in law. It misinterprets various legal concepts in State aid law including the concept of 'serious difficulties' concerning the necessity to initiate formal proceedings, the concept of a 'sufficiently direct link' between an advantage and the State budget to establish the criterion of 'State resources' and the concept of 'severability' concerning various parts of a judgment. The judgment under appeal also ignored a few arguments presented to it and/or distorted or misinterpreted the Commission's Decision C(2018) 6315 final concerning State aid SA.44865 (2016/FC) — Germany — Alleged State aid to German beverage border shops and/or the appellant's submissions and failed to state reasons.

In detail, the appellant raises the following pleas in law:

1) The General Court erred in law and misapplied Art. 107(1) TFEU) by misinterpreting the necessity of a 'sufficiently direct link' between an advantage and the State budget when assessing the criterion of 'State resources'.

2) The General Court erred in law and misapplied Art. 107(1) TFEU) by applying a wrong standard for the Commission's assessment of the criterion of 'State resources' in cases of difficulties in interpreting the applicable legislation, the infringement of which could be subject to fines.

   — Part 1: The General Court erred in law in paragraphs 159 to 164 by rejecting the applicability of the test of 'reasonable and severe grounds' developed by the Commission.

   — Part 2: The General Court erred in law in paragraphs 140 to 158 by requesting an additional criterion ('necessity of gradual clarification of the legislative provisions') to the test of 'reasonable and severe grounds' developed by the Commission.

3) The General Court erred in law in paragraphs 166 to 203 by applying a standard for the Commission's assessment concerning the criterion of State resources beyond the test of 'reasonable grounds'.

4) The General Court erred in law in paragraphs 166 to 203 concerning all of its six further considerations based on which the General Court found that the Commission was faced with 'serious difficulties'.

   — Part 1: The General Court erred in law in para. 166 about the link between the non-imposing of fines and the non-charging of a deposit.

— Part 2: The General Court erred in law in para. 169 to 175 about the lack of a legal basis in German law.

— Part 3: The General Court erred in law in paragraphs 175 to 177 concerning the divergence of legal views in Germany.

— Part 4: The General Court erred in law in paragraphs 178 to 182 about the application of the derogation in Germany.

— Part 5: The General Court erred in law in paragraphs 183 to 190 about the motivation of the local authorities.

— Part 6: The General Court erred in law in paragraphs 191 to 195 concerning the necessity to investigate the underlying legal framework.

— Part 7: The General Court erred in law in paragraphs 196 to 202 concerning the legal interpretation applied by the local German authorities based and on a 'conclusion by analogy'.

5) The General Court erred in law by rejecting the appellant's additional arguments to support the finding that the Commission was not faced with 'serious difficulties'.

— Part 1: The General Court erred in law in paragraphs 222 to 229 by rejecting the appellant's argument concerning the fact that the national law does not require the authorities to impose fines.

— Part 2: The General Court erred in law in paragraphs 231 to 234 by ignoring the appellant's argument concerning the Court's judgment in the Radlberger case and the infringement of Art. 34 TFEU.

6) The General Court erred in law in paragraphs 238 by annulling the entire Commission's Decision, including the part on VAT.

Appeal brought on 19 August 2021 by the European Commission against the judgment of the General Court (First Chamber) delivered on 9 June 2021 in Case T-202/17, Calhau Correia de Paiva v Commission

(Case C-511/21 P)

(2022/C 2/20)

Language of the case: English

Parties

Appellant: European Commission (represented by: B. Schima, I. Melo Sampaio, L. Vernier, Agents)

Other party to the proceedings: Ana Calhau Correia de Paiva

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment under appeal;

— dismiss the second, third and fourth pleas of the action brought by the Applicant at first instance;

— refer the case back to the General Court to rule on the first and fifth pleas of the action brought by the Applicant at first instance, and

— reserve the decision on the costs.

Pleas in law and main arguments

The present Appeal is directed against paragraphs 54-58 of the judgment under appeal, i.e. the part of the judgment concerning the admissibility plea of illegality raised by the Applicant against the language regime of the competition at issue.

The Commission raises a single ground of appeal, which is that the General Court erred in law by concluding that there was a close connection between the statement of reasons of the contested decision and the language regime set out in the notice of competition, thereby admitting that the plea of illegality of this language regime was admissible.

This single ground of appeal is divided in three parts:

(1) First, the General Court made an erroneous legal qualification of the facts, at paragraph 54 of the judgment under appeal, by inferring from the mark obtained by the Applicant for the general competency 'Communication' a close connection between the language regime of the competition at issue and the statement of reasons of the contested decision.

(2) Second, at paragraphs 55-57 of the judgment under appeal, the General Court made an erroneous legal qualification of the facts, by admitting the close connection on the basis of the fact that it is more difficult for a candidate to sit tests in his or her Language 2 than in his or her mother tongue. The General Court also distorted the evidence by neglecting the fact that, in the case at hand, the two other languages that the Applicant mastered the best were English and French. The limitation of the choice of the Language 2 to English, French and German thus could not cause her any disadvantage.

(3) Third and last, at paragraph 58 of the judgment under appeal the General Court erroneoulsy qualified the facts by grounding the close connection also on the fact that the Applicant had to sit the written test with another keyboard configuration than the QWERTY-PT she is accustomed to. First, this is unrelated to the reasoning of the contested decision. Second, even if a limited choice of keyboard configurations is made available by EPSO (AZERTY, QWERTY-EN, and QWERTZ-DE), this is a distinct issue from the language regime of the competition.

Request for a preliminary ruling from the Landgericht Mainz (Germany) lodged on 31 August 2021 — ID v Stadt Mainz

(Case C-544/21)

(2022/C 2/21)

Language of the case: German

Referring court

Landgericht Mainz

Parties to the main proceedings

Applicant: ID

Defendant: Stadt Mainz

Questions referred

1. Does it follow from EU law, in particular from Article 4(3) TEU, the third paragraph of Article 288 TFEU and Article 260(1) TFEU, that, in the context of ongoing court proceedings between private persons, Article 15(1), (2)(g) and (3) of Directive 2006/123/EC [1] of the European Parliament and of the Council of 12 December 2006 on services in the internal market ('the Services Directive') has direct effect in such a way that the national provisions contrary to that directive that are contained in Paragraph 4 of the German Verordnung über die Honorare für Architekten- und Ingenieurleistungen (Decree on fees for services provided by architects and engineers) of 1996, as amended in 2002 ('the 2002 HOAI'), pursuant to which the minimum rates for planning and supervision services provided by architects and engineers laid down in that official scale of fees are mandatory — save in certain exceptional cases — and any fee agreement in contracts with architects or engineers which falls short of the minimum rates is invalid, are no longer to be applied, even in the case of claims arising from an architect's contract concluded in 2004, that is to say, prior to the adoption of the Services Directive?

2. If Question 1 is answered in the negative:

   (a) Is Article 49 TFEU (ex Article 43 TEC) to be interpreted as meaning that a national provision such as Paragraph 4 of the 2002 HOAI, under which the minimum rates for planning and supervision services provided by architects and engineers laid down in that official scale of fees are mandatory — save in certain exceptional cases — and any fee agreement in contracts with architects or engineers which falls short of the minimum rates is invalid, is precluded by, or constitutes an infringement of, that article?

   (b) If the previous question is answered in the affirmative: does it follow from such an infringement that the national rules on mandatory minimum rates (in this case: Paragraph 4 of the 2002 HOAI) are no longer to be applied in ongoing court proceedings between private persons?

