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(2022/C 451/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 6 October 2022 (request for a preliminary ruling from the Riigikohus — Estonia) — I.L. v Politsei- ja Piirivalveamet

(Case C-241/21) [1]

(Reference for a preliminary ruling — Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 15(1) — Detention — Grounds for detention — General criterion based on the risk that the effective enforcement of the removal would be compromised — Risk that the person concerned would commit a criminal offence — Consequences of the establishment of the offence and the imposition of a penalty — Complication of the removal process — Article 6 of the Charter of Fundamental Rights of the European Union — Restriction of the fundamental right to liberty — Requirement of a legal basis — Requirements of clarity, predictability and accessibility — Protection against arbitrariness)

(2022/C 451/02)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: I.L.

Defendant: Politsei- ja Piirivalveamet

Operative part of the judgment

Article 15(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals;

must be interpreted as not permitting a Member State to order the detention of an illegally staying third-country national solely on the basis of a general criterion based on the risk that the effective enforcement of the removal would be compromised, without satisfying one of the specific grounds for detention provided for and clearly defined by the legislation implementing that provision in national law.

[1] OJ C 242, 21.6.2021.

Judgment of the Court (Fourth Chamber) of 6 October 2022 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Szef Krajowej Administracji Skarbowej v O. Fundusz Inwestycyjny Zamknięty reprezentowany przez O S.A.

(Case C-250/21) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Supply of services for consideration — Exemptions — Article 135(1)(b) — Granting of credit — Sub-participation agreement)

(2022/C 451/03)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Szef Krajowej Administracji Skarbowej

Defendant: O. Fundusz Inwestycyjny Zamknięty reprezentowany przez O S.A.

Operative part of the judgment

Article 135(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax,

must be interpreted as meaning that the services provided by a sub-participant under a sub-participation agreement, consisting of making available to the originator a financial contribution in exchange for payment of the proceeds from the receivables specified in that agreement, those receivables remaining in the assets of the originator, fall within the concept of 'granting of credit' within the meaning of that provision.

([1]) OJ C 289, 19.7.2021.

Judgment of the Court (Third Chamber) of 6 October 2022 (request for a preliminary ruling from the Sofiyski gradski sad — Bulgaria) — criminal procedure against HV

(Case C-266/21) ([1])

(Reference for a preliminary ruling — Common transport policy — Directive 2006/126/EC — Article 11(2) and (4) — Suspension of the right to drive a motor vehicle — Driving licence issued by the Member State of normal residence in exchange for a driving licence issued by another Member State — Refusal by the first Member State to enforce a decision suspending the right to drive adopted by the second Member State — Obligation for the second Member State not to recognise, in its territory, the validity of the driving licence that has been suspended)

(2022/C 451/04)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

HV

Intervening party: Sofiyska gradska prokuratura

Operative part of the judgment

The combined provisions of Article 11(2) and the second subparagraph of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences,

must be interpreted as authorising the Member State of normal residence of the holder of a driving licence issued by that Member State not to recognise and enforce in its territory a decision suspending that holder's right to drive a motor vehicle adopted by another Member State on account of a road traffic offence committed in that Member State's territory, including where that driving licence was issued in exchange for a driving licence previously issued by the Member State in which the road traffic offence was committed.

(1) OJ C 263, 5.7.2021.

Judgment of the Court (Tenth Chamber) of 6 October 2022 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — UAB 'Vittamed technologijos', in liquidation v Valstybinė mokesčių inspekcija

(Case C-293/21) (1)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Deductions of input VAT — Goods and services used by the taxable person to produce capital goods — Articles 184 to 187 — Adjustment of deductions — Obligation to adjust deductions of VAT in the event of that taxable person being placed in liquidation and removed from the register of VAT payers)

(2022/C 451/05)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: UAB 'Vittamed technologijos', in liquidation

Respondent: Valstybinė mokesčių inspekcija

intervener: Kauno apskrities valstybinė mokesčių inspekcija

Operative part of the judgment

Articles 184 to 187 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that a taxable person is under an obligation to adjust deductions of input value added tax (VAT) relating to the acquisition of goods or services intended to produce capital goods in the case where, as a result of the decision of the owner or sole shareholder of that taxable person to place it in liquidation and of the taxable person's request to be removed, and it being removed, from the register of VAT payers, the capital goods produced have not been used — and will never be used — in the course of taxable economic activities. The reasons for the decision to place that taxable person in liquidation and, consequently, for the abandonment of the intended taxable economic activity, such as constantly growing losses, the absence of orders and the doubts of the taxable person's shareholder as to the profitability of the intended economic activity, have no bearing on the taxable person's obligation to adjust the deductions of VAT concerned, in so far as that taxable person no longer has — and will never have — any intention of using the capital goods for the purposes of taxable transactions.

(1) OJ C 289, 19.7.2021.

Judgment of the Court (Eighth Chamber) of 6 October 2022 (requests for a preliminary ruling from the Corte suprema di cassazione — Italy) — Agenzia delle Entrate v Contship Italia SpA

(Joined Cases C-433/21 and C-434/21) (1)

(References for a preliminary ruling — Direct taxation — Freedom of establishment — Corporate income tax — Measures to prevent tax avoidance by shell companies — Determination of taxable income on the basis of presumed minimum income — Exclusion from the scope of those measures of companies and entities listed on national regulated markets)

(2022/C 451/06)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Agenzia delle Entrate

Defendant: Contship Italia SpA

Operative part of the judgment

Article 49 TFEU must be interpreted as not precluding national legislation which restricts the ground for exclusion from the scope of the measures to prevent tax avoidance by shell companies to companies whose securities are traded on national regulated markets, excluding from the scope of that ground for exclusion other companies, whether national or foreign, whose securities are not traded on national regulated markets but which are controlled by companies and entities listed on foreign regulated markets.

(1) OJ C 422, 18.10.2021.

Judgment of the Court (Eighth Chamber) of 6 October 2022 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — flightright GmbH v American Airlines Inc.

