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(2023/C 35/01)

Last publication

OJ C 24, 23.1.2023

Past publications

OJ C 15, 16.1.2023

OJ C 7, 9.1.2023

OJ C 482, 19.12.2022

OJ C 472, 12.12.2022

OJ C 463, 5.12.2022

OJ C 451, 28.11.2022

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 1 December 2022 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Kiel v Norddeutsche Gesellschaft für Diakonie mbH

(Case C-141/20) [1]

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Second subparagraph of Article 4(4) — Taxable persons — Option for Member States to treat as a single taxable person entities that are legally independent but closely bound to one another by financial, economic and organisational links ('VAT group') — National legislation designating the controlling company of a VAT group as a single taxable person — Concept of 'close financial links' — Need for the controlling company to have a majority of voting rights as well as a majority shareholding — No need — Assessment of the independence of an economic entity in the light of standardised criteria — Scope)

(2023/C 35/02)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Kiel

Defendant: Norddeutsche Gesellschaft für Diakonie mbH

Operative part of the judgment

1. The second subparagraph of Article 4(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2000/65/EC of 17 October 2000,

must be interpreted as not precluding a Member State from designating, as a single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, the controlling company of that group, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.

2. The second subparagraph of Article 4(4) of Sixth Directive 77/388, as amended by Directive 2000/65,

   must be interpreted as precluding national legislation which makes the possibility for a given entity to form, with the undertaking of the controlling company, a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links conditional upon that controlling company having, in that entity, a majority of the voting rights in addition to a majority holding in the share capital of that entity.

3. The second subparagraph of Article 4(4) of Sixth Directive 77/388, as amended by Directive 2000/65, read in conjunction with the first subparagraph of Article 4(1) of Directive 77/388, as amended,

   must be interpreted as precluding a Member State from classifying, by categorisation, given entities as non-independent, where those entities are integrated, in financial, economic and organisational terms, into the controlling company of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links.

(1) OJ C 222, 6.7.2020.

Judgment of the Court (First Chamber) of 1 December 2022 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt T v S

(Case C-269/20) (1)

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Second subparagraph of Article 4(4) — Taxable persons — Option for Member States to treat as a single taxable person persons who are legally independent but closely bound to one another by financial, economic and organisational links ('VAT group') — National legislation designating the controlling company of a VAT group as a single taxable person — Internal supplies within the VAT group — Article 6(2)(b) — Supplies of services provided free of charge — Concept of 'purposes other than those of the business')

(2023/C 35/03)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt T

Defendant: S

Operative part of the judgment

1. The second subparagraph of Article 4(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment,

   must be interpreted as not precluding a Member State from designating, as a single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, the controlling company of that group, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.

2. EU law

must be interpreted as meaning that in the case of an entity which is the single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, and which carries out, on the one hand, economic activities for which it is a taxable person and, on the other, activities in the exercise of its powers as a public authority, in respect of which it is not considered to be a taxable person liable for value added tax under Article 4(5) of the Sixth Directive, the provision, by an entity forming part of that group, of services in connection with that exercise of powers, must not be taxed under Article 6(2)(b) of that directive.

(1) OJ C 297, 7.9.2020.

Judgment of the Court (Grand Chamber) of 8 December 2022 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — TU, RE v Google LLC

(Case C-460/20) [1]

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Directive 95/46/EC — Article 12(b) — Point (a) of the first paragraph of Article 14 — Regulation (EU) 2016/679 — Article 17(3)(a) — Operator of an internet search engine — Research carried out on the basis of a person's name — Displaying a link to articles containing allegedly inaccurate information in the list of search results — Displaying, in the form of thumbnails, photographs illustrating those articles in the list of results of an image search — Request for de-referencing made to the operator of the search engine — Weighing-up of fundamental rights — Articles 7, 8, 11 and 16 of the Charter of Fundamental Rights of the European Union — Obligations and responsibilities of the operator of the search engine in respect of processing a request for de-referencing — Burden of proof on the person requesting de-referencing)

(2023/C 35/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: TU, RE

Defendant: Google LLC

Operative part of the judgment

1. Article 17(3)(a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

must be interpreted as meaning that:

within the context of the weighing-up exercise which is to be undertaken between the rights referred to in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, on the one hand, and those referred to in Article 11 of the Charter of Fundamental Rights, on the other hand, for the purposes of examining a request for de-referencing made to the operator of a search engine seeking the removal of a link to content containing claims which the person who submitted the request regards as inaccurate from the list of search results, that de-referencing is not subject to the condition that the question of the accuracy of the referenced content has been resolved, at least provisionally, in an action brought by that person against the content provider.

2. Article 12(b) and point (a) of the first paragraph of Article 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as well as Article 17(3)(a) of Regulation 2016/679

must be interpreted as meaning that

in the context of the weighing-up exercise which is to be undertaken between the rights referred to in Articles 7 and 8 of the Charter of Fundamental Rights, on the one hand, and those referred to in Article 11 of the Charter of Fundamental Rights, on the other hand, for the purposes of examining a request for de-referencing made to the operator of a search engine seeking the removal from the results of an image search carried out on the basis of the name of a natural person of photographs displayed in the form of thumbnails representing that person, account must be taken of the informative value of those photographs regardless of the context of their publication on the internet page from which they are taken, but taking into consideration any text element which accompanies directly the display of those photographs in the search results and which is capable of casting light on the informative value of those photographs.

(1) OJ C 443, 21.12.2020.

Judgment of the Court (Sixth Chamber) of 1 December 2022 — European Union Intellectual Property Office (EUIPO) v Guillaume Vincenti

(Case C-653/20 P) [1]

(Appeal — Civil Service — Officials — Staff Regulations of Officials of the European Union — Article 45(1) — Promotion — Decision not to promote an official — Article 41(1) and (2)(a) of the Charter of Fundamental Rights of the European Union — Right to be heard — Duty to state reasons)

(2023/C 35/05)

Language of the case: German

Parties

Appellant: European Union Intellectual Property Office (EUIPO) (represented by: A. Lukošiūtė and K. Tóth, acting as Agents, and by B. Wägenbaur, Rechtsanwalt)

Other party to the proceedings: Guillaume Vincenti (represented by: H. Tettenborn, acting as Agent)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Union Intellectual Property Office (EUIPO) to pay the costs.

(1) OJ C 148, 26.4.2021.

Judgment of the Court (Grand Chamber) of 8 December 2022 (request for a preliminary ruling from the Grondwettelijk Hof — Belgium) — Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU v Vlaamse Regering

(Case C-694/20) [1]

(Reference for a preliminary ruling — Administrative cooperation in the field of taxation — Mandatory automatic exchange of information in relation to reportable cross-border arrangements — Directive 2011/16/EU, as amended by Directive (EU) 2018/822 — Article 8ab(5) — Validity — Legal professional privilege of the lawyer — Exemption from the reporting obligation for the benefit of lawyer-intermediaries subject to legal professional privilege — Obligation on that lawyer-intermediary to notify any other intermediary who is not his or her client of that intermediary's reporting obligations — Articles 7 and 47 of the Charter of Fundamental Rights of the European Union)

(2023/C 35/06)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU

Defendant: Vlaamse Regering

Operative part of the judgment

Article 8ab(5) of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council Directive (EU) 2018/822 of 25 May 2018, is invalid in the light of Article 7 of the Charter of Fundamental Rights of the European Union, in so far as the Member States' application of that provision has the effect of requiring a lawyer acting as an intermediary, within the meaning of Article 3(21) of that directive, as amended, where he or she is exempt from the reporting obligation laid down in paragraph 1 of Article 8ab of that directive, as amended, on account of the legal professional privilege by which he or she is bound, to notify without delay any other intermediary who is not his or her client of that intermediary's reporting obligations under paragraph 6 of that Article 8ab.

[1] OJ C 128, 12.4.2021.

Judgment of the Court (Fifth Chamber) of 8 December 2022 (request for a preliminary ruling from the Administrativen sad — Blagoevgrad — Bulgaria) — VS v Inspektor v Inspektorata kam Visshia sadeben savet

(Case C-180/21) [1]

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Regulation (EU) 2016/679 — Articles 2, 4 and 6 — Applicability of Regulation 2016/679 — Concept of 'legitimate interest' — Concept of 'task carried out in the public interest or in the exercise of official authority' — Directive (EU) 2016/680 — Articles 1, 3, 4, 6 and 9 — Lawfulness of the processing of personal data collected in the course of a criminal investigation — Subsequent processing of data relating to a presumed victim of a criminal offence for the purpose of making a formal accusation in respect of him or her — Concept of purpose 'other than that for which the personal data are collected' — Data used by the public prosecutor's office of a Member State for the purposes of its defence in an action for damages against the State)

(2023/C 35/07)

Language of the case: Bulgarian

Referring court

Administrativen sad — Blagoevgrad

Parties to the main proceedings

Applicant: VS

Defendant: Inspektor v Inspektorata kam Visshia sadeben savet

Interested party: Teritorialno otdelenie — Petrich kam Rayonna prokuratura — Blagoevgrad

Operative part of the judgment

1. Article 1(1) of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, read in conjunction with Article 4(2) and Article 6 thereof,

   must be interpreted as meaning that (i) the processing of personal data serves a purpose other than that for which those data were collected, where such data were collected for the purposes of the detection and investigation of a criminal offence, but that processing is carried out for the purpose of prosecuting a person following the conclusion of the criminal investigation at issue, irrespective of the fact that that person was considered to be a victim at the time of that collection, and that (ii) such processing is permitted pursuant to Article 4(2) of that directive, provided that it meets the conditions laid down in that provision.

2. Article 3(8) and Article 9(1) and (2) of Directive 2016/680 and Article 2(1) and (2) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),

   must be interpreted as meaning that that regulation is applicable to the processing of personal data by the public prosecutor's office of a Member State for the purpose of exercising its rights of defence in an action for damages against the State, where, first, it informs the court having jurisdiction of the opening of files relating to a natural person who is a party to that action for the purposes set out in Article 1(1) of Directive 2016/680 and, second, it transmits those files to that court.

3. Article 6(1) of Regulation 2016/679

   must be interpreted as meaning that where an action for damages against the State is based on alleged misconduct on the part of the public prosecutor's office in the performance of its tasks in criminal matters, such processing of personal data may be regarded as lawful if it is necessary for the performance of a task carried out in the public interest, within the meaning of point (e) of the first subparagraph of Article 6(1) of that regulation, for the purpose of defending the legal and financial interests of the State which falls to the public prosecutor's office in those proceedings, provided that that processing of personal data complies with all the applicable requirements provided for by that regulation.

(1) OJ C 206, 31.5.2021.

Judgment of the Court (Eighth Chamber) of 8 December 2022 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Luxury Trust Automobil GmbH v Finanzamt Österreich

(Case C-247/21) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 42(a) — Article 197(1)(c) — Article 226(11a) — Article 141 — Exemption — Triangular transaction — Designation of the final recipient of a supply as being liable for VAT — Invoicing — Reference to 'Reverse charge' — Mandatory — Omission of that reference on an invoice — Retroactive correction of the invoice)

(2023/C 35/08)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Luxury Trust Automobil GmbH

Defendant: Finanzamt Österreich

Operative part of the judgment

1. Article 42(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, read in conjunction with Article 197(1)(c) of Directive 2006/112, as amended,

   must be interpreted as meaning that, in a triangular transaction, the final customer has not been validly designated as liable for the value added tax (VAT) where the invoice issued by the intermediary acquiring the goods does not contain the words 'Reverse charge', referred to in Article 226(11a) of Directive 2006/112, as amended.

2. Article 226(11a) of Directive 2006/112, as amended by Directive 2010/45,

   must be interpreted as meaning that the omission, on an invoice, of the words 'Reverse charge', required under that provision, may not subsequently be corrected by adding a statement that that invoice relates to an intra-Community triangular transaction and that the tax liability is transferred to the person to whom the supply is made.

([1]) OJ C 263, 5.7.2022.

Judgment of the Court (Third Chamber) of 8 December 2022 (request for a preliminary ruling from the Sofiyski gradski sad — Bulgaria) — Criminal proceedings against HYA, IP, DD, ZI, SS

(Case C-348/21) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings — Article 8(1) — Right of an accused person to be present at the trial — Second paragraph of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union — Right to a fair trial and rights of the defence — Examination of witnesses for the prosecution in the absence of the accused person and his or her lawyer at the pre-trial stage of the criminal proceedings — Impossibility of examining witnesses for the prosecution during the judicial stage of those proceedings — National legislation allowing a criminal court to base its decision on the prior testimony of those witnesses)

(2023/C 35/09)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties in the main proceedings

HYA, IP, DD, ZI, SS

Intervener: Spetsializirana prokuratura

Operative part of the judgment

Article 8(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, read in conjunction with the second paragraph of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:

it precludes the application of national legislation which allows a national court, where it is not possible to examine a witness for the prosecution during the judicial stage of criminal proceedings, to base its decision on the guilt or innocence of the accused person on the testimony of that witness obtained during a hearing before a judge during the preliminary stage of those proceedings, but without the participation of the accused person or his lawyer, unless there is a serious ground justifying the failure to hear the witness at the judicial stage of the criminal proceedings, the testimony of that witness does not constitute the sole or determining basis for the conviction of the accused person, and there are sufficient compensatory elements to offset the difficulty caused to that person and his or her lawyer as a result of the taking into account of that testimony.

([1]) OJ C 338, 23.8.2021.

Judgment of the Court (Eighth Chamber) of 1 December 2022 (request for a preliminary ruling from the Landgericht München I — Germany) — DOMUS-Software-AG v Marc Braschoß Immobilien GmbH

(Case C-370/21) ([1])

(Reference for a preliminary ruling — Directive 2011/7/EU — Combating late payment in commercial transactions — Compensation for recovery costs incurred by the creditor due to late payment by the debtor — Article 6 — Fixed minimum sum of EUR 40 — Several late payments for periodic supplies of goods or services under a single contract)

(2023/C 35/10)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: DOMUS-Software-AG

Defendant: Marc Braschoß Immobilien GmbH

Operative part of the judgment

Article 6(1) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, read in conjunction with Article 3 of that directive,

must be interpreted as meaning that:

where a single contract provides for periodic deliveries of goods or provision of services, each requiring payment within a specified period, the fixed minimum sum of EUR 40 by way of compensation for recovery costs is payable to the creditor for each late payment.

(1) OJ C 349, 30.8.2021.

Judgment of the Court (Seventh Chamber) of 8 December 2022 (request for a preliminary ruling from the Bundesfinanzgericht — Austria) — P GmbH v Finanzamt Österreich

(Case C-378/21) (1)

(Reference for a preliminary ruling — Harmonisation of fiscal legislation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 203 — Adjustment of the VAT return — Recipients of services who are not entitled to make deductions — No risk of loss of tax revenue)

(2023/C 35/11)

Language of the case: German

Referring court

Bundesfinanzgericht

Parties to the main proceedings

Applicant: P GmbH

Defendant: Finanzamt Österreich

Operative part of the judgment

Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2016/1065 of 27 June 2016

must be interpreted as meaning that a taxable person who has supplied a service and who has stated on the invoice an amount of value added tax (VAT) calculated on the basis of an incorrect rate is not liable, under that provision, for the part of the VAT invoiced incorrectly if there is no risk of loss of tax revenue on the ground that the recipients of that service are exclusively final consumers who do not have a right to deduct input VAT.

(1) OJ C 349, 30.8.2021.

Judgment of the Court (Seventh Chamber) of 1 December 2022 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — DELID EOOD v Izpalnitelen direktor na Darzhaven fond 'Zemedelie'

(Case C-409/21) [1]

(Reference for a preliminary ruling — Common agricultural policy (CAP) — European Agricultural Fund for Rural Development (EAFRD) funding — Regulation (EU) No 1305/2013 — Investment support — National legislation making the grant of the support conditional upon the person applying for support submitting a certificate of registration of a livestock facility in that person's name and showing that, on the date of submission of the application, the output of that person's agricultural holding is equivalent to at least EUR 8 000)

(2023/C 35/12)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant in cassation: DELID EOOD

Respondent in cassation: Izpalnitelen direktor na Darzhaven fond 'Zemedelie'

Operative part of the judgment

1. Article 17 of 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, as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017,

   must be interpreted as not precluding a piece of national legislation which makes the grant of the support referred to in that provision conditional upon the person applying for support submitting a certificate of registration of a livestock facility in that person's name.

2. Article 17 of Regulation No 1305/2013, as amended by Regulation 2017/2393,

   must be interpreted as not precluding a piece of national legislation which makes the grant of the support referred to in that provision conditional upon the person applying for support showing that, on the date of submission of the application for support, the output of that person's agricultural holding is equivalent to at least EUR 8 000.

[1] OJ C 401, 4.10.2021.

Judgment of the Court (Eighth Chamber) of 1 December 2022 (request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie — Poland) — X sp. z o.o. sp.k. v Z

(Case C-419/21) ([1])

(Reference for a preliminary ruling — Directive 2011/7/EU — Combating late payment in commercial transactions — Article 2(1) — Concept of 'commercial transactions' — Compensation for recovery costs incurred by the creditor due to late payment by the debtor — Article 6 — Fixed minimum sum of EUR 40 — Several late payments for supplies of goods or services under a single contract)

(2023/C 35/13)

Language of the case: Polish

Referring court

Sąd Rejonowy dla m.st. Warszawy w Warszawie

Parties to the main proceedings

Applicant: X sp. z o.o. sp.k.

Defendant: Z

Operative part of the judgment

1. Article 2(1) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions

   must be interpreted as meaning that:

   the concept of 'commercial transactions' referred to therein covers each successive delivery of goods or provision of services carried out under a single contract.

