Official Journal of the European Union

C 71

English edition

Information and Notices

Volume 66

27 February 2023

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(2023/C 71/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 12 January 2023 — HSBC Holdings plc, HSBC Bank plc, HSBC Continental Europe, formerly HSBC France v European Commission

(Case C-883/19 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Euro Interest Rate Derivatives sector — Decision establishing an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Manipulation of the Euribor interbank reference rates — Exchange of confidential information — Restriction of competition by object — Characterisation — Taking into account of procompetitive effects — Single and continuous infringement — 'Hybrid' procedure having led successively to the adoption of a settlement decision and a decision made under the ordinary procedure — Charter of Fundamental Rights of the European Union — Article 41 — Right to good administration — Article 48 — Presumption of innocence)

(2023/C 71/02)

Language of the case: English

Parties

Appellants: HSBC Holdings plc, HSBC Bank plc, HSBC Continental Europe, formerly HSBC France (represented by: C. Angeli, avocate, K. Bacon, KC, D. Bailey, Barrister, M. Demetriou, KC, M. Giner, avocate, and M. Simpson, Solicitor)

Other party to the proceedings: European Commission (represented by: P. Berghe, M. Farley and F. van Schaik, acting as Agents)

Interveners in support of the appellants: Crédit agricole SA, Crédit agricole Corporate and Investment Bank (represented by: J. Jourdan, J.-J. Lemonnier, A. Sieffert-Xuriguera and J.-P. Tran Thiet, avocats), JPMorgan Chase & Co., JPMorgan Chase Bank, National Association (represented by: D. Das, N. English, N. French, N. Frey, Solicitors, D. Heaton, Barrister, A. Holroyd, D. Hunt, Solicitors, M. Lester, KC, A. Ojukwu, Solicitor, D. Piccinin, Barrister, L. Ream, Solicitor, D. Rose, KC, and B. Tormey, Solicitor)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 24 September 2019, HSBC Holdings and Others v Commission (T-105/17, EU:T:2019:675) in so far as it dismisses, in point 2 of the operative part thereof, the action brought in Case T-105/17 by HSBC Holdings plc, HSBC Bank plc and HSBC France, now HSBC Continental Europe, seeking the annulment of Article 1 of Commission Decision C(2016) 8530 final of 7 December 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39914 — Euro Interest Rate Derivatives (EIRD)) and, in the alternative, of Article 1(b) of that decision;

2. Dismisses the action lodged in Case T-105/17 by HSBC Holdings plc, HSBC Bank plc and HSBC France, now HSBC Continental Europe, seeking the annulment of Article 1 of Decision C(2016) 8530 final and, in the alternative, Article 1(b) of that decision;

3. Orders the European Commission to bear its own costs and to pay those incurred by HSBC Holdings plc, HSBC Bank plc and HSBC Continental Europe, formerly HSBC France, relating to the appeal and to bear its own costs incurred in the proceedings at first instance;

4. Orders HSBC Holdings plc, HSBC Bank plc and HSBC Continental Europe, formerly HSBC France, to bear their own costs incurred in the proceedings at first instance;

5. Orders Crédit agricole SA and Crédit agricole Corporate and Investment Bank to bear their own costs relating to the appeal;

6. Orders JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association, to bear their own costs relating to the appeal.

(1) OJ C 45, 10.2.2020.

Judgment of the Court (Grand Chamber) of 12 January 2023 (requests for a preliminary ruling from the Augstākā tiesa (Senāts) — Latvia) — 'DOBELES HES' SIA (C-702/20), Sabiedrisko pakalpojumu regulēšanas komisija (C-17/21)

(Joined Cases C-702/20 and C-17/21) (1)

(Reference for a preliminary ruling — State aid — Article 107(1) TFEU — National legislation imposing an obligation on the public operator to purchase from renewable energy producers at a price higher than the market price — Failure to pay a portion of the aid concerned — Application for compensation submitted by those producers to a public authority distinct from that which is, in principle, required, under that national legislation, to pay that aid and whose budget is intended solely to ensure its own operation — New aid — Notification requirement — De minimis aid — Regulation (EU) No 1407/2013 — Article 5 (2) — Cumulation — Taking into account the amounts of aid already received during the reference period on the basis of that national legislation)

(2023/C 71/03)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicants: 'DOBELES HES' SIA (C-702/20), Sabiedrisko pakalpojumu regulēšanas komisija (C-17/21)

Intervening parties: Sabiedrisko pakalpojumu regulēšanas komisija, Ekonomikas ministrija, Finanšu ministrija, 'GM' SIA

Operative part of the judgment

1. Article 107(1) TFEU must be interpreted as meaning that national legislation which obliges the approved electricity distribution undertaking to purchase electricity generated from renewable energy sources at a price higher than the market price and which provides that the resulting additional costs are financed by a compulsory surcharge borne by end consumers or which provides that the funds used to finance those additional costs constantly remain under public control constitutes an intervention 'through State resources' within the meaning of that provision.

