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For reasons of protection of personal data and/or confidentiality, some information contained in this issue cannot be disclosed anymore and therefore a new authentic version has been published.

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(2023/C 7/01)

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These texts are available on:

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 8 November 2022 (request for a preliminary ruling from the Schleswig-Holsteinisches Verwaltungsgericht — Germany) — Deutsche Umwelthilfe eV v Bundesrepublik Deutschland

(Case C-873/19) [1]

(Reference for a preliminary ruling — Environment — Aarhus Convention — Access to justice — Article 9(3) — Charter of Fundamental Rights of the European Union — Article 47, first paragraph — Right to effective judicial protection — Environmental association — Standing of such an association to bring an action before a national court against EC type-approval granted to certain vehicles — Regulation (EC) No 715/2007 — Article 5(2)(a) — Motor vehicles — Diesel engine — Pollutant emissions — Valve for exhaust gas recirculation (EGR valve) — Reduction of nitrogen oxide (NOx) emissions limited by a 'temperature window' — Defeat device — Authorisation of such a device where the need is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle — State of the art)

(2023/C 7/02)

Language of the case: German

Referring court

Schleswig-Holsteinisches Verwaltungsgericht

Parties to the main proceedings

Applicant: Deutsche Umwelthilfe eV

Defendant: Bundesrepublik Deutschland

Joined party: Volkswagen AG

Operative part of the judgment

1. Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a situation where an environmental association, authorised to bring legal proceedings in accordance with national law, is unable to challenge before a national court an administrative decision granting or amending EC type-approval which may be contrary to Article 5(2) of 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 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device can be justified under that provision only where it is established that that device strictly meets the need to avoid immediate risks of damage or accident to the engine, caused by a malfunction of a component of the exhaust gas recirculation system, of such a serious nature as to give rise to a specific hazard when a vehicle fitted with that device is driven. Furthermore, the 'need' for a defeat device, within the meaning of that provision, exists only where, at the time of the EC type-approval of that device or of the vehicle equipped with it, no other technical solution makes it possible to avoid immediate risks of damage or accident to the engine, which give rise to a specific hazard when driving the vehicle.

(1) OJ C 87, 16.3.2020.

Judgment of the Court (Grand Chamber) of 8 November 2022 — Fiat Chrysler Finance Europe v Ireland

(Joined Cases C-885/19 P and C-898/19 P) (1)

(Appeal — State aid — Aid implemented by the Grand Duchy of Luxembourg — Decision declaring the aid incompatible with the internal market and unlawful and ordering its recovery — Tax ruling — Advantage — Selectivity — Arm's length principle — Reference framework — National law applicable — 'Normal' taxation)

(2023/C 7/03)

Language of the case: English

Parties

Appellants: Fiat Chrysler Finance Europe (represented by N. de Boynes, lawyer, M. Doeding, Solicitor, M. Engel, Rechtsanwalt, F. Hoseinian, advokat, G. Maisto, A. Massimiano, avvocati, J. Rodríguez, abogado, M. Severi, avvocato, and A. Thomson, Solicitor), Ireland (represented by M. Browne, A. Joyce and J. Quaney, acting as Agents, and by B. Doherty, Barrister-at-Law, P. Gallagher, Senior Counsel, and S. Kingston, Senior Counsel)

Other parties to the proceedings: Grand Duchy of Luxembourg (represented by A. Germeaux and T. Uri, acting as Agents, and by J. Bracker, A. Steichen and D. Waelbroeck, lawyers), European Commission (represented by P.-J. Loewenthal and B. Stromsky, acting as Agents)

Operative part of the judgment

The Court:

1. Joins Cases C-885/19 P and C-898/19 P for the purposes of the judgment;

2. Sets aside the judgment of the General Court of the European Union of 24 September 2019, Luxembourg and Fiat Chrysler Finance Europe v Commission (T-755/15 and T-759/15, EU:T:2019:670);

3. Annuls Commission Decision (EU) 2016/2326 of 21 October 2015 on State aid SA.38375 (2014/C ex 2014/NN) which Luxembourg granted to Fiat;

4. Declares that there is no need to adjudicate on the appeal in Case C-885/19 P;

5. Orders each of the parties to bear its own costs in Case C-885/19 P;

6. Orders the European Commission to pay the costs of the appeal in Case C-898/19 P;

7. Orders the European Commission to pay the costs of the proceedings at first instance.

(1) OJ C 45, 10.2.2020.
OJ C 54, 17.2.2020.

Judgment of the Court (First Chamber) of 10 November 2022 — European Commission v Valencia Club de Fútbol, SAD, Kingdom of Spain

(Case C-211/20 P) ([1])

(Appeal — State aid — Public guarantee granted by a public entity — Loans to three football clubs from the Community of Valencia (Valencia CF, Hércules CF and Elche CF) — Decision declaring the aid to be incompatible with the internal market — Annulment of the decision in so far as it concerns Valencia CF — Concept of 'advantage' — Assessment of the existence of an advantage — Guarantee Notice — Interpretation — Duty of care on the part of the European Commission — Burden of proof — Distortion)

(2023/C 7/04)

Language of the case: Spanish

Parties

Appellant: European Commission (represented by G. Luengo, P. Němečková and B. Stromsky, acting as Agents)

Other parties to the proceedings: Valencia Club de Fútbol SAD (represented by G. Cabrera López, J.R. García-Gallardo Gil-Fournier and D. López Rus, abogados), Kingdom of Spain (represented by M.J. Ruiz Sánchez, acting as Agent)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Commission to bear its own costs and to pay those incurred by Valencia Club de Fútbol SAD;

3. Orders the Kingdom of Spain to bear its own costs.

([1]) OJ C 262, 10.8.2020.

Judgment of the Court (Grand Chamber) of 8 November 2022 (requests for a preliminary ruling from the Raad van State, Rechtbank Den Haag, zittingsplaats's-Hertogenbosch — Netherlands) — Staatssecretaris van Justitie en Veiligheid v C, B (C-704/20), X v Staatssecretaris van Justitie en Veiligheid (C-39/21)

(Joined Cases C-704/20 and C-39/21) ([1])

(References for a preliminary ruling — Area of freedom, security and justice — Detention of third-country nationals — Fundamental right to liberty — Article 6 of the Charter of Fundamental Rights of the European Union — Conditions governing the lawfulness of detention — Directive 2008/115/EC — Article 15 — Directive 2013/33/EU — Article 9 — Regulation (EU) No 604/2013 — Article 28 — Review of the lawfulness of detention and of the continuation of a detention measure — Ex officio review — Fundamental right to an effective judicial remedy — Article 47 of the Charter of Fundamental Rights)

(2023/C 7/05)

Language of the case: Dutch

Referring courts

Raad van State, Rechtbank Den Haag, zittingsplaats's-Hertogenbosch

Parties to the main proceedings

Applicants: Staatssecretaris van Justitie en Veiligheid (C-704/20), X (C-39/21)

Defendants: C, B (C-704/20), Staatssecretaris van Justitie en Veiligheid (C-39/21)

Operative part of the judgment

Article 15(2) and (3) 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, Article 9(3) and (5) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, and Article 28(4) of 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, read in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that

a judicial authority's review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise of its own motion, on the basis of the material in the file brought to its attention, as supplemented or clarified during the adversarial proceedings before it, any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned.

(1) OJ C 128, 12.4.2021.

Judgment of the Court (Second Chamber) of 10 November 2022 (request for a preliminary ruling from the Juzgado de lo Mercantil nº 7 de Barcelona — Spain) — AD and Others v PACCAR Inc, DAF TRUCKS NV, DAF Trucks Deutschland GmbH

(Case C-163/21) (1)

(Reference for a preliminary ruling — Competition — Compensation for harm caused by a practice prohibited under Article 101(1) TFEU — Collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) — Directive 2014/104/EU — Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union — Article 22(2) — Applicability ratione temporis — First subparagraph of Article 5(1) — Concept of relevant evidence which lies in the control of the defendant or a third party — Article 5(2) — Disclosure of specified items of evidence or relevant categories of evidence on the basis of reasonably available facts — Article 5(3) — Review of the proportionality of the request to disclose evidence — Balancing the legitimate interests of the parties and third parties — Scope of the obligations resulting from those provisions)

(2023/C 7/06)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil nº 7 de Barcelona

Parties to the main proceedings

Applicants: AD and Others

Defendants: PACCAR Inc, DAF TRUCKS NV, DAF Trucks Deutschland GmbH

Operative part of the judgment

The first subparagraph of Article 5(1) of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

must be interpreted as meaning that the reference therein to the disclosure of relevant evidence in the control of the defendant or a third party also covers those documents which the party to whom the request to disclose evidence is addressed must create ex novo by compiling or classifying information, knowledge or data in its possession, subject to strict compliance with Article 5(2) and (3) of that directive, which requires the national courts seised to restrict the disclosure of evidence to that which is relevant, proportionate and necessary, taking into account the legitimate interests and fundamental rights of that party.

(1) OJ C 252, 28.6.2021.

Judgment of the Court (Fourth Chamber) of 10 November 2022 (request for a preliminary ruling from the Okrazhen sad — Burgas — Bulgaria) — Criminal proceedings against DELTA STROY 2003

(Case C-203/21) (1)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2005/212/JHA — Applicability — Imposition of a financial penalty on a legal person for non-payment of tax debts — Concept of 'confiscation' — Articles 48, 49 and 52 of the Charter of Fundamental Rights of the European Union — Penalties of a criminal nature — Principles of the presumption of innocence and the legality and proportionality of criminal offences and penalties — Rights of the defence — Imposition of a criminal penalty on a legal person for an offence committed by the representative of that legal person — Parallel criminal proceedings against that representative that have not been concluded — Proportionality)

(2023/C 7/07)

Language of the case: Bulgarian

Referring court

Okrazhen sad — Burgas

Party in the main proceedings

DELTA STROY 2003

Intervening party: Okrazhna prokuratura — Burgas

Operative part of the judgment

Article 48 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation under which a national court may impose on a legal person a criminal penalty for an offence for which a natural person who has the power to bind or represent that legal person is allegedly liable, where that legal person has not been put in a position to dispute the reality of that offence.