([1]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 7 September 2021 — FT v *Land* Hesse

(Case C-552/21)

(2022/C 2/22)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: FT

Defendant: Land Hesse

Joined party: SCHUFA Holding AG

Questions referred

1. Is Article 77(1) of the General Data Protection Regulation (GDPR), ([1]) read in conjunction with Article 78(1) thereof, to be understood as meaning that the outcome that the supervisory authority reaches and notifies to the data subject

   (a) has the character of a decision on a petition? This would mean that judicial review of a decision on a complaint taken by a supervisory authority in accordance with Article 78(1) of the GDPR is, in principle, limited to the question of whether the authority has handled the complaint, investigated the subject matter of the complaint to the extent appropriate and informed the complainant of the outcome of the investigation,

   or

   (b) is to be understood as a decision on the merits taken by a public authority? This would mean that judicial review of a decision on a complaint taken by a supervisory authority in accordance with Article 78(1) of the GDPR leads to the decision on the merits being subject to a full substantive review by the court, whereby, in individual cases — for example where discretion is reduced to zero — the supervisory authority may also be obliged by the court to take a specific measure within the meaning of Article 58 of the GDPR.

2. Is the storage of data at a private credit information agency, where personal data from a public register, such as the 'national databases' within the meaning of Article 79(4) and (5) of Regulation (EU) 2015/848, ([2]) are stored without a specific reason in order to be able to provide information in the event of a request, compatible with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union?

3. Are private databases (in particular databases of a credit information agency) which exist in parallel with, and are set up in addition to, the State databases and in which the data from the latter (*in casu*, insolvency announcements) are stored for longer than the period provided for within the narrow framework of Regulation (EU) 2015/848, read in conjunction with the national law, permissible in principle, or does it follow from the right to be forgotten under Article 17(1)(d) of the GDPR that such data must be deleted where

   (a) provision is made for a processing period which is identical to that of the public register,

   or

   (b) provision is made for a retention period which exceeds that provided for in respect of public registers?

4. In so far as point (f) of Article 6(1) of the GDPR enters into consideration as the sole legal basis for the storage of data at private credit information agencies with regard to data also stored in public registers, is a credit information agency already to be regarded as pursuing a legitimate interest in the case where it imports data from the public register without a specific reason so that those data are then available in the event of a request?

5. Is it permissible for codes of conduct which have been approved by the supervisory authorities in accordance with Article 40 of the GDPR, and which provide for time limits for review and erasure that exceed the retention periods for public registers, to suspend the balancing of interests prescribed under point (f) of Article 6(1) of the GDPR?

([1]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ 2016 L 119, p. 1).

([2]) Regulation of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19).

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 14 September 2021 — European arrest warrant issued against X, Other party to the proceedings: Openbaar Ministerie

(Case C-562/21)

(2022/C 2/23)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

European arrest warrant issued against: X

Other party to the proceedings: Openbaar Ministerie

Question referred

What test should an executing judicial authority apply when deciding whether to execute an EAW for the purpose of executing a final custodial sentence or detention order when examining whether, in the issuing Member State, the trial resulting in the conviction was conducted in breach of the right to a tribunal previously established by law, where no effective remedy was available in that Member State for any breach of that right?

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 14 September 2021 — European arrest warrant issued against Y, Other party to the proceedings: Openbaar Ministerie

(Case C-563/21)

(2022/C 2/24)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

European arrest warrant issued against: Y

Other party to the proceedings: Openbaar Ministerie

Questions referred

1. Is it appropriate to apply the test set out in the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)* ([1]) and affirmed in the judgment in *Openbaar Ministerie (Independence of the issuing judicial authority)*, ([2]) where there is a real risk that the person concerned will stand trial before a court not previously established by law?

2. Is it appropriate to apply the test set out in the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)* and affirmed in the judgment in *Openbaar Ministerie (Independence of the issuing judicial authority)* where the requested person seeking to challenge his surrender cannot meet that test by reason of the fact that it is not possible at that point in time to establish the composition of the courts before which he will be tried by reason of the manner in which cases are randomly allocated?

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

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

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 14 September 2021 — AA v Banca S

(Case C-566/21)

(2022/C 2/25)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant and defendant at first instance: S

Respondent and applicant at first instance: AA

Question referred

Does Article 6(1) of Directive 93/13/EEC on unfair terms in consumer contracts, [1] as interpreted in the case-law of the Court of Justice, allow a term to be altered in such a way that the purely potestative right of the seller or supplier to convert the currency of the credit agreement in fact constitutes an obligation on the seller or supplier if that alteration is entirely to the benefit of the consumer and the mere removal of the unfair term from the agreement is of no benefit to him or her?

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

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 16 September 2021 — Staatssecretaris van Justitie en Veiligheid; Other parties: E. and S., also on behalf of their minor children

(Case C-568/21)

(2022/C 2/26)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Staatssecretaris van Justitie en Veiligheid

Respondents: E. and S., also on behalf of their minor children

Question referred

Must Article 2(1) of the Dublin Regulation [1] be interpreted as meaning that a diplomatic card issued by a Member State under the Vienna Convention on Diplomatic Relations is a residence document within the meaning of that provision?

[1] 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, p. 31).

Request for a preliminary ruling from the Verwaltungsgericht Wien (Austria) lodged on 20 September 2021 — WertInvest Hotelbetriebs GmbH

(Case C-575/21)

(2022/C 2/27)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Applicant: WertInvest Hotelbetriebs GmbH

Construction authority: Magistrat der Stadt Wien

Questions referred

I. Does Directive 2011/92/EU ([1]) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1) as amended by Directive 2014/52/EU ([2]) of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) ('Directive 2011/92/EU') preclude a national rule by which the assessment of the environmental effects of urban development projects is made conditional both on the attainment of thresholds for land take of at least 15 ha and for gross floor area of more than 150 000 m^2 and on the development project in question being a project for entirely multifunctional development with at least residential and commercial buildings, including the access roads and utilities intended for those buildings, and with a catchment area that extends beyond the area covered by the project? In this regard, is it relevant that national law imposes special conditions for:

— theme parks or amusement parks, sports stadia or golf courses (above a certain land take or a certain number of parking spaces);

— industrial or trading estates (above a certain land take);

— shopping centres (above a certain land take or a certain number of parking spaces);

— accommodation establishments, such as hotels or holiday villages, and ancillary facilities (above a certain number of beds or a certain land take, limited to the area outside enclosed settlements); and

— car parks or garages accessible to the public (above a certain number of parking spaces)?

II. Does Directive 2011/92/EU require lower thresholds or criteria with lower thresholds (than those referred to in the first question) to be set for areas of particular historical, cultural, urban-design or architectural significance, such as UNESCO World Heritage Sites, having regard, in particular, to the rule in point 2(c)(viii) of Annex III, according to which 'landscapes and sites of historical, cultural or archaeological significance' are also to be taken into account when deciding whether an environmental impact assessment must be carried out for the projects listed in Annex II?

III. Does Directive 2011/92/EU preclude a national rule according to which, when assessing an 'urban development project' as referred to in the first question, aggregation (cumulation) with other similar and geographically related projects is restricted in such a way that only the sum of the capacities approved in the last five years, including the capacity or capacity expansion applied for, is to be taken into account; urban development projects or parts of such projects are no longer to be regarded conceptually as urban development projects once they have been carried out; and the assessment to be carried out on a case-by-case basis of whether an accumulation of effects is likely to result in significant harmful, undesirable or adverse effects on the environment, thus requiring an environmental impact assessment to be carried out for the proposed project, is not carried out if the capacity of the proposed project is less than 25 % of the threshold?

IV. If the answer to Question I and/or II is in the affirmative: Can the examination to be carried out on a case-by-case basis in the event that the discretion accorded to the national authorities of the Member States (in conformity with the provisions of Article 2(1) and Article 4(2) and (3) of Directive 2011/92/EU, which are directly applicable in this case) is exceeded, in order to determine whether the project is likely to have significant effects on the environment and must therefore be made subject to an environmental impact assessment, be limited to certain aspects of protection, such as the protection objective of a particular area, or must all of the criteria set out in Annex III to Directive 2011/92/EU be taken into account in that case?

