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Information and Notices

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(2022/C 472/01)

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These texts are available on:

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

COURT OF JUSTICE

Designation of the Chambers responsible for cases of the kind referred to in Article 107 of the Rules of Procedure of the Court

(2022/C 472/02)

At its General Meeting on 27 September 2022, the Court designated the Third and Fourth Chambers as the Chambers that are, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 107 of those Rules, for the period from 7 October 2022 to 6 October 2023.

Election of the Presidents of the Chambers of three Judges

(2022/C 472/03)

At a meeting on 4 October 2022, the Judges of the Court of Justice elected, pursuant to Article 12(2) of the Rules of Procedure, Mr Xuereb as President of the Sixth Chamber, Ms Arastey Sahún as President of the Seventh Chamber, Mr Safjan as President of the Eighth Chamber, Ms Rossi as President of the Ninth Chamber and Mr Gratsias as President of the Tenth Chamber for the period from 7 October 2022 to 6 October 2023.

Lists for the purposes of determining the composition of the formations of the Court in respect of cases referred to Chambers of three Judges

(2022/C 472/04)

At its General Meeting on 11 October 2022, the Court drew up the list for determining the composition of the Chambers of three Judges as follows:

Sixth Chamber

Mr Xuereb, President of the Chamber

Mr von Danwitz

Mr Kumin

Ms Ziemele

Seventh Chamber

Ms Arastey Sahún, President of the Chamber

Mr Biltgen

Mr Wahl

Mr Passer

Eighth Chamber

Mr Safjan, President of the Chamber

Mr Piçarra

Mr Jääskinen

Mr Gavalec

Ninth Chamber

Ms Rossi, President of the Chamber

Mr Bonichot

Mr Rodin

Ms Spineanu-Matei

Tenth Chamber

Mr Gratsias, President of the Chamber

Mr Ilešič

Mr Jarukaitis

Mr Csehi

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 20 October 2022 (request for a preliminary ruling from the Sofiyski rayonen sad — Bulgaria) — 'Invest Fund Management' AD v Komisia za finansov nadzor

(Case C-473/20) [1]

(Reference for a preliminary ruling — Approximation of laws — Directive 2009/65/EC — Undertakings for collective investment in transferable securities (UCITS) — UCITS management companies — Obligations concerning information to be provided to investors — Article 72 — Obligation to keep the 'essential elements of the prospectus' up to date — Scope — Article 69(2) — Information specified in Schedule A of Annex I — Composition of a body of the management company — Article 99a(r) — Transposition into national law — National regulation extending the scope for detection of and imposition of a penalty for an offence relating to the keeping up to date of the prospectus)

(2022/C 472/05)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: 'Invest Fund Management' AD

Defendant: Komisia za finansov nadzor

Operative part of the judgment

1) Article 72 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014

must be interpreted as meaning that:

the information concerning a management company — provided for in Schedule A of Annex I to that directive — which the prospectus must at the very least contain under Article 69(2) of the directive comes within the concept of 'essential elements of the prospectus' as provided for in Article 72 and, consequently, that information must be kept up to date.

2) Article 99a(r) of Directive 2009/65, as amended by Directive 2014/91

must be interpreted as:

not precluding national legislation under which a management company that did not fulfil the obligation to keep up to date the prospectus of several undertakings for collective investment in transferable securities, as provided for in Articles 68 to 82 of that Directive, within the period set by that national legislation may be subject to an administrative penalty with regard to each of those undertakings, even though the change that should have been made to those prospectuses concerns a single element — the composition of a body of the management company — provided that the administrative penalty, while being effective and dissuasive, is proportionate.

(1) OJ C 433, 14.12.2020.

Judgment of the Court (Third Chamber) of 20 October 2022 (request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 2 de Valladolid — Spain) — BFF Finance Iberia S.A.U v Gerencia Regional de Salud de la Junta de Castilla y León

(Case C-585/20) (1)

(Reference for a preliminary ruling — Directive 2011/7/EU — Combating late payment in commercial transactions — Recovery from a public authority of claims assigned by undertakings to a debt collection agency — Compensation for the recovery costs incurred by the creditor in the event of late payment by the debtor — Article 6 — Fixed minimum sum of EUR 40 — Transactions between undertakings and public authorities — Article 4 — Procedure for certification of the conformity of goods or services — Payment period — Article 2(8) — Concept of 'amount due' — Taking account of value added tax for the purpose of calculating interest for late payment)

(2022/C 472/06)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 2 deValladolid

Parties to the main proceedings

Applicant: BFF Finance Iberia S.A.U

Defendant: Gerencia Regional de Salud de la Junta de Castilla y León

Operative part of the judgment

1) Article 6 of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions

must be interpreted as meaning that the fixed minimum sum of EUR 40, by way of compensation for the creditor for the recovery costs incurred as a result of late payment by the debtor, is payable for each commercial transaction not paid on the due date, evidenced in an invoice, including where that invoice is presented, among other invoices, in a single administrative or judicial claim.

2) Article 4(3) to (6) of Directive 2011/7

must be interpreted as meaning that it precludes national legislation which provides, as a general rule, for all commercial transactions between undertakings and public authorities, for a payment period of a maximum of 60 calendar days, including where that period consists of an initial period of 30 days for a procedure for the acceptance or verification of the conformity, with the contract, of the goods or services supplied, followed by a further period of 30 days for payment of the agreed price.

3) Article 2(8) of Directive 2011/7

must be interpreted as meaning that the taking into account, as part of the 'amount due' defined in that provision, of the amount of value added tax specified in the invoice or the equivalent request for payment is unrelated to the question as to whether or not the taxable person has already paid that amount to the Treasury on the date on which the delay in payment occurs.

(1) OJ C 53, 15.2.2021.

Judgment of the Court (Third Chamber) of 20 October 2022 (request for a preliminary ruling from the Bundesarbeitsgericht — Germany) — ROI Land Investments Ltd. v FD

(Case C-604/20) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 6 — Defendant not domiciled in a Member State — Article 17 — Jurisdiction over consumer contracts — Concept of 'trade or profession' — Article 21 — Jurisdiction over individual contracts of employment — Concept of 'employer' — Relationship of subordination — Regulation (EC) No 593/2008 — Applicable law — Article 6 — Individual employment contract — Letter of comfort between the employee and a third party company ensuring fulfilment of the employer's obligations vis-à-vis that employee)

(2022/C 472/07)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: ROI Land Investments Ltd.

Defendant: FD

Operative part of the judgment

1. Article 21(1)(b)(i) and (2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,

must be interpreted as meaning that an employee may, in the courts for the last place where or from where he or she habitually carried out his or her work, sue a person, whether domiciled in a Member State or not, to whom the employee is not bound by a formal contract of employment, but who, by virtue of a letter of comfort on which the conclusion of the contract of employment with a third party depended, is directly liable to that employee for the fulfilment of that third party's obligations, provided that there is a relationship of subordination between that person and the employee.

2. Article 6(1) of Regulation No 1215/2012,

must be interpreted as meaning that the reservation relating to the application of Article 21(2) of that regulation precludes a court of a Member State from being able to rely on that State's rules governing jurisdiction where the conditions for the application of Article 21(2) are met, even if those rules would be more favourable to the employee. By contrast, where the conditions for the application of neither Article 21(2) nor any of the other provisions listed in Article 6(1) of that regulation are met, it is open to such a court, in accordance with the latter provision, to apply those rules in order to determine jurisdiction.

3. Article 17(1) of Regulation No 1215/2012 and Article 6(1) of 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),

must be interpreted as meaning that the concept of 'trade or profession' covers not only activity as a self-employed person, but also activity as an employed person. In addition, an agreement between the employee and a person who is a third party to the employer mentioned in the contract of employment, under which that person is directly liable to the employee for that employer's obligations arising from the contract of employment, does not, for the purpose of applying those provisions, constitute a contract concluded outside and independently of any trade or professional activity or purpose.

(1) OJ C 44, 8.2.2021.

Judgment of the Court (Fourth Chamber) of 27 October 2022 (request for a preliminary ruling from the Kammergericht Berlin — Germany) — DB Station & Service AG v ODEG Ostdeutsche Eisenbahn GmbH

(Case C-721/20) (1)

(Reference for a preliminary ruling — Rail transport — Article 102 TFEU — Abuse of a dominant position — Directive 2001/14/EC — Access to railway infrastructure — Article 30 — Railway regulatory body — Review of infrastructure charges — National courts — Review of charges in the light of competition law — Division of competence between the regulatory authority and the national courts)

(2022/C 472/08)

Language of the case: German

Referring court

Kammergericht Berlin

Parties to the main proceedings

Applicant: DB Station & Service AG

Defendant: ODEG Ostdeutsche Eisenbahn GmbH

Operative part of the judgment

Article 30 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007,

must be interpreted as not precluding national courts from applying Article 102 TFEU and national competition law concurrently, in order to hear and determine a claim for reimbursement of infrastructure charges, provided, however, that the competent regulatory body has previously ruled on the lawfulness of the charges in question. In that context, a duty of sincere cooperation is incumbent upon those courts, which are required to take account of decisions delivered by that body as a criterion of assessment and to give reasons for their own decisions in the light of all the documents in the files submitted to them.

(1) OJ C 88, 15.3.2021.

Judgment of the Court (Fourth Chamber) of 20 October 2022 (request for a preliminary ruling from the Rechtbank Den Haag — Netherlands) — O.T.E. v Staatssecretaris van Justitie en Veiligheid

(Case C-66/21) [1]

(Reference for a preliminary ruling — Border controls, asylum and immigration — Asylum policy — Residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate irregular immigration, who cooperate with the competent authorities — Directive 2004/81/EC — Article 6 — Scope — Third-country national claiming to be the victim of an offence related to the trafficking in human beings — Entitlement to the reflection period provided for in Article 6(1) of that directive — Prohibition on enforcing an expulsion measure — Definition — Scope — Calculation of that reflection period — Regulation (EU) No 604/2013 — Criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person — Transfer to the Member State responsible for examining that application for international protection)

(2022/C 472/09)

Language of the case: Dutch

Referring court

Rechtbank Den Haag

Parties to the main proceedings

Applicant: O.T.E.

Defendant: Staatssecretaris van Justitie en Veiligheid

Operative part of the judgment

1. Article 2 of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities,

must be interpreted as meaning that:

the measure by which a third-country national is transferred from the territory of one Member State to that of another Member State, pursuant to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, falls within the scope of the concept of 'expulsion order'.

2. Article 6(2) of Directive 2004/81

must be interpreted as

precluding the enforcement of a decision to transfer a third-country national, taken pursuant to Regulation No 604/2013, during the reflection period guaranteed in Article 6 (1) of that directive, but as not precluding the adoption of such a decision, or of measures preparatory to the enforcement of that decision, provided that those preparatory measures do not deprive such a reflection period of its effectiveness, which is a matter for the referring court to determine.

[1] OJ C 163, 3.5.2021.