(1) OJ C 228, 14.6.2021.

Judgment of the Court (Second Chamber) of 10 November 2022 (request for a preliminary ruling from the Østre Landsret — Denmark) — Dansk Akvakultur, acting for AquaPri A/S v Miljø- og Fødevareklagenævnet

(Case C-278/21) ([1])

(Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(3) — Assessment of a project likely to affect a protected site — Obligation to conduct an assessment — Continuation of the economic activity of an operation already authorised at the planning stage, under unchanged conditions, where authorisation has been granted following an incomplete assessment)

(2023/C 7/08)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Dansk Akvakultur, acting for AquaPri A/S

Defendant: Miljø- og Fødevareklagenævnet

Intervening parties: Landbrug & Fødevarer

Operative part of the judgment

1. The first sentence of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

must be interpreted as meaning that the continuation, under unchanged conditions, of the activity of an operation which has already been authorised at the planning stage must not, in principle, be subject to the assessment obligation laid down in that provision. However, where, on the one hand, the assessment which preceded that authorisation related solely to the impact of that project considered individually, disregarding its combination with other projects, and, on the other hand, that authorisation makes such continuation subject to obtaining a new authorisation provided for by national law, the latter must be preceded by a new assessment in accordance with the requirements of that provision.

2. The first sentence of Article 6(3) of Directive 92/43

must be interpreted as meaning that, in order to determine whether it is necessary to subject the continuation of the activity of an operation which has already been authorised at the planning stage following an assessment which does not comply with the requirements of that provision to a new assessment in accordance with those requirements and, if so, in order to carry out that new assessment, account must be taken of the assessments carried out in the meantime, such as those preceding the adoption of a National River Basin Management Plan and a Natura 2000 plan, covering, inter alia, the area in which the site likely to be affected by that activity is situated, if those earlier assessments are relevant and if the findings, assessments and conclusions contained therein are complete, accurate and definitive.

([1]) OJ C 278, 12.7.2021.

Judgment of the Court (Fifth Chamber) of 10 November 2022 (request for a preliminary ruling from the Înalta Curte de Casație și Justiție — Romania) — Zenith Media Communications SRL v Consiliul Concurenței

(Case C-385/21) ([1])

(Reference for a preliminary ruling — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Penalty imposed by the national competition authority — Determination of the amount of the fine — Consideration of turnover in the profit and loss account — Request for the national competition authority to take into account a different turnover — Refusal by the Competition Council — Real situation of the undertaking concerned — Principle of proportionality)

(2023/C 7/09)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: Zenith Media Communications SRL

Defendant: Consiliul Concurenței

Operative part of the judgment

Article 4(3) TEU and Article 101 TFEU must be interpreted as precluding national legislation or practice under which, for the purposes of calculating the fine imposed on an undertaking for infringement of Article 101 TFEU, the national competition authority is required, in all circumstances, to take into account the turnover of that undertaking as shown in its profit and loss account, without having the possibility of examining evidence put forward by that undertaking to show that that turnover does not reflect its real economic situation and that, consequently, another amount which reflects that situation should be taken into account as turnover, provided that that evidence is precise and documented.

([1]) OJ C 391, 27.9.2021.

Judgment of the Court (Ninth Chamber) of 10 November 2022 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — VP Capital NV v Belgische Staat

(Case C-414/21) ([1])

(Reference for a preliminary ruling — Freedom of establishment — Article 49 and 54 TFEU — Transfer of a company's registered office to a Member State other than that in which it was incorporated — Recovery of write-downs recorded prior to the transfer — Exemption — Comparability of situations)

(2023/C 7/10)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Appellant: VP Capital NV

Respondent: Belgische Staat

Operative part of the judgment

Article 49 TFEU does not preclude national tax legislation under which increases in value of shares in companies recorded by a company in a Member State, after the transfer of its registered office in that Member State, are treated as being expressed but unrealised capital gains, without taking into account whether those shares gave rise to the recording of write-downs by that company on a date on which it was a taxable resident of another Member State.

(1) OJ C 368, 13.9.2021.

Judgment of the Court (Tenth Chamber) of 10 November 2022 — ITD, Brancheorganisation for den danske vejgodstransport A/S, Danske Fragtmænd A/S v European Commission

(Case C-442/21 P) (1)

(Appeal — State aid — Postal sector — Compensation for the discharge of a universal service obligation — Calculation — Net avoided cost methodology — Taking into account the intangible benefits of the universal service — Use of funds granted as compensation — Guarantee covering the redundancy costs of a certain category of employee in the event of insolvency of the universal service provider — Accounting allocation of common costs between universal service activities and non-universal service activities — Decision declaring the aid compatible with the internal market)

(2023/C 7/11)

Language of the case: English

Parties

Appellants: ITD, Brancheorganisation for den danske vejgodstransport A/S, Danske Fragtmænd A/S (represented by L. Sandberg-Mørch, advokat)

Other parties to the proceedings: European Commission (represented by K. Blanck, J. Carpi Badía and L. Nicolae, acting as Agents), Jørgen Jensen Distribution A/S, Dansk Distribution A/S, Kingdom of Denmark (represented initially by V. Pasternak Jørgensen and M. Søndahl Wolff, acting as Agents, and by R. Holdgaard, advokat, and subsequently by M. Søndahl Wolff, acting as Agent, and by R. Holdgaard, advokat)

Intervener in support of the European Commission: Post Danmark (represented by O. Koktvedgaard, advokat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S to bear, in addition to their own costs, those incurred by the European Commission;

3. Declares that the Kingdom of Denmark and Post Danmark are to bear their own costs.

(1) OJ C 382, 20.9.2021.

Judgment of the Court (Eighth Chamber) of 10 November 2022 (request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil — Slovenia) — SHARENGO najem in zakup vozil d.o.o. v Mestna občina Ljubljana

(Case C-486/21) ([1])

(Reference for a preliminary ruling — Public system for the rental and shared use of electric cars — Distinction between the concepts of 'services concessions' and 'public supply contracts' — Directive 2014/23/EU — Article 5(1)(b) — Article 20(4) — Concept of 'mixed contracts' — Article 8 — Determining the value of a services concession — Criteria — Article 27 — Article 38 — Directive 2014/24/EU — Article 2(1), points 5 and 8 — Implementing Regulation (EU) 2015/1986 — Annex XXI — Possibility of imposing a condition concerning the registration of a specific professional activity under national law — Impossibility of imposing that condition on all members of a temporary business association — Regulation (EC) No 2195/2002 — Article 1(1) — Obligation to refer exclusively to the 'Common Procurement Vocabulary' in concession documents — Regulation (EC) No 1893/2006 — Article 1(2) — Impossibility of referring to the 'NACE Rev. 2' nomenclature in the concession documents)

(2023/C 7/12)

Language of the case: Slovenian

Referring court

Državna revizijska komisija za revizijo postopkov oddaje javnih naročil

Parties to the main proceedings

Applicant: SHARENGO najem in zakup vozil d.o.o.

Defendant: Mestna občina Ljubljana

Operative part of the judgment

1. Article 5(1)(b) of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, as amended by Commission Delegated Regulation (EU) 2019/1827 of 30 October 2019,

must be interpreted as meaning that

an operation whereby a contracting authority intends to entrust the establishment and operation of a service consisting of the hire and sharing of electric vehicles to an economic operator whose financial contribution is mostly allocated for the purchase of those vehicles, and in which the revenue of that economic operator will derive essentially from the fees paid by the users of that service constitutes a 'services concession', since such characteristics are such as to establish that the risk linked to the operation of the services under concession has been transferred to that economic operator.

2. Article 8 of Directive 2014/23, as amended by Delegated Regulation 2019/1827,

must be interpreted as meaning that

in order to determine whether the threshold for applicability of that directive is reached, the contracting authority must estimate the 'total turnover of the concessionaire generated over the duration of the contract, net of [value-added tax (VAT)]', taking into account the fees which users will pay to the concessionaire, together with contributions and costs borne by the contracting authority. However, the contracting authority may also take the view that the threshold laid down for the application of Directive 2014/23, as amended by Delegated Regulation 2019/1827, is reached where the investments and costs to be borne by the concessionaire, alone or with the contracting authority, throughout the period of application of the concession contract manifestly exceed that threshold of applicability.

3. Article 38(1) of Directive 2014/23, as amended by Delegated Regulation 2019/1827, read in conjunction with point 7 (b) of Annex V to and recital 4 of that directive, and with Article 4 and point III.1.1 of Annex XXI to Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011,

must be interpreted as meaning that

a contracting authority may require, as criteria for the selection and qualitative assessment of candidates, that economic operators be enrolled on a trade register or on a professional register, provided that an economic operator can rely on being enrolled on a similar register in the Member State in which it is established.

4. Article 38(1) of Directive 2014/23, as amended by Delegated Regulation 2019/1827, read in conjunction with Article 27 of that directive and Article 1 of Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV),

must be interpreted as

precluding a contracting authority, which requires economic operators to be enrolled on the trade register or the professional register of a Member State of the European Union, from referring not to the Common Procurement Vocabulary (CPV) made up of CPV codes, but to the NACE Rev. 2 nomenclature, as established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.

5. Article 38(1) to (2) of Directive 2014/23, as amended by Delegated Regulation 2019/1827, read in conjunction with Article 26(2) of that directive,

must be interpreted as meaning that

a contracting authority may not, without infringing the principle of proportionality guaranteed by the first subparagraph of Article 3(1) of that directive, require each of the members of a temporary business association to be enrolled, in a Member State, on the trade register or the professional register with a view to the pursuit of the activity of renting and leasing of cars and light motor vehicles.

(1) OJ C 471, 22.11.2021.

