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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court of 1 December 2021 (request for a preliminary ruling from the Satversmes tiesa — Latvia) — Pilsētas zemes dienests AS

(Case C-598/20) [1]

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Harmonisation of fiscal legislation — Common system of value added tax (VAT) — Directive 2006/112/EC — Exemptions — Article 135(1)(l) and Article 135(2) — Leasing and letting of immovable property — Exclusion from exemption of a compulsory land lease to owners of buildings — Principle of fiscal neutrality)

(2022/C 95/02)

Language of the case: Latvian

Referring court

Satversmes tiesa

Parties to the main proceedings

Applicant: Pilsētas zemes dienests AS

Other party: Latvijas Republikas Saeima

Operative part of the order

Article 135(1)(l) and Article 135(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding national legislation under which the leasing of land under a compulsory lease scheme is excluded from the exemption from value added tax.

[1] OJ C 35, 1.2.2021.

Order of the Court (Eighth Chamber) of 17 November 2021 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'AKZ — Burgas' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Burgas

(Case C-602/20) [1]

(Reference for a preliminary ruling — Social security contributions — Repayment of contributions wrongly paid — Limitation of interest on repayment — National procedural autonomy — Principle of equivalence — Principle of effectiveness — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Manifest inadmissibility)

(2022/C 95/03)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: 'AKZ — Burgas' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Burgas

Intervener: Varhovna administrativna prokuratura na Republika Bulgaria

Operative part of the order

The request for a preliminary ruling made by the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) by decision of 30 September 2020 is manifestly inadmissible.

(1) OJ C 28, 25.1.2021.

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

(Case C-647/20) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Direct taxation — Taxation of capital gains on immovable property — Articles 63, 64 and 65 TFEU — Free movement of capital — Higher tax liability on capital gains on immovable property made by residents of third countries)

(2022/C 95/04)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: XG

Defendant: Autoridade Tributária e Aduaneira

Operative part of the order

Articles 63 and 65(1) TFEU must be interpreted as precluding legislation of a Member State relating to personal income tax, which makes capital gains arising from the sale of immovable property situated in that Member State, by a resident of a third country, subject to a higher tax liability than that which would be applied, for the same type of transaction, to capital gains made by a resident of that Member State.

(1) OJ C 53, 15.2.2021.

Order of the Court (Sixth Chamber) of 6 December 2021 (request for a preliminary ruling from the Ráckevei Járásbíróság — Hungary) — EP, TA, FV, TB v ERSTE Bank Hungary Zrt.

(Case C-670/20) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Loan agreement denominated in a foreign currency — Terms exposing the borrower to a foreign exchange risk — Article 4(2) — Requirements of intelligibility and transparency — Lack of effect of the declaration by the consumer under which he or she is fully aware of the potential risks arising from a loan denominated in a foreign currency — Contractual term that is in plain, intelligible language)

(2022/C 95/05)

Language of the case: Hungarian

Referring court

Ráckevei Járásbíróság

Parties to the main proceedings

Applicants: EP, TA, FV, TB

Defendant: ERSTE Bank Hungary Zrt.

Operative part of the order

Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the requirement of transparency of terms of a loan agreement denominated in a foreign currency, which expose the borrower to a foreign exchange risk, is satisfied only where the seller or supplier has provided him or her with accurate and sufficient information on the foreign exchange risk, to enable an average consumer, who is reasonably well informed and reasonably observant and circumspect to evaluate the risk of potentially significant adverse economic consequences of such terms on his or her financial obligations throughout the term of the agreement. In that regard, the fact that the consumer declares himself or herself to be fully aware of the potential risks arising from entering into that agreement does not, in itself, have any relevance for the purposes of the assessment of whether the seller or supplier has met that requirement of transparency.

([1]) OJ C 98, 22.3.2021.

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

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

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Direct taxation — Taxation of capital gains on immovable property — Articles 63 and 65 TFEU — Free movement of capital — Discrimination — Higher tax liability on capital gains on immovable property made by non-residents — Election for taxation under the same procedures as residents)

(2022/C 95/06)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: VX

Defendant: Autoridade Tributária e Aduaneira

Operative part of the order

Articles 63 and 65(1) TFEU must be interpreted as precluding legislation of a Member State relating to personal income tax which, as regards capital gains arising from the sale of immovable property situated in that Member State, systematically makes non-residents subject to a higher tax liability than that which would be applied, for the same type of transaction, to capital gains made by residents, notwithstanding the option available to non-residents to opt for the regime applicable to residents.

(1) OJ C 252, 28.6.2021

Order of the Court (Sixth Chamber) of 26 November 2021 (request for a preliminary ruling from the Budapest Környéki Törvényszék — Hungary) — WD v Agrárminiszter

(Case C-273/21) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Agriculture — Common Agricultural Policy — Regulation (EU) No 1307/2013 — Direct support schemes — Article 4(1)(c) and (e) — Article 32(2) — Single area payment application — Concept of 'eligible hectare' — Land classified as an aerodrome according to the land register — Actual use for agricultural purposes)

(2022/C 95/07)

Language of the case: Hungarian

Referring court

Budapest Környéki Törvényszék

Parties to the main proceedings

Applicant: WD

Defendant: Agrárminiszter

Operative part of the order

Article 4(1)(c) and (e) and Article 32(2) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 must be interpreted as meaning that an area classified, under national law, as an aerodrome, but on which no activity relating to an aerodrome is carried out, must be classified as an agricultural area used for agricultural purposes since it is in fact used as permanent pasture for livestock

(1) OJ C 252, 28.6.2021.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 20 August 2021 — Finanzamt X v Y

(Case C-516/21)

(2022/C 95/08)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Defendant: Finanzamt X

Applicant: Y

Question referred

Does the tax liability for the leasing of permanently installed equipment and machinery pursuant to Article 135(2), first subparagraph, point (c) of Directive 2006/112/EC [1] ('the VAT Directive') cover

— only the isolated (independent) leasing of such equipment and machinery or also

— the leasing (letting) of such equipment and machinery which is exempt by virtue of (and as a supply ancillary to) a letting of a building, effected between the same parties, pursuant to Article 135(1)(l) of the VAT Directive?

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

Appeal brought on 21 September 2021 by AM.VI. Srl, Quinam Limited, the successor in law to Fashioneast Sàrl against the judgment of the General Court (Third Chamber) delivered on 14 July 2021 in Case T-297/20, Fashioneast and AM.VI. v EUIPO — Moschillo (RICH JOHN RICHMOND)

(Case C-599/21 P)

(2022/C 95/09)

Language of the case: English

Parties

Appellants: AM.VI. Srl, Quinam Limited, the successor in law to Fashioneast Sàrl (represented by: A. Camusso, M. Baghetti, avvocati, A. Boros, ügyvéd)

Other party to the proceedings: European Union Intellectual Property Office

By order of 17 January 2022, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that AM. VI. and Quinam Limited shall bear their own costs

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Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 30 September 2021 — Gmina O. v Dyrektor Krajowej Informacji Skarbowej

(Case C-612/21)

(2022/C 95/10)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Gmina O.

Defendant: Dyrektor Krajowej Informacji Skarbowej

Questions referred

1. Must the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) in particular Articles 2(1), 9(1) and 13(1) thereof, be interpreted as meaning that a municipality (a public authority) acts as a taxable person for VAT purposes in carrying out a project whose objective is to increase the proportion of renewable energy sources by means of entering into a civil-law contract with property owners, under which the municipality undertakes to install renewable energy source systems on their property and — after a certain period of time has elapsed — to transfer the ownership of those systems to the property owners?

2. If the answer to the first question is in the affirmative, must European co-financing received by a municipality (a public authority) for the implementation of projects involving renewable energy sources be included in the taxable amount within the meaning of Article 73 of that directive?

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

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 5 October 2021 — Dyrektor Krajowej Informacji Skarbowej v Gmina L.

(Case C-616/21)

(2022/C 95/11)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Dyrektor Krajowej Informacji Skarbowej

Respondent: Gmina L.

Question referred

Must the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) in particular Articles 2(1), 9(1) and 13(1) of that directive, be interpreted as meaning that a municipality (a public authority) is to be regarded as a taxable person for VAT purposes in respect of the implementation of a programme for the removal of asbestos from properties located within that municipality which are owned by residents who do not incur any expense in that regard? Or is the implementation of such a programme included in the activities of the municipality as a public authority which are undertaken in order to fulfil its tasks of protecting the health and life of its residents and protecting the environment, in which connection the municipality is not regarded as a taxable person for VAT purposes?

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

Request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie (Poland) lodged on 30 September 2021 — AR and Others v PK SA and Others

(Case C-618/21)

(2022/C 95/12)

Language of the case: Polish

Referring court

Sąd Rejonowy dla m.st. Warszawy w Warszawie

Parties to the main proceedings

Applicants: AR and Others

Defendants: PK SA and Others

Questions referred

1. Must Article 18 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, ([1]) in conjunction with Article 3 thereof, be interpreted as precluding national legislation under which an injured party who exercises a direct right of action for repair of the damage to his/her vehicle in connection with the use of motor vehicles against an insurance undertaking covering the person responsible for the accident, as regards civil liability, can obtain from the insurance undertaking only compensation for the real and actual loss to his/her property, that it is to say, the difference between the value of the vehicle in its state before the accident and the value of the damaged vehicle, plus the reasonable costs actually incurred in repairing the vehicle and any other reasonable costs actually incurred as a result of the accident, whereas if he/she sought a remedy directly from the person responsible, he/she could opt to require the latter to restore the vehicle to its state before the damage occurred (repair of the damage by the person responsible or by a garage paid by that person), instead of claiming compensation?

2. If the answer to the previous question is in the affirmative, must Article 18 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, in conjunction with Article 3 thereof, be interpreted as precluding national legislation under which an injured party who exercises a direct right of action for repair of the damage to his/her vehicle in connection with the use of motor vehicles against an insurance undertaking covering the person responsible for the accident, as regards civil liability, can obtain from the insurance undertaking, instead of compensation for the real and actual loss to his/her property, that is to say, the difference between the value of the vehicle in its state before the accident and the value of the damaged vehicle, plus the reasonable costs actually incurred of repairing the vehicle and any other reasonable costs actually incurred as a result of the accident, only an amount corresponding to the costs of restoring the vehicle to its state before the damage, whereas if he/she sought a remedy directly from the person responsible, he/she could opt to require the latter to restore the vehicle to its state before the damage occurred (and not merely provide funds for that purpose), instead of claiming compensation?

