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COURT OF JUSTICE OF THE EUROPEAN UNION

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(2022/C 37/01)

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Past publications

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Ninth Chamber) of 17 November 2021 (request for a preliminary ruling from the Juzgado de Primera Instancia No 38 de Barcelona — Spain) — Marc Gómez del Moral Guasch v Bankia SA

(Case C-655/20) [1]

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Mortgage loan agreement — Variable interest rate — Mortgage loan reference index (IRPH) — Review of transparency by the national court — Assessment of the unfair nature of contractual terms — Consequences of a declaration of nullity — Judgment of 3 March 2020, Gómez del Moral Guasch (C-125/18, EU:C:2020:138) — New questions)

(2022/C 37/02)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 38 de Barcelona

Parties to the main proceedings

Applicant: Marc Gómez del Moral Guasch

Defendant: Bankia SA

Operative part of the order

1. Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the requirement of transparency of contractual terms in the context of a mortgage loan must be interpreted as allowing the seller or supplier not to include in such a contract the full definition of the reference index used to calculate a variable interest rate or not to provide to the consumer an information booklet setting out past fluctuations in that index prior to signature of that contract, on the basis that the information related to that index has been officially published, provided that, in the light of publicly available and accessible information, as well as the information provided, where appropriate, by the seller or supplier, an average consumer who is reasonably well informed and reasonably observant and circumspect was able to understand the specific functioning of the method used for calculating the reference index and thus evaluate, on the basis of clear, intelligible criteria, the potentially significant economic consequences of such a term on his or her financial obligations.

2. Article 3(1), Article 4(2) and Article 5 of Directive 93/13 must be interpreted as meaning that, where a national court takes the view that a contractual term the purpose of which is to determine the method for calculating a variable interest rate under a mortgage contract is not drafted in plain intelligible language within the meaning of Article 4(2) or Article 5 of that directive, that court is required to examine whether that term is 'unfair' within the meaning of Article 3(1) of that directive.

3. Article 6(1) of Directive 93/13 must be interpreted as requiring the national court to offer the consumer a choice between, on the one hand, amending the contract by substituting a contractual term fixing a variable rate of interest found to be unfair with a term referring to a supplementary index provided for by law, and, on the other hand, annulment of the mortgage loan agreement in its entirety if that contract is not capable of continuing in existence without that term.

4. Article 6(1) and Article 7(1) of Directive 93/13, read in the light of Article 1(2) of that directive, must be interpreted as not precluding the national court, where an unfair term setting a reference index for calculating the variable interest of a loan is null and void, from replacing that index with a statutory index applicable in the absence of an agreement to the contrary between the parties to the contract, in accordance with the conditions laid down in paragraph 67 of the judgment of 3 March 2020, Gómez del Moral Guasch (C-125/18, EU:C:2020:138), where those two indices are determined by a method of calculation of equivalent complexity and national law provides for that replacement to be made where there is no dispute and the objective is to preserve the balance of the parties' obligations, provided that the substitute index does in fact reflect a supplementary provision of national law.

5. Article 6(1) of Directive 93/13 must be interpreted as meaning that, where a contract concluded between a seller or supplier and a consumer is not capable of continuing in existence after the removal of an unfair term and the annulment of the contract in its entirety would expose the consumer to particularly unfavourable consequences, the national court may cure the invalidity of that term by substituting it with a supplementary provision of national law, with the application of the rate resulting from the substitute index taking effect at the date of the conclusion of the contract.

([1]) Date of filing: 2/12/2020

Order of the Court (Ninth Chamber) of 17 November 2021 (request for a preliminary ruling from the Juzgado de Primera Instancia No 2 de Ibiza — Spain) — YB v Unión de Créditos Inmobiliarios SA

(Case C-79/21) ([1])

(Reference for a preliminary ruling — Articles 53 and 99 of the Rules of Procedure of the Court — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Mortgage loan agreement — Variable interest rate — Mortgage loan reference index (IRPH) — Review of transparency by the national court — Duty to provide information — Assessment of the unfair nature of contractual terms — Requirements of good faith, balance and transparency — Consequences of a declaration of nullity)

(2022/C 37/03)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 2 de Ibiza

Parties to the main proceedings

Applicant: YB

Defendant: Unión de Créditos Inmobiliarios SA

Operative part of the order

1. Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the requirement of transparency of contractual terms in the context of a mortgage loan must be interpreted as not precluding national legislation and case-law which exempt the seller or supplier from providing to the consumer, at the time of conclusion of a mortgage loan agreement, information related to the previous fluctuations of the reference index over at least the previous two years by means of a comparison with at least one different index such as the Euribor index, provided that that national legislation and case-law nevertheless enable the court to satisfy itself that the average consumer who is reasonably well informed and reasonably observant and circumspect was able, in the light of the publicly available and accessible information and, where appropriate, the information provided by the seller or supplier, to understand the specific functioning of the method used for calculating the reference index and thus evaluate, on the basis of clear, intelligible criteria, the potentially significant economic consequences of such a term on his or her financial obligations.

2. Article 3(1) of Directive 93/13 must be interpreted as precluding national legislation and case-law which consider an absence of good faith on the part of the seller or supplier to be a necessary precondition for any review of the content of a non-transparent clause in a consumer contract. It is for the national court to determine whether, in the light of all the relevant circumstances of the main proceedings, the seller or supplier must be regarded as having acted in good faith by selecting an index provided for by law, and whether the term incorporating such an index is such as to create a significant imbalance, to the detriment of the consumer, between the rights and obligations of the parties arising under the contract.

3. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as not precluding the national court, where an unfair term setting a reference index for calculating the variable interest of a loan is null and void, from replacing that index with a statutory index applicable in the absence of an agreement to the contrary between the parties to the contract, where those two indices produce the same effects, provided that the conditions laid down in paragraph 67 of the judgment of 3 March 2020, Gómez del Moral Guasch (C-125/18, EU:C:2020:138) are met.

4. The sixteenth question referred for a preliminary ruling by the Juzgado de Primera Instancia No 2 de Ibiza (Court of First Instance No 2, Ibiza, Spain) is manifestly inadmissible.

([1]) Date of filing: 9/2/2021.

Appeal brought on 25 May 2021 by Giro Travel Company SRL against the judgment of the General Court (Ninth Chamber) delivered on 24 March 2021 in Case T-193/18, Andreas Stihl v EUIPO

(Case C-327/21 P)

(2022/C 37/04)

Language of the case: English

Parties

Appellant: Giro Travel Company SRL (represented by: C. N. Frisch, avocat)

Other party to the proceedings: European Union Intellectual Property Office

By order of 26 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Giro Travel Company SRL should bear its own costs.

Appeal brought on 9 June 2021 by FCA Italy SpA against the judgment of the General Court (Ninth Chamber) delivered on 28 April 2021 in Case T-191/20, FCA Italy v EUIPO

(Case C-360/21 P)

(2022/C 37/05)

Language of the case: English

Parties

Appellant: FCA Italy SpA (represented by: F. Jacobacci, E. Truffo, avvocati)

Other party to the proceedings: European Union Intellectual Property Office

By order of 9 June 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that FCA Italy SpA should bear its own costs.

Appeal brought on 18 June 2021 by Hasbro Inc. against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 21 April 2021 in Case T-663/19, Hasbro v EUIPO

(Case C-373/21 P)

(2022/C 37/06)

Language of the case: English

Parties

Appellant: Hasbro Inc. (represented by: J. Moss, Barrister)

Other party to the proceedings: European Union Intellectual Property Office

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

Appeal brought on 21 June 2021 by Keun Jig Lee against the judgment of the General Court (Sixth Chamber) delivered on 21 April 2021 in Case T-382/20, Lee v EUIPO

(Case C-381/21 P)

(2022/C 37/07)

Language of the case: English

Parties

Appellant: Keun Jig Lee (represented by: F. Jacobacci, avvocato, B. La Tella, avvocatessa)

Other party to the proceedings: European Union Intellectual Property Office

By order of 30 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Keun Jig Lee should bear his own costs.

Appeal brought on 5 August 2021 by Health Product Group sp. z o.o. against the judgment of the General Court (Third Chamber) delivered on 16 June 2021 in Case T-678/19, Health Product Group v EUIPO

(Case C-483/21 P)

(2022/C 37/08)

Language of the case: English

Parties

Appellant: Health Product Group sp. z o.o. (represented by: M. Kondrat, adwokat)

Other party: European Union Intellectual Property Office

By order of 30 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Health Product Group sp. z o.o. should bear its own costs.

Appeal brought on 10 August 2021 by Davide Groppi Srl against the judgment of the General Court (Second Chamber) of 16 June 2021 in Case T-187/20 Davide Groppi v EUIPO — Viabizzuno (Table lamp)

(Case C-490/21 P)

(2022/C 37/09)

Language of the case: Italian

Parties

Appellant: Davide Groppi Srl (represented by: F. Boscariol de Roberto, D. Capra and V. Malerba, avvocati)

Other party to the proceedings: European Union Intellectual Property Office

By order of 26 November 2021, the Court (Chamber determining whether appeals are allowed to proceed) declared that the appeal is inadmissible and ordered Davide Groppi Srl to bear its own costs.

Appeal brought on 19 August 2021 by DI against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 9 June 2021 in Case T-514/19, DI v BCE

(Case C-513/21 P)

(2022/C 37/10)

Language of the case: English

Parties

Appellant: DI (represented by: L. Levi, avocate)

Other party to the proceedings: European Central Bank

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— by consequence grant the appellant's requests:

  — the annulment of the decision of the Executive Board of the ECB dated 7 May 2019 imposing the disciplinary dismissal without notice;

— the annulment of the decision of the Executive Board of the ECB dated 25 June 2019 refusing to reopen the disciplinary proceedings further to the closure of criminal proceedings;

— in any case, the compensation of the moral prejudice suffered by the appellant evaluated ex aequo et bono at 20 000,00 Euros;

— the reimbursement of all the costs.

— order the ECB to pay all the costs of both the appeal and of the first instance.

Pleas in law and main arguments

The judgement under appeal erred in law in rejecting the first plea alleging lack of competence of the author of the contested measures.

The judgement under appeal erred in law in rejecting the second plea alleging infringement of Article 8.3.2 of the Staff Rules and of the principle of legal certainty.

The judgement under appeal erred in law in rejecting the seventh plea alleging infringement of the right to the presumption of innocence and Article 48 of the Charter of Fundamental Rights of the European Union.

The judgement under appeal erred in law in rejecting the fourth plea alleging infringement of Article 8.3.7 of the Staff Rules and infringement of the principle of impartiality as enshrined in Article 41 of the Charter.

The judgement under appeal erred in law in rejecting the sixth plea alleging manifest errors of assessment.

Appeal brought on 26 August 2021 by CE against the judgment of the General Court (Seventh Chamber) delivered on 16 June 2021 in Case T-355/19, CE v Committee of the Regions

(Case C-539/21 P)

(2022/C 37/11)

Language of the case: French

Parties

Appellant: CE (represented by: M. Casado García-Hirschfeld, avocate)

Other party to the proceedings: Committee of the Regions

Form of order sought

The appellant claims that the Court should:

— set aside in part the judgment of 16 June 2021, *CE* v *Committee of the Regions* (T-355/19);

— order the Committee of the Regions to pay all the costs, including those incurred before the General Court relating both to the main proceedings and to the interlocutory proceedings.