Judgment of the Court (Fifth Chamber) of 10 November 2022 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Eircom Limited v Commission for Communications Regulation

(Case C-494/21) (1)

(Reference for a preliminary ruling — Electronic communications networks and services — Universal service and users' rights — Directive 2002/22/EC (Universal Service Directive) — Article 12 — Costing and financing of universal service obligations — Single universal service provider and multiple telecommunications services providers operating in the market — Determination as to whether an unfair burden exists)

(2023/C 7/13)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Plaintiff: Eircom Limited

Defendant: Commission for Communications Regulation

Notice parties: Vodafone Ireland Limited, Three Ireland (Hutchison) Limited, Three Ireland Services (Hutchison) Limited

Operative part of the judgment

Articles 12 and 13 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive),

must be interpreted as requiring the competent national regulatory authority, in order to determine whether the net cost of universal service obligations represents an unfair burden on an operator entrusted with such obligations, to examine the characteristics particular to that operator, taking account of its situation relative to that of its competitors in the relevant market.

([1]) OJ C 431, 25.10.2021.

Judgment of the Court (Eighth Chamber) of 10 November 2022 (request for a preliminary request from the Gerechtshof's-Hertogenbosch — Netherlands) — Taxi Horn Tours BV v gemeente Weert, gemeente Nederweert, Touringcars VOF

(Case C-631/21) ([1])

(Reference for a preliminary ruling — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2014/24/EU — Award of contracts — Article 2(1)(10) — Concept of an 'economic operator' — Inclusion of a general partnership without legal personality — Article 19(2) and Article 63 — Joint undertaking or reliance on the capacities of other entities of persons linked with that undertaking — Article 59(1) — Obligation to submit one or several European Single Procurement Documents (ESPD) — Purpose of the ESPD)

(2023/C 7/14)

Language of the case: Dutch

Referring court

Gerechtshof's-Hertogenbosch

Parties to the main proceedings

Applicant: Taxi Horn Tours BV

Defendants: gemeente Weert, gemeente Nederweert, Touringcars VOF

Operative part of the judgment

Article 59(1) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, read in conjunction with Article 2(1)(10) and Article 63 of that directive, and with Annex 1 to Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document,

must be interpreted as meaning that

a joint undertaking which, although not a legal person, has the form of a firm governed by the national legislation of a Member State, which appears on the commercial register of that Member State, which may have been set up on either a temporary or a permanent basis and all the joint partners of which are active on the same market as that joint undertaking and are jointly and severally liable for the proper performance of the obligations which it has entered into, must provide the contracting authority with only its own European Single Procurement Document (ESPD) when it intends to participate, on an individual basis, in a public procurement procedure or to submit a tender if it shows that it can perform the contract in question using only its own personnel and materials. If, on the other hand, for the performance of a public contract, that joint undertaking considers that it must seek the own resources of certain partners, it must be regarded as having recourse to the capacities of other entities, within the meaning of Article 63 of Directive 2014/24, and must then submit not only an ESPD for itself, but also an ESPD for each of the partners whose capacities it intends to use.

(1) OJ C 24, 17.1.2022.

Judgment of the Court (Eighth Chamber) of 10 November 2022 — Laboratoire Pareva v Biotech3D Ltd & Co. KG, European Commission, French Republic, European Chemicals Agency

(Case C-702/21 P) (1)

(Appeal — Biocidal products — Regulation (EU) No 528/2012 — Delegated Regulation (EU) No 1062/2014 — Active substance PHMB (1415; 4.7) — Refusal of approval as an existing active substance for use in biocidal products of product-types 1, 5 and 6 — Approval as an existing active substance for use in biocidal products of product-types 2 and 4 — Teratogenic effect — Human health risk assessment)

(2023/C 7/15)

Language of the case: English

Parties

Appellant: Laboratoire Pareva (represented by S. Englebert, M. Grunchard and M. Ombredane, avocats, P. Sellar, advocaat, and by K. Van Maldegem, avocat)

Other parties to the proceedings: Biotech3D Ltd & Co. KG, European Commission (represented by R. Lindenthal and K. Mifsud-Bonnici, acting as Agents), French Republic (represented by G. Bain and J.-L. Carré, acting as Agents), European Chemicals Agency (ECHA) (represented by C. Buchanan, M. Heikkilä and T. Zbihlej, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Laboratoire Pareva to pay the costs;

3. Orders the French Republic to bear its own costs.

(1) OJ C 64, 7.2.2022.

Order of the Court (Ninth Chamber) of 9 November 2022 — (request for a preliminary ruling from the Giudice di pace di Lecce — Italy) — Criminal proceedings against AB

(Case C-243/22) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Scope — Article 49 — Principles of legality and proportionality of criminal offences and penalties — Exclusion of the criminal liability of the infringement on account of its lack of a particularly serious nature — National case-law prohibiting the application of a national rule before the Magistrate — Lack of connection to EU law — Clear lack of jurisdiction of the Court)

(2023/C 7/16)

Language of the case: Italian

Referring court

Giudice di pace di Lecce

Criminal proceedings against

AB

Operative part of the order

The Court of Justice of the European Union clearly lacks jurisdiction to answer the questions referred by the Giudice di pace di Lecce (Magistrate, Italy), by decision of 28 January 2022.

([1]) Date lodged: 6 April 2022

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 20 September 2022 — Dyrektor Izby Administracji Skarbowej w Bydgoszczy v B. sp. j.

(Case C-606/22)

(2023/C 7/17)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Dyrektor Izby Administracji Skarbowej w Bydgoszczy

Respondent: B. sp. j.

Question referred

Must Articles 1(2) and 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) and the principles of neutrality, proportionality and equal treatment be interpreted as precluding a practice on the part of the national tax authorities, in so far as that practice does not allow — on the grounds of lack of a domestic legal basis and unjust enrichment — an adjustment of the VAT taxable amount and output tax if sales of goods and services to consumers at an inflated rate of VAT were registered using a cash register and evidenced by cash register receipts rather than by VAT invoices, with the price (gross sales value) remaining unchanged as a result of that adjustment?

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

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 29 September 2022 — Koninklijke Nederlandse Lawn Tennisbond v Autoriteit Persoonsgegevens

(Case C-621/22)

(2023/C 7/18)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Appellant: Koninklijke Nederlandse Lawn Tennisbond

Respondent: Autoriteit Persoonsgegevens

Questions referred

1. How should the District Court interpret the term 'legitimate interest'?

2. Should the term be interpreted as the respondent interprets it? Are these interests which exclusively pertain to the law, constitute law, are enshrined in a law? Or;

3. Can any interest be a legitimate interest, provided that interest is not in breach of the law? More specifically: should a purely commercial interest, such as the interest at issue here, the provision of personal data in return for payment without the consent of the data subject concerned, be regarded as a legitimate interest under certain circumstances? If so, what circumstances determine whether a purely commercial interest is a legitimate interest?

Request for a preliminary ruling from the Tallinna Ringkonnakohus (Estonia) lodged on 14 October 2022 — Globex International OÜ v Duclos Legnostrutture S.r.l. and RD

(Case C-647/22)

(2023/C 7/19)

Language of the case: Estonian

Referring court

Tallinna Ringkonnakohus

Parties to the main proceedings

Applicant: Globex International OÜ

Defendants: Duclos Legnostrutture S.r.l. and RD

Questions referred

1. Is Article 1(2) of Regulation No 1896/2006 ([1]) to be interpreted as meaning that a rule of national law such as Paragraph 371(1)(4) of the Estonian Code of Civil Procedure (under which a court may not admit an action inter alia where an order terminating proceedings which was made by an Estonian court in a dispute between the same parties concerning the same subject matter and on the same basis and which precludes further recourse to the courts in the same matter has become final) is an obstacle to the hearing of an action regarding a claim in respect of which a European order for payment has been issued and declared enforceable by a court of a Member State?

2. If the first question is, in principle, to be answered to the effect that an obstacle exists, does the answer change where it appears that, after the European order for payment has been declared enforceable, service of the order for payment was not consistent with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006?

3. If the second question is to be answered to the effect that an obstacle exists: May the court which issued and declared enforceable the European order for payment decide, of its own motion or upon application by the claimant, that the declaration of enforceability of the order for payment is invalid where it appears that, after the European order for payment has been declared enforceable, service of the order for payment was not consistent with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006?

4. If the third question is to be answered in the affirmative: May the court which issued and declared enforceable the European order for payment, irrespective of the conduct, termination or outcome of the proceedings on enforcement before the court in the Member State of enforcement, decide on the invalidity of the declaration of enforceability of the order for payment?

(1) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 19 October 2022 — I (*) GmbH & Co. KG v Hauptzollamt HZA (*)

(Case C-655/22)

(2023/C 7/20)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: I (*) GmbH & Co. KG

Defendant: Hauptzollamt HZA (*)

Questions referred

1. Is Article 2 of Regulation No 1360/2013 (1) to be interpreted as meaning that a sugar manufacturer should have submitted its claim for repayment of levies unduly paid before 30 September 2014?

2. If the first question is answered in the negative: In a case such as this (definitively fixed levies applied in breach of EU law, the reimbursement of which was requested only one year after Regulation No 1360/2013 retroactively established a lower coefficient), is the competent authority entitled to refuse to reimburse production levies unduly paid on the basis of national provisions on the force of res judicata, of the time limit for levy assessments under national law and of the principle of legal certainty under EU law?

(1) Council Regulation (EU) No 1360/2013 of 2 December 2013 fixing the production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years, the coefficient required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years and the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy to be charged for the 2002/2003, 2003/2004 and 2005/2006 marketing years (OJ 2013, L 343, p. 2).