Judgment of the Court (Sixth Chamber) of 27 October 2022 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — Iveco Orecchia SpA v APAM Esercizio SpA (C-68/21), Brescia Trasporti SpA (C-84/21)

(Joined Cases C-68/21 and C-84/21) ([1])

(References for a preliminary ruling — Approximation of laws — Motor vehicles — Directive 2007/46/EC — Technical specifications — Offer to supply spare parts equivalent to the originals of a specific mark — Absence of proof of type-approval — Declaration of equivalence to the original by the tenderer — Concept of 'manufacturer' — Means of proof — Public procurement — Directive 2014/25/EU)

(2022/C 472/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Iveco Orecchia SpA

Defendants: APAM Esercizio SpA (C-68/21), Brescia Trasporti SpA (C-84/21)

Intervening parties: Veneta Servizi International Srl unipersonale, VAR Srl, Di Pinto & Dalessandro SpA, Bellizzi Srl

Operative part of the judgment

1. Article 10(2), Article 19(1) and Article 28(1) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive)

must be interpreted as meaning that they preclude a contracting authority from accepting, in the context of a call for tenders for the supply of spare parts for buses intended for public service, a tender proposing components belonging to a type of component covered by the regulatory acts listed in Annex IV to Directive 2007/46, without being accompanied by a certificate confirming the type-approval of such a component and without submitting any proof of the actual existence of such approval, provided that those regulatory acts provide for such approval.

2. Articles 60 and 62 of Directive of the Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

must be interpreted as meaning that in the light of the definition of the term 'manufacturer' in Article 3(27) of Directive 2007/46, they preclude a contracting authority from accepting, in the context of a call for tenders for the supply of spare parts for buses intended for public service, as proof of the equivalence of components, covered by the regulatory acts listed in Annex IV to Directive 2007/46 and proposed by the tenderer, a declaration of equivalence issued by that tenderer where that tenderer cannot be regarded as being the manufacturer of those components.

([1]) OJ C 128, 12.4.2021.
OJ C 2, 3.1.2022.

Judgment of the Court (First Chamber) of 20 October 2022 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Digi Távközlési és Szolgáltató Kft. v Nemzeti Adatvédelmi és Információszabadság Hatóság

(Case C-77/21) [1]

(Reference for a preliminary ruling — Protection of individuals with regard to the processing of personal data — Regulation (EU) 2016/679 — Article 5(1)(b) and (e) — Principle of 'purpose limitation' — Principle of 'storage limitation' — Creation, from an existing database, of a database for carrying out tests and correcting errors — Further processing of data — Compatibility of further processing of those data with the purposes of the initial collection — Period of storage in the light of those purposes)

(2022/C 472/11)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Digi Távközlési és Szolgáltató Kft.

Defendant: Nemzeti Adatvédelmi és Információszabadság Hatóság

Operative part of the judgment

1) Article 5(1)(b) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), must be interpreted as meaning that:

the principle of 'purpose limitation', laid down in that provision, does not preclude the recording and storage by the controller, in a database set up for the purpose of testing and correcting errors, of personal data previously collected and stored in another database, where such further processing is compatible with the specific purposes for which the personal data were initially collected, which must be determined in the light of the criteria referred to in Article 6(4) of that regulation.

2) Article 5(1)(e) of Regulation 2016/679 must be interpreted as meaning that:

the principle of 'storage limitation', laid down in that provision, precludes the storage by the controller, in a database set up for the purpose of testing and correcting errors, of personal data previously collected for other purposes for a period exceeding that necessary for carrying out those tests and correcting those errors.

[1] OJ C 182, 10.5.2021

Judgment of the Court (Third Chamber) of 20 October 2022 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — BT v Laudamotion GmbH

(Case C-111/21) ([1])

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 17(1) — Liability of air carriers for death or bodily injuries sustained by passengers — Concept of 'bodily injury' — Post-traumatic stress disorder suffered by a passenger during the emergency evacuation of an aircraft)

(2022/C 472/12)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: BT

Defendant: Laudamotion GmbH

Operative part of the judgment

Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001,

must be interpreted as meaning that a psychological injury caused to a passenger by an 'accident', within the meaning of that provision, which is not linked to 'bodily injury', within the meaning of that provision, must be compensated in the same way as such a bodily injury, provided that the aggrieved passenger demonstrates the existence of an adverse effect on his or her psychological integrity of such gravity or intensity that it affects his or her general state of health and that it cannot be resolved without medical treatment.

([1]) OJ C 228, 14.6.2021.

Judgment of the Court (Fourth Chamber) of 27 October 2022 (request for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Proximus NV v Gegevensbeschermingsautoriteit

(Case C-129/21) ([1])

(Reference for a preliminary ruling — Processing of personal data and protection of privacy in the electronic communications sector — Directive 2002/58/EC — Article 12 — Public telephone directories and directory enquiry services — Subscriber's consent — Obligations of the provider of directories and of directory enquiry services — Regulation (EU) 2016/679 — Article 17 — Right to erasure ('right to be forgotten') — Article 5(2) — Article 24 — Information obligations and responsibility of the controller)

(2022/C 472/13)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicant: Proximus NV

Defendant: Gegevensbeschermingsautoriteit

Operative part of the judgment

1. Article 12(2) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, read in conjunction with point (f) of the second paragraph of Article 2 of that directive and with Article 95 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),

must be interpreted as meaning that 'consent' within the meaning of Article 4(11) of that regulation is required from the subscriber of a telephone service operator in order for the personal data of that subscriber to be included in publicly available telephone directories and directory enquiry services published by providers other than that operator, and that that consent may be provided to that operator or to one of those providers.

2. Article 17 of Regulation 2016/679

must be interpreted as meaning that the request by a subscriber to have his or her personal data withdrawn from publicly available telephone directories and directory enquiry services constitutes making use of the 'right to erasure' within the meaning of that article.

3. Article 5(2) and Article 24 of Regulation 2016/679

must be interpreted as meaning that a national supervisory authority may require that the provider of publicly available telephone directories and directory enquiry services, as controller, take appropriate technical and organisational measures to inform third-party controllers, namely the telephone service operator that has communicated its subscriber's personal data to that provider and the other providers of publicly available telephone directories and directory enquiry services to which that provider has itself supplied such data, of the withdrawal of the subscriber's consent.

4. Article 17(2) of Regulation 2016/679

must be interpreted as not precluding a national supervisory authority from ordering a provider of publicly available telephone directories and directory enquiry services — which has been requested by the subscriber of a telephone service operator to cease disclosing personal data relating to him or her — to take 'reasonable steps', within the meaning of that provision, to inform search engine providers of that request for erasure of the data.

(1) OJ C 189, 17.5.2021.

Judgment of the Court (Fifth Chamber) of 27 October 2022 (request for a preliminary ruling from the Korkein oikeus — Finland) — Soda-Club (CO2) SA, SodaStream International BV v MySoda Oy

(Case C-197/21) (1)

(Reference for a preliminary ruling — Trade-mark law — Regulation (EU) 2017/1001 — Article 15(2) — Directive (EU) 2015/2436 — Article 15(2) — Exhaustion of the rights conferred by the trade mark — Cylinders containing carbon dioxide — Placing on the market in a Member State by the trade mark proprietor — Activity of a reseller consisting in refilling and relabelling cylinders — Opposition brought by the trade mark proprietor — Legitimate reasons to oppose further commercialisation of the goods bearing the trade mark)

(2022/C 472/14)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicants: Soda-Club (CO2) SA, SodaStream International BV

Defendant: MySoda Oy

Operative part of the judgment

Article 15(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark and Article 15(2) of Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks

must be interpreted as meaning that the proprietor of a trade mark who has put on the market, in a Member State, goods bearing that mark and intended to be re-used and refilled many times, is not entitled, under those provisions, to oppose further commercialisation of those goods, in that Member State, by a reseller who has refilled them and has replaced the label, on which the original mark appeared, by another labelling, while leaving the original mark on those goods, unless that new labelling creates a false impression in the minds of consumers that there is an economic connection between the reseller and the trade mark proprietor. That likelihood of confusion must be assessed globally in the light of the information appearing on the product and its new labelling and having regard to the distribution practices of the sector concerned and the level of knowledge that consumers have of those practices.

(1) OJ C 242, 21.6.2021.

Judgment of the Court (Eighth Chamber) of 20 October 2022 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — Allianz Benelux SA v État belge, SPF Finances

(Case C-295/21) (1)

(Reference for a preliminary ruling — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Directive 90/435/EEC — Article 4(1) — Exemption in favour of a parent company of the dividends paid by its subsidiary — Carrying over definitively taxed income surpluses to subsequent tax years — Absorption of a company with definitively taxed income surpluses by another company — National legislation limiting the transfer of those surpluses to the absorbing company)

(2022/C 472/15)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Allianz Benelux SA

Defendant: État belge, SPF Finances

Operative part of the judgment

Article 4(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

must be interpreted as not precluding legislation of a Member State which provides that dividends received by a company are to be included in its basis of assessment before up to 95 % of the total amount is deducted from it and which makes it possible, where appropriate, to carry that deduction forward to subsequent tax years, but which, nonetheless, where that company is absorbed in the context of a merger, limits the transfer of the carry-forward of that deduction to the absorbing company in proportion to the share represented by the net tax assets of the absorbed company in the total of the net tax assets of the absorbing company and the absorbed company.

(1) OJ C 289, 19.7.2021.

Judgment of the Court (Sixth Chamber) of 20 October 2022 (request for a preliminary ruling from the Curtea de Apel Oradea — Romania) — Curtea de Apel Alba Iulia and Others v YF and Others

(Case C-301/21) (1)

(Reference for a preliminary ruling — Social policy — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(1) and (2) — Prohibition of discrimination on grounds of age — National legislation which leads to a situation in which the remuneration of certain judges is higher than that of other judges of the same rank and performing the same work — Article 1 — Purpose — Exhaustive nature of the discrimination referred to)

(2022/C 472/16)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Appellants: Curtea de Apel Alba Iulia, Curtea de Apel Cluj, Tribunalul Bihor, Tribunalul Satu Mare, Tribunalul Sălaj

Respondents: YF, KP, OJ, YS, SL, DB, SH

Other parties to the proceedings: Consiliul Național pentru Combaterea Discriminării, Tribunalul Cluj

Operative part of the judgment

1. Article 2(1) and (2) of Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, must be interpreted as not applying to national legislation which — as interpreted in binding national case-law — leads to a situation in which the remuneration of certain judges appointed after that legislation entered into force is lower than that of judges appointed before that legislation entered into force, where there is no resulting direct or indirect discrimination on grounds of age.

2. Directive 2000/78 must be interpreted as precluding discrimination only where it is based on one of the criteria referred to expressly in Article 1 of that directive.

(1) OJ C 329, 16.8.2021.

Judgment of the Court (Eighth Chamber) of 20 October 2022 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Komisia za zashtita na lichnite danni, Tsentralna izbiratelna komisia v Koalitsia 'Demokratichna Bulgaria — Obedinenie'

(Case C-306/21) ([1])

(Reference for a preliminary ruling — Protection of personal data — Regulation (EU) 2016/679 — Scope — Article 2(2)(a) — Meaning of 'activity which falls outside the scope of Union law' — National and European Elections — Article 6(1)(e) — Lawfulness of processing — Article 58 — Act adopted by the supervisory authorities limiting, or where appropriate, prohibiting the video recording of the determination of the election results at electoral premises)

(2022/C 472/17)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicants: Komisia za zashtita na lichnite danni, Tsentralna izbiratelna komisia

Defendant: Koalitsia 'Demokratichna Bulgaria — Obedinenie'

Operative part of the judgment

1. Article 2(2)(a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),

must be interpreted as meaning that the processing of personal data in the context of the organisation of elections in a Member State is not excluded from the scope of that regulation.