Grounds of appeal and main arguments

In support of her appeal, the appellant contests in particular paragraphs 69 and 70, 73 to 77, 83 to 91, 109 to 116, 126 to 139, 149 and 150 of the judgment under appeal. The appellant puts forward a single ground of appeal, alleging distortion of the facts and manifest errors of assessment resulting in an inadequate and inaccurate legal reasoning.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 13 September 2021 — ZS v Zweckverband 'Kommunale Informationsverarbeitung Sachsen' KISA, a body governed by public law

(Case C-560/21)

(2022/C 37/12)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: ZS

Defendant: Zweckverband 'Kommunale Informationsverarbeitung Sachsen' KISA, a body governed by public law

Questions referred

1. Is the second sentence of Article 38(3) of Regulation (EU) 2016/679 ([1]) (the General Data Protection Regulation; 'the GDPR') to be interpreted as precluding a provision of national law, such as, in the present case, the first sentence of Paragraph 6(4) of the Bundesdatenschutzgesetz (Federal Law on data protection), which makes dismissal of the data protection officer by the controller, who is his or her employer, subject to the conditions set out therein, irrespective of whether such dismissal relates to the performance of his or her tasks?

   If the answer to the first question is in the affirmative:

2. Does the second sentence of Article 38(3) of the GDPR have a sufficient legal basis, in particular in so far as the provision covers data protection officers who have an employment relationship with the controller?

([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).

Appeal brought on 23 September 2021 by DD against the judgment of the General Court (Fourth Chamber) delivered on 14 July 2021 in Case T-632/19, DD v FRA

(Case C-587/21 P)

(2022/C 37/13)

Language of the case: English

Parties

Appellant: DD (represented by: N. Lorenz, Rechtsanwältin)

Other party to the proceedings: European Union Agency for Fundamental Rights

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in its entirety,

— consequently,

— annul the decision of the Director of the European Union Agency for Fundamental Rights (FRA) dated 19 November 2018 rejecting the applicant's request under Article 90(1) of the Staff Regulations;

— if need be, annul the decision of the FRA Director dated 12 June 2018, received on 13 June 2018, rejecting the complaint under Article 90(2) of the Staff Regulations directed by the applicant against the above decision of 19 November 2019;

— grant the applicant compensation for the sustained non-material damage, as detailed in this appeal, estimated ex aequo et bono at 100 000 €;

— order the FRA to pay all the costs.

Pleas in law and main arguments

Error of law and distortion of evidence regarding the statement of facts.

Error of law and violation of the principle of legal certainty regarding the first head of unlawfulness.

Error of law, violation of res iudicata, insufficient reasoning, failure to rule on appellant's head of claim, distortion of evidence regarding the second head of unlawfulness.

Error of law, manifest error of appraisal and insufficient reasoning regarding the third head of unlawfulness.

Error of law, distortion of evidence, manifest error of appraisal, plea that General Court acted ultra vires and ultra petita, plea alleging that the General Court wrongly rejected the appellants' offer of production of a document on request which was material to the case and insufficient reasoning regarding the fourth head of unlawfulness.

Error of law, insufficient reasoning, wrong legal classification of facts, distortion of evidence and manifest error of appraisal regarding the fifth head of unlawfulness.

Error of law, distortion of evidence, failure to rule on appellant's head of claim, wrong legal classification, plea that GC acted ultra petita, plea alleging that GC wrongly rejected the appellants' request to order production of a document which was material to the case, incomplete examination of the application and of the plea of harassment raised by the applicant regarding the sixth head of unlawfulness.

Error of law regarding the section on actual damage alleged and causal link.

Request for a preliminary ruling from the Areios Pagos (Greece) lodged on 23 September 2021 — Charles Taylor Adjusting Limited, FD v Starlight Shipping Company, Overseas Marine Enterprises INC

(Case C-590/21)

(2022/C 37/14)

Language of the case: Greek

Referring court

Areios Pagos

Parties to the main proceedings

Appellants:

Charles Taylor Adjusting Limited,

FD

Respondents:

Starlight Shipping Company,

Overseas Marine Enterprises INC

Questions referred

1. Is the expression 'manifestly contrary to public policy' in the EU and, by extension, to domestic public policy, which constitutes a ground for non-recognition and non-enforcement pursuant to point 1 of Article 34 and Article 45(1) of Regulation No 44/2001, ([1]) to be understood as meaning that it extends beyond explicit anti-suit injunctions prohibiting the commencement and continuation of proceedings before a court of another Member State to judgments or orders delivered by courts of Member States where: (i) they impede or prevent the claimant in obtaining judicial protection by the court of another Member State or from continuing proceedings already commenced before it; and (ii) is that form of interference in the jurisdiction of a court of another Member State to adjudicate a dispute of which it has already been seised, and which it has admitted, compatible with public policy in the EU? In particular, is it contrary to public policy in the EU within the meaning of point 1 of Article 34 and Article 45(1) of Regulation No 44/2001, to recognise and/or declare enforceable a judgment or order of a court of a Member State awarding provisional damages to claimants seeking recognition and a declaration of enforceability in respect of the costs and expenses incurred by them in bringing an action or continuing proceedings before the court of another Member State, where the reasons given are that: (a) it follows from an examination of that action that the case is covered by a settlement duly established and ratified by the court of the Member State delivering the judgment (or order); and (b) the court of the other Member State seised in a fresh action by the party against which the judgment or order was delivered lacks jurisdiction by virtue of a clause conferring exclusive jurisdiction?

2. If the first question is answered in the negative, is point 1 of Article 34 of Regulation No 44/2001, as interpreted by the Court of Justice of the European Union, to be understood as constituting a ground for non-recognition and non-enforcement in Greece of the judgment and orders delivered by a court of another Member State (the United Kingdom), as described under (I) above, where they are directly and manifestly contrary to national public policy in accordance with fundamental social and legal perceptions which prevail in Greece and the fundamental provisions of Greek law that lie at the very heart of the right to judicial protection (Articles 8 and 20 of the Greek Constitution, Article 33 of the Greek Civil Code and the principle of protection of that right that underpins the entire system of Greek procedural law, as laid down in Articles 176, 173(1) to (3), 185, 205 and 191 of the Greek Code of Civil Procedure cited in paragraph 6 of the statement of reasons) and Article 6(1) of the [European Convention on Human Rights], such that, in that case, it is permissible to disapply the principle of EU law on the free movement of judgments, and is the non-recognition resulting therefrom compatible with the views that assimilate and promote the European perspective?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Appeal brought on 1 October 2021 by the European Parliament against the judgment of the General Court (Fourth Chamber) delivered on 14 July 2021 in Case T-670/19, Carbajo Ferrero v Parliament

(Case C-613/21 P)

(2022/C 37/15)

Language of the case: French

Parties

Appellant: European Parliament (represented by: I. Terwinghe, C. González Argüelles, R. Schiano, acting as Agents)

Other party to the proceedings: Fernando Carbajo Ferrero

Form of order sought

The appellant claims, principally, that the Court of Justice should:

— set aside the judgment of 14 July 2021 of the General Court in Case T-670/19;

— refer the case back to the General Court;

— reserve the costs.

The appellant claims, in the alternative, that the Court of Justice should:

— set aside the judgment of 14 July 2021 of the General Court in Case T-670/19;

— dismiss the action brought at first instance;

— order Mr Carbajo Ferrero to pay all costs.

Pleas in law and main arguments

The first ground of appeal is based on, first, errors of law relating to the interpretation of the decision laying down the stages of the selection procedure of senior officials of 16 May 2020, as amended by the decision of the Bureau of 18 February 2008, and the interpretation of the principles of equal treatment and transparency and, second, a distortion of the facts. The Parliament submits that the General Court erred in finding that the procedure for the appointment of the Director for Media of the Directorate-General for Communication was carried out in an improper manner, in that the Advisory Committee for the appointment of senior officials failed to use the same criteria for the comparative analysis of merits throughout the procedure.

By the second ground based on an error of law and distortion of the facts and evidence, the Parliament claims that the General Court misconstrued the function of the report on the interviews, compiled by the Advisory Committee, and erred in finding that the Appointing Authority did not correctly take account of the professional experience of the appellant.

Request for a preliminary ruling from the Landgericht Ravensburg (Germany) lodged on 6 October 2021 — RU, PO v Nissan Leasing, Volkswagen Leasing GmbH

(Case C-617/21)

(2022/C 37/16)

Language of the case: German

Referring court

Landgericht Ravensburg

Parties to the main proceedings

Applicants: RU, PO

Defendants: Nissan Leasing, Volkswagen Leasing GmbH

Questions referred

1. Do mileage-based leasing agreements for motor vehicles with a term of approximately 2 years or more which exclude the ordinary right of termination and under which the consumer has to take out civil liability and fully comprehensive insurance for the vehicle, must also assert defect-related rights against third parties (in particular the vehicle dealer and manufacturer) and, moreover, bears the risk of loss, damage and other impairment, fall within the scope of Directive 2011/83/EU ([1]) and/or Directive 2008/48/EC ([2]) and/or Directive 2002/65/EC? ([3]) Are they credit agreements within the meaning of Article 3(c) of Directive 2008/48 and/or contracts relating to financial services within the meaning of Article 2(12) of Directive 2011/83 and Article 2(b) of Directive 2002/65?

2. If mileage-based leasing agreements for motor vehicles (as described in Question 1) are contracts relating to financial services:

   a) Are business premises of a person who prepares the ground for transactions with consumers on behalf of the trader but who does not himself have any power of representation to conclude the contracts in question also to be regarded as immovable business premises for the purposes of Article 2(9) of Directive 2011/83?

      If so:

   b) Does that also apply where the person who prepares the ground for the contract carries out a business activity in another sector and/or is not authorised under supervisory and/or civil law to conclude contracts relating to financial services?

3. If either Question 2(a) or Question 2(b) is answered in the negative:

   Is Article 16(l) of Directive 2011/83 to be interpreted as meaning that mileage-based leasing agreements for motor vehicles (as described in Question 1) are covered by that exception?

4. If mileage-based leasing agreements for motor vehicles (as described in Question 1) are contracts relating to financial services:

   a) Does a distance contract within the meaning of Article 2(a) of Directive 2002/65 and Article 2(7) of Directive 2011/83 exist also where the only personal contact during contractual negotiations was with a person who prepares the ground for transactions with consumers on behalf of the trader but does not personally have any power of representation to conclude the contracts in question?

      If not:

   b) Does that also apply where the person who prepares the ground for the contract carries out a business activity in another sector and/or is not authorised under supervisory and/or civil law to conclude contracts relating to financial services?

([1]) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

([2]) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

([3]) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ 2002 L 271, p. 16).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 8 October 2021 — VB v GUPFINGER Einrichtungsstudio GmbH

(Case C-625/21)

(2022/C 37/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law (original defendant at first instance): VB

Respondent in the appeal on a point of law (original applicant at first instance): GUPFINGER Einrichtungsstudio GmbH

Questions referred

1. Are Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ('the Unfair Contract Terms Directive') ([1]) to be interpreted as meaning that, in the examination of a trader's contractual claim for compensation brought against a consumer based on the consumer's unjustified withdrawal from the contract, the application of supplementary national law is precluded if the trader's general terms and conditions ('the GTCs') contain an unfair term which, in addition to the provisions of supplementary national law, grants the trader an optional right to flat-rate compensation against a consumer who has acted in breach of contract?

   If Question 1 is answered in the affirmative:

2. Is such an application of supplementary national law also precluded in the cases where the trader does not base its claim for compensation against the consumer on that term?

   If Questions 1 and 2 are answered in the affirmative:

3. Is it contrary to the abovementioned provisions of EU law that, in the case of a term containing several provisions (for example, alternative sanctions in the event of unjustified withdrawal from the contract), those parts of the term which, in any event, are consistent with the supplementary national law and are not to be regarded as unfair continue to exist as part of the contract?

([1]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 11 October 2021 — Funke Sp. zo.o.

(Case C-626/21)

(2022/C 37/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Funke Sp. zo.o.