2. Article 6(1) of Directive 2011/7, read in conjunction with Article 4 of that directive,

   must be interpreted as meaning that:

   where a single contract provides for successive deliveries of goods or provision of services, each requiring payment within a specified period, the fixed minimum sum of EUR 40 by way of compensation for recovery costs is payable to the creditor for each late payment.

([1]) OJ C 490, 6.12.2021.

Judgment of the Court (Tenth Chamber) of 1 December 2022 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Aquila Part Prod Com S.A v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-512/21) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 168 — Right to deduct VAT — Principles of fiscal neutrality, effectiveness and proportionality — Fraud — Proof — Obligation of care of the taxable person — Taking into consideration of an infringement of the obligations arising from national provisions and EU law relating to the safety of the food chain — Authority given by the taxable person to a third party to enter into the taxed transactions — Charter of Fundamental Rights of the European Union — Article 47 — Right to a fair trial)

(2023/C 35/14)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Aquila Part Prod Com S.A

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Operative part of the judgment

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as meaning that:

— where the tax authority seeks to deny a taxable person the right to deduct input value added tax (VAT) on the ground that that taxable person was involved in carousel VAT fraud, it precludes that tax authority from merely establishing that that transaction forms part of a circular invoicing chain;

— it is for that tax authority, first, to describe precisely the constituent elements of the fraud and to prove the fraudulent conduct and, second, to establish that the taxable person was actively involved in that fraud or that he knew or ought to have known that the transaction relied on as the basis for that right was involved in that fraud, which does not necessarily mean that all the actors involved in the fraud and the respective actions of those parties must be identified.

2. Directive 2006/112 must be interpreted as meaning that:

— it does not preclude a tax authority, where that tax authority states that the taxable person has been actively involved in a fraudulent evasion of value added tax in order to refuse the right to deduct, from basing that refusal, in addition or in the alternative, on evidence establishing not the involvement therein, but the fact that that taxable person could have known, by exercising all due diligence, that the transaction concerned was involved in such fraud;

— the mere fact that the members of the supply chain, of which that transaction forms part, knew each other is not sufficient to establish that the taxable person was involved in the fraud.

3. Directive 2006/112, read in conjunction with the principle of proportionality, must be interpreted as meaning that:

— where there are indications giving rise to a suspicion of irregularities or fraud, it does not preclude the taxable person from being required to exercise greater diligence in order to ensure that the transaction which he enters into does not lead to his involvement in fraud;

— that person cannot, however, be required to carry out complex and thorough checks such as those which may be carried out by the tax authorities;

— it is for the national court to determine whether, in the light of all the circumstances of the case, the taxable person has shown sufficient diligence and has taken the measures which may reasonably be required of him in those circumstances.

4. Directive 2006/112 must be interpreted as meaning that:

— it precludes the tax authority from refusing to allow a taxable person to exercise the right to deduct value added tax (VAT) solely on the ground that he has failed to comply with the obligations arising from national provisions or EU law relating to the safety of the food chain;

— failure to comply with those obligations may, however, constitute one factor among others which may be taken into account by the tax authority in order to establish both the existence of VAT fraud and the involvement of that taxable person in that fraud, even in the absence of a prior decision of the administrative body competent to find such an infringement.

5. The right to a fair trial, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:

it does not preclude the court hearing the appeal against the decision of the tax authority from taking into consideration, as evidence of the existence of value added tax fraud or the involvement of the taxable person in that fraud, a breach of those obligations, if that evidence may be challenged and subject to debate before it.

6. Directive 2006/112 and the principle of fiscal neutrality must be interpreted as meaning that:

they do not preclude a tax practice whereby, in order to deny a taxable person the right to deduct on the ground that he was involved in value added tax fraud, account was taken of the fact that the legal representative of the taxable person's agent had been aware of the facts constituting that fraud, irrespective of the applicable national rules governing the authority and the terms of the agency agreement entered into in that case.

(1) OJ C 471, 22.11.2021.

Judgment of the Court (Tenth Chamber) of 1 December 2022 (request for a preliminary ruling from the Verwaltungsgericht Wiesbaden — Germany) — BU v Federal Republic of Germany

(Case C-564/21) [1]

(Reference for a preliminary ruling — Fundamental rights — Right to an effective remedy — Article 47 of the Charter of Fundamental Rights of the European Union — Asylum policy — Directive 2013/32/EU — Article 11(1), Article 23(1) and Article 46(1) and (3) — Access to information in the applicant's file — Completeness of the file — Metadata — Communication of that file in the form of individual unstructured electronic files — Information in writing — Digitised copy of the decision with a handwritten signature — Keeping of the electronic file without archiving a paper file)

(2023/C 35/15)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: BU

Defendant: Federal Republic of Germany

Operative part of the judgment

1. Article 23(1) and Article 46(1) and (3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that:

they do not preclude a national administrative practice whereby the administrative authority which has decided on an application for international protection provides the applicant's representative with a copy of the electronic file relating to that application in the form of a series of separate files in PDF (Portable Document Format) format, without consecutive page numbering, and the structure of which can be viewed by means of free software readily accessible on the internet, provided, first, that that method of disclosure guarantees access to all the information in the file relevant to the applicant's defence, and on the basis of which the decision on that application was taken, and that, secondly, that that method of communication offers as faithful a representation as possible of the structure and chronology of that file, subject to cases where public interest objectives prevent the disclosure of certain information to the applicant's representative.

2. Article 11(1) of Directive 2013/32

must be interpreted as meaning that:

a decision on an application for international protection does not need to be signed by the official of the competent authority who took that decision in order for it to be considered to be communicated in writing within the meaning of that provision.

([1]) OJ C 11, 10.1.2022.

Judgment of the Court (Eighth Chamber) of 1 December 2022 (request for a preliminary ruling from the Bayerisches Verwaltungsgericht Ansbach — Germany) — LSI — Germany GmbH v Freistaat Bayern

(Case C-595/21) ([1])

(Reference for a preliminary ruling — Consumer protection — Provision of food information to consumers — Regulation (EU) No 1169/2011 — Article 17 and point 4 of Part A of Annex VI — 'Name of the food' — 'Name of the product' — Mandatory particulars in food labelling — Component or ingredient used for the partial or whole substitution of the component or ingredient which consumers expect to see normally used or present in a food)

(2023/C 35/16)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht Ansbach

Parties to the main proceedings

Applicant: LSI — Germany GmbH

Defendant: Freistaat Bayern

Operative part of the judgment

Article 17(1), (4) and (5) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, in conjunction with point 4 of Part A of Annex VI to Regulation No 1169/2011,

must be interpreted as meaning that:

the expression ‘name of the product’ in point 4 of Part A of Annex VI does not have a separate meaning that is different from that of the expression ‘name of the food’, as referred to in Article 17(1) of that regulation, with the result that the special labelling requirements provided for in point 4 of Part A of Annex VI to that regulation do not apply to the ‘name protected as intellectual property’, the ‘brand name’ or the ‘fancy name’ as referred to in Article 17(4) of that regulation.

(1) OJ C 502, 13.12.2021.

Judgment of the Court (Ninth Chamber) of 8 December 2022 (request for a preliminary ruling from the Cour de cassation — France) — QE v Caisse régionale de Crédit mutuel de Loire-Atlantique et du Centre Ouest

(Case C-600/21) (1)

(Reference for a preliminary ruling — Consumer protection — Unfair terms in consumer contracts — Directive 93/13/EEC — Article 3(1) — Article 4 — Criteria for assessing whether a term is unfair — Term relating to the accelerated repayment of a loan agreement — Contractual dispensation from the requirement for a formal written demand)

(2023/C 35/17)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: QE

Defendant: Caisse régionale de Crédit mutuel de Loire-Atlantique et du Centre Ouest

Operative part of the judgment

1. The judgment of 26 January 2017, Banco Primus (C-421/14, EU:C:2017:60), must be interpreted as meaning that the criteria it establishes for assessing the unfairness of a contractual term, as provided for in Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular the significant imbalance in the rights and obligations of the parties to the contract which that term causes to the detriment of the consumer, cannot be understood either as being cumulative or as being alternative, but must be understood as forming part of all the circumstances surrounding the conclusion of the contract at issue, which the national court must examine in order to assess the unfairness of a contractual term, as provided for in Article 3(1) of Directive 93/13.

2. Article 3(1) and Article 4 of Directive 93/13

   must be interpreted as meaning that a delay of more than 30 days in the payment of an instalment of a loan may, in principle, in the light of the term and amount of the loan, constitute, in itself, sufficiently serious non-compliance with the loan agreement, as referred to in the judgment of 26 January 2017, Banco Primus (C-421/14, EU:C:2017:60).

3. Article 3(1) and Article 4 of Directive 93/13

   must be interpreted as precluding, save where Article 4(2) of that directive applies, the parties to a loan agreement from inserting into that agreement a term which expressly and unequivocally provides that the accelerated repayment procedure in respect of that agreement may be triggered automatically in the event that the delay in payment of an instalment exceeds a certain period, in so far as that term has not been individually negotiated and creates a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.

(1) OJ C 502, 13.12.2021.

Judgment of the Court (Ninth Chamber) of 8 December 2022 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — VB v GUPFINGER Einrichtungsstudio GmbH

(Case C-625/21) [1]

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts — Unjustified withdrawal from a contract by the consumer — Term determining the trader's right to compensation declared unfair — Application of supplementary national law)

(2023/C 35/18)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: VB

Defendant: GUPFINGER Einrichtungsstudio GmbH

Operative part of the judgment

Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

must be interpreted as meaning that, where an indemnification clause of a sales contract has been declared unfair and, consequently, void and that contract is capable of continuing in existence without that clause, the seller or supplier which has imposed that term is precluded from being able to claim, in an action for damages based exclusively on a supplementary provision of national contract law, compensation for the loss or harm caused as provided for in that provision, which would have been applicable in the absence of that clause.

[1] OJ C 37, 24.1.2022.

Judgment of the Court (Eighth Chamber) of 8 December 2022 (request for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg — Luxembourg) — GV v Caisse nationale d'assurance pension

(Case C-731/21) [1]

(Reference for a preliminary ruling — Free movement of persons — Article 45 TFEU — Workers — Regulation (EU) No 492/2011 — Article 7(1) and (2) — Equal treatment — Social advantages — Survivor's pension — Members of a civil partnership — National legislation making the grant of a survivor's pension conditional upon the entry in the national register of a partnership that was validly concluded and registered in another Member State)

(2023/C 35/19)

Language of the case: French

Referring court

Cour de cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Applicant: GV

Defendant: Caisse nationale d'assurance pension

Operative part of the judgment

Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, as amended by Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016,

must be interpreted as precluding legislation of a host Member State which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.

(1) OJ C 73, 14.2.2022.

Judgment of the Court (Tenth Chamber) of 8 December 2022 (request for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — AAS 'BTA Baltic Insurance Company' v Iepirkumu uzraudzības birojs, Tieslietu ministrija

(Case C-769/21) [1]

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 18(1) — Principles of equal treatment, transparency and proportionality — Decision to withdraw an invitation to tender — Tenders submitted separately by two tenderers belonging to the same economic operator and constituting the two most economically advantageous tenders — Refusal of the successful tenderer to sign the contract — Decision of the contracting authority to refuse the tender of the next tenderer, terminate the procedure and issue a new call for tenders)

(2023/C 35/20)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: AAS 'BTA Baltic Insurance Company'

Defendants: Iepirkumu uzraudzības birojs, Tieslietu ministrija

Operative part of the judgment

The principle of proportionality, within the meaning of Article 18(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,

must be interpreted as precluding national legislation which requires the contracting authority to terminate a public procurement procedure where, in the event of withdrawal of the tenderer originally selected for having submitted the most economically advantageous tender, the tenderer which submitted the next most economically advantageous tender constitutes with the tenderer originally selected a single economic operator.

(1) OJ C 84, 21.2.2022.

Judgment of the Court (First Chamber) of 8 December 2022 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of a European arrest warrant issued against CJ

(Case C-492/22 PPU) [1]

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 6(2) — Determination of the competent judicial authorities — Decision to postpone surrender adopted by a body not having the status of executing judicial authority — Article 23 — Expiry of the time limits provided for surrender — Consequences — Article 12 and Article 24(1) — Keeping the requested person in detention for the purposes of criminal proceedings in the executing Member State — Articles 6, 47 and 48 of the Charter of Fundamental Rights of the European Union — Right of the accused person to appear in person at his trial)

(2023/C 35/21)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Party to the main proceedings

Applicant: CJ

Operative part of the judgment

1. Article 24(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009,

   must be interpreted as meaning that:

   the decision to postpone a surrender referred to in that provision constitutes a decision on the execution of the European arrest warrant which, pursuant to Article 6(2) of that framework decision, must be taken by the executing judicial authority. Where such a decision has not been taken by that authority and the time limits referred to in Article 23(2) to (4) of that framework decision have expired, the person who is the subject of a European arrest warrant must be released, in accordance with Article 23(5) of that same framework decision.

2. Article 12 and Article 24(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union,

   must be interpreted as:

   not precluding a person who is the subject of a European arrest warrant, whose surrender to the authorities of the issuing Member State has been postponed for the purposes of a criminal prosecution instituted against him or her in the executing Member State, from being kept in detention on the basis of the European arrest warrant whilst the criminal prosecution is being conducted.

3. Article 24(1) of Framework 2002/584, as amended by Framework Decision 2009/299, read in conjunction with the second and third paragraphs of Article 47 and Article 48(2) of the Charter of Fundamental Rights

   must be interpreted as:

   not precluding the postponement of the surrender of a person who is the subject of a European arrest warrant, for the purposes of a criminal prosecution instituted against that person in the executing Member State, solely on the ground that that person has not waived their right to appear in person before the courts seised in connection with that prosecution.

[1] OJ C 368, 26.9.2022.

Order of the Court (Sixth Chamber) of 15 December 2022 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Centro Petroli Roma Srl v Agenzia delle Dogane e dei Monopoli

(Case C-597/21) [1]

(Reference for a preliminary ruling — Articles 53 and 99 of the Rules of Procedure of the Court of Justice — Article 267 TFEU — Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling — Exceptions to that obligation — Criteria — Situations in which the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt — Condition related to the national court or tribunal of last instance being convinced that the matter would be equally obvious to the other courts or tribunals of last instance of the Member States and to the Court of Justice)

(2023/C 35/22)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Centro Petroli Roma Srl

Defendant: Agenzia delle Dogane e dei Monopoli

Operative part of the order

Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law may refrain from referring to the Court a question concerning the interpretation of EU law and take upon itself the responsibility for resolving it where the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. The question whether such a possibility exists must be assessed on the basis of the characteristic features of EU law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the European Union.

That national court or tribunal is not required to establish in detail that the other courts or tribunals of last instance of the Member States and the Court would give the same interpretation, but must have obtained the conviction, according to an assessment which takes account of those factors, that the matter would be equally obvious to those other national courts or tribunals and to the Court.

[1] Date lodged: 27.9.2021.

Order of the Court (Ninth Chamber) of 18 November 2022 (request for a preliminary ruling from the Sąd Rejonowy dla Warszawy — Śródmieścia w Warszawie — Poland) — TD, SD v mBank S.A.

(Case C-138/22) [1]

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Unfair terms in consumer contracts — Mortgage loan agreement indexed to a foreign currency — Unfair terms — Invalidity of the contract on account of the inclusion of unfair or unlawful terms — Choice of the consumer — Interpretation of national law — Clear lack of jurisdiction)

(2023/C 35/23)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy — Śródmieścia w Warszawie

Parties to the main proceedings

Applicants: TD, SD

Defendant: mBank S.A.

Operative part of the order

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the question referred for a preliminary ruling by the Sąd Rejonowy dla Warszawy — Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw, Poland) by decision of 18 January 2022.

(1) Date lodged: 25.2.2022.

Order of the Court (Eighth Chamber) of 2 December 2022 (request for a preliminary ruling from the Tribunalul Specializat Cluj — Romania) — NC v Compania Națională de Transporturi Aeriene Tarom SA

(Case C-229/22) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Air transport — Regulation (EC) No 261/2004 — Article 5(1)(c)(iii) — Compensation and assistance to passengers — Cancellation of a flight — Right to compensation in the case of an offer of re-routing — Conditions — Divergence between different language versions of a provision of EU law — Re-routing allowing passengers to depart no more than one hour before their scheduled time of departure)

(2023/C 35/24)

Language of the case: Romanian

Referring court

Tribunalul Specializat Cluj

Parties to the main proceedings

Applicant: NC

Defendant: Compania Națională de Transporturi Aeriene Tarom SA

Operative part of the order

Article 5(1)(c)(iii) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91,

must be interpreted as meaning that in the event of cancellation of a flight, the passengers concerned have the right to compensation by the operating air carrier in accordance with Article 7 of that regulation, unless they are informed of the cancellation less than seven days before the scheduled time of departure, if that air carrier offers them re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

(1) Date of filing: 29.3.2022.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 13 June 2022 — GC and Others v Croce Rossa Italiana and Others

(Case C-389/22)

(2023/C 35/25)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: GC and Others

Defendants: Croce Rossa Italiana, Ministero della Difesa, Ministero della Salute, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei ministri

Questions referred

1. In order to consider that there is a derogation from the obligation imposed on the court of final instance to make a reference for a preliminary ruling under Article 267 TFEU, must '[the conviction] that the matter is equally obvious to the courts of the other Member States and to the Court of Justice' [within the meaning of the judgment of 6 October 1982 in Case 238/81, *Cilfit and Others*] (…) be established subjectively, giving reasons for the possible interpretation that might be given to the question by the courts of the other Member States and by the Court of Justice when seised of an identical question?

