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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Eighth Chamber) of 30 September 2022 (request for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — 'ĒDIENS & KM.LV' PS v Ieslodzījuma vietu pārvalde, Iepirkumu uzraudzības birojs

(Case C-592/21) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Public procurement — Directive 2014/24/EU — Conduct of the procedure — Choice of participants — Selection criteria — Technical and professional capacities — Article 58(4) — Forms of evidence — European Single Procurement Document — Article 59 — Reliance on the capacities of other entities — Article 63(1) — Group of economic operators — Condition relating to professional experience to be satisfied by the member of the group responsible, in the event of the award of the contract, for performing the activities requiring that experience — Condition not provided for in the procurement documents — Status of general partnership unaffected by the system of joint and several liability)

(2022/C 441/02)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: 'ĒDIENS & KM.LV' PS

Defendant: Ieslodzījuma vietu pārvalde, Iepirkumu uzraudzības birojs

Operative part of the order

Article 63(1) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, read in conjunction with Article 59 thereof

must be interpreted as meaning that where it is established that, in the event of the award of a public service contract to a group of economic operators, the performance of the activities for which experience is required will be entrusted to a single member of the group, the tendering group may rely, in order to demonstrate that it satisfies a condition relating to experience imposed by the contracting authority in accordance with Article 58(4) of that directive, solely on the experience of that member of the group, even if the procurement documents do not expressly provide that the members of a group of economic operators must individually satisfy that condition.

([1]) Date lodged: 22.9.2021.

Appeal brought on 3 February 2022 by CX against the judgment of the General Court (Eighth Chamber) delivered on 24 November 2021 in Case T-743/16 RENV II, *CX* v *Commission*

(Case C-71/22 P)

(2022/C 441/03)

Language of the case: French

Parties

Appellant: CX (represented by: É. Boigelot, avocat)

Other party to the proceedings: European Commission

By order of 29 September 2022, the Court of Justice (Seventh Chamber) dismissed the appeal as being, in part, manifestly inadmissible and, in part, manifestly unfounded and ordered the appellant to bear its own costs.

Appeal brought on 28 February 2022 by FT and Others against the judgment of the General Court (Eighth Chamber) delivered on 15 December 2021 in Case T-224/20, FT and Others v Commission

(Case C-168/22 P)

(2022/C 441/04)

Language of the case: French

Parties

Appellants: FT and Others (represented by: J.-N. Louis, avocat)

Other party to the proceedings: European Commission

By order of 5 October 2022, the Court (Seventh Chamber) dismissed the appeal as manifestly inadmissible and ordered the appellants to bear their own costs.

Appeal brought on 28 February 2022 by FJ and Others against the judgment of the General Court (Eighth Chamber) delivered on 15 December 2021 in Case T-225/20, FJ and Others v EEAS

(Case C-170/22 P)

(2022/C 441/05)

Language of the case: French

Parties

Appellants: FJ and Others (represented by: J.-N. Louis, avocat)

Other party to the proceedings: European External Action Service

By order of 5 October 2022, the Court (Seventh Chamber) dismissed the appeal as manifestly inadmissible and ordered the appellants to bear their own costs.

Appeal brought on 2 March 2022 by FJ and Others against the judgment of the General Court (Eighth Chamber) delivered on 15 December 2021 in Case T-619/20, FJ and Others v EEAS

(Case C-171/22 P)

(2022/C 441/06)

Language of the case: French

Parties

Appellants: FJ and Others (represented by: J.-N. Louis, avocat)

Other party to the proceedings: European External Action Service

By order of 5 October 2022, the Court (Seventh Chamber) dismissed the appeal as manifestly inadmissible and ordered the appellants to bear their own costs.

Appeal brought on 2 March 2022 by FZ and Others against the judgment of the General Court (Eighth Chamber) delivered on 15 December 2021 in Case T-618/20, FZ and Others v Commission

(Case C-172/22 P)

(2022/C 441/07)

Language of the case: French

Parties

Appellants: FZ and Others (represented by: J.-N. Louis, avocat)

Other party to the proceedings: European Commission

By order of 5 October 2022, the Court (Seventh Chamber) dismissed the appeal as manifestly inadmissible and ordered the appellants to bear their own costs.

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 29 July 2022 — AQ v trendtours Touristik GmbH

(Case C-511/22)

(2022/C 441/08)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: AQ

Defendant: trendtours Touristik GmbH

Questions referred

1. Must the first sentence of Article 12(2) of Directive (EU) 2015/2302 ([1]) of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC ('the Package Travel Directive') be interpreted as providing for a further right of termination — in addition to that provided for in Article 12(1) of that directive — the legal consequences of which apply only if the traveller invokes that right in his or her declaration of termination?

2. Must Article 12(2) of the Package Travel Directive be interpreted as meaning that an obligation to pay a termination fee does not cease to apply where the traveller does not state a reason in his or her declaration of termination of the package travel contract or states a reason which is not related to an unavoidable and extraordinary circumstance?

([1]) OJ 2015 L 326, p. 1.

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 9 August 2022 — PA v trendtours Touristik GmbH

(Case C-529/22)

(2022/C 441/09)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant and appellant: PA

Defendant and respondent: trendtours Touristik GmbH

Questions referred

1. Must Article 12(2) of Directive (EU) 2015/2302 ([1]) of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU and repealing Council Directive 90/314/EEC ('the Package Travel Directive') be interpreted as providing for a further right of termination — in addition to that provided for in Article 12(1) of that directive — the legal consequences of which apply only if the traveller invokes, in his or her declaration of termination, unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination?

2. Must Article 12(2) of the Package Travel Directive be interpreted as meaning that an obligation to pay a termination fee does not cease to apply where the traveller does not state a reason when terminating the package and justifies the termination only subsequently by reference to unavoidable and extraordinary circumstances at the time of termination, this being determined by means of a prognosis, or occurring at the time of travel at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination?

([1]) OJ 2015 L 326, p. 1.