2. Article 107(1) TFEU must be interpreted as meaning that the classification of an advantage as 'State aid' within the meaning of that provision is not subject to the condition that the market concerned has first been fully liberalised.

3. Article 107(1) TFEU must be interpreted as meaning that, where national legislation has established 'State aid', within the meaning of that provision, the payment of a sum claimed before the courts in accordance with that legislation also constitutes such aid.

4. Article 107(1) TFEU must be interpreted as meaning that, where national legislation establishing a statutory right to a higher payment for electricity generated from renewable energy sources constitutes 'State aid', within the meaning of that provision, legal proceedings seeking full entitlement to that right must be regarded as requests for payment of the portion of that State aid not received, and not as requests for the grant by the court seised of a separate State aid.

5. Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid, in particular Article 5(2) thereof, must be interpreted as meaning that compliance with the *de minimis* threshold laid down in Article 3(2) of that regulation must be assessed in the light of the amount of aid claimed under the relevant national legislation cumulated with the amount of the payments already received during the reference period under that legislation.

6. Article 1(b) and (c) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] must be interpreted as meaning that, where State aid does not correspond to any of the categories of existing aid provided for in Article 1(b) of that regulation, that aid, including the portion thereof whose payment is subsequently claimed, must be classified as 'new aid' within the meaning of Article 1(c) of that regulation.

7. Article 108(3) TFEU and Article 2(1) and Article 3 of Regulation 2015/1589 must be interpreted as meaning that a national court may grant a request for payment of a sum corresponding to new aid which has not been notified to the European Commission, provided that that aid is first duly notified by the national authorities concerned to that institution and that the latter gives, or is deemed to have given, its consent in that regard.

8. Article 107(1) TFEU must be interpreted as meaning that it is irrelevant, for the purpose of determining whether sums are in the nature of 'State aid' within the meaning of that provision, whether those sums are claimed from a public authority distinct from that which is, in principle, required to pay them pursuant to the national legislation concerned and whose budget is intended solely to ensure its own operation.

([1]) OJ C 79, 8.3.2021.
OJ C 88, 15.3.2021.

Judgment of the Court (Third Chamber) of 12 January 2023 — Lietuvos geležinkeliai AB v European Commission, Orlen Lietuva AB

(Case C-42/21 P) ([1])

(Appeal — Competition — Abuse of dominant position — Rail freight market — Decision finding an infringement of Article 102 TFEU — Access by third-party undertakings to infrastructure managed by Lithuania's national railway company — Removal of a section of railway track — Concept of 'abuse' — Actual or likely exclusion of a competitor — Exercise by the General Court of its powers of unlimited jurisdiction — Reduction of the fine)

(2023/C 71/04)

Language of the case: English

Parties

Appellant: Lietuvos geležinkeliai AB (represented by: K. Apel, W. Deselaers and P. Kirst, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: A. Cleenewerck de Crayencour, A. Dawes, H. Leupold and G. Meessen, acting as Agents), Orlen Lietuva AB (represented by: C. Conte, avvocato, and C. Thomas, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Lietuvos geležinkeliai AB to bear its own costs and to pay the costs incurred by the European Commission and by Orlen Lietuva AB.

([1]) OJ C 98, 22.3.2021.

Judgment of the Court (Second Chamber) of 12 January 2023 (request for a preliminary ruling from the Nejvyšší soud — Czech Republic) — RegioJet a.s. v České dráhy a.s.

(Case C-57/21) [1]

(Reference for a preliminary ruling — Competition — Abuse of a dominant position — Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union — Directive 2014/104/EU — Articles 5 and 6 — Disclosure of evidence — Evidence in a competition authority's file — Proceedings relating to an infringement of competition rules pending before the European Commission — National proceedings relating to an action for damages with regard to the same infringement — Conditions for the disclosure of evidence)

(2023/C 71/05)

Language of the case: Czech

Referring court

Nejvyšší soud

Parties to the main proceedings

Applicant: RegioJet a.s.

Defendant: České dráhy a.s.