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 19 October 2022 — Askos Properties EOOD v Zamestnik izpalnitelen direktor na Darzhaven fond 'Zemedelie'

(Case C-656/22)

(2023/C 7/21)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant in cassation: Askos Properties EOOD

Respondent in cassation: Zamestnik izpalnitelen direktor na Darzhaven fond 'Zemedelie'

Questions referred

1. [The referring court asks] how to interpret Article 2(2)(f) of Regulation (EU) No 1306/2013 ([1]) of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, according to which, for the purposes of the financing, management and monitoring of the CAP, 'force majeure' and 'exceptional circumstances' may, in particular, be recognised in the case of the expropriation of all or a large part of the holding if that expropriation could not have been anticipated on the day of lodging the application, and, in particular, whether force majeure or exceptional circumstances in the form of an expropriation of all or a large part of the holding is present in the case where a contract for the use of municipal agricultural land (pastures, grassland and meadows) concluded between a municipal administration and a beneficiary under Measure 211, entitled 'Payments to farmers in mountain areas facing natural handicaps', of the Rural Development Programme for the period 2007-2013 is terminated in implementation of a change to the Bulgarian legislation which could not have been anticipated by the beneficiary on the day of lodging the application.

2. Is the situation provided for in Article 47(3) of Regulation (EU) No 1305/2013 ([2]) of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 present in the case where an agreement for the lease of municipal land to the beneficiary under Measure [211], entitled 'Payments to farmers in mountain areas facing natural handicaps', is terminated as a result of a change to national legislation amending and supplementing the Law on the Ownership and Use of Agricultural Land so as to make the possession of a livestock holding and the declaration by the farmer of a certain number of livestock to the Bulgarian Food Safety Authority new conditions for the renting or leasing of municipal land, in accordance with Article [37i](4) of the Law on the Ownership and Use of Agricultural Land, and that change could not have been anticipated either by the beneficiary or by the administrative authority on the day on which the application was lodged?

([1]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([2]) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013, L 347, p. 487).

Action brought on 2 November 2022 — Republic of Poland v Council of the European Union

(Case C-675/22)

(2023/C 7/22)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas ([1]) in its entirety;

— order the Council of the European Union to pay the costs;

— in the alternative, should the Court find that the legal basis of the contested regulation is correct, annul Article 5(1) and (2) of the contested regulation.

Pleas in law and main arguments

The Republic of Poland raises the following pleas in respect of the contested regulation:

1. Plea alleging that the legal basis for the adoption of the regulation was incorrect and, consequently, that Article 192(2)(c) TFEU, in conjunction with the second subparagraph of Article 194(2) thereof, was infringed in so far as the contested regulation was not adopted on the basis of Article 192(2)(c) TFEU, which requires the Council to act unanimously, despite the fact that that regulation significantly affects a Member State's choice between different energy sources and the general structure of its energy supply.

   In respect of the contested regulation, Poland raises, first, the plea that its legal basis, namely Article 122(1) TFEU, is incorrect. Poland submits that the main objective of the contested regulation is to have a significant effect on the conditions for exploiting energy resources, the choice between different energy sources and the general structure of a Member State's energy supply. Since that regulation significantly affects the freedom to shape the energy mix, it should have been adopted on the basis of Article 192(2)(c) TFEU, to which the second subparagraph of Article 194(2) TFEU refers, that is to say, in accordance with a special legislative procedure under which the Council acts unanimously.

2. Plea alleging breach of the principle of legal certainty by conferring on the EU institutions a discretionary power with regard to the triggering of a Union alert and by failing to explain how the measures contained in the regulation are intended to achieve its objectives.

3. Plea alleging breach of the principle of energy solidarity.

([1]) OJ 2022 L 206, p. 1.

Appeal brought on 8 November 2022 by Methanol Holdings (Trinidad) Ltd against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 14 September 2022 in Case T-744/19, Methanol Holdings (Trinidad) v Commission

(Case C-688/22 P)

(2023/C 7/23)

Language of the case: English

Parties

Appellant: Methanol Holdings (Trinidad) Ltd (represented by: B. Servais, and V. Crochet, avocats)

Other parties to the proceedings: European Commission, Achema AB, Grupa Azoty S.A., Grupa Azoty Zakłady Azotowe Puławy S.A.

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— accept the application at first instance; and

— order the Commission and any intervening party to pay the costs including those incurred at first instance;

or alternatively

— refer the case back to the General Court for reconsideration; and

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

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

First, the General Court misinterpreted the rules of Articles 3(2), 3(3) and 9(4) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] (the 'Basic Regulation') when defining the export price for the purpose of the undercutting and underselling margins calculation in case of exports to the European Union through related entities and, as a result, erroneously concluded that the Commission did not violate Articles 3(1), 3(2), 3(3), 3(5) to 3(8) and 9(4) of the Basic Regulation.

Second, the General Court misconstrued the arguments put forth by Methanol Holdings (Trinidad) Limited in the Reply regarding the Commission's price depression and price suppression analysis and, as a result, mistakenly declared them inadmissible.

[1] OJ 2016 L 176, p. 21.

GENERAL COURT

Judgment of the General Court of 19 October 2022 — JS v SRB

(Case T-270/20) ([1])

(Civil service — Members of the temporary staff — Appraisal report — 2018 appraisal exercise — Manifest error of assessment — Principle of impartiality — Right to a fair hearing — Article 26 of the Staff Regulations — Duty to have regard for the welfare of staff — Liability)

(2023/C 7/24)

Language of the case: English

Parties

Applicant: JS (represented by L. Levi and A. Champetier, lawyers)

Defendant: Single Resolution Board (SRB) (represented by L. Forestier, acting as Agent, and by D. Waelbroeck and A. Duron, lawyers)

Re:

By his action under Article 270 TFEU, lodged at the Court Registry on 7 May 2020, the applicant seeks, first, annulment of his appraisal report for 2018 and of the decision of 22 January 2020 rejecting his complaint and, secondly, compensation for the damage which he claims to have suffered as a result.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders JS to pay the costs.

([1]) OJ C 247, 27.7.2020.

Judgment of the General Court of 19 October 2022 — JS v SRB

(Case T-271/20) ([1])

(Civil service — Members of the temporary staff — Time limit for complaints — Admissibility — Psychological harassment — Article 12a of the Staff Regulations — Request for assistance — Article 24 of the Staff Regulations — Rejection of the request — Absence of prima facie evidence — Duty to have regard for the welfare of staff — Liability)

(2023/C 7/25)

Language of the case: English

Parties

Applicant: JS (represented by: L. Levi and A. Champetier, lawyers)

Defendant: Single Resolution Board (represented by: L. Forestier and H. Ehlers, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

By his action based on Article 270 TFEU, the applicant seeks, first, annulment of the decision of the Single Resolution Board (SRB) of 14 June 2019 rejecting his request for assistance submitted on 2 May 2019 and, in so far as necessary, of the decision of the SRB of 23 January 2020 rejecting his complaint against the decision of 14 June 2019 and, second, compensation for the harm which he claims to have suffered as a result of those decisions.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders JS to pay the costs.

([1]) OJ C 247, 27.7.2020.

Judgment of the General Court of 26 October 2022 — KD v EUIPO

(Case T-298/20) ([1])

(Civil service — Members of the temporary staff — 2019 Appraisal exercise — Appraisal report — Pre-litigation procedure — Admissibility — Obligation to state reasons — Rights of the defence — Duty of care — Liability — Non-material damage)

(2023/C 7/26)

Language of the case: English

Parties

Applicant: KD (represented by S. Pappas, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO) (represented by K. Tóth, acting as Agent, and by B. Wägenbaur, lawyer)

Re:

By her action based on Article 270 TFEU and brought on 22 May 2020, the applicant seeks, first, annulment of her appraisal report for the 2019 appraisal exercise and, secondly, compensation in respect of the non-material damage she claims to have suffered.

Operative part of the judgment

The Court:

1. Annuls KD's appraisal report in respect of the 2019 appraisal exercise;

2. Dismisses the action as to the remainder;

3. Orders the European Union Intellectual Property Office (EUIPO), in addition to bearing its own costs, to pay three quarters of the costs incurred by KD;

4. Orders KD to pay a quarter of her own costs.

([1]) OJ C 262, 10.8.2020.

Judgment of the General Court of 26 October 2022 — LE v Commission

(Case T-475/20) ([1])

(Grant agreement concluded in the framework of the Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — Debit notes issued by the Commission for the recovery of grants awarded by contract — Enforceable decision — Article 299 TFEU)

(2023/C 7/27)

Language of the case: English

Parties

Applicant: LE (represented by: M. Straus, lawyer)

Defendant: European Commission (represented by: L. André, J. Estrada de Solà and S. Romoli, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of Commission Decision C(2020) 3988 final of 9 June 2020 relating to the recovery of a principal amount of EUR 275 915,12 from it.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders LE to pay the costs, including those relating to the proceedings for interim measures.

([1]) OJ C 414, 30.11.2020.

Judgment of the General Court of 19 October 2022 — Ighoga Region 10 and Others v Commission

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

(State aid — Construction of a hotel and congress centre in Ingolstadt — Decision finding no State aid — Procedural rights of interested parties — Failure to initiate formal investigation procedure — No serious difficulties)

(2023/C 7/28)

Language of the case: German

Parties

Applicants: Interessengemeinschaft der Hoteliers und Gastronomen Region 10 e.V. (Ighoga Region 10) (Ingolstadt, Germany), MJ, MK (represented by: A. Bartosch, lawyer)

Defendant: European Commission (represented by: B. Stromsky and K. Blanck, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: J. Möller, acting as Agent)

Re:

By their action under Article 263 TFEU, the applicants seek the annulment of Decision C(2020) 2623 final of the European Commission of 28 April 2020 declaring, at the end of the preliminary examination stage in State aid procedure SA. 48582 (2017/FC), that the measures referred to in the complaint brought on 4 July 2017 by Ighoga Region 10 and relating to the ongoing construction of the Ingolstadt Congress Centre (Germany) and a neighbouring hotel did not constitute State aid implemented by Germany in favour of the Maritim Group and KHI Immobilien GmbH.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Interessengemeinschaft der Hoteliers und Gastronomen Region 10 e.V. (Ighoga Region 10), MJ and MK to bear their own costs and to pay those incurred by the European Commission;

3. Orders the Federal Republic of Germany to bear its own costs.

(1) OJ C 414, 30.11.2020.