V. Does Directive 2011/92/EU, having regard in particular to the principles of judicial protection laid down in Article 11 of that Directive, permit the assessment referred to in the fourth question to be carried out first by the referring court (in a building consent procedure and as part of the verification of its own jurisdiction) in the proceedings of which national law accords the 'public' only extremely limited status as a party and against the decisions of which members of the 'public concerned' have only extremely limited judicial protection within the meaning of Article 1(2)(d) and (e) of Directive 2011/92/EU? Is it relevant to the answer to that question that — apart from the possibility for an authority to make a declaration of its own motion — only the project applicant, a participating authority or the environmental ombudsman is permitted under national law to request a separate declaration to establish whether the project is subject to the requirement to carry out an environmental impact assessment?

VI. Does Directive 2011/92/EU permit building permits for individual construction measures which form part of 'urban development projects' pursuant to point 10(b) of Annex II to this Directive to be granted before, or alongside, a necessary environmental impact assessment, or before the completion of a case-by-case assessment of the environmental effects intended to clarify the need for an environmental impact assessment, without carrying out a comprehensive assessment of the environmental effects within the meaning of Directive 2011/92/EU as part of the building consent procedure, and while according the public only limited status as a party?

([1]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1).

([2]) Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ 2014 L 124, p. 1).

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch (Netherlands) lodged on 4 October 2021 — G v Staatssecretaris van Justitie en Veiligheid

(Case C-614/21)

(2022/C 2/28)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats's-Hertogenbosch

Parties to the main proceedings

Applicant: G

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Should the Dublin Regulation, ([1]) in view of recitals 3, 32 and 39 thereof, and read in conjunction with Articles 1, 4, 6, 18, 19 and 47 of the Charter of Fundamental Rights of the European Union, be interpreted and applied in such a way that the principle of inter-State trust is not divisible, so that serious and systematic infringements of EU law committed by the potentially responsible Member State, before transfer, with respect to third-country nationals who are not (yet) Dublin returnees absolutely preclude transfer to that Member State?

2. If the answer to the previous question is in the negative, should Article 3(2) of the Dublin Regulation, read in conjunction with Articles 1, 4, 6, 18, 19 and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, if the Member State responsible infringes EU law in a serious and systemic way, the transferring Member State cannot rely on the principle of inter-State trust, but must eliminate all doubts or must demonstrate that, after the transfer, the applicant will not be placed in a situation which is contrary to Article 4 of the Charter of Fundamental Rights of the European Union?

3. What evidence can the applicant use in support of his arguments that Article 3(2) of the Dublin Regulation precludes his transfer, and what standard of proof should be applied? In the light of the references to the Union *acquis* in the recitals of the Dublin Regulation, does the transferring Member State have a duty of cooperation or verification, or, in the event of serious and systemic infringements of fundamental rights with respect to third-country nationals, is it necessary to obtain individual guarantees from the Member State responsible that the applicant's fundamental rights will (indeed) be

respected after the transfer? Is the answer to this question different if the applicant lacks evidence in so far as he is unable to support his consistent and detailed statements with documents, when he cannot be expected to do so, given the nature of the statements?

(1) 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, p. 31).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 15 October 2021 — NN v Regione Lombardia

(Case C-636/21)

(2022/C 2/29)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant and appellant: NN

Defendant and respondent: Regione Lombardia

Question referred

Does Article 220 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council (1) and Commission Implementing Regulation (EU) 2019/1323 (2) of 2 August 2019 preclude national legislation (such as the Ministerial Decree of 15 January 2020 enacted by the Italian Minister for Agriculture, Food and Forestry Policies) which is interpreted and applied so as to limit access to compensation for damage caused by avian influenza only to undertakings that have not ceased operating on the date of submission of the application?

(1) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

(2) Commission Implementing Regulation (EU) 2019/1323 of 2 August 2019 on exceptional market support measures for the eggs and poultrymeat sectors in Italy (OJ 2019 L 206, p. 12).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 19 October 2021 — PB v Geos SAS, Geos International Consulting Limited

(Case C-639/21)

(2022/C 2/30)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: PB

Respondents: Geos SAS, Geos International Consulting Limited

Questions referred

— Are Article 4(1) and Article 20(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 ([1]) to be interpreted as meaning that, where it is claimed that a company domiciled in a Member State, and being sued by an employee before the courts of that State, is the joint employer of that employee, who was engaged by another company, that court is not required to assess at the outset whether the employee is jointly employed by those two companies in order to determine whether it has jurisdiction to rule on the claims made against them?

— Are those articles to be interpreted as meaning that, in such a case, the autonomy of the special rules of jurisdiction over individual contracts of employment does not preclude the application of the general rule that jurisdiction lies with the courts of the Member State in which the defendant is domiciled, set out in Article 4(1) of Regulation No 1215/2012?

([1]) OJ 2012 L 351, p. 1.

Order of the President of the Court of 13 October 2021 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — LU v Autoridade Tributária e Aduaneira

(Case C-314/20) ([1])

(2022/C 2/31)

Language of the case: Portuguese

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

([1]) Date lodged: 9.7.2020.

GENERAL COURT

Judgment of the General Court of 27 October 2021 — Clean Sky 2 Joint Undertaking v Revoind Industriale di Pindaru Gelu

(Case T-268/17) ([1])

(Arbitration clause — Grant agreement concluded in the framework of the Seventh Framework Programme for research and technological development including demonstration activities (2007-2013) — Non-performance of the contract — Repayment of the amounts advanced — Default interest — Procedure by default)

(2022/C 2/32)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (represented by: B. Mastantuono, acting as Agent, and by M. Velardo, lawyer)

Defendant: Revoind Industriale di Pindaru Gelu Sas (Rome, Italy)

Re:

Action brought under Article 272 TFEU seeking an order for Revoind Industriale di Pindaru Gelu to repay the advanced payment paid under the Grant Agreement for partners No 632462, plus accrued late payment interest.

Operative part of the judgment

The Court:

1. Orders Revoind Industriale di Pindaru Gelu Sas to pay Clean Sky 2 Joint Undertaking the amount of EUR 101 370,94, together with default interest calculated at 3,5 % per annum from 7 February 2017 and until the date of full payment of the amount due;

2. Orders Revoind Industriale di Pindaru Gelu to bear the costs.

([1]) OJ C 231, 17.7.2017.

Judgment of the General Court of 27 October 2021 — Clean Sky 2 Joint Undertaking v Revoind Industriale di Pindaru Gelu

(Case T-269/17) ([1])

(Arbitration clause — Grant agreement concluded in the framework of the Seventh Framework Programme for research and technological development including demonstration activities (2007-2013) — Non-performance of the contract — Repayment of the amounts advanced — Default interest — Procedure by default)

(2022/C 2/33)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (represented by: B. Mastantuono, acting as Agent, and by M. Velardo, lawyer)

Defendant: Revoind Industriale di Pindaru Gelu Sas (Rome, Italy)

Re:

Action brought under Article 272 TFEU seeking an order for Revoind Industriale di Pindaru Gelu to repay the advanced payment paid under the Grant Agreement for partners No 325954, plus accrued late payment interest.

Operative part of the judgment

The Court:

1. Orders Revoind Industriale di Pindaru Gelu Sas to pay Clean Sky 2 Joint Undertaking the amount of EUR 433 485,93, together with default interest calculated at 3,5 % per annum from 7 February 2017 and until the date of full payment of the amount due;

2. Orders Revoind Industriale di Pindaru Gelu to bear the costs.

(1) OJ C 231, 17.7.2017.

Judgment of the General Court of 27 October 2021 — Clean Sky 2 Joint Undertaking v Revoind Industriale di Pindaru Gelu

(Case T-270/17) (1)

(Arbitration clause — Grant agreement concluded in the framework of the Seventh Framework Programme for research and technological development including demonstration activities (2007-2013) — Non-performance of the contract — Repayment of the amounts advanced — Default interest — Procedure by default)

(2022/C 2/34)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (represented by: B. Mastantuono, acting as Agent, and by M. Velardo, lawyer)

Defendant: Revoind Industriale di Pindaru Gelu Sas (Rome, Italy)

Re:

Action brought under Article 272 TFEU seeking an order for Revoind Industriale di Pindaru Gelu to repay the advanced payment paid under the Grant Agreement for partners No 620108, plus accrued late payment interest.