Defendant authority before the Verwaltungsgericht Wien (Austria): Landespolizeidirektion Wien

Questions referred

Are

— Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, ([1]) as amended by Regulation (EC) No 765/2008 ([2]) and Regulation (EC) No 596/2009, ([3]) in particular Article 12 and Annex II,

— Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in particular Articles 20 and 22, and

— Commission Implementing Decision (EU) 2019/417 of 8 November 2018 laying down guidelines for the management of the European Union Rapid Information System 'RAPEX' established under Article 12 of Directive 2001/95/EC on general product safety and its notification system ([4]) to be interpreted as meaning that

1. the right of an economic operator to complete a RAPEX notification arises directly from those provisions?

2. the European Commission is competent to decide on such a request?

   or

3. the authority of the Member State concerned is competent to decide on such a request?

(If Question 3 is answered in the affirmative)

4. the (national) judicial protection against such a decision is sufficient where it is not afforded to everyone but only to the economic operator affected by the (obligatory) measure against the (obligatory) measure taken by the authority?

(1) OJ 2002 L 11, p. 4.
(2) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ 2008 L 218, p. 30).
(3) Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Four (OJ 2009 L 188, p. 14).
(4) OJ 2019 L 73, p. 121.

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 15 October 2021 — OQ v Land Hesse

(Case C-634/21)

(2022/C 37/19)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: OQ

Defendant: Land Hesse

Joined party: SCHUFA Holding AG

Questions referred

1. Is Article 22(1) of Regulation (EU) 2016/679 (1) to be interpreted as meaning that the automated establishment of a probability value concerning the ability of a data subject to service a loan in the future already constitutes a decision based solely on automated processing, including profiling, which produces legal effects concerning the data subject or similarly significantly affects him or her, where that value, determined by means of personal data of the data subject, is transmitted by the controller to a third-party controller and the latter draws strongly on that value for its decision on the establishment, implementation or termination of a contractual relationship with the data subject?

2. If Question 1 is answered in the negative, are Articles 6(1) and 22 of Regulation (EU) 2016/679 to be interpreted as precluding national legislation under which the use of a probability value — *in casu*, in relation to a natural person's ability and willingness to pay, in the case where information about claims against that person is taken into account — regarding specific future behaviour of a natural person for the purpose of deciding on the establishment, implementation or termination of a contractual relationship with that person (scoring) is permissible only if certain further conditions, which are set out in more detail in the grounds of the request for a preliminary ruling, are met?

(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).

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 25 October 2021 — M. Ya. M.

(Case C-651/21)

(2022/C 37/20)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Party to the main proceedings

Applicant in the main proceedings: M. Ya. M.

Questions referred

1. Is Article 13 of Regulation (EU) No 650/2012 […], [1] read in conjunction with the principle of the protection of legal certainty, to be interpreted as precluding, after an heir has already had registered with a court of the State in which he or she is habitually resident his or her acceptance or waiver of the succession of a deceased person who was habitually resident in another State of the European Union at the time of his or her death, a request to have that waiver or acceptance subsequently registered in the latter State?

2. If the answer to the first question is that such registration is permissible, is Article 13 of Regulation (EU) No 650/2012 […], read in conjunction with the principles of the protection of legal certainty and the effective implementation of EU law, and the obligation of cooperation between States under Article 4(3) [TEU], to be interpreted as permitting a request for the registration of a waiver of the succession of a deceased person effected by an heir in the State in which he or she is habitually resident by another heir residing in the State in which the deceased was habitually resident at the time of his or her death, irrespective of the fact that the procedural law of the latter State does not provide for the possibility to have a waiver of a succession registered on behalf of another person?

[1] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 27 October 2021 — Syndicat Uniclima v Ministre de l'Intérieur

(Case C-653/21)

(2022/C 37/21)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Syndicat Uniclima

Defendant: Ministre de l'Intérieur

Questions referred

1. Does the harmonisation required by Directive 2006/42/EC, ([1]) Directive 2014/35/EU ([2]) and Directive 2014/68/EU ([3]) permit Member States to lay down safety requirements for the equipment governed by those directives, and if so under what conditions and within what limits, where those requirements do not entail any modification of equipment that is, as attested by the affixing of the 'CE marking', in conformity with the requirements of those directives?

2. Does the harmonisation required by them permit Member States to lay down, solely for use of that equipment in premises open to the public and in the light of specific fire safety risks, safety requirements which may entail the modification of equipment that, as attested by the affixing of the 'CE marking', is nevertheless in conformity with the requirements of those directives?

3. If the preceding question is answered in the negative, can it be answered in the affirmative if the safety requirements in question apply only where that equipment uses flammable refrigerants as alternatives to fluorinated greenhouse gases, in accordance with the objectives set out in Regulation No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases, ([4]) and, in addition, relate only to equipment which, although in conformity with the requirements of those directives, does not, having regard to the fire risk from the use of flammable refrigerants, offer the protection of being hermetically sealed?

([1]) Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (OJ 2006 L 157, p. 24).
([2]) Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ 2014 L 96, p. 357).
([3]) Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment (OJ 2014 L 189, p. 164).
([4]) Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ 2014 L 150, p. 195).

Request for a preliminary ruling from the Rayonen sad Nesebar (Bulgaria) lodged on 27 October 2021 — Criminal proceedings against G. ST. T.

(Case C-655/21)

(2022/C 37/22)

Language of the case: Bulgarian

Referring court

Rayonen sad Nesebar

Party to the main proceedings

G. ST. T.

Questions referred

1. Are the legislation and case-law in accordance with which the harm suffered by the trade mark proprietor forms part of the constituent elements of the offences referred to in Article 172b(1) and (2) of the NK consistent with the standards introduced by Directive 2004/48/EC ([1]) in relation to harm caused by the unlawful exercise of intellectual property rights?

2. If the first question is answered in the affirmative, is the automatic presumption, introduced by case-law in the Republic of Bulgaria, for determining the harm — in the amount of the value of the goods offered for sale, calculated on the basis of the retail prices of lawfully manufactured goods — consistent with the standards of Directive 2004/48/EC?

3. Is legislation which does not distinguish between an administrative offence (Article 127(1) of the Zakon za markite i geografskite oznacheniya (Law on trade marks and geographical indications; 'the ZMGO') currently in force and Article 81(1) of the ZMGO in force in 2016), the criminal offence under Article 172b(1) of the NK and, if the first question is answered in the negative, the criminal offence under Article 172b(2) of the NK compatible with the principle of legality of criminal offences, as enshrined in Article 49 of the Charter of Fundamental Rights of the European Union?

4. Are the penalties provided for in Article 172b(2) of the NK (custodial sentence of 5 to 8 years and a fine of BGN 5 000 to 8 000) consistent with the principle established in Article 49(3) of the Charter of Fundamental Rights of the European Union (the severity of penalties must not be disproportionate to the criminal offence)?

(1) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 29 October 2021 — IM GESTÃO DE ATIVOS — SOCIEDADE GESTORA DE ORGANISMOS DE INVESTIMENTO COLETIVO, SA and Others v Autoridade Tributária e Aduaneira

(Case C-656/21)

(2022/C 37/23)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicants: IM GESTÃO DE ATIVOS — SOCIEDADE GESTORA DE ORGANISMOS DE INVESTIMENTO COLETIVO, SA and Others

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Does Article 5(2) of Directive 2008/7/EC (1) preclude national legislation, such as item 17(3)(4) of the Código do Imposto do Selo (Stamp Duty Code), under which stamp duty is levied on fees which banks charge open-ended securities investment fund management companies for gaining new subscriptions for units, that is, for obtaining new inflows of capital for the investment funds in the form of new subscriptions for units issued by the funds?

2. Does Article 5(2) of Directive 2008/7/EC preclude national legislation under which stamp duty is levied on the management fees charged to open-ended securities investment funds by management companies, in so far as those management fees include the fees which the banks charge the fund management companies for the aforementioned activity?

(1) Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital (OJ 2008 L 46, p. 11).

Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Latvia) lodged on 8 November 2021 — SIA Druvnieks v Lauku atbalsta dienests

(Case C-668/21)

(2022/C 37/24)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicant at first instance and appellant: SIA Druvnieks

Other party in the appeal proceedings: Lauku atbalsta dienests

Questions referred

1. Is the application of Article 60 of Regulation (EU) No 1306/2013 ([1]) of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy justified where an undertaking owned by the proprietor of the company applying for aid, which is distinct from the latter, has committed an irregularity the financial consequences of which have not been rectified and the company applying for aid has taken over that undertaking's agricultural business?

2. Is it possible to apply Article 60 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy in such a way that a person is found to have circumvented the administrative penalty provided for in Article 64(4)(d) of that regulation, despite the fact that, in respect of the applicant company or its proprietor, no decision has been adopted imposing on it an administrative penalty resulting in its exclusion from eligibility for the aid?

3. Is it possible to apply Article 60 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 in such a way that the authority responsible for examination of the project proposal must verify whether other undertakings previously owned by the proprietor of the company applying for aid satisfy the provisions of Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 ([2]) of the Treaty on the Functioning of the European Union, and, if the conditions are not fulfilled, reject the project proposal without an additional individual assessment of the factual circumstances?

([1]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([2]) OJ 2014 L 193, p. 1.

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 15 November 2021 — VW, Legea S.r.l. v SW, CQ, ET, VW, Legea S.r.l.

(Case C-686/21)

(2022/C 37/25)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellants: VW, Legea S.r.l.

Respondents: SW, CQ, ET, VW, Legea S.r.l.

Questions referred

1. Are the EU rules in question, ([1]) in so far as they provide for the exclusive rights of the proprietor of an EU trade mark and, at the same time, for the possibility of such a mark being owned by several individuals in shares, to be interpreted as meaning that the assignment to a third party of the exclusive right to use a shared trade mark, free of charge and for an indefinite period, can be decided upon by a majority of the joint proprietors, or as meaning that it requires their unanimous consent instead?

2. If it is the latter, in the case where an EU trade mark or a national trade mark is owned by several individuals, would it be consistent with the principles of EU law for it to be impossible for one of the joint proprietors of the mark, after the mark has been assigned to a third party by unanimous decision, free of charge and for an indefinite period, unilaterally to withdraw from that decision or, alternatively, would it, on the contrary, be consistent with the principles of EU law if the joint proprietor were not bound in perpetuity by the original intent, such that he or she could retract, with the resulting effect on the act of assignment?

([1]) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336, p. 1); Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 17 November 2021 — Confédération paysanne and Others v Premier minister, Ministre de l'Agriculture et de l'Alimentation

(Case C-688/21)

(2022/C 37/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Confédération paysanne, Réseau Semences Paysannes, Les Amis de la Terre France, Collectif vigilance OGM et Pesticides 16, Vigilance OG2M, CSFV 49, OGM: dangers, Vigilance OGM 33

Defendants: Premier ministre, Ministre de l'Agriculture et de l'Alimentation

Intervener: Fédération française des producteurs d'oléagineux et de protéagineux

Questions referred

1. Is Article 3(1) of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, ([1]) read in conjunction with point 1 of Annex I B to that directive and in the light of recital 17 of the Directive, to be interpreted as meaning that, in order to distinguish from amongst techniques/methods of mutagenesis those techniques/methods which have conventionally been used in a number of applications and have a long safety record, within the meaning of the judgment of the Court of Justice of 25 July 2018, consideration need be given only to the methods by which the mutageneous agent modifies the genetic material of the organism, or must account be taken of all the variations in the organism induced by the process used, including somaclonal variations, which may affect human health and the environment?