2. (…) In order to avoid a *probatio diabolica* and to allow the specific implementation of the circumstances derogating from the obligation to make a reference for a preliminary ruling as indicated by the Court of Justice, is it sufficient to establish that the question referred for a preliminary ruling (concerning the interpretation and correct application of the relevant European provision in the specific case) raised in the national proceedings is manifestly unfounded, by ruling out the existence of reasonable doubts in that regard, having regard, on a purely objective basis — without an enquiry into the specific interpretative approach that might be adopted by different courts or tribunals — to the terminology and meaning in [EU] law attributable to the words of the European provision (relevant in the present case), the European legislative context of which it forms part and the safeguarding aims it seeks to fulfil, and having regard to the stage of development of European law at the time when the provision relevant to the national proceedings is to be applied?

3. In order to preserve the constitutional and European values of the independence of the courts and to ensure the reasonable duration of legal proceedings, may Article 267 TFEU be interpreted as precluding the bringing of civil or disciplinary liability proceedings against a national supreme court that has examined and rejected a request for a preliminary ruling on the interpretation of EU law, either automatically or at the discretion of the party bringing the action?

4. Are Articles 1626, 1653, 1668 and 1669 of Legislative Decree No 66 of 15 March 2010, which provide for the existence of service relationships with a public authority with end dates that may be extended several times and may be renewed over decades without interruption, compatible with Directive 1999/70/EC [1] and the principle of the protection of legitimate expectations?

5. Are Articles 5 and 6 of Legislative Decree No 178/2012, in so far as they provide for a difference in treatment between staff of the same institution in continuous service (or service for an indefinite period) and in temporary (or fixed-term) service, without any legislative provision guaranteeing workers who are in temporary service opportunities to retain the working relationship following the reorganisation of the body for which they work, compatible with Directive 1999/70/EC and the principle of non-discrimination?

[1] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Appeal brought on 14 September 2022 by Gugler France against the judgment of the General Court (Third Chamber) delivered on 13 July 2022 in Case T-147/21, Gugler France v EUIPO — Gugler (GUGLER)

(Case C-594/22 P)

(2023/C 35/26)

Language of the case: English

Parties

Appellant: Gugler France (represented by: S. Guerlain, avocat)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Alexander Gugler

By order of 5 December 2022, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Gugler France should bear its own costs.

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 29 September 2022 — Belgian Association of Tax Lawyers and Others v Premier ministre/ Eerste Minister

(Case C-623/22)

(2023/C 35/27)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Belgian Association of Tax Lawyers and Others, Ordre des barreaux francophones et germanophone, Orde van Vlaamse Balies and Others, Institut des conseillers fiscaux et des experts-comptables and Others

Defendant: Premier ministre/ Eerste Minister

Questions referred

1. Does Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ([1]) infringe Article 6(3) of the Treaty of the European Union and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union and, more specifically, the principles of equality and non-discrimination as guaranteed by those provisions, in that Directive (EU) 2018/822 does not limit the reporting obligation in respect of cross-border arrangements to corporation tax, but makes it applicable to all taxes falling within the scope of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, ([2]) which include under Belgian law not only corporation tax, but also direct taxes other than corporation tax and indirect taxes, such as registration fees?

2. Does Directive (EU) 2018/822 infringe the principle of legality in criminal matters as guaranteed by Article 49(1) of the Charter of Fundamental Rights of the European Union and by Article 7(1) of the European Convention on Human Rights, the general principle of legal certainty and the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the concepts of 'arrangement' (and therefore the concepts of 'cross-border arrangement', 'marketable

arrangement' and 'bespoke arrangement'), 'intermediary', 'participant', 'associated enterprise', the terms 'cross-border', the different 'hallmarks' and the 'main benefit test' that Directive (EU) 2018/822 uses to determine the scope of the reporting obligation in respect of cross-border arrangements, are not sufficiently clear and precise?

3. Does Directive (EU) 2018/822, in particular in so far as it inserts Article 8ab(1) and (7) into Directive 2011/16/EU, infringe the principle of legality in criminal matters as guaranteed by Article 49(1) of the Charter of Fundamental Rights of the European Union and by Article 7(1) of the European Convention on Human Rights, and infringe the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the starting point of the 30-day period during which the intermediary or relevant taxpayer must fulfil its reporting obligation in respect of a cross-border arrangement is not fixed in a sufficiently clear and precise manner?

4. Does Article 1(2) of Directive (EU) 2018/822 infringe the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the new Article 8ab(5) which it inserted in Directive 2011/16/EU, provides that, where a Member State takes the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach legal professional privilege under the national law of that Member State, that Member State is obliged to require the intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer, of their reporting obligations, in so far as the effect of that obligation is to oblige an intermediary bound by legal professional privilege subject to criminal sanctions under the national law of that Member State to share with another intermediary, not being his client, information which he obtains in the course of the essential activities of his profession?

5. Does Directive (EU) 2018/822 infringe the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the reporting obligation in respect of cross-border arrangements interferes with the right to respect for the private life of intermediaries and relevant taxpayers which is not reasonably justified or proportionate in the light of the objectives pursued and which is not relevant to the objective of ensuring the proper functioning of the internal market?

(1) OJ 2018 L 139, p. 1.
(2) OJ 2011, L 64, p. 1.

Request for a preliminary ruling from the Rechtbank Gelderland (Netherlands) lodged on 12 October 2022 — X v Inspecteur van de Belastingdienst Utrecht

(Case C-639/22)

(2023/C 35/28)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicant: X

Defendant: Inspecteur van de Belastingdienst Utrecht

Question referred

Must Article 135(1)(g) of the VAT Directive [1] be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

— whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective — and no one else — bear the consequences of the investment results?

— what the magnitude of the collective or individual risk is?

— to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?

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

Request for a preliminary ruling from the Rechtbank Gelderland (Netherlands) lodged on 12 October 2022 — Fiscale Eenheid Achmea BV v Inspecteur van de Belastingdienst Amsterdam

(Case C-640/22)

(2023/C 35/29)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicant: Fiscale Eenheid Achmea BV

Defendant: Inspecteur van de Belastingdienst Amsterdam

Questions referred

1. Must Article 135(1)(g) of the VAT Directive [1] be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

   — whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective — and no one else — bear the consequences of the investment results?

   — what the magnitude of the collective or individual risk is?

   — to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?

   — that the pension fund has no active accrual from 1 January 2018 and is obliged to proceed with a collective value transfer to an insurer or another pension fund because of the low policy coverage ratio?

2. Does the principle of tax neutrality require that, for the application of Article 135(1)(g) of the VAT Directive, in the case of funds which are not UCITS, [2] it must be assessed not only whether they are comparable to UCITS but also whether, from the perspective of the average consumer, they are comparable to other funds that are not UCITS funds but are regarded by the Member State as special investment funds?

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[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
[2] Undertakings for collective investment in transferable securities.

Request for a preliminary ruling from the Rechtbank Gelderland (Netherlands) lodged on 12 October 2022 — Y v Inspecteur van de Belastingdienst Amsterdam

(Case C-641/22)

(2023/C 35/30)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicant: Y

Defendant: Inspecteur van de Belastingdienst Amsterdam

Question referred

Must Article 135(1)(g) of the VAT Directive [1] be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

— whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective — and no one else — bear the consequences of the investment results?

— what the magnitude of the collective or individual risk is?

— to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?

— that the employer has guaranteed for the period 2014 to 2020 up to an amount of €250 000 000 in order to achieve the targeted pension accrual?

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

Request for a preliminary ruling from the Rechtbank Gelderland (Netherlands) lodged on 12 October 2022 — Stichting Pensioenfonds voor Fysiotherapeuten v Inspecteur van de Belastingdienst Maastricht

(Case C-642/22)

(2023/C 35/31)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicant: Stichting Pensioenfonds voor Fysiotherapeuten

Defendant: Inspecteur van de Belastingdienst Maastricht

Question referred

Must Article 135(1)(g) of the VAT Directive ([1]) be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

— whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective — and no one else — bear the consequences of the investment results?

— what the magnitude of the collective or individual risk is?

— to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?

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

Request for a preliminary ruling from the Rechtbank Gelderland (Netherlands) lodged on 12 October 2022 — Stichting BPL Pensioen v Inspecteur van de Belastingdienst Utrecht

(Case C-643/22)

(2023/C 35/32)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicant: Stichting BPL Pensioen

Defendant: Inspecteur van de Belastingdienst Utrecht

Question referred

Must Article 135(1)(g) of the VAT Directive ([1]) be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

— whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective — and no one else — bear the consequences of the investment results?

— what the magnitude of the collective or individual risk is?

— to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?

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

Request for a preliminary ruling from the Rechtbank Gelderland (Netherlands) lodged on 12 October 2022 — Stichting Bedrijfstakpensioensfonds voor het levensmiddelenbedrijf (BPFL) v Inspecteur van de Belastingdienst Utrecht

(Case C-644/22)

(2023/C 35/33)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicant: Stichting Bedrijfstakpensioensfonds voor het levensmiddelenbedrijf (BPFL)

Defendant: Inspecteur van de Belastingdienst Utrecht

Questions referred

1. Must Article 135(1)(g) of the VAT Directive ([1]) be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

   — whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective — and no one else — bear the consequences of the investment results?

   — what the magnitude of the collective or individual risk is?

   — to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?

2. Does the principle of tax neutrality require that, for the application of Article 135(1)(g) of the VAT Directive, in the case of funds which are not UCITS, ([2]) it must be assessed not only whether they are comparable to UCITS but also whether, from the perspective of the average consumer, they are comparable to other funds that are not UCITS funds but are regarded by the Member State as special investment funds?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
([2]) Undertakings for collective investment in transferable securities.

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 17 October 2022 — Federation Internationale de Football Association (FIFA) v BZ

(Case C-650/22)

(2023/C 35/34)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: Federation Internationale de Football Association (FIFA)

Defendant: BZ

Question referred

Are Articles 45 and 101 of the Treaty on the Functioning of the European Union to be interpreted as precluding:

the principle that the player and the club wishing to employ him are jointly and severally liable in respect of the compensation due to the club whose contract with the player has been terminated without just cause, as stipulated in Article 17.2 of the FIFA RSTP (Regulations on the Status and Transfer of Players), in conjunction with the sporting sanctions provided for in Article 17.4 of those regulations and the financial sanctions provided for in Article 17.1;

the ability of the association to which the player's former club belongs not to deliver the international transfer certificate required if the player is to be employed by a new club, where there is a dispute between that former club and the player (Article 9.1 of the FIFA RSTP and Article 8.2.7 of Annex 3 to the FIFA RSTP)?

Request for a preliminary ruling from the Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent (Belgium) lodged on 19 October 2022 — FOD Volksgezondheid, Veiligheid van de voedselketen & Leefmilieu v Triferto Belgium NV

(Case C-654/22)

(2023/C 35/35)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent

Parties to the main proceedings

Applicant: FOD Volksgezondheid, Veiligheid van de voedselketen & Leefmilieu

Defendant: Triferto Belgium NV

Questions referred

1. Must Articles 6(1), 3(10) and 3(11) of the REACH Regulation ([1]) be interpreted as meaning that a registration obligation rests on the person who orders/purchases the substance from a non-EU manufacturer, even though all the arrangements for physically introducing the substance into the customs territory of the Union are in fact made by a third party who also expressly confirms being responsible for doing so?

   In answering the foregoing question, is it relevant whether the quantity ordered/purchased forms only part (but exceeds 1 tonne) of a larger shipment of the same substance from the same non-EU manufacturer which is introduced into the customs territory of the Union by that third party to be stored in a bonded warehouse?

2. Must Article 2(1)(b) of the REACH Regulation be interpreted as meaning that a substance which is stored in a bonded warehouse (by placing it under procedure J — code 71 00 in box 37 of the single administrative document) also remains outside the scope of the REACH Regulation until it is removed at a later stage and placed under a different customs procedure (e.g. release for free circulation)?

If so, must Articles 6(1) and 3(10) and 3(11) of the REACH Regulation be construed as meaning that, in that circumstance, the registration obligation rests on the person who has directly purchased the substance outside the Union and who calls for it (without having previously physically introduced the substance into the customs territory of the Union), even if the substance has already been registered by the third undertaking which previously physically introduced it into the customs territory of the Union?

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 19 October 2022

(Case C-658/22)

(2023/C 35/36)

Language of the case: Polish

Referring court

Sąd Najwyższy

Questions referred

(1) Must Article 2, Article 6(1) and (3), and the second subparagraph of Article 19(1) of the Treaty on European Union (‘TEU’), read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Article 267 of the Treaty on the Functioning of the European Union (‘TFEU’), be interpreted as meaning that a court of last instance of a Member State (Sąd Najwyższy (Supreme Court, Poland)) whose composition includes persons appointed to the post of judge in breach of the fundamental rules of law of the Member State applicable to judicial appointments to the Supreme Court is not an independent, impartial tribunal previously established by law and providing effective legal protection to individuals in areas covered by EU law, where the aforementioned breach consists in:

(a) the Prezydent Rzeczypospolitej Polskiej (President of the Republic of Poland) announcing judicial vacancies in the Supreme Court without the prior countersignature of the Prezes Rady Ministrów (Prime Minister);

(b) pre-appointment proceedings being conducted without regard to the principles of transparency and fairness by a national body (Krajowa Rada Sądownictwa — the National Council of the Judiciary, Poland) which, given the circumstances surrounding its establishment (the selection of judges), and the manner in which it operates, does not meet the requirements of a constitutional body upholding the independence of the courts and of judges;

(c) the President of the Republic of Poland handing out letters of appointment to the post of judge of the Supreme Court despite the fact that the resolution of the National Council of the Judiciary, which includes the motion for appointment to the post of judge, was previously challenged before the competent national court (Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland)), that the Supreme Administrative Court suspended the implementation of that resolution in accordance with national law, and that the appeal proceedings were not concluded, after which proceedings the Supreme Administrative Court validly set aside the challenged resolution of the National Council of the Judiciary due to its unlawfulness, permanently removing it from the legal order, thereby depriving the appointment to the post of judge of the Supreme Court of the basis required by Article 179 of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland), which basis consists of a motion by the National Council of the Judiciary for appointment to the post of judge?

(2) Must Article 2, Article 6(1) and (3), and the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter and Article 267 TFEU, be interpreted as precluding the application of national laws such as Article 29(2) and (3), Article 26(3), and Article 72(1), (2) and (3) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court, consolidated text: Dz. U. of 2021, item 154) ['the Law on the Supreme Court'], in so far as those laws prohibit judges of the Supreme Court, on pain of the disciplinary penalty of dismissal, from determining or assessing the lawfulness of a judge's appointment or his or her resulting authority to perform judicial tasks as well as from assessing in substantive terms motions to exclude a judge based on those grounds, assuming that that prohibition were to be justified by the need for the Union to respect the constitutional identity of the Member States?

(3) Must Article 2 and Article 4(2) and (3) TEU, read in conjunction with Article 19 TEU and Article 267 TFEU, be interpreted as meaning that a judgment of the constitutional court of a Member State (Trybunał Konstytucyjny (Constitutional Court, Poland) declaring a ruling of the national court of last instance (the Supreme Court) to be incompatible with the Constitution of the Republic of Poland cannot constitute an obstacle to assessing the independence of a court and determining whether a court is a tribunal established by law within the meaning of European Union law, given that, in addition, the ruling of the Supreme Court aimed to implement the judgment of the Court of Justice of the European Union to the effect that the provisions of the Constitution of the Republic of Poland and applicable laws (national laws) do not confer upon the Constitutional Court the competence to review judicial rulings, including resolutions resolving discrepancies in the interpretation of laws adopted pursuant to Article 83 of the [Law on the Supreme Court] and, furthermore, the Constitutional Court, due to the manner in which it is currently constituted, is not a tribunal established by law within the meaning of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (Dz. U. of 1993, No 61, item 284, as amended)?

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 24 October 2022 — Criminal proceedings against M.N.

(Case C-670/22)

(2023/C 35/37)

Language of the case: German

Referring court

Landgericht Berlin

Party to the main proceedings

M.N.

Questions referred

1. Interpretation of the concept of 'issuing authority' under Article 6(1) of Directive 2014/41, [1] in conjunction with Article 2(c) thereof:

   (a) Must a European Investigation Order ('EIO') for obtaining evidence already located in the executing State (*in casu*: France) be issued by a judge where, under the law of the issuing State (*in casu*: Germany), the underlying gathering of evidence would have had to be ordered by a judge in a similar domestic case?

   (b) In the alternative, is that the case at least where the executing State carried out the underlying measure on the territory of the issuing State with the aim of subsequently making the data gathered available to the investigating authorities in the issuing State, which are interested in the data for the purposes of criminal prosecution?

(c) Does an EIO for obtaining evidence always have to be issued by a judge (or an independent authority not involved in criminal investigations), irrespective of the national rules of jurisdiction of the issuing State, where the measure entails serious interference with high-ranking fundamental rights?

2. Interpretation of Article 6(1)(a) of Directive 2014/41:

(a) Does Article 6(1)(a) of Directive 2014/41 preclude an EIO for the transmission of data already available in the executing State (France), obtained from the interception of telecommunications, in particular traffic and location data and recordings of the content of communications, where the interception carried out by the executing State covered all the users subscribed to a communications service, the EIO seeks the transmission of the data of all terminal devices used on the territory of the issuing State and there was no concrete evidence of the commission of serious criminal offences by those individual users either when the interception measure was ordered and carried out or when the EIO was issued?