Operative part of the judgment

The Court:

1. Orders Revoind Industriale di Pindaru Gelu Sas to pay Clean Sky 2 Joint Undertaking the amount of EUR 625 793,42, together with default interest calculated at 3,5 % per annum from 7 February 2017 and until the date of full payment of the amount due;

2. Orders Revoind Industriale di Pindaru Gelu to bear the costs.

(1) OJ C 231, 17.7.2017

Judgment of the General Court of 27 October 2021 — Clean Sky 2 Joint Undertaking v Revoind Industriale di Pindaru Gelu

(Case T-271/17) (1)

(Arbitration clause — Grant agreement concluded in the framework of the Seventh Framework Programme for research and technological development including demonstration activities (2007-2013) — Non-performance of the contract — Repayment of the amounts advanced — Default interest — Procedure by default)

(2022/C 2/35)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (represented by: B. Mastantuono, acting as Agent, and by M. Velardo, lawyer)

Defendant: Revoind Industriale di Pindaru Gelu Sas (Rome, Italy)

Re:

Action brought under Article 272 TFEU seeking an order for Revoind Industriale di Pindaru Gelu to repay the advanced payment paid under the Grant Agreement for partners No 632456, plus accrued late payment interest.

Operative part of the judgment

The Court:

1. Orders Revoind Industriale di Pindaru Gelu Sas to pay Clean Sky 2 Joint Undertaking the amount of EUR 189 128,26, together with default interest calculated at 3,5 % per annum from 7 February 2017 and until the date of full payment of the amount due;

2. Orders Revoind Industriale di Pindaru Gelu to bear the costs.

(1) OJ C 231, 17.7.2017.

Judgment of the General Court of 27 October 2021 — Clean Sky 2 Joint Undertaking v Revoind Industriale di Pindaru Gelu

(Case T-318/17) (1)

(Arbitration clause — Grant agreement concluded in the framework of the Seventh Framework Programme for research and technological development including demonstration activities (2007-2013) — Non-performance of the contract — Repayment of the amounts advanced — Default interest — Procedure by default)

(2022/C 2/36)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (represented by: B. Mastantuono, acting as Agent, and by M. Velardo, lawyer)

Defendant: Revoind Industriale di Pindaru Gelu Sas (Rome, Italy)

Re:

Action brought under Article 272 TFEU seeking an order for Revoind Industriale di Pindaru Gelu to repay the advanced payment paid under the Grant Agreement for partners No 325940, plus accrued late payment interest.

Operative part of the judgment

The Court:

1. Orders Revoind Industriale di Pindaru Gelu Sas to pay Clean Sky 2 Joint Undertaking the amount of EUR 359 913,75, together with default interest calculated at 3,5 % per annum from 31 January 2017 and until the date of full payment of the amount due;

2. Orders Revoind Industriale di Pindaru Gelu to bear the costs.

(1) OJ C 231, 17.7.2017.

Judgment of the General Court of 27 October 2021 — WM v Commission

(Case T-411/18) ([1])

(Civil service — Officials — Recruitment — Notice of competition — Open Competition EPSO/AD/338/17 — Decision of the Selection Board to exclude the applicant from the next phase of the competition — Articles 21 and 26 of the Charter of Fundamental Rights of the European Union — Article 1d(1), (4) and (5) of the Staff Regulations — Reasonable accommodation — Principle of non-discrimination on the ground of disability — Directive 2000/78/EC — Liability — Material and non-material harm)

(2022/C 2/37)

Language of the case: English

Parties

Applicant: WM (represented by: B. Entringer, lawyer)

Defendant: European Commission (represented by: T.S. Bohr and D. Milanowska, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of the Selection Board of open competition EPSO/AD/338/17 of 27 September 2017 to exclude the applicant from the next phase of the competition as well as the decision of the Appointing Authority of 19 April 2018 rejecting his complaint and, secondly, compensation for the damages he allegedly suffered as a result of those decisions.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders each party to bear its own costs.

([1]) OJ C 61, 24.2.2020.

Judgment of the General Court of 20 October 2021 — Kerstens v Commission

(Case T-220/20) ([1])

(Civil service — Officials — Disciplinary proceedings — Article 266 TFEU — Administrative investigations — Principle of sound administration — Principle of impartiality — Action for annulment and for damages)

(2022/C 2/38)

Language of the case: French

Parties

Applicant: Petrus Kerstens (La Forclaz, Switzerland) (represented by: C. Mourato, lawyer)

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

Re:

Application under Article 270 TFEU for, first, annulment of the Commission note of 27 March 2017 informing the applicant of the resumption of disciplinary proceedings and the decision of 11 July 2019 issuing him with a warning and, secondly, compensation for the damage which he claims to have sustained as a result of the handling and duration of three disciplinary procedures.

Operative part of the judgment

The Court:

1. Annuls the European Commission's decision of 11 July 2019 issuing Mr Petrus Kerstens with a warning;

2. Dismisses the action as to the remainder;

3. Orders the Commission to bear its own costs and to pay two thirds of the costs incurred by Mr Kerstens.

(1) OJ C 247, 27.7.2020.

Judgment of the General Court of 10 November 2021 — Stada Arzneimittel v EUIPO — Pfizer (RUXXIMLA)

(Case T-239/20) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark RUXXIMLA — Earlier EU word mark RUXIMERA — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 2/39)

Language of the case: English

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Pfizer Inc. (New York, New York, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 13 February 2020 (Case R 1879/2019-4), relating to opposition proceedings between Pfizer and Stada Arzneimittel.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Stada Arzneimittel AG to pay the costs.

(1) OJ C 209, 20.6.2020.

Judgment of the General Court of 10 November 2021 — Stada Arzneimittel v EUIPO — Pfizer (RUXYMLA)

(Case T-248/20) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark RUXYMLA — Earlier EU word mark RUXIMERA — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 2/40)

Language of the case: English

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Pfizer Inc. (New York, New York, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 13 February 2020 (Case R 1878/2019-4), relating to opposition proceedings between Pfizer and Stada Arzneimittel.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Stada Arzneimittel AG to pay the costs.

([1]) OJ C 209, 22.6.2020.

Judgment of the General Court of 10 November 2021 –AC Milan v EUIPO — InterES (ACM 1899 AC MILAN)

(Case T-353/20) ([1])

(European Union trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark ACM 1899 AC MILAN — Earlier national word marks Milan — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Proof of genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009 (now Article 47(2) and (3) of Regulation 2017/1001) — No alteration of distinctive character)

(2022/C 2/41)

Language of the case: English

Parties

Applicant: Associazione Calcio Milan SpA (AC Milan) (Milan, Italy) (represented by: A. Perani and G. Ghisletti, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: InterES Handels- und Dienstleistungs Gesellschaft mbH & Co. KG (Nuremberg, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 February 2020 (Case R 161/2019-2), relating to opposition proceedings between InterES Handels- und Dienstleistungs Gesellschaft and AC Milan.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Associazione Calcio Milan SpA (AC Milan) to pay the costs, with the exception of the travel expenses incurred by the latter;

3. Orders the European Union Intellectual Property Office (EUIPO) to bear the travel expenses incurred by AC Milan.

([1]) OJ C 262, 10.8.2020.

