Official Journal of the European Union

C 165

English edition

Information and Notices

Volume 65

19 April 2022

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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2022/C 165/01)

Last publication

OJ C 158, 11.4.2022

Past publications

OJ C 148, 4.4.2022

OJ C 138, 28.3.2022

OJ C 128, 21.3.2022

OJ C 119, 14.3.2022

OJ C 109, 7.3.2022

OJ C 95, 28.2.2022

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V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 24 February 2022 (Request for a preliminary ruling from the Sąd Rejonowy dla Warszawy-Woli w Warszawie — Poland) — A v O (C-143/20), G. W., E. S. v A. Towarzystwo Ubezpieczeń Życie S.A. (C-213/20)

(Joined Cases C-143/20 and C-213/20) [1]

(Reference for a preliminary ruling — Freedom to provide services — Direct life assurance — 'Unit-linked' open-ended group endowment and life assurance contracts — Directive 2002/83/EC — Article 36 — Directive 2002/92/EC — Article 12(3) — Pre-contractual information disclosure — Information as to the nature of the underlying assets of 'unit-linked' assurance contracts — Field of application — Scope — Directive 2005/29/EC — Article 7 — Unfair commercial practices — Misleading omission)

(2022/C 165/02)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy-Woli w Warszawie

Parties to the main proceedings

Applicants: A (C-143/20), G. W., E. S. (C-213/20)

Defendants: O (C-143/20), A. Towarzystwo Ubezpieczeń Życie S.A. (C-213/20)

Operative part of the judgment

1. Article 36(1) of Directive 2002/83/EC of the European Parliament and of the Council, of 5 November 2002, concerning life assurance, must be interpreted as meaning that the information referred to by it must be communicated to the consumer acceding, as an insured person, to an open-ended group endowment and life assurance contract concluded between an insurance undertaking and the undertaking which is the policyholder. It is for the insurance undertaking to communicate that information to the undertaking which is the policyholder, which must transmit it to that consumer prior to the accession of the latter to that contract, supplied together with all other details that are deemed necessary taking into account the requirements and needs of the latter, in accordance with that provision, read in conjunction with Article 12(3) of Directive 2002/92/EC of the European Parliament and of the Council, of 9 December 2002, on insurance mediation.

2. Article 36(1) of Directive 2002/83, read in conjunction with point a(12) of Annex III(A) thereto, must be interpreted as meaning that indications as to the nature of the underlying assets must be communicated to a consumer before that consumer accedes to an open-ended group endowment and life assurance contract must include an indication of the essential characteristics of the underlying assets. Those indications:

— must include clear, accurate and understandable information as to the economic and legal nature of those underlying assets, as well as the structural risks that are associated with them, and

— does not necessarily have to include exhaustive information as to the nature and extent of all the risks associated with the investment in those underlying assets, or the information communicated to the insurance undertaking by the issuer of those financial instruments under Article 19(3) of Directive 2004/39/EC of the European Parliament and of the Council, of 21 April 2004, on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

3. Article 36(1) of Directive 2002/83 must be interpreted as meaning that the information referred to in point a(12) of Annex III(A) to that directive does not necessarily have to be communicated to a consumer who accedes, as an insured person, to an open-ended group endowment and life assurance contract in a separate pre-contractual procedure and that it does not preclude a national provision under which it is sufficient if that information is mentioned in that contract, where provided to that consumer prior to their accession, such as to enable them to make a timely and an informed choice as to the assurance product which best meets their requirements.

4. Article 36(1) of Directive 2002/83 must be interpreted as not requiring a failure to correctly discharge the obligation to communicate the requisite information referred to in point a(12) of Annex III(A) to that directive to be regarded as entailing the nullity or invalidity of an open-ended group endowment and life assurance contract or the accession declaration thereto and thus confers on the consumer who acceded to that contract the right to the recovery of the assurance premiums paid, to the extent that the national law procedural rules for the exercise of the right to rely on that information obligation are not such as to undermine the effectiveness of that right by dissuading that consumer from exercising it.

5. Article 7 of Directive 2005/29/EC of the European Parliament and of the Council, of 11 May 2005, concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), must be interpreted as meaning that, for the purposes of that provision, failure to communicate the information referred to in Article 36(1) of Directive 2002/83, read in conjunction with point a(12) of Annex III(A) thereto, to a consumer acceding to an open-ended group endowment and life assurance contract, is likely to constitute a misleading omission.

(1) OJ C 209, 22.6.2020.
OJ C 304, 14.9.2020.

Judgment of the Court (Grand Chamber) of 22 February 2022 (request for a preliminary ruling from the Rechtbank Rotterdam — Netherlands) — Stichting Rookpreventie Jeugd and Others v Staatssecretaris van Volksgezondheid, Welzijn en Sport

(Case C-160/20) [1]

(Reference for a preliminary ruling — Directive 2014/40/EU — Manufacture, presentation and sale of tobacco products — Products not complying with the maximum emission levels — Prohibition on placing on the market — Measurement method — Filter cigarettes with small ventilation holes — Measurement of the emissions on the basis of ISO standards — Standards not published in the Official Journal of the European Union — Compliance with the publication requirements laid down in Article 297(1) TFEU read in the light of the principle of legal certainty — Compliance with the principle of transparency)

(2022/C 165/03)

Language of the case: Dutch

Referring court

Rechtbank Rotterdam

Parties to the main proceedings

Applicants: Stichting Rookpreventie Jeugd, Stichting Inspire2live, Rode Kruis Ziekenhuis BV, Stichting ClaudicatioNet, Nederlandse Vereniging voor Kindergeneeskunde, Nederlandse Vereniging voor Verzekeringsgeneeskunde, Accare, Stichting Universitaire en Algemene Kinder- en Jeugdpsychiatrie Noord-Nederland, Vereniging Praktijkhoudende Huisartsen, Nederlandse Vereniging van Artsen voor Longziekten en Tuberculose, Nederlandse Federatie van Kankerpatiëntenorganisaties, Nederlandse Vereniging Arbeids- en Bedrijfsgeneeskunde, Nederlandse Vereniging voor Cardiologie, Koepel van Artsen Maatschappij en Gezondheid, Koninklijke Nederlandse Maatschappij tot bevordering der Tandheelkunde, College van Burgemeester en Wethouders van Amsterdam

Defendant: Staatssecretaris van Volksgezondheid, Welzijn en Sport

Intervener: Vereniging Nederlandse Sigaretten- en Kerftabakfabrikanten (VSK)

Operative part of the judgment

1. Article 4(1) of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC is to be interpreted as providing that the maximum emission levels for tar, nicotine and carbon monoxide from cigarettes intended to be placed on the market or manufactured in the Member States, prescribed in Article 3(1) of that directive, must be measured in accordance with the measurement methods arising from ISO standards 4387, 10315, 8454 and 8243, to which Article 4(1) refers.

2. Consideration of Question 1 has disclosed no factor of such a kind as to affect the validity of Article 4(1) of Directive 2014/40 having regard to the principle of transparency, to Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the Official Journal of the European Union, and to Article 297(1) TFEU read in the light of the principle of legal certainty.

3. Consideration of Question 3(a) has disclosed no factor of such a kind as to affect the validity of Article 4(1) of Directive 2014/40 having regard to Article 5(3) of the World Health Organisation Framework Convention on Tobacco Control.

4. Consideration of Question 3(b) has disclosed no factor of such a kind as to affect the validity of Article 4(1) of Directive 2014/40 having regard to Article 114(3) TFEU, the World Health Organisation Framework Convention on Tobacco Control and Articles 24 and 35 of the Charter of Fundamental Rights of the European Union.

5. Should Article 4(1) of Directive 2014/40 not be binding on individuals, the method used for the purpose of applying Article 3(1) of that directive must be appropriate, in the light of scientific and technical developments or internationally agreed standards, for measuring the levels of emissions released when a cigarette is consumed as intended, and must take as a base a high level of protection of human health, especially for young people, while the accuracy of the measurements obtained by means of that method must be verified by laboratories approved and monitored by the competent authorities of the Member States as referred to in Article 4(2) of that directive.

(1) OJ C 222, 6.7.2020.

Judgment of the Court (Fifth Chamber) of 24 February 2022 (request for a preliminary ruling from the Administratīvā apgabaltiesa — Latvia) — 'SS' SIA v Valsts ieņēmumu dienests

(Case C-175/20) ([1])

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Regulation (EU) 2016/679 — Article 2 — Scope — Article 4 — Concept of 'processing' — Article 5 — Principles relating to processing — Purpose limitation — Data minimisation — Article 6 — Lawfulness of processing — Processing necessary for the performance of a task carried out in the public interest by the controller — Processing necessary for compliance with a legal obligation to which the controller is subject — Article 23 — Limitations — Processing of data for tax purposes — Request for the disclosure of information relating to vehicle sale advertisements placed online — Proportionality)

(2022/C 165/04)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: 'SS' SIA

Defendant: Valsts ieņēmumu dienests

Operative part of the judgment

1. The provisions of 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) must be interpreted as meaning that the collection by the tax authorities of a Member State from an economic operator of information involving a significant amount of personal data is subject to the requirements of that regulation, in particular those set out in Article 5(1) thereof.

2. The provisions of Regulation 2016/679 must be interpreted as meaning that the tax authorities of a Member State may not derogate from the provisions of Article 5(1) of that regulation where such a right has not been granted to them by a legislative measure within the meaning of Article 23(1) thereof.

3. The provisions of Regulation 2016/679 must be interpreted as not precluding the tax authorities of a Member State from requiring a provider of internet advertisement services to disclose to them information relating to taxpayers who have published advertisements in one of the sections of their internet portal, provided, in particular, that those data are necessary in the light of the specific purposes for which they are collected and that the period to which the data collection relates does not exceed the period strictly necessary to achieve the objective of general interest sought.

([1]) OJ C 222, 6.7.2020.

Judgment of the Court (Fourth Chamber) of 24 February 2022 — Eurofer, European Steel Association, AISBL v European Commission, HBIS Group Serbia Iron & Steel LLC Belgrade

(Case C-226/20 P) [1]

(Appeal — Dumping — Imports of hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine — Termination of the proceedings against imports originating in Serbia — Determination of injury — Cumulative assessment of the effects of imports from more than one third country — Regulation (EU) 2016/1036 — Article 3(4) — Termination of the proceedings without measures — Article 9(2) — 'Negligible' imports — De minimis threshold — European Commission's discretion)

(2022/C 165/05)

Language of the case: English

Parties

Appellant: Eurofer, European Steel Association, AISBL (represented by: J. Killick and G. Forwood, avocats)

Other parties to the proceedings: European Commission (represented: initially by T. Maxian Rusche and by A. Demeneix, and subsequently by T. Maxian Rusche and G. Luengo, acting as Agents), HBIS Group Serbia Iron & Steel LLC Belgrade (represented by: R. Luff, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Eurofer, European Steel Association, AISBL to bear its own costs and to pay those incurred by the European Commission and HBIS Group Serbia Iron & Steel LLC Belgrade.