(b) Does Article 6(1)(a) of Directive 2014/41 preclude such an EIO where the integrity of the data gathered by the interception measure cannot be verified by the authorities in the executing State by reason of blanket secrecy?

3. Interpretation of Article 6(1)(b) of Directive 2014/41:

(a) Does Article 6(1)(b) of Directive 2014/41 preclude an EIO for the transmission of telecommunications data already available in the executing State (France) where the executing State's interception measure underlying the gathering of data would have been impermissible under the law of the issuing State (Germany) in a similar domestic case?

(b) In the alternative: does this apply in any event where the executing State carried out the interception on the territory of the issuing State and in its interest?

4. Interpretation of Article 31(1) and (3) of Directive 2014/41:

(a) Does a measure entailing the infiltration of terminal devices for the purpose of gathering traffic, location and communication data of an internet-based communication service constitute interception of telecommunications within the meaning of Article 31 of Directive 2014/41?

(b) Must the notification under Article 31(1) of Directive 2014/41 always be addressed to a judge, or is that the case at least where the measure planned by the intercepting State (France) could be ordered only by a judge under the law of the notified State (Germany) in a similar domestic case?

(c) In so far as Article 31 of Directive 2014/41 also serves to protect the individual telecommunications users concerned, does that protection also extend to the use of the data for criminal prosecution in the notified State (Germany) and, if so, is that purpose of equal value to the further purpose of protecting the sovereignty of the notified Member State?

5. Legal consequences of obtaining evidence in a manner contrary to EU law

(a) In the case where evidence is obtained by means of an EIO which is contrary to EU law, can a prohibition on the use of evidence arise directly from the principle of effectiveness under EU law?

(b) In the case where evidence is obtained by means of an EIO which is contrary to EU law, does the principle of equivalence under EU law lead to a prohibition on the use of evidence where the measure underlying the gathering of evidence in the executing State should not have been ordered in a similar domestic case in the issuing State and the evidence obtained by means of such an unlawful domestic measure could not be used under the law of the issuing State?

(c) Is it contrary to EU law, in particular the principle of effectiveness, if the use in criminal proceedings of evidence, the obtaining of which was contrary to EU law precisely because there was no suspicion of an offence, is justified in a balancing of interests by the seriousness of the offences which first became known through the analysis of the evidence?

(d) In the alternative: does it follow from EU law, in particular the principle of effectiveness, that infringements of EU law in the obtaining of evidence in national criminal proceedings cannot remain completely without consequence, even in the case of serious criminal offences, and must therefore be taken into account in favour of the accused person at least when assessing evidence or determining the sentence?

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(1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1).

Request for a preliminary ruling from the Sąd Rejonowy Katowice — Wschód w Katowicach (Poland) lodged on 2 November 2022 — Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe A. v P. S.A.

(Case C-677/22)

(2023/C 35/38)

Language of the case: Polish

Referring court

Sąd Rejonowy Katowice — Wschód w Katowicach

Parties to the main proceedings

Applicant: Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe A.

Defendant: P. S.A.

Question referred

Must Article 3(5) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (recast) (1) be interpreted as meaning that a period for payment longer than 60 days may be expressly stipulated by undertakings only in contracts in which the contractual terms are not determined unilaterally by one of the contracting parties?

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(1) OJ 2011 L 48, p. 1.

Request for a preliminary ruling from the Sąd Rejonowy dla Krakowa — Podgórza w Krakowie (Poland) lodged on 3 November 2022 — Profi Credit Polska S.A. v G.N.

(Case C-678/22)

(2023/C 35/39)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Krakowa — Podgórza w Krakowie

Parties to the main proceedings

Applicant: Profi Credit Polska S.A.

Defendant: G.N.

Questions referred

1. Should Article 10(2)(f) in conjunction with Article 3(j) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([1]) in view of the principle of EU law effectiveness and the purpose of this directive, and in the light of Article 3(1) and (2) in conjunction with Article 4(1) of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([2]) be interpreted in such a way that they oppose the practice of including in consumer credit contracts the content of which is not the result of individual arrangements between the supplier (lender) and consumer (borrower) provisions that provide for interest not only on the amount disbursed to the consumer, but also on non-interest credit costs (that is to say, commissions or other fees that are not components of the credit amount disbursed to the consumer, and that make up the total amount to be paid by the consumer in performance of their obligation under the consumer credit contract)?

2. Should Article 10(2)(f) and (g) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66) in view of the principle of EU law effectiveness and the purpose of this directive, and in the light of Article 5 of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) be interpreted in such a way that they oppose the practice of including in consumer credit contracts the content of which is not the result of individual arrangements between the supplier (lender) and consumer (borrower) provisions disclosing only the borrowing rate and total value of capitalised interest expressed in amounts that the consumer is required to pay in the performance of their obligation arising under this contract, without at the same time clearly informing the consumer that the basis for calculating the capitalised interest (expressed as an amount) is an amount other than the credit amount actually disbursed to the consumer, and in particular, that it is the sum of the credit amount disbursed to the consumer and non-interest credit costs (that is to say, commissions or other fees that are not components of the credit amount disbursed to the consumer, and that make up the total amount to be paid by the consumer in performance of their obligation under the consumer credit contract)?

([1]) OJ 2008 L 133, p. 66.
([2]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Upravni sud u Zagrebu (Croatia) lodged on 2 November 2022 — LM v Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak

(Case C-682/22)

(2023/C 35/40)

Language of the case: Croatian

Referring court

Upravni sud u Zagrebu

Parties to the main proceedings

Applicant: LM

Defendant: Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak

Question referred

Must Article 26(2)(c) of the Framework Agreement between the Government of the Republic of Albania and the Commission of the European Communities on the rules for cooperation concerning European Community financial assistance to the Republic of Albania in the framework of the implementation of the assistance under the instrument for pre-accession assistance, signed on 18 October 2007, be interpreted as excluding the power of a Member State, in this case the Republic of Croatia, to charge income tax on the remuneration which was paid in 2016 to one of its nationals,

employed as a long-term expert, for tasks carried out in the territory of Albania concerning a project whose beneficiaries are State institutions of the Republic of Albania and which is financed by the European Union under the 2013 instrument for pre-accession assistance (IPA)?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 4 November 2022 — Adusbef — Associazione difesa utenti servizi bancari e finanziari and Others v Presidenza del Consiglio dei ministri and Others

(Case C-683/22)

(2023/C 35/41)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Adusbef — Associazione difesa utenti servizi bancari e finanziari, AIPE — Associazione Italiana Pressure Equipment, Confimi Industria Abruzzo — Associazione dell'industria manifatturiera e dell'impresa privata dell'Abruzzo

Defendants: Presidenza del Consiglio dei ministri, Ministero dell'Economia e delle Finanze, Ministero delle Infrastrutture e della Mobilità sostenibili, DIPE — Dipartimento programmazione e coordinamento della politica economica, Autorità di regolazione dei trasporti, Corte dei Conti, Avvocatura Generale dello Stato

Questions referred

1. Would it be inconsistent with [EU] law to interpret the national legislation as meaning that the awarding authority is entitled to conduct a procedure to modify an existing motorway concession, with respect to the entities concerned and the substance, or to renegotiate such a concession, without assessing and expressing a position on the obligation to launch a public procurement procedure?

2. Would it be inconsistent with [EU] law to interpret the national legislation as meaning that the awarding authority is entitled to conduct a procedure to modify an existing motorway concession, with respect to the entities concerned and the substance, or to renegotiate such a concession, without assessing the reliability of a concessionaire that is guilty of a serious failure to fulfil its obligations?

3. Where an infringement of the principle of public procurement is established and/or the unreliability of the holder of a motorway concession is established, does [EU] law impose an obligation to terminate the relationship?

Request for a preliminary ruling from the Tribunale di Oristano (Italy) lodged on 9 November 2022 — S.G. v Unione di Comuni Alta Marmilla

(Case C-689/22)

(2023/C 35/42)

Language of the case: Italian

Referring court

Tribunale di Oristano

Parties to the main proceedings

Applicant: S.G.

Defendant: Unione di Comuni Alta Marmilla

Question referred

Must Article 31(2) of the Charter of Fundamental Rights of the European Union and Article 7(2) of Directive 2003/88/EC, [1] also considered separately, be interpreted as precluding national provisions or practices, justified by compliance with public finance restrictions, under which staff, including managerial staff, of public administrative bodies may not under any circumstances, upon termination of their employment relationship, be granted monetary benefits in lieu of leave accrued but not taken?

[1] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie (Poland) lodged on 10 November 2022 — I. sp. z o.o. v M.W.

(Case C-693/22)

(2023/C 35/43)

Language of the case: Polish

Referring court

Sąd Rejonowy dla m.st. Warszawy w Warszawie

Parties to the main proceedings

Applicant: I. sp. z o.o.

Defendant: M.W.

Question referred

Should Article 5(1)(a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), [1] in conjunction with Article 6(1)(a), (c) and (e) of that regulation, as well as Article 6(3) thereof, be interpreted as precluding a provision of national law that permits the sale, in enforcement proceedings, of a database, within the meaning of Article 1(2) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, [2] which contains personal data, if the data subject did not consent to such a sale?

[1] OJ 2016 L 119, p. 1.
[2] OJ 1996 L 77, p. 20.

Request for a preliminary ruling from the Městský soud v Praze (Czech Republic) lodged on 10 November 2022 — Fondee a.s. v Česká národní banka

(Case C-695/22)

(2023/C 35/44)

Language of the case: Czech

Referring court

Městský soud v Praze

Parties to the main proceedings

Applicant: Fondee a.s.

Defendant: Česká národní banka

Questions referred

1. Does a person who is, pursuant to Article 3(1) of Directive 2014/65/EU [1] of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II), excluded from the scope of that Directive, and who does not, pursuant to Article 3(3) of the Directive, enjoy the freedom to provide services as defined in Article 34 thereof, enjoy the right to freedom to provide services embodied in Article 56 of the Treaty on the Functioning of the European Union, if it itself does not provide investment services on the basis of a single European passport to a client established in another Member State, but rather receives an investment service from a foreign entity using a single European passport or otherwise takes part in its provision to the end client (acts as an intermediary)?

2. If the answer to the previous question is affirmative, does EU law, namely Article 56 of the Treaty on the Functioning of the European Union, preclude legislation prohibiting an investment broker from transmitting a client's order to a foreign securities trader?

([1]) OJ 2014 L 173, p. 349.

Request for a preliminary ruling from the Apelativen sad Varna (Bulgaria) lodged on 14 November 2022 — Criminal proceedings against TP and OF

(Case C-698/22)

(2023/C 35/45)

Language of the case: Bulgarian

Referring court

Apelativen sad Varna

Criminal proceedings against

TP and OF

Questions referred

I. May substances which, although not set out in Annex I to Regulation (EC) No 111/2005 ([1]) of the European Parliament and of the Council of 22 December 2004, have been identified as being used for the illicit manufacture of narcotic drugs or psychotropic substances be the subject of the criminal offence of illegal trafficking across national borders for the purposes of Article 242(3) of the NK (as material), given that neither national law nor the applicable EU law requires a special import regime in respect of such substances? Article 242(3) of the NK is a blanket provision and refers to other special provisions that explicitly regulate the import of precursors. Is the national provision in Article 242(3) of the NK (whose content is analogous to that of the provision in the second sentence of Article 354a of the NK) compatible in that sense with Article 49 of the Charter of Fundamental Rights of the European Union and Article 7 of the European Convention on Human Rights, given that there is no legal requirement for a registration regime in respect of the import of such materials that could flesh out the blanket provisions under criminal law?

II. If this question is answered in the affirmative:

II.1. What is meant by 'use for the illicit manufacture of narcotic drugs or psychotropic substances' for the purposes of Article 2(b) of Regulation (EC) No 111/2005: must it be interpreted as a mere mixing of substances for the creation of narcotic drugs or psychotropic substances or may the meaning also cover the involvement of the substances in chemical reactions for the synthesis of narcotic drugs or psychotropic substances?

II.2. The substance APAA was identified as an immediate amphetamine precursor by Commission Delegated Regulation (EU) 2020/1737 [2] of 14 July 2020 amending Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances and included in Category 1 of Annex I to Regulation No 273/2004 and in the Annex to Regulation No 111/2005. Prior to its inclusion therein, may APAA be considered a substance/material used for the illicit manufacture of narcotic drugs or psychotropic substances and, consequently, what import regime was it subject to?

III. May activities and conduct relating to the financing, negotiating and organising of the import of substances for the purposes of Article 2(a) of Regulation (EC) No 111/2005 (APAAN and PMK), including via the engagement of other natural and/or legal persons who directly make the customs declaration and draw up the customs documents for the import, be regarded as 'intermediary activities', 'operator' or 'importer' within the meaning of Article 2(e), (f) and (h) of Regulation No 111/2005?

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(1) Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (OJ 2005 L 22, p. 1).

(2) Commission Delegated Regulation (EU) 2020/1737 of 14 July 2020 amending Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances (OJ 2020 L 392, p. 1).

Appeal brought on 24 November 2022 by the European Commission against the judgment delivered by the General Court (Second Chamber) of 14 September 2022 in Case T-775/20, PB v Commission

(Case C-721/22 P)

(2023/C 35/46)

Language of the case: French

Parties

Appellant: European Commission (represented by: J. Baquero Cruz, B. Araujo Arce, J. Estrada de Solà, acting as Agents)

Other parties to the proceedings: PB, Council of the European Union

Form of order sought

The Commission claims that the Court should:

— set aside the first and third paragraphs of the operative part of the judgment delivered by the General Court of the European Union on 14 September 2022 in Case T-775/20;

— refer the case back to the General Court for a decision on the merits in relation to the action for annulment; and

— order PB to pay the costs.

Grounds of appeal and main arguments

In support of its appeal, the Commission relies on a ground of annulment alleging an error of law.

The Commission disputes the finding of the General Court which considers, in paragraph 65 of the judgment under appeal, that, on the basis of the reasoning in paragraphs 51 to 64 of that judgment, the PFI Regulation [1] 'cannot therefore constitute on its own the relevant legal basis for the purposes of adopting administrative measures seeking the recovery of amounts unduly paid. …'

The General Court errs in law because Articles 4 and 7 of the PFI Regulation constitute an autonomous and sufficiently precise basis to adopt administrative measures of recovery, which are not a penalty.

In paragraph 69 of its judgment, the General Court, lastly, concluded that the joint application of Article 103 of the Financial Regulation of 2002 and Articles 4 and 7 of the PFI Regulation did not permit the adoption of a measure vis-à-vis the applicant at first instance, in so far as he was not the direct beneficiary of the payments.

According to the Commission, the General Court errs in law because Article 7 of the PFI Regulation, applied in conjunction with Article 4 of that regulation and Article 103 of the Financial Regulation of 2002, constitutes a sufficiently clear and precise provision to allow recovery from the applicant at first instance, even though he was not the direct beneficiary of the payments at issue.

([1]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Application for authorisation to serve a garnishee order made on 30 November 2022 — Ntinos Ramon v European Commission

(Case C-742/22 SA)

(2023/C 35/47)

Language of the case: Greek

Parties

Applicant: Ntinos Ramon (represented by: Achilleas Dimitriadis, Charalampos Pogiatzis and Alexandros Dimitriadis, lawyers, and Pavlos Eleftheriadis, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order waiver of the immunity of the European Commission under Article 1 of the Protocol (No 7) on the privileges and immunities of the European Union and authorise service and enforcement of the garnishee order nisi dated 23 June 2022 issued by the Eparchiako Dikastirio Ammochostou (District Court, Famagusta, Cyprus) against the European Commission subject to the waiver of its immunity, concerning the claims made by Mr Ramon against Türkiye in the amount of EUR 622 114,52 awarded to him in 2010 by the European Court of Human Rights ('ECtHR') on the ground of the violation of his rights on account of the unlawful occupation of his property by the Turkish authorities;

— order any remedy which it considers appropriate and equitable in the circumstances of the case;

— order the European Commission to pay the costs of the proceedings, plus VAT.

Pleas in law and main arguments

Türkiye has claims against the European Union that are certain, payable and liquid under the following financing agreements concluded between the EU and Türkiye:

(a) *the 2018 financing agreement 'Annual action plan in favour of Turkey — 2018' of 6 November 2019, for a maximum amount of EUR 98,4 million;*

(b) *the 2019 financing agreement 'Annual action plan in favour of Turkey — 2019', of 4 June 2020, for a maximum amount of EUR 157,7 million;*

(c) *the 2020 financing agreement 'Annual action plan in favour of Turkey — 2020' of 26 March 2021, for a maximum amount of EUR 122 million.*

The purpose of the pre-accession aid from the European Union is, inter alia, to support Türkiye in carrying out reforms to bring it closer to the European *acquis*, including respect for the rule of law and the protection of human rights.

The garnishee order sought by the applicant concerns the enforcement of a judgment of the European Court of Human Rights of 26 October 2010, *Ramon v. Turkey* (CE:ECHR:2010:1026JUD002909295), and is a measure to promote, protect and respect human rights.

The garnishee order against the debts of fixed amount payable to Türkiye by the EU, in the amount owed by Türkiye to Mr Ramon, will not hinder the smooth functioning of the European Union or restrict its independence. On the contrary, it will contribute to the achievement of one of the main objectives of the pre-accession aid granted to Turkey, namely respect for the rule of law and the protection of human rights by the candidate country for accession to the European Union.