Judgment of the General Court of 10 November 2021 — Sanford v EUIPO — Avery Zweckform (Labels)

(Case T-443/20) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a label — Earlier design — Proof of disclosure — Article 7(1) of Regulation (EC) No 6/2002 — Evidence submitted after the expiry of the prescribed time limit — Board of Appeal's discretion — Article 63(2) of Regulation No 6/2002 — Ground for invalidity — No individual character — Article 6 and Article 25(1)(b) of Regulation No 6/2002)

(2022/C 2/42)

Language of the case: English

Parties

Applicant: Sanford LP (Atlanta, Georgia, United States) (represented by: J. Zecher, 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: Avery Zweckform GmbH (Oberlaindern/Valley, Germany) (represented by: H. Förster, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 15 May 2020 (Case R 2413/2018-3), relating to invalidity proceedings between Avery Zweckform and Sanford.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sanford LP to pay the costs.

([1]) OJ C 297, 7.9.2020.

Judgment of the General Court of 10 November 2021 — Selmikeit & Giczella v EUIPO — Boehmert & Boehmert (HALLOWIENER)

(Case T-500/20) ([1])

(EU trade mark — Revocation proceedings — EU word mark HALLOWIENER — No genuine use — Article 58(1)(a) of Regulation (EU) 2017/1001)

(2022/C 2/43)

Language of the case: German

Parties

Applicant: Selmikeit & Giczella GmbH (Osterode, Germany) (represented by: S. Keute, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Boehmert & Boehmert Anwaltspartnerschaft mbB — Patentanwälte Rechtsanwälte (Bremen, Germany) (represented by: U. Ulrich, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 27 May 2020 (Case R 1893/2019-1), relating to revocation proceedings between Boehmert & Boehmert Anwaltspartnerschaft mbB — Patentanwälte Rechtsanwälte and Selmikeit & Giczella.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Selmikeit & Giczella GmbH to pay the costs.

(1) OJ C 329, 5.10.2020.

Judgment of the General Court of 10 November 2021 — Stada Arzneimittel v EUIPO — Pfizer (RUXIMBLIS)

(Case T-542/20) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark RUXIMBLIS — Earlier EU word mark RUXIMERA — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 2/44)

Language of the case: English

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

Defendant: European Union Intellectual Property Office (represented by: T. Frydendahl, A. Folliard-Monguiral and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Pfizer Inc. (New York, New York, United States) (represented by: V. von Bomhard, J. Fuhrmann and P.-F. Karamolegkou, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 16 June 2020 (Case R 1877/2019-4), relating to opposition proceedings between Pfizer and Stada Arzneimittel.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Stada Arzneimittel AG to pay the costs.

(1) OJ C 339, 12.10.2020.

Judgment of the General Court of 10 November 2021 — Spisto v Commission

(Case T-572/20) (1)

(Civil service — Officials — Recruitment — Notice of Open Competition EPSO/AD/371/19 — Decision of the Selection Board to exclude the applicant from the next phase of the competition — Criterion to assess professional experience — Compliance of criterion applied by the Selection Board with the competition notice)

(2022/C 2/45)

Language of the case: French

Parties

Applicant: Amanda Spisto (Amsterdam, Netherlands) (represented by: N. de Montigny, lawyer)

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

Re:

Application under Article 270 TFEU for annulment of, first, the decision of the Selection Board of 24 September 2019 rejecting the request for a review of the refusal to admit the applicant to the next phase of Open Competition EPSO/AD/371/19, and, second, the decision of the appointing authority of 26 May 2020 rejecting the complaint of the applicant against that decision.

Operative part of the judgment

The Court:

1. Annuls the decision of the Selection Board of 24 September 2019 rejecting the request for a review of the exclusion of Ms. Amanda Spisto from Competition EPSO/AD/371/19;

2. Orders the European Commission to pay the costs.

(1) OJ C 371, 3.11.2020.

Judgment of the General Court of 20 October 2021 — YG v Commission

(Case T-599/20) (1)

(Civil service — Officials — Promotion — 2019 promotion exercise — Decision not to promote the applicant to grade AST 9 — Article 45 of the Staff Regulations — Comparison of merits — Manifest error of assessment — Duty to state reasons)

(2022/C 2/46)

Language of the case: English

Parties

Applicant: YG (represented by: S. Rodrigues and A. Champetier, lawyers)

Defendant: European Commission (represented by: L. Hohenecker, L. Radu Bouyon and L. Vernier, acting as Agents)

Re:

Application under Article 270 TFEU for annulment of the Commission's decision of 14 November 2019 not to promote the applicant to grade AST 9 in the 2019 promotion exercise.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders YG to pay the costs.

(1) OJ C 423, 7.12.2020.

Judgment of the General Court of 27 October 2021 — Egis Bâtiments International and InCA v Parliament

(Case T-610/20) ([1])

(Arbitration clause — Project to extend and modernise the Konrad Adenauer building in Luxembourg — Settlement agreement — Confidentiality clause — Principle of good faith — Contractual liability)

(2022/C 2/47)

Language of the case: French

Parties

Applicants: Egis Bâtiments International (Montreuil, France) and InCA — Ingénieurs Conseils Associés Sàrl (Niederanven, Luxembourg) (represented by: A. Rodesch and R. Jazbinsek, lawyers)

Defendant: European Parliament (represented by: A. Caiola and L. Chrétien, acting as Agents)

Re:

Application under Article 272 TFEU seeking (i) a declaration that the Parliament has infringed Article VIII of the settlement agreement of 9 April 2019 and has breached the duty of good faith in the performance of agreements enshrined in Article 1134 of the Luxembourg Civil Code and (ii) an order that that institution is to pay a sum of EUR 100 000 under that same agreement or, in the alternative, that it is to pay any other sum to be fixed *ex aequo et bono*.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Egis Bâtiments International and InCA — Ingénieurs Conseils Associés Sàrl to pay the costs.

([1]) OJ C 390, 16.11.2020.

Judgment of the General Court of 20 October 2021 — Standardkessel Baumgarte Holding v EUIPO (Standardkessel)

(Case T-617/20) ([1])

(EU trade mark — Application for EU word mark Standardkessel — Absolute grounds for refusal — No descriptive character — Distinctive character — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001)

(2022/C 2/48)

Language of the case: German

Parties

Applicant: Standardkessel Baumgarte Holding GmbH (Duisburg, Germany) (represented by: J. Vogtmeier, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 27 July 2020 (Case R 2665/2019-1), concerning an application for registration of word mark Standardkessel as an EU trade mark.

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 27 July 2020 (Case R 2665/2019-1) as regards 'common metals and their alloys; unprocessed and semi-processed materials of metal, not specified for use; metal materials for building and construction (non-electric)' in Class 6, 'elevating apparatus (machines), cranes' in Class 7 and 'rental of generators; recycling of waste and trash' and 'incineration of waste and trash; recycling of waste and valuable materials; recycling of chemicals; waste treatment (transformation); sorting of waste and recyclable material (transformation)' in Class 40 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended;

2. Dismisses the action as to the remainder;

3. Orders each party to bear their own costs.

(1) OJ C 414, 30.11.2020.

Judgment of the General Court of 10 November 2021 — Nissan Motor v EUIPO — VDL Groep (VDL E-POWER)

(Case T-755/20) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark VDL E-POWER — Earlier national figurative marks e-POWER — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons — Article 94 (1) of Regulation 2017/1001)

(2022/C 2/49)

Language of the case: English

Parties

Applicant: Nissan Motor Co. Ltd (Yokohama-shi, Japan) (represented by: P. Martini-Berthon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: VDL Groep BV (Eindhoven, Netherlands) (represented by: M. Rijks, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 20 October 2020 (Case R 2914/2019-1), relating to opposition proceedings between Nissan Motor and VDL Groep.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Nissan Motor Co. Ltd to bear its own costs and to pay those of the European Union Intellectual Property Office (EUIPO) and of VDL Groep BV.

(1) OJ C 53, 15.2.2021.