(1) OJ C 313, 21.9.2020.

Judgment of the Court (Fifth Chamber) of 24 February 2022 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'Viva Telecom Bulgaria' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia

(Case C-257/20) [1]

(Reference for a preliminary ruling — Taxation — Withholding tax on notional interest on an interest-free loan granted to a resident subsidiary by a non-resident parent company — Directive 2003/49/EC — Payments of interest between associated companies of different Member States — Article 1(1) — Exemption from withholding tax — Article 4(1)(d) — Exclusion of certain payments — Directive 2011/96/EU — Corporation tax — Article 1(1)(b) — Distribution of profits by a resident subsidiary to its non-resident parent company — Article 5 — Exemption from withholding tax — Directive 2008/7/EC — Raising of capital — Article 3 — Contributions of capital — Article 5(1)(a) — Indirect tax exemption — Articles 63 and 65 TFEU — Free movement of capital — Taxation of the gross amount of notional interest — Recovery procedure for the purposes of the deduction of expenses related to the grant of the loan and a possible refund — Difference in treatment — Justification — Balanced allocation of the power to impose taxes between the Member States — Effective collection of tax — Combating of tax avoidance)

(2022/C 165/06)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: 'Viva Telecom Bulgaria' EOOD

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

Intervener: Varhovna administrativna prokuratura na Republika Bulgaria

Operative part of the judgment

1. Article 1(1) of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, read in conjunction with Article 4(1)(d) of that directive, Article 5 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive (EU) 2015/121 of 27 January 2015, and Articles 3 and 5 of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital must be interpreted as not precluding national legislation which provides for the taxation in the form of a withholding tax of notional interest that a resident subsidiary which has been granted an interest-free loan by its non-resident parent company would have had to pay to the latter had the loan been concluded under market conditions;

2. Article 63 TFEU, read in the light of the principle of proportionality, must be interpreted as not precluding national legislation which provides for the taxation in the form of a withholding tax of notional interest that a resident subsidiary which has been granted an interest-free loan by its non-resident parent company would have had to pay to the latter had the loan been concluded under market conditions, where that withholding tax applies to the gross amount of that interest, without it being possible to deduct, at that stage, expenses related to that loan since a subsequent application to that effect is necessary for the purpose of recalculating that tax and making a possible refund, in so far as, first, the length of the procedure laid down for that purpose by that legislation is not excessive and, second, interest is owed on the amounts refunded.

(1) OJ C 279, 24.8.2020.

Judgment of the Court (Second Chamber) of 24 February 2022 (request for a preliminary ruling from the Rayonen sad Lukovit — Bulgaria) — VB v Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto'

(Case C-262/20) [1]

(Reference for a preliminary ruling — Social policy — Organisation of working time — Directive 2003/88/EC — Article 8 — Article 12(a) — Articles 20 and 31 of the Charter of Fundamental Rights of the European Union — Reduction of the normal length of night work in relation to day work — Public sector workers and private sector workers — Equal treatment)

(2022/C 165/07)

Language of the case: Bulgarian

Referring court

Rayonen sad Lukovit

Parties to the main proceedings

Applicant: VB

Defendant: Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto'

Operative part of the judgment

1. Articles 8 and 12(a) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not requiring the adoption of national legislation providing that the normal length of night work for workers in the public sector, such as police officers and firefighters, is shorter than the normal length of day work laid down for them. Such workers should in any case benefit from other protective measures in terms of working hours, pay, allowances or similar benefits, in order to compensate for the particular hardship involved in the night work they perform.

2. Articles 20 and 31 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that they do not preclude the normal length of night work of seven hours laid down in the legislation of a Member State for workers in the private sector from being applied to workers in the public sector, including police officers and firefighters, if such a difference in treatment is based on an objective and reasonable criterion, that is to say, it relates to a legally permitted aim pursued by that legislation, and is proportionate to that aim.

(1) OJ C 279, 24.8.2020.

Judgment of the Court (Fifth Chamber) of 24 February 2022 (request for a preliminary ruling from the Tribunal du travail francophone de Bruxelles — Belgium) — CO and Others v MJ, European Commission, European External Action Service (EEAS), Council of the European Union, Eulex Kosovo

(Case C-283/20) (1)

(Reference for a preliminary ruling — Common Foreign and Security Policy (CFSP) — European Union Rule of Law Mission in Kosovo (Eulex Kosovo) — Joint Action 2008/124/CFSP — Article 8(3) and (5), Article 9(3) and Article 10(3) — Status of employer of the mission staff — Article 16(5) — Subrogation)

(2022/C 165/08)

Language of the case: French

Referring court

Tribunal du travail francophone de Bruxelles

Parties to the main proceedings

Applicants: CO and Others

Defendants: MJ, European Commission, European External Action Service, Council of the European Union, Eulex Kosovo

Operative part of the judgment

Article 16(5) of Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, Eulex Kosovo, as amended by Council Decision 2014/349/CFSP of 12 June 2014, must be interpreted as meaning that, starting from 15 June 2014, it designates the Rule of Law Mission in Kosovo, known as 'Eulex Kosovo', referred to in Article 1 of that joint action, as responsible and therefore as defendant in any action relating to the consequences of the implementation of the mission entrusted to it, irrespective of whether the facts underlying such an action occurred before 12 June 2014, the date when Decision 2014/349 entered into force.

(1) OJ C 297, 7.9.2020.

Judgment of the Court (Third Chamber) of 24 February 2022 (request for a preliminary ruling from the Satversmes tiesa — Latvia) — 'Latvijas Gāze' AS

(Case C-290/20) [1]

(Reference for a preliminary ruling — Internal market in natural gas — Directive 2009/73/EC — Article 2(3) — Concept of 'transmission' — Article 23 — Decision-making powers regarding the connection of storage facilities, liquefied natural gas regasification facilities and industrial customers to the transmission system — Article 32(1) — Third-party access to the system — Possibility of direct connection of final customers to the natural gas transmission system)

(2022/C 165/09)

Language of the case: Latvian

Referring court

Satversmes tiesa

Parties to the main proceedings

Applicant: 'Latvijas Gāze' AS

Intervener: Latvijas Republikas Saeima, Sabiedrisko pakalpojumu regulēšanas komisija

Operative part of the judgment

1. Articles 23 and 32(1) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC must be interpreted as meaning that it does not follow from those provisions that Member States are obliged to adopt legislation under which, first, any final customer may choose to be connected either to the transmission system or to the distribution system for natural gas, and, second, the system operator concerned is required to allow him to connect to that system.

2. Article 23 of Directive 2009/73 must be interpreted as not requiring Member States to adopt legislation under which only an industrial customer may connect to the natural gas transmission system.

3. Article 2(3) and Article 23 of Directive 2009/73 must be interpreted as not precluding legislation of a Member State under which the transmission of natural gas includes the transmission of natural gas directly to the natural gas supply system of a final customer.

[1] OJ C 297, 7.9.2020.

Judgment of the Court (Grand Chamber) of 22 February 2022 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bund Naturschutz in Bayern eV v Landkreis Rosenheim

(Case C-300/20) ([1])

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Article 2(a) — Concept of 'plans and programmes' — Article 3(2)(a) — Measures prepared for certain sectors and setting a framework for future development consent of projects listed in Annexes I and II to Directive 2011/92/EU — Article 3(4) — Measures setting a framework for future development consent of projects — Landscape conservation regulation adopted by a local authority)

(2022/C 165/10)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant and appellant in the appeal on a point of law: Bund Naturschutz in Bayern eV

Defendant and respondent in the appeal on a point of law: Landkreis Rosenheim

Intervening parties: Landesanwaltschaft Bayern and Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

1. Article 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of the projects referred to in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment does not fall within the scope of that provision.

2. Article 3(4) of Directive 2001/42 must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of projects does not fall within the scope of that provision.

([1]) OJ C 304, 14.9.2020.

Judgment of the Court (Seventh Chamber) of 24 February 2022 — Ernests Bernis, Oļegs Fiļs, OF Holding SIA, Cassandra Holding Company SIA v Single Resolution Board, European Central Bank

(Case C-364/20 P) [1]

(Appeal — Economic and monetary union — Banking union — Recovery and resolution of credit institutions and investment firms — Single resolution mechanism for credit institutions and certain investment firms (SRM) — Regulation (EU) No 806/2014 — Article 18 — Resolution procedure — Declaration by the European Central Bank (ECB) that an entity is failing or is likely to fail — Decision of the Single Resolution Board (SRB) not to adopt a resolution scheme — Lack of public interest — Winding up in accordance with national law — Shareholders — Lack of direct concern — Inadmissibility)

(2022/C 165/11)

Language of the case: English

Parties

Appellants: Ernests Bernis, Oļegs Fiļs, OF Holding SIA, Cassandra Holding Company SIA (represented by: O. Behrends, Rechtsanwalt)

Other parties to the proceedings: Single Resolution Board (represented: initially by H. Ehlers, A. Valavanidou and E. Muratori, and subsequently by H. Ehlers and E. Muratori, acting as Agents, and by B. Heenan, Solicitor, J. Rivas Andrés and A. Manzaneque Valverde, abogados), European Central Bank (ECB) (represented by: E. Koupepidou and G. Marafioti, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mr Ernests Bernis and Mr Oļegs Fiļs, OF Holding SIA and Cassandra Holding Company SIA to bear their own costs and to pay those incurred by the Single Resolution Board;

3. Orders the European Central Bank to bear its own costs.

[1] OJ C 320, 28.9.2020.

Judgment of the Court (Third Chamber) of 24 February 2022 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 2 de Vigo — Spain) — CJ v Tesorería General de la Seguridad Social (TGSS)

(Case C-389/20) [1]

(Reference for a preliminary ruling — Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Article 4(1) — Prohibition of any discrimination on grounds of sex — Domestic workers — Protection against unemployment — Exclusion — Particular disadvantage to female workers — Legitimate social policy objectives — Proportionality)

(2022/C 165/12)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 2 de Vigo

Parties to the main proceedings

Applicant: CJ

Defendant: Tesorería General de la Seguridad Social (TGSS)

Re:

Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding a national provision excluding unemployment benefits from the social security benefits granted to domestic workers by a statutory social security scheme, since that provision places female workers at a particular disadvantage as compared with male workers and is not justified by objective factors wholly unrelated to discrimination based on sex.

([1]) OJ C 423, 7.12.2020.