2. Is Article 3(1) of Directive 2001/18/EC of 12 March 2001, read in conjunction with point 1 of Annex I B to that directive and in the light of recital 17 of the Directive, to be interpreted as meaning that, in order to determine whether a technique/method of mutagenesis has conventionally been used in a number of applications and has a long safety record, within the meaning of the judgment of the Court of Justice of 25 July 2018, account need be taken only of open field cultivation of the organisms obtained using that method/technique, or may account also be taken of research work and publications that do not relate to such cultivation and, in relation to that work and those publications, is consideration to be given only to work and publications relating to risks for human health or the environment?

(1) OJ 2001 L 106, p. 1.

Appeal brought on 17 November 2021 by Brunswick Bowling Products LLC against the judgment of the General Court (Second Chamber) delivered on 8 September 2021 in Case T-152/19, Brunswick Bowling Products LLC v Commission

(Case C-694/21 P)

(2022/C 37/27)

Language of the case: English

Parties

Appellant: Brunswick Bowling Products LLC (represented by: R. Martens, avocat)

Other parties to the proceedings: European Commission, Kingdom of Sweden

Form of order sought

The appellant claims that the Court should:

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

— and refer the case back to the General Court,

— or, in the alternative, set aside points 1 and 2 of the operative part of the judgment under appeal and rule on the action at first instance and annul, in its entirety, Commission Implementing Decision (EU) 2018/1960 (1);

— and, in any case, order the European Commission to pay all costs.

Pleas in law and main arguments

First plea in law, alleging infringement of Articles 263 juncto 256(1) TFEU and Article 41(1) of the Charter of Fundamental Rights of the European Union and the principle of good administration, because, the General Court committed an error of law by omitting to appraise the information on which the Commission relied or failed to rely upon to adopt its final decision, and by therefore failing to take into account all relevant factors, whereas, where the Commission has the duty to ensure that it has at its disposal the most complete and reliable information possible, an adequate review of the legality of the Commission Decision by the General Court implies a review as to whether the Commission relied on all relevant information and whether, where applicable, the information relied on by the Commission is factually accurate, reliable, complete and consistent.

Second plea in law, alleging infringement of Article 296(2) TFEU, Article 41(1) and 41(2)(c) of the Charter and the duty to state reasons, because, the General Court failed to provide a sufficiently detailed and reasoned statement of reasons, whereas, in conformity with its duty to state reasons the General Court should disclose its reasoning in such a way as to enable the Appellant to ascertain the reasons for the decision taken.

(1) Commission Implementing Decision (EU) 2018/1960 of 10 December 2018 on a safeguard measure taken by Sweden pursuant to Directive 2006/42/EC of the European Parliament and of the Council, to prohibit the placing on the market a type of pinsetter machine and a supplementary kit to be used together with that type of pinsetter machine, manufactured by Brunswick Bowling & Billiards, and to withdraw those machines already placed on the market (OJ 2018, L 315, p. 29).

Appeal brought on 19 November 2021 by Mytilinaios AE — Omilos Epicheiriseon against the judgment delivered on 22 September 2021 by the General Court (Third Chamber, Extended Composition) in Joined Cases T-639/14 RENV, T-352/15 and T-740/17, Dimosia Epicheirisi Ilektrismou AE v European Commission supported by Mytilinaios AE — Omilos Epicheiriseon

(Case C-701/21 P)

(2022/C 37/28)

Language of the case: Greek

Parties

Appellant: Mytilinaios AE — Omilos Epicheiriseon (represented by: Vassilios-Spyridon Christianos and Georgios Karydis, δικηγόροι)

Other parties to the proceedings: Dimosia Epicheirisi Ilektrismou AE (DEI), European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court in Joined Cases T-639/14 RENV, T-352/15 and T-740/17;

— if necessary, refer the matter back to the General Court;

— order DEI AE to pay the costs in their entirety.

Grounds of appeal and main arguments

The purpose of the judgment under appeal was to determine whether the Commission should have had doubts or serious difficulties, pursuant to Article 4(3) and (4) of Regulation 2015/1589, (1) as to the existence of State aid concerning the electricity supply tariff charged by DEI to the appellant following an arbitration decision, on the basis of which a formal investigation procedure should have been initiated.

The appellant puts forward three grounds of appeal and submits that, in the judgment under appeal:

— **First**, the General Court failed to examine the general principles of law *nemo auditur* (…) and *venire contra factum proprium* in so far as concerns DEI AE's interest in bringing an action for annulment.

— **Second**, the General Court erred in law, first, as regards the private-operator test referred to in Article 107(1) TFEU and, second, as regards the status of the arbitration tribunal as a State body.

— **Third**, the General Court erred in law in its interpretation of Article 4 of Regulation 2015/1589 as regards first, the condition of doubts or serious difficulties as to the existence of State aid at the stage of the preliminary examination of complaints, and, second, the reversal of the burden of proof.

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

Appeal brought on 25 November 2021 by Françoise Grossetête (T-722/19) against the judgment of the General Court (Fifth Chamber) delivered on 15 September 2021 in Joined Cases T-720/19 to T-725/19, Ashworth and Others v Parliament

(Case C-714/21 P)

(2022/C 37/29)

Language of the case: French

Parties

Appellant: Françoise Grossetête (represented by: J. M. Martínez Gimeno, abogado, D. Sarmiento Ramírez-Escudero, abogado, E. Arnaldos Orts, abogado, and F. Doumont, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in its entirety;

— rule on the dispute and annul the Parliament's decision contained in the notice fixing the additional pension rights owed to the appellant in so far as it introduces a special levy of 5 % of the nominal amount of her pension, payable directly into the additional voluntary pension fund;

— order the Parliament to pay the costs of the appeal proceedings and the costs of the proceedings before the General Court in Case T-722/19.

Grounds of appeal and main arguments

The grounds of appeal allege: (i) the Bureau's lack of competence to take the decision of the Bureau of 2018, inter alia in so far as it lays down substantive conditions for rights conferring prospective entitlement before the entry into force of the Staff Regulations; (ii) infringement of the first sentence of Article 27(2) of the Staff Regulations by reason of non-observance of rights conferring prospective entitlement prior to the entry into force of the Staff Regulations; (iii) infringement of the principle of equality and non-discrimination and of the principle of proportionality; and (iv) infringement of the principle of legal certainty (lack of transitional measures) and the principle of legitimate expectations.

Appeal brought on 25 November 2021 by Gerardo Galeote (T-243/20) against the judgment of the General Court (Fifth Chamber) delivered on 15 September 2021 in Joined Cases T-240/20 to T-245/20, Arnaoutakis and Others v Parliament

(Case C-715/21 P)

(2022/C 37/30)

Language of the case: French

Parties

Appellant: Gerardo Galeote (represented by: J. M. Martínez Gimeno, abogado, D. Sarmiento Ramírez-Escudero, abogado, E. Arnaldos Orts, abogado, and F. Doumont, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in its entirety;

— rule on the dispute and annul the Parliament's decision in so far as it rejects the appellant's application to be granted a voluntary additional pension on the ground that he has not reached the required age of 65;

— order the Parliament to pay the costs of the appeal proceedings and the costs of the proceedings before the General Court in Case T-243/20.

Grounds of appeal and main arguments

The grounds of appeal allege: (i) the Bureau's lack of competence to take the decision of the Bureau of 2018, inter alia in so far as it lays down substantive conditions for rights conferring prospective entitlement before the entry into force of the Staff Regulations; (ii) infringement of the first sentence of Article 27(2) of the Staff Regulations by reason of non-observance of rights conferring prospective entitlement prior to the entry into force of the Staff Regulations; (iii) infringement of the principle of equality and non-discrimination and of the principle of proportionality; and (iv) infringement of the principle of legal certainty (lack of transitional measures) and the principle of legitimate expectations.

Appeal brought on 25 November 2021 by Graham R. Watson (T-245/20) against the judgment of the General Court (Fifth Chamber) delivered on 15 September 2021 in Joined Cases T-240/20 to T-245/20, Arnaoutakis and Others v Parliament

(Case C-716/21 P)

(2022/C 37/31)

Language of the case: French

Parties

Appellant: Graham R. Watson (represented by: J. M. Martínez Gimeno, abogado, D. Sarmiento Ramírez-Escudero, abogado, E. Arnaldos Orts, abogado, and F. Doumont, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in its entirety;

— rule on the dispute and annul the Parliament's decision in so far as it rejects the appellant's application to be granted a voluntary additional pension on the ground that he has not reached the required age of 65;

— order the Parliament to pay the costs of the appeal proceedings and the costs of the proceedings before the General Court in Case T-245/20.

Grounds of appeal and main arguments

The grounds of appeal allege: (i) the Bureau's lack of competence to take the decision of the Bureau of 2018, inter alia in so far as it lays down substantive conditions for rights conferring prospective entitlement before the entry into force of the Staff Regulations; (ii) infringement of the first sentence of Article 27(2) of the Staff Regulations by reason of non-observance of rights conferring prospective entitlement prior to the entry into force of the Staff Regulations; (iii) infringement of the principle of equality and non-discrimination and of the principle of proportionality; and (iv) infringement of the principle of legal certainty (lack of transitional measures) and the principle of legitimate expectations.

Appeal brought on 1 December 2021 by the European Commission against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 22 September 2021 in Joined Cases T-639/14 RENV, T-352/15 and T-740/17, Dimosia Epicheirisi Ilektrismou AE (DEI) v European Commission, supported by Mytilinaios AE — Omilos Epicheiriseon

(Case C-739/21 P)

(2022/C 37/32)

Language of the case: Greek

Parties

Appellant: European Commission (represented by: Antonios Bouchagiar and Paul-John Loewenthal)

Other parties to the proceedings: Dimosia Epicheirisi Ilektrismou AE (DEI) (applicant at first instance),

Mytilinaios AE — Omilos Epicheiriseon (intervener at first instance)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Third Chamber, Extended Composition) of 22 September 2021 in Joined Cases T-639/14 RENV, T-352/15 and T-740/17, *DEI* v *Commission*;

— give final judgment on the action at first instance in Case T-740/17 and dismiss it (in the alternative, give final judgment rejecting the third and fourth pleas for annulment and the first and second parts of the fifth plea for annulment and refer Case T-740/17 back to the General Court as regards the remaining pleas for annulment), and at the same time declare that the action in Cases T-639/14 RENV and T-352/15 has become devoid of purpose and there is no longer any need to adjudicate; and

— order the respondent and applicant at first instance to pay the costs of the proceedings.

Grounds of appeal and main arguments

The appellant raises a single ground of appeal:

According to the appellant, the General Court misinterpreted and misapplied Article 107(1) TFEU, because it considered that the Commission could not have ruled out the existence of an advantage on the basis of application of the market economy operator test in relation to DEI's recourse to arbitration with Mytilinaios, but should have examined whether the tariff determined by the arbitration tribunal in fact reflected the market price, because the arbitration tribunal should supposedly have been treated in the same way as an ordinary State court.

Owing to that error of law, the General Court erred in finding that the Commission should have entertained doubts within the meaning of Article 4(4) of Regulation 2015/1589, [1] on the basis of which it should have opened a formal investigation procedure under Article 108(2) TFEU regarding the tariff fixed by the arbitration tribunal.

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

GENERAL COURT

Judgment of the General Court of 24 November 2021 — CX v Commission

(Case T-743/16 RENV II) ([1])

(Civil service — Officials — Disciplinary measure — Removal from post — OLAF investigation — Unauthorised and clandestine negotiation of a contract — Conflict of interests — Certification of a non-compliant invoice — Rights of the defence — Right to be heard — Repeated absence of the applicant and his lawyer from the disciplinary hearing — Legal certainty — Legitimate expectations — Proportionality — Reasonable time — Principle ne bis in idem — Manifest error of assessment — Obligation to state reasons)

(2022/C 37/33)

Language of the case: French

Parties

Applicant: CX (represented by: É. Boigelot, lawyer)

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

Re:

Action pursuant to Article 270 TFEU seeking, first, annulment of Commission Decision of 16 October 2013 removing the applicant from his post without reduction of his entitlement to a retirement pension and, second, compensation for the harm allegedly suffered by the applicant on account of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders CX to bear his own costs and to pay those of the European Commission relating to the present proceedings and to the proceedings in Cases F-5/14 R, F-5/14, T-493/15 P, T-743/16 RENV and C-131/19 P.