3. If the answer to Question [1] is in the affirmative and the answer to Question [2] is in the negative, must Article 18 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, in conjunction with Article 3 thereof, be interpreted as precluding national legislation under which an insurance undertaking, to which the owner of a car damaged in motor vehicle traffic applied for payment of hypothetical costs which he/she has not incurred but would have had to incur if he/she had decided to restore the vehicle to its state before the accident, can:

   a. make that payment conditional on the injured party proving that he/she genuinely intends to have the vehicle repaired in a specific way, by a specific mechanic, at a specific price for parts and services, and to transfer the funds for that repair directly to that mechanic (or to the seller of the parts necessary for the repair), subject to reimbursement, if the purpose for which the funds were paid should not be fulfilled, and if not:

   b. make that payment conditional on the consumer undertaking to show, within an agreed period, that he/she has used the funds paid to repair the vehicle or to reimburse them to the insurance undertaking, and if not:

   c. after the payment of those funds and indication of the purpose of the payment (the manner in which they are used) and expiry of the necessary period during which the injured party was able to have the car repaired), require him/her to show that those funds have been spent on the repair or refunded

   — so as to rule out the possibility of the injured party enriching himself/herself as a result of the damage?

4. If the answer to Question [1] is in the affirmative and the answer to Question [2] is in the negative, must Article 18 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, in conjunction with Article 3 thereof, be interpreted as precluding national legislation under which the injured party, who is no longer the owner of the damaged car because he/she has sold it and received money in return, and thus can no longer have it repaired, cannot therefore claim from the insurance undertaking covering the person responsible for the accident, as regards civil liability, payment of the costs of the repair which would have been necessary to restore the damaged vehicle to the state before the damage, and his/her right of action is limited to claiming from the insurance undertaking compensation for the real and actual loss to his/her property, that it is to say, the difference between the value of the vehicle in its state before the accident and the amount obtained from the sale of the vehicle, plus the reasonable costs of repairing the vehicle actually incurred and any other reasonable costs actually incurred as a result of the accident?

(1) OJ 2009 L 263, p. 11.

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 11 October 2021 — TB

(Case C-628/21)

(2022/C 95/13)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Applicant: TB

Other parties to the proceedings: Castorama Polska Sp. z o.o., 'Knor' Sp. z o.o.

Questions referred

1. Should Article 8(1) read in conjunction with Article 4(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (1) be understood to refer to a measure to protect intellectual property rights only when the rightholder's intellectual property right has been confirmed in these or other proceedings?

   – if Question 1 is answered in the negative

2. Should Article 8(1) of the directive, read in conjunction with Article 4(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights be interpreted as meaning that it is sufficient to substantiate the fact that that measure refers to an existing intellectual property right, and not to prove that circumstance, especially in a case where a request for information about the origin and distribution networks of goods or services precedes the assertion of claims for compensation on account of an infringement of intellectual property rights?

(1) OJ 2004 L 157, p. 45.

Request for a preliminary ruling from the Tribunalul Bihor (Romania) lodged on 18 October 2021 — P.C.H. v Parchetul de pe lângă Tribunalul Bihor, Parchetul de pe lângă Curtea de Apel Oradea and Ministerul Public — Parchetul de pe lângă Înalta Curte de Casație și Justiție

(Case C-642/21)

(2022/C 95/14)

Language of the case: Romanian

Referring court

Tribunalul Bihor

Parties to the main proceedings

Applicant: P.C.H.

Defendants: Parchetul de pe lângă Tribunalul Bihor, Parchetul de pe lângă Curtea de Apel Oradea and Ministerul Public — Parchetul de pe lângă Înalta Curte de Casație și Justiție

Interested party: Consiliul Național pentru Combaterea Discriminării

Questions referred

1. Must Article 9(1) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [1] as regards the aspect of ensuring that judicial procedures are 'available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them', and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, as regards the aspect of guaranteeing the right to 'an effective remedy [and] a fair … hearing', be interpreted as precluding national legislation, such as that laid down in Article 211(c) of Legea dialogului social nr. 62/2011 (Law No 62/2011 on social dialogue), which provides that the three-year time limit for bringing a claim for compensation runs 'from the date on which the damage occurred', irrespective of whether or not the claimant was aware of the occurrence of the damage (and the extent thereof)?

2. Must Article 2(1) and (2) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, together with Article 3(1)(c), *in fine*, of that directive, be interpreted as precluding national legislation, such as that laid down in Article 1(2) of Legea-cadru nr. 330 din 5 noiembrie 2009 privind salarizarea unitară a personalului plătit din fonduri publice (Framework Law No 330 of 5 November 2009 on the uniform remuneration of staff paid from the public purse), as interpreted by Decizia nr. 7/2019 (Decision No 7/2019) (published in *Monitorul Oficial al României* — Official Journal of Romania — No 343 of 6 May 2019), given by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), ruling on an appeal on a point of law, in circumstances in which the claimant did not have the legal possibility of requesting an increase in his or her employment allowance on entering the judiciary at a date after the entry into force of [Framework Law No 330/2009], a legislative act which expressly provided that remuneration rights are to be and remain exclusively as provided in [that] law, thus creating remuneration discrimination as compared with his or her colleagues, including on the basis of the criterion of age, which means in fact that only older judges, who were appointed before January 2010 (who benefited from court rulings in the period from 2006 to 2009, the operative parts of which were subject to interpretation in 2019 pursuant to Decision [No 7/2019 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)]), received retroactive payment of remuneration rights (similar to those sought in the action which forms the subject matter of the present proceedings) during December 2019 and January 2020, in respect of the period from 2010 to 2015, even though during that period the claimant also acted as a prosecutor and performed the same work, under the same conditions and in the same institution?

3. Must the provisions of Directive 2000/78/EC be interpreted as precluding discrimination only where it is based on one of the criteria referred to in Article 1 of that directive or, on the contrary, do those provisions, possibly supplemented by other provisions of EU law, generally preclude one employee from being treated differently from another, in respect of remuneration, where he or she performs the same work, for the same employer, [during the] same period, and under the same conditions?

[1] OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Tribunalul Bihor (Romania) lodged on 18 October 2021 — F.O.L. v Tribunalul Cluj

(Case C-643/21)

(2022/C 95/15)

Language of the case: Romanian

Referring court

Tribunalul Bihor

Parties to the main proceedings

Applicant: F.O.L.

Defendant: Tribunalul Cluj

Questions referred

1. Must Article 9(1) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, ([1]) as regards the aspect of ensuring that judicial procedures are 'available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them', and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, as regards the aspect of guaranteeing the right to 'an effective remedy [and] a fair … hearing', be interpreted as precluding national legislation, such as that laid down in Article 211(c) of Legea dialogului social nr. 62/2011 (Law No 62/2011 on social dialogue), which provides that the three-year time limit for bringing a claim for compensation runs 'from the date on which the damage occurred', irrespective of whether or not the claimant was aware of the occurrence of the damage (and the extent thereof)?

2. Must Article 2(1) and (2) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, together with Article 3(1)(c), *in fine*, of that directive, be interpreted as precluding national legislation, such as that laid down in Article 1(2) of Legea-cadru nr. 330 din 5 noiembrie 2009 privind salarizarea unitară a personalului plătit din fonduri publice (Framework Law No 330 of 5 November 2009 on the uniform remuneration of staff paid from the public purse), as interpreted by Decizia nr. 7/2019 (Decision No 7/2019) (published in *Monitorul Oficial al României* — Official Journal of Romania — No 343 of 6 May 2019), given by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), ruling on an appeal on a point of law, in circumstances in which the claimant did not have the legal possibility of requesting an increase in his or her employment allowance on entering the judiciary at a date after the entry into force of [Framework Law No 330/2009], a legislative act which expressly provided that remuneration rights are to be and remain exclusively as provided in [that] law, thus creating remuneration discrimination as compared with his or her colleagues, including on the basis of the criterion of age, which means in fact that only older judges, who were appointed before January 2010 (who benefited from court rulings in the period from 2006 to 2009, the operative parts of which were subject to interpretation in 2019 pursuant to Decision [No 7/2019 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)]), received retroactive payment of remuneration rights (similar to those sought in the action which forms the subject matter of the present proceedings) during December 2019 and January 2020, in respect of the period from 2010 to 2015, even though during that period the claimant also acted as a judge and performed the same work, under the same conditions and in the same institution?

3. Must the provisions of Directive 2000/78/EC be interpreted as precluding discrimination only where it is based on one of the criteria referred to in Article 1 of that directive or, on the contrary, do those provisions, possibly supplemented by other provisions of EU law, generally preclude one employee from being treated differently from another, in respect of remuneration, where he or she performs the same work, for the same employer, [during the] same period, and under the same conditions?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Tribunalul Bihor (Romania) lodged on 18 October 2021 — M.I.A., P.R.-M., V.-C.I-C, F.C.R., P. (formerly T.) Ş-B., D.R., P.E.E. and F.I. v Tribunalul Cluj, Tribunalul Mureș, Tribunalul Hunedoara, Tribunalul Suceava and Tribunalul Galați

(Case C-644/21)

(2022/C 95/16)

Language of the case: Romanian

Referring court

Tribunalul Bihor

Parties to the main proceedings

Applicants: M.I.A., P.R.-M., V.-C.I-C, F.C.R., P. (formerly T.) Ş-B., D.R., P.E.E. and F.I.

Defendants: Tribunalul Cluj, Tribunalul Mureș, Tribunalul Hunedoara, Tribunalul Suceava and Tribunalul Galați

Interested party: Consiliul Național pentru Combaterea Discriminării

Questions referred

1. Must Article 9(1) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, ([1]) as regards the aspect of ensuring that judicial procedures are 'available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them', and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, as regards the aspect of guaranteeing the right to 'an effective remedy [and] a fair … hearing', be interpreted as precluding national legislation, such as that laid down in Article 211(c) of Legea dialogului social nr. 62/2011 (Law No 62/2011 on social dialogue), which provides that the three-year time limit for bringing claims for compensation runs 'from the date on which the damage occurred', irrespective of whether or not the claimants were aware of the occurrence of the damage (and the extent thereof)?

2. Must Article 2(1) and (2) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, together with Article 3(1)(c), *in fine*, of that directive, be interpreted as precluding national legislation, such as that laid down in Article 1(2) of Legea-cadru nr. 330 din 5 noiembrie 2009 privind salarizarea unitară a personalului plătit din fonduri publice (Framework Law No 330 of 5 November 2009 on the uniform remuneration of staff paid from the public purse), as interpreted by Decizia nr. 7/2019 (Decision No 7/2019) (published in *Monitorul Oficial al României* — Official Journal of Romania — No 343 of 6 May 2019), given by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), ruling on an appeal on a point of law, in circumstances in which the claimants did not have the legal possibility of requesting an increase in their employment allowance on entering the judiciary at a date after the entry into force of [Framework Law No 330/2009], a legislative act which expressly provided that remuneration rights are to be and remain exclusively as provided in [that] law, thus creating remuneration discrimination as compared with their colleagues, including on the basis of the criterion of age, which means in fact that only older judges, who were appointed before January 2010 (who benefited from court rulings in the period from 2006 to 2009, the operative parts of which were subject to interpretation in 2019 pursuant to Decision [No 7/2019 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)]), received retroactive payment of remuneration rights (similar to those sought in the action which forms the subject matter of the present proceedings) during December 2019 and January 2020, in respect of the period from 2010 to 2015, even though during that period the claimants also acted as judges and performed the same work, under the same conditions and in the same institutions?