Judgment of the Court (Fourth Chamber) of 24 February 2022 (request for a preliminary ruling from the Landesgericht Korneuburg — Austria) — Airhelp Limited v Austrian Airlines AG

(Case C-451/20) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 3(1) — Scope — Flight with connecting flight departing from and arriving in a third country — Single reservation through a Community air carrier — Stopover in the territory of a Member State — Article 5 (1)(c)(iii) and Article 7 — Delayed alternative flight — Taking into account of the actual arrival time for the purposes of compensation)

(2022/C 165/13)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: Airhelp Limited

Defendant: Austrian Airlines AG

Operative part of the judgment

Article 3(1) of Regulation (EC) No 261/2004 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 must be interpreted as meaning that that regulation is not applicable to a flight with a connecting flight, booked under a single booking but consisting of two flights, both of which are operated by a Community air carrier, if both the departure airport of the first flight and the arrival airport of the second flight are in the territory of a third country and only the airport where the stopover takes place is in the territory of a Member State.

([1]) OJ C 433, 14.12.2020.

Judgment of the Court (First Chamber) of 24 February 2022 (request for a preliminary ruling from the Consiglio di Stato — Italy) — PJ v Agenzia delle dogane e dei monopoli — Ufficio dei monopoli per la Toscana, Ministero dell'Economia e delle Finanze

(Case C-452/20) [1]

(Reference for a preliminary ruling — Approximation of laws — Directive 2014/40/EU — Article 23 (3) — World Health Organisation Framework Convention on Tobacco Control — Prohibition on selling tobacco products to minors — Rules on penalties — Effective, proportionate and dissuasive penalties — Obligation on sellers of tobacco products to verify the buyer's age when selling those products — Fine — Operation of a tobacconist's shop — Suspension of trading licence for a period of 15 days — Principle of proportionality — Precautionary principle)

(2022/C 165/14)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: PJ

Respondents: Agenzia delle dogane e dei monopoli — Ufficio dei monopoli per la Toscana, Ministero dell'Economia e delle Finanze

Operative part of the judgment

The principle of proportionality must be interpreted as not precluding national legislation which, in the case of a first infringement of the prohibition on the sale of tobacco products to minors, provides, in addition to the imposition of an administrative fine, for the suspension, for a period of 15 days, of the trading licence authorising the economic operator who has infringed that prohibition to sell such products, provided that such legislation does not exceed the limits of what is appropriate and necessary in order to attain the objective of protecting human health and reducing, in particular, smoking prevalence among young people.

[1] OJ C 423, 7.12.2020.

Judgment of the Court (Third Chamber) of 24 February 2022 (request for a preliminary ruling from the Conseil d'État — Belgium) — Namur-Est Environnement ASBL v Région wallonne

(Case C-463/20) [1]

(Reference for a preliminary ruling — Environment — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Relationship between the assessment and consent procedure referred to in Article 2 of Directive 2011/92/EU and a national procedure of derogation from the species protection measures provided for in Directive 92/43/EEC — Concept of 'consent' — Complex decision-making process — Obligation to conduct an assessment — Material scope — Procedural stage at which public participation in the decision-making process must be guaranteed)

(2022/C 165/15)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Namur-Est Environnement ASBL

Defendant: Région wallonne

Operative part of the judgment

1. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment must be interpreted as meaning that a decision adopted under Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, which authorises a developer to derogate from applicable measures for the protection of species, with a view to executing a project, within the meaning of Article 1(2)(a) of Directive 2011/92, falls within the consent procedure of that project, within the meaning of Article 1(2)(c) of that directive, if, first, the execution of that project cannot take place without the developer having obtained that decision and, second, the authority competent for authorising such a project retains the ability to determine its environmental effects more strictly than was done in that decision.

2. Directive 2011/92 must be interpreted, having regard in particular to Articles 6 and 8, as meaning that the adoption of a prior decision authorising a developer to derogate from applicable measures for the protection of species, with a view to executing a project, within the meaning of Article 1(2)(a) of that directive, need not necessarily be preceded by public participation, provided that that participation is ensured in an effective manner before the adoption of the decision to be taken by the competent authority for the possible consent for that project.

[1] OJ C 9, 11.1.2021.

Judgment of the Court (Grand Chamber) of 22 February 2022 (request for a preliminary ruling from the Conseil d'État — Belgium) — XXXX v Commissaire général aux réfugiés et aux apatrides

(Case C-483/20) [1]

(Reference for a preliminary ruling — Common policy on asylum — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 33(2)(a) — Inadmissibility of an application for international protection lodged in a Member State by a third-country national who has obtained refugee status in another Member State, where the minor child of that third-country national, who is a beneficiary of subsidiary protection status, resides in the first Member State — Charter of Fundamental Rights of the European Union — Article 7 — Right to respect for family life — Article 24 — Best interests of the child — No infringement of Articles 7 and 24 of the Charter of Fundamental Rights due to the inadmissibility of the application for international protection — Directive 2011/95/EU — Article 23(2) — Obligation on the Member States to ensure the family unity of beneficiaries of international protection is maintained)

(2022/C 165/16)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: XXXX

Respondent: Commissaire général aux réfugiés et aux apatrides

Operative part of the judgment

Article 33(2)(a) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in the light of Article 7 and Article 24(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a Member State from exercising the option available to it under that provision to refuse to grant an application for international protection on the ground that it is inadmissible because the applicant has already been granted refugee status by another Member State, where that applicant is the father of a child who is an unaccompanied minor who has been granted subsidiary protection in the first Member State, without prejudice, nevertheless, to the application of Article 23(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

(1) OJ C 9, 11.1.2021.

Judgment of the Court (Ninth Chamber) of 24 February 2022 (request for a preliminary ruling from the Curtea de Apel Bucureşti — Romania) — Alstom Transport SA v Compania Naţională de Căi Ferate CFR SA, Strabag AG — Sucursala Bucureşti, Swietelsky AG Linz — Sucursala Bucureşti

(Case C-532/20) [1]

(Reference for a preliminary ruling — Directive 92/13/EEC — Procurement procedures of entities operating in the water, energy, transport and telecommunications sectors — Article 1(1) and (3) — Access to review procedures — Article 2c — Time limits for applying for review — Calculation — Review of a decision allowing a tenderer to participate)

(2022/C 165/17)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Applicant: Alstom Transport SA

Defendants: Compania Naţională de Căi Ferate CFR SA, Strabag AG — Sucursala Bucureşti, Swietelsky AG Linz — Sucursala Bucureşti

Operative part of the judgment

Article 1(1), fourth subparagraph, Article 1(3) and Article 2c of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, must be interpreted as meaning that the period within which the successful tenderer for a contract may apply for review of a decision of the contracting entity declaring admissible, in the decision awarding that contract, the bid submitted by an unsuccessful tenderer may be calculated by using as a point of reference the date of receipt of that decision of the contracting authority by that successful tenderer, even if, at that date, that unsuccessful tenderer had not, or had not yet, applied for review of it. On the other hand, if, during the notification or publication of that decision, a summary of the relevant reasons for it, such as the information concerning the procedures for evaluating that tender, was not, in accordance with that Article 2c, brought to the knowledge of that successful tenderer, that time limit must be calculated by using as a point of reference the communication of such a summary to the same successful tenderer.

(1) OJ C 53, 15.2.2021.

Judgment of the Court (Fourth Chamber) of 24 February 2022 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — 'Tiketa' UAB v M. Š.

(Case C-536/20) [1]

(Reference for a preliminary ruling — Directive 2011/83/EU — Consumer contracts — Concept of 'trader' — Obligation to provide information in respect of distance contracts — Requirement that the necessary information be provided in plain and intelligible language and on a durable medium)

(2022/C 165/18)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellant on a point of law: 'Tiketa' UAB

Respondent on a point of law: M. Š.

Other party in the appeal on a point of law: 'Baltic Music' VšĮ

Operative part of the judgment

1. Point 2 of Article 2 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council must be interpreted as meaning that not only a natural or legal person who is acting for purposes relating to his own trade, business, craft or profession in relation to contracts covered by that directive, but also a natural or legal person who is acting as an intermediary, in the name of or on behalf of that person, is a 'trader' within the meaning of that provision, since that intermediary and the principal trader may both be classified as 'traders' for the purposes of that provision, without there being any need to establish the existence of a twofold provision of services;

2. Article 6(1) and (5) and Article 8(1) and (7) of Directive 2011/83 must be interpreted as not precluding the information referred to in Article 6(1) from being provided to the consumer, prior to the conclusion of the contract, only in the general terms and conditions for the provision of services on the intermediary's website, which that consumer actively accepts by ticking the box provided for that purpose, provided that that information is brought to the consumer's attention in a clear and comprehensible manner. However, such a means of providing information cannot act as a substitute for providing the consumer with the confirmation of the contract on a durable medium, within the meaning of Article 8(7) of that directive, since this does not prevent that information from forming an integral part of the distance or off-premises contract.

[1] OJ C 19, 18.1.2021.

Judgment of the Court (Fourth Chamber) of 24 February 2022 (request for a preliminary ruling from the Sąd Okręgowy w Warszawie — Poland) — ORLEN KolTrans sp. z o.o. v Prezes Urzędu Transportu Kolejowego

(Case C-563/20) [1]

(Reference for a preliminary ruling — Rail transport — Directive 2001/14/EC — Article 4 — Setting of infrastructure charges by decision of the manager — Article 30(2) — Railway undertakings' right to bring an administrative action — Article 30(6) — Judicial review of the decisions of the regulatory body)

(2022/C 165/19)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Applicant: ORLEN KolTrans sp. z o.o.

Defendant: Prezes Urzędu Transportu Kolejowego

Operative part of the judgment

1. Article 30(2)(e) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, must be interpreted as not governing the right of a railway undertaking, which uses or intends to use the railway infrastructure, to participate in any procedure conducted by the regulatory body for the purpose of adopting a decision approving or rejecting a draft unit rate for the basic charge for minimum access to infrastructure submitted by an infrastructure manager;

2. Article 30(6) of Directive 2001/14, as amended by Directive 2007/58 must be interpreted as meaning that a railway undertaking which uses or intends to use the railway infrastructure must be able to challenge before the court having jurisdiction the decision of the regulatory body approving the unit rates of the basic charge for minimum access to infrastructure established by the infrastructure manager.

(1) OJ C 44, 8.2.2021.