2. Article 6(1)(e) and Article 58 of Regulation 2016/679,

must be interpreted as meaning that those provisions do not preclude the competent authorities of a Member State from adopting an administrative act of general application which provides for the limitation or, where appropriate, the prohibition of the video recording of the determination of the electoral results in polling stations during elections in that Member State.

([1]) OJ C 329, 16.8.2021.

Judgment of the Court (Tenth Chamber) of 20 October 2022 (request for a preliminary ruling from the Administrativen sad Veliko Tarnovo — Bulgaria) — 'EKOFRUKT' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Veliko Tarnovo

(Case C-362/21) ([1])

(Reference for a preliminary ruling — Internal market — Regulation (EU) No 910/2014 — Point 12 of Article 3 — Concept of 'qualified electronic signature' — Article 25(1) — Article 26 — Annex I — Legal effects of electronic signatures — Requirements relating to an advanced electronic signature — Administrative act issued in the form of an electronic document, the electronic signature of which does not meet the requirements of a 'qualified electronic signature' — Cumulative requirements — Consequences — Point 15 of Article 3 — Absence of a 'qualified certificate for electronic signature' — Qualified electronic signature entered in the certificate issued by the trust service provider — Effect — Names of the holder of the electronic signature having been written in the Latin alphabet rather than being written, as was customary, in Cyrillic script)

(2022/C 472/18)

Language of the case: Bulgarian

Referring court

Administrativen sad Veliko Tarnovo

Parties to the main proceedings

Applicant: 'EKOFRUKT' EOOD

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

Operative part of the judgment

1. Article 25(1) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC must be interpreted as not precluding an administrative act issued in the form of an electronic document from being declared invalid, where it has been signed with an electronic signature which does not meet the requirements of that regulation in order to be regarded as a 'qualified electronic signature' within the meaning of point 12 of Article 3 of that regulation, provided that document is not found to be invalid solely on the ground that its signature is in an electronic form.

2. Point 12 of Article 3 of Regulation No 910/2014 must be interpreted as meaning that the absence of a 'qualified certificate for electronic signature', within the meaning of point 15 of Article 3 of that regulation is sufficient to establish that an electronic signature does not constitute a 'qualified electronic signature', within the meaning of point 12 of Article 3, the fact that it could be classified as a 'professional electronic signature' being irrelevant in that regard.

3. Regulation No 910/2014 must be interpreted as meaning that the entry of an electronic signature in the certificate issued by the trust services provider is not sufficient for that signature to meet the requirements established by that regulation in order to be regarded as a 'qualified electronic signature' within the meaning of point 12 of Article 3 of that regulation. Where such a qualification is disputed in legal proceedings, the national court is required to ascertain whether the cumulative conditions laid down in point 12 of Article 3 are all met, which requires it, inter alia, to ascertain whether the conditions referred to in Article 26 and Annex I of that regulation are met.

4. Point 12 of Article 3, and Annex I of Regulation No 910/2014 must be interpreted as meaning that when verifying the compliance, with the requirements of that annex, of the qualified electronic signature, the fact that the names of the signatory of the electronic signature, who has habitually used the Cyrillic alphabet to write those names, have been written in the Latin alphabet does not preclude its electronic signature from being regarded as a 'qualified electronic signature' within the meaning of point 12 of Article 3 in so far as that signature is unequivocally connected to the signatory.

([1]) OJ C 357, 6.9.2021.

Judgment of the Court (Eighth Chamber) of 27 October 2022 (request for a preliminary ruling from the Landgericht Köln — Germany) — ADPA European Independent Automotive Data Publishers, Gesamtverband Autoteile-Handel eV v Automobiles PEUGEOT SA, PSA Automobiles SA

(Case C-390/21) [1]

(Reference for a preliminary ruling — Market for vehicle repair and maintenance information services — Regulation (EU) 2018/858 — Article 61 — Obligation on automotive manufacturers to provide vehicle repair and maintenance information — Scope — Right of access to that information — Independent operators — Publishers of technical information — Article 63 — Reasonable and proportionate fees for access)

(2022/C 472/19)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicants: ADPA European Independent Automotive Data Publishers, Gesamtverband Autoteile-Handel eV

Defendants: Automobiles PEUGEOT SA, PSA Automobiles SA

Operative part of the judgment

1. Articles 61 and 63 of Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, read in conjunction with Article 86(1)(4) and Article 86(2) of, and point 1 of Annex XI to, that regulation,

   must be interpreted as meaning that they apply to vehicle models which were approved under Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

2. Article 61(1) of Regulation 2018/858

   must be interpreted as meaning that the obligation which it imposes on automotive manufacturers to provide unrestricted, standardised and non-discriminatory access to vehicle repair and maintenance information, defined in Article 3(48) of that regulation, includes the obligation to allow publishers of technical information to process and use that information for the purposes of their activities in the aftermarket supply chain, without subjecting them to conditions other than those laid down in that regulation.

3. Article 63 of Regulation 2018/858, read in the light of recital 52 of that regulation and the principle of equal treatment,

   must be interpreted as meaning that the concept of 'reasonable and proportionate fees', set out in that article, first, requires automotive manufacturers to take into consideration the commercial activity in which the vehicle and repair maintenance information is used by the different independent operators and, second, allows them to charge fees which go beyond solely the costs borne as a result of access to that information, which that regulation requires them to grant to those operators, on condition, however, that those fees do not have a deterrent effect for those operators.

[1] OJ C 368, 13.9.2021.

Judgment of the Court (Tenth Chamber) of 20 October 2022 (request for a preliminary ruling from the Korkein oikeus — Finland) — A Oy v B Ky, Joint heirs of C

(Case C-406/21) ([1])

(Reference for a preliminary ruling — Combating late payment in commercial transactions — Directive 2011/7/EU — Article 12(4) — Temporal scope — Practice established before 16 March 2013 consisting in not recovering interest for late payment or compensation for recovery costs — Practice applied to individual orders placed on or after that date — Article 7(2) and (3) — Grossly unfair contractual terms and practices — Waiver freely agreed to)

(2022/C 472/20)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: A Oy

Defendants: B Ky, Joint heirs of C

Operative part of the judgment

1. Article 12(4) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions

must be interpreted as meaning that Member States may exclude from the scope of that directive a contractual practice relating to the payment of interest for late payment and compensation for recovery costs, if that practice falls under a contract concluded before 16 March 2013, pursuant to the applicable national law. Individual orders on the basis of which interest for late payment and such compensation are claimed, which were placed on or after that date, may be excluded from the scope of Directive 2011/7 provided that they constitute only the performance of a contract concluded prior to 16 March 2013, pursuant to the applicable national law. By contrast, if, pursuant to that law, those individual orders constitute independent contracts concluded on or after that date, they may not be excluded from the scope of that directive.

2. Article 7(2) and (3) of Directive 2011/7

must be interpreted as not precluding a practice under which, in the case of delays in payment of less than one month, the creditor does not recover interest for late payment or compensation for recovery costs, in exchange for payment of the principal amount of the debts payable, provided that, in so doing, the creditor has freely agreed to waiving payment of the sums due in respect of that interest and compensation.

([1]) OJ C 368, 13.9.2021.

Judgment of the Court (Seventh Chamber) of 27 October 2022 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Instituto do Cinema e do Audiovisual IP v NOWO Communications SA

(Case C-411/21) ([1])

(Reference for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Services consisting in the creation and production of cinematographic and audiovisual works — Operators of subscription television services — Subscription fee payable by subscription television operators — Allocation of the revenue from the fee — Restriction — Effects too uncertain or too indirect)

(2022/C 472/21)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Instituto do Cinema e do Audiovisual IP

Defendant: NOWO Communications SA

Operative part of the judgment

Article 56 TFEU must be interpreted as not precluding national legislation introducing a fee intended to finance the promotion and dissemination of cinematographic and audiovisual works, provided that any effects of that fee on the freedom to provide services for the production of such works are too uncertain and indirect to constitute a restriction within the meaning of that provision.

([1]) OJ C 452, 8.11.2021.

Judgment of the Court (Second Chamber) of 27 October 2022 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Orthomol pharmazeutische Vertriebs GmbH v Verband Sozialer Wettbewerb eV

(Case C-418/21) ([1])

(Reference for a preliminary ruling — Food safety — Food — Regulation (EU) No 609/2013 — Article 2(2)(g) — Delegated Regulation (EU) 2016/128 — Food for special medical purposes — Other particular nutritional requirements — Food providing a general benefit for the patient — Distinction in relation to medicinal products)

(2022/C 472/22)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Appellant: Orthomol pharmazeutische Vertriebs GmbH

Respondent: Verband Sozialer Wettbewerb eV

Operative part of the judgment

Article 2(2)(g) of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 and, in particular, the concept of 'other medically determined nutrient requirements',

must be interpreted as meaning that a product constitutes a food for special medical purposes if the disease results in increased or specific nutritional requirements which the food is intended to cover, such that it is not sufficient, for the purposes of such a qualification, that the patient derives a general benefit from the intake of that food because the substances that it contains counteract the disorder or alleviate its symptoms.

(1) OJ C 471, 22.11.2021.

Judgment of the Court (Eighth Chamber) of 27 October 2022 (request for a preliminary ruling from the Rayonen sad — Nesebar — Bulgaria) — 'S.V.' OOD v E. Ts. D.

(Case C-485/21) (1)

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Article 2(b) — Concept of 'consumer' — Article 2(c) — Concept of 'seller or supplier' — Natural person who owns an apartment in a building in co-ownership — Different types of legal relationships relating to the management and maintenance of that building — Difference in treatment, as regards the status of consumer, arising from the law of a Member State between co-owners who have concluded an individual contract for the management and maintenance of the communal areas of such a building and those who have not concluded such a contract)

(2022/C 472/23)

Language of the case: Bulgarian

Referring court

Rayonen sad — Nesebar

Parties to the main proceedings

Applicant: 'S.V.' OOD

Defendant: E. Ts. D.

Operative part of the judgment

Article 1(1) and Article 2(b) and (c) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

must be interpreted as meaning that:

— a natural person who owns an apartment in a building in co-ownership must be regarded as a 'consumer', within the meaning of that directive, where that person enters into a contract with a managing agent for the purpose of managing and maintaining the communal areas of that building, provided that he or she does not use that apartment for purposes which fall exclusively within his or her trade, business or profession. The fact that some of the services provided by that managing agent under that contract are the result of the need to comply with specific requirements relating to safety and town and country planning laid down by national law is not such as to remove that contract from the scope of that directive,

— where a contract relating to the management and maintenance of the communal areas of a building in co-ownership is entered into between the managing agent and the general meeting of the property owners or owners' association of that building, a natural person who owns an apartment in that building may be regarded as a 'consumer', within the meaning of Directive 93/13, in so far as that person may be classified as a 'party' to that contract and does not use that apartment exclusively for purposes which fall within his or her trade, business or profession.