Appeal brought on 11 August 2022 by Araceli García Fernández and Others against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 1 June 2022 in Case T-523/17, Eleveté Invest Group and Others v Commission and SRB

(Case C-541/22 P)

(2022/C 441/10)

Language of the case: Spanish

Parties

Appellants: Araceli García Fernández, Faustino González Parra, Fernando Luis Treviño de Las Cuevas, Juan Antonio Galán Alcázar, Lucía Palazuelo Vallejo-Nágera, Macon, SA, Marta Espejel García, Memphis Investments Ltd, Pedro Alcántara de la Herrán Matorras, Pedro José de Jesús Benito Trebbau López, Pedro Regalado Cuadrado Martínez, María Rosario Mari Juan Domingo (represented by: B. M. Cremades Román, J. López Useros, S. Cajal Martín and P. Marrodán Lázaro, lawyers)

Other parties to the proceedings: Eleveté Invest Group, SL, Antonio Bail Cajal, Carlos Sobrini Marín, Edificios 1326 de l'Hospitalet, SL, Juan José Homs Tapias, Anna María Torras Giro, Marbore 2000, SL, Tristán González del Valle, European Commission, Single Resolution Board (SRB), Kingdom of Spain, Banco Santander, SA

Form of order sought

The appellants claim that the Court of Justice should:

(i) acknowledge the lodging of the appeal and its supporting documents, as well as the claims it contains;

(ii) in accordance with Article 256 TFEU, Article 61 of the Statute of the Court of Justice and Article 170 of the Rules of Procedure of the Court of Justice, rule as follows:

(a) set aside the judgment of the General Court in its entirety or, alternatively, in part, as set out in Sections III and IV of the appeal;

(b) issue a judgment in accordance with line 219 of the application;

(c) order the SRB and the European Commission to pay the costs of the proceedings before the General Court;

(d) order the SRB and the European Commission to pay the costs of the present proceedings; and

(e) order that all sums awarded to the appellants accrue compensatory interest as of 23 May 2017 (or, alternatively, as of 7 June 2017) until the date of delivery of the judgment and, additionally, default interest as of the date of the judgment, except for the costs resulting from the present proceedings, which will only accrue default interest as of the date of the judgment; and

(f) grant the appellants any additional remedy that it considers appropriate in law.

Grounds of appeal and main arguments

The appellants challenge all the grounds and the operative part of the General Court's judgment on the grounds, inter alia, that it is vitiated by numerous errors in the application and interpretation of EU law, inadequate and contradictory reasoning, and errors in the legal characterisation and consequences of the facts and the assessment of the evidence.

In that regard, the appellants raise four grounds of appeal in support of their claims.

By the **first ground of appeal**, the appellants submit that the General Court erred in the interpretation and application of Article 18 of Regulation (EU) No 806/2014 ([1]) of the European Parliament and of the Council of 15 July 2014 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 ('**SRMR**').

In the first part of the first ground of appeal, the appellants claim erroneous interpretation and application of Article 18(1)(a) SRMR relating to the need for liquidity assistance, the breach of confidentiality obligations and the interpretation of the principle of sound administration. In the second part of the first ground of appeal, the appellants claim inadequate reasoning and misinterpretation of Article 18(1)(b) SRMR. In that regard, it is submitted that Banco Popular Español was not insolvent and that the SRB had other, less harmful alternatives available to it. In the third part of the first ground of appeal, the appellants submit that the GC erred in its interpretation and application of Article 18(1)(c) SRMR.

With regard to the **second ground of appeal**, the appellants take the view that the General Court misinterpreted and misapplied Article 20 SRMR. In this regard, the appellants allege errors of interpretation and application of Article 20(1), (5), (7), (9), (10) and (11) SRMR. Furthermore, in the fifth part of the second ground of appeal, the appellants submit that the General Court erred in the interpretation and application of the right of access to the expropriation file, since its reasoning was contrary to the provisions of the Charter of Fundamental Rights of the European Union and the First Protocol to the European Convention on Human Rights and Fundamental Freedoms. In the sixth part of the second ground of appeal, the appellants refer to the error of law in the assessment of the obligation to state reasons.

The **third ground of appeal** is based on the claim for compensation made in connection with the annulment of the decision at issue with confirmation of its effects.

With regard to the **fourth ground of appeal**, the appellants submit that the General Court erred in its interpretation and application of the SRMR in relation to the claim for non-contractual liability independent of the claim for annulment. The first part of the fourth ground of appeal analyses how the General Court manifestly erred in interpreting and applying Recital 116 and Articles 88 and 91 SRMR and Article 339 TFEU with a standard of protection far below that laid down by the European Union in banking resolution matters. At the same time, the appellants claim erroneous interpretation and application of the SRMR through an infringement of the duty of due diligence. Finally, in the second part of the fourth ground of appeal, the appellants allege erroneous interpretation and application of Article 20(15) and (16) SRMR, and failure to provide a reasoned response.

(1) OJ 2014 L 225, p. 1.

Appeal brought on 16 August 2022 by United Kingdom of Great Britain and Northern Ireland against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 8 June 2022 in Joined Cases T-363/19 and T-456/19, United Kingdom and ITV v Commission

(Case C-555/22 P)

(2022/C 441/11)

Language of the case: English

Parties

Appellant: United Kingdom of Great Britain and Northern Ireland (represented by: L. Baxter, Agent, P. Baker QC and T. Johnston, Barrister)

Other parties to the proceedings: European Commission, ITV plc, LSEGH (Luxembourg) Ltd, London Stock Exchange Group Holdings (Italy) Ltd

Form of order sought

The appellant claims that the Court should:

— set aside in its entirety the judgment under appeal and grant the relief sought by United Kingdom before the General Court;

— alternatively, set aside in its entirety the judgment under appeal and remit the case to the General Court for final determination; and

— order the Commission to pay the costs of this appeal and the proceedings before the General Court.

Pleas in law and main arguments

In support of the appeal, the appellant relies on five pleas in law:

First, the General Court erred in law and/or infringed EU law because it distorted the underlying facts and mischaracterized them in law when it concluded that the reference system was the United Kingdom CFC (controlled foreign companies) legislation.

Second, the General Court erred in law when it held that the United Kingdom CFC legislation gave rise to an advantage. This error of law followed from the distortions and mischaracterisations of the facts in relation to the role of significant people functions ('SPFs') in the United Kingdom CFC legislation and the relationship between Chapters 5 and 9.