(Case C-436/21) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 3(1)(a) — Scope — Article 2(f) to (h) — Concept of 'ticket' — Concept of 'reservation' — Concept of 'connecting flight' — Reservation through a travel agency — Article 7 — Compensation for air passengers in the event of a long delay to a flight — Transport operation consisting of a number of flights operated by separate operating air carriers — Connecting flight departing from an airport located in a Member State with a stop in Switzerland and final destination in a third country)

(2022/C 451/07)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: flightright GmbH

Defendant: American Airlines Inc.

Operative part of the judgment

Article 2(h) 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 the concept of a 'connecting flight' covers a transport operation made up of a number of flights operated by separate operating air carriers which do not have a specific legal relationship, where those flights have been combined by a travel agency which has charged an overall price and issued a single ticket for that operation, with the result that a passenger departing from an airport located in the territory of a Member State who suffers a long delay to the arrival at the destination of the last flight may rely on the right to compensation pursuant to Article 7 of that regulation.

([1]) OJ C 452, 8.12.2021.

Judgment of the Court (Seventh Chamber) of 6 October 2022 — KN v European Economic and Social Committee (EESC)

(Case C-673/21 P) ([1])

(Appeal — Institutional law — European Economic and Social Committee (EESC) — Code of Conduct — Allegations of psychological harassment against a member of the EESC — Investigation by the European Anti-Fraud Office (OLAF) — Decision to relieve the member of his supervisory and personnel management functions — Action for annulment and compensation)

(2022/C 451/08)

Language of the case: French

Parties

Appellant: KN (represented by: M. Aboudi and M. Casado García-Hirschfeld, avocats)

Other party to the proceedings: European Economic and Social Committee) (represented by: X. Chamodraka, M. Pascua Mateo, L. Camarena Januzec and A Carvajal García-Valdecasas, acting as agents, and by A. Duron, avocate)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders KN to bear his own costs and to pay those incurred by the European Economic and Social Committee (EESC).

([1]) OJ C 11, 10.1.2022.

Appeal brought on 9 June 2022 by SFD S.A. against the judgment of the General Court (Third Chamber) delivered on 30 March 2022 in Case T-35/21, SFD v EUIPO — Allmax Nutrition (ALLNUTRITION DESIGNED FOR MOTIVATION)

(Case C-383/22 P)

(2022/C 451/09)

Language of the case: English

Parties

Appellant: SFD S.A. (represented by: T. Grucelski, adwokat)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

By order of 17 October 2022, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that SFD S.A. should bear its own costs.

Request for a preliminary ruling from the Szegedi Törvényszék (Hungary) lodged on 24 June 2022 — NW v Országos Idegenrendészeti Főigazgatóság and Miniszterelnöki Kabinetirodát vezető miniszter

(Case C-420/22)

(2022/C 451/10)

Language of the case: Hungarian

Referring court

Szegedi Törvényszék

Parties to the main proceedings

Applicant: NW

Defendants: Országos Idegenrendészeti Főigazgatóság and Miniszterelnöki Kabinetirodát vezető miniszter

Questions referred

1. Must Article 10(1) of Council Directive 2003/109/EC [1] of 25 November 2003 concerning the status of third-country nationals who are long-term residents, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') — and also, in this specific case, with Articles 7 and 24 of the Charter — be interpreted as meaning that the authority of a Member State which, on grounds of national security and/or public policy or public security, has adopted a decision ordering the withdrawal of a long-term residence permit which had previously been issued, and the specialised authority which has determined that the matter is confidential, must ensure there is a guarantee that in all circumstances the person concerned, who is a third-country national, and his or her legal representative, are entitled to know at least the essence of the confidential or classified information and data underpinning the decision which is based on those grounds and to use that information or those data in the proceedings concerning the decision, where the responsible authority considers that such disclosure would be contrary to the interests of national security?

2. If the answer is in the affirmative, what precisely must be understood by the 'essence' of the confidential grounds on which that decision is based, having regard to Articles 41 and 47 of the Charter?

3. Having regard to Article 47 of the Charter, must Article 10(1) of Directive 2003/109 be interpreted as meaning that, where a court of a Member State rules on the legality of the opinion of the specialised authority which is based on grounds relating to confidential or classified information and on the legality of the substantive immigration decision adopted on the basis of that opinion, it must have jurisdiction to examine the legality of the confidentiality (its necessity and proportionality) and, if it considers that the confidentiality is unlawful, to order, of its own motion, that the person concerned and his or her legal representative may know and use all the information on which the opinion and the decision issued by the administrative authorities are based, or alternatively, if it considers that the confidentiality claim is lawful, that the person concerned may know and use at least the essence of the confidential information in the immigration proceedings in which he or she is concerned?

4. Must Article 9(3) and Article 10(1) of Directive 2003/109, in conjunction with Articles 7 and 24 and Article 51(1) and Article 52(1) of the Charter, be interpreted as precluding legislation of a Member State under which an immigration decision ordering the withdrawal of a long-term residence permit which had previously been issued takes the form of a non-reasoned decision which:

   (i) is based solely on automatic reference to a — likewise non-reasoned — binding and mandatory opinion by the specialised authority which identifies a danger or harm to national security, public policy or public security; and

   (ii) has therefore been adopted without an in-depth examination of whether the grounds of national security, public policy or public security exist in the specific case in question, and without taking into account individual circumstances or the requirements of necessity and proportionality?

[1] OJ 2004 L 16, p. 44.

Request for a preliminary ruling from the Oberlandesgerichts Wien (Austria) lodged on 28 June 2022 — VK v N1 Interactive Ltd.

(Case C-429/22)

(2022/C 451/11)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: VK

Defendant: N1 Interactive Ltd.

Question referred

Is Article 6(1) of Regulation (EC) No 593/2008 ([1]) on the law applicable to contractual obligations (Rome I) ('the Rome I Regulation') to be interpreted as meaning that the law of the country in which the consumer has his or her habitual residence is not applicable if the law applicable under Article 4 of the Rome I Regulation, the application of which the applicant seeks and which would be applicable if the applicant lacked consumer status, is more favourable to the applicant?