GENERAL COURT

Judgment of the General Court of 30 November 2022 — PKK v Council

(Joined Cases T-316/14 RENV and T-148/19) [1]

(Common foreign and security policy — Restrictive measures against the PKK with a view to combating terrorism — Freezing of funds — Common Position 2001/931/CFSP — Applicability to situations of armed conflict — Terrorist group — Factual basis of the fund-freezing decisions — Decision taken by a competent authority — Authority of a third State — Review — Proportionality — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Modification of the application)

(2023/C 35/48)

Language of the case: English

Parties

Applicant: Kurdistan Workers' Party (PKK) (represented by: A. van Eik and T. Buruma, lawyers)

Defendant: Council of the European Union (represented by: S. Van Overmeire and B. Driessen, acting as Agents)

Intervener in support of the defendant in Case T-316/14 RENV: European Commission (represented by: T. Ramopoulos, J. Norris, J. Roberti di Sarsina and R. Tricot, acting as Agents)

Interveners in support of the defendant in the appeal proceedings: French Republic (represented by: A.-L. Desjonquères, B. Fodda and J.-L. Carré, acting as Agents), Kingdom of the Netherlands (represented by: M. Bulterman and J. Langer, acting as Agents)

Re:

By its action in Case T-316/14 RENV, which is based on Article 263 TFEU, the applicant seeks the annulment of:

— Council Implementing Regulation (EU) No 125/2014 of 10 February 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 714/2013 (OJ 2014 L 40, p. 9);

— Council Implementing Regulation (EU) No 790/2014 of 22 July 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation No 125/2014 (OJ 2014 L 217, p. 1);

— Council Decision (CFSP) 2015/521 of 26 March 2015 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2014/483/CFSP (OJ 2015 L 82, p. 107);

— Council Implementing Regulation (EU) 2015/513 of 26 March 2015 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 790/2014 (OJ 2015 L 82, p. 1);

— Council Decision (CFSP) 2015/1334 of 31 July 2015 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2015/521 (OJ 2015 L 206, p. 61);

— Council Implementing Regulation (EU) 2015/1325 of 31 July 2015 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation 2015/513 (OJ 2015 L 206, p. 12);

— Council Implementing Regulation (EU) 2015/2425 of 21 December 2015 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation 2015/1325 (OJ 2015 L 334, p. 1);

— Council Implementing Regulation (EU) 2016/1127 of 12 July 2016 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation 2015/2425 (OJ 2016 L 188, p. 1);

— Council Implementing Regulation (EU) 2017/150 of 27 January 2017 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation 2016/1127 (OJ 2017 L 23, p. 3);

— Council Decision (CFSP) 2017/1426 of 4 August 2017 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2017/154 (OJ 2017 L 204, p. 95); and

— Council Implementing Regulation (EU) 2017/1420 of 4 August 2017 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation 2017/150 (OJ 2017 L 204, p. 3), in so far as those measures concern the applicant.

By its action in Case T-148/19, which is also based on Article 263 TFEU, the applicant seeks the annulment of:

— Council Decision (CFSP) 2019/25 of 8 January 2019 amending and updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/1084 (OJ 2019 L 6, p. 6);

— Council Decision (CFSP) 2019/1341 of 8 August 2019 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2019/25 (OJ 2019 L 209, p. 15);

— Council Implementing Regulation (EU) 2019/1337 of 8 August 2019 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2019/24 (OJ 2019 L 209, p. 1);

— Council Implementing Regulation (EU) 2020/19 of 13 January 2020 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation 2019/1337 (OJ 2020 L 8I, p. 1);

— Council Decision (CFSP) 2020/1132 of 30 July 2020 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2020/20 (OJ 2020 L 247, p. 18); and

— Council Implementing Regulation (EU) 2020/1128 of 30 July 2020 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation 2020/19 (OJ 2020 L 247, p. 1), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. Annuls Council Implementing Regulation (EU) No 125/2014 of 10 February 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 714/2013 and Council Implementing Regulation (EU) No 790/2014 of 22 July 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation No 125/2014 in so far as they concern the Kurdistan Workers' Party (PKK);

2. Dismisses the action in Case T-316/14 RENV as to the remainder;

3. Dismisses the action in Case T-148/19;

4. Orders the PKK and the Council of the European Union each to bear their own costs relating to Cases T-316/14, C-46/19 P, T-316/14 RENV and T-148/19;

5. Orders the European Commission, the French Republic and the Kingdom of the Netherlands each to bear their own costs.

(1) OJ C 245, 28.7.2014.

Judgment of the General Court of 30 November 2022 — Trasta Komercbanka and Others v ECB

(Case T-698/16) (1)

(Economic and monetary policy — Prudential supervision of credit institutions — Specific supervisory tasks assigned to the ECB — Decision to withdraw a credit institution's authorisation — Death of an applicant — No need to adjudicate in part — Powers of the national authorities of participating Member States and of the ECB under the Single Supervisory Mechanism — Equal treatment — Proportionality — Legitimate expectations — Legal certainty — Misuse of powers — Rights of the defence — Obligation to state reasons)

(2023/C 35/49)

Language of the case: English

Parties

Applicants: Trasta Komercbanka AS (Riga, Latvia), and six other applicants whose names are set out in the annex to the judgment (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: E. Koupepidou, C. Hernández Saseta and A. Witte, acting as Agents, and by B. Schneider, lawyer)

Interveners in support of the defendant: Republic of Latvia (represented by: K. Pommere and J. Davidoviča, acting as Agents), European Commission (represented by: V. Di Bucci and A. Steiblytė, acting as Agents)

Re:

By their action based on Article 263 TFEU, the applicants seek annulment of Decision ECB/SSM/2016-529900WI-P0INFDAWTJ81/2 WOANCA-2016-0005 of the ECB of 11 July 2016 withdrawing the authorisation of Trasta Komercbanka for access to the activities of a credit institution.

Operative part of the judgment

The Court:

1. Declares that there is no longer any need to adjudicate on the action in so far as it was brought by Mr Igors Buimisters;

2. Dismisses the action;

3. Orders Trasta Komercbanka AS and the other applicants whose names are included in the annex, with the exception of Mr Buimisters, to pay the costs;

4. Orders Mr Buimisters to bear his own costs;

5. Orders the European Commission and the Republic of Latvia to bear their own costs.

([1]) OJ C 441, 28.11.2016.

Judgment of the General Court of 30 November 2022 — Austria v Commission

(Case T-101/18) ([1])

(State aid — Nuclear industry — Aid planned by Hungary for the development of two new nuclear reactors at the Paks site — Decision declaring the aid compatible with the internal market subject to compliance with certain commitments — Article 107(3)(c) TFEU — Compliance of the aid with EU law other than State aid law — Inextricable link — Promotion of nuclear energy — First paragraph of Article 192 of the Euratom Treaty — Principle of protection of the environment, 'polluter pays' principle, precautionary principle and principle of sustainability — Determination of the economic activity concerned — Market failure — Distortion of competition — Proportionality of the aid — Need for State intervention — Determination of the aid elements — Public procurement procedure — Obligation to state reasons)

(2023/C 35/50)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: J. Schmoll, F. Koppensteiner, M. Klamert and T. Ziniel, acting as Agents, and by H. Kristoferitsch, lawyer)

Defendant: European Commission (represented by: K. Blanck, K. Herrmann and P. Němečková, acting as Agents)

Intervener in support of the applicant: Grand Duchy of Luxembourg (represented by: A. Germeaux and T. Schell, acting as Agents, and by P. Kinsch, lawyer)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, J. Vláčil, T. Müller, J. Pavliš and L. Halajová, acting as Agents), French Republic (represented by: E. de Moustier and P. Dodeller, acting as Agents), Hungary (represented by: M. Fehér, acting as Agent, and by P. Nagy, N. Gràcia Malfeito, B. Karsai, lawyers, and C. Bellamy KC), Republic of Poland (represented by: B. Majczyna, acting as Agent), Slovak Republic (represented by: S. Ondrášiková, acting as Agent), United Kingdom of Great Britain and Northern Ireland (represented by: F. Shibli, L. Baxter and S. McCrory, acting as Agents, and by T. Johnston, Barrister)

Re:

By its action under Article 263 TFEU, the Republic of Austria seeks the annulment of Commission Decision (EU) 2017/2112 of 6 March 2017 on the measure/aid scheme/State aid SA.38454 — 2015/C (ex 2015/N) which Hungary is planning to implement for supporting the development of two new nuclear reactors at Paks II nuclear power station (OJ 2017 L 317, p. 45).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Republic of Austria to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Czech Republic, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Republic of Poland, the Slovak Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

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(1) OJ C 152, 30.4.2018.

Judgment of the General Court of 7 December 2022 — PNB Banka v ECB

(Case T-275/19) [1]

(Economic and monetary policy — Prudential supervision of credit institutions — Powers of the ECB — Investigatory powers — On-site inspections — Article 12 of Regulation (EU) No 1024/2013 — Decision of the ECB to conduct an inspection at the premises of a less significant credit institution — Action for annulment — Challengeable act — Admissibility — Competence of the ECB — Obligation to state reasons — Elements capable of justifying an inspection — Article 106 of the Rules of Procedure — Request for a hearing without a statement of reasons)

(2023/C 35/51)

Language of the case: English

Parties

Applicant: PNB Banka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: C. Hernández Saseta, F. Bonnard and V. Hümpfner, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: D. Triantafyllou, A. Nijenhuis and A. Steiblytė, acting as Agents)

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment of the decision of the European Central Bank (ECB), notified by letter of 14 February 2019, to conduct an on-site inspection at the applicant's premises.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PNB Banka AS to bear its own costs and pay those incurred by the European Central Bank (ECB);

3. Orders the European Commission to bear its own costs.

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(1) OJ C 213, 24.6.2019.

Judgment of the General Court of 7 December 2022 — PNB Banka v ECB

(Case T-301/19) [1]

(Economic and monetary policy — Prudential supervision of credit institutions — Article 6(5)(b) of Regulation (EU) No 1024/2013 — Need for the ECB's direct supervision of a less significant credit institution — Request by the national competent authority — Article 68(5) of Regulation (EU) No 468/2014 — ECB decision classifying PNB Banka as a significant entity subject to its direct prudential supervision — Obligation to state reasons — Proportionality — Rights of the defence — Access to the administrative file — Report laid down in Article 68(3) of Regulation No 468/2014 — Article 106 of the Rules of Procedure — Request for a hearing lacking a statement of reasons)

(2023/C 35/52)

Language of the case: English

Parties

Applicant: PNB Banka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: C. Hernández Saseta, F. Bonnard and D. Segoin, acting as Agents)

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment of the decision of the European Central Bank (ECB), notified by letter of 1 March 2019, to classify the applicant as a significant entity subject to its direct prudential supervision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PNB Banka AS to bear its own costs and to pay those incurred by the European Central Bank (ECB).

(1) OJ C 246, 22.7.2019.

Judgment of the General Court of 7 December 2022 — PNB Banka v ECB

(Case T-330/19) [1]

(Economic and monetary policy — Prudential supervision of credit institutions — Article 22 of Directive 2013/36/EU — Opposition of the ECB to the acquisition of qualifying holdings in a credit institution — Starting point of the assessment period — Intervention by the ECB during the initial stage of the procedure — Criteria of financial stability of the proposed acquirer and compliance with prudential requirements — Existence of reasonable grounds for opposing the acquisition on the basis of one or more assessment criteria — Article 106 of the Rules of Procedure — Request for a hearing without a statement of reasons)

(2023/C 35/53)

Language of the case: English

Parties

Applicant: PNB Banka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: C. Hernández Saseta, F. Bonnard and V. Hümpfner, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: D. Triantafyllou, A. Nijenhuis and A. Steiblytė, acting as Agents)

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment of the decision, notified by letter of 21 March 2019, by which the European Central Bank (ECB) decided to oppose the transaction consisting of the acquisition of qualifying holdings in B.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PNB Banka AS to bear its own costs and to pay those incurred by the European Central Bank (ECB);

3. Orders the European Commission to bear its own costs.

([1]) OJ C 270, 12.8.2019.

Judgment of the General Court of 7 December 2022 — PNB Banka v ECB

(Case T-230/20) ([1])

(Economic and monetary policy — Prudential supervision of credit institutions — Regulation (EU) No 1024/2013 — Specific supervisory tasks assigned to the ECB — Decision to withdraw the authorisation of the credit institution PNB Banka — Proposal of the national competent authority to withdraw authorisation — Insolvency decision in respect of PNB Banka — Reasonable time — Obligation to state reasons — Proportionality)

(2023/C 35/54)

Language of the case: English

Parties

Applicant: PNB Banka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: C. Hernández Saseta, F. Bonnard and V. Hümpfner, acting as Agents)

Intervener in support of the defendant: Republic of Latvia (represented by: K. Pommere, J. Davidoviča and E. Bārdiņš, acting as Agents)

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment of the decision of the European Central Bank (ECB) of 17 February 2020, ECB-SSM-220-LVPNB-1, WHD-2019-0016, withdrawing its authorisation as a credit institution.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PNB Banka AS to bear its own costs and to pay those incurred by the European Central Bank (ECB), including those incurred in the proceedings for interim relief;

3. Orders the Republic of Latvia to bear its own costs.

(1) OJ C 209, 22.6.2020.

Judgment of the General Court of 23 November 2022 — Westfälische Drahtindustrie and Others v Commission

(Case T-275/20) (1)

(Action for annulment and for damages — Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Suspension of the obligation to provide a bank guarantee — Payment by instalments on a provisional basis — Judgment annulling in part the decision and setting a fine in an amount identical to the amount of the fine originally imposed — Application of payments made on a provisional basis — Default interest — First paragraph of Article 266 TFEU — Unjust enrichment — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Recovery of undue payments — No legal basis — Unlawfulness)

(2023/C 35/55)

Language of the case: German

Parties

Applicants: Westfälische Drahtindustrie GmbH (Hamm, Germany), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG (Hamm), Pampus Industriebeteiligungen GmbH & Co. KG (Iserlohn, Germany) (represented by: O. Duys and N. Tkatchenko, lawyers)

Defendant: European Commission (represented by: P. Rossi and L. Mantl, acting as Agents)

Re:

By their action, the applicants seek, principally, (i), the annulment, on the basis of Article 263 TFEU, of the European Commission’s letter of 2 March 2020 by which it gave them formal notice to pay it the sum of EUR 12 236 931,69, corresponding, according to the Commission, to the outstanding balance of the fine imposed on them on 30 September 2010; (ii), a finding that the fine was paid in full on 17 October 2019 by the payment of EUR 18 149 636,24; and, (iii), an order that the Commission pay WDI the sum of EUR 1 633 085,17, plus interest from that latter date, on account of unjust enrichment on the part of that institution. In the alternative, the applicants request under Article 268 TFEU that the Commission be ordered to pay them the sum of EUR 12 236 931,69, claimed by the Commission from the applicant WDI, and a sum equivalent to the amount of overpayment to that institution of EUR 1 633 085,17, plus interest as of 17 October 2019, until the repayment in full of the amount owed.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG to pay the costs.

(1) OJ C 247, 27.7.2020.

Judgment of the General Court of 7 December 2022 — Lithuania v Commission

(Case T-537/20) [1]

(EAGF and EAFRD — Expenditure excluded from financing — Expenditure by Lithuania — Aid for early retirement — Article 52(2) of Regulation (EU) No 1306/2013 — Article 34(6) and Article 35(1) of Implementing Regulation (EU) No 908/2014)

(2023/C 35/56)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: R. Dzikovič and K. Dieninis, acting as Agents)

Defendant: European Commission (represented by: J. Aquilina, J. Jokubauskaitė and M. Kaduczak, acting as Agents)

Re:

By its action under Article 263 TFEU, the Republic of Lithuania seeks the annulment of Commission Implementing Decision (EU) 2020/859 of 16 June 2020 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2020 L 195, p. 59), in so far as that decision imposed on it a flat-rate financial correction of 5 %, thereby excluding the sum of EUR 2 186 447,97 from financing under the early retirement aid measure during the period from 16 October 2013 to 30 June 2018.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Republic of Lithuania to pay the costs.

[1] OJ C 359, 26.10.2020.

Judgment of the General Court of 7 December 2022 — CCPL and Others v Commission

(Case T-130/21) [1]

(Competition — Agreements, decisions and concerted practices — Retail food packaging — Decision adjusting the amount of a fine — Calculation of the fine — Imputability of unlawful conduct — 2006 Guidelines on the method for setting fines — Upper limit of the fine — Proportionality — Equal treatment — Ability to pay)

(2023/C 35/57)

Language of the case: Italian

Parties

Applicants: CCPL — Consorzio Cooperative di Produzione e Lavoro SC (Reggio Emilia, Italy), Coopbox Group SpA (Bibbiano, Italy), Coopbox Eastern s.r.o. (Nové Mesto nad Váhom, Slovakia) (represented by: E. Cucchiara and E. Rocchi, lawyers)

Defendant: European Commission (represented by: P. Rossi and T. Baumé, acting as Agents)

Re:

By their action based on Article 263 TFEU, the applicants seek annulment of Commission Decision C(2020) 8940 final of 17 December 2020 adjusting the amount of the fines imposed by Commission Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39563 — Retail Food Packaging).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders CCPL — Consorzio Cooperative di Produzione e Lavoro SC, Coopbox Group SpA and Coopbox Eastern s.r.o. to bear their own costs and to pay those incurred by the European Commission, including the costs relating to the interim proceedings.

(1) OJ C 148, 26.4.2021.