3. Must the provisions of Directive 2000/78/EC be interpreted as precluding discrimination only where it is based on one of the criteria referred to in Article 1 of that directive or, on the contrary, do those provisions, possibly supplemented by other provisions of EU law, generally preclude one employee from being treated differently from another, in respect of remuneration, where he or she performs the same work, for the same employer, [during the] same period, and under the same conditions?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Tribunalul Bihor (Romania) lodged on 21 October 2021 — C.C.C., C.R.R. and U.D.M. v Tribunalul Cluj, Tribunalul Satu Mare, Tribunalul București, Tribunalul Bistrița-Năsăud, Tribunalul Maramureș and Tribunalul Sibiu

(Case C-645/21)

(2022/C 95/17)

Language of the case: Romanian

Referring court

Tribunalul Bihor

Parties to the main proceedings

Applicants: C.C.C., C.R.R. and U.D.M.

Defendants: Tribunalul Cluj, Tribunalul Satu Mare, Tribunalul București, Tribunalul Bistrița-Năsăud, Tribunalul Maramureș and Tribunalul Sibiu

Questions referred

1. Must Article 9(1) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, ([1]) as regards the aspect of ensuring that judicial procedures are 'available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them', and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, as regards the aspect of guaranteeing the right to 'an effective remedy [and] a fair … hearing', be interpreted as precluding national legislation, such as that laid down in Article 211(c) of Legea dialogului social nr. 62/2011 (Law No 62/2011 on social dialogue), which provides that the three-year time limit for bringing claims for compensation runs 'from the date on which the damage occurred', irrespective of whether or not the claimants were aware of the occurrence of the damage (and the extent thereof)?

2. Must Article 2(1) and (2) of Council Directive 2000/78/[E]C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, together with Article 3(1)(c), *in fine*, of that directive, be interpreted as precluding national legislation, such as that laid down in Article 1(2) of Legea-cadru nr. 330 din 5 noiembrie 2009 privind salarizarea unitară a personalului plătit din fonduri publice (Framework Law No 330 of 5 November 2009 on the uniform remuneration of staff paid from the public purse), as interpreted by Decizia nr. 7/2019 (Decision No 7/2019) (published in *Monitorul Oficial al României* — Official Journal of Romania — No 343 of 6 May 2019), given by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), ruling on an appeal on a point of law, in circumstances in which the claimants did not have the legal possibility of requesting an increase in their employment allowance on entering the judiciary at a date after the entry into force of [Framework Law No 330/2009], a legislative act which expressly provided that remuneration rights are to be and remain exclusively as provided in [that] law, thus creating remuneration discrimination as compared with their colleagues, including on the basis of the criterion of age, which means in fact that only older judges, who were appointed before January 2010 (who benefited from court rulings in the period from 2006 to 2009, the operative parts of which were subject to interpretation in 2019 pursuant to Decision [No 7/2019 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)]), received retroactive payment of remuneration rights (similar to those sought in the action which forms the subject matter of the present proceedings) during December 2019 and January 2020, in respect of the period from 2010 to 2015, even though during that period the claimants also acted as judges and performed the same work, under the same conditions and in the same institutions?

3. Must the provisions of Directive 2000/78/EC be interpreted as precluding discrimination only where it is based on one of the criteria referred to in Article 1 of that directive or, on the contrary, do those provisions, possibly supplemented by other provisions of EU law, generally preclude one employee from being treated differently from another, in respect of remuneration, where he or she performs the same work, for the same employer, [during the] same period, and under the same conditions?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 8 November 2021 — ZQ v Medizinischer Dienst der Krankenversicherung Nordrhein, a body governed by public law

(Case C-667/21)

(2022/C 95/18)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: ZQ

Defendant: Medizinischer Dienst der Krankenversicherung Nordrhein, Körperschaft des öffentlichen Rechts

Questions referred

1. Is Article 9(2)(h) of Regulation (EU) 2016/679 ([1]) (General Data Protection Regulation; 'the GDPR') to be interpreted as prohibiting a medical service of a health insurance fund from processing its employee's data concerning health which are a prerequisite for the assessment of that employee's working capacity?

2. If the Court answers Question 1 in the negative, with the consequence that an exception to the prohibition on the processing of data concerning health laid down in Article 9(1) of the GDPR is possible under Article 9(2)(h) of the GDPR: in a case such as the present one, are there further data protection requirements, beyond the conditions set out in Article 9(3) of the GDPR, that must be complied with, and, if so, which ones?

3. If the Court answers Question 1 in the negative, with the consequence that an exception to the prohibition on the processing of data concerning health laid down in Article 9(1) of the GDPR is possible under Article 9(2)(h) of the GDPR: does the permissibility or lawfulness of the processing of data concerning health depend on the fulfilment of at least one of the conditions set out in Article 6(1) of the GDPR?

4. Does Article 82(1) of the GDPR have a specific or general preventive character, and must that be taken into account in the assessment of the amount of non-material damage to be compensated at the expense of the controller or processor on the basis of Article 82(1) of the GDPR?

5. Is the degree of fault on the part of the controller or processor a decisive factor in the assessment of the amount of non-material damage to be compensated on the basis of Article 82(1) of the GDPR? In particular, can non-existent or minor fault on the part of the controller or processor be taken into account in their favour?

([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 Verwaltungsgericht Cottbus (Germany) lodged on 29 November 2021 — Stadt Frankfurt (Oder) and FWA Frankfurter Wasser- und Abwassergesellschaft mbH v Landesamt für Bergbau, Geologie und Rohstoffe

(Case C-723/21)

(2022/C 95/19)

Language of the case: German

Referring court

Verwaltungsgericht Cottbus

Parties to the main proceedings

Applicants: Stadt Frankfurt (Oder), FWA Frankfurter Wasser- und Abwassergesellschaft mbH

Defendant: Landesamt für Bergbau, Geologie und Rohstoffe

Questions referred

1. a. Is Article 7(3) of Directive 2000/60/EC ([1]) to be interpreted as meaning that all members of the public directly concerned by a project are entitled to bring judicial proceedings asserting breaches of the duty:

   (i) to avoid deterioration in the quality of bodies of water intended for the production of drinking water,

   (ii) to reduce the level of purification treatment required in the production of drinking water,

   on the basis of third-party protection in the context of the ban on deterioration of groundwater (see CJEU, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, ([2]) paragraph 132 et seq., and judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, ([3]) paragraphs 40 and 42)?

b. If Question (a) is answered in the negative:

In any event, are applicants who have been tasked with the production and purification treatment of drinking water entitled to bring proceedings asserting breaches of the prohibitions and requirements under Article 7(3) of the WFD?

2. In addition to the mandate for longer-term planning in management plans and programmes of measures, does Article 7(3) of the WFD contain, in respect also of bodies of water outside safeguard zones within the meaning of the second sentence of Article 7(3) of the WFD, an obligation, similar to that in Article 4 of the WFD, to refuse authorisation for specific projects on the ground of a breach of the ban on deterioration (see CJEU, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, paragraph 75)?

3. Given that — unlike Annex V, referred to in Article 4 of the WFD — Article 7(3) of the WFD does not set its own parameters for assessing the ban on deterioration:

a. Under what conditions is it to be assumed that a body of water has deteriorated and, consequently, the level of purification treatment required in the production of drinking water has increased?

b. Could the limit values of Annex I to Council Directive 98/83/EC ([4]) be regarded as the relevant point of reference for an increase in the level of purification treatment and thus for the ban on deterioration under Article 7(3) of the WFD, as might be inferred from the last part of Article 7(2) of the WFD?

c. If Question (b) is answered in the affirmative:

Can there be a breach of the ban on deterioration under Article 7(3) of the WFD where the only significant value is not a limit value under Parts A or B of Annex I [to the Drinking Water Directive] but an 'indicator parameter' in accordance with Part C of Annex I?

4. When is a breach of the ban on deterioration, in terms of the law on drinking water, in Article 7(3) of the WFD to be assumed (see, in relation to the criterion for the ban on deterioration under Article 4 of the WFD: CJEU, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, paragraph 119, and, previously, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, ([5]) paragraph 52)?

a. Is any deterioration sufficient for the assumption of a breach

or

b. must it be probable that the indicator parameter for sulphate of 250 mg/l is not being complied with

or

c. must there be a threat of remedial action, within the meaning of Article 8(6) of the Drinking Water Directive, which increases the treatment effort involved in the production of drinking water?

5. Does Article 7(3) of the WFD also contain, in addition to the substantive criteria for examination, specifications regarding the regulatory approval procedure, that is to say, is the Court's case-law on Article 4 of the WFD transferable to the scope of examination under Article 7(3) of the WFD (see CJEU, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18 — second question referred)?

6. Must the developer also commission an expert's investigation of a possible deterioration under Article 7(3) of the WFD as soon as the project is likely to infringe the provisions of Article 7(3) of the WFD?

7. Must it be assumed in that respect also that the investigation must have been conducted by the time of the decision taken under water law, with the result that an investigation carried out subsequently during the court proceedings cannot remedy the illegality of the authorisation granted under water law (see CJEU, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, paragraphs 76 and 80 et seq.)?

8. In the balancing of interests carried out in the context of authorisation, can the requirements and prohibitions under Article 7(3) of the WFD be outweighed by the objective pursued by the project where, for example, the purification treatment effort involved is low or the purpose of the project is of particular importance?

9. Does Article 4(7) of the WFD apply to Article 7(3) thereof?

10. What obligations going beyond Article 4 of the WFD can be inferred from Article 7(2) of the WFD, with the consequence that they must be taken into account in a project authorisation procedure?

([1]) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) ('the WFD').
([2]) EU:C:2020:391.
([3]) EU:C:2019:824.
([4]) Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32) ('the Drinking Water Directive').
([5]) EU:C:2015:433.