([1]) OJ C 412, 11.10.2021.

Judgment of the Court (Eighth Chamber) of 27 October 2022 — CE v Committee of the Regions

(Case C-539/21 P) ([1])

(Appeal — Civil Service — Temporary Staff — Conditions of Employment of Other Servants of the European Union — Article 2(c) — Contract for an indefinite period — Early termination with notice — Article 47(c)(i) — Breakdown in relationship of trust — Terms implementing the notice — Manifest error of assessment and error of law — Omissions — Action for annulment and for damages)

(2022/C 472/24)

Language of the case: French

Parties

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

Other party to the proceedings: Committee of the Regions (represented by: S. Bachotet and M. Espárrago Arzadun, acting as Agents, assisted by B. Wägenbaur, Rechtsanwalt)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders CE to bear her costs and to pay those incurred by the Committee of the Regions.

([1]) OJ C 37, 24.1.2022.

Judgment of the Court (Eighth Chamber) of 20 October 2022 (request for a preliminary ruling from the Augstākā tiesa (Senāts) — Latvia) — 'Mikrotīkls' SIA v Valsts ieņēmumu dienests

(Case C-542/21) ([1])

(Reference for a preliminary ruling — Customs union — Common Customs Tariff — Combined Nomenclature — Tariff classification — Heading 8517 — Subheadings 8517 70 11 and 8517 70 19 — Router aerials)

(2022/C 472/25)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Appellant: 'Mikrotīkls' SIA

Respondent: Valsts ieņēmumu dienests

Operative part of the judgment

Subheading 8517 70 11 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the customs and statistical nomenclature and on the Common Customs Tariff, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000, as that annex has been amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 and by Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013,

must be interpreted as meaning that it does not cover router aerials configured for communication in local area networks (LAN) and/or in wide area networks (WAN).

(1) OJ C 462, 15.11.2021.

Judgment of the Court (Ninth Chamber) of 27 October 2022 (request for a preliminary ruling from the Landgericht Mainz — Germany) — ID v Stadt Mainz

(Case C-544/21) (1)

(Reference for a preliminary ruling — Freedom to provide services — Directive 2006/123/EC — Article 15(1), (2)(g) and (3) — Services in the internal market — Fees of architects and engineers — Fixed minimum tariffs — Direct effect of provisions of EU law and possible inapplicability of national legislation)

(2022/C 472/26)

Language of the case: German

Referring court

Landgericht Mainz

Parties to the main proceedings

Applicant: ID

Defendant: Stadt Mainz

Operative part of the judgment

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market does not apply to a situation in which a contract was concluded before the entry into force of that directive and where all the effects of that contract were exhausted prior to the deadline for the transposition of the directive.

(1) OJ C 2, 3.1.2022.

Judgment of the Court (Eighth Chamber) of 27 October 2022 (request for a preliminary ruling from the Bundesfinanzgericht — Austria) — Climate Corporation Emissions Trading GmbH v Finanzamt Österreich

(Case C-641/21) (1)

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 44 — Point of reference for tax purposes — Transfer of greenhouse gas emission allowances — Recipient involved in VAT evasion in a chain of transactions — Taxable person who knew or should have known about that evasion)

(2022/C 472/27)

Language of the case: German

Referring court

Bundesfinanzgericht

Parties to the main proceedings

Applicant: Climate Corporation Emissions Trading GmbH

Defendant: Finanzamt Österreich

Operative part of the judgment

The provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008,

must be interpreted as precluding, in the case of a supply of services by a taxable person established in one Member State to a taxable person established in another Member State, the authorities of the former Member State from taking the view that the place of that supply — which, pursuant to Article 44 of Directive 2006/112, as amended by Directive 2008/8, is located in that other Member State — is nonetheless deemed to be located in the former Member State where the supplier knew, or should have known, that he or she was, by that supply, participating in VAT evasion committed by the recipient of that supply in a chain of transactions.

(1) OJ C 51, 31.1.2020.

Judgment of the Court (Fifth Chamber) of 20 October 2022 (request for a preliminary ruling from the Cour de cassation — Belgium) — UP v Centre public d'action sociale de Liège

(Case C-825/21) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Immigration policy — Directive 2008/115/EC — Return of illegally staying third-country nationals — Asylum application — Rejection — Order to leave the territory — Article 6(4) — Application for leave to remain for the purpose of medical treatment — Admissible application — Issuance of temporary leave to remain while the application is being examined — Dismissal of application — Social assistance — Refusal — Condition relating to the legality of the stay — No return decision — Effect of temporary leave to remain on the order to leave the territory)

(2022/C 472/28)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: UP

Defendant: Centre public d'action sociale de Liège

Operative part of the judgment

Article 6(4) 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 precluding legislation of a Member State under which, where a right to stay is granted to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by that provision, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of a return decision previously adopted in respect of that national after the rejection of his or her application for international protection.

([1]) OJ C 158, 11.4.2022.

Judgment of the Court (Grand Chamber) of 28 October 2022 (request for a preliminary ruling from the Oberlandesgericht München — Germany) — Criminal proceedings against HF

(Case C-435/22 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Charter of Fundamental Rights of the European Union — Article 50 — Convention implementing the Schengen Agreement — Article 54 — Principle ne bis in idem — Extradition agreement between the European Union and the United States of America — Extradition of a third-country national to the United States under a bilateral treaty concluded by a Member State — National who has been convicted by final judgment for the same acts and has served his sentence in full in another Member State)

(2022/C 472/29)

Language of the case: German

Referring court

Oberlandesgericht München

Party in the main proceedings

HF

Intervening party: Generalstaatsanwaltschaft München

Operative part of the judgment

Article 54 of the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 and entered into force on 26 March 1995, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding the extradition, by the authorities of a Member State, of a third-country national to another third country, where, first, that national has been convicted by final judgment in another Member State for the same acts as those referred to in the extradition request, and has been subject to the sentence imposed in that State, and, second, the extradition request is based on a bilateral extradition treaty limiting the scope of the principle ne bis in idem to judgments handed down in the requested Member State.

([1]) OJ C 326, 29.8.2022.

Reference for a preliminary ruling from High Court (Ireland) made on 9 December 2021 — X v International Protection Appeals Tribunal, Minister for Justice and Equality, Ireland and the Attorney General

(Case C-756/21)

(2022/C 472/30)

Language of the case: English

Referring court

High Court (Irlande)

Parties to the main proceedings

Applicant: X

Defendants: International Protection Appeals Tribunal, Minister for Justice and Equality, Ireland and the Attorney General

Questions referred

1) In circumstances where there has been a complete breach of the duty of cooperation as described at paragraph 66 of the judgment of the CJEU in Case C-277/11 ([1]) *M.M. v Minister for Justice, Equality and Law Reform and Ors*, in an applicant's application for subsidiary protection, has the consideration of that application been rendered '*totally ineffective*' in the sense considered in Case C-137/14 ([2]) *Commission v. Germany*?

2) If the answer to Question 1 is positive, should the aforesaid breach of the duty of cooperation, without more, entitle an applicant to annulment of the decision?

3) If the answer to Question 2 is in the negative, then and if applicable, on whom does the onus lie to establish that the refusal decision might have been different had there been proper cooperation by the decision maker?

4) Should the failure to provide a decision on an applicant's application for international protection within a reasonable time entitle an applicant to annulment of a decision when issued?

5) Does the time taken in effecting of change to the applicable asylum protection framework within a Member State operate to excuse that Member State from operating an international protection scheme, which would have provided a decision on such protection application within a reasonable time?

6) Where insufficient evidence is before a protection decision maker as to the state of an applicant's mental health but where some evidence of the possibility of an applicant suffering from such difficulties is present, is the international protection decision maker, in accordance with the duty of cooperation mentioned in Case C- 277/11 *M.M. v Minister for Justice, Equality and Law Reform and Ors* (paragraph 66), or otherwise, under a duty to make further enquiry, or any other duty, prior to arriving at a final decision?

7) Where a Member State is carrying out its duty pursuant to Article 4(1) of the Qualification Directive 2004/83/EC ([3]) to assess the relevant elements of an application is it permissible to declare the general credibility of an applicant not to have been established by reason of one lie, explained and withdrawn at the first reasonably available opportunity thereafter, without more?

([1]) EU:C:2012:744
([2]) EU:C:2015:683
([3]) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004, L 304, p. 12).

Request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona (Spain) lodged on 19 May 2022 — HM, VD v Generalitat de Catalunya

(Case C-332/22)

(2022/C 472/31)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona

Parties to the main proceedings

Applicants: HM, VD

Defendant: Generalitat de Catalunya

Questions referred

FIRST.- [The referring court wishes to ascertain] whether the measures endorsed in Spanish Supreme Court judgments Nos 1425/2018 and 1426/2018 of 26 September 2018, which express a position — still maintained today (30 November 2021) — the effect of which is to keep a public employee who has been a victim of [the] abuse [of successive fixed-term contracts] in the same abusive situation of insecure employment until such time as the employer administration determines whether there is a structural need [for the post in question to be made permanent] and issues a notice of competition for the relevant selection procedure with a view to filling the post with a permanent or career public employee, are measures which fulfil the requirements governing the prescription of penalties laid down in clause 5 of the framework agreement annexed to Directive 1999/70; ([1]) or whether, conversely, those measures have the effect of perpetuating insecurity and the lack of protection until such time as the employer administration decides at random, with a view to filling a post with a permanent employee, to issue a notice of competition for a selection procedure the outcome of which is uncertain inasmuch as such procedures are also open to candidates who have not been victims of such abuse, and are measures which cannot be construed as dissuasive punitive measures for the purposes of clause 5 of the framework agreement and do not guarantee that the objectives they pursue will be attained.

SECOND.- Where a national court, pursuant to its obligation to penalise the abuse established in any event (the penalty is 'essential' and 'immediate'), arrives at the conclusion that the principle that national law must be interpreted in conformity with EU law makes it impossible for it to give effect to the Directive without adopting a *contra legem* interpretation of domestic law, precisely because the domestic law of the Member State in question has not introduced any punitive measures in order to give effect to clause 5 of the framework agreement in the public sector,

must it apply the findings contained in the judgment of 17 April 2018 in *Egenberger*, ([2]) or in the judgment (of the Grand Chamber) of 15 April 2008 in Case No C-268/2006, ([3]) to the effect that Articles 21 and 47 of the Charter of [Fundamental] Rights of the European Union allow any provisions of domestic law that make it impossible to give full effect to Directive 1999/1970/EC to be excluded, even if they have constitutional status?

Does it therefore have a duty to convert an abusive temporary relationship into a permanent relationship identical to and on a par with that of comparable permanent employees, thus giving stability of employment to the victim of the abuse, in order to ensure that such abuse does not go unpunished and the objectives and effectiveness of clause 5 of the agreement are not undermined, even if such a conversion is prohibited by domestic legislation and the case-law of the Spanish Supreme Court, or might be contrary to the Spanish Constitution?