([1]) OJ C 85, 22.3.2014 (case initially registered before the Civil Service Tribunal of the European Union under number F-5/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 24 November 2021 — Assi v Council

(Case T-256/19) ([1])

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Errors of assessment — Proportionality — Right to property — Right to pursue an economic activity — Misuse of powers — Obligation to state reasons — Rights of the defence — Right to a fair trial)

(2022/C 37/34)

Language of the case: English

Parties

Applicant: Bashar Assi (Damascus, Syria) (represented by: L. Cloquet, lawyer)

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

Re:

Application under Article 263 TFEU for annulment of Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 18 I, p. 13), of Council Implementing Regulation (EU) 2019/85 of 21 January 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 18 I, p. 4), of Council Decision (CFSP) 2019/806 of 17 May 2019 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 132, p. 36), of Council Implementing Regulation (EU) 2019/798 of 17 May 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 132, p. 1), of Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), and of Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria in so far as they concern Mr Bashar Assi;

2. Dismisses the action as to the remainder;

3. Orders the Council of the European Union to bear its own costs and to pay half of those of Mr Assi;

4. Orders Mr Assi to bear half of his own costs.

(1) OJ C 246, 22.7.2019.

Judgment of the General Court of 24 November 2021 — Foz v Council

(Case T-258/19) (1)

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Error of assessment — Proportionality — Right to property — Right to pursue an economic activity — Misuse of powers — Obligation to state reasons — Rights of the defence — Right to a fair trial)

(2022/C 37/35)

Language of the case: English

Parties

Applicant: Samer Foz (Dubai, United Arab Emirates) (represented by: L. Cloquet and J.P. Buyle, lawyers)

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

Re:

Application under Article 263 TFEU for annulment of Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 18 I, p. 13), of Council Implementing Regulation (EU) 2019/85 of 21 January 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 18 I, p. 4), of Council Decision (CFSP) 2019/806 of 17 May 2019 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 132, p. 36), of Council Implementing Regulation (EU) 2019/798 of 17 May 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 132, p. 1), of Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), and of Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Samer Foz to pay the costs.

(1) OJ C 238, 15.7.2019.

Judgment of the General Court of 24 November 2021 — Aman Dimashq v Council

(Case T-259/19) (1)

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Error of assessment — Proportionality — Right to property — Right to pursue an economic activity — Misuse of powers — Obligation to state reasons — Rights of the defence — Right to a fair trial — Right to effective judicial protection)

(2022/C 37/36)

Language of the case: English

Parties

Applicant: Aman Dimashq JSC (Damascus, Syria) (represented by: L. Cloquet and J.-P. Buyle, lawyers)

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

Re:

Application under Article 263 TFEU for annulment of Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 18 I, p. 13), of Council Implementing Regulation (EU) 2019/85 of 21 January 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 18 I, p. 4), of Council Decision (CFSP) 2019/806 of 17 May 2019 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 132, p. 36), of Council Implementing Regulation (EU) 2019/798 of 17 May 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 132, p. 1), of Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), and of Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1), in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Aman Dimashq JSC to pay the costs.

(1) OJ C 238, 15.7.2019.

Judgment of the General Court of 1 December 2021 — Team Beverage v EUIPO — Zurich Deutscher Herold Lebensversicherung (Team Beverage)

(Case T-359/20) ([1])

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

(2022/C 37/37)

Language of the case: German

Parties

Applicant: Team Beverage AG (Bremen, Germany) (represented by: O. Spieker, A. Schönfleisch, N. Willich and N. Achilles, lawyers)

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

Other party the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zurich Deutscher Herold Lebensversicherung AG (Bonn, Germany) (represented: F. Kramer, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 April 2020 (Case R 2727/2019-4), relating to opposition proceedings between Zurich Deutscher Herold Lebensversicherung and Team Beverage.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Team Beverage AG to pay the costs.

([1]) OJ C 255, 3.8.2020.

Judgment of the General Court of 24 November 2021 — KL v EIB

(Case T-370/20) ([1])

(Civil Service — EIB Staff — Health status — Fitness for work — Unjustified absence — Action for annulment — Concept of invalidity — Unlimited jurisdiction — Disputes of a financial character — Retrospective payment of invalidity pension — Action for damages)

(2022/C 37/38)

Language of the case: French

Parties

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

Defendant: European Investment Bank (represented by: G. Faedo and M. Loizou, acting as Agents, and by A. Duron, lawyer)

Re:

Application based on Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union and seeking, in the first place, annulment of the EIB's decisions of 8 February and 8 March 2019 declaring the applicant fit to work and absent without justification since 18 February 2019 and, in so far as is necessary, of the decision of the President of the EIB of 16 March 2020 maintaining those decisions; in the second place, an order requiring the EIB to make retrospective payment of the applicant's invalidity pension from 1 February 2019 onwards; and, in the third place, compensation for the damage allegedly suffered by the applicant as a result of those decisions.

Operative part of the judgment

The Court:

1. Annuls the decisions of the European Investment Bank (EIB) of 8 February and 8 March 2019 declaring KL fit to work and absent without justification since 18 February 2019 and the decision of the President of the EIB of 16 March 2020 maintaining those decisions;

2. Orders the EIB to pay an invalidity pension to KL from 1 February 2019 and default interest on that pension until such time as payment has been made in full, the default interest rate being the interest rate applied by the European Central Bank (ECB) for its principal refinancing operations and in force on the first day of the month in which the deadline for payment falls, increased by two percentage points, less the sums paid by way of remuneration to the applicant during the same period and in respect of which it would appear that, due to the payment of the invalidity pension, they were not payable to the applicant;

3. Dismisses the action as to the remainder;

4. Orders the EIB to pay the costs.

(1) OJ C 255, 3.8.2020.

Judgment of the General Court of 1 December 2021 — KY v Court of Justice of the European Union

(Case T-433/20) (1)

(Civil service — Officials — Pensions — Pension rights acquired before entry into the service of the EU — Transfer to the EU scheme — Crediting of additional pensionable years — Restitution of the amount of pension rights not taken into account in the EU's pension annuity scheme — Article 11(2) of Annex VIII to the Staff Regulations — The 'minimum subsistence figure' rule — Unjust enrichment)

(2022/C 37/39)

Language of the case: French

Parties

Applicant: KY (represented by: J.-N. Louis, lawyer)

Defendant: Court of Justice of the European Union (represented by: J. Inghelram and A. Ysebaert, acting as Agents)

Re:

Application under Article 270 TFEU for annulment of the implied decision, confirmed by the express decision of 10 October 2019, rejecting the request for restitution of the non-subsidised part of the pension rights acquired by the applicant before she took up her duties and transferred to the pension scheme of the institutions of the European Union.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders KY to pay the costs.

(1) OJ C 279, 24.8.2020.

Judgment of the General Court of 1 December 2021 — Inditex v EUIPO — Ffauf Italia (ZARA)

(Case T-467/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark ZARA — Earlier international word mark LE DELIZIE ZARA and earlier national figurative mark ZARA — Proof of genuine use of the earlier marks — Article 42(2) and (3) of Regulation (EC) No 207/2009 (now Article 47 (2) and (3) of Regulation (EU) 2017/1001) — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001))

(2022/C 37/40)

Language of the case: English

Parties

Applicant: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) (represented by: G. Marín Raigal and E. Armero Lavie, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ffauf Italia SpA (Riese Pio X, Italy) (represented by: P. Creta, A. Lanzarini, B. Costa and M. Lazzarotto, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 May 2020 (Case R 2040/2019-4), relating to opposition proceedings between Ffauf Italia and Inditex.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Industria de Diseño Textil, SA (Inditex) to pay the costs.

([1]) OJ C 304, 14.9.2020.

Judgment of the General Court of 24 November 2021 — YP v Commission

(Case T-581/20) ([1])

(Civil service — Officials — Promotion — 2019 promotion exercise — Decision not to promote — Article 45 of the Staff Regulations — Comparison of merits — Use of languages in the context of duties performed by officials assigned to linguistic duties and by officials assigned to duties other than linguistic — Seniority in grade — Presumption of innocence — Article 9 of Annex IX to the Staff Regulations — Duty to state reasons — Compliance with a settlement agreement)

(2022/C 37/41)

Language of the case: French

Parties

Applicant: YP (represented by: J. Van Rossum and J.-N. Louis, lawyers)

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

Re:

Application under Article 270 TFEU seeking annulment of the Commission's decision of 14 November 2019 not to include the applicant's name in the list of officials promoted in the 2019 promotion exercise.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders YP to pay the costs.

(1) OJ C 371, 3.11.2020.

Order of the General Court of 22 November 2021 — Garment Manufacturers Association in Cambodia v Commission

(Case T-454/20) (1)

(Action for annulment — Common commercial policy — Generalised arrangement of preferential customs tariffs established by Regulation (EU) No 978/2012 — Temporary withdrawal of trade preferences applicable to certain products originating in Cambodia for reason of serious and systematic violations of human rights — Lack of direct concern — Lack of individual concern — Inadmissibility)

(2022/C 37/42)

Language of the case: English

Parties

Applicant: Garment Manufacturers Association in Cambodia (Phnom Penh, Cambodia) (represented by: C. Borelli, S. Monti and C. Ziegler, lawyers)

Defendant: European Commission (represented by: A. Biolan and E. Schmidt, acting as Agents)

Re:

Application under Article 263 TFEU for the partial annulment of Commission Delegated Regulation (EU) 2020/550 of 12 February 2020, amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia (OJ 2020 L 127, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. Garment Manufacturers Association in Cambodia is ordered to pay the costs.

(1) OJ C 287, 31.8.2020.

Order of the General Court of 8 November 2021 — Satabank v ECB

(Case T-494/20) ([1])

(Economic and monetary policy — Prudential supervision of less significant credit institutions — Regulation (EU) No 1024/2013 — Specific tasks of the ECB — Refusal to carry out direct prudential supervision — Refusal to give instructions to the Competent Person — Action manifestly lacking any foundation in law)

(2022/C 37/43)

Language of the case: English

Parties

Applicant: Satabank plc (St Julians, Malta) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (ECB) (represented by: C. Hernández Saseta, F. Bonnard and A. Lefterov, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking annulment of the ECB's decision of 15 May 2020 refusing to ensure direct supervision of the applicant and to give instructions to the Competent Person concerning it.

Operative part of the order

1. The action is dismissed.

2. Satabank plc shall pay, in addition to its own costs, those incurred by the European Central Bank (ECB).

([1]) OJ C 371, 3.11.2020.

Order of the General Court of 18 November 2021 — RG v Council

(Case T-157/21) ([1])

(Action for annulment — Area of freedom, security and justice — Trade and Cooperation Agreement between the European Union and the Euratom, on the one hand, and the United Kingdom, on the other — Council decision on the signing and on provisional application of the Trade and Cooperation Agreement — Mechanism of surrender pursuant to an arrest warrant — Person arrested and detained in Ireland after the end of the transition period for the purpose of the execution of a European Arrest Warrant issued by the United Kingdom during the transition period — Act not of individual concern — Non-regulatory act — Inadmissibility)

(2022/C 37/44)

Language of the case: English

Parties

Applicant: RG (represented by: R. Purcell, Solicitor)

Defendant: Council of the European Union (represented by: A. Antoniadis, J. Ciantar and A. Stefanuc, acting as Agents)

Re:

Application under Article 263 TFEU for the partial annulment of Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ 2020 L 444, p. 2).