([1]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

Request for a preliminary ruling from the Szegedi Törvényszék (Hungary) lodged on 8 August 2022 — PQ v Országos Idegenrendészeti Főigazgatóság, Miniszterelnöki Kabinetirodát vezető miniszter

(Case C-528/22)

(2022/C 451/12)

Language of the case: Hungarian

Referring court

Szegedi Törvényszék

Parties to the main proceedings

Applicant: PQ

Defendants: Országos Idegenrendészeti Főigazgatóság, Miniszterelnöki Kabinetirodát vezető miniszter

Questions referred

1. (a) Must Article 20 of the Treaty on the Functioning of the European Union ('TFEU'), in conjunction with Articles 7 and 24 of the Charter of Fundamental Rights of the European Union ('Charter') be interpreted as meaning that it precludes a practice whereby a Member State adopts a decision ordering the withdrawal of a residence permit which had previously been issued to a third country national — or refuses an application for an extension of the right of residence (in the present case, an application for a national permanent residence permit) — whose minor child and cohabiting partner are nationals of a Member State of the Union and live in that Member State, without previously examining whether the family member concerned, a third country national, can benefit from a derived right of residence under Article 20 TFEU?

   (b) Must Article 20 TFEU, in conjunction with Articles 7 and 24 and 51(1) and 52(1) of the Charter, be interpreted as meaning that, where there is a derived right of residence under Article 20 TFEU, EU law requires that national administrative authorities and courts must also apply EU law when adopting an immigration decision concerning an application for extension of the right of residence (in this case an application for a national permanent residence permit) and when they apply the national security, public policy or public security exceptions on which that decision is based and, where it is shown that those grounds exist, when they examine the necessity and proportionality justifying a limitation on the right of residence?

2. Must Article 20 TFEU, in conjunction with Article 47 of the Charter — and also, in this specific case, with Articles 7 and 24 of the Charter –, be interpreted as meaning that an authority of a Member State which, on grounds of national security and/or public policy or public security, has adopted a decision ordering the withdrawal of a long-term residence permit which had previously been issued — or makes a decision on an application for extension of the right of residence –, and the specialised authority which has determined that the matter is confidential, must ensure there is a guarantee that in all circumstances the person concerned, who is a third-country national, and his or her legal representative, are entitled to know at least the essence of the confidential or classified information and data underpinning the decision which is based on those grounds and to use that information or those data in the proceedings concerning the decision, where the competent authority considers that such disclosure would be contrary to the interests of national security?

3. If the answer is in the affirmative, what precisely must be understood by the 'essence' of the confidential grounds on which that decision is based, having regard to Articles 41 and 47 of the Charter?

4. Having regard to Article 47 of the Charter, must Article 20 TFEU be interpreted as meaning that, where a court of a Member State rules on the legality of the opinion of the specialised authority which is based on grounds relating to confidential or classified information and on the legality of the substantive immigration decision adopted on the basis of that opinion, it must have jurisdiction to examine the legality of the confidentiality (its necessity and proportionality) and, if it considers that the confidentiality is unlawful, to order, of its own motion, that the person concerned and his or her legal representative may know and use all the information on which the opinion and the decision issued by the administrative authorities are based, or alternatively, if it considers that the confidentiality claim is lawful, that the person concerned may know and use at least the essence of the confidential information in the immigration proceedings concerning him or her?

5. Must Article 20 TFEU, in conjunction with Articles 7 and 24 and Article 51(1) and Article 52(1) of the Charter, be interpreted as precluding legislation of a Member State under which an immigration decision ordering the withdrawal of a long-term residence permit which had previously been issued or ruling on an application for extension of the right of residence, takes the form of a non-reasoned decision which:

   (i) is based solely on automatic reference to a — likewise non-reasoned — binding and mandatory opinion by the specialised authority which identifies a danger or harm to national security, public policy or public security; and

   (ii) has therefore been adopted without an in-depth examination of whether the grounds of national security, public policy or public order exist in the specific case in question, and without taking into account individual circumstances or the requirements of necessity and proportionality?

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 9 August 2022 — Direcția Generală Regională a Finanțelor Publice Cluj-Napoca, Administrația Județeană a Finanțelor Publice Cluj v SC Westside Unicat

(Case C-532/22)

(2022/C 451/13)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

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

Defendant: SC Westside Unicat

Questions referred

1. Is Article 53 of the VAT Directive ([1]) to be interpreted as applying to services of the type at issue in this dispute, which is to say services provided by a video chat studio to a website operator, consisting in interactive sessions of an erotic nature filmed and transmitted in real [time] via the Internet (live streaming of digital content)?

2. In the event that the first question is answered in the affirmative, then, for the purposes of interpreting the phrase 'the place where those events actually take place', appearing in Article 53 of the VAT Directive, is the place where the performers appear in front of the webcam relevant, or the place where the organiser of the sessions is established, or the place where customers see the images, or should some other place be taken into account?

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

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 22 August 2022 — SN and LN, represented by SN

(Case C-563/22)

(2022/C 451/14)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicants: SN and LN, represented by SN

Defendant: Zamestnik-predsedatel na Darzhavnata agentsia za bezhantsite

Questions referred

1. Does it follow from Article 40(1) of Directive 2013/32/EU (1) that, where a subsequent application for international protection lodged by a stateless applicant of Palestinian origin on the basis of his or her registration with UNRWA is admissible, the obligation on the competent authorities laid down in that provision to take into account and consider all the elements underlying the further representations in the subsequent application also includes, in the circumstances of the case, the obligation to consider the reasons for which the person left UNRWA's area of operations, in addition to the new elements or circumstances which are the subject of the subsequent application, when that obligation is interpreted in conjunction with the second sentence of Article 12(1)(a) of Directive 2011/95/EU? (2) Does fulfilment of that obligation depend on the fact that the reasons for which the person left UNRWA's area of operations had already been examined in the proceedings relating to the first application for [international] protection, which resulted in a final decision refusing such protection but in which the applicant neither invoked nor proved his or her registration with UNRWA?