Judgment of the General Court of 30 November 2022 — Italy v Commission

(Case T-221/21) (1)

(EAGF and EAFRD — Expenditure excluded from financing — Area-related aid scheme — Financial corrections — Definition of 'permanent grasslands' — Article 4(1)(h) of Regulation (EU) No 1307/2013 — Article 5(3) of Delegated Regulation (EU) No 499/2014)

(2023/C 35/58)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and C. Gerardis, G. Rocchitta and E. Feola, avvocati dello Stato)

Defendant: European Commission (represented by: P. Rossi, J. Aquilina and F. Moro, acting as Agents)

Re:

By its action based on Article 263 TFEU, the Italian Republic seeks the annulment of Commission Implementing Decision (EU) 2021/261 of 17 February 2021 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2021 L 59, p. 10), in so far as it concerns certain expenditure it has incurred.

Operative part of the judgment

The Court:

1. Annuls Commission Implementing Decision (EU) 2021/261 of 17 February 2021 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as it imposes a flat rate correction of 2 % on the Italian Republic relating to area aid granted in Italy in the amount of EUR 67 368 272,99 for the claim year 2017;

2. Dismisses the action as to the remainder;

3. Orders the Italian Republic and the European Commission to bear their own costs.

(1) OJ C 228, 14.6.2021.

Judgment of the General Court of 30 November 2022 — KN v Parliament

(Case T-401/21) [1]

(Institutional law — Member of the EESC — Discharge procedure in respect of the implementation of the EESC's budget for the 2019 financial year — Resolution of the Parliament designating the applicant as the perpetrator of psychological harassment — Action for annulment — Non-actionable measure — Inadmissibility — Action for damages — Protection of personal data — Presumption of innocence — Duty of confidentiality — Principle of sound administration — Proportionality — Sufficiently serious infringement of a rule of law conferring rights on individuals)

(2023/C 35/59)

Language of the case: French

Parties

Applicant: KN (represented by: M. Casado García-Hirschfeld and M. Aboudi, lawyers)

Defendant: European Parliament (represented by: R. Crowe, C. Burgos and M. Allik, acting as Agents)

Re:

By its action, the applicant seeks, first, on the basis of Article 263 TFEU, annulment of Decision (EU, Euratom) 2021/1552 of the European Parliament of 28 April 2021 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section VI — European Economic and Social Committee (OJ 2021 L 340, p. 140), and of Resolution (EU) 2021/1553 of the European Parliament of 29 April 2021 with comments forming an integral part of the decision on the discharge for implementation of the European Union general budget for the financial year 2019, Section VI — European Economic and Social Committee (OJ 2021 L 340, p. 141), and, secondly, on the basis of Article 268 TFEU, compensation for the damage which it has allegedly suffered as a result of the contested acts.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders KN to pay the costs.

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[1] OJ C 338, 23.8.2021.

Judgment of the General Court of 7 December 2022 — Neoperl v EUIPO (Representation of a cylindrical sanitary insert)

(Case T-487/21) [1]

(EU trade mark — Application for an EU trade mark representing a cylindrical sanitary insert — Tactile position mark — Absolute grounds for refusal — Scope of the law — Court acting of its own motion — Examination of distinctive character by the Board of Appeal — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Sign not capable of constituting an EU mark — Absence of a precise and self-contained graphic representation of the tactile impression produced by the sign — Article 4 and 7(1)(a) of Regulation (EC) No 207/2009 (now Article 4 and 7(1)(a) of Regulation (EU) 2017/1001))

(2023/C 35/60)

Language of the case: German

Parties

Applicant: Neoperl AG (Reinach, Switzerland) (represented by: U. Kaufmann, lawyer)

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

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 3 June 2021 (Case R 2327/2019-5).

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 3 June 2021 (Case R 2327/2019-5);

2. Orders EUIPO to pay the costs.

(1) OJ C 391, 27.9.2021.

Judgment of the General Court of 23 November 2022 — Zeta Farmaceutici v EUIPO — Specchiasol (EUPHYTOS)

(Case T-515/21) (1)

(EU trade mark — Invalidity proceedings — EU wordmark EUPHYTOS — Earlier EU figurative mark EuPhidra — Proof of genuine use of the earlier mark — Article 56(2) and Article 43(2) of Regulation (EC) No 40/94 (now Article 64(2) and Article 47(2) of Regulation (EU) 2017/1001) — Relevant periods — Submission of evidence for the first time before the Board of Appeal — Discretion of the Board of Appeal — Article 95(2) of Regulation 2017/1001 — Article 27(4) of Delegated Regulation (EU) 2018/625)

(2023/C 35/61)

Language of the case: Italian

Parties

Applicant: Zeta Farmaceutici SpA (Vicenza, Italy) (represented by: F. Celluprica, F. Fischetti and F. De Bono, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Specchiasol Srl (Bussolengo, Italy)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment and alteration of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 June 2021 (Case R 2094/2019-1).

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 June 2021 (Case R 2094/2019-1);

2. Dismisses the action as to the remainder;

3. Orders EUIPO to bear its own costs and to pay those incurred by Zeta Farmaceutici SpA.

([1]) OJ C 422, 18.10.2021.

Judgment of the General Court of 30 November 2022 — ADS L. Kowalik, B. Włodarczyk v EUIPO — ESSAtech (Accessory for wireless remote control)

(Case T-612/21) ([1])

(Community design — Invalidity proceedings — Registered Community design representing an accessory for a wireless remote control — Ground for invalidity — Features of appearance of a product which are solely dictated by its technical function — Article 8(1) and Article 25(1)(b) of Regulation (EC) No 6/2002 — Facts or evidence submitted for the first time before the Board of Appeal — Article 63(2) of Regulation No 6/2002 — Obligation to state reasons — Article 41(1) and (2)(c) of the Charter of Fundamental Rights)

(2023/C 35/62)

Language of the case: Polish

Parties

Applicant: ADS L. Kowalik, B. Włodarczyk s.c. (Sosnowiec, Poland) (represented by: M. Oleksyn, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: ESSAtech (Přistoupim, Czech Republic)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 14 July 2021 (Case R 1072/2020-3).

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 14 July 2022 (Case R 1072/2020-3);

2. Orders EUIPO to pay the costs incurred in the proceedings before the Board of Appeal of EUIPO and before the General Court.

([1]) OJ C 502, 13.12.2021.

Judgment of the General Court of 7 December 2022 — Puma v EUIPO — Vaillant (Puma)

(Case T-623/21) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Puma — Earlier EU figurative mark PUMA — Relative ground for refusal — Damage to reputation — Article 8(5) of Regulation (EU) 2017/1001)

(2023/C 35/63)

Language of the case: German

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke and P. Trieb, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Schäfer, D. Stoyanova-Valchanova and E. Markakis, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Vaillant GmbH (Remscheid, Germany) (represented by: S. Abrar, lawyer)

Re:

By its 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 8 July 2021 (Case R 1875/2019-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Puma SE to pay the costs.

([1]) OJ C 471, 22.11.2021.

Judgment of the General Court of 30 November 2022 — Mendes v EUIPO — Actial Farmaceutica (VSL3TOTAL)

(Case T-678/21) ([1])

(EU trade mark — Invalidity proceedings — EU word mark VSL3TOTAL — Earlier EU word mark VSL#3 — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Similarity of the goods — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009 (now Article 8(1)(b) and Article 60(1)(a) of Regulation (EU) 2017/1001))

(2023/C 35/64)

Language of the case: English

Parties

Applicant: Mendes SA (Lugano, Switzerland) (represented by: M. Cavattoni, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Actial Farmaceutica Srl (Rome, Italy) (represented by: M. Mostardini, F. Mellucci and F. Rombolà, lawyers)

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 17 August 2021 (Case R 1568/2020-2).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mendes SA to pay the costs.

([1]) OJ C 502, 13.12.2021.

Judgment of the General Court of 23 November 2022 — Allessa v EUIPO — Dumerth (CASSELLAPARK)

(Case T-701/21) [1]

(EU trade mark — Cancellation proceedings — EU word mark CASSELLAPARK — Absolute grounds for refusal — Distinctive character — Lack of descriptive character — Mark not of such a nature as to mislead the public — Article 7(1)(b), (c) and (g) of Regulation (EC) No 207/2009 (now Article 7(1)(b), (c) and (g) of Regulation (EU) 2017/1001) — Obligation to state reasons — Article 94 of Regulation 2017/1001)

(2023/C 35/65)

Language of the case: German

Parties

Applicant: Allessa GmbH (Frankfurt am Main, Germany) (represented by: S. Fröhlich, M. Hartmann and H. Lerchl, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Carim Dumerth (Frankfurt am Main, Germany) (represented by: T. Wieland and C. Corbet, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union intellectual Property Office (EUIPO) of 11 August 2021 (Case R 1043/2020-5).

Operative part of the judgment

The Court:

1. Rejects the appeal;

2. Orders Allessa GmbH to bear the costs.

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[1] OJ C 2, 3.1.2022.

Judgment of the General Court of 7 December 2022 — Bora Creations v EUIPO (essence)

(Case T-738/21) [1]

(EU trade mark — Invalidity proceedings — EU figurative mark essence — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001 — Lack of distinctive character — Article 7(1)(b) of Regulation 2017/1001)

(2023/C 35/66)

Language of the case: German

Parties

Applicant: Bora Creations, SL (Andratx, Spain) (represented by: R. Lange and M. Ebner, lawyers)

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

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment of the decision of the Fourth Board of Appeal the European Union Intellectual Property Office (EUIPO) of 21 September 2021 (Case R 693/2021-4).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Bora Creations, SL to pay the costs.

(1) OJ C 37, 24.1.2022.

Judgment of the General Court of 7 December 2022 — Borussia VfL 1900 Mönchengladbach v EUIPO — Neng (Fohlenelf)

(Case T-747/21) [1]

(EU trade mark — Revocation proceedings — EU word mark Fohlenelf — Genuine use of the mark — Article 58(1)(a), Article 94(1) and Article 97(1)(d) of Regulation (EU) 2017/1001)

(2023/C 35/67)

Language of the case: German

Parties

Applicant: Borussia VfL 1900 Mönchengladbach GmbH (Mönchengladbach, Germany) (represented by: R. Kitzberger, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Söder and E. Nicolás Gómez, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: David Neng (Brüggen, Germany) (represented by: D. Breuer, lawyer)

Re:

By its action based on Article 263 TFEU, the applicant seeks the annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 28 September 2021 (Case R 2126/2020-4).

Operative part of the judgment

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 28 September 2021 (Case R 2126/2020-4) in so far as proof of genuine use of EU word mark Fohlenelf was rejected in relation to 'soaps' in Class 3, 'self-adhesive films of paper or plastic, self-adhesive labels' in Class 16, 'porcelain and earthenware' in Class 21, as well as in relation to 'drinking bottles', in so far as they constitute a subcategory of goods within 'household or kitchen containers' also in Class 21, 'bath towels of textile' in Class 24 and 'games, toys' in Class 28;

2. Dismisses the action as to the remainder;

3. Orders each party to bear its own costs.

(1) OJ C 37, 24.1.2022.

Judgment of the General Court of 30 November 2022 — Lila Rossa Engros v EUIPO (LiLAC)

(Case T-780/21) [1]

(EU trade mark — Application for EU figurative mark LiLAC — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2023/C 35/68)

Language of the case: Romanian

Parties

Applicant: Lila Rossa Engros SRL (Voluntari, Romania) (represented by: O. Anghel, lawyer)

Defendant: European Union Intellectual Property Office (represented by: V. Ruzek, 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 10 September 2021 (Case R 441/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Lila Rossa Engros SRL to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).

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[1] OJ C 95, 28.2.2022.

Judgment of the General Court of 30 November 2022 — Hasco TM v EUIPO — Esi (NATURCAPS)

(Case T-12/22) [1]

(EU trade mark — Invalidity proceedings — EU word mark NATURCAPS — Earlier national word mark NATURKAPS — No genuine use of the earlier trade mark — Article 64(2) of Regulation (EU) 2017/1001 — Classification of pharmaceutical products and food supplements)

(2023/C 35/69)

Language of the case: English

Parties

Applicant: Hasco TM sp. z o.o. sp.k. (Wrocław, Poland) (represented by: M. Krekora, lawyer)

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: Esi Srl (Albisola Superiore, Italy)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 9 November 2021 (Case R 617/2021-4).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Hasco TM sp. z o.o. sp.k. to pay the costs.

([1]) OJ C 109, 7.3.2022.

Judgment of the General Court of 30 November 2022 — Korporaciya 'Masternet' v EUIPO — Stayer Ibérica (STAYER)

(Case T-85/22) ([1])

(EU trade mark — Revocation proceedings — EU word mark STAYER — Genuine use of the mark — Article 15 and Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 18 and Article 58(1)(a) of Regulation (EU) 2017/1001) — Classification of the goods in respect of which genuine use has been shown)

(2023/C 35/70)

Language of the case: English

Parties

Applicant: ZAO Korporaciya 'Masternet' (Moscow, Russia) (represented by: N. Bürglen, lawyer)

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: Stayer Ibérica, SA (Pinto, Spain) (represented by: P. Creta, A. Lanzarini, B. Costa and M. Lazzarotto, lawyers)

Re:

By its 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 16 December 2021 (Case R 932/2021-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ZAO Korporaciya 'Masternet' to pay the costs.

([1]) OJ C 158, 11.4.2022.

Judgment of the General Court of 23 November 2022 — General Wire Spring v EUIPO (GENERAL PIPE CLEANERS)

(Case T-151/22) ([1])

(EU trade mark — International registration designating the European Union — Word mark GENERAL PIPE CLEANERS — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2023/C 35/71)

Language of the case: English

Parties

Applicant: General Wire Spring Co. (McKees Rocks, Pennsylvania, United States) (represented by: E. Carrillo, lawyer)

Defendant: European Union Intellectual Property Office (represented by: R. Raponi, 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 11 January 2022 (Case R 1452/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders General Wire Spring Co. to pay the costs.

([1]) OJ C 198, 16.5.2022.

Judgment of the General Court of 30 November 2022 — Korporaciya 'Masternet' v EUIPO — Stayer Ibérica (STAYER)

(Case T-155/22) ([1])

(EU trade mark — Revocation proceedings — EU figurative mark STAYER — Genuine use of the mark — Article 15 and Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 18 and Article 58(1)(a) of Regulation (EU) 2017/1001) — Classification of the goods in respect of which genuine use has been shown)

(2023/C 35/72)

Language of the case: English

Parties

Applicant: ZAO Korporaciya 'Masternet' (Moscow, Russia) (represented by: N. Bürglen, lawyer)

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: Stayer Ibérica, SA (Pinto, Spain) (represented by: P. Creta, A. Lanzarini, A. Sponzilli, B. Costa and M. Lazzarotto, lawyers)

Re:

By its 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 21 December 2021 (Case R 931/2021-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ZAO Korporaciya 'Masternet' to pay the costs.

([1]) OJ C 198, 16.5.2022.

Judgment of the General Court of 7 December 2022 — Sanetview v EUIPO — 2boca2catering (Las Cebras)

(Case T-159/22) [1]

(EU trade mark — Opposition proceedings — Application for EU figurative mark Las Cebras — Earlier national figurative mark LEZEBRA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2023/C 35/73)

Language of the case: Spanish

Parties

Applicant: Sanetview, SLU (Andorra la Vella, Andorra) (represented by: J. Gallego Jiménez, E. Sanz Valls, P. Bauzá Martínez, Y. Hernández Viñes and C. Marí Aguilar, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: 2boca2catering, SL (Seville, Spain)

Re:

By its action under Article 263 TFUE, the applicant seeks annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 January 2022 (Case R 1070/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sanetview, SLU to pay the costs.

(1) OJ C 198, 16.5.2022.

Order of the General Court of 30 November 2022 — Basicmed Enterprises and Others v Council and Others

(Case T-379/16) [1]

(Non-contractual liability — Economic and monetary policy — Stability support programme for Cyprus — Decision of the Governing Council of the ECB on the provision of emergency liquidity following a request by the Central Bank of Cyprus — Eurogroup statements of 25 March, 12 April, 13 May and 13 September 2013 concerning Cyprus — Decision 2013/236/EU — Implementing Decision 2013/463/EU — Memorandum of Understanding of 26 April 2013 on specific economic policy conditions between Cyprus and the European Stability Mechanism — Jurisdiction of the General Court — Admissibility — Formal requirements — Exhaustion of domestic remedies — Sufficiently serious breach of a rule of law conferring rights on individuals — Right to property — Legitimate expectations — Equal treatment — Action brought in part before a court which manifestly lacks jurisdiction to hear and determine the case, in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2023/C 35/74)

Language of the case: English

Parties

Applicants: Basicmed Enterprises Ltd (Limassol, Cyprus), and 19 other applicants whose names are listed in the annex to the order (represented by: P. Tridimas, K. Kakoulli and P. Panayides, lawyers)

Defendants: Council of the European Union (represented by: A. Westerhof Löfflerová and I. Gurov, acting as Agents), European Commission (represented by: L. Flynn, J.-P. Keppenne and S. Delaude, acting as Agents), European Central Bank (represented by: K. Laurinavičius, G. Várhelyi and K. Drēviņa, acting as Agents, and by H.-G. Kamann, lawyer), Eurogroup, represented by the Council of the European Union (represented by: A. Westerhof Löfflerová and I. Gurov, acting as Agents), European Union, represented by the European Commission (represented by: L. Flynn and J.-P. Keppenne and by S. Delaude, acting as Agents)

Re:

By their application under Article 268 TFEU, the applicants seek compensation for the damage allegedly suffered by them as a result of the decision of the Governing Council of the European Central Bank (ECB) of 21 March 2013 on the provision of emergency liquidity following a request made by the Central Bank of Cyprus ('the CBC'), the Eurogroup statements of 25 March, 12 April, 13 May and 13 September 2013 on Cyprus, Council Decision 2013/236/EU of 25 April 2013 addressed to Cyprus on specific measures to restore financial stability and sustainable growth (OJ 2013 L 141, p. 32), Council Implementing Decision 2013/463/EU of 13 September 2013 approving the macroeconomic adjustment programme for Cyprus and repealing Decision 2013/236 (OJ 2013 L 250, p. 40), the Memorandum of Understanding of 26 April 2013 on specific economic policy conditions between the Republic of Cyprus and the European Stability Mechanism (ESM) ('the Memorandum of Understanding of 26 April 2013'), as well as other acts and conduct of the European Commission, the Council of the European Union, the ECB and the Eurogroup related to the provision of a financial assistance facility to the Republic of Cyprus.