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the applications for leave to intervene submitted by Ireland and the European Commission.

3. RG is ordered to pay, in addition to his own costs, those incurred by the Council of the European Union, with the exception of those relating to the applications for leave to intervene.

4. RG, the Council, Ireland and the Commission shall each bear their own costs relating to the applications to intervene.

(1) OJ C 288, 14.6.2021.

Order of the Vice-President of the General Court of 26 November 2021 — Puigdemont i Casamajó and Others v Parliament

(Case T-272/21 R II)

(Interim measures — Institutional law — Member of Parliament — Privileges and immunities — Waiver of the parliamentary immunity of a Member of the Parliament — Application for suspension of operation — No urgency)

(2022/C 37/45)

Language of the case: English

Parties

Applicants: Carles Puigdemont i Casamajó (Waterloo, Belgium), Antoni Comín i Oliveres (Waterloo), Clara Ponsatí i Obiols (Waterloo) (represented by: P. Bekaert, G. Boye, J. Costa i Rosselló and S. Bekaert, lawyers)

Defendant: European Parliament (represented by: N. Lorenz, N. Görlitz and J.-C. Puffer, acting as Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by: S. Centeno Huerta, acting as Agent)

Re:

Application under Articles 278 and 279 TFEU for the suspension of operation of decisions P9_TA(2021)0059, P9_TA(2021)0060 and P9_TA(2021)0061 of the Parliament of 9 March 2021 on the request for waiver of the applicants' immunity.

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 25 November 2021 — VP v Cedefop

(Case T-534/21 R)

(Interim relief — Civil service — Members of the temporary staff — Application for interim measures — Inadmissibility)

(2022/C 37/46)

Language of the case: English

Parties

Applicant: VP (represented by: L. Levi, lawyer)

Defendant: European Centre for the Development of Vocational Training (represented by: T. Bontinck, A. Guillerme and T. Payan, lawyers)

Re:

Application under Articles 278 TFEU and 279 TFEU for, first, suspension of the application of the act of Cedefop's Executive Board to support the conclusion of its Executive Director that he re-establish the post of internal legal adviser and to initiate a selection procedure and for, second, an order to Cedefop that it keep vacant a temporary agent post at grade AD suitable for reinstating the applicant in the post of legal adviser.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 19 October 2021 — XH v Commission

(Case T-613/21)

(2022/C 37/47)

Language of the case: English

Parties

Applicant: XH (represented by: E. Auleytner, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 4 December 2020 concerning the refusal of the applicant's request for assistance and the decision of the Appointing Authority in response to the complaint filed by the applicant;

— annul the decision of 26 May 2021 concerning the opening of the invalidity procedure and the decision of the Appointing Authority in response to the complaint filed by the applicant;

— compensate the applicant for loss and damages;

— order the defendant to pay all costs and expenses.

Pleas in law and main arguments

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

1. First plea in law, alleging error of law and the irregularity of the contested procedure: the violation of Article 12a and 24 of the Staff Regulations in the light of Article 7 of the Charter of Fundamental Rights of the European Union, in particular violation of the duty of care and the principle of sound administration contained in Article 41 of the Charter.

2. Second plea in law, alleging the violation of Articles 12a, 24, and 59-60 of the Staff Regulations, by setting clearly unattainable objectives requiring the applicant to provide work during sickness leave with 100 % incapacity for work.

3. Third plea in law, alleging violation of Article 59 of the Staff Regulations in the light of Articles 12a and 24 thereof — opening of the invalidity procedure without the required amount of the sick leave at the moment of the opening.

4. Fourth plea in law, alleging the violation of Articles 7 and 8 of the Charter of Fundamental Rights.

Action brought on 4 October 2021 — Pharmadom v EUIPO — Wellbe Pharmaceuticals (WellBe PHARMACEUTICALS)

(Case T-644/21)

(2022/C 37/48)

Language of the case: English

Parties

Applicant: Pharmadom (Boulogne-Billancourt, France) (represented by: M-P. Dauquaire, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wellbe Pharmaceuticals S.A. (Warsaw, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark WellBe PHARMACEUTICALS — Application for registration No 17 151 176

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 July 2021 in Case R 1423/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

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 19 October 2021 — ClientEarth v Council

(Case T-682/21)

(2022/C 37/49)

Language of the case: English

Parties

Applicant: ClientEarth AISBL (Brussels, Belgium) (represented by: O. Brouwer, B. Verheijen and T. van Helfteren, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 9 August 2021, reference SGS 21/2870, received by the applicant on 9 August 2021, to refuse access to certain documents requested pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([1]) and Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies; ([2])

— order the defendant to pay the applicant's costs pursuant to Article 134 of the Rules of Procedure of the General Court, including the costs relating to any intervening parties.

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 errors of law and manifest error of assessment resulting in the misapplication of the protection of the decision-making process exemption (first subparagraph of Article 4(3) of Regulation 1049/2001), because the disclosure would not seriously undermine the invoked decision-making process.

   — The applicant argues that the Council failed to meet the high threshold set by the legal test, which is that disclosure must seriously undermine the decision-making process. Firstly, there was no decision-making process on substance remaining at the time of the contested decision. Moreover, the Council incorrectly relied on an argument that external interference from the public in the decision-making process of Regulation 1367/2006 would be problematic.

2. Second plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the protection of legal advice exemption (second indent of Article 4(2) of Regulation 1049/2001), because disclosure would not seriously undermine the protection of legal advice.

   — The Council failed to demonstrate that the requested document contains specific operational legal advice. Furthermore, the Council did not take into account relevant legal provisions and principles, as established in law and case-law, that the legislative process of the EU must be open and that a legal analysis of the legal service of an EU institution containing important general legal analyses relating to a legislative process for the adoption or revision of EU legislation should (when requested under Regulation 1049/2001) be disclosed.

3. Third plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the decision-making process exemption (first subparagraph of Article 4(3) of Regulation 1049/2001) and the protection of legal advice exemption (second indent of Article 4(2) of Regulation 1049/2001), because the contested decision failed to recognise and grant access on the basis of an overriding public interest.

   — The Council failed to recognise and grant access on the basis of an overriding public interest. In particular, an overriding public interest exists as the revision of Regulation 1367/2006 is of very significant importance for the future level of access to justice in environmental matters and the contested decision affects the applicant in a particular and significant way in carrying out its mission as an NGO which is serving a public interest.

4. Fourth plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the protection of the international relations exception (third indent of Article 4(1)(a) of Regulation 1049/2001).

— The Council failed to meet the high threshold set by the legal test to validly invoke the exception contained in Article 4(1)(a), third indent, of Regulation 1049/2001, namely that disclosure of a document should specifically and actually undermine the protection of international relations, and that the risk of the interest being undermined must be reasonably foreseeable and not be purely hypothetical.

5. Fifth plea in law, in subsidiary order, alleging errors of law and manifest error of assessment resulting in the misapplication of the obligation to provide partial access to documents (Article 4(6) Regulation 1049/2001).

— It is argued, finally, that the Council did not examine and grant partial access to the requisite legal standard. It has misapplied the legal test which requires the Council to assess whether every part of the requested document is covered by (any of) the exceptions invoked.

(1) OJ 2001 L 145, p. 43.
(2) OJ 2006 L 264, p. 13. Editorial note: the requested document relates to the decision-making process concerning the proposed revision of Regulation 1367/2006.

Action brought on 19 October 2021 — Leino-Sandberg v Council

(Case T-683/21)

(2022/C 37/50)

Language of the case: English

Parties

Applicant: Päivi Leino-Sandberg (Helsinki, Finland) (represented by: O. Brouwer, B. Verheijen and T. van Helfteren, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 9 August 2021, reference SGS 21/2869, received by the applicant on 9 August 2021, to refuse access to certain documents (1) requested pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents; (2)

— order the defendant to pay the applicant's costs pursuant to Article 134 of the Rules of Procedure of the General Court, including the costs relating to any intervening parties.

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 errors of law and manifest error of assessment resulting in the misapplication of the protection of the decision-making process exemption (first subparagraph of Article 4(3) of Regulation 1049/2001), because the disclosure would not seriously undermine the invoked decision-making process.

— The applicant argues that the Council failed to meet the high threshold set by the legal test, which is that disclosure must seriously undermine the decision-making process. Firstly, there was no decision-making process on substance remaining at the time of the contested decision. Moreover, the Council incorrectly relied on an argument that external interference from the public in the decision-making process of Regulation 1367/2006 would be problematic.

2. Second plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the protection of legal advice exemption (second indent of Article 4(2) of Regulation 1049/2001), because disclosure would not seriously undermine the protection of legal advice.

— The Council failed to demonstrate that the requested document contains specific operational legal advice. Furthermore, the Council did not take into account relevant legal provisions and principles, as established in law and case-law, that the legislative process of the EU must be open and that a legal analysis of the legal service of an EU institution containing important general legal analyses relating to a legislative process for the adoption or revision of EU legislation should (when requested under Regulation 1049/2001) be disclosed.

3. Third plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the decision-making process exemption (first subparagraph of Article 4(3) of Regulation 1049/2001) and the protection of legal advice exemption (second indent of Article 4(2) of Regulation 1049/2001), because the contested decision failed to recognise and grant access on the basis of an overriding public interest.

— The Council failed to recognise and grant access on the basis of an overriding public interest. In particular, an overriding public interest exists as the revision of Regulation 1367/2006 is of very significant importance for the future level of access to justice in environmental matters and the contested decision affects the applicant in a particular and significant way in exercising her task as researcher and academic which is serving a public interest.

4. Fourth plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the protection of international relations exception (third indent of Article 4(1)(a) of Regulation 1049/2001).

— The Council failed to meet the high threshold set by the legal test to validly invoke the exception contained in Article 4(1)(a), third indent, of Regulation 1049/2001, namely that disclosure of a document should specifically and actually undermine the protection of international relations and that the risk of the interest being undermined must be reasonably foreseeable and not purely hypothetical.

5. Fifth plea in law, in subsidiary order, alleging errors of law and manifest error of assessment resulting in the misapplication of the obligation to provide partial access to documents (Article 4(6) Regulation 1049/2001).

— The applicant argues, finally, that the Council did not examine and grant partial access to the requisite legal standard. It has misapplied the legal test which requires the Council to assess whether every part of the requested document is covered by (any of) the exceptions invoked.

([1]) Editorial note: the requested document relates to the decision-making process concerning the proposed revision of Regulation (EC) No 1367/2006 Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies (OJ 2006 L 264, p. 13).

([2]) OJ 2001 L 145, p. 43.

Action brought on 22 October 2021 — AL v Commission and OLAF

(Case T-692/21)

(2022/C 37/51)

Language of the case: English

Parties

Applicant: AL (represented by: R. Rata, lawyer)

Defendants: European Commission, European Anti-Fraud Office

Form of order sought

The applicant claims that the Court should:

— annul (i) the OLAF decision OCM (2021)22007 dated 22 July 2021; (ii) the OLAF decision OCM (2021)22008 dated 22 July 2021; (iii) the Commission decision (ref. Ares(2021)20233749) dated 22 March 2021 and (iv) the Commission decision (ref. Ares(2021)1610971) dated 3 March 2021;

— order the defendants to pay (i) EUR 1 127,66 retained in the absence of any PMO individual administrative decision in respect of the recovery; (ii) EUR 9 250,05 retained for May, June, July, August, and September 2021 and (iii) EUR 1 *ex aequo et bono* to compensate for the non-material harm suffered by the applicant as a consequence of the illegal conduct of the OLAF investigation OF/2016/0928/A1 which finally led to the removal from post of the applicant;

— order the defendants to bear their own costs and to pay the costs incurred by the applicant.