2. Does it follow from the second sentence of Article 12(1)(a) of Directive 2011/95 that the phrase 'When such protection or assistance has ceased for any reason' in that provision applies to a stateless person of Palestinian origin who was registered with UNRWA and was receiving assistance in Gaza City from UNRWA in the form of food, health services and educational services, without there being any evidence of a personal threat to that person, who left Gaza City voluntarily and lawfully, having regard to the information available in the case:

   — assessment of the general situation at the time of departure as constituting an unprecedented humanitarian crisis, associated with shortages of food, drinking water, health services and medicines, as well as water and electricity supply issues, the destruction of buildings and infrastructure, and unemployment;

   — UNRWA's difficulties in sustaining the provision of aid and services in Gaza, including in the form of food and health services, due to a significant deficit in UNRWA's budget and a steady increase in the number of persons in need of the agency's assistance, [and the circumstance that] the general situation in Gaza is undermining UNRWA's activities?

   Must that question be answered differently for the sole reason that the applicant is a vulnerable person within the meaning of Article 20(3) of that directive, namely a minor child?

3. Must the second sentence of Article 12(1)(a) of Directive 2011/95 be interpreted as meaning that an applicant for international protection who is a Palestinian refugee registered with UNRWA may return to the UNRWA area of operations which he or she had left, specifically to Gaza City, where, at the time of the hearing of his or her action against a refusal decision before the court,

— there is no certainty that that person will be able to obtain from UNRWA the necessary food, health services, medicines and healthcare and education;

— the information on the general situation in Gaza City and on UNRWA, according to the UNHCR Position on Returns to Gaza of March 2022, was assessed as constituting justification for leaving UNRWA's area of operations and for non-return;

as well as the fact that, if the applicant were to return, he or she would be able to stay there in dignified living conditions?

For the purpose of applying and complying with the principle of non-refoulement under Article 21(1) of Directive 2011/95, in conjunction with Article 19 of the Charter, does the personal situation of an applicant for international protection come within the scope of the interpretation given in operative part 4 of the judgment of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218), concerning extreme material poverty under Article 4 of the Charter of Fundamental Rights of the European Union, in the light of the situation in the Gaza Strip at the time in question, and in so far as the applicant in question is dependent on UNRWA's assistance as regards food, health services, medicines and healthcare?

On the basis of the information regarding the general situation in Gaza City and regarding UNRWA, must the question as to return to Gaza City be answered differently for the sole reason that the person applying for protection is a minor child, with a view to safeguarding the best interests of the child and guaranteeing his or her well-being and social development, protection and safety?

4. Depending on the answer to the third question:

In the present case, must the second sentence of Article 12(1)(a) of Directive 2011/95, and in particular the phrase 'those persons shall *ipso facto* be entitled to the benefits of this Directive' in that provision, be interpreted as meaning that:

(A) the principle of non-refoulement under Article 21(1) of Directive 2011/95, in conjunction with Article 19(1) of the Charter, is applicable in relation to a person applying for protection who is a stateless Palestinian registered with UNRWA because, if returned to Gaza City, the person would be exposed to the risk of inhuman and degrading treatment, as he or she could suffer extreme material poverty, and comes within the scope of Article 15[(b)] of Directive 2011/95 for the purpose of being granted subsidiary protection;

or

(B) that provision, in relation to a person applying for protection who is a stateless Palestinian registered with UNRWA, requires recognition by that Member State of refugee status within the meaning of Article 2(c) of that directive and the granting to that person of refugee status by operation of law, in so far as he or she does not come within the scope of Article 12(1)(b) or (2) and (3) of that directive, in accordance with operative part 2 of the judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826), without account being taken of the circumstances relating to that person which are relevant to the grant of subsidiary protection under Article 15[(b)] of Directive 2011/95?

([1]) 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 (OJ 2013 L 180, p. 60).

([2]) 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 (OJ 2011 L 337, p. 9).

Appeal brought on 30 September 2022 by Grail LLC against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 13 July 2022 in Case T-227/21, Illumina v Commission

(Case C-625/22 P)

(2022/C 451/15)

Language of the case: English

Parties

Appellant: Grail LLC (represented by: D. Little, Solicitor, J. Ruiz Calzado, J. M. Jiménez Laiglesia, abogados, A. Giraud, avocat, S. Troch, advocaat)

Other parties to the proceedings: Illumina, Inc., European Commission, Hellenic Republic, French Republic, Kingdom of the Netherlands, EFTA Surveillance Authority

Form of order sought

The appellant claims that the Court should:

— set aside and annul the judgment under appeal;

— annul Commission Decision C(2021) 2847 of 19 April 2021 in Case COMP/M.10188 — *Illumina/Grail*; related Commission Decisions C(2021) 2848 final, C(2021) 2849 final, C(2021) 2851 final, C(2021) 2854 final and C(2021) 2855 final of 19 April 2021; and the related Commission Decision of 11 March 2021 which informed Illumina and GRAIL that the Commission had received a request for referral and had the legal consequence, pursuant to Article 22(4)§ 2 that Illumina and GRAIL were prohibited from implementing the concentration pursuant to Article 7 EUMR ([1]);

— order the Commission to bear its own costs and pay the Appellant's costs, both for these proceedings and the proceedings before the General Court; and

— take any other measures that the Court considers appropriate.

Pleas in law and main arguments

In support of its action, GRAIL relies on three pleas. The first plea focuses on the legal errors included in the contested judgment's historical, contextual and teleological interpretation of Article 22 EUMR concluding that Member States may make a referral request under that provision irrespective of the scope of their national merger control laws. The second plea focuses on the legal errors made by the General Court in its judgment by (i) not deriving any legal consequence from the correct finding that the Commission took an 'unreasonable period of time' to send the invitation letter to all Member States concerning the concentration relating to the acquisition by Illumina of sole control over GRAIL, and (ii) in the assessment leading to the conclusion that the Commission did not violate the Parties' right of defence during the procedure leading to the adoption of the invitation letter and eventually to the Commission Decision C(2021) 2847. Finally, the third plea focuses on the legal errors in the contested judgment's assessment of the legitimate expectations and legal certainty arising from the unconditional and precise assurances made by the Commissioner for Competition / Executive Vice President of the Commission regarding when and how the Commission's reappraisal of the application of Article 22 EUMR would be implemented.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