Judgment of the General Court of 19 October 2022 — MV v Commission

(Case T-624/20) (1)

(Civil service — Officials — Recruitment — Notice of open competition EPSO/AD/364/19 (AD 7) — Decision of the Selection Board to exclude the applicant from the next stage of the competition — Competition eligibility requirements — Insufficient professional experience — Obligation to state reasons — Manifest error of assessment — Rules on languages — Equal treatment)

(2023/C 7/29)

Language of the case: English

Parties

Applicant: MV (represented by G. Pandey, D. Rovetta and V. Villante, lawyers)

Defendant: European Commission (represented by T. Lilamand and M. Brauhoff, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by M. Bauer and M. Alver, acting as Agents)

Re:

By his action based on Article 270 TFEU, the applicant seeks, first, annulment of the decision of the competition selection board of 29 October 2019 rejecting his request for review of the decision of 5 June 2019 not to admit him to the next stage of Open Competition EPSO/AD/364/19 — Security Officers (AD 7), the notice of competition and the draft list of officials selected to take part in the competition and, second, compensation for the damage allegedly suffered by him as a result of those acts.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders MV to bear his own costs and to pay those incurred by the European Commission;

3. Orders the Council of the European Union to bear its own costs.

(1) OJ C 443, 21.12.2020.

Judgment of the General Court of 26 October 2022 — Ovsyannikov v Council

(Case T-714/20) ([1])

(Common foreign and security policy — Restrictive measures taken in respect of actions undermining or threatening Ukraine — Freezing of funds — Restrictions on entry into the territory of the Member States — List of persons, entities and bodies subject to freezing of funds and economic resources — Maintenance of the applicant's name on the list — Error of assessment)

(2023/C 7/30)

Language of the case: Spanish

Parties

Applicant: Dmitry Vladimirovich Ovsyannikov (Moscow, Russia) (represented by: J. L. Iriarte Ángel and E. Delage González, lawyers)

Defendant: Council of the European Union (represented by: H. Marcos Fraile, S. Sáez Moreno and A. Antoniadis, acting as Agents)

Re:

By his action pursuant to Article 263 TFEU, the applicant seeks annulment of, first, Council Decision (CFSP) 2020/1269 of 10 September 2020 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2020 L 298, p. 23), and Council Implementing Regulation (EU) 2020/1267 of 10 September 2020 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2020 L 298, p. 1), secondly, Council Decision (CFSP) 2021/448 of 12 March 2021 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2021 L 87, p. 35), and Council Implementing Regulation (EU) 2021/446 of 12 March 2021 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2021 L 87, p. 19), thirdly, Council Decision (CFSP) 2021/1470 of 10 September 2021 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2021 L 321, p. 32), and Council Implementing Regulation (EU) 2021/1464 of 10 September 2021 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2021 L 321, p. 1), and fourthly, Council Decision (CFSP) 2022/411 of 10 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 84, p. 28), and Council Implementing Regulation (EU) No 2022/408 of 10 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty or independence of Ukraine (OJ 2014 L 84, p. 2), in so far as those acts maintain his name on the lists annexed to those acts.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2020/1269 of 10 September 2020 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Council Implementing Regulation (EU) 2020/1267 of 10 September 2020 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Council Decision (CFSP) 2021/448 of 12 March 2021 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Council Implementing Regulation (EU) 2021/446, of 12 March 2021, implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Council Decision (CFSP) 2021/1470 of 10 September 2021 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Council Implementing Regulation (EU) 2021/1464 of 10 September 2021 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and

independence of Ukraine, Council Decision (CFSP) 2022/411 of 10 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, and Council Implementing Regulation (EU) 2022/408 of 10 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, in so far as the name of Mr Dmitry Vladimirovich Ovsyannikov was maintained on the list of persons, entities and bodies to which those restrictive measures apply.

2. Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Ovsyannikov, including those relating to the interlocutory proceedings.

([1]) OJ C 44, 8.2.2021.

Judgment of the General Court of 19 October 2022 — Praesidiad v EUIPO — Zaun (Post)

(Case T-231/21) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a post — Ground for invalidity — Failure to comply with the requirements for protection — Article 25(1)(b) of Regulation (EC) No 6/2002 — Features of appearance of a product solely dictated by its technical function — Article 8(1) of Regulation No 6/2002)

(2023/C 7/31)

Language of the case: English

Parties

Applicant: Praesidiad Holding (Zwevegem, Belgium) (represented by M. Rieger-Jansen and D. Op de Beeck, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zaun Ltd (Wolverhampton, United Kingdom) (represented by O. Petter and J. Saladin, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment and the alteration of the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 15 February 2021 (Case R 2068/2019-3).

Operative part of the judgment

The Court:

1. Annuls the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 15 February 2021 (Case R 2068/2019-3);

2. Rejects the application filed by Zaun Ltd on 27 March 2018 for a declaration that the design registered under the number 127204-0001 is invalid;

3. Orders EUIPO to bear its own costs and to pay those incurred by Praesidiad Holding;

4. Orders Zaun to bear its own costs.

(1) OJ C 278, 12.7.2021.

Judgment of the General Court of 26 October 2022 — The Bazooka Companies v EUIPO — Bilkiewicz (Shape of a baby's bottle)

(Case T-273/21) (1)

(EU trade mark — Revocation proceedings — Three-dimensional EU trade mark — Shape of a baby's bottle — Genuine use of the mark — Point (a) of the second subparagraph of Article 18(1) and Article 58 (1)(a) of Regulation (EU) 2017/1001 — Nature of use of the mark — Form differing in elements which do not alter the distinctive character — Obligation to state reasons)

(2023/C 7/32)

Language of the case: English

Parties

Applicant: The Bazooka Companies, Inc. (New York, New York, United States), authorised to replace The Topps Company, Inc. (represented by: D. Wieddekind and D. Wiemann, lawyers)

Defendant: European Union Intellectual Property Office (represented by: R. Raponi and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Trebor Robert Bilkiewicz (Gdańsk, Poland) (represented by: P. Ratnicki-Kiczka, lawyer)

Re:

By its action based on Article 263 TFEU, the applicant seeks the annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 March 2021 (Case R 1326/2020-2).

Operative part of the judgment

The Court:

1. Grants The Bazooka Companies, Inc., leave to replace The Topps Company, Inc., as applicant;

2. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 March 2021 (Case R 1326/2020-2);

3. Orders EUIPO to bear its own costs and to pay the costs incurred by The Bazooka Companies;

4. Orders Mr Trebor Robert Bilkiewicz to bear his own costs.

(1) OJ C 278, 12.7.2021.

Judgment of the General Court of 19 October 2022 — Louis Vuitton Malletier v EUIPO — Wisniewski (Representation of a chequerboard pattern II)

(Case T-275/21) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Figurative mark representing a chequerboard pattern — Absolute ground for invalidity — No distinctive character acquired through use — Article 7(3) and Article 51(2) of Regulation (EC) No 40/94 (now Article 7(3) and Article 59(2) of Regulation (EU) 2017/1001) — Overall assessment of the evidence of distinctive character acquired through use — Geographical scope of the evidence of distinctive character acquired through use — Evidence of use of the mark on the internet — Evidence regarding infringement proceedings)

(2023/C 7/33)

Language of the case: English

Parties

Applicant: Louis Vuitton Malletier (Paris, France) (represented by: P. Roncaglia, N. Parrotta and P.-Y. Gautier, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Norbert Wisniewski (Warsaw, Poland)

Re:

By its action based on Article 263 TFEU, the applicant seeks the annulment and alteration of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 25 February 2021 (Case R 1307/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Louis Vuitton Malletier to pay the costs.

([1]) OJ C 263, 5.7.2021.

Judgment of the General Court of 19 October 2022 — Castel Frères v EUIPO — Shanghai Panati (Representation of Chinese characters)

(Case T-323/21) ([1])

(EU trade mark — Revocation proceedings — EU figurative mark representing Chinese characters — Genuine use of the trade mark — Article 18(1) of Regulation (EU) 2017/1001 — Article 58(1)(a) of Regulation 2017/1001 — Alteration of the distinctive character)

(2023/C 7/34)

Language of the case: English

Parties

Applicant: Castel Frères (Blanquefort, France) (represented by: T. de Haan, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Shanghai Panati Co. (Shanghai, China)

Re:

By its action based on 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 22 March 2021 (Case R 753/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Castel Frères to pay the costs.

(1) OJ C 310, 2.8.2021.

Judgment of the General Court of 9 November 2022 — Pharmadom v EUIPO — Wellstat Therapeutics (WELLMONDE)

(Case T-601/21) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark WELLMONDE — Earlier national word mark WELL AND WELL — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 7/35)

Language of the case: English

Parties

Applicant: Pharmadom (Boulogne-Billancourt, France) (represented by: M.P. Dauquaire, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Wellstat Therapeutics Corp. (Rockville, Maryland, United States) (represented by: M. Graf, lawyer)

Re:

By its action based on 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 23 June 2021 (Case R 1776/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Pharmadom to pay the costs.

(1) OJ C 481, 29.11.2021.

Judgment of the General Court of 9 November 2022 — WP and Others v Commission

(Case T-604/21) ([1])

(Civil service — Members of the contract staff — Pensions — Pension rights acquired before entry into the service of the EU — Transfer to the EU scheme — Additional years of pensionable service — Application for restitution of the amount of transferred national pension rights — Dismissal of application — 'Minimum subsistence figure' rule — Undue enrichment — Equal treatment)

(2023/C 7/36)

Language of the case: French

Parties

Applicants: WP, WQ, WR (represented by: N. de Montigny, lawyer)

Defendant: European Commission (represented by: B. Mongin and M. Brauhoff, acting as Agents)

Re:

By their action under Article 270 TFEU, the applicants, as successors in title to A, seek annulment of the decision of the Office for Administration and Payment of Individual Entitlements (PMO) of the European Commission of 16 November 2020 dismissing the application for restitution of the national pension rights acquired by A before his death and transferred to the pension scheme of the EU institutions and annulment of Commission Decision of 15 June 2021 rejecting the complaint lodged by A under Article 90 of the Staff Regulations of Officials of the European Union.