Judgment of the Court (Fifth Chamber) of 24 February 2022 (request for a preliminary ruling from the Înalta Curte de Casaţie şi Justiţie — Romania) — SC Cridar Cons SRL v Administrația Județeană a Finanțelor Publice Cluj, Direcția Generală Regională a Finanțelor Publice Cluj-Napoca

(Case C-582/20) ([1])

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Articles 167 and 168 — Right to deduction — Refusal — Tax evasion — Evaluation of evidence — Suspension of examination of an administrative complaint relating to a notice of assessment refusing a right to deduction, pending the outcome of criminal proceedings — Procedural autonomy of the Member States — Principle of fiscal neutrality — Right to good administration — Article 47 of the Charter of Fundamental Rights of the European Union)

(2022/C 165/20)

Language of the case: Romanian

Referring court

Înalta Curte de Casaţie şi Justiţie

Parties to the main proceedings

Applicant: SC Cridar Cons SRL

Defendants: Administrația Județeană a Finanțelor Publice Cluj, Direcția Generală Regională a Finanțelor Publice Cluj-Napoca

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation which permits national tax authorities to suspend the examination of an administrative complaint against a notice of assessment refusing a taxable person the right to deduct input VAT on account of the involvement of that taxable person in tax evasion, with a view to securing additional objective evidence concerning that involvement, provided that, first, such suspension does not delay the outcome of that administrative complaint procedure beyond a reasonable time, second, that the decision ordering that suspension includes reasons both in law and in fact and may be subject to judicial review and, third, that, if it ultimately transpires that the right to deduction was refused in breach of EU law, that taxable person may secure the repayment of the corresponding amount within a reasonable time as well as, where relevant, the corresponding late payment interest. In those circumstances, it is not necessary that, during that suspension, that taxable person enjoy a suspension of enforcement of that notice, except, in case of serious doubt as to the lawfulness of that notice, if granting the suspension of enforcement of the same notice is required to avoid serious and irreparable harm to the interests of the taxable person.

([1]) OJ C 53, 15.2.2021.

Judgment of the Court (Eighth Chamber) of 3 March 2022 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Presidenza del Consiglio dei Ministri and Others v UK and Others

(Case C-590/20) [1]

(Reference for a preliminary ruling — Coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors — Directives 75/363/EEC and 82/76/EEC — Specialist medical training — Appropriate remuneration — Application of Directive 82/76/EEC to training begun before its entry into force and continuing after the date of expiry of the period prescribed for its transposition)

(2022/C 165/21)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellants: Presidenza del Consiglio dei Ministri and Others

Respondents and cross-appellants: UK and Others

Operative part of the judgment

Article 2(1)(c) and Article 3(1) and (2) of Council Directive 75/363/EEC of 16 June 1975 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors, as amended by Council Directive 82/76/EEC of 26 January 1982, as well as the annex thereto, must be interpreted as meaning that any full-time or part-time specialist medical training begun before the entry into force, on 29 January 1982, of Directive 82/76 and continued after the expiry, on 1 January 1983, of the period prescribed for the transposition of that directive must, in respect of the period of that training running from 1 January 1983 until the end of that training, be subject to appropriate remuneration within the meaning of that annex, provided that that training concerns a medical specialty which is common to all the Member States or to two or more of them and is mentioned in Article 5 or Article 7 of Council Directive 75/362/EEC of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services.

[1] Date lodged: 10.11.2020.

Judgment of the Court (Seventh Chamber) of 24 February 2022 (request for a preliminary ruling from the Supremo Tribunal Administrativo -Portugal) — Suzlon Wind Energy Portugal — Energia Eólica Unipessoal, Lda v Autoridade Tributária e Aduaneira

(Case C-605/20) [1]

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(c) — Applicability ratione temporis — Supplies subject to VAT — Supplies of services for consideration — Criteria — Intra-group relationship — Supplies consisting in repairing or replacing components of wind turbines under guarantee and preparing non-compliance reports — Debit notes issued by the supplier of services with no reference to VAT — Deduction by the supplier of the VAT charged on the goods and services for which it has been invoiced by its subcontractors in respect of those supplies)

(2022/C 165/22)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Suzlon Wind Energy Portugal — Energia Eólica Unipessoal, Lda

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that transactions forming part of a contractual framework which identifies a supplier of services, the purchaser of those services and the nature of the services in question, duly accounted for by the taxable person, bearing a heading confirming the nature of the services and having given rise to remuneration received by the supplier constituting the actual value of those services in the form of debit notes, form a supply of services for consideration within the meaning of that provision, notwithstanding, first, any absence of profit for the taxable person and, second, the existence of a guarantee relating to the goods in respect of which those services were provided.

(1) OJ C 44, 8.2.2021.

Judgment of the Court (Seventh Chamber) of 24 February 2022 (requests for a preliminary ruling from the Cour d'appel de Liège — Belgium) — Pharmacie populaire — La Sauvegarde SCRL v État belge (C-52/21), Pharma Santé — Réseau Solidaris SCRL v État belge (C-53/21)

(Joined Cases C-52/21 and C-53/21) [1]

(References for a preliminary ruling — Freedom to provide services — Article 56 TFEU — Restrictions — Tax legislation — Corporation tax — Obligation for purchasers of services to draw up and submit supporting documents to the tax authorities concerning amounts invoiced by suppliers of services established in another Member State — No such obligation regarding purely domestic supplies of services — Justification — Effectiveness of fiscal supervision — Proportionality)

(2022/C 165/23)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Applicants: Pharmacie populaire — La Sauvegarde SCRL (C-52/21), Pharma Santé — Réseau Solidaris SCRL (C-53/21),

Defendant: État belge (C-52/21 and C-53/21)

Operative part of the judgment

Article 56 TFEU must be interpreted as precluding legislation of a Member State which requires that any company established on the territory of that Member State submit statements to the tax authorities concerning payments for services purchased from suppliers established in another Member State in which the latter are subject to legislation on the accounting system of undertakings and under the obligation to issue invoices in accordance with legislation on value added tax, failing which a corporation tax levy of 50 % or 100 % of the value of those services is to be made, whereas, in accordance with an administrative practice, the former Member State imposes no equivalent obligation where those services are provided by suppliers established on its territory.

(1) OJ C 128, 12.4.2021.

Judgment of the Court (Grand Chamber) of 22 February 2022 (request for a preliminary ruling from the Curtea de Apel Craiova — Romania) — proceedings brought by RS

(Case C-430/21) [1]

(Reference for a preliminary ruling — Rule of law — Independence of the judiciary — Second subparagraph of Article 19(1) TEU — Article 47 of the Charter of Fundamental Rights of the European Union — Primacy of EU law — Lack of jurisdiction of a national court to examine the conformity with EU law of national legislation found to be constitutional by the constitutional court of the Member State concerned — Disciplinary proceedings)

(2022/C 165/24)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicant: RS

Operative part of the judgment

1. The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.

2. The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.

(1) OJ C 371, 3.11.2020.

Judgment of the Court (Grand Chamber) of 22 February 2022 (requests for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of European arrest warrants issued against X (C-562/21 PPU), Y (C-563/21 PPU)

(Joined Cases C-562/21 PPU and C-563/21 PPU) [1]

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 1(3) — Surrender procedures between Member States — Conditions for execution — Charter of Fundamental Rights of the European Union — Second paragraph of Article 47 — Fundamental right to a fair trial before an independent and impartial tribunal previously established by law — Systemic or generalised deficiencies — Two-step examination — Criteria for application — Obligation of the executing judicial authority to determine, specifically and precisely, whether there are substantial grounds for believing that the person in respect of whom a European arrest warrant has been issued, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law)

(2022/C 165/25)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicants: X (C-562/21 PPU), Y (C-563/21 PPU)

Operative part of the judgment

Article 1(2) and (3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where the executing judicial authority called upon to decide on the surrender of a person in respect of whom a European arrest warrant has been issued has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, that authority may refuse to surrender that person:

— in the context of a European arrest warrant issued for the purposes of executing a custodial sentence or detention order, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by that person relating to the composition of the panel of judges who heard his or her criminal case or to any other circumstance relevant to the assessment of the independence and impartiality of that panel, there has been a breach of that person's fundamental right to a fair trial before an independent and impartial tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, and

— in the context of a European arrest warrant issued for the purposes of conducting a criminal prosecution, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by the person concerned relating to his or her personal situation, the nature of the offence for which that person is prosecuted, the factual context surrounding that European arrest warrant or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person, the latter, if surrendered, runs a real risk of breach of that fundamental right.

(1) OJ C 2, 3.1.2022.

Order of the Court (Ninth Chamber) of 10 January 2022 — (Request for a preliminary ruling from the Tribunale di Parma — Italy) — Criminal proceedings against ZI, TQ

(Case C-437/20) [1]

(Reference for a preliminary ruling — Article 53(2) Rules of Procedure of the Court of Justice — Games of chance — Licences for the activity of collecting bets — Extension of existing licences — Regularisation of data transmission centres (DTC) engaged in collecting bets without the necessary licence and police authorisation — Short deadline — Manifest inadmissibility of the request for a preliminary ruling)

(2022/C 165/26)

Language of the case: Italian

Referring court

Tribunale di Parma

Parties in the main criminal proceedings

ZI, TQ

Operative part of the order

The request for a preliminary ruling made by the Tribunale di Parma (Parma District Court, Italy), by decision of 8 November 2019, is manifestly inadmissible.

(1) Date lodged: 17/09/2020.

Order of the Court (Tenth Chamber) of 21 February 2022 (request for a preliminary ruling from the Commissione tributaria provinciale di Roma — Italy) — Leonardo SpA v Agenzia delle Entrate — Direzione Regionale del Lazio

(Case C-550/21) [1]

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Common system of value added tax — Lack of sufficient information — Manifest inadmissibility)

(2022/C 165/27)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Roma

Parties to the main proceedings

Applicant: Leonardo SpA

Defendant: Agenzia delle Entrate — Direzione Regionale del Lazio

Operative part of the order

The request for a preliminary ruling made by the Commissione tributaria provinciale di Roma (Provincial Tax Court, Rome, Italy), by decision of 21 July 2021, is manifestly inadmissible.

(1) Date lodged: 6.9.2021.

Order of the President of the Court of 23 February 2022 (request for a preliminary ruling from the Verwaltungsgericht Wiesbaden — Germany) — TV v Land Hessen

(Case C-63/22) [1]

(Protection of personal data — Information agency (credit bureau) — Creditworthiness assessment ('credit scoring') of natural persons based on unverified information provided by creditors — Lawfulness of data processing and joint responsibility for that processing)

(2022/C 165/28)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: TV

Defendant: Land Hessen

Other party: SCHU Holding AG

Operative part of the order

Case C-63/22 is removed from the Register of the Court

(1) Date lodged: 01/02/2022.