Judgment of the General Court of 10 November 2021 — Nissan Motor v EUIPO — VDL Groep (VDL E-POWERED)

(Case T-756/20) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark VDL E-POWERED — Earlier national figurative marks e-POWER — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons — Article 94 (1) of Regulation 2017/1001)

(2022/C 2/50)

Language of the case: English

Parties

Applicant: Nissan Motor Co. Ltd (Yokohama-shi, Japan) (represented by: P. Martini-Berthon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: VDL Groep BV (Eindhoven, Netherlands) (represented by: M. Rijks, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 20 October 2020 (Case R 2915/2019-1), relating to opposition proceedings between Nissan Motor and VDL Groep.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Nissan Motor Co. Ltd to bear its own costs and to pay those of the European Union Intellectual Property Office (EUIPO) and of VDL Groep BV.

([1]) OJ C 53, 15.2.2021.

Order of the General Court of 3 November 2021 — Aurubis v Commission

(Case T-729/20) ([1])

(Action for annulment — Environment — Directive 2003/87/EC — Greenhouse gases — Allocation of emission allowances — Request to transfer emission certificates to Germany — Request made in the context of national proceedings for interim relief aimed at guaranteeing the effectiveness of the preliminary ruling procedure in Case C-271/20 — Commission refusal decision — Locus standi — Lack of individual concern — Inadmissibility)

(2022/C 2/51)

Language of the case: German

Parties

Applicant: Aurubis AG (Hamburg, Germany) (represented by: S. Altenschmidt and J. Hoss, lawyers)

Defendant: European Commission (represented by: B. De Meester and G. Wils, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Commission's letter of 8 December 2020 refusing the request of the Deutsche Emissionshandelsstelle (German Emissions Trading Authority) to transfer, as a protective measure, to the national holding account of the Federal Republic of Germany or, in the alternative, to the applicant's operator holding account, by 31 December 2020 at the latest, a number of greenhouse gas emission allowances corresponding to the number of additional allowances covered by the application filed by the applicant with the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) for the free allocation of emission allowances for the third greenhouse gas emission allowance trading period.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Aurubis AG shall pay the costs, including those relating to the proceedings for interim relief.

(1) OJ C 44, 8.2.2021.

Order of the General Court of 3 November 2021 — ExxonMobil Production Deutschland v Commission

(Case T-731/20) (1)

(Action for annulment — Environment — Directive 2003/87/EC — Greenhouse gases — Allocation of emission allowances — Request to transfer emission certificates to Germany — Request made in the context of national proceedings for interim relief aimed at guaranteeing the effectiveness of the preliminary ruling procedure in Case C-126/20 — Commission refusal decision — Locus standi — Lack of individual concern — Inadmissibility)

(2022/C 2/52)

Language of the case: German

Parties

Applicant: ExxonMobil Production Deutschland GmbH (Hanover, Germany) (represented by: S. Altenschmidt and J. Hoss, lawyers)

Defendant: European Commission (represented by: B. De Meester and G. Wils, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Commission's letter of 8 December 2020 refusing the request of the Deutsche Emissionshandelsstelle (German Emissions Trading Authority) to transfer, as a protective measure, to the national holding account of the Federal Republic of Germany or, in the alternative, to the applicant's operator holding account, by 31 December 2020 at the latest, a number of greenhouse gas emission allowances corresponding to the number of additional allowances covered by the application filed by the applicant with the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) for the free allocation of emission allowances for the third greenhouse gas emission allowance trading period.

Operative part of the order

1. The action is dismissed as inadmissible.

2. ExxonMobil Production Deutschland GmbH shall pay the costs, including those relating to the proceedings for interim relief.

(1) OJ C 44, 8.2.2021.

Order of the General Court of 29 October 2021 — Apex Brands v EUIPO — Sartorius Werkzeuge (SATA)

(Case T-430/21) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2022/C 2/53)

Language of the case: German

Parties

Applicant: Apex Brands, Inc. (Wilmington, Delaware, United States) (represented by: S. Fröhlich, M. Hartmann and H. Lerchl, lawyers)

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: Sartorius Werkzeuge GmbH & Co. KG (Ratingen, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 4 May 2021 (Case R 2322/2020-4), relating to opposition proceedings between Sartorius Werkzeuge and Apex Brands.

Operative part of the order

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

2. Apex Brands, Inc. shall bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 357, 6.9.2021.

Order of the President of the General Court of 29 October 2021 — Abenante and Others v Parliament and Council

(Case T-527/21 R)

(Interim relief — Regulation (EU) 2021/953 — EU Digital COVID Certificate — Application for suspension of operation of a measure — No urgency)

(2022/C 2/54)

Language of the case: Italian

Parties

Applicant: Stefania Abenante (Ferrara, Italy) and the 423 other applicants whose names are listed in the annex to the order (represented by: M. Sandri, lawyer)

Defendants: European Parliament (represented by: L. Visaggio, J. Rodrigues and P. López-Carceller, acting as Agents), Council of the European Union (represented by: M. Moore and S. Scarpa Ferraglio, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for suspension of operation of Article 3(1)(a) and (b) of Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ 2021 L 211, p. 1).

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Order of the President of the General Court of 3 November 2021 — PBL and WA v Commission

(Case T-538/21 R)

(Interim relief — State aid — Aid granted by France to a professional football club — Application for interim measures — No urgency)

(2022/C 2/55)

Language of the case: French

Parties

Applicants: Penya Barça Lyon: Plus que des supporters (PBL) (Bron, France), WA (represented by: J. Branco, lawyer)

Defendant: European Commission (represented by: B. Stromsky and G. Braga da Cruz, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for, first, annulment of the Commission's letter of 1 September 2021 bearing the reference COMP.C.4/AH/mdr 2021(092342) and responding to a State aid complaint (SA.64489 — State aid to the Paris Saint-Germain football club) and, second, directions to be issued to the Commission.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 8 October 2021 — Eurecna v Commission

(Case T-654/21)

(2022/C 2/56)

Language of the case: Italian

Parties

Applicant: Eurecna SpA (Venice, Italy) (represented by: R. Sciaudone, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order the Commission to produce the report of the European Anti-Fraud Office with the relevant annexes; and

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons.

   — In that regard, the applicant claims that (i) the documents on which the contested decision is based are incoherent and abnormal, (ii) the reasoning in the letter of 25 June 2019 suspending the contract is incorrect and incoherent, (iii) the obligation to state reasons in the investigation documents of the European Anti-Fraud Office has not been fulfilled and (iv) the obligation to state reasons has not been fulfilled due to the indeterminate and generic nature of the European Anti-Fraud Office's conclusions, which are lacking in substance.

2. Second plea in law, alleging infringement of the principle of sound administration and diligence in the administrative action relating to the audit carried out by Ernst & Young.

3. Third plea in law, alleging infringement of the rights of the defence in respect of the audit carried out by Ernst & Young.

4. Fourth plea in law, alleging infringement of the principle of sound administration due to a failure to comply with the duty of impartiality in the administrative action.

5. Fifth plea in law, alleging that the contract was misinterpreted in the Ernst & Young report.

Action brought on 15 October 2021 — Società Navigazione Siciliana v Commission

(Case T-666/21)

(2022/C 2/57)

Language of the case: Italian

Parties

Applicant: Società Navigazione Siciliana SCpA (Trapani, Italy) (represented by: R. Nazzini, F. Ruggeri Laderchi, C. Labruna and L. Calini, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in part the decision of 17 June 2021 in so far as it found that Società Navigazione Siciliana SCpA was the beneficiary of unlawful aid resulting from the tax exemptions provided for by the 2010 law and ordered the recovery of that aid by the Italian State;

— order the Commission to pay compensation for the damage as calculated and to be calculated at a later (and possible) stage of the proceedings;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging incorrect identification of the beneficiary of the aid –Infringement of law

   — The applicant claims in that regard that the decision of 17 June 2021 is vitiated by a manifest error of interpretation and application of EU legislation in so far as the Commission found that Società Navigazione Siciliana SCpA (not Siremar) was the beneficiary of the aid considered incompatible with EU legislation relating to the payment of stamp duty for the purchase of the Siremar business branch.