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 the violation by OLAF of Article 90(2) and of Article 90a of the Staff Regulations of Officials of the European Union, due to the rejection of the applicant's complaint dated 23 March 2021 as inadmissible based on consistent EU case-law according to which OLAF's final report and recommendations do not constitute acts producing legal effects.

2. Second plea in law, alleging the violation by OLAF of Article 90(2) and Article 90a of the aforesaid Staff Regulations, due to the rejection of the applicant's complaint dated 23 April 2021 as inadmissible. The applicant alleges that the complaint should have been declared admissible by OLAF because OLAF is a service of the Commission, therefore part of the Commission, and should have assessed the applicant's complaint.

3. Third plea in law, alleging the violation by the Commission of Article 90(2) of the aforesaid Staff Regulations in so far as the Commission issued an implicit rejection decision in relation to the applicant's complaint directed against the Commission's decision of 22 March 2021 (ref. ARES(2021)2023374) which confirmed the Commission's decision of 3 March 2021 (ref. ARES(2021)1610971).

Action brought on 25 October 2021 — NJ v Commission

(Case T-693/21)

(2022/C 37/52)

Language of the case: English

Parties

Applicant: NJ (represented by: C. Maczkovics, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare, in accordance with Article 265 TFEU, that the Commission unlawfully failed to act on its complaint of 19 April 2018 on State aid measure SA.50952(2018FC);

— order the Commission to take a position on the complaint registered under number SA.50952(2018FC) without delay;

— order the Commission to pay the whole costs, including those incurred by the applicant, even if, after the introduction of the present action, the Commission takes the measures that, according to the General Court, would make the action without object, or if the General Court rejects the application as inadmissible.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the Commission has violated its obligations under the Treaty on the Functioning of the European Union. In particular, it alleges the violation of Article 265 TFEU, as well as Article 12(1), second paragraph, of Regulation 2015/1589, ([1]) the requirement of diligent and impartial examination, the principle of sound administration and the principle of adoption of decisions in a reasonable time, because the Commission has not adopted any decision pursuant to Article 4(2), (3) or (4) of Regulation 2015/1589 more than three years and six months after the applicant lodged its complaint on State aid measure SA.50952(2018FC). The applicant argues that the Commission should have adopted such a decision within a period of twelve months, in conformity with its Code of Best Practice for the conduct of State aid control procedures, ([2]) or at least within a reasonable time.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).
([2]) Code of Best Practice for the conduct of State aid control procedures (OJ 2009 C 136, p. 13).

Action brought on 31 October 2021 — Peace United v EUIPO — 1906 Collins (MY BOYFRIEND IS OUT OF TOWN)

(Case T-699/21)

(2022/C 37/53)

Language in which the application was lodged: French

Parties

Applicant: Peace United Ltd (London, United Kingdom) (represented by: M. Artzimovitch, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: 1906 Collins LLC (Miami, Florida, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark MY BOYFRIEND IS OUT OF TOWN — EU trade mark No 11 352 804

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 July 2021 in Case R 276/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as, as a result of various errors of assessment in fact and in law, as well as a failure to fulfil the duty of good administration, the Board of Appeal found that EU trade mark No 11 352 804, MY BOYFRIEND IS OUT OF TOWN, had not been put to genuine use during the period at issue for the services claimed in Classes 41 and 43;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 63(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in that the Board of Appeal erred in its assessment of the abusive nature of the action for revocation;

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in that the Board of Appeal erred in its assessment of the genuine use of the trade mark.

Action brought on 3 November 2021 — Balaban v EUIPO (Stahlwerk)

(Case T-705/21)

(2022/C 37/54)

Language of the case: German

Parties

Applicant: Okan Balaban (Bornheim, Germany) (represented by: T. Schaaf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'Stahlwerk' — Application for registration No 18 235 592

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 September 2021 in Case R 77/2021-1

Form of order sought

The applicant claims that the Court should:

— annul the defendant's refusal decision of 18 November 2020 in respect of application number 18 235 592 as well as the contested decision, in so far as the application was rejected in part, and order the defendant to register the trade mark for all goods and services sought by the application;

— order EUIPO to pay the costs.

Pleas in law

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

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

Action brought on 3 November 2021 — Balaban v EUIPO (Stahlwerkstatt)

(Case T-706/21)

(2022/C 37/55)

Language of the case: German

Parties

Applicant: Okan Balaban (Bornheim, Germany) (represented by: T. Schaaf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'Stahlwerkstatt' — Application for registration No 18 219 170

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 September 2021 in Case R 1987/2020-1

Form of order sought

The applicant claims that the Court should:

— change the defendant's refusal decision of 27 August 2020 and the contested decision and order the defendant to register the trade mark for education and training services in Class 41;

— order EUIPO to pay the costs.

Pleas in law

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

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

Action brought on 5 November 2021 — Cellnex Telecom and Retevisión I v Commission

(Case T-715/21)

(2022/C 37/56)

Language of the case: Spanish

Parties

Applicants: Cellnex Telecom, SA (Madrid, Spain) and Retevisión I, SA (represented by: J. Buendía Sierra, A. Lamadrid de Pablo and N. Bayón Fernández, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— admit and uphold the pleas for annulment raised in their application;

— annul the Commission Decision of 10 June 2021 on the State aid SA.28599 (C 23/2010) (ex NN 36/2010, ex CP 163/2009) implemented by Spain for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha); ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest infringement of the procedure laid down in Article 108(2) TFEU and a breach of the procedural rights that interested parties derive from EU law.

— In that regard, the applicants submit that that infringement occurred because the decision at issue was adopted without a new opening decision being adopted, or the opening decision which preceded the 2013 decision being amended, or the Commission having first informed the applicants of its preliminary selectivity analysis.

2. Second plea in law, alleging an error of law in the application of Article 107(1) TFEU in relation to the notion of selectivity, infringement of the burden of proof and failure to state reasons.

— In that regard, the applicants submit that the Commission errs in its 'primary' selectivity analysis by stating that the system of reference is 'the normal market conditions under which companies should operate', including all undertakings and sectors of the economy. The Commission errs in its 'subsidiary' selectivity analysis by stating that terrestrial and satellite technologies are in comparable situations when delivering digital television signal to what the decision at issue refers to as Area II.

([1]) OJ 2021 L 417, p. 1.

Action brought on 16 November 2021 — Společnost pro eHealth databáze v Commission

(Case T-731/21)

(2022/C 37/57)

Language of the case: Czech

Parties

Applicant: Společnost pro eHealth database, a.s. (Prague, Czech Republic) (represented by: P. Konečný, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2021) 6597 of 2 September 2021,

— declare that the defendant is to bear its own costs and order it to pay the costs incurred by the applicant in the present proceedings.

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 infringement of the prohibition on retroactivity and the incorrect use of stricter conditions in connection with participation in the project.

— The applicant claims that the defendant cannot refer to obligations stemming from a non-binding document, of whose existence the contractual parties were not aware and to the application of which they did not at any point agree.

— The applicant further argues that the defendant referred to the obligations stemming from that non-binding document in breach of the contract concerned on the provision of the grant.

— The applicant also argues that the defendant infringed the principle of non-retroactivity when it referred to the use of stricter formal requirements stemming from documents not drawn up until after the contract on the provision of the grant was signed.

2. Second plea in law, alleging infringement of the principle of lawfulness of a legal measure on account of a failure to take into account the evidence provided.

   — The applicant claims that the defendant failed to take into account the evidence provided by the applicant in the final audit report, although it should have done so, and that it thereby infringed the principle of the lawfulness of a legal measure.

   — The applicant further claims that the evidence provided was furnished on the basis of a request by the auditor.

3. Third plea in law, alleging infringement of the principle of the lawfulness of a legal measure based on errors in calculation.

   — The applicant claims that the defendant erred in the determination of the sum on the basis of which the final sum to be returned to the defendant by the applicant was calculated.

   — The applicant objects that, were it to return the sum calculated by the defendant, it will return a sum that was never provided to it and it will therefore refund the defendant an essentially higher sum.

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

   — The applicant claims that it should be awarded payment of personnel costs in the amount of, at least, the average remuneration of the corresponding employees in the years 2008-2011 in IT companies in the Czech Republic. It considers the failure to award such costs to be unfair and disproportionate conduct on the part of the defendant.

Action brought on 16 November 2021 — Asociación de Elaboradores de Cava de Requena v Commission

(Case T-732/21)

(2022/C 37/58)

Language of the case: Spanish

Parties

Applicant: Asociación de Elaboradores de Cava de Requena (Requena, Spain) (represented by: G. Guillem Carrau, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, on the basis of Article 263 TFEU, the publication of the communication of approval of a standard amendment to the product specification for 'Cava', PDO-ES-A0735-AM10, ([1]) published in accordance with Article 17(5) of Commission Delegated Regulation (EU) 2019/33 of 17 October 2018. ([2])

Pleas in law and main arguments

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

1. First plea in law, alleging failure to comply with an essential procedural requirement in the examination of the file on the amendment which is the subject of the present action, since the Commission was aware that the amendment was the subject of an action pending before the courts of the Kingdom of Spain and did not suspend the procedure, contrary to the case-law in force in relation to Article 47 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging breach of the rules governing the application of the Treaties, on the following grounds: the amendment was treated as a standard amendment, even though it should be identified as a 'Union' amendment under Article 14(1)(c) and (d) and related provisions (inter alia, Articles 15, 17 and 55) of Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 and Article 6 of Delegated Regulation (EU) 2019/34; ([3]) the publication at issue infringes the general principle of truthfulness, as regards optional labelling, arising from the requirement that the smaller geographical unit must be in the municipality of Requena, and the right of the consumer to be able to identify the origin of the product (Article 120 of Regulation (EU) No 1308/2013 ([4]) of the European Parliament and of the Council and Article 55(1) and (3) of Commission Delegated Regulation (EU) 2019/33 of 17 October 2018); the publication at issue infringes the rights acquired by the winemakers through almost 40 years of continuous use of the name CAVA DE REQUENA and the legal rules protecting those rights (Judgment of the Supreme Court of the Kingdom of Spain No 1893/1989 and enforcement decisions of 1991), and infringes Commission Delegated Regulation (EU) 2019/33 of 17 October 2018, Article 40 of which, by reference to Article 119 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council, makes it compulsory to indicate the provenance on the label, since it is not sufficient merely to indicate a postal code, contrary to what the Commission has alleged; the publication at issue infringes the principle of equal treatment vis-à-vis other producers of CAVA which have a smaller geographical unit and are able to indicate the geographical origin of the product to the consumer; the publication at issue infringes the Court's case-law on market access developed in the context of the free movement of goods (Article 34 *et seq*. TFEU) and allows the cumulative effect of demand in the CAVA market, which infringes Article 101 TFEU.

([1]) OJ 2021 C 369, p. 2.

([2]) Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation (OJ 2019 L 9, p. 2).

([3]) Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks (OJ 2019 L 9, p. 46).

([4]) 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).

Action brought on 17 November 2021 — The Chord Company v EUIPO — AVSL Group (CHORD)

(Case T-734/21)

(2022/C 37/59)

Language of the case: English

Parties

Applicant: The Chord Company Ltd (Wiltshire, United Kingdom) (represented by: A. Deutsch, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: AVSL Group Ltd (Manchester, United Kingdom)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark CHORD — European Union trade mark No 8 254 229

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 31 August 2021 in Case R 1664/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and/or the other party to the proceeding before the Board of Appeal to pay the costs incurred by the applicant for the General Court, appeal and the cancellation proceedings.