THIRD.- [The referring court wishes to ascertain] whether, given that the CJEU held in its judgments of 25 October 2018 in Case C-331/17, ([4]) and of 13 January 2022 in Case C-[2]82/19, ([5]) that clause 5 of the framework agreement precludes national legislation which excludes certain public employees from the application of provisions that penalise the abusive use of successive fixed-term contracts, if the domestic legal system contains no other effective measure for penalising such an abusive measure, and, given that Spanish law does not contain any measure for penalising abuse in the public sector that is applicable to the temporary staff who have brought this action,

whether the application of that case-law of the CJEU and of the Community principle of equivalence imposes an obligation to convert temporary public employees who have been victims of abuse into permanent or career public employees, making them subject to the same grounds for dismissal and termination of the employment relationship as those that apply to the latter, in so far as, in the private sector, Article 15 of the Regulatory Code for Workers lays down an obligation to convert into permanent staff temporary workers who, over a period of 30 months, have accrued more than 24 months' continuous service for the same employer, and in so far as Article [87(5)] of Law 40/2015 [of 1 October 2015] on [the legal framework governing] the public sector, as amended by Law 11/2020 on the general State budget for 2021, operates, pursuant to national law, to allow private-sector workers of undertakings and entities that move across to the public sector to perform the same duties as career civil servants, with the right to remain in post until the end of their working lives, thus making them subject to the same grounds for termination of employment as the latter.

FOURTH – Given that the conditions relating to termination of the employment relationship and the requirements for terminating an employment contract form part of the 'employment conditions' set out in clause 4 of the framework agreement, according to the judgments of the CJEU of 13 March 2014 in Case C[-]38/13, ([6]) *Nierodzik*, paragraphs 27 and 29, and of 14 September 2016 in Case C-596[/14], ([7]) *Ana de Diego Porras*, paragraphs 30 and 31),

[the referring court] seeks from the CJEU, in the event that the answer to the previous question is in the negative, a ruling as to whether stabilising the employment of temporary public-sector staff who have been victims of abuse by applying to them the same grounds for termination of employment and dismissal as apply to comparable career civil servants or permanent employees, without granting them that status, is a measure which the national authorities have an obligation to discharge pursuant to clauses 4 and 5 of the framework agreement annexed to Directive 1999/70 and the principle that national law must be interpreted in conformity with EU law, since the national legislation prohibits only staff who do not fulfil certain requirements from acquiring permanent or career employee status, and stabilising the employment of such staff in the manner described does not entail the grant of that status.

FIFTH.- In so far as Article 15 of the Regulatory Code for Workers lays down a maximum period of duration for temporary contracts of two years, it being understood that, on the expiry of that period, the need met is no longer temporary or exceptional but routine and regular, in which event employers in the private sector are obliged to make the temporary relationship indefinite, and, in so far as, in the public sector, Article 10 of the Estatuto Básico del Empleado Público (Basic Regulatory Code for Public Employees) (EBEP) lays down the obligation to include vacant posts occupied by interim/temporary staff in the list of public-sector vacancies for the year of appointment and, if this is not possible, that is to say within the maximum period of two years, in the list for the following year, with a view to ensuring that the post is filled by a permanent or career civil servant,

the referring court wishes to ascertain] whether it must be concluded that the abuse consisting in the conclusion of successive temporary contracts in the public sector arises as soon as the employer administration fails to fill a post occupied by a temporary public employee with a permanent or career employee within the time limits laid down in the Spanish legislation, that is to say by including that post in a list of public-sector vacancies within a maximum period of two years as from the appointment of the interim/temporary employee, thereby entering into an obligation to terminate the latter's employment by filling the public-sector vacancy within the maximum period of three years laid down in Article 70 of the EBEP.

SIXTH.- [The referring court wishes to ascertain] whether Spanish Law 20/2021 of 28 December 2021 infringes the Community principles of legality and the non-retroactivity of penalties contained in, inter alia, Article 49 of the Charter of Fundamental Rights of the EU, inasmuch as it provides, as a penalty for abuse in connection with temporary employment, for selection procedures which are triggered even if the actions or omissions constituting the infringement — and, therefore, the abuse — and the reporting thereof took place and were committed prior to — years before — the enactment of Law 20/2021[.]

SEVENTH.- [The referring court wishes to ascertain] whether Law 20/2021, in providing as a punitive measure for the issue of notices of competition for selection procedures and compensation available only to victims of abuse who are unsuccessful in such a procedure, infringes clause 5 of the framework agreement and Directive 1999/70/EC, since it prescribes no penalties for abuse arising in respect of temporary public employees who have been successful in such selection procedures, notwithstanding that a penalty must always be provided for and the successful completion of such a selection procedure is not a punitive measure which fulfils the requirements of the Directive, as the CJEU states its order of 2 June 2021 in Case C-103/2019. ([8])

In other words, [the referring court wishes to ascertain] whether Law 20/2021, in limiting the award of compensation to staff having been victims of abuse who are unsuccessful in a selection procedure, thus excluding from that right employees having been the subject of abuse who acquired permanent staff status, through such selection procedures, subsequently, infringes Directive 1999/70/EC and, in particular, the ruling given in the order of the CJEU of 2 June 2021, paragraph 45, according to which, although the organisation of selection procedures open to public employees who were abusively appointed under successive fixed-term employment relationships allows such employees to apply for a permanent and stable post and, therefore, for access to permanent public employee status, this does not relieve Member States of the obligation to establish a suitable measure for properly penalising the abusive use of successive fixed-term employment contracts and relationships.

EIGHTH.- [The referring court wishes to ascertain] whether Law 20/2021, in providing that selection procedures aimed at reducing temporary employment in the public sector must take place within a period of three years, by 31 December 2024, and in laying down as a penalty compensation receivable upon the termination of employment or dismissal of the victim of abuse, infringes clause 5 of the framework agreement, in the light of the order of the CJEU of 9 February 2017 in Case C-44 [3]/2016 ([9]) or the judgments of the CJEU of 14 [September] 2016 in Case C-16/15 ([10]) and of 21 November 2018 in Case C-619/2017, ([11]) inasmuch as it has the effect of perpetuating or prolonging an abused employee's position as a victim of abuse, lack of protection and insecurity of employment, thus undermining the effectiveness of Directive 1999/70 until such time as the worker is finally dismissed and qualifies for the aforementioned compensation.

NINTH.- [The referring court wishes to ascertain] whether Law 20/2021 infringes the principle of equivalence, since it confers rights under the directive which are inferior to those that flow from domestic law, inasmuch as:

— Law 11/2020 on the general State budget for 2021, in amending Article [87(5)] of Law 40/20[15], operates, pursuant to domestic law, to allow private-sector workers of undertakings that move across to the public sector to perform the same duties as career civil servants, while remaining subject to the same grounds for termination of employment, even if they have not successfully completed a selection procedure, with the right to remain in post until the end of their working lives, whereas Law 20/2021, pursuant to EU law, does not allow workers who have been selected in accordance with selection procedures subject to principles of equality, publicity and free competition to continue to perform the same duties as career civil servants and to remain subject to the same grounds for termination of employment.

— Article 15 of the Regulatory Code for Workers, as amended by Law 1/1995 of 24 March 1995, that is to say prior to the adoption of Directive 1999/70, operates — pursuant to domestic law — to allow private-sector workers who have been working for the same employer for more than two years to become permanent employees, whereas, pursuant to the Directive, public-sector workers who have been victims of abuse qualify only for compensation equal to 20 days per year of service up to a limit of [the equivalent of] 12 monthly salary payments, with no right to become permanent employees.

— The provisions of Article 32 et seq. of Law 40/2015 on the legal framework governing the public sector […] establish the principle of full reparation, which imposes on the administrative authorities an obligation to provide compensation for any loss and damage caused to the victims of their actions, and yet, pursuant to Community law, compensation for victims of abuse is restricted by a prior upper limit, in terms of both amount — 20 days per year of service — and time — 12 monthly salary payments.

TENTH.- [The referring court wishes to ascertain] whether Law 20/2021, in providing as the only genuine punitive measure for compensation equal to 20 days per year of service for victims of abuse who have been unsuccessful in a selection procedure, infringes the case-law established by the CJEU in its judgment of 7 March 2018 in *Santoro*, ([12]) according to which, in the public sector, in order to comply with the Directive, compensation alone is not sufficient, but must be accompanied by other additional, effective, proportionate and dissuasive punitive measures.

ELEVENTH.- [The referring court wishes to ascertain] whether Law 20/2021, in fixing the compensation available to victims who are unsuccessful in a selection procedure at 20 days per year of service up to a limit of [the equivalent of] 12 monthly salary payments, infringes the Community principles of adequate and full compensation and proportionality, in that it excludes loss of earnings and other heads of indemnification or compensation such as, for example, those arising from the loss of opportunities (as referred to in the judgment of the CJEU in *Santoro*); the impossibility of acquiring permanent staff status because no notices of competition for selection processes are issued within the time limits laid down in the domestic legislation, or the inability to secure promotion or progression; the non-material damage arising from the lack of protection attendant upon any insecure employment; termination of the employment of a victim of abuse whose age and sex (a woman over the age of 50, for example) deprives them of an alternative labour market; or the reduction of the retirement pension?

TWELFTH.- [The referring court wishes to ascertain] whether Law 20/2021, in providing for compensation capped at 20 days per year of service and [the equivalent of] 12 monthly salary payments, infringes the Community legislation, in the light of the judgments of the CJEU of 2 August 1993 in Case C-271/91, ([13]) *Marshall*, and of 17 December 2015 in Case C-407/14, ([14]) *Arjona*, according to which EU law precludes reparation for the loss and damage sustained by a person as a result of dismissal from being restricted by a prior upper limit.

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).
([2]) Judgment of 17 April 2018, *Egenberger* (Case C-414/16, EU:C:2018:257).
([3]) Judgment of 15 April 2008, *Impact* (Case C-268/06, EU:C:2008:223).
([4]) Judgment of 25 October 2018, *Sciotto* (Case C-331/17, EU:C:2018:859).
([5]) Judgment of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania* (Case C-282/19, EU:C:2022:3).
([6]) Judgment of 13 March 2014, *Nierodzik* (Case C-38/13, EU:C:2014:152).
([7]) Judgment of 14 September 2016, *de Diego Porras* (Case C-596/14, EU:C:2016:683).
([8]) Order of 2 June 2021, *SUSH and CGT Sanidad de Madrid* (Case C-103/19, not published, EU:C:2021:460).
([9]) Order of 9 February 2017, *Rodrigo Sanz* (Case C-443/16, EU:C:2017:109).
([10]) Judgment of 14 September 2016, *Pérez López* (Case C-16/15, EU:C:2016:679).
([11]) Judgment of 21 November 2018, *de Diego Porras* (Case C-619/17, EU:C:2018:936).
([12]) Judgment of 7 March 2018, *Santoro* (Case C-494/16, EU:C:2018:166).
([13]) Judgment of 2 August 1993, *Marshall* (Case C-271/91, EU:C:1993:335).
([14]) Judgment of 17 December 2015, *Arjona Camacho* (Case C-407/14, EU:C:2015:831).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 15 July 2022 — Maxi Mobility Spain, S. L. U. v Comunidad de Madrid, Asociación Nacional del Taxi, Asociación Taxi Project 2.0

(Case C-475/22)

(2022/C 472/32)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Maxi Mobility Spain, S. L. U.