Third, the General Court erred in law when assessing the objective and the selectivity of the United Kingdom CFC legislation. The judgment under appeal contains repeated distortions and/or manifest errors of understanding with regard to the role of SPFs in the United Kingdom CFC legislation and the interrelation between Chapters 5 and 9 thereof. It also fails to record or address core elements of the United Kingdom's pleading, in breach of the duty to give reasons.

Fourth, the General Court failed to address the United Kingdom's argument that the distinction in the Commission Decision ([1]) between United Kingdom SPFs and United Kingdom connected capital was irrational, in breach of the duty to give reasons. Furthermore, the General Court rejected the justification of administrative practicability for two reasons related to the alleged lack of evidence before the General Court; neither was sustainable, and both involved a clear distortion of the facts that were in evidence before the Court.

Fifth, the General Court's reasoning contains a clear error of law as to the requirement of the freedom of establishment and the meaning of the judgment of 12 September 2006, *Cadbury Schweppes and Cadbury Schweppes Overseas*, C-196/04, EU:C:2006:544, (the 'Cadbury Schweppes case') amounting to a disregard of that case. The General Court's conclusion on this issue reveals several errors. First, it rests on a misunderstanding of the role of the SPFs in United Kingdom CFC legislation. Second, the General Court appears to have assumed that United Kingdom adopted a purely territorial system. Third, this part of the judgment under appeal fails to record or deal with the substantial arguments made by United Kingdom with regard to the impact of the Cadbury Schweppes line of cases on the design of its CFC legislation.

([1]) Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption (OJ 2019 L 216, p. 1).

Appeal brought on 17 August 2022 by ITV plc against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 8 June 2022 in Joined Cases T-363/19 and T-456/19, United Kingdom and ITV v Commission

(Case C-556/22 P)

(2022/C 441/12)

Language of the case: English

Parties

Appellant: ITV plc (represented by: J. Lesar, Solicitor, and K. Beal QC)

Other parties to the proceedings: European Commission, United Kingdom of Great Britain and Northern Ireland, LSEGH (Luxembourg) Ltd, London Stock Exchange Group Holdings (Italy) Ltd

Form of order sought

The appellant claims that the Court should:

— allow the appeal;

— annul points 2 and 4 of the operative part of the judgment under appeal;

— annul the Commission Decision (EU) 2019/1352 of 2 April 2019 of the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption ([1]); and

— order the Commission to pay the costs of the application before this Court and the General Court.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law:

First, the General Court erred in law and/or made a manifest error of assessment or appraisal in concluding that the Commission had not erred in its selection of the reference system for the analysis of whether or not the State aid provisions found in Articles 107 and 108 TFEU had been breached.

Second, the General Court erred in law and/or made a manifest error of assessment or appraisal in concluding that the relevant exemptions operated as a derogation from a general system of taxation comprising the CFC (controlled foreign companies) rules and thereby conferred a selective advantage on only some of the corporate taxpayers who were otherwise in a comparable position.

Third, the General Court erred in law and/or made a manifest error of assessment or appraisal in concluding that the exemptions, if they did confer a selective advantage (*quod non*), could not be justified on the basis of administrative practicability.

Fourth, the General Court erred in law in its failure properly to consider and apply the ruling of the judgment of 12 September 2006, *Cadbury Schweppes and Cadbury Schweppes Overseas,* C-196/04, EU:C:2006:544, whether when considering the issue of reference framework, selective advantage or considering the question of whether or not the exemptions (or any of them) might be justified in order to protect the freedom of establishment under Article 49 TFEU. Further or alternatively, the General Court failed to give adequate reasons for its conclusions on this issue.

(1) OJ 2019 L 216, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 19 August 2022 — Autorità di Regolazione per Energia Reti e Ambiente (ARERA) v Fallimento Esperia SpA, Gestore dei Servizi Energetici SpA — GSE

(Case C-558/22)

(2022/C 441/13)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità di Regolazione per Energia Reti e Ambiente (ARERA)

Respondents: Fallimento Esperia SpA, Gestore dei Servizi Energetici SpA — GSE

Questions referred

Do the following provisions:

— Article 18 TFEU, in so far as it prohibits any discrimination on grounds of nationality within the scope of the Treaties;

— Articles 28 and 30 TFEU, in so far as they provide for the abolition of customs duties on imports and measures having equivalent effect;

— Article 110 TFEU, in so far as it prohibits taxation on imports in excess of those imposed directly or indirectly on similar domestic products;

— Article 34 TFEU, in so far as it prohibits the adoption of measures having equivalent effect to quantitative restrictions on imports;

— Articles 107 and 108 TFEU, in so far as they prohibit the implementation of a State aid measure not notified to the Commission and incompatible with the internal market; and

— Directive 2009/28/EC, (1) in so far as it seeks to promote intra-Community trade in green electricity, thus promoting, moreover, the production capacity of individual Member States,

preclude national legislation such as the one described above, which imposes on importers of green electricity a financial burden that does not apply to domestic producers of the same product?

(1) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Request for a preliminary ruling from the Commissione tributaria regionale per il Friuli Venezia Giulia (Italy) lodged on 23 August 2022 — Ferriere Nord SpA and Others v Autorità Garante della Concorrenza e del Mercato, Agenzia delle Entrate — Riscossione

(Case C-560/22)

(2022/C 441/14)

Language of the case: Italian

Referring court

Commissione tributaria regionale per il Friuli Venezia Giulia

Parties to the main proceedings

Appellants: Ferriere Nord SpA, SIAT — Società Italiana Acciai Trafilati SpA, Acciaierie di Verona SpA

Respondents: Autorità Garante della Concorrenza e del Mercato, Agenzia delle Entrate — Riscossione

Question referred

Can Article 5-bis of Decree-Law No 1 of 24 January 2012 (as amended by Conversion Law No 27 of 24 March 2012) — which added paragraphs 7-ter and 7-quater to Article 10 of Law No 287/1990 — under which the institutional activities of the Italian competition authority are financed solely by a 'contribution' payable only by companies (Italian or foreign, in the event that they have branch offices with permanent representation in Italy that are subject to registration with the Companies' Register) with total revenue exceeding EUR 50 million, which therefore does not affect to a fair and proportionate extent all market participants, for whose benefit (in addition to consumers) the activities of that authority are undertaken, be interpreted as being compatible with EU law, in particular:

— Article 4(3) TEU (principle of sincere cooperation);

— the principles underlying the internal market (including the right of establishment and free movement of capital);

— Articles 101, 102 and 103 TFEU;

— Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (1) (now Articles 101 and 102 TFEU);

— Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (2) (in particular recitals 1, 6, 8, 17 and 26, Article 1(1), Article 2(10) and Article 5(1));

read in the light of Articles 17(1) (right to property), 20 (equality before the law), 21(1) (non-discrimination) and 52(1) (principle of proportionality) of the Charter of Fundamental Rights of the European Union;

and therefore must it be interpreted as meaning [that] the national legislation laid down in Article 5-bis of Decree-Law No 1 of 24 January 2012 (as amended by Conversion Law No 27 of 24 March 2012) — which added paragraphs 7-ter and 7-quater to Article 10 of Law No 287/1990 — is contrary to EU law as stated above?

(1) OJ 2003 L 1, p. 1.
(2) OJ 2019 L 11, p. 3.

Appeal brought on 25 August 2022 by LSEGH (Luxembourg) Ltd, London Stock Exchange Group Holdings (Italy) Ltd against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 8 June 2022 in Joined Cases T-363/19 and T-456/19, United Kingdom and ITV v Commission

(Case C-564/22 P)

(2022/C 441/15)

Language of the case: English

Parties

Appellants: LSEGH (Luxembourg) Ltd, London Stock Exchange Group Holdings (Italy) Ltd (represented by: A. von Bonin, Rechtsanwalt, O.W. Brouwer and A. Pliego Selie, advocaten)

Other parties to the proceedings: European Commission, United Kingdom of Great Britain and Northern Ireland, ITV plc

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— render final judgment and annul Commission Decision (EU) 2019/1352 of 2 April 2019 of the State aid SA.44896 implemented by the United Kingdom concerning Controlled Foreign Company Group Financing Exemption (1) (the 'contested decision');

— or in the alternative, refer the case back to the General court for determination in accordance with the judgment of the Court; and

— order the Commission to pay the costs of these proceedings and those before the General Court, including the costs relating to any intervening parties.

Pleas in law and main arguments

In support of the appeal, the appellants rely on five pleas in law:

First, the General Court erred in law by distorting national law and overlooking evidence in identifying the reference system as the United Kingdom CFC (controlled foreign companies) rules in Part 9A of the Taxation (International and Other Provisions) Act 2010 (the 'TIOPA'), rather than the United Kingdom corporate taxation system of which they form an inseparable part.

Second, even if the reference system would be the United Kingdom CFC rules, the General Court erred in law in identifying the objective of the reference system, and consequently erred in identifying the provisions in Chapter 5 of the United Kingdom CFC rules as determining the 'normal' taxation of non-trading finance profits such that the 'group financing exemption' in Chapter 9 of Part 9A of the TIOPA would confer an 'advantage'.

Third, the General Court erred in law in relation to the finding of a selective advantage. In particular, the General Court erred in law by incorrectly concluding that economic operators, which were able to benefit from the 'group financing exemption' in Chapter 9 of Part 9A of the TIOPA, were in a comparable legal and factual situation with companies, which were not.

Fourth, the General Court infringed Article 263 TFEU and Article 296 TFEU because it failed to address pleas in law and breached its duty to state reasons, because the General Court substituted its own reasoning for the reasoning of the Commission in the contested decision.

Fifth, the General Court erred in law in concluding that the 'group financing exemption' in Chapter 9 of Part 9A of the TIOPA is not justified by the nature or overall structure of the reference system.

(1) OJ 2019 L 216, p. 1.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 26 August 2022 — Verein für Konsumenteninformation v Sofatutor GmbH

(Case C-565/22)

(2022/C 441/16)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: Verein für Konsumenteninformation

Respondent in the appeal on a point of law: Sofatutor GmbH

Question referred

Must Article 9(1) of Directive 2011/83/EU (1) of the European Parliament and of the Council of 25 October 2011 on consumer rights be interpreted as meaning that the consumer has a new right of withdrawal where a distance contract is 'extended automatically' (Article 6(1)(o) of that directive)?

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

Appeal brought on 25 August 2022 by Vasile Dumitrescu, Guido Schwarz against the judgment of the General Court (Eighth Chamber) delivered on 15 June 2022 in Case T-531/16, Dumitrescu and Schwarz v Commission

(Case C-567/22 P)

(2022/C 441/17)

Language of the case: French

Parties

Appellants: Vasile Dumitrescu, Guido Schwarz (represented by: L. Levi, J.-N. Louis, avocats)

Other parties to the proceedings: European Commission, European Parliament, Council of the European Union

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of the European Union of 15 June 2022 in Case T-531/16, *Dumitrescu and Schwarz* v *Commission*;

— refer the present case to the Court of Justice for a ruling that the appellants' action at first instance is well founded;

— order the defendant at first instance to pay all of the costs at first instance and on appeal.

Grounds of appeal and main arguments

In support of their appeal, the appellants rely on three grounds:

The first ground of appeal alleges infringement of Article 45 TFEU, infringement by the General Court of its obligation to state reasons, error of legal characterisation and distortion of the contents of the file;

The second ground of appeal alleges infringement of the purpose of Article 8 of Annex VII to the Staff Regulations of Officials of the European Union, breach of the general principle of the right of an official to retain personal links with the place where his or her principal interests are situated, infringement of Articles 7 and 8 of the Charter of Fundamental Rights and distortion of the contents of the file;

The third ground of appeal alleges breach of the principle of equal treatment.