Operative part of the order

1. The action is dismissed.

2. Basicmed Enterprises Ltd and the other applicants whose names are listed in the annex shall pay, in addition to their own costs, those incurred by the Council of the European Union, the European Commission and the European Central Bank (ECB).

([1]) OJ C 383, 17.10.2016.

Order of the General Court of 22 November 2022 — Validity v Commission

(Case T-640/20) ([1])

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a draft call for proposals co-funded by the ERDF — Documents originating from a Member State — Partial refusal of access — Disclosure after the action had been brought — Interest in bringing proceedings ceasing to exist — No need to adjudicate in part — Request to modify the application — Partial inadmissibility)

(2023/C 35/75)

Language of the case: English

Parties

Applicant: Validity Foundation — Mental Disability Advocacy Centre (Budapest, Hungary) (represented by: B. Van Vooren and R. Oyarzabal Arigita, lawyers)

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

Re:

By its action based on Article 263 TFEU, the applicant seeks the annulment, first, of Commission Decision C(2020) 5540 final of 6 August 2020, by which the Commission refused it access to documents relating to a draft call for proposals from the Hungarian authorities and, secondly, of Commission Decision C(2021) 2834 final of 19 April 2021 granting it access to those documents.

Operative part of the order

1. There is no longer any need to adjudicate on the application for annulment of Commission Decision C(2020) 5540 final of 6 August 2020, by which the Commission refused Validity Foundation — Mental Disability Advocacy Centre access to documents relating to a draft call for proposals of the Hungarian authorities.

2. The remainder of the action is dismissed as inadmissible.

3. Each party is ordered to bear its own costs.

([1]) OJ C 9, 11.1.2021.

Order of the General Court of 22 November 2022 — Fieldpoint (Cyprus) v EUIPO (HYPERLIGHTOPTICS)

(Case T-800/21) ([1])

(EU trade mark — Application for the EU word mark HYPERLIGHTOPTICS — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EU) 2017/1001 — Equal treatment — Action manifestly lacking any foundation in law)

(2023/C 35/76)

Language of the case: English

Parties

Applicant: Fieldpoint (Cyprus) LTD (Nicosia, Cyprus) (represented by: P. Rath and S. Gebele, lawyers)

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

Re:

By its action under 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 6 October 2021 (Case R 1166/2021-2).

Operative part of the order

1. The action is dismissed.

2. Fieldpoint (Cyprus) LTD shall pay the costs.

([1]) OJ C 73, 14.2.2022.

Order of the General Court of 22 November 2022 — Fieldpoint (Cyprus) v EUIPO (HYPERLIGHTEYEWEAR)

(Case T-801/21) ([1])

(EU trade mark — Application for the EU word mark HYPERLIGHTEYEWEAR — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EU) 2017/1001 — Equal treatment — Action manifestly lacking any foundation in law)

(2023/C 35/77)

Language of the case: English

Parties

Applicant: Fieldpoint (Cyprus) LTD (Nicosia, Cyprus) (represented by: P. Rath and S. Gebele, lawyers)

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

Re:

By its action under 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 6 October 2021 (Case R 1165/2021-2).

Operative part of the order

1. The action is dismissed.

2. Fieldpoint (Cyprus) LTD shall pay the costs.

([1]) OJ C 73, 14.2.2022.

Action brought on 21 September 2022 — Ferreira de Macedo Silva v Frontex

(Case T-595/22)

(2023/C 35/78)

Language of the case: English

Parties

Applicant: Carlos Miguel Ferreira de Macedo Silva (Cercal do Alentejo, Portugal) (represented by: L. Cosme Nunes Rolo, lawyer)

Defendant: European Border and Coast Guard Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision of 29 August 2022 of the Deputy Executive Director for Information Management and Processes of the European Border and Coast Guard Agency (Frontex), acting as Appointing Authority, to dismiss him before the end of probationary period as temporary staff of Standing Corps, Cat. 1;

— order that Frontex, in case of impossible readmission in time in Batch 8, pay all costs related to the fulfilment of the five year contract, and legal expenses.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of the protection of legitimate expectations, and violation of the principle of equal treatment in employment (reference: Council Directive 2000/78/EC of 27 November 2000). ([1])

2. Second plea in law, alleging infringement of essential procedural requirements and also of the right to good administration and the right to be heard.

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Action brought on 7 December 2022 — Athlet v EUIPO — Heuver Bandengroothandel (ATHLET)

(Case T-650/22)

(2023/C 35/79)

Language in which the application was lodged: German

Parties

Applicant: Athlet Ltd (London, United Kingdom) (represented by: S. Reinhard, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Heuver Bandengroothandel BV (Hardenberg, Netherlands)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark ATHLET — EU trade mark No 9 224 692

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 8 August 2022 in Case R 2214/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of the TFEU;

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

— Distortion of the facts and evidence;

— Infringement of Article 34 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 11 November 2022 — FOF v Commission

(Case T-688/22)

(2023/C 35/80)

Language of the case: Portuguese

Parties

Applicant: FOF — Fox Oil Fund, Lda (Funchal, Portugal) (represented by: S. Gemas Donário and S. Soares, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2020) 8550 final of 4 December 2020, on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law which, in essence, are identical or similar to those raised in Case T-553/22, *Thorn Investments* v *Commission*.

Action brought on 12 November 2022 — Fontwell v Commission

(Case T-691/22)

(2023/C 35/81)

Language of the case: Portuguese

Parties

Applicant: Fontwell — Import, Export, Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: S. Gemas Donário and S. Soares, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision C(2020) 8550 final of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law that are, essentially, identical or similar to those relied on in Case T-553/22, *Thorn Investments* v *Commission*.

Action brought on 12 November 2022 — Mission v Commission

(Case T-700/22)

(2023/C 35/82)

Language of the case: Portuguese

Parties

Applicant: Mission — Trading, Gestão e Serviços, Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: S. Gemas Donário and S. Soares, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision C(2020) 8550 final of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law that are, essentially, identical or similar to those relied on in Case T-553/22, *Thorn Investments* v *Commission*.

Action brought on 13 November 2022 — Durie v Commission

(Case T-705/22)

(2023/C 35/83)

Language of the case: Portuguese

Parties

Applicant: Durie — Trading e Serviços Internacionais, Sociedade Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: A. Ferreira Correia and R. da Palma Borges, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and 4 of the contested decision;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

In support of the action against Commission Decision (EU) 2022/1414 of 4 December 2020, on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III (notified under document C(2020) 8550) (OJ 2022 L 217, p. 49), the applicant relies on six pleas in law which, in essence, are identical or similar to those raised in Case T-702/22, *TA* v *Commission*.

Action brought on 14 November 2022 — Ostrava v Commission

(Case T-707/22)

(2023/C 35/84)

Language of the case: Portuguese

Parties

Applicant: Ostrava — Trading e Serviços Internacionais, Sociedade Unipessoal, Lda (Funchal, Portugal) (represented by: S. Gemas Donário and S. Soares, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision C(2020) 8550 final of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law that are, essentially, identical or similar to those relied on in Case T-553/22, *Thorn Investments* v *Commission*.

Action brought on 14 November 2022 — White Pearl v Commission

(Case T-708/22)

(2023/C 35/85)

Language of the case: Portuguese

Parties

Applicant: White Pearl, Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: S. Gemas Donário and S. Soares, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision C(2020) 8550 final of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law that are, essentially, identical or similar to those relied on in Case T-553/22, *Thorn Investments* v *Commission*.

Action brought on 13 November 2022 — Starboard v Commission

(Case T-710/22)

(2023/C 35/86)

Language of the case: Portuguese

Parties

Applicant: Starboard, Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: A. Ferreira Correia and R. da Palma Borges, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and 4 of the contested decision;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

In support of the action against Commission Decision (EU) 2022/1414 of 4 December 2020, on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III (notified under document C(2020) 8550) (OJ 2022 L 217, p. 49), the applicant relies on five pleas in law which, in essence, are identical or similar to those raised in Case T-702/22, *TA* v *Comission*.

Action brought on 13 November 2022 — Caledonian v Commission

(Case T-711/22)

(2023/C 35/87)

Language of the case: Portuguese

Parties

Applicant: Caledonian — Serviços Internacionais, Sociedade Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: A. Ferreira Correia and R. da Palma Borges, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and 4 of the contested decision;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

In support of the action against Commission Decision (EU) 2022/1414 of 4 December 2020, on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III (notified under document C(2020) 8550) (OJ 2022 L 217, p. 49), the applicant relies on five pleas in law which, in essence, are identical or similar to those raised in Case T-702/22, *TA* v *Commission*.

Action brought on 13 November 2022 — Funchinvest v Commission

(Case T-712/22)

(2023/C 35/88)

Language of the case: Portuguese

Parties

Applicant: Fuchinvest Real Estate Participações, Unipessoal, Lda (Zona Franca da Madeira) (Funchal, Portugal) (represented by: A. Ferreira Correia and R. da Palma Borges, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and 4 of the contested decision;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

In support of the action against Commission Decision (EU) 2022/1414 of 4 December 2020, on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III (notified under document C(2020) 8550) (OJ 2022 L 217, p. 49), the applicant relies on five pleas in law which, in essence, are identical or similar to those raised in Case T-702/22, *TA* v *Commission*.

Action brought on 14 November 2022 — Administradora Fortaleza and Others v Commission

(Case T-716/22)

(2023/C 35/89)

Language of the case: Portuguese

Parties

Applicant: Administradora Fortaleza Ltda (São Paulo, Brazil) (represented by: A. Ferreira Correia and R. da Palma Borges, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and 4 of the contested decision for a failure to state adequate reasons, or to the extent that they are applied to 'sociedades gestoras de participações sociais' (holding companies) or as a result of income being received from a source outside the outermost region;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

In support of the action against Commission Decision (EU) 2022/1414 of 4 December 2020, on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III (notified under document C(2020) 8550) (OJ 2022 L 217, p. 49), the applicant relies on six pleas in law which, in essence, are identical or similar to those raised in Case T-702/22, *TA* v *Commission*.

Action brought on 14 November 2022 — Newco v Commission

(Case T-717/22)

(2023/C 35/90)

Language of the case: Portuguese

Parties

Applicant: Newco Corporate Services, SA (Zona Franca da Madeira) (Funchal, Portugal) (represented by: A. Ferreira Correia and R. da Palma Borges, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in respect of Articles 1 and 4;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

In support of the action brought against Commission Decision (EU) 2022/1414 of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III (notified under document C(2020) 8550) (OJ 2022 L 217, p. 49), the applicant relies on four pleas in law that are, essentially, identical or similar to those relied on in Case T-702/22, *TA* v *Commission*.

Action brought on 15 November 2022 — Bourbon Offshore Interoil Shipping v Commission

(Case T-721/22)

(2023/C 35/91)

Language of the case: Portuguese

Parties

Applicant: Bourbon Offshore Interoil Shipping — Navegação, Lda (Funchal, Portugal) (represented by: S. Fernandes Martins and M. Mendonça Saraiva, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision (EU) 2022/1414 of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) — Regime III;

— in any event, without prejudice to the previous head of claim, annul Article 4 of Commission Decision (EU) 2022/1414 of 4 December 2020 on aid scheme SA.21259 (2018/C) (ex 2018/NN) and, consequently, the order to recover the aid from the beneficiaries, together with interest;

— annul the contested decision in accordance with Article 264 TFEU;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

First plea in law, alleging that the methodology proposed by the European Commission of defining the concept of ‘job creation’ in FTEs (Full-Time Equivalents) and ALUs (Annual Labour Units), as used in the Guidelines on national regional aid for 2007-2013 (OJ 2006 C 54, p. 13), is inapplicable.

Second plea in law, alleging the inadmissibility of the order to recover the aid from the beneficiaries and to pay interest.

Action brought on 18 November 2022 — LG and Others v Commission

(Case T-730/22)

(2023/C 35/92)

Language of the case: English

Parties

Applicants: LG and seven other applicants (represented by: A. Sigal and M. Teder, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare that the defendant has acted unlawfully under Article 9(4) of the Regulation (EU, Euratom) No 883/2013, ([1]) as amended by Regulation (EU, Euratom) 2020/2223, ([2]) by not sending the applicants reasonably detailed and clear fact statements that would clarify whether and how the applicants' actions have, in OLAF's views, harmed the interests of the European Union, and not providing the applicants an additional opportunity to comment on such fact statements; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that OLAF has failed to act by not providing the applicants, who have been named as persons concerned in an OLAF investigation, a meaningful opportunity to comment on the facts concerning them, in accordance with Article 9(4) and Article 9(b)(1) and (2) of Regulation (EU, Euratom) No 883/2013, as amended by Regulation (EU, Euratom) 2020/2223.

2. Second plea in law, alleging that OLAF has failed to act in accordance with the principle of good administration by not disclosing, with the statement of facts provided to the applicants, the preliminary allegations against the applicants that would allow them to assess the relevance of the stated facts and to comment on such facts.

([1]) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

([2]) Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OJ 2020 L 437, p. 49).

Action brought on 25 November 2022 — Mazepin v Council

(Case T-743/22)

(2023/C 35/93)

Language of the case: English

Parties

Applicant: Nikita Dmitrievich Mazepin (Moscow, Russia) (represented by: D. Rovetta, M. Campa, M. Moretto, V. Villante, T. Marembert and A. Bass, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2022/1530 of 14 September 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [1];

— annul Council Implementing Regulation (EU) 2022/1529 of 14 September 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2];

— annul the decision to maintain the applicant on the list of persons and entities subject to restrictive measures under Council Decision 2014/145/CFSP [3], as amended by the Council Decision (CFSP) 2022/1530, and under Council Regulation (EU) No 269/2014, as implemented by Council Implementing Regulation (EU) No 2022/1529, concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;

collectively referred to as the 'Contested Acts', in so far as the Contested Acts include the applicant in the list of persons and entities made subject to the restrictive measures.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons; of Article 296 of the TFUE and of Article 41 (2) (c) of the Charter of Fundamental Rights; breach of the right to effective judicial protection and of Article 47 of the Charter of Fundamental Rights.

2. Second plea in law, alleging error of appreciation.

3. Third plea in law, alleging manifest error of assessment; failure to discharge the burden of proof; breach of the listing criteria set forth in Articles 1 (1) (e) and 2 (1) (g) of Council Decision 2014/145/CFSP of 17 March 2014 and in Article 3 (1) (g) of Council Regulation (EU) No 269/2014 of 17 March 2014, both concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

4. Fourth plea in law, alleging breach of the principle of proportionality and of the applicant's fundamental rights; breach of the applicant's fundamental rights to property and freedom to conduct business and breach of Articles 16 and 17 of the Charter of Fundamental Rights.

5. Fifth plea in law, alleging infringement of the fundamental principle of non-discrimination.

6. Sixth plea in law, alleging breaches of essential procedural requirements; breach of the rights of the defence and of the council's obligation to periodically review the sanctions.

(1) OJ 2022, L 239, p. 149.
(2) OJ 2022, L 239, p. 1.
(3) OJ 2014, L 78, p. 16.

Action brought on 1 December 2022 — Mazzone v Parliament

(Case T-751/22)

(2023/C 35/94)

Language of the case: Italian

Parties

Applicant: Antonio Mazzone (Napoli, Italy) (represented by: M. Paniz, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the measure entitled 'Amendment to the determination of the rights to a retirement pension of a former Member of the European Parliament under an Italian mandate' communicated by letter of 21 September 2022, received on 5 October 2022, sent by the Directorate-General for Finance of the European Parliament, with the subject line: 'Redefinition of the rights to a retirement pension following Decision No 150 of 3 March 2022 of the Ufficio di Presidenza della Camera dei deputati [(Office of the President of the Italian Chamber of Deputies, Italy)]', and any other prior and/or subsequent and/or consecutive act,

— declare that the applicant is entitled to the maintenance of the life annuity paid by the European Parliament in so far as it was accrued and is being accrued at the time of the first payment,

— order the European Parliament to pay the applicant all the sums unduly withheld, adjusted for inflation, together with statutory interest from the date of withholding until the date of payment,

— and order the European Parliament to comply with the judgment in this case and immediately to restore in full the original amount of the life annuity.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the powers reserved to the Bureau of the European Parliament (Rule 25 of the Rules of Procedure of the European Parliament).

   — The applicant claims that the contested measure is unlawful on the ground that it was adopted by the Head of Unit of the Members' Salaries and Social Entitlements Unit without the necessary involvement of the Bureau of the European Parliament, which is in fact the body that takes financial, organisational and administrative decisions on matters concerning the Members of the European Parliament under Article 25 of the Rules of Procedure of the European Parliament.

2. Second plea in law, alleging infringement of the second paragraph of Article 296 TFEU and of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') ([1]); insufficient statement of reasons in the contested act.

   — The applicant claims that the contested measure is unlawful since it fails to provide a sufficient statement of reasons, in breach of the second paragraph of Article 296 TFEU and of Article 41 of the Charter.