2. Second plea in law, alleging compatibility of the aid with the derogation provided for by Article 106(2) TFEU — Infringement of law — Infringement of the obligation to state reasons

— The applicant claims in that regard that the decision of 17 June 2021 is, in any event, vitiated by a manifest error of interpretation and application of EU legislation and by the infringement of the defendant's obligation to state reasons, in so far as the Commission — without carrying out any examination in that regard — ruled out the compatibility of the aid in favour of Società Navigazione Siciliana SCpA with the derogation provided for by Article 106(2) TFEU for services of general economic interest (SGEIs).

Action brought on 15 October 2021 — Siremar v Commission

(Case T-668/21)

(2022/C 2/58)

Language of the case: Italian

Parties

Applicant: Sicilia Regionale Marittima SpA — Siremar (Rome, Italy) (represented by: B. Nascimbene, F. Rossi Dal Pozzo and A. Moriconi, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 17 June 2021 with respect to Articles 2 and 3;

— in the alternative, annul Articles 5 and 6 of the decision which order the immediate and effective recovery of the alleged State aid;

— order the Commission 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 infringement of Article 107(1) and Article 108(2) TFEU and infringement of the 2004 Guidelines for rescuing and restructuring.

— The applicant claims in this regard that the contested decision is vitiated by an error of law in the application of Article 107(3)(b) TFEU, including with regard to the 2004 Guidelines, in so far as it concluded that the rescue aid to Siremar was illegally prolonged for a year and is incompatible with EU State aid rules.

2. Second plea in law, alleging infringement of Article 107(1) and Article 108(2) TFEU, with reference to the exemptions from payment of some taxes.

— The applicant claims in this regard that the right to the contested tax exemption is subject to the conditions defined generally for insolvency proceedings.

3. Third plea in law, alleging infringement of the principles of legal certainty and of good administration as regards the duration of the proceedings, and that the recovery order is unlawful as a result.

— The applicant claims in this regard that the investigation procedure that is being criticised here was excessively long, contrary to the principles of legal certainty and of good administration, as well as to the general principles which are corollary of these.

Action brought on 20 October 2021 — Alves Casas v EUIPO — Make-Up Art Cosmetics (mccosmetics NY)

(Case T-681/21)

(2022/C 2/59)

Language in which the application was lodged: Portuguese

Parties

Applicant: Ana Maria Alves Casas (Porto, Portugal) (represented by: Â. Rodrigues Oliveira, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Make-Up Art Cosmetics, Inc. (New York, New York, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark mccosmetics NY — Application for registration No 17 866 777

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 20 October 2021 in Case R 2398/2020-2

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— order EUIPO to pay the costs, with all the attendant legal consequences.

Plea in law

— Infringement of Article 47(2) and (3) and Article 8(1)(b) and (5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 October 2021 — Mostostal v EUIPO — Polimex — Mostostal (MOSTOSTAL)

(Case T-684/21)

(2022/C 2/60)

Language of the case: English

Parties

Applicant: Mostostal S.A. (Warsaw, Poland) (represented by: C. Saettel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Polimex — Mostostal S.A. (Warsaw)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark MOSTOSTAL — European Union trade mark No 9 329 848

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 30 July 2021 in Case R 2508/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare the European Union trade mark registered on 20 May 2011 under No 9 329 848 valid;

— order EUIPO and the intervener to pay the costs in accordance with Article 134(1) of the Rules of Procedure of the General Court.

Pleas in law

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

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

— Infringement of Article 59(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 61 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 28 October 2021 — aTmos Industrielle Lüftungstechnik v EUIPO — aTmos Industrielle Lüftungstechnik (aTmos)

(Case T-694/21)

(2022/C 2/61)

Language in which the application was lodged: German

Parties

Applicant: aTmos Industrielle Lüftungstechnik GmbH (Düsseldorf, Germany) (represented by: F. Stangl and S. Pilgram, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: aTmos Industrielle Lüftungstechnik GmbH (Riedstadt, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union word mark 'aTmos' — European Union trade mark No 12 285 649

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 2 September 2021 in Case R 1844/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Pleas in law

— Infringement of Article 60(1)(c) in conjunction with Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 28 October 2021 — Alauzun and Others v Commission

(Case T-695/21)

(2022/C 2/62)

Language of the case: French

Parties

Applicants: Virginie Alauzun (Saint Cannat, France) and 774 other applicants (represented by: F. Di Vizio, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare that the European Commission (EC) unlawfully failed to include carcinogenicity and genotoxicity testing in the preclinical phase for the mRNA-technology vaccines;

— order the European Commission to include carcinogenicity and genotoxicity testing in the preclinical phase for mRNA-technology vaccines not yet authorised under the EMA procedure;

— order the European Commission to include carcinogenicity and genotoxicity testing in the pharmacovigilance phase for mRNA-technology vaccines already authorised under the EMA procedure;

— request the Commission to disclose the following information:

  — the clear legislative basis as to why the testing at issue was not included in the preclinical and pharmacovigilance testing phases;

  — the regulation setting out the mandatory checks required for the authorisation of mRNA-technology vaccines.

— order the European Commission to pay all the costs of the applicants.

Pleas in law and main arguments

In support of the action, the applicants allege an infringement of EU law and a failure to act on the part of the Commission. The applicants submit in that regard that the Commission did not comply with its obligation arising under Article 168 TFEU to guarantee a 'high level of human health protection' by granting a conditional marketing authorisation to mRNA-technology vaccines in the absence of carcinogenicity and genotoxicity studies.

Action brought on 28 October 2021 — Les Bordes Golf International v EUIPO — Mast-Jägermeister (LES BORDES)

(Case T-696/21)

(2022/C 2/63)

Language of the case: English

Parties

Applicant: Les Bordes Golf International (Saint-Laurent-Nouan, France) (represented by: M. Maier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mast-Jägermeister SE (Wolfenbüttel, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark LES BORDES — Application for registration No 18 082 876

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the fourth Board of Appeal of EUIPO of 1 September 2021 in Case R 67/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— to reinstate the decision of 17 April 2020 of the Opposition Division in Opposition No B 3 094 876; and

— order EUIPO and the other party to pay the costs incurred by the applicant, including the costs of proceedings before the Board of Appeal.

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 26 October 2021 — FC v EASO

(Case T-697/21)

(2022/C 2/64)

Language of the case: Greek

Parties

Applicant: FC (represented by: B. Christianos, A. Skoulikis and G. Kelepouri, lawyers)

Defendant: European Asylum Support Office (EASO)

Form of order sought

The applicant claims that the Court should:

— annul the contested decision of the Authority Empowered to Conclude Contracts of Employment (AECE) of EASO No EASO/EDD/2021/112 of 25 July 2021 rejecting the complaint brought by the applicant on 26 March 2021 under Article 90(2) of the Staff Regulations of Officials of the European Union;

— order EASO to pay all the costs incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is vitiated by infringement of the applicant's rights of defence.

2. Second plea in law, alleging that the contested decision is vitiated by infringement of the right to sound administration.

3. Third plea in law, alleging that the contested decision is vitiated by infringement of the applicant's right to effective judicial protection.

4. Fourth plea in law, alleging that the contested decision is vitiated by infringement of the general principle of procedural economy.

Action brought on 27 October 2021 — Paraskevaidis v Council and Commission

(Case T-698/21)

(2022/C 2/65)

Language of the case: English

Parties

Applicant: Georgios Paraskevaidis (Wezembeek-Oppem, Belgium) (represented by: S. Pappas and D.-A. Pappa, lawyers)

Defendants: Council of the European Union and European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 4 February 2021 of the Commission and the instalment plan of 9 March 2021 and the decision of the Council of 19 July 2021, by which the complaint of the applicant against the decision of the Commission was rejected, to the extent it contains additional reasoning; and

— order the defendants to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decisions infringed the principle of legality. It is also alleged that the Revised Conclusion No 237/05 [1] was not applicable for the period the applicant claimed the educational allowance.