Appeal brought on 25 August 2022 by YT, YU against the judgment of the General Court (Eighth Chamber) delivered on 15 June 2022 in Case T-532/16, YT and YU v Commission

(Case C-568/22 P)

(2022/C 441/18)

Language of the case: French

Parties

Appellants: YT, YU (represented by: L. Levi, J.-N. Louis, avocats)

Other parties to the proceedings: European Commission, European Parliament, Council of the European Union

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of the European Union of 15 June 2022 in Case T-532/16, *YT and YU* v *Commission*;

— refer the present case to the Court of Justice for a ruling that the appellants' action at first instance is well founded;

— order the defendant at first instance to pay all of the costs at first instance and on appeal.

Grounds of appeal and main arguments

In support of their appeal, the appellants rely on two grounds:

The first ground of appeal alleges infringement of Article 45 TFEU, infringement by the General Court of its obligation to state reasons, error of legal characterisation and distortion of the contents of the file;

The second ground of appeal alleges infringement of the purpose of Article 8 of Annex VII to the Staff Regulations of Officials of the European Union and breach of the general principle of proportionality.

Appeal brought on 25 August 2022 by YV against the judgment of the General Court (Eighth Chamber) delivered on 15 June 2022 in Case T-533/16, YV and Others v Commission

(Case C-569/22 P)

(2022/C 441/19)

Language of the case: French

Parties

Appellant: YV (represented by: L. Levi, J.-N. Louis, avocats)

Other parties to the proceedings: European Commission, YW, YZ, European Parliament, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 15 June 2022 in Case T-533/16, *YV and Others* v *Commission*;

— refer the present case to the Court of Justice for a ruling that the appellant's action at first instance is well founded;

— order the defendant at first instance to pay all of the costs at first instance and on appeal.

Grounds of appeal and main arguments

In support of his appeal, the appellant relies on two grounds:

The first ground of appeal alleges infringement of Article 45 TFEU, infringement by the General Court of its obligation to state reasons, error of legal characterisation and distortion of the contents of the file;

The second ground of appeal alleges infringement of the purpose of Article 8 of Annex VII to the Staff Regulations of Officials of the European Union and breach of the general principle of proportionality.

Appeal brought on 25 August 2022 by ZA against the judgment of the General Court (Eighth Chamber) delivered on 15 June 2022 in Case T-545/16, YY and ZA v Court of Justice of the European Union

(Case C-570/22 P)

(2022/C 441/20)

Language of the case: French

Parties

Appellant: ZA (represented by: L. Levi, J.-N. Louis, avocats)

Other parties to the proceedings: Court of Justice of the European Union, YY, European Parliament, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 15 June 2022 in Case T-545/16, *YY and ZA* v *Court of Justice*;

— refer the present case to the Court of Justice for a ruling that the appellant's action at first instance is well founded;

— order the defendant at first instance to pay all of the costs at first instance and on appeal.

Grounds of appeal and main arguments

In support of his appeal, the appellant relies on two grounds:

The first ground of appeal alleges infringement of Article 45 TFEU, infringement by the General Court of its obligation to state reasons, error of legal characterisation and distortion of the contents of the file;

The second ground of appeal alleges infringement of the purpose of Article 8 of Annex VII to the Staff Regulations of Officials of the European Union and breach of the general principle of proportionality.

Appeal brought on 29 August 2022 by Hochmann Marketing GmbH against the judgment of the General Court (Tenth Chamber) delivered on 29 June 2022 in Case T-337/20, Hochmann Marketing GmbH v European Union Intellectual Property Office

(Case C-575/22 P)

(2022/C 441/21)

Language of the case: German

Parties

Appellant: Hochmann Marketing GmbH (represented by: J. Jennings, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 10 October 2022, the Vice-President of the Court of Justice of the European Union decided to dismiss the appeal as inadmissible and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 1 September 2022 — flightright GmbH v TAP Portugal

(Case C-578/22)

(2022/C 441/22)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant and appellant: flightright GmbH

Defendant and respondent: TAP Portugal

Questions referred

1. Must Article 4(3), in conjunction with Article 2(j), of Regulation (EC) No 261/2004, ([1]) read in conjunction with Article 3(2) of that regulation, be interpreted as meaning that passengers must always present themselves for check-in as stipulated and at the time indicated in advance by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time, and, in accordance with Article 2(j) of that regulation, must also present themselves for boarding under the conditions laid down in Article 3(2) thereof?

2. In the event that the Court of Justice answers the first question in the negative:

Must Article 4(3), in conjunction with Article 2(j), of Regulation No 261/2004 be interpreted as meaning that denied boarding against the will of the passenger may also be expressed by the contractual air carrier — which has concluded a code-share agreement with the operating air carrier in relation to the flight — to the passenger with effect to the detriment of the operating air carrier?

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

Request for a preliminary ruling from the Verwaltungsgericht Köln (Germany) lodged on 2 September 2022 — Die Länderbahn GmbH DLB and Others v Federal Republic of Germany

(Case C-582/22)

(2022/C 441/23)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicants: Die Länderbahn GmbH DLB, Prignitzer Eisenbahn GmbH, Ostdeutsche Eisenbahn, Ostseeland Verkehrs GmBH

Defendant: Federal Republic of Germany

Party to the proceedings: DB Netz AG

Questions referred

1. Must Article 56(1), (6) and (9) of Directive 2012/34/EU (1) be interpreted as meaning that a charging scheme is capable of forming the subject matter of a complaint even where the period during which the charge to be reviewed was applicable has already expired (complaint against an 'old charge')?

2. If Question 1 is answered in the affirmative, must Article 56(1), (6) and (9) of Directive 2012/34/EU be interpreted as meaning that, in the case of an *ex-post* review of old charges, the regulatory body may declare them to be invalid with *ex-tunc* effect?

3. If Questions 1 and 2 are answered in the affirmative, does the interpretation of Article 56(1), (6) and (9) of Directive 2012/34/EU permit national legislation which excludes the possibility of an *ex-post* review of old charges with *ex-tunc* effect?

4. If Questions 1 and 2 are answered in the affirmative, must Article 56(9) of Directive 2012/34/EU be interpreted as meaning that, with regard to legal consequences, the competent regulatory body's remedial action which is provided for in that provision also includes, in principle, the possibility to order the infrastructure manager to reimburse charges which had been levied unlawfully, even though claims for reimbursement between the railway undertakings and the infrastructure manager can be enforced by way of civil proceedings?