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders WP, WQ and WR to bear the costs.

([1]) OJ C 452, 8.11.2021.

Judgment of the General Court of 26 October 2022 — Lemken v EUIPO (shade of sky blue)

(Case T-621/21) ([1])

(EU trade mark — Application for an EU trade mark consisting of a shade of sky blue — Absolute grounds for refusal — No descriptive character — Article 7(1)(b) of Regulation (EU) 2017/1001 — No distinctive character acquired through use — Article 7(3) of Regulation 2017/1001)

(2023/C 7/37)

Language of the case: German

Parties

Applicant: Lemken GmbH & Co. KG (Alpen, Germany) (represented by: I. Kuschel and W. von der Osten-Sacken, lawyers)

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

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 15 July 2021 (Case: R 2037/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Lemken GmbH & Co. KG to pay the costs.

([1]) OJ C 462, 15.11.2021.

Judgment of the General Court of 26 October 2022 — Siremar v Commission

(Case T-668/21) ([1])

(State aid — Maritime transport — Rescue aid — Decision declaring the aid unlawful — Decision declaring the aid in part compatible and in part incompatible with the internal market and ordering its recovery — Service of general economic interest — Obligation to submit a restructuring or liquidation plan — Six-month time limit — Extension — Tax exemption — Advantage — Effect on trade between Member States — Adverse effect on competition — Length of proceedings — Legitimate expectations — Legal certainty — Principle of sound administration)

(2023/C 7/38)

Language of the case: Italian

Parties

Applicant: Sicilia Regionale Marittima SpA — Siremar (Rome, Italy) (represented by: B. Nascimbene, F. Rossi Dal Pozzo and A. Moriconi, lawyers)

Defendant: European Commission (represented by: G. Braga da Cruz, C.-M. Carrega and D. Recchia, Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment in part of Commission Decision C(2021) 4268 final of 17 June 2021 on the measures SA.32014, SA.32015, SA.32016 (2011/C) (ex 2011/NN) implemented by Italy for Siremar and its acquirer Società Navigazione Siciliana (SNS).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sicilia Regionale Marittima SpA to pay the costs.

([1]) OJ C 2, 3.1.2022.

Judgment of the General Court of 26 October 2022 — Gameageventures v EUIPO — (GAME TOURNAMENTS)

(Case T-776/21) ([1])

(EU trade mark — Application for EU figurative mark GAME TOURNAMENTS — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001 — Descriptive character — Article 7(1)(c) of Regulation 2017/1001 — No distinctive character acquired through use — Article 7(3) of Regulation 2017/1001 — Obligation to state reasons — Article 94(1) of Regulation 2017/1001 — Right to be heard — Equal treatment — Principle of sound administration)

(2023/C 7/39)

Language of the case: English

Parties

Applicant: Gameageventures LLP (Folkestone, United Kingdom) (represented by: S. Santos Rodríguez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: T. Frydendahl, acting as Agent)

Re:

By its action based on 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 5 October 2021 (Case R 211/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Gameageventures LLP to pay the costs.

([1]) OJ C 64, 7.2.2022.

Judgment of the General Court of 9 November 2022 — Loutsou v EUIPO (POLIS LOUTRON)

(Case T-13/22) ([1])

(EU trade mark — Application for EU figurative mark POLIS LOUTRON — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001 — No distinctive character — Article 7(1)(b) of Regulation 2017/1001)

(2023/C 7/40)

Language of the case: Greek

Parties

Applicant: Alexandra Loutsou (Thessaloniki, Greece) (represented by: S. Psomakakis, lawyer)

Defendant: European Union Intellectual Property Office (represented by: E. Markakis, acting as Agent)

Re:

By her action based on Article 263 TFEU, the applicant seeks annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 20 October 2021 (Case R 544/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ms Alexandra Loutsou to pay the costs.

(1) OJ C 138, 28.3.2022.

Action brought on 11 October 2022 — Canalones Castilla v EUIPO — Canalones Novokanal (Water-collection guttering; waterspouts)

(Case T-329/22)

(2023/C 7/41)

Language in which the application was lodged: Spanish

Parties

Applicant: Canalones Castilla, SL (Madrid, Spain) (represented by: F. J. Serrano Irurzun, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Canalones Novokanal, SL (Madrid, Spain)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design (Water-collection guttering; waterspouts) — Community design No 363 486-0001

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 5 April 2022 in Case R 1122/2021-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— if the applicant's claims are rejected in their entirety, order, in ruling as to costs in the decision closing the proceedings, that the other parties must bear their own costs.

Pleas in law

— The prior disclosure of the design submitted by the invalidity applicant has not been sufficiently established.

— In the alternative, the design submitted by the invalidity applicant as a prior design does not produce the same overall impression as the design at issue.

— In the alternative, the disclosure was abusive due to infringement of copyright.

Action brought on 30 September 2022 — MBDA France v Commission

(Case T-614/22)

(2023/C 7/42)

Language of the case: English

Parties

Applicant: MBDA France (Le Plessis-Robinson, France) (represented by: F. de Bure, and A. Delors, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission served to the applicant on July 20, 2022 (ARES(2022)5278815) rejecting the proposal EDF-2021-AIRDEF-D- EATMI-HYDIS (hereafter the 'HYDIS Proposal'), on the basis of articles 256 and 263 of the Treaty on the Functioning of the European Union;

— annul on the same basis any related decision in order to allow for the re-evaluation of the proposals submitted in response to Call for Proposals EDF-2021-AIRDEF-D 'Endo-atmospheric interceptor — concept phase' and the reallocation of funding, including the decision of the Commission accepting the proposal submitted by the consortium coordinated by Sener Aeroespacial (hereafter the 'HYDEF Proposal');

— order the defendant to produce all the documents requested by the applicant relating to the Commission's evaluation of the HYDIS and HYDEF Proposals;

— order the defendant to pay the applicant's legal and other costs and expenses.

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 that the Commission exceeded the limits of its discretion by applying an artificial and arbitrary grading methodology clashing with the core objectives of the endo-atmospheric interceptor solution (hereafter the 'EATMI Project').

   The EATMI Project aims to allocate a European Defence Fund (hereafter the 'EDF') € 100 million grant for the concept phase of an interceptor solution against 'hypersonic' missiles and gliders. This new type of aerial weapons which, to date, cannot be countered by existing air defence systems, have been used for the first time by Russia during its invasion of Ukraine. In a context of heightened geopolitical insecurity, they pose an unprecedented, game-changing and potentially existential threat to the integrity and security of the Union's Member States and citizens. They require a new approach to air defence design. Yet the Commission's grading methodology strays away from that objective:

   — First, the Commission applied an identical standard weighting methodology to all 2021 EDF projects, without taking into account the crucial stakes of the EATMI Project;

   — Second, the Commission assessed the applicants' proposals almost exclusively on the basis of generic considerations common to all 2021 EDF projects, which lack relevance or even clash with the objectives of the EATMI Project;

   — Through this artificial and arbitrary methodology, the Commission exceeded its discretion, undermining the Union's capacity to foster an autonomous response to hypersonic threats as a result.

2. Second plea in law, alleging several manifest errors of assessment:

— The Commission committed several manifest errors in the assessment of the HYDIS Proposal. In particular: (i) the Commission misunderstood the notion of 'concept phase' and rejected the HYDIS Proposal based on elements that are manifestly irrelevant during that phase; (ii) the Commission misunderstood the notion of cross-border cooperation. As a result, it assessed negatively the past contribution of the MBDA group to the integration of the European defence industry, and ignored the support of the main military powers of the Union in favour of its proposal; and (iii) the Commission relied on generic considerations that are not relevant in the context of the EATMI Project while setting aside the specific requirements of that project;

— The Commission's manifest errors of assessment led to a decision that largely contradicts the overarching objectives of the EDF: it (i) ignores the initiatives taken by Member States in the Permanent Structured Cooperation framework; (ii) results in a sub-optimal allocation of resources that does not reflect the expertise of European defence players; and (iii) will likely lead to duplications of competences within the Union.

3. Third plea in law, alleging breaches of the principles of good administration and transparency:

— The Commission rejected the HYDIS Proposal largely because it felt that some aspects were insufficiently detailed. However, pursuant to the principle of good administration, the Commission had a duty to gather all the relevant facts including by seeking clarifications from the applicant as appropriate, in particular as the future security of the Union's Member States and citizens is at stake. The applicant could easily have provided such clarifications. Instead, the Commission's passive attitude and failure to gather relevant factual information resulted in the violation of the principle of good administration;

— In addition, these alleged shortcomings relate almost exclusively to generic considerations common to all 2021 EDF projects which are unrelated to the EATMI-specific technical and functional requirements. The Commission violated the transparency principle by overweighting such considerations, with no prior information of the applicants.

4. Fourth plea in law, alleging failure to sufficiently state reasons.

The contested decision contains a series of statements that are unclear or difficult to understand in the context of the case, thereby preventing the applicant from assessing its merits. In particular, the Commission was under a duty to clarify how it had interpreted and applied the above-mentioned generic considerations in the specific context of the EATMI Project and how it had inferred negative comments from them. Yet it failed to do so.

Action brought on 30 September 2022 — Safran Aircraft Engines v Commission

(Case T-617/22)

(2023/C 7/43)

Language of the case: English

Parties

Applicant: Safran Aircraft Engines (Paris, France) (represented by: B. Hoorelbeke, F. Donnat and M. Perche, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision; and

— order the Commission to bear its own costs and the applicant's costs in connection with these proceedings.

Pleas in law and main arguments

In support of the action, the applicant submits that the decision of the European Commission, DG DEFIS, with reference Ares (2022)5278390, informing the applicant that its proposal EDF-2021-ENERENV-D-PES-ALPES in response to the Call EDF-2021-ENERENV-D-PES has been rejected, as notified to the applicant on 20 July 2022, is vitiated by errors in law and fact because it holds that the applicant's proposal EDF-2021-ENERENV-D-PES-ALPES (hereafter the 'proposal') in response to the Call for proposals EDF-2021-ENERENV-D-PES (hereafter the 'PES-Call') did not meet the minimum qualitative threshold to be considered for award and therefore rejected the applicant's proposal. The applicant relies on the following pleas in law.