Pleas in law

— Infringement of Article 7(2) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 27(2) of Commission Delegated Regulation (EU) 2018/625 and Article 95 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the right to be heard pursuant to article 94(1) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 17 November 2021 — Aprile and Commerciale Italiana v EUIPO — DC Comics partnership (Device of a stylized depiction of a black bat inside a white oval frame)

(Case T-735/21)

(2022/C 37/60)

Language of the case: English

Parties

Applicants: Luigi Aprile (San Giuseppe Vesuviano, Italy), Commerciale Italiana Srl (Nola, Italy) (represented by: C. Saettel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DC Comics partnership (Burbank, California, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Device of a stylised depiction of a black bat inside a white oval frame) — European Union trade mark No 38 158

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 September 2021 in Case R 1447/2020-2

Form of order sought

The applicant claims that the Court should:

— find the application admissible;

— annul the contested decision;

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

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

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

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

Action brought on 19 November 2021 — Refractory Intellectual Property v EUIPO (e-tech)

(Case T-737/21)

(2022/C 37/61)

Language of the case: German

Parties

Applicant: Refractory Intellectual Property GmbH & Co. KG (Vienna, Austria) (represented by: J. Schmidt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark e-tech — Application for registration No 18 274 481

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 September 2021 in Case R 548/2021-4

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) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 19 November 2021 — Bora Creations v EUIPO (essence)

(Case T-738/21)

(2022/C 37/62)

Language of the case: German

Parties

Applicant: Bora Creations, SL (Andratx, Spain) (represented by: R. Lange and M. Ebner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark essence — Application for registration No 18 269 704

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 September 2021 in Case R 693/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and register the EU trade mark applied for;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) and Article 7(2) 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.

Action brought on 22 November 2021 — LG Electronics v EUIPO — ZTE Deutschland (V10)

(Case T-741/21)

(2022/C 37/63)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Bölling, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ZTE Deutschland (Düsseldorf, Germany)

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 V10 — European Union trade mark No 14 328 892

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 September 2021 in Case R 2101/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it rejects the applicant's appeal against the cancellation decision in relation only to the goods smart phones, mobile phones and wearable smart phones;

— order EUIPO to bear the costs of the proceedings.

Pleas in law

— Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) 207/2009 due to insufficient differentiation between invalidated goods;

— Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) 207/2009 due to inconsistent argumentation on the public's perception;

— Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) 207/2009 by finding that there is no intrinsic and inherent characteristic;

— Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) 207/2009 by finding that there is no easily recognizable characteristic;

— Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) 207/2009 by finding that there is no specific, precise and objective characteristic.

Action brought on 19 November 2021 — Preventicus v EUIPO (NIGHTWATCH)

(Case T-742/21)

(2022/C 37/64)

Language of the case: English

Parties

Applicant: Preventicus GmbH (Jena, Germany) (represented by: J. Zecher, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark NIGTHWATCH — Application for registration No 17 996 007 — Refusal — Request for conversion of an EU trade mark application into a national trade mark application for the United Kingdom

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 September 2021 in Case R 1241/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— orders the EUIPO to pay the costs incurred in the proceedings before the General Court and the costs incurred during the appeal and examination procedures before the EUIPO.

Pleas in law

— Infringement of Article 139 (1) in conjunction with Article 37 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the right to a fair and timely handling of the matter pursuant to Article 41(1) of the Charter of fundamental rights of the European Union

— Infringement of the right to be heard pursuant to Article 41(2) of the Charter of fundamental rights of the European Union.

Action brought on 22 November 2021 — Ryanair v Commission

(Case T-743/21)

(2022/C 37/65)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 16 July 2021 on State aid SA. 57369 (2020/N) — Portugal — *Rescue aid to TAP SGPS*; ([1]) and

— order the defendant 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 that the defendant erred in law and manifestly erred in its assessment by claiming that the State aid falls within the material scope of the R&R Guidelines, without correctly determining whether the applicant's difficulties are too serious to be dealt with by itself, and are intrinsic or the result of an arbitrary allocation of costs within the group to which it belongs.

2. Second plea in law, alleging that the defendant misapplied Article 107(3)(c) TFEU. It is argued that the defendant's review of the satisfaction of the compatibility condition that aid should contribute to an objective of common interest and its assessment of the rescue aid's appropriateness and proportionality and of its negative effects are flawed by errors in law and manifest errors of assessment.

3. Third plea in law, alleging that the contested decision violates the principles of non-discrimination and free provision of services (applied to air transport through Regulation (EC) No 1008/2008 ([2])) and also the principle of free establishment.

4. Forth plea in law, alleging that the defendant failed to initiate a formal investigation procedure despite serious difficulties and violated the applicant's procedural rights.

5. Fifth plea in law, alleging that the contested decision violates the Commission's duty to state reasons pursuant to Article 296(2) TFEU.

([1]) OJ 2021 C 345, p. 1.

([2]) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance) (OJ 2008 L 293, p. 3–20).

Action brought on 24 November 2021 — Medela v EUIPO (MAXFLOW)

(Case T-744/21)

(2022/C 37/66)

Language of the case: German

Parties

Applicant: Medela Holding AG (Baar, Switzerland) (represented by: M. Hartmann and S. Fröhlich, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark MAXFLOW — Application for registration No 18 328 426

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 August 2021 in Case R 876/2021-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(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.

Action brought on 22 November 2021 — Rotkäppchen-Mumm Sektkellereien v EUIPO — Cantina San Donaci (Passo Lungo)

(Case T-745/21)

(2022/C 37/67)

Language of the case: English

Parties

Applicant: Rotkäppchen-Mumm Sektkellereien GmbH (Freyburg, Germany) (represented by: K. Schmidt-Hern and A. Lubberger, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cantina Sociale Cooperativa San Donaci (San Donaci, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark Passo Lungo — Application for registration No 18 082 770

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 September 2021 in Case R 130/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Articles 46(1)(a) and 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 26 November 2021 — Borussia VfL 1900 Mönchengladbach v EUIPO — Neng (Fohlenelf)

(Case T-747/21)

(2022/C 37/68)

Language in which the application was lodged: German

Parties

Applicant: Borussia VfL 1900 Mönchengladbach GmbH (Mönchengladbach, Germany) (represented by: R. Kitzberger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: David Neng (Brüggen, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'Fohlenelf' — EU trade mark No 12 246 898

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 September 2021 in Case R 2126/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings and the costs of the applicant, including the costs incurred in the previous proceedings.

Pleas in law

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

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

— Infringement of Article 97(1)(d) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 26 November 2021 — Gerhard Grund Gerüste v EUIPO — Josef Grund Gerüstbau (Josef Grund Gerüstbau)

(Case T-749/21)

(2022/C 37/69)

Language in which the application was lodged: German

Parties

Applicant: Gerhard Grund Gerüste (Kamp-Lintfort, Germany) (represented by: P. Lee, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Josef Grund Gerüstbau GmbH (Erfurt, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark Josef Grund Gerüstbau — EU trade mark No 17 372 178

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 22 September 2021 in Case R 1925/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and declare EU trade mark No 17 372 178 invalid in its entirety;

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

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 29 November 2021 — Associação do Socorro e Amparo v EUIPO — De Bragança (quis ut Deus)

(Case T-752/21)

(2022/C 37/70)

Language in which the application was lodged: Portuguese

Parties

Applicant: Associação do Socorro e Amparo (Lisbon, Portugal) (represented by: J. Motta Veiga, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Duarte Pio De Bragança (Sintra, Portugal)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark quis ut Deus — European Union trade mark No 9 131 566

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 October 2021 in Case R 581/2021-4

Form of order sought

The applicant claims that the General Court should:

— uphold the present action and replace the decision of the Fourth Board of Appeal with a decision declaring European Union trade mark No 9 131 566 invalid in respect of all goods and services protected by the mark on the basis of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, on the grounds that the mark has not been put to genuine use for a continuous period of five years;

— order the defendant to pay the costs and other expenses incurred in the proceedings, including lawyers' fees the amount of which is to be determined subsequently.

Plea in law

Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 1 December 2021 — Illumina/Commission

(Case T-755/21)

(2022/C 37/71)

Language of the case: English

Parties

Applicant: Illumina, Inc. (Wilmington, Delaware, United States) (represented by: D. Beard, Barrister-at-law, and P. Chappatte, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 29 October 2021 in case COMP/M.10493 taken pursuant to Art. 8(5)(a) of Council Regulation No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation) ([1]) (i) finding that Illumina implemented the acquisition of GRAIL in breach of Art. 7 EUMR; (ii) imposing on Illumina and GRAIL the interim measures set out in section 4.7 of the decision; and (iii) requiring Illumina and GRAIL to implement or procure the implementation of such measures immediately, failing which periodic penalties shall be imposed (the Decision); and

— order the Commission to pay the costs of the present proceedings.

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 the Decision is outside Commission competence because Art 7 EUMR did not apply. In particular:

   — The Commission's power under Art. 8(5) EUMR to adopt the Decision depended on the concentration having been implemented in contravention of Art. 7.

   — If Illumina's challenge in Case T-227/21 to the referral decision is upheld and the referral decisions are annulled, then Illumina was never subject to the obligation under Art. 7 EUMR to suspend implementation of the concentration and the Commission accordingly lacked competence to adopt the Decision or any part of it.

2. Second plea in law, alleging the provisions in the Decision regarding funding are disproportionate. In particular:

   — The requirement in the Decision that Illumina provide funding for GRAIL on terms that prevent Illumina from knowing the purpose to which the funds are being put is disproportionate because Illumina has a pressing need for such information to comply with other legal obligations.

   — The Commission's concerns could readily be addressed through much less intrusive measures.

3. Third plea in law, alleging the Decision is disproportionate in its treatment of Illumina's pre-existing contractual obligations and/or the Commission has failed to provide adequate reasons under Art. 296 TFUE and Art. 41 of the Charter of Fundamental Rights of the European Union. In particular:

   — The Commission's reasoning is circular and therefore breaches the duty to state adequately the reasons on which its decision is based.

   — The Decision disproportionately purports to require Illumina to breach pre-existing contractual obligations to provide information to particular holders of financial instruments.

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

Action brought on 2 December 2021 — Activa — Grillküche v EUIPO — Targa (Grilling apparatus)

(Case T-757/21)

(2022/C 37/72)

Language of the case: English

Parties

Applicant: Activa — Grillküche GmbH (Selb, Germany) (represented by: F. Stangl and M. Würth, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Targa GmbH (Soest, Germany)

Details of the proceedings before EUIPO

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

Design at issue: European Union design No 3 056 449-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 4 October 2021 in Case R 1651/2020-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety and the decision No. ICD 104479 of the Invalidity Division of EUIPO of 12 June 2020 in its entirety;

— declare the design at issue invalid; and

— order EUIPO and the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law

— Infringement of Article 7(2) of Council Regulation (EC) No 6/2002;

— Infringement of Article 63(1), first sentence, in conjunction with Article 7(2) of Council Regulation (EC) No 6/2002;

— Infringement of Article 63(1), second sentence, of Council Regulation (EC) No 6/2002.

Action brought on 6 December 2021 — Société des produits Nestlé v EUIPO — The a2 Milk Company (A2)

(Case T-759/21)

(2022/C 37/73)

Language of the case: English

Parties

Applicant: Société des produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz and J. Thomsen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: The a2 Milk Company Ltd (Auckland, New Zealand)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark A2 — International registration designating the European Union No 1 438 650

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 October 2021 in Case R 2447/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of the EUIPO of 17 November 2020, and reject opposition no. B 3080425 in its entirety and allow international registration no. WO 1438650 to proceed for designation in the European Union and;

— order EUIPO to pay the costs of the proceedings before the General Court and order the potential intervener to pay the costs before the EUIPO in the opposition and appeal proceedings.

Plea in law

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

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