GENERAL COURT

Order of the General Court of 13 September 2022 — Ben Ali v Council

(Case T-170/21) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Tunisia — Death of the applicant — Proceedings not resumed by the successors — No need to adjudicate)

(2022/C 451/16)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Saint-Étienne-du-Rouvray, France) (represented by: A. de Saint Remy, lawyer)

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

Re:

By his action, the applicant seeks, first, on the basis of Article 263 TFEU, the annulment of Council Decision (CFSP) 2021/55 of 22 January 2021 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2021 L 23, p. 22) and of Council Implementing Regulation (EU) 2021/49 of 22 January 2021 implementing Regulation (EU) No 101/2011 on restrictive measures against certain persons and entities in view of the situation in Tunisia (OJ 2021 L 23, p. 5), in so far as those measures concern him and, second, on the basis of Article 268 TFEU, compensation for the damage which he has allegedly suffered as a result of those measures.

Operative part of the order

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

2. Each party shall bear its own costs.

([1]) OJ C 217, 7.6.2021.

Order of the General Court of 12 September 2022 — Biologische Heilmittel Heel v EUIPO — Esi (TRAUMGEL)

(Case T-130/22) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark TRAUMGEL — Earlier EU word mark Traumeel — Relative ground for refusal — No likelihood of confusion — No similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2022/C 451/17)

Language of the case: English

Parties

Applicant: Biologische Heilmittel Heel GmbH (Baden-Baden, Germany) (represented by: J. Künzel, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Ringelhann and J. Ivanauskas, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Esi Srl (Albisola Superiore, Italy)

Re:

By its action under Article 263 TFEU, the applicant seeks the partial annulment and partial alteration of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 20 December 2021 (Case R 813/2021-4).

Operative part of the order

1. The action is dismissed as manifestly lacking any foundation in law.

2. Biologische Heilmittel Heel GmbH shall pay the costs.

([1]) OJ C 171, 25.4.2022.

Action brought on 13 September 2022 — QZ v EIB

(Case T-569/22)

(2022/C 451/18)

Language of the case: English

Parties

Applicant: QZ (represented by: L. Levi and P. Baudoux, lawyers)

Defendant: European Investment Bank

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decisions dated 5 October 2021 and 8 March 2022 in which the defendant alleges that the applicant had unjustified absences during three contested periods;

— annul the defendant's decision of 3 June 2022 rejecting the applicant's request for an administrative review and confirming that the applicant had unjustified absences for three contested periods;

— order the defendant to pay a compensation for the damage suffered by the applicant; and

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. Regarding the first contested period, the applicant raises three pleas, alleging breach of the principle of legal certainty and of Article 3.6 of Annex X to the Staff Rules, breach of the duty to state reasons and of the right to a sound administration and, breach of the duty of care.

2. Regarding the second contested period, the applicant raises two pleas, alleging breach of the duty of care and breach of Article 2.1, C, of Annex X to the Staff Rules.

3. Regarding the third contested period, the applicant raises one plea, alleging that the defendant was not legally entitled to challenge of the applicant's medical certificate.

Action brought on 12 September 2022 — Herbert Smith Freehills v Commission

(Case T-570/22)

(2022/C 451/19)

Language of the case: English

Parties

Applicant: Herbert Smith Freehills LLP (Brussels, Belgium) (represented by: P. Wytinck, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety the decision of the European Commission C(2022) 4816 final of 3 July 2022, pursuant to Article 4 of the Implementing Rules to Regulation (EC) No 1049/2001; ([1])

— order that the defendant pay the applicant's costs in these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 2(1) and 2(3) of Regulation 1049/2001, as the Commission failed to provide access to information from the relevant databases that qualifies as documents falling within the scope of the applicant's requests, and the Commission failed to identify and provide access to all documents falling within the scope of the applicant's requests, including the intermediate documents containing information extracted from the relevant databases.

2. Second plea in law, alleging failure to state reasons, as required by Article 296 TFEU.

([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 15 September 2022 — Sberbank Europe v SRB

(Case T-571/22)

(2022/C 451/20)

Language of the case: English

Parties

Applicant: Sberbank Europe AG (Vienna, Austria) (represented by: O. Behrends, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the SRB's decision dated 5 July 2022 (SRB/EES/2022/37) by which the SRB determined the expenses in connection with the resolution of the Croatian subsidiary of the applicant and instructed the Croatian National Bank to deduct such expenses from the purchase price payable to the applicant;

— order the SRB to bear the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is procedurally and substantively vitiated because of the following specific defects pertaining to the contested decision:

   — The contested decision violates Article 22(6) SRMR and Article 28(2) SRMR ([1]) because (a) the costs do not constitute reasonable expenses properly incurred in connection with the use of the resolution tools or powers; (b) the SRB did not take an appropriate decision with respect to the manner in which the costs are recovered by it and should have imposed the costs on the institution under resolution and therefore indirectly the purchaser; (c) Article 28(2) SRMR only authorises the SRB to give instructions to the national resolution authorities as to aspects of the execution of the resolution scheme whereas the costs referenced by the contested decision are costs associated with the procedure leading to the resolution decision; and (d) the SRMR does not authorise the SRB to obtain legal or other advice at the expense of the supervised entity or its shareholders.

   — The involvement of external advisors violates Article 41 of the Charter on Fundamental Rights of the European Union which provides for a right of every person to have his or her affairs handled by the institutions, bodies, offices and agencies of the Union and not external advisors.

   — The costs imposed on the applicant by the contested decision would in any case be covered by the regular contributions to the administrative expenditure of the SRB by each supervised institution.

   — It follows *e contrario* from the special rules permitting the recovery of expenses for legal counsel in certain circumstances that such costs cannot generally be recovered.

   — The costs were not properly and reasonably incurred.

   — Certain costs concern matters of Croatian law. Only the national authorities and courts are responsible for the interpretation and application of Croatian law.

   — Certain costs concern sanction matters which are also outside the competence of the SRB.