1. First plea in law, alleging that the Commission has violated Articles 188 and 199 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, ([1]) Article 3(2) and 10(1) Regulation (EU) 2021/697 of the European Parliament and of the Council, ([2]) the principle of transparency, equal treatment and legal certainty as well as the duty of diligence and principles of sound administration, because the Commission:

   — has, in breach of Article 3(2) and 10(1) of Regulation 2021/697, erroneously qualified the PES-Call as a development action instead of a research action, and in doing so violated Article 188 of Regulation 2018/1046 and the principles of transparency and equal treatment which require that the conditions of a call for proposals must be clear and unambiguous so that each participant is in an equal position to submit its proposal and those proposals can be evaluated on equal footing;

   — has violated Article 199 of Regulation 2018/1046 and the principles of transparency and equal treatment by including award criteria which are not pertinent for the scope and nature of the call for proposals, which is clearly a research action; and

   — has violated the principles of transparency, equal treatment and sound administration by not informing the applicant of the changes to the conditions governing the PES-Call after their publication.

2. Second plea in law, alleging that the Commission violated Article 296 TFEU by not explaining clearly how the comments included in the evaluation summary report (hereafter the 'ESR') related to the different sub-criteria that were relevant for each award criterion, nor explaining how the comments in the ESR related to the score awarded for each award criterion.

3. Third plea in law, alleging that the Commission has erred in fact by making a number of manifest errors in assessment in the evaluation of the applicant's proposal relating

   — first, to the evaluation of the sixth award criterion pertaining to 'quality and efficiency of the carrying out the action';

   — second, to a case of double penalization, where the Commission has made the same negative remark concerning the applicant's proposal under two different award criteria and therefore has deducted twice points for the same shortcoming;

   — third and in the alternative, should the Court hold, contrary to what the applicant argues in the second limb of the first plea in law, that the Commission was entitled to evaluate the applicant's offer against award criterion 7, to the evaluation of the award criterion 7 aimed at evaluating 'the contribution to increasing efficiency across the lifecycle of defence products and technologies, including cost-effectiveness and the potential for synergies in the procurement, maintenance and disposal processes';

— fourth and in the alternative, should the Court hold, contrary to what the applicant argues in the second limb of the first plea in law, that the Commission was entitled to evaluate the applicant's offer against award criterion 8, to the evaluation of award criterion 8 aimed at evaluating 'the contribution to the further integration of the European defence industry throughout the Union through the demonstration by the recipients that Member States have undertaken to jointly use, own or maintain the final product or technology in a coordinated manner'.

([1]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 du 30.7.2018, p. 1).

([2]) Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170 du 12.5.2021, p. 149).

Action brought on 10 October 2022 — LD v EUIPO

(Case T-633/22)

(2023/C 7/44)

Language of the case: English

Parties

Applicant: LD (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office

Form of order sought

The applicant claims that the Court should:

— First, annul the decision of the EUIPO of 1 December 2021 insofar as it rejects the applicant's requests submitted with her letter of 8 August 2021 and with the letter of her lawyer of 12 November 2021; and the applicant further requests as follows:

  — order the EUIPO to correct its erroneous measures (such correction and erroneous measures elaborated and referenced in detail in [the said] letter of [lawyer's name] of 12 November 2021) and inform the Spanish Ministry of Foreign Affairs and Cooperation that the applicant is still an EUIPO official with all the rights and privileges provided in the EU Staff Regulations, the Protocol on Privileges and Immunities and the Seat Agreement;

  — order the EUIPO to issue amended information to the Spanish Ministry of Foreign Affairs and Cooperation in order that the Ministry's unlawful approach and decisions can be rectified as soon as possible;

  — order the EUIPO to ensure that it uses all factual and legal means vis-à-vis the Spanish Ministry of Foreign Affairs and Cooperation to retain or restore the applicant's full privileges under the EU Staff Regulations, the Protocol on Privileges and Immunities and the Seat Agreement.

— Furthermore, annul any implicit decision of the EUIPO (Art. 90(1), 3rd sentence, EU Staff Regulations) about these requests of the applicant;

— Second, annul the decision of the EUIPO of 1 December 2021 insofar as it rejects the applicant's request submitted with her letter of 8 August 2021 for material damages based on the EUIPO's misconduct in dealing with the implementation of the EU Staff Regulations in connection with the applicant's leave in the interest of the service, and order the EUIPO to pay material damages to the applicant in the amount of EUR 7 500;

— Third, order the EUIPO to pay immaterial damages to the applicant in an amount left to the discretion of the court;

— Fourth, order the EUIPO to pay its costs as well as the applicant's costs for the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea in law, namely that, by EUIPO's refusal to grant the requests submitted by the applicant, the EUIPO breaches its duty of care, the applicant's right to good administration (Article 41 of the Charter of Fundamental Rights of the EU), Articles 35 and 42c of the EU Staff Regulations, Articles 11-13 of the Protocol (No 7) on the Privileges and Immunities of the European Union ([1]) and Articles 2-3 of the Headquarters Agreement between the Kingdom of Spain and the European Union, relating to EUIPO. ([2])

— The applicant claims that EUIPO commits the above breaches by its refusal to grant the requests submitted by the applicant, seeking to ensure that EUIPO uses all factual and legal means vis-à-vis the Spanish Ministry of Foreign Affairs and Cooperation to retain or restore the applicant's full privileges under the EU Staff Regulations, the Protocol (No 7) on the Privileges and Immunities of the European Union PPI and the Headquarters Agreement between the Kingdom of Spain and the European Union, in particular the issuing of an accreditation card and the right to be given OI plates;

— The applicant argues that the EUIPO committed manifest errors in interpreting among others Article 42c of the EU Staff Regulations and also breached its duty of care, when implementing the applicant's leave in the interest of the service. The applicant submits that the EUIPO, during a period of several months, was of the false opinion that the applicant's employment with the EUIPO would end with the start of the applicant's leave in the interest of service and acted and informed the Spanish Ministry of Foreign Affairs and Cooperation according to this false opinion;

— The applicant further submits that this wrong approach and behaviour of the EUIPO was the reason for the Spanish Ministry of Foreign Affairs and Cooperation to deprive the applicant of her rights and privileges provided in the EU Staff Regulations, the Protocol (No 7) on the Privileges and Immunities of the European Union PPI and the Headquarters Agreement between the Kingdom of Spain and the European Union. Therefore, the applicant holds that EUIPO, among others, breaches its duty of care by not complying with the applicant's request to take a decision to act towards the Spanish Ministry of Foreign Affairs and Cooperation and rejecting the applicant's request for compensation of material and immaterial damages.

([1]) OJ 2016 C 202, p. 266.
([2]) Editorial Note: This 'Headquarters Agreement' (official name) is in fact defined in the application as the 'Seat Agreement' or 'SA'.

Action brought on 31 October 2022 — Claro v EUIPO — Claranet Europe (Claro)

(Case T-661/22)

(2023/C 7/45)

Language in which the application was lodged: English

Parties

Applicant: Claro SA (São Paulo, Brazil) (represented by: J. Ferreira Sardinha, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Claranet Europe Ltd (St Helier, Jersey)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark in red and white Claro — European Union trade mark No 16 172 934

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 25 August 2022 in Case R 1674/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Pleas in law

— Infringement of Article 60(1)a read together with Article 8(1)b of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 60(1)a read together with Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 31 October 2022 — Tavitova v EUIPO — Uccoar (AURUS)

(Case T-662/22)

(2023/C 7/46)

Language in which the application was lodged: French

Parties

Applicant: Zalina Tavitova (Batoulieh, Lebanon) (represented by: V. Kojevnikov, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Uccoar (Carcassonne, France)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark AURUS — Application for registration No 18 205 163

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 25 August 2022 in Case R 2139/2021-5

Form of order sought

The applicant claims that the Court should:

— confirm the contested decision in so far as it allowed the registration of mark No 18 205 163, for non-alcoholic beverages, with the exception of non-alcoholic wine;

— annul the contested decision refusing registration of mark No 18 205 163, for the goods and classes 'beers' (Class 32) and 'vodka' (Class 33);

— grant the application for registration of mark No 18 205 163 for the classes and goods indicated;

— dismiss the company Uccoar's contrary applications and form of order sought;

— order the defendant to pay the costs.

Plea in law

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

Action brought on 31 October 2022 — Mood Media Netherlands v EUIPO — Tailoradio (RADIO MOOD In-store Radio, made easy)

(Case T-663/22)

(2023/C 7/47)

Language in which the application was lodged: French

Parties

Applicant: Mood Media Netherlands (Naarden, Netherlands) (represented by: A.-M. Pecoraro, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Tailoradio Srl (Milan, Italy)

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 the EU figurative mark RADIO MOOD In-store Radio, made easy in the colours grey, orange and white — Application for registration No 16 150 708

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 August 2022 in Case R 1853/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— 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 31 October 2022 — Mood Media Netherlands v EUIPO — Tailoradio (VIDEO MOOD Digital Signage, made easy)

(Case T-664/22)

(2023/C 7/48)

Language in which the application was lodged: French

Parties

Applicant: Mood Media Netherlands (Naarden, Netherlands) (represented by: A.-M. Pecoraro, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Tailoradio Srl (Milan, Italy)

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 the EU figurative mark VIDEO MOOD Digital Signage, made easy in the colours grey, blue and white — Application for registration No 16 150 691

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 August 2022 in Case R 1852/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— 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 4 November 2022 — Calrose Rice v EUIPO — Ricegrowers (Device of a sun with arabic characters)

(Case T-670/22)

(2023/C 7/49)

Language in which the application was lodged: English

Parties

Applicant: Calrose Rice EOOD (Sofia, Bulgaria) (represented by: H. Raychev, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ricegrowers Ltd (Leeton, New South Wales, Australia)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Device of a sun with arabic characters) — European Union trade mark No 18 186 653

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 August 2022 in Case R 272/2022-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener in the present proceedings to bear their own costs and to pay the Applicant's costs of these proceedings, as well as the costs of the appeal procedure before the Fifth Board of Appeal.