5. If Questions 1 and 2 are answered in the negative, does a right to complain against old charges arise in any event from the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and the second subparagraph of Article 19(1) of the Treaty on European Union (TEU) in so far as, where the regulatory body has not decided on the complaint, reimbursement of unlawful old charges under the rules of national civil law is precluded in accordance with the case-law of the Court in Case C-489/15 ([2]) (judgment of 9 November 2017)?

([1]) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) (OJ 2012 L 343, p. 32).
([2]) EU:C:2017:834, *CTL Logistics*.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 5 September 2022 — QM v Kiwi Tours GmbH

(Case C-584/22)

(2022/C 441/24)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant on a point of law: QM

Defendant and respondent in the appeal on a point of law: Kiwi Tours GmbH

Questions referred

Is Article 12(2) of Directive (EU) 2015/2302 ([1]) to be interpreted

1. as meaning that the assessment of the justification of the termination must be based solely on such unavoidable and extraordinary circumstances as have already occurred at the time of termination,

2. or as meaning that it is also necessary to take into account unavoidable and extraordinary circumstances that actually occur after the termination but before the planned start of the journey?

([1]) Directive of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).

Appeal brought on 16 September 2022 by Carles Puigdemont i Casamajó and Antoni Comín i Oliveres against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 6 July 2022 in Case T-388/19, Puigdemont i Casamajó and Comín i Oliveres v Parlement

(Case C-600/22 P)

(2022/C 441/25)

Language of the case: English

Parties

Appellants: Carles Puigdemont i Casamajó and Antoni Comín i Oliveres (represented by: P. Bekaert, S. Bekaert, advocaten, and G. Boye, abogado)

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

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court or, in the alternative, annul the challenged acts; and

— order the Parliament and the Kingdom of Spain to pay the costs or, in the alternative, reserve the costs.

Pleas in law and main arguments

In support of this appeal, the appellants rely on the following four pleas in law:

First, the General Court erred in law and infringed Article 263 TFEU and, thus, Article 47 of the Charter, by concluding that the fact that the appellants had not been allowed by the Parliament to take office, exercise their mandate and sit in the Parliament as from 2 July 2019 was not the result of the refusal of the Parliament to recognize the appellants' status as Members of the European Parliament, as reflected in the instruction of 29 May 2019 and the letter of 27 June 2019, and therefore, that the challenged acts did not bring about a change to the appellants' legal situation.

Pursuant to Article 12 of the 1976 Act, ([1]) it is for the Parliament to decide disputes that may arise out of the provisions of the 1976 Act, of which Article 1(3) is an essential provision. Donnici ([2]) wrongly interpreted the division of powers between national authorities and the Parliament provided for in Article 12 of the 1976 Act as regards the powers conferred to the Parliament. The appellants would have in any event been able to take their seats pending the decision on the dispute they brought before the Parliament, and therefore, the judgment under appeal erred in law by deciding that the challenged acts did not bring a change to the appellants' situation.

The General Court erred in law by concluding that the decision not to take an initiative to assert the privileges and immunities pursuant to Rule 8 of the Rules of Procedure of the European Parliament is not a challengeable act.

The General Court erred in law by claiming that the appellants had not made a request to the Parliament for the defence of their privileges and immunities pursuant to Rules 7 and 9 of the Rules of Procedure of the European Parliament.

([1]) Act concerning the election of the Members of the European Parliament by direct universal suffrage (OJ 1976 L 278, p. 5), annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 (OJ 2002 L 283, p. 1).

([2]) Judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275.

Request for a preliminary ruling from the Landesverwaltungsgericht Tirol (Austria) lodged on 19 September 2022 — Umweltverband WWF Österreich and Others v Tiroler Landesregierung

(Case C-601/22)

(2022/C 441/26)

Language of the case: German

Referring court

Landesverwaltungsgericht Tirol

Parties to the main proceedings

Applicants: Umweltverband WWF Österreich, ÖKOBÜRO — Allianz der Umweltbewegung, Naturschutzbund Österreich, Umweltdachverband, Wiener Tierschutzverein

Defendant: Tiroler Landesregierung

Questions referred

1. Does Article 12 in conjunction with Annex IV to Directive 92/43/EEC, ([1]) as most recently amended by Directive 2013/17/EU, ([2]) according to which wolves are covered by the system of strict protection, exempting populations in several Member States, while no such exemption has been provided for Austria, infringe the 'principle of equal treatment of Member States' enshrined in Article 4(2) TEU?

2. Is Article 16(1) of Directive 92/43/EEC, as most recently amended by Directive 2013/17/EU, according to which a derogation from the system of strict protection of wolves is only permitted if, inter alia, the derogation is not detrimental to the maintenance of the populations of the species concerned with a 'favourable conservation status' in their 'natural range', to be interpreted as meaning that the favourable conservation status must be maintained or restored not in relation to the territory of a Member State, but to the natural range of a population, which may encompass a significantly larger, cross-border biogeographical region?

3. Is Article 16(1)(b) of Directive 92/43/EEC, as most recently amended by Directive 2013/17/EU, to be interpreted as meaning that, in addition to direct damage caused by a particular wolf, 'serious damage' also encompasses indirect (future) 'economic' damage that cannot be attributed to a particular wolf?

4. Is Article 16(1) of Directive 92/43/EEC, as most recently amended by Directive 2013/17/EU, to be interpreted as meaning that 'satisfactory alternatives' are to be examined purely on the basis of actual feasibility or also on the basis of economic criteria, given the prevailing topographical, alpine farming and business conditions in the Province of Tyrol?

([1]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

([2]) Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 193).

GENERAL COURT

Action brought on 19 August 2022 — Sberbank of Russia v Commission and SRB

(Case T-525/22)

(2022/C 441/27)

Language of the case: English

Parties

Applicant: Sberbank of Russia OAO (Moscow, Russia) (represented by: D. Rovetta, M. Campa, M. Pirovano, M. Moretto and V. Villante, lawyers)

Defendants: European Commission and Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision SRB/EES/2022/21 on the adoption of a resolution scheme in respect of Sberbank d.d., issued by the Single Resolution Board on 1 March 2022, together with the Valuation Report 1 issued by the Single Resolution Board on 27 February 2022 and the Valuation Report 2 issued by the Single Resolution Board on 27 or 28 February 2022;

— annul the European Commission decision (EU) 2022/948 of 1 March 2022 endorsing the resolution scheme for Sberbank d.d.; ([1])

— order the Single Resolution Board and the European Commission to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements.