Appeal brought on 24 May 2021 by Roberto Alejandro Macías Chávez, José María Castillejo Oriol and Fernando Presencia against the order of the General Court (Fourth Chamber) delivered on 27 April 2021 in Case T-719/20 Macías Chávez and Others v Spain and Parliament

(Case C-322/21 P)

(2022/C 165/29)

Language of the case: Spanish

Parties

Appellants: Roberto Alejandro Macías Chávez, José María Castillejo Oriol and Fernando Presencia (represented by: J. Jover Padró, abogado)

Other parties to the proceedings: European Parliament and Kingdom of Spain

By order of 1 February 2022, the Court of Justice (Tenth Chamber) dismissed the appeal as being, in part, manifestly inadmissible and, in part, manifestly unfounded, and ordered appellants to bear their own costs.

Appeal brought on 10 September 2021 by Acciona, S.A. against the judgment of the General Court (Fifth Chamber) delivered on 30 June 2021 in Case T-362/20 Acciona v EUIPO — Agencia Negociadora PB (REACCIONA)

(Case C-557/21 P)

(2022/C 165/30)

Language of the case: Spanish

Parties

Appellant: Acciona S.A. (represented by: J. C. Erdozain López, abogado)

Other parties to the proceedings: European Union Intellectual Property Office, Agencia Negociadora PB, S.L.

By order of 27 January 2022, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered Acciona S.A. to bear its own costs.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 25 November 2021 — IEF Service GmbH v HB

(Case C-710/21)

(2022/C 165/31)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law and original defendant: IEF Service GmbH

Respondent in the appeal on a point of law and original applicant: HB

Questions referred

1. Is Article 9(1) of Directive 2008/94/EC [1] of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer to be interpreted as meaning that an undertaking within the meaning of that article carries out activities in the territories of at least two Member States where it offers its services in another Member State, employs a freelance sales engineer there for that purpose and an employee employed at the registered office of the undertaking regularly works every second week in his or her home office in the other Member State?

2. If Question 1 is answered in the affirmative:

   Is Article 9(1) of Directive 2008/94/EC to be interpreted as meaning that an employee of such an undertaking who is resident in the second Member State and is subject to compulsory social insurance there, but alternately works for one week in the Member State in which the employer has its registered office and then the next week in the Member State in which he or she is resident and is subject to compulsory social insurance, 'habitually' works in both Member States within the meaning of that article?

3. If Question 2 is answered in the affirmative:

   Is Article 9(1) of Directive 2008/94/EC to be interpreted as meaning that the guarantee institution responsible for meeting the outstanding claims of an employee who works or habitually works in two Member States is

   a) the guarantee institution of the Member State to the legislation of which he or she is subject in the context of the coordination of social security (social insurance) systems where the guarantee institutions pursuant to Article 3 of Directive 2008/94/EC in both States are structured in such a way that the employer's contributions to the financing of the guarantee institution are payable as part of the compulsory social insurance contributions; or

   b) the guarantee institution of the other Member State in which the undertaking which is in a state of insolvency has its registered office; or

   c) the guarantee institutions of both Member States, with the result that the employee can choose which one he or she wants to claim from when submitting his or her application?

(1) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ 2008 L 283, p. 36).

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 21 December 2021 — R.I. v Inspecția Judiciară, N.L.

(Case C-817/21)

(2022/C 165/32)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Appellant: R.I.

Respondents: Inspecția Judiciară, N.L.

Question referred

Must Article 2 and the second subparagraph of Article 19(1) of the Treaty on European Union, Decision 2006/928 (establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption), (1) and the guarantees of independence and impartiality imposed under EU law, be interpreted as precluding national legislation which allows the chief inspector of the Judicial Inspectorate to issue administrative acts of a normative nature (subordinate to the law) and/or an individual nature by which he or she decides autonomously on the organisation of the institutional framework of the Judicial Inspectorate for the selection of judicial inspectors and the assessment of their activity, the conduct of the inspection activities, and the appointment of the deputy chief inspector, where, under organic law, those persons alone may carry out, approve or reject acts of disciplinary investigation in respect of the chief inspector?

(1) Commission Decision 2006/928 of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 30 December 2021 — Banca A v ANAF, President of ANAF

(Case C-827/21)

(2022/C 165/33)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant for revision: Banca A

Defendants: ANAF, President of ANAF

Questions referred

1. Is a national court required to interpret in a manner consistent with Council Directive 2009/133/EC ([1]) the national tax legislation applicable to internal situations which governs the non-taxation of income arising on the cancellation of the shareholding of a receiving company in the capital of a transferring company, in circumstances such as those of this case, where:

   — the national legislature has regulated internal transactions and similar cross-border transactions with separate, non-identical rules;

   — the national rule applicable to internal transactions nevertheless operates using concepts contained in the directive — merger, transfer of assets and liabilities, cancellation of shareholdings;

   — the explanatory memorandum to the national tax law can be interpreted as meaning that the legislature intended to establish the same tax treatment for national transactions as for cross-border transactions, covered by the transposition of the directive, in order to comply with the principle of the tax neutrality of mergers in a non-discriminatory manner and in such a way as to avoid distortions of competition?

2. Must Article 7 of Council Directive 2009/133/EC be interpreted as meaning that the benefit of the non-taxation of income arising from a transaction whereby one company cancels its shareholding in another company, following the transfer of the assets and liabilities of the latter company to the former, cannot be refused on the ground that the transaction in question does not satisfy all the conditions laid down in national law in order to be classified as a merger?

3. Must Article 7 of Council Directive 2009/133/EC be interpreted as meaning that the benefit of non-taxation applies to the profit arising from an acquisition on favourable terms, reflected in the profit and loss account of the incorporating company?

([1]) Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ 2009 L 310, p. 34).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 6 January 2022 — RF v Finanzamt G

(Case C-15/22)

(2022/C 165/34)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: RF

Defendant: Finanzamt G

Question referred

Are Article 4(3) of the TEU and Article 208, read in conjunction with Article 210 of the TFEU, to be interpreted as precluding a national administrative practice according to which tax is not waived in cases where a development cooperation project is financed by the European Development Fund, while salary that a worker earns from a current employment relationship in respect of an activity associated with German official development assistance within the framework of technical or financial cooperation that is financed to at least 75 % by a Federal Ministry responsible for development cooperation or else by a state-owned private development assistance association is, in certain conditions, exempted from taxation?

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 10 January 2022 — Caxamar — Comércio e Indústria de Bacalhau SA v Autoridade Tributária e Aduaneira

(Case C-23/22)

(2022/C 165/35)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Caxamar — Comércio e Indústria de Bacalhau SA

Defendant: Autoridade Tributária e Aduaneira

Question referred

According to the correct interpretation of the Guidelines on regional State aid for 2014-2020, in conjunction with the provisions of Commission Regulation (EU) No 651/2014 of 16 June 2014, [1] in particular Article 1 and Article 2(11) thereof, Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013, [2] and Annex I to the Treaty on the Functioning of the European Union, is it possible to conclude that, under Articles 2(2) and 22 (1) of the Código Fiscal do Investimento (Tax Code on Investment), approved by Decreto-Lei n.º 162/2014 (Decree-Law No 162/2014) of 31 October 2014, and Articles 1 and 2 of the Portaria n.º 282/2014 (Ministerial Order No 282/2014) of 30 December 2014, the processing of fishery and aquaculture products relating to 'salted cod', 'frozen cod' and 'desalted cod' in Economic Activity Code 10204Rev3 does not constitute the processing of agricultural products for the purposes of granting the relevant tax advantages?

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[1] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ 2014 L 187, p. 1).

[2] Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ 2013 L 354, p. 1).

Request for a preliminary ruling from the Pesti Központi Kerületi Bíróság (Hungary) lodged on 25 January 2022 — PannonHitel Pénzügyi Zrt. v WizzAir Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.)

(Case C-51/22)

(2022/C 165/36)

Language of the case: Hungarian

Referring court

Pesti Központi Kerületi Bíróság

Parties to the main proceedings

Applicant: PannonHitel Pénzügyi Zrt.

Defendant: WizzAir Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.)

Question referred

Must Article 5(1)(a), the first indent of Article 8(1)(a) and Article 8(2) of Regulation (EC) No 261/2004 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, ([1]) be interpreted as meaning that a passenger may exercise his or her right to reimbursement of the full cost of the ticket at the price at which it was bought directly against the air carrier, even where the passenger has booked the ticket with the help of a third party acting as an intermediary, to whom the passenger paid the ticket price, and it was the intermediary who purchased the ticket from the air carrier and who paid [the carrier] the ticket price, and there is no indication that the intermediary was acting as the authorised agent of the air carrier or that it was a tour operator?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Amtsgericht Frankfurt am Main (Germany) lodged on 1 February 2022 — IA v DER Touristik Deutschland GmbH

(Case C-62/22)

(2022/C 165/37)

Language of the case: German

Referring court

Amtsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: IA

Defendant: DER Touristik Deutschland GmbH

Question referred

Is Article 18(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ([1]) to be interpreted as meaning that, in addition to regulating international jurisdiction, the provision also lays down a rule to be observed by the adjudicating court as to the territorial jurisdiction of the national courts in matters pertaining to travel contracts where both the consumer, as the traveller, and his or her contractual partner, the tour operator, are domiciled in the same Member State, however the destination is not in that Member State but is located abroad, with the consequence that the consumer can bring contractual claims against the tour operator before the court for his or her place of domicile as a supplement to national rules?

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

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 1 February 2022 — Viagogo AG v Autorità per le Garanzie nelle Comunicazioni, Autorità Garante della Concorrenza e del Mercato

(Case C-70/22)

(2022/C 165/38)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Viagogo AG

Respondents: Autorità per le Garanzie nelle Comunicazioni, Autorità Garante della Concorrenza e del Mercato

Questions referred

1. Does Directive 2000/31/EC, [1] and in particular Articles 3, 14 and 15 thereof, in conjunction with Article 56 TFEU, preclude the application of legislation of a Member State on sales of tickets for events on the secondary market which has the effect of barring the operator of a hosting platform operating in the EU, such as the appellant in the present case, from supplying to third-party users services advertising the sale of tickets for events on the secondary market, reserving that activity solely to sellers, event organisers or other persons authorised by the public authorities to issue tickets on the primary market through certified systems?

2. In addition, does Article 102 TFEU, in conjunction with Article 106 thereof, preclude the application of legislation of a Member State on the sale of tickets for events which reserves all services relating to the secondary market for tickets (and brokering in particular) solely to sellers, event organisers or other persons authorised to issue tickets on the primary market through certified systems, by barring from that activity information society service providers which intend to operate as a hosting provider for the purposes of Articles 14 and 15 of Directive 2000/31/EC, in particular where, as in the present case, such a reservation has the effect of allowing an operator which is dominant on the primary market for the distribution of tickets to extend its dominance over brokering services on the secondary market?