Appeal brought on 6 December 2021 by Pilatus Bank plc against the order of the General Court (Ninth Chamber) delivered on 24 September 2021 in Case T-139/19, Pilatus Bank v ECB

(Case C-750/21 P)

(2022/C 95/20)

Language of the case: English

Parties

Appellant: Pilatus Bank plc (represented by: O. Behrends, Rechtsanwalt)

Other party to the proceedings: European Central Bank (ECB)

Form of order sought

The appellant claims that the Court should:

— set aside the order under appeal;

— declare void pursuant to Article 264 TFEU the ECB's decision of 21 December 2018 declaring to the appellant that it was no longer competent to ensure its direct prudential supervision and to take measures concerning it;

— to the extent that the Court of Justice is not in a position to take a decision on the merits to refer the case back to the General Court for it to determine the action for annulment; and

— order the ECB to pay the appellant's costs and the costs of this appeal.

Pleas in law and main arguments

In support of the appeal, the appellant relies on two grounds of appeal.

First ground of appeal alleging that the General Court misinterpreted the provisions of Council Regulation (EU) No 1024/2013 ([1]) by falsely assuming that the ECB has no further competence with respect to the appellant as a result of the appellant's loss of license.

Second ground of appeal alleging that the General Court fails to address appropriately the pleas in law of the appellant which do not concern the alleged lack of competence of the ECB.

(1) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 7 December 2021 — PJ v Eurowings GmbH

(Case C-751/21)

(2022/C 95/21)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: PJ

Defendant: Eurowings GmbH

Questions referred

1. Is there a case of 'denied boarding' within the meaning of Article 4 and Article 2(j) of Regulation (EC) No 261/2004 (1) ('Air Passenger Rights Regulation') even in the case where passengers are denied boarding on the flight in question not at the boarding gate (departure gate) but earlier, at the check-in counter, and for that reason do not even get as far as the boarding gate (departure gate)?

2. In order to meet the conditions under Article 3(2)(a) of the Air Passenger Rights Regulation, is it sufficient that, in the case of a departure time of 6:20 a.m., a boarding time of 5:50 a.m. and 'gate closure' at 6:05 a.m. (according to the boarding pass in each case), the passenger, after arriving at the airport by taxi at 5:14 a.m., presents himself at the defendant's check-in desk immediately afterwards (that is to say, at approximately 5:16 a.m.) — particularly in view of the fact that, at 3:14 a.m. on the day of departure, the defendant informed the passenger that the flight was heavily booked and that hand luggage had to be checked in at the check-in counter, and also in consideration of the fact that the defendant had informed the passenger that the check-in counter at Hamburg Airport opens 2 hours before departure and closes 40 minutes before departure?

3. Is there a case of 'denied boarding' within the meaning of Article 4 and Article 2(j) of the Air Passenger Rights Regulation in the case where, at 5:16 a.m., the applicant and his family are immediately referred from the defendant's check-in counter to the very busy luggage check-in machines at Hamburg Airport in order to check in their luggage, which are not functioning properly despite assistance from employees of the defendant or the airport, after which the passengers are sent to further luggage check-in machines, where the passengers are once again unable to check in their luggage, with the result that it is not until 5:40 a.m. that one of the machines is operational and recognises the luggage, but then, at 5:41 a.m., refuses to check it in and refers the applicant back to the defendant's check-in counter, where he is then informed that he has now missed the flight?

4. Having regard to the difficulties encountered with the automated luggage check-in, does simply following the instructions of the employees and the machines, thereby overlooking the diminishing amount of time remaining until the check-in process ends and the departure gate closes, constitute contributory negligence on the part of the applicant and his fellow passengers? Can any blame be attributed to the applicant and his fellow passengers for not having considered, in good time, in view of the difficulties that they encountered when checking in their luggage, the possibility of having their luggage forwarded? Would it have been reasonable to expect the group of passengers to separate, leaving one person, for example the applicant, with the luggage, in order to enable the remaining persons to reach the departure gate, in particular in view of the fact that the mobility of the applicant's daughter and mother-in-law was restricted, due to the need to use crutches following a knee operation in the case of his daughter and due to age and arthrosis in the case of his mother-in-law?

5. In the event that Questions 1 to 3 are answered in the negative, is Article 2(j) of the Air Passenger Rights Regulation to be interpreted as meaning that a situation in which passengers join the queue at the check-in desk approximately one hour before departure, but, because of organisational shortcomings on the part of the airline (such as not opening enough check-in desks, short staffing and not providing information to passengers over the public announcement system) and/or on account of disruptions affecting the airport (a luggage check-in machine malfunction), do not reach the front of the queue at the check-in desk until a point in time (closing time of the check-in counter) by which, for that reason, passengers are no longer being accepted onto the flight, constitutes a case of 'denied boarding' within the meaning of Article 2(j) of the Air Passenger Rights Regulation?

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

Request for a preliminary ruling from the Cour de cassation (France) lodged on 8 December 2021 — Instrubel NV v Montana Management Inc., BNP Paribas Securities Services

(Case C-753/21)

(2022/C 95/22)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Instrubel NV

Defendants: Montana Management Inc., BNP Paribas Securities Services

Questions referred

1. Are Article 4(2), (3) and (4) and Article 6 of Regulation (EC) No 1210/2003, (1) as amended, to be interpreted as meaning that:

   — the frozen funds and economic resources remain, pending the decision to transfer them to the successor arrangements to the Development Fund for Iraq, the property of the natural and legal persons, bodies and entities associated with the regime of former President Saddam Hussein covered by the freezing of funds and economic resources?

   — or those frozen funds are the property of the successor arrangements to the Development Fund for Iraq upon the entry into force of the regulation identifying, in Annexes III and IV, the natural and legal persons, bodies and entities associated with the regime of former President Saddam Hussein covered by the freezing of funds and economic resources?

2. Should the answer to Question 1 be that the funds and economic resources are the property of the successor arrangements to the Development Fund for Iraq, are Articles 4 and 6 of Regulation (EC) No 1210/2003, as amended, to be interpreted as meaning that attachment of the frozen assets is subject to the prior authorisation of the competent national authority? Or are those provisions to be interpreted as requiring the authorisation of that national authority only at the moment the frozen funds are released?

(1) Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ 2003 L 169, p. 6).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 8 December 2021 — Montana Management Inc. v Heerema Zwijndrecht BV, BNP Paribas Securities Services

(Case C-754/21)

(2022/C 95/23)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Montana Management Inc.

Defendants: Heerema Zwijndrecht BV, BNP Paribas Securities Services

Questions referred

1. Are Article 4(2), (3) and (4) and Article 6 of Regulation (EC) No 1210/2003, ([1]) as amended, to be interpreted as meaning that:

   — the frozen funds and economic resources remain, pending the decision to transfer them to the successor arrangements to the Development Fund for Iraq, the property of the natural and legal persons, bodies and entities associated with the regime of former President Saddam Hussein covered by the freezing of funds and economic resources?

   — or those frozen funds are the property of the successor arrangements to the Development Fund for Iraq upon the entry into force of the regulation identifying, in Annexes III and IV, the natural and legal persons, bodies and entities associated with the regime of former President Saddam Hussein covered by the freezing of funds and economic resources?

2. Should the answer to Question 1 be that the funds and economic resources are the property of the successor arrangements to the Development Fund for Iraq, are Articles 4 and 6 of Regulation (EC) No 1210/2003, as amended, to be interpreted as meaning that attachment of the frozen assets is subject to the prior authorisation of the competent national authority? Or are those provisions to be interpreted as requiring the authorisation of that national authority only at the moment the frozen funds are released?

([1]) Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ 2003 L 169, p. 6).

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 14 December 2021 — 'Brink's Lithuania' UAB v Lietuvos bankas

(Case C-772/21)

(2022/C 95/24)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: 'Brink's Lithuania' UAB

Other party to the appeal proceedings: Lietuvos bankas

Questions referred

1. Should Article 6(2) of Decision ECB/2010/14 ([1]) be interpreted as meaning that the minimum standards referred to in that rule must be complied with by a cash handler who carries out automated fitness checking of euro banknotes?

2. If, in accordance with Article 6(2) of Decision ECB/2010/14, the minimum standards referred to therein are applicable only to manufacturers of banknote handling machines (but not to cash handlers), should Article 6(2) of Decision ECB/2010/14, read in conjunction with Article 3(5) thereof, be interpreted as precluding a provision of national law according to which the obligation to comply with those minimum standards does apply to a cash handler?

3. Do the minimum standards for automated fitness checking of euro banknotes by banknote handling machines, regard being had to the fact that they are published on the ECB's website, comply with the principle of legal certainty and with Article 297(2) TFEU, and are they binding on, and capable of being relied upon as regards, cash handlers?

4. Is Article 6(2) of Decision ECB/2010/14, in so far as it provides that the minimum standards for automated fitness checking of euro banknotes are published on the ECB's website and amended from time to time, contrary to the principle of legal certainty and to Article 297(2) TFEU, and therefore invalid?

(1) Decision of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14) (2010/597/EU) (OJ 2010 L 267, p. 1).

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 20 December 2021 — C and CD

(Case C-804/21)

(2022/C 95/25)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicants: C and CD

Defendant: Syyttäjä

Questions referred

1. Does Article 23(3) of Framework Decision 2002/584/JHA, (1) read in conjunction with Article 23(5) thereof, require that, if a person in detention has not been surrendered within the time limits, the executing judicial authority referred to in Article 6(2) of the Framework Decision is to decide on a new surrender date and must determine whether a situation of force majeure exists and if the conditions required for detention are met, or is a procedure under which the court only examines those matters where the parties so request also compatible with the framework decision? If action on the part of the judicial authority is required in order for the time limit to be extended, does the lack of any such action necessarily mean that the time limits laid down in the framework decision have expired, in which case the person in detention must be released pursuant to Article 23(5) thereof?

2. Is Article 23(3) of Framework Decision 2002/584/JHA to be interpreted as meaning that the concept of force majeure includes legal obstacles to the surrender which are based on the national legislation of the executing Member State, such as an order preventing execution which has effect for the duration of the legal proceedings, or the right of an asylum seeker to remain in the executing Member State until his or her application for asylum has been determined?

(1) 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1).

GENERAL COURT

Judgment of the General Court of 21 December 2021 — Gmina Kosakowo v Commission

(Case T-209/15) ([1])

(State aid — Airport infrastructure — Public funding by the municipalities of Gdynia and Kosakowo for setting up the Gdynia-Kosakowo Airport — Decision declaring the aid incompatible with the internal market and ordering its recovery — Advantage — Market economy operator principle — Effect on trade between Member States — Adverse effect on competition — Recovery — Obligation to state reasons)

(2022/C 95/26)

Language of the case: Polish

Parties

Applicant: Gmina Kosakowo (Poland) (represented by: M. Leśny, lawyer)

Defendant: European Commission (represented by: S. Noë, K. Herrmann and A. Stobiecka-Kuik, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Decision (EU) 2015/1586 of 26 February 2015 on measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo airport (OJ 2015 L 250, p. 165).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Gmina Kosakowo, in addition to bearing its own costs, to pay those incurred by the European Commission.