2. Second plea in law, alleging infringement of the obligation to state reasons, of Article 296 of the Treaty on the Functioning of the European Union and of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, and breach of the right to effective judicial protection and of Article 47 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging manifest error of assessment in the overall evaluation of the conditions related to the resolution scheme and breach of Article 6 of Regulation (EU) No 806/2014, ([2]) as well as breach of Article 39 of Directive 2014/59/EU, ([3]) and infringement of the fundamental right to property and of the freedom to conduct a business.

([1]) OJ 2022 L 164, p. 65.

([2]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 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).

([3]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Action brought on 20 August 2022 — Sberbank of Russia v Commission and SRB

(Case T-526/22)

(2022/C 441/28)

Language of the case: English

Parties

Applicant: Sberbank of Russia OAO (Moscow, Russia) (represented by: D. Rovetta, M. Campa, M. Pirovano, M. Moretto and V. Villante, lawyers)

Defendants: European Commission and Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision SRB/EES/2022/20 on the adoption of a resolution scheme in respect of Sberbank d.d., issued by the Single Resolution Board on 1 March 2022, together with the Valuation Report 1 issued by the Single Resolution Board on 27 February 2022 and the Valuation Report 2 issued by the Single Resolution Board on 27 or 28 February 2022;

— annul the European Commission decision (EU) 2022/947 of 1 March 2022, endorsing the resolution scheme for Sberbank banka d.d.; ([1])

— order the Single Resolution Board and the European Commission to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements.

2. Second plea in law, alleging infringement of the obligation to state reasons, of Article 296 of the Treaty on the Functioning of the European Union and of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, and breach of the right to effective judicial protection and of Article 47 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging manifest error of assessment in the overall evaluation of the conditions related to the resolution scheme and breach of Article 6 of Regulation (EU) No 806/2014, ([2]) as well as breach of Article 39 of Directive 2014/59/EU, ([3]) and infringement of the fundamental right to property and of the freedom to conduct a business.

([1]) OJ 2022 L 164, p. 63.

([2]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 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).

([3]) Directive s2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Action brought on 22 August 2022 — Sberbank of Russia v SRB

(Case T-527/22)

(2022/C 441/29)

Language of the case: English

Parties

Applicant: Sberbank of Russia OAO (Moscow, Russia) (represented by: D. Rovetta, M. Campa, M. Pirovano, M. Moretto and V. Villante, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision (SRB/EES/2022/19) on assessment of the conditions for resolution in respect of Sberbank Europe AG issued by the Single Resolution Board on 1 March 2022, together with the Valuation Report 1, issued by the Single Resolution Board on 27 February 2022;

— order the Single Resolution Board to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging the infringement of essential procedural requirements.

2. Second plea in law, alleging infringement of the obligation to state reasons, of Article 296 TFEU and of Article 41(2)(c) of the Charter of Fundamental Rights, and breach of the right to effective judicial protection and of Article 47 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging manifest error of assessment in the overall evaluation of the conditions related to the resolution scheme and breach of Articles 6, 14 and 18 of Regulation (EU) No 806/2014, [1] as well as infringement of the fundamental right to property and of the freedom to conduct a business.

[1] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 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).

Action brought on 23 September 2022 — Polaroid IP v EUIPO — Klimeck (Representation of a square in a rectangle)

(Case T-591/22)

(2022/C 441/30)

Language in which the application was lodged: English

Parties

Applicant: Polaroid IP BV (Amsterdam, Netherlands) (represented by: G. Vos, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Thomas Klimeck (Kevelaer, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Representation of a square in a rectangle) — European Union trade mark No 16 217 267

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 30 June 2022 in Case R 1646/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— remit the case to the Cancellation Division;

— order EUIPO to pay the costs of this Application and order Klimeck to pay the costs of the proceedings before the Cancellation Division and the Board of Appeal.

Plea in law

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

Action brought on 26 September 2022 — Sophienwald v EUIPO — Zalto Glas (Sw Sophienwald)

(Case T-597/22)

(2022/C 441/31)

Language in which the application was lodged: German

Parties

Applicant: Sophienwald AG (Vaduz, Liechtenstein) (represented by: J. Hellenbrand, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zalto Glas GmbH (Gmünd, Austria)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark Sw Sophienwald — EU trade mark No 13 448 981

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 25 July 2022 in Case R 2113/2021-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the Court and of the proceedings before EUIPO.

Pleas in law

— Infringement of Art 95(1) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council;

— Infringement of Art 94(1) of Regulation (EU) No 2017/1002 of the European Parliament and of the Council;

— Infringement of Art 7(1)(c) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council;

— Infringement of the principle of non-arbitrariness.

Action brought on 26 September 2022 — Consultora de Telecomunicaciones Optiva Media/EUIPO — Optiva Canada (OPTIVA MEDIA)

(Case T-601/22)

(2022/C 441/32)

Language in which the application was lodged: English

Parties

Applicant: Consultora de Telecomunicaciones Optiva Media SL (Madrid, Spain) (represented by: C. Rivadulla Oliva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Optiva Canada Inc. (Mississauga, Ontario, Canada)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark OPTIVA MEDIA (Claiming the colours 'green' and 'black') — European Union trade mark No 10 939 767

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 13 July 2022 in joined cases R 1533/2021-5 and R 1740/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Plea in law

— Infringement of Articles 18 and 58 through 64 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 26 September 2022 — Agus v EUIPO — Alpen Food Group (ROYAL MILK)

(Case T-603/22)

(2022/C 441/33)

Language in which the application was lodged: English

Parties

Applicant: Agus sp. z o.o. (Warsaw, Poland) (represented by: B. Wojtkowska, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Alpen Food Group BV (Weesp, Netherlands)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark ROYAL MILK — European Union trade mark No 10 321 735