3. Third plea in law, alleging that the contested measure was adopted without a valid legal basis; incorrect application of Annex III to the PEAM Rules ([2]) (Rules governing the payment of expenses and allowances to Members) and of Articles 74 and 75 of the IMS ([3]) (Decision concerning implementing measures for the Statute for Members).

   — The applicant claims that the contested measure is unlawful on the ground that it was adopted without a valid legal basis, since Article 2(1) of Annex III to the PEAM Rules was repealed following the entry into force of the Statute for Members (Articles 74 and 75 of the IMS).

4. Fourth plea in law, alleging misinterpretation of Article 75 of the IMS and of Annexes I, II and III to the PEAM Rules. Infringement of Article 28 of the Statute for Members and of the applicant's entitlement to a pension.

   — The applicant claims that the contested act is unlawful on the ground that the European Parliament misinterpreted and misapplied Article 75 of the IMS and Article 2(1) of Annex III to the PEAM Rules. The applicant submits that those provisions must be interpreted as meaning that the reference, in Article 75 of the IMS, to Annexes I, II and III to the PEAM Rules, and in particular to Article 2(1) of Annex III, must necessarily be understood as referring to the pension applicable when that Annex III was in force. By contrast, the abovementioned provisions have been interpreted and applied by the Parliament as allowing the applicant's pension to be amended an indefinite number of times, in clear breach of Article 28 of the Statute for Members and of the principles of legitimate expectations and of legal certainty.

— In the end, even if the interpretation of the European Parliament were to be adopted — according to which Article 2(1) of Annex III to the PEAM Rules requires that institution to adjust the EU pension to the pension amount prescribed for the members of the lower house of the national parliament — such an adjustment operation meets its limit under EU law and, in any event, it may relate only to that amount and the conditions for paying the pension, with the consequence that acts that affect the entitlement to a pension itself may not be transposed automatically. However, in the present case, the measure applied to the applicant, through the automatic transposition of Decision 150/2022 by the European Parliament, not only amended the applicant's entitlement to a pension, by affecting the conditions relating to the constitution of that entitlement due to the retroactive recalculation that changed the pension itself, but presents, moreover, clear signs of incompatibility with EU law.

5. Fifth plea in law, alleging infringement of the principle of legitimate expectations, of legal certainty, of the protection of acquired rights and of equality.

— The applicant claims that the contested measure is unlawful on the ground that, by providing for the automatic transposition of Decision 150/2022 and the resulting recalculation of the applicant's pension using a new, retroactive method with permanent effects that directly affects the entitlement to a pension, the European Parliament infringed the principle of legal certainty, which precludes a violation of acquired rights, in line, furthermore, with the rationale of Article 28 of the Statute for Members and Article 75 of the IMS, as well as the principle of legitimate expectations, which does not allow pensions to be diminished or changed. In addition, in so far as it affects only former Italian Members of the European Parliament, who are the sole addressees of a measure that recalculates retroactively, using a contributive method, pensions accrued while the contributive method had not yet been introduced in Italy, that recalculation presents clear signs of infringement of the principle of equality too, in that it amounts to unlawful discrimination compared to former Members of the European Parliament from the other Member States as well as the Members of the European Parliament elected after 2009 and all other citizens in general, who are not subject to any such reductions.

6. Sixth plea in law, alleging breach of Article 17 of the Charter. Breach of Article 1 of Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Disproportionate nature of the sacrifice imposed.

— The applicant submits that the contested measure, which reduced the amount of the pension for the position of Member of the European Parliament to which he was entitled as originally paid, directly affects his right of ownership. He claims, in addition, that interference occurred without an effective statement of reasons and that it imposed a disproportionate and unreasonable sacrifice to his detriment.

7. Seventh plea in law, alleging breach of Articles 21 and 25 of the Charter, of Article 10 TFEU and of Article 15 of the European Pillar of Social Rights.

— The applicant submits that, since it transposed a measure for the recalculation of pensions which, on account of the way in which it was designed, affects primarily subjects who are older, the European Parliament, by the contested act, is itself in breach of Articles 21 and 25 of the Charter, of Article 10 TFEU and of Article 15 of the European Pillar of Social Rights.

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(1) OJ 2016 C 202, p. 389.

(2) Enlarged Bureau Decision of 4 November 1981; Bureau Decision of 24 and 25 May 1982, as amended on 13 September 1995 and 6 June 2005.

(3) Decision of the Bureau of the European Parliament of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament (OJ 2009 C 159, p. 1).

Action brought on 1 December 2022 — Ceravolo v Parliament

(Case T-752/22)

(2023/C 35/95)

Language of the case: Italian

Parties

Applicant: Domenico Ceravolo (Noventa Padovana, Italy) (represented by: M. Paniz, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the measure entitled 'Amendment to the determination of the rights to a retirement pension of a former Member of the European Parliament under an Italian mandate' communicated by letter of 21 September 2022, received on 5 October 2022, sent by the Directorate-General for Finance of the European Parliament, with the subject line: 'Redefinition of the rights to a retirement pension following Decision No 150 of 3 March 2022 of the Ufficio di Presidenza della Camera dei deputati [(Office of the President of the Italian Chamber of Deputies, Italy)]' to the applicant, and, in any event, the redefinition and recalculation of the life annuity paid by the European Parliament to the applicant, any other prior and/or consecutive act,

— declare that the applicant is entitled to the maintenance of the life annuity paid by the European Parliament in so far as it was accrued and is being accrued at the time of the first payment,

— order the European Parliament to pay the applicant all the sums unduly withheld, adjusted for inflation, together with statutory interest from the date of withholding until the date of payment,

— and order the European Parliament to comply with the judgment in this case and immediately to restore in full the original amount of the life annuity.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the powers reserved to the Bureau of the European Parliament (Rule 25 of the Rules of Procedure of the European Parliament).

   — The applicant claims that the contested measure is unlawful on the ground that it was adopted by the Head of Unit of the Members' Salaries and Social Entitlements Unit without the necessary involvement of the Bureau of the European Parliament, which is in fact the body that takes financial, organisational and administrative decisions on matters concerning the Members of the European Parliament under Article 25 of the Rules of Procedure of the European Parliament.

2. Second plea in law, alleging infringement of the second paragraph of Article 296 TFEU and of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') ([1]); insufficient statement of reasons in the contested act.

   — The applicant claims that the contested measure is unlawful since it fails to provide a sufficient statement of reasons, in breach of the second paragraph of Article 296 TFEU and of Article 41 of the Charter.

3. Third plea in law, alleging that the contested measure was adopted without a valid legal basis; incorrect application of Annex III to the PEAM Rules ([2]) (Rules governing the payment of expenses and allowances to Members) and of Articles 74 and 75 of the IMS ([3]) (Decision concerning implementing measures for the Statute for Members).

   — The applicant claims that the contested measure is unlawful on the ground that it was adopted without a valid legal basis, since Article 2(1) of Annex III to the PEAM Rules was repealed following the entry into force of the Statute for Members (Articles 74 and 75 of the IMS).

4. Fourth plea in law, alleging misinterpretation of Article 75 of the IMS and of Annexes I, II and III to the PEAM Rules. Infringement of Article 28 of the Statute for Members and of the applicant's entitlement to a pension.

   — The applicant claims that the contested act is unlawful on the ground that the European Parliament misinterpreted and misapplied Article 75 of the IMS and Article 2(1) of Annex III to the PEAM Rules. The applicant submits that those provisions must be interpreted as meaning that the reference, in Article 75 of the IMS, to Annexes I, II and III to the PEAM Rules, and in particular to Article 2(1) of Annex III, must necessarily be understood as referring to the pension applicable when that Annex III was in force. By contrast, the abovementioned provisions have been interpreted and applied by the Parliament as allowing the applicant's pension to be amended an indefinite number of times, in clear breach of Article 28 of the Statute for Members and of the principles of legitimate expectations and of legal certainty.

— In the end, even if the interpretation of the European Parliament were to be adopted — according to which Article 2(1) of Annex III to the PEAM Rules requires that institution to adjust the EU pension to the pension amount prescribed for the members of the lower house of the national parliament — such an adjustment operation meets its limit under EU law and, in any event, it may relate only to that amount and the conditions for paying the pension, with the consequence that acts that affect the entitlement to a pension itself may not be transposed automatically. However, in the present case, the measure applied to the applicant, through the automatic transposition of Decision 150/2022 by the European Parliament, not only amended the applicant's entitlement to a pension, by affecting the conditions relating to the constitution of that entitlement due to the retroactive recalculation that changed the pension itself, but presents, moreover, clear signs of incompatibility with EU law.

5. Fifth plea in law, alleging infringement of the principle of legitimate expectations, of legal certainty, of the protection of acquired rights and of equality.

— The applicant claims that the contested measure is unlawful on the ground that, by providing for the automatic transposition of Decision 150/2022 and the resulting recalculation of the applicant's pension using a new, retroactive method with permanent effects that directly affects the entitlement to a pension, the European Parliament infringed the principle of legal certainty, which precludes a violation of acquired rights, in line, furthermore, with the rationale of Article 28 of the Statute for Members and Article 75 of the IMS, as well as the principle of legitimate expectations, which does not allow pensions to be diminished or changed. In addition, in so far as it affects only former Italian Members of the European Parliament, who are the sole addressees of a measure that recalculates retroactively, using a contributive method, pensions accrued while the contributive method had not yet been introduced in Italy, that recalculation presents clear signs of infringement of the principle of equality too, in that it amounts to unlawful discrimination compared to former Members of the European Parliament from the other Member States as well as the Members of the European Parliament elected after 2009 and all other citizens in general, who are not subject to any such reductions.

6. Sixth plea in law, alleging breach of Article 17 of the Charter. Breach of Article 1 of Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Disproportionate nature of the sacrifice imposed.

— The applicant submits that the contested measure, which reduced the amount of the pension for the position of Member of the European Parliament to which he was entitled as originally paid, directly affects his right of ownership. He claims, in addition, that interference occurred without an effective statement of reasons and that it imposed a disproportionate and unreasonable sacrifice to his detriment.

7. Seventh plea in law, alleging breach of Articles 21 and 25 of the Charter, of Article 10 TFEU and of Article 15 of the European Pillar of Social Rights.

— The applicant submits that, since it transposed a measure for the recalculation of pensions which, on account of the way in which it was designed, affects primarily subjects who are older, the European Parliament, by the contested act, is itself in breach of Articles 21 and 25 of the Charter, of Article 10 TFEU and of Article 15 of the European Pillar of Social Rights.

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(1) OJ 2016 C 202, p. 389.
(2) Enlarged Bureau Decision of 4 November 1981; Bureau Decision of 24 and 25 May 1982, as amended on 13 September 1995 and 6 June 2005.
(3) Decision of the Bureau of the European Parliament of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament (OJ 2009 C 159, p. 1).

Action brought on 5 December 2022 — Puma v EUIPO — Road Star Group (Footwear)

(Case T-757/22)

(2023/C 35/96)

Language in which the application was lodged: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke and P. Trieb, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Road Star Group (Nupaky, Czech Republic)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 4 160 273-0015

Contested decision: Decision of the Third Board of Appeal of EUIPO of 21 September 2022 in Case R 1900/2021–3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

Infringement of Article 6(1)(a) of the Council Regulation (EC) No 6/2002.

Action brought on 5 December 2022 — Puma v EUIPO — Fujian Daocheng Electronic Commerce (Shoes)

(Case T-758/22)

(2023/C 35/97)

Language in which the application was lodged: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke and P. Trieb, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fujian Daocheng Electronic Commerce Co. Ltd (Quanzhou, China)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 8 367 742-0013

Contested decision: Decision of the Third Board of Appeal of EUIPO of 21 September 2022 in Case R 1876/2021-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

Infringement of Article 6(1)(a) of the Council Regulation (EC) No 6/2002.

Action brought on 7 December 2022 — Kesaev v Council

(Case T-763/22)

(2023/C 35/98)

Language of the case: Dutch

Parties

Applicant: Igor Albertovich Kesaev (Usovo, Russia) (represented by: R. Moeyersons and A. De Jonge, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul Council Decision (CFSP) 2022/1530 [1] of 14 September 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as implemented by Council Implementing Regulation (EU) 2022/1529 [2] of 14 September 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, to the extent that they concern Kesaev; cancel the extension of the individual sanctions in respect of Kesaev, and remove Kesaev from the list in Annex I to Regulation No 269/2014; [3]

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the grounds for the applicant's inclusion on the sanctions list is factually incorrect and/or irrelevant.

   — first branch: the applicant is not active in specifically those economic sectors that constitute a significant source of income for the Government of the Russian Federation;

   — second branch: the applicant does not support or implement actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine or its stability or security. The applicant is not a shareholder of JSC Detyarev Plant;

   — third branch: the applicant does not materially or financially support the Government of the Russian Federation. The Monolit Fonds is a politically neutral charitable organisation and the medals and rewards received do not constitute evidence of material or financial support to the targeted Government of the Russian Federation;

   — fourth branch: the applicant does not benefit from the Government of the Russian Federation. Neither via the Monolit Fonds nor by any other means does the applicant benefit economically or otherwise from the Government of the Russian Federation;

   — fifth branch: the cited facts are obsolete, dated and irrelevant to proceed with (extension of the) sanctioning of the applicant;

   — sixth branch: the Council does not satisfy the burden of proof incumbent upon it. The Council relies exclusively, after all, on biased, incorrect and unverified information sources. There is no objective, trustworthy evidence for the Council's claims.

2. Second plea in law, alleging that the applicant has never been heard or properly informed — violation of the right to a fair trial.

3. Third plea in law, alleging that the inclusion of the applicant on the sanctions list is contrary to the Charter of Fundamental Rights of the European Union — infringement of Articles 6, 8, 16 and 17, in combination with Article 52 of the Charter.

4. Fourth plea in law, alleging that the terminology used in Decision (CFSP) 2022/329 ([4]) is so vague that the application of the decision becomes arbitrary — breach of the principle of legal certainty.

5. Fifth plea in law, alleging that the sanctioning is based on discrimination. People in comparable situations are not sanctioned, the applicant is sanctioned merely because he is a 1) rich, 2) politically neutral and 3) Russian businessman.

6. Sixth plea in law, alleging that the Council must be ordered to pay the costs in any event, since the applicant felt obliged to institute the present proceedings because the Council has not yet acted on his request for review.

([1]) OJ 2022 L 239, p. 149.
([2]) OJ 2022 L 239, p. 1.
([3]) Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6).
([4]) Council Decision (CFSP) 2022/329 of 25 February 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 50, p. 1).

Action brought on 8 December 2022 — bet365 Group/EUIPO (bet365)

(Case T-764/22)

(2023/C 35/99)

Language of the case: English

Parties

Applicant: bet365 Group Ltd (Stoke-on-Trent, United Kingdom) (represented by: J. van Manen and E. van Gelderen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union figurative mark containing the word elements ‘bet365’ — Application for registration No 18 479 799

Contested decision: Decision of the Forth Board of Appeal of EUIPO of 19 September 2022 in Case R 622/2022-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

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

Action brought on 9 December 2022 — Hoffmann v EUIPO — Moldex/Metric (Holex)

(Case T-767/22)

(2023/C 35/100)

Language in which the application was lodged: German

Parties

Applicant: Hoffmann GmbH Qualitätswerkzeuge (Munich, Germany) (represented by: D. von Schultz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Moldex/Metric AG & Co. KG (Walddorfhäslach, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for the EU word mark 'Holex' — Application No 18 222 083

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 September 2022 in Case R 1248/2022-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, in so far as EU trade mark application No 18 222 083 was refused in respect of the goods 'respiratory masks, except for artificial respiration' in Class 9 and 'Dispensers for ear protection devices; Hearing protection means; Hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones)';

— reject the opposition in its entirety;

— order EUIPO to pay the costs of the proceedings.

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 13 December 2022 — Cogebi and Cogebi v Council

(Case T-782/22)

(2023/C 35/101)

Language of the case: English

Parties

Applicants: Cogebi (Brussels, Belgium), Cogebi, a.s. (Tábor, Czech Republic) (represented by: H. over de Linden, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul Article 3 (i) of the Council Regulation (EU) No 833/2014 of 31 July 2014 [1], as amended by the Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2], in so far it concerns inclusion in the list of goods and technology referred to in Article 3 (i) of the Council Regulation (EU) 2022/1904 (Annex XXI) of the CN code 6814;

— order the Council bear the costs of this procedure.

Pleas in law and main arguments

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

1. First plea in law alleging infringement of an essential procedural requirement -requirement to state reasons.

2. Second plea in law alleging manifest error of assessment.

3. Third plea in law alleging infringement of the principle of proportionality.

4. Fourth plea in law alleging infringement of freedom to conduct a business, as referred to in Article 16 of the Charter of Fundamental Rights of the European Union.

5. Fifth plea in law alleging infringement of the right to good administration, as referred to in Article 41 of the Charter of Fundamental Rights of the European Union, and infringement of the right of effective remedy and to a fair trial laid down in Article 47 of the Charter.

(1) OJ 2014, L 229, p. 1.
(2) OJ 2022, L 259 I, p. 3.

Order of the General Court of 30 November 2022 — Timberland Europe v Commission

(Case T-782/16) [1]

(2023/C 35/102)

Language of the case: English

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

(1) OJ C 14, 16.1.2017.

Order of the General Court of 1 December 2022 — Foz v Council

(Case T-481/21) [1]

(2023/C 35/103)

Language of the case: English

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

(1) OJ C 412, 11.10.2021.

Order of the General Court of 28 November 2022 — Lilly Drogerie v EUIPO — Lillydoo (LILLYDOO kids)

(Case T-150/22) ([1])

(2023/C 35/104)

Language of the case: English

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

([1]) OJ C 198, 16.5.2022.

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