2. Second plea in law, alleging that the contested decision is based on a resolution decision which is procedurally and substantively illegal and is currently being reviewed in case T-524/22.

([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 15 September 2022 — Sberbank Europe v SRB

(Case T-572/22)

(2022/C 451/21)

Language of the case: English

Parties

Applicant: Sberbank Europe AG (Vienna, Austria) (represented by: O. Behrends, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the SRB's decision dated 5 July 2022 (SRB/EES/2022/36) by which the SRB determined the expenses in connection with the resolution of the Slovenian subsidiary of the applicant and instructed the Bank of Slovenia to deduct such expenses from the purchase price payable to the applicant;

— order the SRB to bear the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is procedurally and substantively vitiated because of the following specific defects pertaining to the contested decision:

   — The contested decision violates Article 22(6) SRMR and Article 28(2) SRMR ([1]) because (a) the costs do not constitute reasonable expenses properly incurred in connection with the use of the resolution tools or powers; (b) the SRB did not take an appropriate decision with respect to the manner in which the costs are recovered by it and should have imposed the costs on the institution under resolution and therefore indirectly the purchaser; (c) Article 28(2) SRMR only authorises the SRB to give instructions to the national resolution authorities as to aspects of the execution of the resolution scheme whereas the costs referenced by the contested decision are costs associated with the procedure leading to the resolution decision; and (d) the SRMR does not authorise the SRB to obtain legal or other advice at the expense of the supervised entity or its shareholders.

   — The involvement of external advisors violates Article 41 of the Charter on Fundamental Rights of the European Union, which provides for a right of every person to have his or her affairs handled by the institutions, bodies, offices and agencies of the Union and not external advisors.

   — The costs imposed on the applicant by the contested decision would in any case be covered by the regular contributions to the administrative expenditure of the SRB by each supervised institution.

   — It follows *e contrario* from the special rules permitting the recovery of expenses for legal counsel in certain circumstances that such costs cannot generally be recovered.

   — The costs were not properly and reasonably incurred.

   — Certain costs concern matters of Slovenian law. Only the national authorities and courts are responsible for the interpretation and application of Slovenian law.

   — Certain costs concern sanction matters which are also outside the competence of the SRB.

2. Second plea in law, alleging that the contested decision is based on a resolution decision, which is procedurally and substantively illegal and is currently being reviewed in case T-523/22.

([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 4 October 2022 — CMB v Commission

(Case T-619/22)

(2022/C 451/22)

Language of the case: Dutch

Parties

Applicant: CMB Colorex Master Batches BV (Helmond, Netherlands) (represented by: M. Wolf, lawyer)

Defendant: European Commission

Form of order sought

— Annulment of Commission Decision C(2022) 5829 final of 5 August 2022 relating to the recovery by 16 August 2022 of a principal sum of EUR 125 166,68 plus interest in the amount of EUR 24 592,68 or in total an amount of EUR 149 759,36 from CMB Colorex Master Batches.

Pleas in law and main arguments

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

1. First plea in law: the claim has already been paid.

2. Second plea in law: infringement of the Treaties or of any rule of law relating to their application.

— the claim is, according to the applicable provisions of European law, time-barred.

3. Third plea in law: the claim was determined incorrectly.

— the contested decision was prepared carelessly.

Action brought on 10 October 2022 — Vi.ni.ca.v EUIPO — Venica & Venica (agricolavinica. Le Colline di Ripa)

(Case T-627/22)

(2022/C 451/23)

Language in which the application was lodged: Italian

Parties

Applicant: Vi.ni.ca. Srl — soc. agr. (Ripalimosani, Italy) (represented by: S. Di Pardo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Venica & Venica di Gianni e Giorgio Venica Ss soc. agr. (Dolegna del Collio, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark 'agricolavinica. Le Colline di Ripa' in white, black, red and green colours — EU trade mark No 18 196 079

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 July 2022 in Case R 90/2022-4

Form of order sought

The applicant claims that the Court should:

— annul or in any case amend the contested decision, declaring that the contested mark 'agricolavinica. Le Colline di Ripa' is valid since it has no similarity, visually, phonetically, or conceptually, to the earlier mark VENICA and since no risk of confusion between such marks exists;

— order the defendant and the other party to the proceedings to pay the costs.

Plea in law

Infringement of Article 8(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council.

Action brought on 10 October 2022 — LAICO v Council

(Case T-629/22)

(2022/C 451/24)

Language of the case: English

Parties

Applicant: Libyan African Investment Company (LAICO) (Tripoli, Libya) (represented by: A. Bahrami and N. Korogiannakis, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Decision (CFSP) 2022/1315 of 26 July 2022 amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya ([1]) in so far as it maintains the name of Libyan African Investment Company (LAICO) on the list of entities set out in Annex IV to Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP ([2]);

— annul Council Implementing Regulation (EU) 2022/1308 of 26 July 2022 ([3]) implementing Article 21(2) of Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 ([4]) in so far as it maintains the name of LAICO on the list of entities set out in Annex III to Council Regulation (EU) 2016/44;

— order the Council to pay the applicant's legal and other costs and expenses incurred in connection with the application.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Council Decision (CFSP) 2015/1333 of 31 July 2015 and Council Regulation (EU) 2016/44 of 18 January 2016.

2. Second plea in law, alleging infringement of the obligation of the Council to keep all restrictive measures under review to ensure that they continue to contribute towards achieving their stated objectives.

3. Third plea in law, alleging error of assessment or alternatively manifest error of assessment committed when maintaining the applicant's name on the list of entities subject to restrictive measures. The reason for maintaining the applicant's name on the lists at issue is at odds with the general listing criterion. The Council failed to comply with its obligation to ensure that the reason for maintaining the applicant's name on the list of entities subject to restrictive measures complied with the general listing criterion laid down in Article 9(2)(b) of Council Decision (CFSP) 2015/1333.

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

5. Fifth plea in law, alleging infringement of the principle of proportionality.

6. Sixth plea in law, alleging insufficient and contradicting change of motivation: infringement of the obligation to state reasons, infringement of article 296 of the TFEU infringement of an essential procedural requirement and of the right to an effective remedy.