([1]) OJ C 205, 22.6.2015.

Judgment of the General Court of 21 December 2021 — Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo v Commission

(Case T-263/15 RENV) ([1])

(State aid — Airport infrastructure — Public funding by the municipalities of Gdynia and Kosakowo for setting up the Gdynia-Kosakowo Airport — Decision declaring the aid incompatible with the internal market and ordering its recovery — Advantage — Market economy operator principle — Effect on trade between Member States — Adverse effect on competition — Recovery — Withdrawal of a decision — Failure to re-open the formal investigation procedure — Procedural rights of the interested parties — Rights of the defence — Obligation to state reasons)

(2022/C 95/27)

Language of the case: Polish

Parties

Applicants: Gmina Miasto Gdynia (Poland), Port Lotniczy Gdynia Kosakowo sp. z o.o. (Gdynia, Poland) (represented by: T. Koncewicz, M. Le Berre, K. Gruszecka-Spychała and P. Rosiak, lawyers)

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

Intervener in support of the applicants: Republic of Poland (represented by: B. Majczyna, M. Rzotkiewicz and S. Żyrek, acting as Agents)

Re:

Action brought under Article 263 TFEU and seeking the annulment of Articles 2 to 5 Commission Decision (EU) 2015/1586 of 26 February 2015 on measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo Airport (OJ 2015 L 250, p. 165).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo sp. z o.o. to bear their own costs and to pay those incurred by the European Commission before the Court of Justice in Case C-56/18 P and before the General Court in Cases T-263/15 and T-263 RENV;

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

([1]) OJ C 254, 3.8.2015.

Judgment of the General Court of 21 December 2021 — EKETA v Commission

(Case T-177/17) ([1])

(Arbitration clause — Ask-it contract concluded under the Sixth Framework Programme — Eligible costs — Debit note issued by the Commission for the recovery of amounts advanced — Reliability of the time records — Conflict of interests — Subcontracting)

(2022/C 95/28)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: A. Katsimerou, T. Adamopoulos and J. Estrada de Solà, acting as Agents)

Re:

Action under Article 272 TFEU seeking a declaration, first, that the request made to the applicant by the Commission in debit note No 3241615292 of 29 November 2016 to reimburse to it the sum of EUR 211 185,95 of the payment received for a study on a research project called Ask-it is, in the amount of EUR 89 126,11, unfounded, and, second, that the sum in dispute corresponds to eligible costs which the applicant is not required to reimburse.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ethniko Kentro Erevnas kai Technologikis Anaptyxis to pay the costs.

([1]) OJ C 151, 15.5.2017.

Judgment of the General Court of 21 December 2021 — EKETA v Commission

(Case T-189/17) ([1])

(Arbitration clause — Humabio contract concluded under the Sixth Framework Programme — Eligible costs — Debit note issued by the Commission for the recovery of amounts advanced — Reliability of the time records — Conflict of interests)

(2022/C 95/29)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: A. Katsimerou, O. Verheecke, T. Adamopoulos and J. Estrada de Solà, acting as Agents)

Re:

Action under Article 272 TFEU seeking a declaration, first, that the request made to the applicant by the Commission in debit note No 3241615288 of 29 November 2016 to reimburse to it the sum of EUR 64 720,19 of the payment received for a study on a research project called Humabio is, in the amount of EUR 10 436,36, unfounded, and, second, that the sum in dispute corresponds to eligible costs which the applicant is not required to reimburse.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ethniko Kentro Erevnas kai Technologikis Anaptyxis to pay the costs.

([1]) OJ C 151, 15.5.2017.

Judgment of the General Court of 21 December 2021 — EKETA v Commission

(Case T-190/17) ([1])

(Arbitration clause — Cater contract concluded under the Sixth Framework Programme — Eligible costs — Debit note issued by the Commission for the recovery of amounts advanced — Reliability of the time records — Conflict of interests)

(2022/C 95/30)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos. lawyer)

Defendant: European Commission (represented by: A. Katsimerou, T. Adamopoulos and J. Estrada de Solà, acting as Agents)

Re:

Action under Article 272 TFEU seeking a declaration, first, that the request made to the applicant by the Commission in debit note No 3241615289 of 29 November 2016 to reimburse to it the sum of EUR 172 992,15 of the payment received for a study on a research project called Cater is, in the amount of EUR 28 520,08, unfounded, and, second, that the sum in dispute corresponds to eligible costs which the applicant is not required to reimburse.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ethniko Kentro Erevnas kai Technologikis Anaptyxis to pay the costs.

(1) OJ C 151, 15.5.2017.

Judgment of the General Court of 21 December 2021 — Apostolopoulou and Apostolopoulou-Chrysanthaki v Commission

(Joined Cases T-721/18 and T-81/19) (1)

(Non-contractual liability — Grant agreements concluded in the context of various EU programmes — Breach of contractual terms by the beneficiary company — Eligible costs — OLAF investigation — Liquidation of the company — Recovery from the partners in the company — Enforcement — Allegations made by the representatives of the Commission before the national courts — Identification of the defendant — Failure to have regard to procedural requirements — Partial inadmissibility — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2022/C 95/31)

Language of the case: Greek

Parties

Applicants: Zoï Apostolopoulou (Athens, Greece), Anastasia Apostolopoulou-Chrysanthaki (Athens) (represented by: D. Gkouskos, lawyer)

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

Re:

APPLICATIONS pursuant to Article 268 TFEU seeking, in essence, compensation for the damage which the applicants allegedly suffered as a result of the allegations made by the representatives of the Commission in the procedure for objecting to enforcement against them of the judgments of 16 July 2014, *Isotis* v *Commission* (T-59/11, EU:T:2014:679), and of 4 February 2016, *Isotis* v *Commission* (T-562/13, not published, EU:T:2016:63), before the Protodikeio Athinon (Court of First Instance, Athens, Greece) and the Efeteio Athinon (Court of Appeal, Athens, Greece).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ms Zoï Apostolopoulou and Ms Anastasia Apostolopoulou-Chrysanthaki to pay the costs.

(1) OJ C 54, 11.2.2019.

Judgment of the General Court of 15 December 2021 — Breyer v REA

(Case T-158/19) (1)

(Access to documents — Regulation (EC) No 1049/2001 — Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) — Regulation (EU) No 1290/2013 — Documents concerning the research project 'iBorderCtrl: Intelligent Portable Border Control System' — Exception relating to the protection of the commercial interests of a third party — Partial refusal to grant access — Overriding public interest)

(2022/C 95/32)

Language of the case: German

Parties

Applicant: Patrick Breyer (Kiel, Germany) (represented by: J. Breyer, lawyer)

Defendant: European Research Executive Agency (represented by: S. Payan-Lagrou and V. Canetti, acting as Agents, and by R. van der Hout and C. Wagner, lawyers)

Re:

Application under Article 263 TFEU seeking annulment of the decision of the REA of 17 January 2019 (ARES (2019) 266593) concerning partial access to documents.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Research Executive Agency (REA) of 17 January 2019 (ARES (2019) 266593), first, to the extent that the REA failed to give a decision in respect of Mr Patrick Breyer's application for access to documents relating to the authorisation of the project iBorderCtrl and, second, to the extent that the REA refused full access to document D 1.3, partial access to documents D 1.1, D 1.2, D 2.1, D 2.2 and D 2.3 and more extensive access to documents D 3.1, D 7.3 and D 7.8, in so far as those documents contain information which is not covered by the exception referred to in Article 4(2), first indent, of 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. Dismisses the action as to the remainder;

3. Orders Mr Breyer to bear his own costs relating to the lodging of his letter of 23 March 2021 and to pay the costs incurred by the REA relating to the lodging of its observations of 20 May 2021;

4. Orders Mr Breyer to bear half of his own costs other than those relating to the lodging of his letter of 23 March 2021;

5. Orders the REA to bear its own costs, with the exception of those relating to the lodging of its observations of 20 May 2021, and to pay half of the costs incurred by Mr Breyer other than those relating to the lodging of Mr Breyer's letter of 23 March 2021.

(1) OJ C 206, 17.6.2019.

Judgment of the General Court of 21 December 2021 — DD v FRA

(Case T-703/19) (1)

(Action for damages — Civil service — Members of the temporary staff — Initiation of an administrative inquiry — Article 86(2) of the Staff Regulations — Duty to provide information — Duration of the procedure — Reasonable time — Obligation to state reasons — Manifest error of assessment — Confidentiality of the administrative inquiry — Duty to have regard for the welfare of officials — Non-material damage — Causal link)

(2022/C 95/33)

Language of the case: English

Parties

Applicant: DD (represented: initially by L. Levi and M. Vandenbussche, lawyers, and subsequently by L. Levi, lawyer)

Defendant: European Union Agency for Fundamental Rights (FRA) (represented by: M. O'Flaherty, acting as Agent, and by B. Wägenbaur, lawyer)

Re:

Action under Article 270 TFEU seeking, in essence, compensation for the non-material damage allegedly suffered by the applicant estimated *ex aequo et bono* at EUR 50 000 as a result of the initiation and conduct of an administrative procedure within FRA.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders DD to bear his own costs and to pay those incurred by the European Union Agency for Fundamental Rights (FRA).

(1) OJ C 432, 23.12.2019.

Judgment of the General Court of 21 December 2021 — HB v Commission

(Case T-795/19) (1)

(Public service contracts — Provision of technical assistance services to the High Judicial Council — Decision to reduce the amount of the contract and to recover the amounts already paid — Action for annulment and for damages — Act forming part of a purely contractual framework from which it is inseparable — No arbitration clause — Inadmissibility — No heads of damage that are separable from the contract)

(2022/C 95/34)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: J. Baquero Cruz, J. Estrada de Solà and A. Katsimerou, acting as Agents)

Re:

(i) Application under Article 263 TFEU seeking annulment of Commission Decision C(2019) 7319 final of 15 October 2019 to reduce the amounts due under contract CARDS/2008/166-429 and to recover the amounts unduly paid and (ii) application under the second paragraph of Article 340 TFEU seeking, first of all, reimbursement of any amounts recovered by the Commission on the basis of that decision and payment of the last invoice issued, together with late-payment interest; next, release of the bank guarantee and compensation for the harm allegedly suffered by the applicant on account of its late release; and lastly, symbolic compensation for the non-material harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action as inadmissible, in so far as it seeks annulment of Commission Decision C(2019) 7319 final of 15 October 2019 to reduce the amounts due under contract CARDS/2008/166-429 and to recover the amounts unduly paid;

2. Dismisses the action as unfounded, in so far as it seeks to establish non-contractual liability on the part of the European Union;

3. Orders the European Commission to pay the costs, including those relating to the interim proceedings.

(1) OJ C 10, 13.1.2020.