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 July 2022 in Case R 2056/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Plea in law

— Infringement of Article 58(1)(a) and 58(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 30 September 2022 — KHG v EUIPO — Dreams (Dreamer)

(Case T-608/22)

(2022/C 441/34)

Language in which the application was lodged: German

Parties

Applicant: KHG GmbH & Co. KG (Schönefeld, Germany) (represented by: D. Gehnen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dreams Ltd (High Wycombe, United Kingdom)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Application EU figurative mark Dreamer — Application for registration No 17 652 165

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 29 June 2022 in Case R 1975/2021-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and, if it joins the proceedings, the other party 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 30 September 2022 — Nienaber v EUIPO — St. Hippolyt Mühle Ebert (BoneKare)

(Case T-609/22)

(2022/C 441/35)

Language in which the application was lodged: German

Parties

Applicant: Andreas Nienaber (Cloppenburg, Germany) (represented by: J. Eberhardt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: St. Hippolyt Mühle Ebert GmbH (Dielheim, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark BoneKare — EU trade mark No 10 055 903

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 4 August 2022 in Case R 436/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including those incurred in the proceedings before the Cancellation Division of the defendant and its Board of Appeal.

Pleas in law

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

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

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

Action brought on 30 September 2022 — Nienaber v EUIPO (BoneKare)

(Case T-610/22)

(2022/C 441/36)

Language of the case: German

Parties

Applicants: Jannah Nienaber (Cloppenburg, Germany), Andreas Nienaber (Cloppenburg) (represented by: J. Eberhardt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark BoneKare — Application No 18 411 756

Contested decision: Decision of the First Board of Appeal of EUIPO of 4 August 2022 in Case R 348/2022-1

Form of order sought

The applicants claim that the Court should:

— annul the contested decision;

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

Plea in law

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

Action brought on 30 September 2022 — Marico v EUIPO — Regal Impex (SAFFOLA)

(Case T-611/22)

(2022/C 441/37)

Language in which the application was lodged: English

Parties

Applicant: Marico Ltd (Mumbai, India) (represented by: B. Collett and S. Malynicz, Barristers-at-Law)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Regal Impex Ltd (Harrow, United Kingdom)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark SAFFOLA — European Union trade mark No 12 568 739

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 3 July 2022 in Case R 1538/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener, should the other party to the proceedings before EUIPO decide to intervene, to pay the applicant's costs and bear their own costs.

Pleas in law

— The Board of Appeal infringed Article 18(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by wrongly concluding that the European Union trade mark proprietor had demonstrated genuine use of the contested mark in respect of 'edible oils and fats';

— The Board of Appeal erred evidentially, procedurally and legally in respect of the finding that sunflower oil is an edible fat.

Action brought on 3 October 2022 — Breville v EUIPO (Cooking devices)

(Case T-616/22)

(2022/C 441/38)

Language of the case: English

Parties

Applicant: Breville Pty Ltd (Alexandria, Australia) (represented by: F. Caruso, G. Grippiotti, M. Pozzi, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Design: Community design No 1 444 467-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 20 June 2022 in Case R 613/2022-3

Form of order sought

The applicant claims that the Court should annul the contested decision and grant the requested *restitutio in integrum.*

Pleas in law

— Error in law in connection with the time limit to file the application for *restitutio in integrum*;

— Infringement of Article 67(1) of Council Regulation (EC) No 6/2002.

Action brought on 4 October 2022 — Amazonen-Werke H. Dreyer v EUIPO (Combination of the colours green and orange)

(Case T-618/22)

(2022/C 441/39)

Language of the case: English

Parties

Applicant: Amazonen-Werke H. Dreyer SE & Co. KG (Hasbergen-Gaste, Germany) (represented by: C. Neuhierl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative mark representing the combination of the colours green and orange — International registration No 1 461 516

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 July 2022 in Case R 2006/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Plea in law

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

Action brought on 4 October 2022 — SB v EEAS

(Case T-621/22)

(2022/C 441/40)

Language of the case: French

Parties

Applicant: SB (represented by: L. Burguin, T. Bontinck and A. Guillerme, lawyers)

Defendant: European External Action Service (EEAS)

Form of order sought

The applicant claims that the Court should:

— find that the EEAS is liable;

— order the EEAS to pay the sum of EUR 80 000 in respect of non-material harm and EUR 720 000 in respect of material harm;

— order the defence to bear the costs.

Pleas in law and main arguments

In support of the action against the two decisions of 10 November 2021 rejecting the applicant's applications for the positions of Head of Delegation of the European Union, first, in [*confidential*] [1] and, second, in [*confidential*], the applicant relies on four pleas in law.

1. First plea in law, alleging a manifest error of assessment.

2. Second plea in law, alleging violation of the principle of legitimate expectations.

3. Third plea in law, alleging violation of the principle of equal treatment.

4. Fourth plea in law, alleging the existence of a misuse of powers.

[1] Confidential information omitted.

Action brought on 6 October 2022 — Van Oosterwijck v Commission

(Case T-622/22)

(2022/C 441/41)

Language of the case: French

Parties

Applicant: Viviane Van Oosterwijck (Kontich, Belgium) (represented by: F. Moyse, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 7 July 2022 and to the extent necessary the decision of 15 December 2021, decisions by which the Commission refused to grant a survivor's pension to the applicant;

— accordingly, recognise the applicant as being entitled to a survivor's pension under Articles 19 and 20 of Annex VIII to the Staff Regulations;

— in any event, order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, based on a plea of illegality of Article 20 of Annex VIII to the Staff Regulations of Officials of the European Union ('the Staff Regulations') on account of the violation of the principles of equal treatment and non-discrimination on the basis of the duration of her relationship with her spouse. The applicant claims, inter alia, that the distinction that must be established in the present case, namely the fact that the requirement relating to the minimum duration of the marriage, in the situations covered by the abovementioned Article 20 is much greater than that in the situations covered by Article 19 of Annex VIII to the Staff Regulations, even though that all those situations are comparable, had to be regarded as arbitrary or manifestly inappropriate in the light of the objective pursued by the legislature.

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