(1) Council Implementing Decision (CFSP) 2022/1315 of 26 July 2022 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya (OJ 2022 L 198, p. 19).
(2) Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP (OJ 2015 L 206, p. 34).
(3) Council Implementing Regulation (EU) 2022/1308 of 26 July 2022 implementing Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya (OJ 2022 L 198, p. 1).
(4) Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 (OJ 2016 L 12, p. 1).

Action brought on 12 October 2022 — Fridman and Others v Council

(Case T-635/22)

(2022/C 451/25)

Language of the case: French

Parties

Applicants: Mikhail Fridman (London, United Kingdom), Petr Aven (Virginia Water, United Kingdom), German Khan (London) (represented by: T. Marembert and A. Bass, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul Council Regulation (EU) 2022/1273 of 21 July 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (1) in so far as it concerns the applicants;

and

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging lack of any legal basis. According to the applicants, the Council cannot impose any positive obligations, particularly where they are so burdensome, on the persons on which it imposes sanctions.

2. Second plea in law, alleging lack of any legal basis and infringement of Articles 4, 5, 25 and 40 TEU and Articles 3, 4, 82, 83 and 215 TFEU. The applicants claim, in that connection, that, by requiring Member States to treat any deviation from the Council's requirement to declare assets as a circumvention of sanctions, the Council, which is aware that the circumvention of sanctions is a criminal offence in 25 of the 27 Member States, has acted as a legislative authority in criminal matters.

(1) OJ 2022 L 194, p. 1.

Action brought on 12 October 2022 — U. I. Lapp v EUIPO — Labkable Asia (Labkable Solutions for cables)

(Case T-636/22)

(2022/C 451/26)

Language in which the application was lodged: English

Parties

Applicant: U. I. Lapp GmbH (Stuttgart, Germany) (represented by: R. Ingerl and M. Ringer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Labkable Asia Ltd (Kowloon, Hong Kong, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark Labkable Solutions for cables — Application for registration No 18 123 696

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 July 2022 in Case R 1894/2021-2

Form of order sought

The applicant claims that the Court should:

— alter the contested decision so that the appeal filed by the other party to the proceedings before the Board of Appeal is dismissed;

— alternatively, annul the contested decision;

— order EUIPO to pay the costs incurred by the applicant.

Pleas in law

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

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1), first sentence of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 October 2022 — Westpole Belgium and Unisys Belgium v Parliament

(Case T-640/22)

(2022/C 451/27)

Language of the case: French

Parties

Applicants: Westpole Belgium (Vilvoorde, Belgium), Unisys Belgium (Machelen, Belgium) (represented by: A. Vercruysse, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— principally, annul the Parliament's decisions:

  — awarding Lot 7 of the tender entitled 'PE/ITEC-ITS19-External Provision of IT Services' to the first three tenderers listed below:

    — Rank 1: OneCode, a group of economic operators led by the Belgian branch of NTT Data Spain S.L.U. and whose co-contractors are ARHS Developments S.A., SWORD Technologies S.A. and SOGETI Luxembourg S.A.; headquarters of the group of economic operators: B-1000 Brussels (Belgium), rue de Spa 8;

— Rank 2: Consortium APC, a group of economic operators led by Atos Luxembourg PSF and whose co-contractors are PWC EU Services and Computer Resources International Luxembourg; headquarters of the group of economic operators: L-3364 Leudelange (Luxembourg), rue du Château d'Eau 12;

— Rank 3: FACI²T Consortium, a group of economic operators led by CTG IT Solutions S.A. and whose co-contractors are Fujitsu Technology Solutions N.V./S.A., Netcompany Intrasoft S.A. and AXIANSEU — DIGITAL SOLUTIONS S.A., headquarters of the group of economic operators: L-8070 Bertrange (Luxembourg), rue des Mérovingiens 7;

— not awarding that tender to the consortium InfraExpert, of which the above mentioned applicants are members — a consortium created for the purpose of submitting a tender in the award procedure at issue, as well as signing and performing the framework contract and the specific agreements which may be signed following the award of the tender — decision refusing to award the contract of which the applicants were informed by registered letter of 3 October 2022, reference GEDA (2022) 27063;

— in the alternative and as an interim measure, if the Court considers that it should be given further information:

— order the above mentioned defendant to produce the following documents:

— decision(s) concerning 'the unusual circumstances related to a possible exclusion situation of several tenderers', which are referred to in the defendant's requests for extension of the validity period of the tenders in the award procedure at issue;

— sworn statement by the OneCode consortium and/or the Belgian branch of NTT Data Spain S.L.U.;

— reasons for the exclusion of EVERIS S.L.U. from Lots 3 and 8 of the tender at issue;

— answer of the successful tenderers for the contract at issue to Part C 'Technical evaluation questionnaire' of the technical specifications;

— answers (questionnaire + Excel price table) of the successful tenderers to Annex II to the technical specifications 'Price evaluation form (Lots 1-10)' — or, at the very least, the relevant extracts for Lot 7.

Pleas in law and main arguments

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

1. First plea in law, alleging likely infringement of Articles 136 and 140 of Regulation 2018/1046. ([1]) The applicants submit that the defendant failed to take account of the administrative and judicial decisions made in relation to a member of the consortium that was the highest-ranked tenderer.

2. Second plea in law, alleging infringement of Article 160 of Regulation 2018/1046. The applicants submit that, by failing to exclude at least one abnormally low tender, the defendant unlawfully rejected the applicants' tender.

3. Third plea in law, relating to reservations concerning the technical evaluation and alleging a possible infringement of Article 160 of Regulation 2018/1046 in that regard. The applicants submit, in particular, that the technical evaluation of the tenders, which accounts for 70 % of the weighting of the award criteria, is based too heavily on subjective assessments for the General Court to be able to carry out a reasonable review.