Judgment of the General Court of 21 December 2021 — HB v Commission

(Case T-796/19) ([1])

(Public service contracts — Provision of technical assistance services to the Ukrainian authorities — Decision to reduce the amount of the contract and to recover the amounts already paid — Action for annulment and for damages — Act forming part of a purely contractual framework from which it is inseparable — No arbitration clause — Inadmissibility — No heads of damage that are separable from the contract)

(2022/C 95/35)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: J. Baquero Cruz, J. Estrada de Solà and A. Katsimerou, acting as Agents)

Re:

(i) Application under Article 263 TFEU seeking annulment of Commission Decision C(2019) 7318 final of 15 October 2019 to reduce the amounts due under contract TACIS/2006/101-510 and to recover the amounts unduly paid and (ii) application under the second paragraph of Article 340 TFEU seeking, first, reimbursement of any amounts recovered by the Commission on the basis of that decision, together with late-payment interest, and second, symbolic compensation for the non-material harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action as inadmissible, in so far as it seeks annulment of Commission Decision C(2019) 7318 final of 15 October 2019 to reduce the amounts due under contract TACIS/2006/101-510 and to recover the amounts unduly paid;

2. Dismisses the action as unfounded, in so far as it seeks to establish non-contractual liability on the part of the European Union;

3. Orders the European Commission to pay the costs, including those relating to the interim proceedings.

([1]) OJ C 10, 13.1.2020.

Judgment of the General Court of 21 December 2021 — Worldwide Spirits Supply v EUIPO — Melfinco (CLEOPATRA QUEEN)

(Case T-870/19) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark CLEOPATRA QUEEN — Earlier national word mark CLEOPATRA MELFINCO — Articles 15 and 57 of Regulation (EC) No 207/2009 (now Articles 18 and 64 of Regulation (EU) 2017/1001) — Proof of genuine use of the earlier mark — Declaration of invalidity)

(2022/C 95/36)

Language of the case: English

Parties

Applicant: Worldwide Spirits Supply, Inc. (Tortola, British Virgin Islands) (represented by: S. Demetriou, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Melfinco S.A. (Schaan, Liechtenstein) (represented by: M. Gioti, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 21 October 2019 (Case R 1820/2018-4), relating to invalidity proceedings between Melfinco and Worldwide Spirits Supply.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Worldwide Spirits Supply, Inc. to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders Melfinco S.A. to bear its own costs.

([1]) OJ C 77, 9.3.2020.

Judgment of the General Court of 21 December 2021 — Dr. Spiller v EUIPO — Rausch (Alpenrausch Dr. Spiller)

(Case T-6/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Alpenrausch Dr. Spiller — Earlier EU word mark RAUSCH — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2022/C 95/37)

Language of the case: German

Parties

Applicant: Dr. Spiller GmbH (Siegsdorf, Germany) (represented by: J. Stock and M. Geitz, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Eberl, J. Schäfer, A. Söder and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Rausch AG Kreuzlingen (Kreuzlingen, Switzerland) (represented by: F. Stangl and S. Pilgram, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 8 October 2019 (Case R 2206/2015-1), relating to opposition proceedings between Rausch Kreuzlingen and Dr. Spiller.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dr. Spiller GmbH to pay the costs.

([1]) OJ C 68, 2.3.2020.

Judgment of the General Court of 21 December 2021 –EFFAS v EUIPO — CFA Institute (CEFA Certified European Financial Analyst)

(Case T-369/20) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark CEFA Certified European Financial Analyst — Earlier EU word mark CFA — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2022/C 95/38)

Language of the case: English

Parties

Applicant: European Federation of Financial Analysts' Societies (EFFAS) (Frankfurt am Main, Germany) (represented by: S. Merico, G. Macías Bonilla and F. Miazzetto, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: CFA Institute (Charlottesville, Virginia, United States) (represented by: G. Engels and W. May, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 31 March 2020 (Case R 1082/2019-5), relating to opposition proceedings between CFA Institute and EFFAS.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 31 March 2020 (R 1082/2019-5);

2. Orders EUIPO to bear its own costs and to pay those incurred by European Federation of Financial Analysts' Societies (EFFAS);

3. Orders CFA Institute to bear its own costs.

([1]) OJ C 255, 3.8.2020.

Judgment of the General Court of 21 December 2021 — Datax v REA

(Case T-381/20) ([1])

(Arbitration clause — Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — HELP and GreenNets grant agreements — OLAF's investigation — Personnel costs — Burden of proof — Reliability of timesheets — Ineligibility of costs declared by the beneficiary — Request for recovery — Debit notes — Limitation — Reasonable time — Proportionality)

(2022/C 95/39)

Language of the case: English

Parties

Applicant: Datax sp. z o.o. (Wrocław, Poland) (represented by: J. Bober, lawyer)

Defendant: European Research Executive Agency (represented by: S. Payan-Lagrou and V. Canetti, acting as Agents, and by M. Le Berre, lawyer)

Re:

Application based on Article 272 TFEU seeking, first, a declaration of eligibility of the personnel costs relating to the researcher, second, a declaration that the obligation to pay liquidated damages is unfounded and, third, an order that the REA take no further action against the applicant as regards the personnel costs of the researcher relating to the HELP and GreenNets grant agreements.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Datax sp. z o.o. to pay the costs, including those relating to the interlocutory proceedings.

(1) OJ C 297, 7.9.2020.

Judgment of the General Court of 21 December 2021 — Magic Box Int. Toys v EUIPO — KMA Concepts (SUPERZINGS)

(Case T-549/20) (1)

(EU trade mark — Invalidity proceedings — EU word mark SUPERZINGS — Earlier international figurative mark ZiNG — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2022/C 95/40)

Language of the case: Spanish

Parties

Applicant: Magic Box Int. Toys SLU (Sant Cugat del Vallés, Spain) (represented by: J. L. Rivas Zurdo and E. López Leiva, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: KMA Concepts Ltd. (Mahé, Seychelles) (represented by: C. Duch Fonoll and I. Osinaga Lozano, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 June 2020 (Case R 2511/2019-4), relating to invalidity proceedings between KMA Concepts and Magic Box Int. Toys.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Magic Box Int. Toys SLU to bear its owns costs and to pay the costs incurred by the European Union Intellectual Property Office (EUIPO) and by KMA Concepts Ltd.

(1) OJ C 348, 19.10.2020.

Judgment of the General Court of 21 December 2021 — MO v Council

(Case T-587/20) (1)

(Civil service — Officials — Compulsory reassignment — 2019 Appraisal exercise — Right to be heard — Liability)

(2022/C 95/41)

Language of the case: French

Parties

Applicant: MO (represented by: A. Guillerme, lawyer)

Defendant: Council of the European Union (represented by: M. Bauer, M. Alver and K. Kouri, acting as Agents)

Re:

Application under Article 270 TFEU for, first, annulment of the decision of the Council of 19 November 2019 to reassign the applicant to the [confidential] unit and of the applicant's appraisal report for 2019 and, second, compensation in respect of the material and non-material damage the applicant allegedly suffered.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders MO to the costs.

(1) OJ C 433, 14.12.2020.

Judgment of the General Court of 21 December 2021 — Skechers USA v EUIPO (ARCH FIT)

(Case T-598/20) (1)

(EU trade mark — Application for the EU word mark ARCH FIT — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001)

(2022/C 95/42)

Language of the case: English

Parties

Applicant: Skechers USA, Inc. II (Manhattan Beach, California, United States) (represented by: T. Holman and A. Reid, Solicitors, and J. Bogatz and Y. Stone, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 29 July 2020 (Case R 2631/2019-1), relating to an application for registration of the word sign ARCH FIT as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Skechers USA, Inc. II to pay the costs.

(1) OJ C 390, 16.11.2020.

Judgment of the General Court of 21 December 2021 — Fashion Energy v EUIPO — Retail Royalty (1st AMERICAN)

(Case T-699/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark 1st AMERICAN — Earlier EU figurative mark representing an eagle or other bird of prey — Relative ground for refusal — Likelihood of confusion — Phonetic similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Article 72(6) of Regulation 2017/1001 — Article 94(1) of Regulation 2017/1001)

(2022/C 95/43)

Language of the case: English

Parties

Applicant: Fashion Energy Srl (Milan, Italy) (represented by: T. Müller and F. Togo, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Retail Royalty Co. (Las Vegas, Nevada, United States) (represented by: J. Bogatz and Y. Stone, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 10 September 2020 (Case R 426/2020-4), relating to opposition proceedings between Retail Royalty and Fashion Energy.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Fashion Energy Srl to pay the costs.

([1]) OJ C 28, 25.1.2021.

Judgment of the General Court of 21 December 2021 — Bustos v EUIPO — Bicicletas Monty (motwi)

(Case T-159/21) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark motwi — Earlier national word mark MONTY — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 95/44)

Language of the case: Spanish

Parties

Applicant: Dante Ricardo Bustos (Wenling, China) (represented by: A. Lorente Berges, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Bicicletas Monty, SA (Sant Feliú de Llobregat, Spain)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 21 January 2021 (Case R 289/2020-5), relating to opposition proceedings between Bicicletas Monty and Mr Bustos.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 21 January 2021 (Case R 289/2020-5);

2. Dismisses the action as to the remainder;

3. Orders EUIPO to pay the costs.

(1) OJ C 182, 10.5.2021.

Judgment of the General Court of 21 December 2021 — Fidia farmaceutici v EUIPO — Stelis Biopharma (HYALOSTEL ONE)

(Case T-194/21) (1)

(EU trade mark — Opposition proceedings — International figurative registration designating the European Union — Figurative mark HYALOSTEL ONE — Earlier EU word mark HYALISTIL and earlier figurative mark HyalOne — Earlier international word mark HYALO — Relative ground for refusal — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons)

(2022/C 95/45)

Language of the case: English

Parties

Applicant: Fidia farmaceutici SpA (Abano Terme, Italy) (represented by: R. Kunz-Hallstein and H.P. Kunz-Hallstein, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Stelis Biopharma Ltd (Karnataka, India)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 27 January 2021 (Case R 831/2020-5), relating to opposition proceedings between Fidia Farmaceutici and Stelis Biopharma.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 27 January 2021 (Case R 831/2020-5);

2. Orders EUIPO to bear its own costs and to pay those incurred by Fidia farmaceutici SpA in connection with the present proceedings.

(1) OJ C 217, 7.6.2021.