Respondents: Comunidad de Madrid, Asociación Nacional del Taxi, Asociación Taxi Project 2.0

Questions referred

Spanish national legislation considers the maintenance of a taxi service to be a form of urban transport using vehicles with driver in the public interest and therefore subjects it to intense administrative regulation in order to guarantee quality objectives, user protection, transport policy and environmental policy, including fare control. In view of that national legislation,

1. Is it compatible with the principle of freedom of establishment to impose limitations on other urban transport services using vehicles with driver, such as PHV, subject to the principle of proportionality, in order to ensure the compatibility and complementarity of those other models of the same activity with that of taxis?

2. If the answer to the previous question is in the affirmative, is it compatible with the principle of freedom of establishment to impose, as regards urban transport services using vehicles with driver other than taxi services, such as PHV, the specific restrictive measure of establishing a maximum ratio of authorisations in respect of taxi licences, such as the 1/30 ratio laid down in the Spanish legislation, subject in its application by the competent administration to the principle of proportionality?

3. Is the restrictive measure for PHV of establishing a 1/30 licence ratio as described in the previous question compatible with the prohibition on State aid under Article 107 of the Treaty on the Functioning of the European Union?

Request for a preliminary ruling from the Tribunal Superior de Justicia de las Islas Baleares (Spain) lodged on 7 September 2022 — J.L.O.G., J.J.O.P. v Resorts Mallorca Hotels International S.L.

(Case C-589/22)

(2022/C 472/33)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de las Islas Baleares

Parties to the main proceedings

Appellants: J.L.O.G., J.J.O.P.

Respondent: Resorts Mallorca Hotels International S.L.

Questions referred

1. Should Article 2 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, ([1]) read in the light of the case-law the Court of Justice of the European Union set out in the judgment of 10 September 2009 (C-44/08, ([2]) EU:C:2009:533),

   be interpreted as meaning that the consultation and notification requirements, which underpin the effectiveness of the Directive, arise as soon as an undertaking, as part of a restructuring process, projects a number of terminations of employment contracts which may exceed the collective redundancy threshold, irrespective of the fact that, ultimately, the number of assimilable dismissals or terminations does not reach that threshold on account of measures taken by the employer, without prior consultation with the workers' representatives, to reduce that number?

2. Does the provision in the final subparagraph of Article 1(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, which states that *'for the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies'*,

   in the context of a crisis in which a reduction in the workforce, including through dismissals, is expected, cover worker redundancies proposed by an undertaking, which although not sought by the workers, were accepted by them on receipt of a firm offer of immediate employment at another undertaking, when it was the employer who arranged for its employees to have the option of being interviewed by that other undertaking with a view to their possible recruitment?

([1]) OJ 1998 L 225, p. 16.
([2]) Judgment of 10 September, *Akavan Erityisalojen Keskusliitto AEK and Others* (C-44/08, EU:C:2009:533).

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 12 September 2022 — L. VOF v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-591/22)

(2022/C 472/34)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: L. VOF

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Questions referred

1. What constitutes an exceptional case within the meaning of point 2.2.2.2(c) of the Annex to Commission Regulation (EU) No 200/2010 ([1]) of 10 March 2010 implementing Regulation (EC) No 2160/2003 ([2]) of the European Parliament and of the Council as regards a Union target for the reduction of the prevalence of Salmonella serotypes in adult breeding flocks of Gallus gallus, where the competent authority has reason to question the correctness of a positive test result for salmonella obtained from a routine sampling at the initiative of the food business operator, so that the competent authority may decide to repeat the testing?

2. Are the following factors relevant in determining whether an exceptional case exists within the meaning of point 2.2.2.2 (c) of the Annex to Regulation 200/2010:

   (i) (multiple) negative test results for the relevant Salmonella type obtained from subsequent samples taken at the initiative of the food business operator;

   (ii) the fact that only one of the two samples per house yielded a positive result for salmonella;

   (iii) the vaccination status of the (sampled) flock for the relevant Salmonella type in relation to the age of the flock;

   (iv) the number of houses with a positive result for salmonella in relation to the sampling frequency applicable to the relevant Salmonella type;

   (v) the history of the holding in terms of the prevalence of the Salmonella (zoonotic) type detected?

3. If the answer to question 2(i) is in the affirmative, how much time may be granted to a food business operator to carry out subsequent samplings (or to have them carried out) and submit the results of the investigation, before the competent authority proceeds to implement irreversible follow-up measures following the declaration of contamination?

([1]) OJ 2010 L 61, p. 1.
([2]) OJ 2003 L 325, p. 1.

Request for a preliminary ruling from the Tribunalul Specializat Cluj (Romania) lodged on 12 September 2022 — FS and WU v First Bank SA

(Case C-593/22)

(2022/C 472/35)

Language of the case: Romanian

Referring court

Tribunalul Specializat Cluj

Parties to the main proceedings

Appellants: FS and WU

Respondent: First Bank SA

Questions referred

1. Is Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) to be interpreted as meaning that

   (a) a 'contractual term which reflects statutory provisions' must reproduce, in whole or in part, the corresponding legal rule set out in the relevant statutory provision;

   or that

   (b) a 'contractual term which reflects statutory provisions' must contain an express reference to the corresponding legal rule set out in the relevant statutory provision;

or, on the contrary, that,

(c) in order for the exclusion from the scope of the analysis of the unfairness of a contractual term provided for in Article 1(2) of Directive 93/13 to be deemed to apply, it is sufficient to apply the general civil-law rule that contracts are supplemented by the law, without any specific reference being made to the corresponding legal rule set out in the relevant statutory provision?

2. Is Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to be interpreted as meaning that, in the context of the special legal regime for the protection of consumer rights, it is excessive to take the view that the consumer is under an obligation to be familiar with the content of all the legal rules set out in the statutory provisions which supplement a contract, without the seller or supplier first providing the consumer with information to that effect?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Reference for a preliminary ruling from the High Court (Ireland) made on 23 September 2022 — Dublin 8 Residents Association v An Bord Pleanála, Ireland and the Attorney General

(Case C-613/22)

(2022/C 472/36)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Dublin 8 Residents Association

Defendants: An Bord Pleanála, Ireland, and the Attorney General

Notice Party: DBTR-SCR1 Fund, a Sub-Fund of the CWTC Multi-Family ICAV

Questions referred

1. Does article 11(1)(a) of directive 2011/92/EU ([1]) read in conjunction with article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council Decision 2005/370/EC ([2]) have the effect that where an environmental NGO meets the test for standing set out in that provision, the NGO concerned is to be regarded as having sufficient capacity to seek a judicial remedy notwithstanding a general rule in the domestic law of a member state which precludes unincorporated associations from bringing legal proceedings?

2. If Article 11(1)(a) of directive 2011/92/EU read in conjunction with article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect set out in the first question in general circumstances, does it have that effect in circumstances where the domestic law of the member state concerned provides that an NGO that meets the test for standing conferred by article 1(2)(e) of the directive is thereby conferred with capacity to seek a judicial remedy?

3. If article 11(1)(a) of directive 2011/92/EU read in conjunction with article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect set out in the first question in general circumstances, does it have that effect in circumstances where the domestic law of the member state concerned and/or procedures adopted by the competent authority of the member state concerned have enabled an environmental NGO which would not otherwise have legal capacity in domestic law to nonetheless participate in the administrative phase of the development consent process?

4. If article 11(1)(a) of EIA directive 2011/92/EU read in conjunction with article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect set out in the first question in general circumstances, does it have that effect where the conditions set by the law of the member state concerned in order to enable an NGO to qualify for the purpose of article 1(2)(e) are such that the required period of existence of an NGO in order to so qualify is longer than the statutory period for determination of an application for development consent, thus having the consequence that an unincorporated NGO formed in response to a particular planning application would normally never qualify for the purposes of the legislation implementing article 1(2)(e).

5. Does article 11(1)(a) of directive 2011/92/EU read in the light of the principles of legal certainty and/or effectiveness and/or in conjunction with Article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC have the effect that a discretion created by a provision of national procedural law of a member state to allow the substitution of an individual applicant or applicants who are members of an unincorporated association in lieu of the unincorporated association itself must be exercised in such a way as to give full effect to the right of access to an effective judicial remedy such that that substitution could not be precluded by reason only of a rule of domestic law regarding limitation of time for the bringing of the action concerned.

6. If article 11(1)(a) of directive 2011/92/EU read in the light of the principles of legal certainty and/or effectiveness and/or in conjunction with Article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect referred to in the fifth question in general circumstances, does it have that effect particularly in the light of the principle of effectiveness in circumstances where the action was brought by the original applicant within the time fixed by domestic law and where the grounds of challenge on which the right of access to a judicial remedy was sought by the substituted applicant remained unchanged.

7. If article 11(1)(a) of directive 2011/92/EU read in the light of the principles of legal certainty and/or effectiveness and/or in conjunction with Article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect referred to in the fifth question in general circumstances, does it have that effect if the domestic law of the member state concerned regarding the application of limitation periods in such situations is unclear and/or contradictory such that an applicant does not enjoy legal certainty prior to bringing proceedings as to whether such substitution is permissible.

([1]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012, L 26, p. 1).

([2]) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005, L 142, p. 1).

GENERAL COURT

Judgment of the General Court of 19 October 2022 — H&H v EUIPO — Giuliani (Swisse)

(Case T-486/20) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Swisse — Absolute grounds for invalidity — Article 51(1)(a) and (b) of Regulation (EC) No 40/94 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — No distinctive character — Trade mark of such a nature as to deceive the public — State emblem — Trade mark including badges, emblems or escutcheons — Article 7(1)(b), (g), (h) and (i) of Regulation No 40/94 (now Article 7(1)(b), (g), (h) and (i) of Regulation 2017/1001) — Bad faith — Statement of reasons for the application for a declaration of invalidity — Article 63(2) of Regulation 2017/1001 — Scope of the examination which has to be carried out by EUIPO — Article 95 (1) of Regulation 2017/1001 — Right to be heard — Article 41 of the Charter of Fundamental Rights)

(2022/C 472/37)

Language of the case: English

Parties

Applicant: Health and Happiness (H&H) Hong Kong Ltd (Hong Kong, China) (represented by: D. Rose and L. Flascher, Solicitors, and N. Saunders KC)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Giuliani SpA (Milan, Italy) (represented by: S. de Bosio, lawyer)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 25 May 2020 (Case R 2185/2019-5).

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 25 May 2020 (Case R 2185/2019-5);

2. Orders EUIPO to bear its own costs and to pay those incurred by Health and Happiness (H&H) Hong Kong Ltd;

3. Orders Giuliani SpA to bear its own costs.

([1]) OJ C 320, 28.9.2020.

Judgment of the General Court of 19 October 2022 — Sistem ecologica v Commission

(Case T-81/21) [1]

(Regulation (EU, Euratom) No 883/2013 — Investigation into evasion of the conventional, countervailing and anti-dumping duties imposed on imports of biodiesel into the European Union — OLAF Communication to national customs authorities — OLAF investigation report — Action for annulment — Act not open to challenge — Claim for compensation — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2022/C 472/38)

Language of the case: English

Parties

Applicant: 'Sistem ecologica' production, trade and services d.o.o. Srbac (Srbac, Bosnia and Herzegovina) (represented by: D. Diris, D. Rjabynina, C. Kocks and C. Verheyen, lawyers)

Defendant: European Commission (represented by: J. Baquero Cruz and T. Materne, acting as Agents)

Re:

By its action under Articles 263 and 268 TFEU, the applicant seeks, first, annulment of the final investigation report adopted by the European Anti-Fraud Office (OLAF) on 8 December 2020 and of OLAF's decisions contained in a communication sent on 9 June 2020 to the Member States, in letters of 25 and 27 November 2020 and in letters of 8 and 21 December 2020 and, second, compensation in respect of the damage allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders 'Sistem ecologica' production, trade and services d.o.o. Srbac to pay the costs.