2. Second plea in law, alleging that the Revised Conclusion No 237/05 was illegally applied retroactively.

3. Third plea in law, alleging that the Revised Conclusion No 237/05 was adopted by the Heads of Administration beyond their remit.

4. Fourth plea in law, alleging that the Revised Conclusion infringes Article 3(1) of Annex VII to the Staff Regulations.

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[1] Revised Conclusion No 237/05 on the education allowance within the meaning of Article 3(1) of Annex VII to the Staff Regulations approved by the Heads of Administration at their 284th meeting on 1 July 2020.

Action brought on 2 November 2021 — Voco v EUIPO (Shape of packaging)

(Case T-700/21)

(2022/C 2/66)

Language of the case: German

Parties

Applicant: Voco GmbH (Cuxhaven, Germany) (represented by: C. Spintig and S. Pietzcker, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for a three-dimensional EU trade mark (Shape of packaging) — Application for registration No 17 959 421

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 August 2021 in Case R 117/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the Court and the Board of Appeal including, in particular, the applicant's costs.

Plea in law

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

Action brought on 2 November 2021 — Allessa v EUIPO — Dumerth (CASSELLAPARK)

(Case T-701/21)

(2022/C 2/67)

Language in which the application was lodged: German

Parties

Applicant: Allessa GmbH (Frankfurt am Main, Germany) (represented by: S. Fröhlich, M. Hartmann and H. Lerchl, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Carim Dumerth (Frankfurt am Main)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark CASSELLAPARK — EU word mark No 16 917 429

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 11 August 2021 in Case R 1043/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings and the costs incurred by the applicant.

Pleas in law

— Infringement of the right to be heard consisting in an adequate statement of reasons;

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

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

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

— Infringement of Article 59(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 3 November 2021 — Compass Tex v EUIPO (Trusted Handwork)

(Case T-704/21)

(2022/C 2/68)

Language of the case: German

Parties

Applicant: Compass Tex Ltd (Tsuen Wan, Hongkong, China) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark Trusted Handwork — Application for registration No 18 244 483

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 31 August 2021 in Case R 0034/2021-5

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 7(1)(b) in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 1 November 2021 — WhatsApp Ireland v EDPB

(Case T-709/21)

(2022/C 2/69)

Language of the case: English

Parties

Applicant: WhatsApp Ireland Ltd (Dublin, Ireland) (represented by: H.-G. Kamann, F. Louis, A. Vallery, lawyers, P. Nolan, B. Johnston, C. Monaghan, Solicitors, P. Sreenan, D. McGrath, C. Geoghegan and E. Egan McGrath, Barristers-at-Law)

Defendant: European Data Protection Board

Form of order sought

The applicant claims that the Court should:

— annul the decision 1/2021 of the European Data Protection Board (EDPB) of 28 July 2021, in total or, in the alternative, in its relevant parts, and

— order the Defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action to annul the binding decision 1/2021 of the EDPB of 28 July 2021, on the dispute arisen on the draft decision of the Irish Supervisory Authority regarding WhatsApp Ireland under Article 65(1)(a) of Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR) ([1]), the applicant relies on seven pleas in law.

1. First plea in law, alleging that the EDPB exceeded its competence under Article 65 of GDPR.

2. Second plea in law, alleging that the EDPB infringed Articles 13(1)(d) and 12(1) GDPR by interpreting and applying these provisions and WhatsApp's transparency obligations excessively by requesting WhatsApp to provide unrequired information.

3. Third plea in law, alleging that the EDPB infringed Article 4(1) GDPR by interpreting and applying this provision and the term 'personal data' excessively.

4. Fourth plea in law, alleging the EDPB violated the presumption of innocence as enshrined in Article 48 of the Charter of Fundamental Rights of the EU by inappropriately shifting the burden of proof onto WhatsApp to demonstrate that its processing environment is such that the risks of re-identification of data subjects is purely speculative.

5. Fifth plea in law, alleging that the EDPB infringed the right to good administration as enshrined in Article 41 of the Charter of Fundamental Rights of the EU by disregarding WhatsApp's right to be heard and the EDPB's obligations to carefully and impartially examine evidence and to adequately state reasons.

6. Sixth plea in law, alleging that the EDPB violated Article 83 GDPR and various underlying principles governing the determination of fines under the GDPR.

7. Seventh plea in law, alleging that the EDPB violated the principle of legal certainty by failing to acknowledge that its decision puts forward novel interpretations and applications of several provisions of the GDPR, with the consequence that the infringement was unpredictable.

([1]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1)

Action brought on 8 November 2021 — Kaczorowska v EUIPO — Groupe Marcelle (MAESELLE)

(Case T-716/21)

(2022/C 2/70)

Language of the case: English

Parties

Applicant: Katarzyna Kaczorowska (Warsaw, Poland) (represented by: P. Kurcman, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Groupe Marcelle Inc. (Lachine, Quebec, Canada)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark MAESELLE– Application for registration No 18 131 833

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 September 2021 in Case R 670/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of Opposition Division dated 15/02/2021 in opposition proceedings No B 3 108 583 with respect to all the goods and services for which the opposition has been upheld;

— refer the case back to EUIPO so it can amend the decision on the substance of the case and register the trade mark at issue in respect of all the goods and services covered, without prejudice to those which are uncontested;

— order EUIPO to pay the costs of the proceedings before the Opposition Division, Board of Appeal and General Court.

Plea in law

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

Action brought on 8 November 2021 — ICA Traffic v Commission

(Case T-717/21)

(2022/C 2/71)

Language of the case: German

Parties

Applicant: ICA Traffic GmbH (Dortmund, Germany) (represented by: S. Hertwig and C. Vogt, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision in so far as the framework agreement with UVD Robots APS concerning delivery of up to 200 disinfection robots ceased to have effect when the maximum quantity was reached;

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

Pleas in law and main arguments

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

The decision of the European Commission, notified in the press release of 21 September 2021, to procure a further 100 robots despite the fact that the framework agreement has ceased to have effect infringes the principle of legality under EU law, enshrined in primary law in the second paragraph of Article 263 TFEU in conjunction with Article 264 TFEU.

In Case C-23/20, ([1]) the European Court of Justice ruled that once the maximum quantity specified in the contract notice was reached, the framework agreement ceased to have effect. The decision of the European Commission to now order a further 100 disinfection robots, on the basis of the framework agreement with UVD Robots APS concerning delivery of up to 200 disinfection robots, infringes Article 49 of Directive 2014/24/EU ([2]) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and also Annex V, Part C, points 7, 8 and 10(a) in conjunction with Article 33 thereof and the principles of equal treatment and transparency set out in Article 18(1) of that directive.

([1]) Judgment of 17 June 2021, Simonsen & Weel, C-23/20, EU:C:2021:490.
([2]) OJ 2014 L 94, p. 65.

Action brought on 8 November 2021 — Kaczorowska v EUIPO — Groupe Marcelle (MAESELLE)

(Case T-718/21)

(2022/C 2/72)

Language of the case: English

Parties

Applicant: Katarzyna Kaczorowska (Warsaw, Poland) (represented by: P. Kurcman, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Groupe Marcelle Inc. (Lachine, Quebec, Canada)

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 MAESELLE — Application for registration No 18 130 823

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 September 2021 in Case R 671/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of Opposition Division dated 15/02/2021 in opposition proceedings No B 3 108 698 with respect to all the goods and services for which the opposition has been upheld;

— refer the case back to EUIPO so it can amend the decision on the substance of the case and register the trade mark at issue in respect of all the goods and services covered, without prejudice to those which are uncontested;

— order EUIPO to pay the costs of the proceedings before the Opposition Division, Board of Appeal and General Court.

Plea in law

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

Order of the General Court of 29 October 2021 — LF v Commission

(Case T-178/21) ([1])

(2022/C 2/73)

Language of the case: French

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

([1]) OJ C 206, 31.5.2021.

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