Judgment of the General Court of 21 December 2021 — Klymenko v Council

(Case T-195/21) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of the persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Council's obligation to verify that the decision of an authority of a third State was taken in accordance with the rights of defence and the right to effective judicial protection)

(2022/C 95/46)

Language of the case: French

Parties

Applicant: Oleksandr Viktorovych Klymenko (Moscow, Russia) (represented by: M. Phelippeau, lawyer)

Defendant: Council of the European Union (represented by: S. Lejeune and A. Vitro, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 29), and of Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 2), in so far as those acts maintain the applicant's name on the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Mr Oleksandr Viktorovych Klymenko was maintained on the list of persons, entities and bodies subject to those restrictive measures;

2. Orders the Council of the European Union to pay the costs.

([1]) OJ C 206, 31.5.2021.

Order of the General Court of 17 December 2021 — Theodorakis and Theodoraki v Council

(Case T-495/14) ([1])

(Non-contractual liability — Economic and monetary policy — Stability support programme for the Republic of Cyprus — Statements of the Euro Group of 16 and 25 March 2013 concerning Cyprus — Statement of the President of the Euro Group of 21 March 2013 concerning Cyprus — Incorrect identification of the defendant — Manifest inadmissibility)

(2022/C 95/47)

Language of the case: Greek

Parties

Applicants: Georgios Theodorakis (Chania, Greece), Maria Theodoraki (Chania) (represented by: V. Christianos, lawyer)

Defendant: Council of the European Union (represented by: A. de Gregorio Merino, E. Chatziioakeimidou and E. Dumitriu-Segnana, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: B. Smulders, J.-P. Keppenne, M. Konstantinidis and S. Delaude, acting as Agents)

Re:

APPLICATION pursuant to Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicants as a result of the statements of the Euro Group of 16 and 25 March 2013 and the statement of the President of the Euro Group of 21 March 2013.

Operative part of the order

1. The action is dismissed as being manifestly inadmissible.

2. Mr Georgios Theodorakis and Ms Maria Theodoraki shall bear their own costs and pay those incurred by the Council of the European Union.

3. The European Commission shall bear its own costs.

(1) OJ C 292, 1.9.2014.

Order of the General Court of 17 December 2021 — Berry Investments v Council

(Case T-496/14) (1)

(Non-contractual liability — Economic and monetary policy — Stability support programme for the Republic of Cyprus — Statements of the Euro Group of 16 and 25 March 2013 concerning Cyprus — Statement of the President of the Euro Group of 21 March 2013 concerning Cyprus — Incorrect identification of the defendant — Manifest inadmissibility)

(2022/C 95/48)

Language of the case: Greek

Parties

Applicant: Berry Investments, Inc. (Monrovia, Liberia) (represented by: V. Christianos, lawyer)

Defendant: Council of the European Union (represented by: A. de Gregorio Merino, E. Chatziioakeimidou and E. Dumitriu-Segnana, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: B. Smulders, J.-P. Keppenne, M. Konstantinidis and S. Delaude, acting as Agents)

Re:

APPLICATION pursuant to Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicant as a result of the statements of the Euro Group of 16 and 25 March 2013 and the statement of the President of the Euro Group of 21 March 2013.

Operative part of the order

1. The action is dismissed as being manifestly inadmissible.

2. Berry Investments Inc. shall bear its own costs and pay those incurred by the Council of the European Union.

3. The European Commission shall bear its own costs.

(1) OJ C 292, 1.9.2014.

Order of the General Court of 30 November 2021 — CE v Committee of the Regions

(Case T-355/19 INTP) ([1])

(Procedure — Interpretation of a judgment — Inadmissibility)

(2022/C 95/49)

Language of the case: French

Parties

Applicant: CE (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: Committee of the Regions (represented by: M. Esparrago Arzadun and S. Bachotet, acting as Agents, and B. Wägenbaur, lawyer)

Re:

Application for interpretation of the judgment of 16 June 2021, *CE* v *Committee of the Regions* (T-355/19, EU:T:2021:369).

Operative part of the order

1. The application for interpretation is dismissed as inadmissible.

2. CE shall pay the costs.

([1]) OJ C 255, 29.7.2019.

Order of the General Court of 8 December 2021 — Alessio and Others v ECB

(Case T-620/20) ([1])

(Action for annulment — Economic and monetary union — Banking union — Recovery and resolution of credit institutions — Early intervention measures — Decision of the ECB to place Banca Carige under temporary administration — Subsequent extension decisions — Time limit for bringing proceedings — Delay — Inadmissibility)

(2022/C 95/50)

Language of the case: Italian

Parties

Applicants: Roberto Alessio (Turin, Italy) and the 56 other applicants whose names are listed in the annex to the order (represented by: M. Condinanzi, L. Boggio, M. Cataldo and A. Califano, lawyers)

Defendant: European Central Bank (represented by: C. Hernández Saseta and A. Pizzolla, Agents)

Re:

Application under Article 263 TFEU for annulment, first, of the ECB's decision of 1 January 2019 placing Banca Carige SpA under temporary administration and, secondly, of its decision of 29 March 2019, extending the period of the temporary administration, and of the subsequent extension decisions.

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the European Commission's application for leave to intervene.

3. Mr Roberto Alessio and the other applicants whose names are listed in the annex shall bear their own costs and pay those incurred by the European Central Bank (ECB).

4. The Commission shall bear its own costs relating to the application for leave to intervene.

(1) OJ C 390, 16.11.2020.

Order of the General Court of 2 December 2021 — FC v EASO

(Case T-303/21) (1)

(Action for annulment — Civil Service — Temporary staff — Disciplinary proceedings — Applications for suspension — Summons to attend a hearing before the Disciplinary Board — Postponement of the date of the hearing — No act adversely affecting the applicant — Premature action — Manifest inadmissibility)

(2022/C 95/51)

Language of the case: Greek

Parties

Applicant: FC (represented by: V. Christianos, lawyer)

Defendant: European Asylum Support Office (represented by: P. Eyckmans and M. Stamatopoulou, acting as Agents, and by T. Bontinck, A. Guillerme and L. Burguin, lawyers)

Re:

Application under Article 270 TFEU seeking annulment of the act adopted by the Chair of the Disciplinary Board of EASO on [confidential] by which the applicant's hearing in the disciplinary proceedings initiated against her was fixed for [confidential].

Operative part of the order

1. The action is dismissed as manifestly inadmissible.

2. FC shall pay her own costs and those incurred by the European Asylum Support Office (EASO).

(1) OJ C 289, 19.7.2021.

Order of the President of the General Court of 8 December 2021 — D'Amato and Others v Parliament

(Case T-722/21 R)

(Application for interim measures — Members of Parliament — Conditions of access to the Parliament's buildings at its three places of work in connection with the health crisis — Application for suspension of operation of a measure — No urgency)

(2022/C 95/52)

Language of the case: French

Parties

Applicants: Rosa D'Amato (Taranto, Italy), Claude Gruffat (Mulsans, France), Damien Carême (Argenteuil, France), Benoît Biteau (Sablonceaux, France) (represented by: P. de Bandt, M. Gherghinaru and L. Panepinto, lawyers)

Defendant: European Parliament (represented by: S. Alves and A.-M. Dumbrăvan, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for the suspension of operation of the decision of the Bureau of the European Parliament of 27 October 2021 on the exceptional health and safety rules governing access to the Parliament's buildings at its three places of work.

Operative part of the order

1. The application for interim measures is dismissed.

2. The order of 15 November 2021, D'Amato and Others v Parliament (T-722/21 R), is set aside.

3. The costs are reserved.

Order of the President of the General Court of 8 December 2021 — Rooken and Others v Parliament

(Case T-723/21 R)

(Application for interim measures — Members of Parliament — Conditions of access to the Parliament's buildings at its three places of work in connection with the health crisis — Application for suspension of operation of a measure — No urgency)

(2022/C 95/53)

Language of the case: French

Parties

Applicants: Robert Jan Rooken (Muiderberg, Netherlands) an 8 other applicants whose names are listed in the annex to the order (represented by: P. de Bandt, M. Gherghinaru and L. Panepinto, lawyers)

Defendant: European Parliament (represented by: S. Alves and A.-M. Dumbrăvan, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for the suspension of operation of the decision of the Bureau of the European Parliament of 27 October 2021 on the exceptional health and safety rules governing access to the Parliament's buildings at its three places of work.

Operative part of the order

1. The application for interim measures is dismissed.

2. The order of 15 November 2021, Rooken and Others v Parliament (T-723/21 R), is set aside.

3. The costs are reserved.

Order of the President of the General Court of 8 December 2021 — IL and Others v Parliament

(Case T-724/21 R)

(Application for interim measures — Civil Service — Conditions of access to the Parliament's buildings at its three places of work in connection with the health crisis — Application for suspension of operation of a measure — No urgency)

(2022/C 95/54)

Language of the case: French

Parties

Applicants: IL and 81 other applicants whose names are listed in the annex to the order (represented by: P. de Bandt, M. Gherghinaru and L. Panepinto, lawyers

Defendants: European Parliament (represented by: D. Boytha, S. Bukšek Tomac and L. Darie, acting as Agents

Re:

Application under Articles 278 and 279 TFEU for the suspension of operation of the decision of the Bureau of the European Parliament of 27 October 2021 on the exceptional health and safety rules governing access to the Parliament's buildings at its three places of work.

Operative part of the order

1. The application for interim measures is dismissed.

2. The order of 15 November 2021, IL and Others v Parliament (T-724/21 R) is set aside.

3. The costs are reserved.

Action brought on 8 December 2021 — Atesos medical and Others v Commission

(Case T-764/21)

(2022/C 95/55)

Language of the case: English

Parties

Applicants: Atesos medical AG (Aarau, Switzerland) and 7 other applicants (represented by: M. Meulenbelt, B. Natens and I. Willemyns, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the unpublished defendant's decision of an unknown date which falsely asserts the expiry of the designation of Schweizerische Vereinigung für Qualitäts — und Management Systeme ('SQS') as a conformity assessment body for medical devices under Directive No 93/42/EEC concerning medical devices, and that delists SQS from the European Commission's New Approach Notified and Designated Organizations database with effect from 28 September 2021; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant violated Article 296 TFUE and Articles 5(1), 5(2) and 13(2) TEU.

2. Second plea in law, alleging that the defendant misused its powers.

3. Third plea in law, alleging that the defendant infringed Article 218(9) TFEU and Articles 8, 18, 19 and 21 of the 'EU-Swiss MRA' ([1]), the right to be heard as reflected in Article 41(2) of the Charter of Fundamental Rights, the right of defence and the general principle of *fraus omnia corrumpit*.

4. Forth plea in law, alleging that the defendant infringed Article 120 of Regulation (EU) No 2017/745 ([2]) and Articles 1 (*juncto* 20) and 5 of the 'EU-Swiss MRA', as well as the general principles of effectiveness, legal certainty and legitimate expectations.