[1] OJ C 163, 3.5.2021.

Judgment of the General Court of 5 October 2022 — Múka v Commission

(Case T-214/21) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to State aid control procedures — Refusal to grant access — Third indent of Article 4(2) of Regulation No 1049/2001 — Exception relating to the protection of the purpose of inspections, investigations and audits — General presumption of non-disclosure — Overriding public interest)

(2022/C 472/39)

Language of the case: English

Parties

Applicant: Ondřej Múka (Prague, Czech Republic) (represented by: P. Kočí, lawyer)

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

Re:

By his action under Article 263 TFEU, the applicant asks the General Court, first, to annul (i) the letter of the European Commission of 27 October 2020 rejecting his initial application of 17 September 2020 requesting access to documents which it had exchanged with the Czech Republic and (ii) Decision C(2021) 1320 final of 21 February 2021 rejecting his confirmatory application of 12 November 2020 requesting access to those documents, and, second, to order the Commission to provide him with all the documents and information referred to in his application of 17 September 2020.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Ondřej Múka to bear his own costs and to pay those incurred by the European Commission.

(1) OJ C 242, 21.6.2021.

Judgment of the General Court of 5 October 2022 — Basaglia v Commission

(Case T-257/21) (1)

(Non-contractual liability — Access to documents — Documents relating to research and technological development projects — Decision limiting the request for access and partially refusing access — Partial annulment by the General Court of that decision — Convictions by national courts — Unlawfulness of the conduct complained of — Causal link)

(2022/C 472/40)

Language of the case: Italian

Parties

Applicant: Giorgio Basaglia (Milan, Italy) (represented by: G. Balossi, G. Borriello and F. Fimmanò, lawyers)

Defendant: European Commission (represented by: C. Ehrbar, F. Moro and A. Spina, acting as Agents)

Re:

By his action under Article 268 TFEU, the applicant seeks compensation for the financial, non-material and reputational damage which he allegedly suffered as a result of the European Commission's unlawful rejection of his requests for access to documents and its failure to comply with the judgment of 23 September 2020, *Basaglia* v *Commission* (T-727/19, not published, EU:T:2020:446).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Giorgio Basaglia to pay the costs.

(1) OJ C 252, 28.6.2021.

Judgment of the General Court of 12 October 2022 — MCO (IP) v EUIPO — C8 (C2 CYPRUS CASINOS)

(Case T-460/21) (1)

(European Union trade mark — Opposition proceedings — Application for European Union figurative mark C2 CYPRUS CASINOS — Earlier national figurative mark C8 — Relative ground for refusal — Likelihood of confusion — Interdependence of factors — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons)

(2022/C 472/41)

Language of the case: French

Parties

Applicant: MCO (IP) Holdings Ltd (Tortola, British Virgin Islands) (represented by: A. Roughton, Barrister)

Defendant: European Union Intellectual Property Office (represented by: J. Hamel and D. Hanf, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: C8 (Issy-les-Moulineaux, France) (represented by: M. Georges-Picot and C. Cuny, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 26 May 2021 (Case R 908/2020-2).

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office of the European Union for Intellectual Property (EUIPO) of 26 May 2021 (Case R 908/2020-2) in so far as it relates to services for which only a low degree of similarity was found;

2. Dismisses the remainder of the action;

3. Orders MCO (IP) Holdings Ltd, EUIPO and C8 to bear their own costs.

([1]) OJ C 412, 11.10.2021.

Judgment of the General Court of 12 October 2022 — MCO (IP) v EUIPO — C8 (C2)

(Case T-461/21) ([1])

(European Union trade mark — Opposition proceedings — Application for European Union figurative mark C2 — Earlier national figurative mark C8 — Relative ground for refusal — Likelihood of confusion — Interdependence of factors — Article 8(1)(b) of Regulation (EU) 2017/1001 — Obligation to state reasons)

(2022/C 472/42)

Language of the case: French

Parties

Applicant: MCO (IP) Holdings Ltd (Tortola, British Virgin Islands) (represented by: A. Roughton, Barrister)

Defendant: European Union Intellectual Property Office (represented by: J. Hamel and D. Hanf, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: C8 (Issy-les-Moulineaux, France) (represented by: M. Georges-Picot and C. Cuny, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 26 May 2021 (Case R 909/2020-2).

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office of the European Union for Intellectual Property (EUIPO) of 26 May 2021 (Case R 909/2020-2) in so far as it relates to services for which only a low degree of similarity was found;

2. Dismisses the remainder of the action;

3. Orders MCO (IP) Holdings Ltd, EUIPO and C8 to bear their own costs.

(1) OJ C 412, 11.10.2021.

Judgment of the General Court of 19 October 2022 — Baumberger v EUIPO — Nube (Lío)

(Case T-466/21) (1)

(EU trade mark — Invalidity proceedings — European Union figurative mark Lío — Absolute ground for invalidity — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2022/C 472/43)

Language of the case: English

Parties

Applicant: Dino Baumberger (Wesel, Germany) (represented by: J. Fusbahn and D. Dawirs, lawyers)

Defendant: European Union Intellectual Property Office (represented by: N. Lamsters and E. Markakis, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Nube, SL (Ibiza, Spain) (represented by: J. Gracia Albero and R. Ahijón Lana, lawyers)

Re:

By his action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 June 2021 (Case R 1221/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dino Baumberger to pay the costs.

(1) OJ C 382, 20.9.2021.

Judgment of the General Court of 19 October 2022 — DBM Videovertrieb v EUIPO — Nube (Lío)

(Case T-467/21) (1)

(EU trade mark — Invalidity proceedings — European Union figurative mark Lío — Absolute ground for invalidity — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2022/C 472/44)

Language of the case: English

Parties

Applicant: DBM Videovertrieb GmbH (Wesel, Germany) (represented by: J. Fusbahn and D. Dawirs, lawyers)

Defendant: European Union Intellectual Property Office (represented by: N. Lamsters and E. Markakis, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Nube, SL (Ibiza, Spain) (represented by: J. Gracia Albero and R. Ahijón Lana, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 June 2021 (Case R 1220/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders DBM Videovertrieb GmbH to pay the costs.

(1) OJ C 382, 20.9.2021.

Judgment of the General Court of 5 October 2022 — Philip Morris Products v EUIPO (TOGETHER. FORWARD.)

(Case T-500/21) (1)

(EU trade mark — Application for EU word mark TOGETHER. FORWARD. — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2022/C 472/45)

Language of the case: English

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

Defendant: European Union Intellectual Property Office (represented by: E. Nicolás Gómez, M. Eberl and D. Hanf, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 June 2021 (Case R 417/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Philip Morris Products SA to pay the costs.

(1) OJ C 391, 27.9.2021.

Judgment of the General Court of 5 October 2022 — Philip Morris Products v EUIPO (Representation of angular lines in black and white)

(Case T-501/21) ([1])

(EU trade mark — Application for EU figurative mark representing angular lines in black and white — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2022/C 472/46)

Language of the case: English

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

Defendant: European Union Intellectual Property Office (represented by: P. Georgieva, E. Nicolás Gómez, M. Eberl and D. Hanf, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 3 June 2021 (Case R 79/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Philip Morris Products SA to pay the costs.

([1]) OJ C 391, 27.9.2021.

Judgment of the General Court of 5 October 2022 — Philip Morris Products v EUIPO (Representation of black and white lines)

(Case T-502/21) ([1])

(EU trade mark — Application for EU figurative mark representing black and white lines — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2022/C 472/47)

Language of the case: English

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

Defendant: European Union Intellectual Property Office (represented by: P. Georgieva, E. Nicolás Gómez, M. Eberl and D. Hanf, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 26 May 2021 (Case R 78/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Philip Morris Products SA to pay the costs.

(1) OJ C 391, 27.9.2021.

Action brought on 15 September 2022 — ViiV Healthcare v EMA

(Case T-574/22)

(2022/C 472/48)

Language of the case: English

Parties

Applicant: ViiV Healthcare BV (Amersfoort, Netherlands) (represented by: G. Castle, M. Doyle-Rossi, E. Handy, Solicitors, and D. Scannell, Barrister-at-Law)

Defendant: European Medicines Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision communicated by the European Medicines Agency to the applicant on 7 July 2022 to suspend the applicant's marketing authorisation application in respect of APRETUDE made under Article 8(3) of the Directive 2001/83/EC of the European Parliament and of the Council, (1) and

— order the EMA to pay 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 premised upon a manifest error of assessment.

   The applicant holds a marketing authorisation for a separate medicinal product, VOCABRIA, which the European Commission granted to the applicant on 17 December 2020. The basis for the European Medicines Agency's (hereafter the 'EMA') contested Decision is the EMA's view that APRETUDE is the same medicinal product as VOCABRIA. The EMA therefore considers that a request for authorisation must be made to the Commission under Article 82(2) of Regulation (EC) No. 726/2004 of the European Parliament and of the Council, (2) before a marketing authorisation application may be made in respect of APRETUDE.

   The EMA committed a manifest error of assessment by concluding that APRETUDE is the same medicinal product as VOCABRIA. The differences between APRETUDE and VOCABRIA's indications (and thus the two products' safety and efficacy profiles), their strengths, and presentations mean they cannot be regarded in law as the same medicinal product. Accordingly, the contested Decision is premised upon a manifest error and must be annulled.

2. Second plea in law, alleging that the contested Decision is contrary to the principle of the protection of legitimate expectations.

   On 30 June 2021, the EMA stated to the applicant that it did not consider that APRETUDE and VOCABRIA are the same medicinal product. The EMA therefore advised the applicant that it would be unnecessary to make a request for authorisation from the Commission under Article 82(2) of Regulation (EC) No. 726/2004. In reliance on the EMA's advice, the applicant submitted its marketing authorisation application for APRETUDE on 24 June 2022 without making any such request from the Commission.

The applicant submits that by adopting the contested Decision the EMA has resiled from its precise and unconditional assurances as to the proper legal basis for the Applicant's marketing authorisation application for APRETUDE. The applicant thus contends that the contested Decision infringes the principle of the protection of legitimate expectations and falls to be annulled.

(1) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

(2) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 15 September 2022 — ClientEarth v Council

(Case T-577/22)

(2022/C 472/49)

Language of the case: English

Parties

Applicant: ClientEarth AISBL (Brussels, Belgium) (represented by: C. Ziegler, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the decision dated 5 July 2022 of the Council of the European Union (SGS 22/00149) in relation to the request for internal review under Title IV of the Aarhus Regulation in relation to Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters (OJ L 21 of 27 January 2022, p. 1), and

— order the Council to bear its own costs and pay those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest errors of law and of assessment as regards the scope of the applicant's access to review rights under the Aarhus Regulation, due to the Council having:

   — refused to review the Provisional TACs later replaced by final EU/UK TACs, even though the applicant retains an interest in their review; and

   — found that the applicant's pleas that the Council lacked competence and misused its powers in adopting the TAC Regulation were inadmissible for falling outside the scope of Article 10 of the Aarhus Regulation.