([1]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

Action brought on 12 October 2022 — Portigon v SRB

(Case T-641/22)

(2022/C 451/28)

Language of the case: German

Parties

Applicant: Portigon AG (Düsseldorf, Germany) (represented by: D. Bliesener, V. Jungkind and F. Geber, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 25 July 2022 on the calculation of the 2017 ex-ante contributions to the Single Resolution Fund (ref.: SRB/ES/2022/41), in so far as the decision concerns the applicant;

— stay the proceedings in accordance with Article 69(c) and (d) of the Rules of Procedure of the General Court until a final decision is issued in Cases T-413/18, ([1]) T-481/19, ([2]) T-339/20, ([3]) T-424/20 ([4]) and T-360/21 ([5]) or until those cases are otherwise brought to a conclusion;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Regulation (EU) No 806/2014 of the European Parliament and of the Council, ([6]) Council Implementing Regulation (EU) 2015/81 ([7]) and the TFEU through increases in the amounts of the contributions to be paid by the applicant to the fund.

   — The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution, since a mandatory contribution for institutions under resolution is not provided for under Regulation No 806/2014 and Directive 2014/59/EU of the European Parliament and of the Council. ([8])

   — The legislature was not entitled to base the obligation to pay a contribution on Article 114 TFEU owing to the lack of relevance to the internal market. Harmonised rules governing contributions throughout the European Union neither facilitate the exercise of fundamental freedoms nor remedy appreciable distortions of competition in relation to institutions that withdraw from the market.

   — The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution, since the institution has no risk exposure, there is no prospect of the institution entering into resolution in accordance with the rules of Regulation (EU) No 806/2014 and the institution is of no importance to the stability of the financial system.

   — Commission Delegated Regulation (EU) 2015/63 ([9]) infringes Article 114 TFEU and Article 103(7) of Directive 2014/59/EU as an essential element relating to the calculation of the contribution (second paragraph of Article 290 (1) TFEU).

2. Second plea in law, alleging infringement of Article 41(2)(c) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), on the ground that the calculation procedure does not allow for a complete statement of reasons for the contested decision. Delegated Regulation (EU) 2015/63 is invalid in part.

3. Third plea in law, alleging infringement of Articles 16 and 20 of the Charter, since, in view of the special situation of the applicant, the contested decision is contrary to the general principle of equality and to the fundamental freedom to conduct a business.

4. Fourth plea in law, alleging breach of the principle of legal certainty, since retroactive effect of the contested decision is not permissible.

5. Fifth plea in law, alleging infringement of essential procedural requirements, since the defendant did not hear the applicant before adopting the contested decision and did not state adequate reasons for its decision.

6. Sixth plea in law, alleging, in the alternative, that the defendant's creation of three categories within the 'membership of an institutional protection scheme' indicator is not comprehensible.

7. Seventh plea in law alleging, in the alternative, infringement of Article 70(2) of Regulation (EU) No 806/2014 in conjunction with Article 103(7) of Directive 2014/59/EU, since the defendant, in calculating the amount of the contribution, should have excluded risk-free liabilities from the relevant liabilities.

8. Eighth plea in law alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014 in conjunction with Article 5(3) and (4) of Delegated Regulation (EU) 2015/63, since the defendant wrongly calculated the applicant's contribution on the basis of a gross approach with regard to derivative contracts.

9. Ninth plea in law alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014, in conjunction with Article 6(8)(a) of Delegated Regulation (EU) 2015/63, since the defendant wrongly regarded the applicant as an institution undergoing reorganisation.

([1]) OJ 2018 C 294, p. 41.
([2]) OJ 2019 C 305, p. 60.
([3]) OJ 2020 C 240, p. 34.
([4]) OJ 2020 C 279, p. 70.
([5]) OJ 2021 C 320, p. 53.
([6]) 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).
([7]) Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).
([8]) 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).
([9]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Action brought on 14 October 2022 — Yanukovych v Council

(Case T-642/22)

(2022/C 451/29)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Saint Petersburg, Russia) (represented by: B. Kennelly, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should annul Council Decision (CFSP) 2022/1355 of 4 August 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ([1]) and Council Implementing Regulation (EU) 2022/1354 of 4 August 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ([2]), insofar as they apply to the applicant. The applicant also seeks his costs.

Plea in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the Council made manifest errors of assessment in determining that the designation criterion had been satisfied. In particular, the Council accepted at face value, without any attempted verification whatsoever, unsubstantiated and largely historic assertions, allegations and even opinions from various media reports of questionable reliability. The Council presented these claims and accusations as fact, despite the many inaccuracies and inconsistencies identified by the applicant in his observations. The Council should have undertaken further investigation and conducted a proper examination of the sufficiency, credibility, and reliability of the material upon which it relied, but failed to do so. In consequence, there is no sufficiently solid factual basis for the 2022 August Sanctions and they should accordingly be annulled.

(1) OJ 2022, L 204 I, p. 4.
(2) OJ 2022, L 204 I, p. 1.

Action brought on 14 October 2022 — Yanukovych v Council

(Case T-643/22)

(2022/C 451/30)

Language of the case: English

Parties

Applicant: Viktor Fedorovych Yanukovych (Rostov-on-Don, Russia) (represented by: B. Kennelly, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should annul Council Decision (CFSP) 2022/1355 of 4 August 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (1) and Council Implementing Regulation (EU) 2022/1354 of 4 August 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2), insofar as they apply to the applicant. The applicant also seeks his costs.

Plea in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the Council made manifest errors of assessment in determining that the designation criterion had been satisfied. In particular, the Council accepted at face value, without any attempted verification whatsoever, unsubstantiated and largely historic assertions, allegations and even opinions from various media reports of questionable reliability. The Council presented these claims and accusations as fact, despite the many inaccuracies and inconsistencies identified by the applicant in his observations. The Council should have undertaken further investigation and conducted a proper examination of the sufficiency, credibility, and reliability of the material upon which it relied, but failed to do so. In consequence, there is no sufficiently solid factual basis for the 2022 August Sanctions and they should accordingly be annulled.

(1) OJ 2022, L 204 I, p. 4.
(2) OJ 2022, L 204 I, p. 1.

Order of the General Court of 4 October 2022 — Interfloat and GMB v Commission

(Case T-530/20) ([1])

(2022/C 451/31)

Language of the case: German

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

([1]) OJ C 329, 5.10.2020.

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