3. For the purposes of European legislation and Directive 2000/31/EC in particular, can the notion of passive hosting provider be used only in the absence of any activity involving the filtering, selection, indexing, organisation, cataloguing, aggregation, evaluation, use, modification, extraction or promotion of the contents published by users, deemed to be illustrative indicators which do not all have to coexist since they are to be regarded in their own right as indicating business management of the service and/or the adoption of a technique for assessing user behaviour to increase their loyalty, or is it for the referring court to assess the relevance of those circumstances so that, if one or more of them exists, the neutrality of the service which leads to classification as passive hosting provider may be regarded as overriding?

[1] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Appeal brought on 3 February 2022 by Grupa Azoty S.A., Azomureș SA, Lipasmata Kavalas LTD Ypokatastima Allodapis against the order of the General Court (Fifth Chamber) delivered on 29 November 2021 in Case T-726/20, Grupa Azoty and Others v Commission

(Case C-73/22 P)

(2022/C 165/39)

Language of the case: English

Parties

Appellants: Grupa Azoty S.A., Azomureș SA, Lipasmata Kavalas LTD Ypokatastima Allodapis (represented by: D. Haverbeke, L. Ruessmann and P. Sellar, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the order under appeal; and

— declare the appellants' application under Article 263 TFEU for partial annulment of the Communication from the Commission of 25 September 2020 entitled 'Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021' [1] admissible; or

— in the alternative, set aside the order under appeal on the ground that the General Court should have reserved the decision on admissibility until consideration of the merits of the substance of the application; and

— refer the case back to the General Court for consideration on the merits; and

— award the costs of these proceedings to the appellants; and

— reserve the question of the costs of the proceedings before the General Court once it has completed its full consideration of the application.

Pleas in law and main arguments

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

First plea in law: inadequate statement of reasons.

— The General Court did not discharge its duty to provide an adequate statement of reasons. First, in paragraphs 34 to 48 and 49 to 51 of the order under appeal, the General Court failed to address the arguments put to it by the appellants and to establish the facts of the case before it. Second, it failed to explain why it is that only Commission decisions adopted under a specific piece of secondary legislation can be of direct concern to the appellants. That affects paragraph 38 of the order under appeal.

Second plea in law: General Court erred in law by stating that the appellants were not directly concerned.

— The General Court refers to settled case law to recite the test for direct concern in paragraphs 26 to 30 of the order under appeal. As part of that test of direct concern, the General Court must assess the content, nature, purpose and substance of the act that is being challenged, as well as the factual and legal context of which it forms part. The General Court erred in law in its assessment of the Article 263 TFEU requirement of 'direct concern' by failing to do that. That affects paragraphs 34 to 48 of the order under appeal. The General Court has created a scenario in which the appellants are left with no legal remedy. By failing to follow and properly apply the test for assessing direct concern, the General Court erred in law.

In the alternative, the General Court should have reserved judgment on the admissibility until after consideration of the application on the merits.

— Paragraphs 7 and 8 of Article 130(3) of the General Court's Rules of Procedure require the General Court to reserve its decision on a plea of inadmissibility until it rules on the substance of the case where special circumstances so justify, and to subsequently prescribe new time limits for further steps in the procedure. Per settled case law, those special circumstances exist where a reservation is needed for the proper administration of justice.

— The General Court was required to assess the nature, content and context of the contested act to determine if it was of direct concern to the appellants. For that, it is necessary to look at the act's substance and whether it imposes independent legal obligations on Member States. There is overlap between that assessment and the first plea in law on the merits regarding the Commission's lack of competence to adopt Annex I of the contested act. By not reserving its decision on the Commission's plea on inadmissibility until it had heard the arguments on the merits, the General Court infringed the provisions of paragraph 7 and 8 of Article 130 of its Rules of Procedure.

[1] OJ 2020 C 317, p. 5

Appeal brought on 4 February 2022 by Advansa Manufacturing GmbH, Beaulieu International Group, Brilen, SA, Cordenka GmbH & Co. KG, Dolan GmbH, Enka International GmbH & Co. KG, Glanzstoff Longlaville, Infinited Fiber Company Oy, Kelheim Fibres GmbH, Nurel SA, PHP Fibers GmbH, Teijin Aramid BV, Thrace Nonwovens & Geosynthetics monoprosopi AVEE mi yfanton yfasmaton kai geosynthetikon proïonton, Trevira GmbH against the order of the General Court (Fifth Chamber) delivered on 29 November 2021 in Case T-741/20, Advansa Manufacturing and Others v Commission

(Case C-77/22 P)

(2022/C 165/40)

Language of the case: English

Parties

Appellants: Advansa Manufacturing GmbH, Beaulieu International Group, Brilen, SA, Cordenka GmbH & Co. KG, Dolan GmbH, Enka International GmbH & Co. KG, Glanzstoff Longlaville, Infinited Fiber Company Oy, Kelheim Fibres GmbH, Nurel SA, PHP Fibers GmbH, Teijin Aramid BV, Thrace Nonwovens & Geosynthetics monoprosopi AVEE mi yfanton yfasmaton kai geosynthetikon proïonton, Trevira GmbH (represented by: D. Haverbeke, L. Ruessmann and P. Sellar, avocats)

Other parties to the proceedings: Dralon GmbH, European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the order under appeal; and

— declare the appellants' application under Article 263 TFEU for partial annulment of the Communication from the Commission of 25 September 2020 entitled 'Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021' (1) admissible; or

— in the alternative, set aside the order under appeal on the ground that the General Court should have reserved the decision on admissibility until consideration of the merits of the substance of the application; and

— refer the case back to the General Court for consideration on the merits; and

— award the costs of these proceedings to the appellants; and

— reserve the question of the costs of the proceedings before the General Court once it has completed its full consideration of the application.

Pleas in law and main arguments

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

First plea in law: inadequate statement of reasons.

— The General Court did not discharge its duty to provide an adequate statement of reasons. First, in paragraphs 34 to 48 and 49 to 51 of the order under appeal, the General Court failed to address the arguments put to it by the appellants and to establish the facts of the case before it. Second, it failed to explain why it is that only Commission decisions adopted under a specific piece of secondary legislation can be of direct concern to the appellants. That affects paragraph 38 of the order under appeal.

Second plea in law: General Court erred in law by stating that the appellants were not directly concerned.

— The General Court refers to settled case law to recite the test for direct concern in paragraphs 26 to 30 of the order under appeal. As part of that test of direct concern, the General Court must assess the content, nature, purpose and substance of the act that is being challenged, as well as the factual and legal context of which it forms part. The General Court erred in law in its assessment of the Article 263 TFEU requirement of 'direct concern' by failing to do that. That affects paragraphs 34 to 48 of the order under appeal. The General Court has created a scenario in which the appellants are left with no legal remedy. By failing to follow and properly apply the test for assessing direct concern, the General Court erred in law.

In the alternative, the General Court should have reserved judgment on the admissibility until after consideration of the application on the merits.

— Paragraphs 7 and 8 of Article 130(3) of the General Court's Rules of Procedure require the General Court to reserve its decision on a plea of inadmissibility until it rules on the substance of the case where special circumstances so justify, and to subsequently prescribe new time limits for further steps in the procedure. Per settled case law, those special circumstances exist where a reservation is needed for the proper administration of justice.

— The General Court was required to assess the nature, content and context of the contested act to determine if it was of direct concern to the appellants. For that, it is necessary to look at the act's substance and whether it imposes independent legal obligations on Member States. There is overlap between that assessment and the first plea in law on the merits regarding the Commission's lack of competence to adopt Annex I of the contested act. By not reserving its decision on the Commission's plea on inadmissibility until it had heard the arguments on the merits, the General Court infringed the provisions of paragraph 7 and 8 of Article 130 of its Rules of Procedure.

(1) OJ 2020 C 317, p. 5

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 9 February 2022 — Papier Mettler Italia S.r.l. v Ministero della Transizione Ecologica (formerly the Ministero dell'Ambiente e della Tutela del Territorio e del Mare), Ministero dello Sviluppo Economico

(Case C-86/22)

(2022/C 165/41)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Papier Mettler Italia S.r.l.

Defendants: Ministero della Transizione Ecologica (formerly the Ministero dell'Ambiente e della Tutela del Territorio e del Mare), Ministero dello Sviluppo Economico

Questions referred

1. Do Article 114(5) and (6) TFEU, Article 16(1) of Directive 94/62/EC [1] and Article 8 of Directive 98/34/EC [2] preclude the application of a national provision such as that laid down in the contested interministerial decree, which prohibits the marketing of single-use shopping bags made of non-biodegradable materials but otherwise complying with the requirements laid down in Directive 94/62/EC, where that national provision containing more restrictive technical rules than the EU legislation was not notified by the Member State to the European Commission in advance, but only after the adoption and before the publication of the measure?

2. Must Articles 1, 2, 9(1) and 18 of Directive 94/62/EC, as supplemented by the provisions of points 1, 2 and 3 of Annex II to the directive, be interpreted as precluding the adoption of a national rule prohibiting the marketing of single-use shopping bags made of non-biodegradable materials, which otherwise comply with the requirements laid down in Directive 94/62/EC, or may the additional technical rules laid down by national law be justified by the aim of ensuring a higher level of environmental protection, considering, if need be, the specific problems regarding waste collection in the Member State and the need for that State to implement the EU obligations laid down in that related context?

3. Must Articles 1, 2, 9(1) and 18 of Directive 94/62/EC, supplemented by the provisions of points 1, 2 and 3 of Annex II to the directive, be interpreted as constituting a clear and precise rule aimed at prohibiting any obstacle to the marketing of bags complying with the requirements laid down in the directive and leading to the necessary disapplication of any conflicting national legislation by all organs of the State, including public authorities?

4. Lastly, could the adoption of national legislation prohibiting the marketing of single-use non-biodegradable shopping bags manufactured in compliance with the requirements laid down in Directive 94/62/EC, where that national legislation is not justified by the aim of ensuring a higher level of environmental protection, by the specific problems regarding waste collection in the Member State and by the need for that State to implement the EU obligations laid down in that related context, constitute a manifest and serious infringement of Article 18 of Directive 94/62/EC?

(1) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

(2) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37).

Request for a preliminary ruling from the Landgericht Essen (Germany) lodged on 10 February 2022 — DC v HJ

(Case C-97/22)

(2022/C 165/42)

Language of the case: German

Referring court

Landgericht Essen

Parties to the main proceedings

Applicant: DC

Defendant: HJ

Question referred

Must Article 14(5) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council [1] be interpreted as meaning that, in the event that the customer withdraws his or her declaration of intention to conclude an off-premises construction contract only after the trader has already (fully) performed his or her services, it also precludes any entitlement to compensation or compensation for value on the part of the trader where the conditions of entitlement to compensation or compensation for value under the rules governing the legal consequences of withdrawal are not met, but the customer's assets have been enhanced as a result of the trader's construction work, that is to say, he or she has been enriched?