2. Second plea in law, alleging manifest errors of law and of assessment as regards essential elements of secondary law and the scope of the Council's competence to set TACs under Article 43(3) TFEU, due to the Council having committed:

   — manifest errors of law as regards the margin of discretion it has to set fishing opportunities; and

   — manifest errors of law and of assessment regarding the limits of its competence under Article 43(3) TFEU.

3. Third plea in law, alleging manifest errors of assessment regarding the Council's obligations to:

— not exceed the MSY exploitation rate after 2020 for all stocks, as required by Article 2(2) of the CFP Basic Regulation;

— implement the precautionary approach, as commanded by the first and second subparagraphs of Article 2(2), Articles 4(1)(8) and 9(2) of the CFP Basic Regulation, and strictly limited by the MSY Objective;

— implement the ecosystem-based approach as required by Article 2(3) of the CFP Basic Regulation.

4. Fourth plea in law, alleging a manifest error of assessment regarding the misuse of powers committed by the Council when adopting Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters (OJ L 21 of 27 January 2022, p. 1).

Action brought on 16 September 2022 — Fédération environnement durable and Others v Commission

(Case T-583/22)

(2022/C 472/50)

Language of the case: English

Parties

Applicants: Fédération environnement durable (Paris, France), Bundesinitiative Vernunftkraft eV (Berlin, Germany), Vent de Colère! — Fédération nationale (Peyraud, France), Vent de Raison — Wind met Redelijkheid (VdR-WmR) (Petit-Roeulx, Belgium) (represented by: M. Le Berre, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the European Commission decision of 7 July 2022 (fisma.b.2(2022) 5340198, Ares (2022)4952619 — 07/07/2022) rejecting the applicants' request for internal review of Commission Delegated Regulation (EU) 2021/2139; ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging, with regard to the preparation of the Delegated Regulation, breaches of Articles 6 to 8 of the Aarhus Convention, ([2]) Articles 9 and 10(2) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006, ([3]) and of Articles 10(4), 11(4) and 20(2) of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020. ([4])

2. Second plea in law, alleging, with regard to the objective of climate change mitigation, breaches of Article 37 of the Charter of Fundamental Rights of the European Union, of Article 191 TFEU and Article 19(1)(f) of Regulation 2020/852 as well as of Article 10(3)(a), 19(1)(a) and (j) and 19(3) of Regulation 2020/852.

3. Third plea in law, alleging, with regard to the objective of climate change adaptation, the breach of Article 10(2) of Regulation 1367/2006.

4. Fourth plea in law, alleging, with regard to the requirement of Do No Significant Harm (DNSH), breaches of Article 17(1)(d) of Regulation 2020/852 and of Article 10(2) of Regulation 1367/2006.

5. Fifth plea in law, alleging the breach of the obligation of motivation.

(1) Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ 2021 L 442, p. 1).

(2) Convention on access to information, public participation in decision-making and access to justice in environmental matters of 25 June 1998 (OJ 2005 L 124, p. 4).

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

(4) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13).

Action brought on 14 October 2022 — SE and SF v Council

(Case T-644/22)

(2022/C 472/51)

Language of the case: French

Parties

Applicants: SE, SF (represented by: S. Bonifassi, E. Fedorova, T. Bontinck, A. Guillerme and L. Burguin, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the General Court should:

— annul Regulation (EU) 2022/1273 (1) in so far as it amends Article 9(2) of Regulation (EU) 269/2014 (2) and creates a reporting obligation at the expense of the applicants;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council exceeded its competence concerning restrictive measures. According to the applicants, the reporting obligation is not a necessary measure to give effect to Decision 2014/145/CFSP (3) and that provision, therefore, encroaches on the competences of Member States to implement the restrictive measures. Furthermore, the Council lacked the competence to create and define, by itself, an infringement to a reporting obligation that does not fall within the scope of a restrictive measure, and to harmonise the penalties for that infringement.

2. Second plea in law, alleging a misuse of power, since the reporting obligation imposed within a strict time limit, coupled with the obligation on Member States to penalise the failure to comply with that obligation by a sanction regime consisting, in particular, of confiscations, was adopted with the exclusive or main purpose of achieving an end other than that stated.

3. Third plea in law, alleging infringement of the principle of proportionality, on the ground that the reporting obligation was not necessary and that the consequences of a failure to comply with the reporting obligation are, therefore, disproportionate with regard to the objective pursued by the regulation.

4. Fourth plea in law, alleging breach of the principle of legal certainty, on the ground that Article 1(4) of the contested regulation is neither clear nor precise and that its application is not foreseeable.

(1) 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 (OJ 2022 L 194, p. 1).
(2) Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6).
(3) Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine(OJ 2014 L 78, p. 16).

Action brought on 19 October 2022 — Lidl Stiftung v EUIPO — MHCS (Shade of the colour orange)

(Case T-652/22)

(2022/C 472/52)

Language in which the application was lodged: English

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Kefferpütz and K. Wagner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MHCS (Épernay, France)

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 trade mark No 747 949

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 16 August 2022 in Case R 118/2022-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to bear their own costs;

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

— in the alternative, if the trade mark at issue is not declared invalid, refer the case back to the Board of Appeal.

Pleas in law

— Infringement of Article 4 of Council Regulation (EC) No 40/94 and of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Inadmissible interpretation of the trade mark at issue by reference to external circumstances;

— Unlawful disregard of the description provided in defining the subject-matter of the trade mark at issue;

— Erroneous assumption that the graphic representation as such meets the requirement of Article 4 of Council Regulation (EC) No 40/94;

— Erroneous assumption that EUIPO had set legitimate expectations;

— Erroneous determination of the relevant public and its degree of attention;

— Incorrect restriction of the relevant market to champagne wines;

— Erroneous interpretation of the concept of acquisition of distinctiveness through use and disregard of the relevance of market surveys;

— Disregard of relevant observations submitted by the applicant;

— Insufficient basis as far as distinctiveness for Greece, Portugal Luxembourg and Ireland was assumed.

Action brought on 25 October 2022 — M&T 1997 v EUIPO — VDS Czmyr Kowalik (Door and window handles)

(Case T-654/22)

(2022/C 472/53)

Language in which the application was lodged: English

Parties

Applicant: M&T 1997, a.s. (Dobruška, Czech Republic) (represented by: T. Dobřichovský, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: VDS Czmyr Kowalik sp.k. (Świętochłowice, Poland)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: European Union design No 2 138 008-0031

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 29 August 2022 in Case R 29/2022-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— modify the contested decision so that the appeal brought by the applicant is upheld, the application for invalidity is dismissed and the other party to the proceedings before the Board of Appeal is ordered to pay the costs incurred by the applicant in the proceedings before the Board of Appeal and the Invalidity Division;

— order the other party to the proceedings before the Board of Appeal to pay the costs incurred by the applicant.

Pleas in law

— Infringement of Article 25(1)b of Council Regulation (EC) No 6/2002, read in conjunction with Article 6 thereof;

— Infringement of Article 64(1) of Council Regulation (EC) No 6/2002, read in conjunction with Article 65(1) thereof.

Action brought on 25 October 2022 — Torre Oria v EUIPO — Giramondi and Antonelli (WINE TALES RACCONTI DI VINO)

(Case T-655/22)

(2022/C 472/54)

Language in which the application was lodged: English

Parties

Applicant: Torre Oria, SL (Derramador-Requena, Spain) (represented by: Á. González López-Menchero and V. Valero Piña, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Simone Giramondi (Milan, Italy), Damiano Antonelli (Vignate, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark WINE TALES RACCONTI DI VINO — Application for registration No 18 194 623

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 August 2022 in Case R 822/2022-5

Form of order sought

The applicant claims that the Court should:

— partially revoke the contested decision;

— reject the contested EUTM application No. 18 194 623 for the designated services in class 35: 'Advertising; business management; business administration; office functions';

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 27 October 2022 — moderne Stadt v EUIPO (DEUTZER HAFEN)

(Case T-656/22)

(2022/C 472/55)

Language of the case: German

Parties

Applicant: moderne Stadt Gesellschaft zur Förderung des Städtebaues und der Gemeindeentwicklung mbH (Cologne, Germany) (represented by: G. Simon and L. Daams, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the EU word mark DEUTZER HAFEN — Application No 18 316 145

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 24 August 2022 in Case R 2195/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the principle of equal treatment.

Action brought on 27 October 2022 — moderne Stadt v EUIPO (DEUTZER HAFEN KÖLN)

(Case T-657/22)

(2022/C 472/56)

Language of the case: German

Parties

Applicant: moderne Stadt Gesellschaft zur Förderung des Städtebaues und der Gemeindeentwicklung mbH (Cologne, Germany) (represented by: G. Simon and L. Daams, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'DEUTZER HAFEN KÖLN' — Application No 18 401 434

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 24 August 2022 in Case R 2196/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) read in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(b) read in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the principle of equal treatment.

Action brought on 1 November 2022 — SkinIdent v EUIPO — Beiersdorf (NIVEA SKIN-IDENTICAL Q10)

(Case T-665/22)

(2022/C 472/57)

Language in which the application was lodged: German

Parties

Applicant: SkinIdent AG (Freienbach, Switzerland) (represented by: U. Hildebrandt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Beiersdorf AG (Hamburg, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark NIVEA SKIN-IDENTICAL Q10 — Application for registration No 18 041 739

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 August 2022 in Case R 1499/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and the decision of the Opposition Division of 1 July 2021 in Case B 3 091 527;

— order EUIPO to pay the costs.

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.

Action brought on 2 November 2022 — United Shipping Group v EUIPO — Baulies Gómez (UNITED WIND LOGISTICS)

(Case T-666/22)

(2022/C 472/58)

Language in which the application was lodged: German

Parties

Applicant: United Shipping Group GmbH & Co. KG (Hamburg, Germany) (represented by: J. Bornholdt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pablo Baulies Gómez (Rocafort, Spain)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark UNITED WIND LOGISTICS in the colours blue and black — International registration designating the European Union No 1 531 891

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 17 August 2022 in Case R 134/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— vary the contested decision to find that the appeal is well-founded, annul decision No B3 131 303 of the Opposition Division of 30 November 2021, and reject the opposition to the designation of the European Union in international registration No 1 531 891;

— order EUIPO to pay the costs.

Plea in law

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

Order of the General Court of 21 October 2022 — Iccrea Banca v Commission and SRB

(Joined Case T-386/18 and T-400/19) ([1])

(2022/C 472/59)

Language of the case: Italian

The President of the Tenth Chamber, Extended Composition has ordered that the case be removed from the register.

([1]) OJ C 294, 20.8.2018.

Order of the General Court of 20 October 2022 — Cecoforma and Sopexa v REA

(Case T-493/22) ([1])

(2022/C 472/60)

Language of the case: French

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

([1]) OJ C 380, 3.10.2022.

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