Pleas in law

— The Board erred in finding that the compared signs are visually similar to a high degree;

— the Board was wrong to focus its conclusions regarding the visual comparison of the signs exclusively on the Arabic language wording and the stylised sun devices contained in the conflicting marks;

— the Board assessed the level of attention of the relevant public in a contradictory manner throughout the decision and therefore infringed its obligations under the first sentence of Art. 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 7 November 2022 — López-Ibor Aliño v EUIPO — Dimensión Estratégica Quality Research (LOPEZ-IBOR ABOGADOS)

(Case T-672/22)

(2023/C 7/50)

Language in which the application was lodged: Spanish

Parties

Applicant: Alfonso López-Ibor Aliño (Madrid, Spain) (represented by: A. Vela Ballesteros, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dimensión Estratégica Quality Research, SL (Madrid)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark LOPEZ-IBOR ABOGADOS — Application No 18 190 205

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 September 2022 in Case R 500/2022-1

Form of order sought

The applicant claims that the Court should:

— stay the present proceedings until a final judgment has been given in the revocation proceedings against the EU trade mark 009566291 ESTUDIO JURÍDICO INTERNACIONAL LÓPEZ-IBOR MAYOR & ASOCIADOS, proceedings, 000053919 C, before EUIPO;

— uphold the action brought against the contested decision and allow the EU trade mark applied for, order the other party to pay the costs;

— order EUIPO to pay the costs and the other party in the event that that party appears in the present proceedings.

Pleas in law

— Incorrect assessment of the proof of use in accordance with Article 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(1)(b) and Article 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 7 November 2022 — Dr. Neumann & Kindler v EUIPO — Laboratory Corporation of America Holdings (LABCORP)

(Case T-673/22)

(2023/C 7/51)

Language in which the application was lodged: German

Parties

Applicant: Dr. Neumann & Kindler GmbH & Co. KG (Bochum, Germany) (represented by: T. Pfeifer and N. Gottschalk, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Laboratory Corporation of America Holdings (Burlington, North Carolina, United States)

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 the EU word mark LABCORP — Application No 15 174 766

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 August 2022 in Case R 182/2021-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the General Court of the European Union and order the potential intervener to pay the costs of the appeal proceedings before EUIPO.

Plea in law

— Infringement of Article 47(2) and (3) of Regulation 2017/1001 of the European Parliament and of the Council.

Action brought on 7 November 2022 — Dr. Neumann & Kindler v EUIPO — Laboratory Corporation of America Holdings (LabCorp)

(Case T-674/22)

(2023/C 7/52)

Language in which the application was lodged: German

Parties

Applicant: Dr. Neumann & Kindler GmbH & Co. KG (Bochum, Germany) (represented by: T. Pfeifer and N. Gottschalk, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Laboratory Corporation of America Holdings (Burlington, North Carolina, United States)

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 the EU figurative mark LabCorp — Application No 15 174 774

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 August 2022 in Case R 1998/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the General Court of the European Union and order the potential intervener to pay the costs of the appeal proceedings before EUIPO.

Plea in law

— Infringement of Article 47(2) and (3) of Regulation 2017/1001 of the European Parliament and of the Council.

Action brought on 9 November 2022 — Giuffrida v European Public Prosecutor's Office

(Case T-676/22)

(2023/C 7/53)

Language of the case: Italian

Parties

Applicant: Carmela Giuffrida (Catania, Italy) (represented by: S. Petillo, lawyer)

Defendant: European Public Prosecutor's Office (EPPO)

Form of order sought

The applicant claims that the Court should:

— annul Decision No 038/2022, issued on 14 September 2022 and communicated by email on 16 September, with which the EPPO rejected, without reason, the appointment of Ms Carmela Giuffrida to the position of European Delegated Prosecutor located in Bari under Article 17(2) of the EPPO Regulation; ([1])

— grant compensation for the harm caused to Ms Giuffrida as a result of both the delay in concluding the procedure and the unlawful refusal of her nomination which resulted in damage to her image, in the amount of EUR 445,94 for material damage and EUR 50 000 for non-material damage to her image, making a sum total of EUR 50 445,94.

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 a failure to state adequate reasons. Contradictory reasoning.

   — The grounds of the decision rejecting the nomination of Ms Carmela Giuffrida as an EPPO European Delegated Prosecutor located in Bari appear inadequate inasmuch as the applicant had performed the required function at national level for more than eight years, from 30 September 1999 to 8 January 2008. During that whole period she had performed her role dealing specifically with offences affecting the European Union's financial interests.

   — From the cover letter the applicant sent to supplement and clarify her CV it is apparent that during the abovementioned period she had formed part of the working group set up at the public prosecutor's office that dealt with the offences referred to in Article 640a, that is to say, with fraud involving EU finds and, consequently, with all offences related thereto.

2. Second plea in law, alleging unequal treatment.

   — The applicant claims unequal treatment in relation to other Italian colleagues hired.

   — The applicant notes that only one year earlier, under a previous notice for the recruitment of Italian European Delegated Prosecutors (EDP), the EPPO hired fifteen judicial officers simply on the basis of their nomination by the Consiglio Superiore della Magistratura (Supreme Council of the Judiciary, Italy; 'CSM'), without any of those judicial officers having to undergo an interview.

3. Third plea in law, alleging a misuse of power.

   — The applicant claims that, with respect to the nomination by the CSM, an institution which knows Ms Giuffrida's entire career, in that it holds her personal file, and which nominated her on the basis of that knowledge, the College of European Prosecutors renounced that decision without even gathering information from the Italian institutions, in infringement of Article 1(2) of College Decision 013/202 on the procedure for the appointment of the European Delegated Prosecutors.

4. Fourth plea in law, regarding the request for compensation for material damage and for damage to the applicant's image.

   — Waiting in vain for the end of the EPPO's procedure caused the applicant substantial harm both professionally and personally.

   — Ms Giuffrida states that even if the Court were to annul the rejection decision and she were hired by the EPPO she has suffered irreparable harm. The delay in her recruitment results in a loss of professionalism, specifically with regard to the EDP position, as compared to colleagues already hired and also causes a delay to her wage increase which is scheduled every three years

([1]) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1)

Action brought on 14 November 2022 — Meta Platforms Ireland v EDPB

(Case T-682/22)

(2023/C 7/54)

Language of the case: English

Parties

Applicant: Meta Platforms Ireland Ltd (Dublin, Ireland) (represented by: H.-G. Kamann, F. Louis, A. Vallery, lawyers, P. Nolan, B. Johnston, C. Monaghan, D. Breatnach, Solicitors, D. McGrath, A. Fitzpatrick, I. McGrath, SC, and E. Egan McGrath, Barrister-at-Law)

Defendant: European Data Protection Board

Form of order sought

The applicant claims that the Court should:

— Annul — in total or, in the alternative, in its relevant parts — the Binding Decision 2/2022 of the EDPB of 28 July 2022, which determined that Meta Ireland infringed certain requirements set out in Regulation 2016/679 (GDPR); and

— order the defendant to pay the costs of the proceedings.

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 that the EDPB exceeded its competence under Article 65 GDPR.

2. Second plea in law, alleging that the EDPB infringed Article 6(1)(f) GDPR by interpreting and applying this provision incorrectly by failing to conduct a proper balancing test, disregarding the legitimate interests of the data subjects and failing to determine a legitimate interest.

3. Third plea in law, alleging the EDPB infringed the right to good administration as enshrined in Article 41 of the Charter by disregarding Meta Ireland's right to be heard and the EDPB's obligations to conduct a comprehensive, fair and impartial assessment and to adequately state reasons.

4. Fourth plea in law, alleging that that the EDPB violated Article 83 GDPR and various underlying principles governing the determination of fines under the GDPR.

Action brought on 9 November 2022 — CMT v EUIPO — Camomilla (CAMOMILLA italia)

(Case T-694/22)

(2023/C 7/55)

Language in which the application was lodged: Italian

Parties

Applicant: CMT Compagnia manifatture tessili Srl (CMT Srl) (Naples, Italy) (represented by: P. Marzano, G. Rubino and F. Cordova, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Camomilla Srl (Assago, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark CAMOMILLA italia — EU trade mark No 9 287 038

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 24 August 2022 in Case R 1738/2021-2

Form of order sought

The applicant claims that the Court should:

— with regard to the goods in Class 25: declare the limitation of the contested mark and, consequently, refer the case back to EUIPO for a new assessment of the affinity between the goods in Class 25 covered by the contested mark and the goods in Class 24 covered by the earlier mark, indicating the principles of law with which EUIPO must comply in the assessment;

— in the alternative, or if the Court deems it appropriate, by upholding the present action, vary the contested decision and, consequently, confirm the validity of the contested mark for 'clothing' in Class 25, without prejudice, in any event, to the validity of the other goods claimed in that class, which are not covered by the declaration of invalidity;

— with regard to the goods in Class 18: by upholding the present action, vary the contested decision and, consequently, confirm the validity of the contested mark in respect of the following goods: *Class 18: Goods made of these materials and not included in other classes [leather and imitations of leather]; Trunks; Big umbrellas; Beach bags; Briefcases, cases [leather articles]; Card cases [notecases]; Chain mesh purses; Handbags; Haversacks; Pocket wallets; Purses; Rucksacks; School bags; School bags; Shopping bags; Bags for sports; Vanity cases, not fitted; Wheeled shopping bags*;

— in any event, order the applicant for a declaration of invalidity to pay the costs of the present proceedings and those relating to the decisions in the earlier proceedings.

Plea in law

— Infringement of Article 8(1)(b) and Article 60 of Regulation 2017/1001 of the European Parliament and of the Council.

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