(1) OJ 2011 L 304, p. 64.

GENERAL COURT

Order of the General Court of 10 February 2022 — TO v EEA

(Case T-434/21) [1]

(Civil service — Compliance with a judgment of the General Court — Decision which was not contested in time — Res judicata — Conditional undertaking given by the AECC in the context of a favourable out-of-court settlement — Settlement offer not accepted by the applicant — No act adversely affecting the applicant — Inadmissibility)

(2022/C 165/43)

Language of the case: French

Parties

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

Defendant: European Environment Agency (represented by: O. Cornu, acting as Agent, supported by B. Wägenbaur, lawyer)

Re:

Application pursuant to Article 270 TFEU seeking, in the first place, annulment of the decision of 21 September 2020 by which the EEA, (i) refused to comply with the judgment of the Court of 11 June 2019, *TO* v *EEA* (T-462/17, not published, EU:T:2019:397) and (ii) rejected the requests made by the applicant on 16 September 2020 and, in the second place, an order requiring the EEA to pay the applicant, (i) the sum corresponding to the compensation in lieu of notice and the installation allowance, together with interest as from 22 September 2016, (ii) the sum of EUR 20 000 in compensation for the alleged non-material damage suffered on account of the disclosure of her personal data to third parties and (iii) the sum of EUR 20 000 in compensation for the alleged non-material damage suffered on account of the refusal to disclose to her the correspondence exchanged with her previous counsel both before and after the delivery of that judgment.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Orders TO to pay, in addition to her own costs, those incurred by the European Environment Agency (EEA).

[1] OJ C 349 of 30.8.2021.

Action brought on 27 January 2022 — BNP Paribas v SRB

(Case T-71/22)

(2022/C 165/44)

Language of the case: English

Parties

Applicant: BNP Paribas (Paris, France) (represented by: A. Champsaur and A. Delors, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— order the SRB to produce the full resolution plan approved under the resolution decision; [1]

— declare that the contested provisions of the MREL Policy must be disapplied;

— annul the resolution decision;

— annul the MREL decision; [2]

— order the SRB to pay the applicant's legal and other costs and expenses in relation to the present proceeding.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law in support of its action against the resolution decision and eight pleas in law in support of its action against the MREL decision.

1. First plea in law concerning the resolution decision, alleging that the SRB has committed errors of law. The applicant contends that the resolution decision breaches provisions of Regulation (EU) No 806/2014 of 15 July 2014, [3] and of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016, [4] as well as the principle of proportionality.

2. Second plea in law concerning the resolution decision, alleging that the SRB has committed manifest errors of assessment and violated the principle of good administration.

   — In support of this plea, the applicant submits that the SRB has adopted a uniform 'bail-in only' strategy for all Globally Systemically Important Institutions (G-SIIs), disregarding actual resolution cases, and has failed to examine carefully and impartially all the fact-based and reasoned elements put forward by the applicant in its choice of resolution strategy.

3. Third plea in law concerning the resolution decision, alleging that the SRB expresses a position reflecting a normative choice and thus exceeded its powers under Regulation (EU) No 806/2014.

4. Fourth plea in law concerning the resolution decision, alleging that it has been adopted in violation of the applicant's right to be heard and in breach of the SRB's duty to state reasons, by failing to justify its choice of resolution strategy for the applicant.

5. Fifth plea in law concerning the resolution decision, alleging that certain provisions of Regulation (EU) No 806/2014, applied by the SRB in adopting that decision, violate fundamental rights as well as the TFEU.

6. First plea in law concerning the MREL decision, alleging that it is based on, and intrinsically linked to, the resolution decision, and would thus no longer stand if that decision is annulled.

7. Second plea in law concerning the MREL decision, alleging that the SRB has committed an error of law in interpreting and applying the provisions of Regulation (EU) No 806/2014.

   — In support of this plea, the applicant claims that the SRB failed to take into account the post-resolution banking group in its MREL determination and the post-resolution combined buffer requirement (CBR) in the determination of the market confidence charge, and has failed to carry out a full assessment of all the relevant elements of the MREL calculation and to state reasons for its calculation of the MREL.

8. Third plea in law concerning the MREL decision, alleging that the SRB has committed manifest errors of assessment in the determination of the MREL and has breached the principle of good administration, in so far as the SRB failed to carry out a careful and impartial assessment of the BNP Paribas group post-resolution, and in particular to take into account the effect of resolution on the size and business model of the BNP Paribas group.

9. Fourth plea in law concerning the MREL decision, alleging that the SRB has violated the principle of legitimate expectations, by failing to apply several provisions of its own MREL Policy with respect to MREL adjustments.

10. Fifth plea in law concerning the MREL decision, alleging that the SRB has breached the principle of proportionality, the right to property and the freedom to conduct business, by setting an amount of MREL that is disproportionate in light of the resolution objectives.

11. Sixth plea in law concerning the MREL decision, alleging that the SRB has failed to state reasons for that decision, by not including in the decision all the elements necessary in order for the applicant to understand on which basis and according to what methodology the MREL was determined and why such methodology departed from the general methodology set forth in the MREL Policy.

12. Seventh plea in law concerning the MREL decision, alleging that the SRB has violated the applicant's right to be heard, by refusing as a matter of principle to take into account certain comments.

13. Eighth plea in law concerning the MREL decision, alleging that the MREL policy, on which the MREL decision is based, violates Regulation (EU) No 806/2014 and constitutes a misuse of powers by the SRB, insofar as it manifests a normative choice in the field of resolution and infringes on the powers of the legislator.

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(1) The resolution decision referred to is: Joint Decision on the Group resolution plan and resolvability assessment for BNP Paribas and its subsidiaries, as agreed by the Single Resolution Board, Magyar Nemzeti Bank, Finanstilsynet and Bankowy Fundusz Gwarancyjny on 4 November 2021, Reference No. RC/JD/2020/52.
(2) The MERL decision referred to is: Joint Decision determining the minimum requirement for own funds and eligible liabilities for BNP Paribas and certain of its affiliates, as agreed by the SRB, Magyar Nemzeti Bank, Finanstilsynet and Bankowy Fundusz Gwarancyjny on 4 November 2021, Reference No. RC/JD/2020/53.
(3) Regulation (EU) No 806/2014 of 15 July 2014 of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
(4) Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ 2016 L 184, p. 1).

Action brought on 15 February 2022 — Associazione 'Terra Mia Amici No Tap' v EIB

(Case T-86/22)

(2022/C 165/45)

Language of the case: Italian

Parties

Applicant: Associazione 'Terra Mia Amici No Tap' (Melendugno, Italy) (represented by: A. Calò, lawyer)

Defendant: European Investment Bank

Form of order sought

The applicant claims that the Court should:

— find and declare that the European Investment Bank wrongfully declared inadmissible and out of time the request for review submitted by the applicant association;

— order the European Investment Bank to issue a decision withdrawing the financing granted to TAP AG;

— order the European Investment Bank to pay the costs.

Pleas in law and main arguments

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

1. First plea, concerning the alleged inadmissibility of the request for review.

   — In that regard, the applicant alleges an infringement of the Aarhus Convention, of Regulation (EC) No 1367/2006 of 6 September 2006, (1) of Regulation (EU) 2021/1767, (2) and of points 1, 6 and 9 of the preamble to the EIB's Statement of Environmental and Social Principles and Standards. In that specific instance, the EIB should have withdrawn the financing granted, given that the request for review focussed on the administrative measure within the meaning of environmental law.

2. Second plea, concerning the allegation that the request is inadmissible as it was submitted out of time.

— In that regard, the applicant alleges an infringement of the Aarhus Convention, of Regulation (EC) No 1367/2006 of 6 September 2006, of Regulation (EU) 2021/1767, and of points 1, 6 and 9 of the preamble to the EIB's Statement of Environmental and Social Principles and Standards. In that specific instance, the EIB failed to withdraw the financing through a new, independent measure separate from the one under which the financing was granted previously, and therefore the deadline of six weeks for the submission of a request for review must be calculated from the beginning of the works, given that the party in receipt of financing had agreed contractually to meet the EIB's standards by that date.

3. Third plea, alleging infringement of point 36 of the EIB's Statement of Environmental and Social Principles and Standards of 2009.

— In that regard, the applicant claims specifically that point 36 provides that the EIB requires that all projects that it finances comply at least with:

— Applicable national environmental law;

— Applicable EU environmental law, notably the EIA Directive and the nature conservation directives, as well as sector-specific directives and 'cross-cutting' directives;

— The principles and standards of relevant international environmental conventions incorporated into EU law.

In the present case, none of those subpoints was complied with.

The applicant claims that the following infringements are clear:

a. EU environmental legislation, more specifically:

a.I recital 36 of Regulation (EU) No 347/2013, read in conjunction with Articles 4 and 14 thereof (failure to carry out a cost-benefit analysis);

a.II recital 31 of Regulation No 347/2013, read in conjunction with Article 5(1) of Directive 2011/92/EU and Note 1 of Annex IV to that directive (external cumulative effect);

a.III recital 31 of Regulation No 347/2013, read in conjunction with Article 5(1) of Directive 2011/92/EU and Note 1 of Annex IV to that directive (internal cumulative effect) — prohibition of 'salami slicing';

a.IV Article 2(1) of Directive 2011/92/EU, Article 6(3) and (4) of the Habitats Directive;

a.V Article 4(4) of Directive 2009/147/EC, (5) the Birds Directive;

a.VI recital 30 of Regulation No 1367/2006, read in conjunction with Article 9 thereof and Article 6 of the EIA Directive (transparency and participation);

a.VII recital 28 of Regulation No 347/2013, read in conjunction with Article 7 thereof (Habitat rules);

a.VIII Infringement of Article 191(1) TFEU together with the infringement of the Statement of Environmental and Social Principles and Standards of the European Investment Bank, approved by the Board of Directors on 3 February 2009.

b. Italian legislation, more specifically:

b.I Legislative Decree 42/2004 transposing Article 26 of the Landscape Convention;

b.II Legislative Decree 42/2004 transposing Article 146 of the Landscape Convention;

b.III Article 14b of the Law of 7 August 1990 No 241, Interdepartmental conference;

b.IV Rule A57 of Ministerial Decree relating to environmental compatibility 223/14;

b.V Legislative Decree 152/06, failure to impose sanctions;

b.VI Article 452c of the Criminal Code (environmental disaster).

4. Fourth plea, alleging infringement of Regulation No 347/2013 of the European Parliament and of the Council of 17 April 2013.

   — The applicant claims in that regard that an appropriate cost-benefit analysis was never carried out.

(1) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

(2) Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2021 L 356, p. 1).