([1]) Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment — Final Act — Joint Declarations — Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products (OJ 2002 L 114, p. 369), as amended by Decision no 2/2017 of the Committee established under the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment of 22 December 2017 on the amendment of Chapter 2 on Personal protective equipment, Chapter 4 on medical devices, Chapter 5 on gas appliances and boilers and Chapter 19 on Cableway installations [2018/403] (OJ 2018 L 72, p. 24-41).

([2]) Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (Text with EEA relevance) (OJ 2017 L 117, p. 1-175).

Action brought on 14 December 2021 — Lila Rossa Engros v EUIPO (LiLAC)

(Case T-780/21)

(2022/C 95/56)

Language of the case: Romanian

Parties

Applicant: Lila Rossa Engros SRL (Voluntari, Romania) (represented by: O. Anghel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the black EU figurative mark LiLAC — Application for registration No 18 243 487

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 10 September 2021 in Case R 441/2021-5

Form of order sought

The applicant claims that the Court should:

— uphold the present action;

— annul the contested decision;

— grant the application for registration No 18 243 487 for the mark LiLAC in respect of all the goods and services applied for;

— order EUIPO to pay the costs.

Pleas in law

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

— Incorrect application of the criteria for analysing the absolute grounds for refusal laid down by the case-law.

Action brought on 10 January 2022 — NV v EIB

(Case T-16/22)

(2022/C 95/57)

Language of the case: French

Parties

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

Defendant: European Investment Bank

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

consequently,

— annul the decision of 5 February 2021 characterising as unauthorised the applicant's absences during the following periods: from 29 May 2020 until 15 September 2020, from 30 June 2020 until 30 September 2020, from 7 September 2020 until 7 November 2020, and from 3 November 2020 until 8 January 2021;

— where necessary, annul the decision of 1 October 2021 dismissing the administrative action submitted on 1 April 2021 against the decision of 5 February 2021;

— annul the decision of 20 April 2021 characterising as unauthorised the applicant's absences from 8 January 2021 until 8 April 2021;

— annul the decision of 3 May 2021 characterising as unauthorised the applicant's absences from 8 April 2021 until 8 June 2021;

— where necessary, annul the decision of 27 October 2021 dismissing the administrative action submitted on 18 June 2021 against the decisions of 20 April 2021 and of 3 May 2021;

— order EIB to pay the remuneration relating to the periods from 29 May 2020 until 8 January 2021, from 8 January 2021 until 8 April 2021, and from 8 April 2021 until 8 June 2021, together with default interest, the rate of which being the interest rate applied by the European Central Bank plus two percentage points;

— order the EIB to pay compensation for the harm suffered by the applicant;

— order the EIB to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 2.3, 3.3, 3.4 and 3.6 of Annex X to the administrative provisions, infringement of Article 34 of the Charter whether or not read in conjunction with Articles 2.3, 3.3, 3.4 and 3.6 of the administrative provisions, manifest error of assessment, breach of the duty to have regard for the welfare of officials and misuse of rights.

2. Second plea in law, alleging breach of the duty of diligence and care, infringement of Article 41 of the Charter of Fundamental Rights of the European Union and manifest error of assessment.

3. Third plea in law, alleging infringement of Articles 33c of the Staff Regulations and Article 11 of the administrative provisions.

Action brought on 11 January 2022 — Piaggio & C. v EUIPO — Zhejiang Zhongneng Industry (Shape of a scooter)

(Case T-19/22)

(2022/C 95/58)

Language in which the application was lodged: Italian

Parties

Applicant: Piaggio & C. SpA (Pontedera, Italy) (represented by: F. Jacobacci and B. La Tella, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Zhongneng Industry Co. Ltd (Taizhou, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union three-dimensional mark (Shape of a scooter) –European Union trade mark No 11 686 482

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 25 October 2021 in Case R 359/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

in the alternative:

— annul the contested decision and refer the case back to the Boards of Appeal for them to set out clearly in which countries the EU mark No 11 686 482 of the applicant is valid and/or has acquired distinctive character and, conversely, in which countries it has not acquired such distinctive character, on the basis of the evidence provided by the proprietor;

in any event:

— order the defendant to pay the procedural costs relating to the proceedings before the Board of Appeal, pursuant to Article 190 of the Rules of Procedure of the General Court of the European Union;

— order EUIPO and the potential intervener to pay the entirety of the costs of the present proceedings.

Pleas in law

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

— Infringement and/or incorrect interpretation of Article 7(3) of Council Regulation No 207/2009 and incorrect assessment of the evidence provided by the proprietor of the EU mark.

Action brought on 12 January 2022 — NW v Commission

(Case T-20/22)

(2022/C 95/59)

Language of the case: French

Parties

Applicant: NW (represented by: M. Velardo, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decisions in so far as they include the recovery of the sums paid to the applicant;

— order the Commission to repay to the applicant the sums already recovered;

— order the Commission to pay the costs of the proceedings;

— in the alternative, annul the contested decisions in so far as they include the recovery of the sum of EUR 3 986,72;

— moreover, the applicant seeks the payment of interest on any sum which will be paid to him as from the moment each sum should have been paid to him until actual payment;

— if the Court dismisses the present action — in the light of the multiple irregularities committed by the PMO over time, the fact that 'a tax allowance is not easily detectable on a payslip', the assurances given by the PMO to the applicant, the applicant's good faith which the administration accepts and the fact that the applicant (having no reason to doubt the amount of his salary) made financial commitments proportionate to such a salary level during those years (such as taking out a mortgage for the purchase of a house for his family) — the applicant submits that, in the interest of fairness, the Court should order the Commission to bear at least its own costs and to pay those of the applicant pursuant to Article 135 of the Rules of Procedure.

Pleas in law and main arguments

In support of the action against the decisions of the Commission of 6 and 9 April 2021 and of 4 May 2021 to recover the sums unduly paid to him in respect of the tax allowance for his children, the applicant relies on three pleas in law.

1. First plea in law, alleging erroneous interpretation and application of Article 85 of the Regulations of Officials of the European Union. The applicant submits in that regard that the conditions laid down in Article 85 to permit the recovery of sums paid but not due are not met.

2. Second plea in law, alleging infringement of the principle of legitimate expectations in that, in the present case, the three conditions to characterise legitimate expectations under the applicable legislation are met.

3. Third plea in law, alleging failure to state reasons.

Action brought on 12 January 2022 — NY v Commission

(Case T-21/22)

(2022/C 95/60)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and founded;

— annul the first contested decision and, if necessary, the second contested decision;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action against the decision of the Commission of 14 April 2021 dismissing the applicant's claim for compensation filed on 22 December 2020, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of the right to sound administration and the principle of impartiality. The applicant submits that, in the context of the preparatory inquiry of the claim for compensation, the requirement of impartiality has not been met, both subjectively and objectively.

2. Second plea in law, alleging infringement of the right to integrity and dignity and the existence of several manifest errors of assessment. The applicant claims that the defendant failed to comply with its duty to preserve and protect its dignity and its integrity, having regard to the acts of violence by security personnel against him and the finding of which is vitiated by manifest errors of assessment.

3. Third plea in law, alleging breach of the duty of care in that the applicant did not receive all the support which he was entitled to expect from the defendant.

Action brought on 11 January 2022 — Grail v Commission

(Case T-23/22)

(2022/C 95/61)

Language of the case: English

Parties

Applicant: Grail LLC (Menlo Park, California, United States) (represented by: D. Little, Solicitor, J. Ruiz Calzado, J. M. Jiménez-Laiglesia Oñate and A. Giraud, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Commission's Decision of 29 October 2021 adopting interim measures under Article 8(5)(a) of Regulation 139/2004 ('EUMR') in Case COMP/M.10493 — Illumina / GRAIL;

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, contesting the jurisdiction of the Commission to adopt the Decision. The Commission has no competence to adopt a decision under Article 8(5)(a) EUMR, if the Court rules in Case T-227/21 that the six referral decisions adopted by the Commission on 19 April 2021 pursuant to Article 22(3) EUMR were unlawful.

2. Second plea in law, alleging errors of law and facts committed by the Commission in the interpretation, application, and reasoning of the legal requirements for adoption of the Decision under Article 8(5)(a) EUMR.

   — The Decision is wrong in ignoring that the Hold-Separate Commitments adopted and notified by Illumina to the Commission after Illumina's acquisition of GRAIL Inc.'s shares prevented the Parties from implementing the concentration within the meaning of Article 7 EUMR.

   — The Decision contains no meaningful discussion of the conditions of competition existing at the time of its adoption and fails to demonstrate how Illumina's acquisition of GRAIL Inc.'s shares had reduced effective competition or would reduce effective competition before the Commission could adopt a final decision on the substance.

   — The Decision fails to identify any urgency that would justify the adoption of interim measures since nothing material in terms of effects on competition in the affected markets could happen during the few months between the adoption of the Decision and the adoption of the substantive decision on the concentration.

   — The Decision is vitiated by an error of law in assuming that under Article 8(5)(a) EUMR the Commission is entitled to adopt interim measures with a view to ensuring the effectiveness of a hypothetical future decision under Article 8(4) EUMR.

   — The imposition of a particular obligation on GRAIL is incompatible with Article 8(5)(a) EUMR; it is not necessary or proportionate.

Action brought on 17 January 2022 — Canai Technology/EUIPO — WE Brand (HE&ME)

(Case T-25/22)

(2022/C 95/62)

Language of the case: English

Parties

Applicant: Canai Technology Co. Ltd (Guangzhou, China) (represented by: J. Gallego Jiménez, E. Sanz Valls, P. Bauzá Martínez, Y. Hernández Viñes and C. Marí Aguilar, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: WE Brand Sàrl (Luxembourg, Luxembourg)

Details of the proceedings before EUIPO

Applicant 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 HE&ME — International registration designating the European Union No 1 426 777

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 16 November 2021 in Case R 1390/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO (and if it intervenes, the other party to the proceedings before the EUIPO) to pay the costs.

Plea in law

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

Order of the General Court of 20 December 2021 — HS v Commission

(Case T-848/19) ([1])

(2022/C 95/63)

Language of the case: English

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

([1]) OJ C 271, 17.8.2020.

Order of the General Court of 16 December 2021 — The Floow v Commission

(Case T-765/20) ([1])

(2022/C 95/64)

Language of the case: English

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

([1]) OJ C 88, 15.3.2021.

Order of the General Court of 7 December 2021 — El Corte Inglés v EUIPO — Yajun (PREMILITY)

(Case T-46/21) ([1])

(2022/C 95/65)

Language of the case: Spanish

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

([1]) OJ C 88, 15.3.2021.

Order of the General Court of 8 December 2021 — VY v Commission

(Case T-519/21) ([1])

(2022/C 95/66)

Language of the case: French

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

([1]) OJ C 422, 18.10.2021.

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