Action brought on 17 February 2022 — Hahn Rechtsanwälte v Commission

(Case T-87/22)

(2022/C 165/46)

Language of the case: German

Parties

Applicant: Hahn Rechtsanwälte PartG mbB (Bremen, Germany) (represented by: K. Künstner, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision C(2021) 9326 final of 7 December 2021;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging no grounds for refusal under Article 4(2) of Regulation (EC) No 1049/2001 [1]

   — The Commission failed to set out any commercial reasons worthy of protection with regard to the parties to cartel proceedings AT.40178 — Car Emissions, within the meaning of Article 4(2) of Regulation (EC) No 1049/2001 and failed to carry out a case-by-case examination.

   — The Commission cannot rely on the protection of investigations, in view of the fact that this case concerns a closed cartel investigation with a decision that has become final and the Commission also failed to carry out a case-by-case examination.

   — The Commission relies on the general presumption of non-disclosure, despite the fact that the conditions provided for in the first and/or third indent of Article 4(2) of Regulation (EC) No 1049/2001 are not met which leads to an inadmissible distortion of the 'rule-exception relationship' of the right of access.

2. Second plea in law, alleging overriding public interest in disclosure within the meaning of Article 4(2) of Regulation (EC) No 1049/2001

   — The Commission erred in not finding that there was an overriding public interest within the meaning of Article 4(2) of Regulation (EC) No 1049/2001.

   — In the present case, a failure to have regard for interests of public welfare is evident, since the arrangements contrary to cartel law also concern the defeat devices of passenger cars and excessive nitrogen oxide emissions have a negative impact on interests of public welfare such as health, the environment and climate.

— According to the findings of the European Environment Agency (EEA), approximately 12 800 people die each year in Germany alone from air pollution caused by nitrogen oxide.

3. Third plea in law, alleging lack of a specific examination of partial access pursuant to Article 4(2) of Regulation (EC) No 1049/2001

   — The Commission did not examine in a sufficiently specific manner whether, in the alternative, partial access to the files should be granted pursuant to Article 4(2) of Regulation (EC) No 1049/2001.

   — No examination as to whether it might be possible to adopt a less restrictive measure concerning the applicant's right of access took place.

(1) 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 (OJ 2001 L 145, p. 43).

Action brought on 21 February 2022 — OG and Others v Commission

(Case T-101/22)

(2022/C 165/47)

Language of the case: Spanish

Parties

Applicants: OG, OH, OI and OJ (represented by: D. Gómez Fernández, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1 of Commission Delegated Regulation (EU) 2021/2288 [1] of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 [2] of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rules of jurisdiction and Article 290(1) TFEU.

   — In that respect, the applicants claim that the Commission has acted in excess of its authority as regards the delegation mandate given by the European Parliament in Articles 12 and 5(2) of Regulation 2021/953 and those articles themselves in so far as the contested act does not comply with the essential elements of the enabling act and does not, in any case, fall within the regulatory framework defined in the basic legislative act since the changes are not necessary in the event of scientific progress in containing the COVID-19 pandemic.

2. Second plea in law, alleging infringement of the rules of jurisdiction and Article 290(1) TFEU.

   — In that respect, the applicants claim that the Commission has acted in excess of its authority as regards the delegation mandate given by the European Parliament in Articles 32 and 5(4) of Regulation 2021/953 and those articles themselves. Infringement of essential procedural requirements in so far as the urgency procedure was followed in the absence of the specific scenario required for use of that procedure, namely the availability of new scientific evidence and the existence of imperative grounds of urgency.

3. Third plea in law, alleging infringement of the fundamental right of free movement enshrined in Article 21 TFEU, Article 45 of the Charter of Fundamental Rights of the European Union, Article 2 of Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 27 of Directive 2004/38/EC of 29 April and the principle of proportionality.

— In that respect, the applicants note that the limitations introduced do not respond to public health reasons and their effectiveness and necessity have not been established.

4. Fourth plea in law, alleging infringement of the fundamental rights of the Charter of equality before the law (Article 20) and non-discrimination (Article 21) and concordant rights under the European Convention on Human Rights (ECHR) by introducing, without any scientific basis for doing so, a difference in treatment between persons who are fully vaccinated and those receiving the booster dose.

5. Fifth plea in law, alleging lack of jurisdiction *ratione materiae*.

   — In that respect, the applicants claim that the principle of conferral and Articles 5 and 168 TFEU have been infringed in so far as neither the Commission nor the EU has the power to take measures making vaccination compulsory, even indirectly, by the vaccination certificate being automatically lost 270 days after completion of the vaccination schedule.

6. Sixth plea in law, alleging infringement of the fundamental rights of the Charter of the right to liberty (Article 6), respect for private and family life (Article 7), human dignity (Article 1) and right to the integrity of the person (Article 3) and concordant rights under the ECHR by indirectly imposing the booster vaccination in order not to lose the vaccination certificate.

7. Seventh plea in law, alleging misuse of powers.

   — In that respect, the applicants claim that Article 18 of the ECHR has been infringed in so far as the delegated regulation pursues a purpose other than that intended, an indirect booster vaccination obligation so as not to automatically lose the vaccination certificate.

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(1) Commission Delegated Regulation (EU) 2021/2288 of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series (OJ 2021 L 458, p. 459).

(2) Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ 2021, L 211, p. 1).

Action brought on 22 February 2022 — Transgourmet Ibérica v EUIPO — Aldi (Gourmet)

(Case T-102/22)

(2022/C 165/48)

Language in which the application was lodged: English

Parties

Applicant: Transgourmet Ibérica, SAU (Gerona, Spain) (represented by: C. Duch Fonoll and I. Osinaga Lozano, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark Gourmet — European Union trade mark No 8 143 653

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 December 2021 in Case R 862/2021-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— remit the case back to the Board of Appeal to give final judgment and

— order the EUIPO and the intervener to bear their own costs and to pay those incurred by the appellant in the present proceedings and in the appeal and first instance proceedings.

Pleas in law

— Infringement of Article 3 of Directive (EU) 2015/2436 of the European Parliament and of the Council and the case-law related;

— Infringement of Article 64(2) and (3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, read in conjunction with Article 10(4) of Commission Delegated Regulation (EU) 2018/625 and case-law related;

— Infringement of Article 64(2) and (3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, read in conjunction with Article 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 24 February 2022 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — M. J. Dairies (BBQLOUMI)

(Case T-106/22)

(2022/C 165/49)

Language in which the application was lodged: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: S. Malynicz, Barrister-at-Law, and C. Milbradt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: M. J. Dairies EOOD (Sofia, Bulgaria)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark BBQLOUMI — European Union trade mark No 12 898 029

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 December 2021 in Case R 656/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to each bear their own costs and pay those of the applicant for annulment.

Pleas in law

— Infringement of Articles 8(1)(b) and 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 74(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— The Board of Appeal contravened the case law of the Court of Justice concerning the distinctiveness;

— The Board of appeal wrongly allocated a burden of proof on earlier registered mark holder, the applicant, to show a required level of distinctiveness;

— The Board of Appeal failed to give proper reasons for its core finding that the earlier collective mark lacked distinctiveness.

Action brought on 28 February 2022 — Adega Ponte da Boga v EUIPO — Viñedos y Bodegas Dominio de Tares (P3 DOMINIO DE TARES)

(Case T-107/22)

(2022/C 165/50)

Language in which the application was lodged: Spanish

Parties

Applicant: Adega Ponte da Boga, SL (Ourense, Spain) (represented by: C. Sueiras Villalobos, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Viñedos y Bodegas Dominio de Tares, SA (San Román de Bembibre, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Figurative mark P3 DOMINIO DE TARES — European Union trade mark No 16 691 651

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 3 December 2021 in Case R 479/2021-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and any interveners liable to appear in the present proceedings in support of the contested decision to pay the costs.

Plea in law

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

Action brought on 3 March 2022 — OK v EEAS

(Case T-113/22)

(2022/C 165/51)

Language of the case: French

Parties

Applicant: OK (represented by: N. de Montigny, lawyer)

Defendant: European External Action Service (EEAS)

Form of order sought

The applicant claims that the Court should

— in respect of the request for assistance

  — annul the EEAS director's decision to reject, in part, his request for assistance on the grounds of harassment and discriminatory treatment, notified on [*confidential*]; ([1])

  — annul, in so far as necessary, to the extent that it supplements the decision of 15 June 2021, the EEAS Secretary General's decision to reject his [*confidential*] complaints regarding the decision rejecting, in part, the abovementioned request for assistance, notified on [*confidential*];

— in respect of the content, scope and implementation of the agreement which took effect on [*confidential*] in the [*confidential*] case:

  — annul the [*confidential*] mutual agreement for defective consent, but also failure to observe its terms;

  — annul, in so far as it constitutes the implementation of that agreement, the implied decision to promote the applicant retroactively to grade AD 14 on 1 January 2018, as brought to his attention by providing his salary statement of May 2021, and as formally confirmed by decision of the Director-General of Resource Management (Appointing Authority) on [*confidential*];

  — Annul the decision of the Director-General of Resource Managmeent of 30 November 2021 by which the EEAS rejected his [*confidential*] complaint against there being no express decision regarding his promotion to grade AD 14 on 1 January 2018 and against the EEAS producing a false statement aimed at, and which had the effect in of, altering the opinion of the General Court and the applicant's right to rely on the principle of equal treatment in relation to this case.

— order the defendant to pay compensation to the applicant of EUR 52 400 for the purposes of compensating his material harm suffered, as well as compensation for his non-material harm in the symbolic amount fixed at EUR 1.

— order the defendants to pay the costs.

Pleas in law and main arguments

In support of the action against the decision rejecting his request for assistance, the applicant relies on five pleas in law.

1. First plea in law, alleging maladministration, breach of the duty of care towards an official who has been a victim of harassment, infringement of the Charter of Fundamental Rights of the European Union (the 'Charter') and the Staff Regulations of Officials of the European Union.

2. Second plea in law, alleging a manifest error of assessment regarding the reality of the acts of harassment suffered by the applicant.

3. Third plea in law, alleging misuse of power and infringement of Article 47 of the Charter.

4. Fourth plea in law, alleging misuse of power, infringement of Article 227 TFEU and Article 44 of the Charter.

5. Fifth plea in law, alleging that the examination of the request for assistance was not consistent with the [*confidential*] decision.

In support of the action against the implied decision to promote and the settlement agreement concluded in relation to the [*confidential*] case, the applicant relies on two pleas in law.

1. First plea in law, alleging that the agreement which took effect in the [*confidential*] case was invalid and fraudulent.

2. Second plea in law, alleging the EEAS's failure to comply with the agreement and abusive reliance on *res judicata*.

([1]) Confidential information omitted.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

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