Intervening party: Česká republika, Ministerstvo dopravy

Operative part of the judgment

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

must be interpreted as not precluding a national court from ordering the disclosure of evidence for the purpose of national proceedings brought before that court which concern an action for damages relating to an infringement of competition law, even though proceedings in respect of that infringement are pending before the European Commission with a view to the adoption of a decision pursuant to Chapter III of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU], which have led to the national court staying the proceedings pending before it. It is, however, for the national court to ensure that the disclosure of the evidence requested at that stage of the proceedings, which must fulfil the conditions laid down in Articles 5 and 6 of Directive 2014/104, does not go beyond what is necessary in the light of the claim for damages brought before it.

2. Article 6(5) of Directive 2014/104

must be interpreted as meaning that the staying by a national competition authority of administrative proceedings that it has initiated, on the ground that the European Commission has opened proceedings under Chapter III of Regulation No 1/2003, cannot be equated to a closing of those administrative proceedings by that authority 'by adopting a decision or otherwise', within the meaning of that provision.

3. Article 5(8) and Article 6(5)(a) and (9) of Directive 2014/104

must be interpreted as precluding national legislation which temporarily restricts, under Article 6(5) of that directive, not only the disclosure of information 'prepared' specifically for the proceedings of the competition authority, but also that of all information 'submitted' for that purpose.

4. Article 5(1) of Directive 2014/104, read in conjunction with Article 6(5)(a) thereof

must be interpreted as meaning that those provisions do not preclude a national court, pursuant to a procedural instrument of national law, from ruling on the disclosure of evidence and ordering that evidence to be placed under sequestration, while postponing the examination of whether that evidence contains 'information that was prepared by a natural or legal person specifically for the proceedings of a competition authority', within the meaning of the latter provision, to a time when that court has access to that evidence. The use of such an instrument must, however, comply with the requirements arising from the principle of proportionality, as set out in Article 5(3) and Article 6(4) of Directive 2014/104.

5. Article 6(5)(a) of Directive 2014/104

must be interpreted as meaning that where a national court, pursuant to a procedural instrument of national law, postpones the examination of whether the evidence whose disclosure has been requested contains 'information that was prepared by a natural or legal person specifically for the proceedings of a competition authority', that court must ensure that the claimant or other parties to the proceedings and their representatives do not have access to that evidence before it has completed that review, where the evidence falls within the white list or, where that evidence falls within the grey list, before the competent competition authority has closed its proceedings.

(1) OJ C 148, 26.4.2021.

Judgment of the Court (First Chamber) of 12 January 2023 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — BE v Nemzeti Adatvédelmi és Információszabadság Hatóság

(Case C-132/21) (1)

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Regulation (EU) 2016/679 — Articles 77 to 79 — Remedies — Parallel exercise — Relationship — Procedural autonomy — Effectiveness of the protection rules established by that regulation — Consistent and homogeneous application of those rules throughout the European Union — Article 47 of the Charter of Fundamental Rights of the European Union)

(2023/C 71/06)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: BE

Defendant: Nemzeti Adatvédelmi és Információszabadság Hatóság

Interested party: Budapesti Elektromos Művek Zrt

Operative part of the judgment

Article 77(1), Article 78(1) and Article 79(1) 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), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as permitting the remedies provided for in Article 77(1) and Article 78(1) of that regulation, on the one hand, and Article 79(1) thereof, on the other, to be exercised concurrently with and independently of each other. It is for the Member States, in accordance with the principle of procedural autonomy, to lay down detailed rules as regards the relationship between those remedies in order to ensure the effective protection of the rights guaranteed by that regulation and the consistent and homogeneous application of its provisions, as well as the right to an effective remedy before a court or tribunal as referred to in Article 47 of the Charter of Fundamental Rights.

(1) OJ C 206, 31.5.2021.

Judgment of the Court (First Chamber) of 12 January 2023 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — RW v Österreichische Post AG

(Case C-154/21) (1)

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Regulation (EU) 2016/679 — Article 15(1)(c) — Data subject's right of access to his or her data — Information about the recipients or categories of recipient to whom the personal data have been or will be disclosed — Restrictions)

(2023/C 71/07)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: RW

Defendant: Österreichische Post AG

Operative part of the judgment

Article 15(1)(c) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),

must be interpreted as meaning that the data subject's right of access to the personal data concerning him or her, provided for by that provision, entails, where those data have been or will be disclosed to recipients, an obligation on the part of the controller to provide the data subject with the actual identity of those recipients, unless it is impossible to identify those recipients or the controller demonstrates that the data subject's requests for access are manifestly unfounded or excessive within the meaning of Article 12(5) of Regulation 2016/679, in which cases the controller may indicate to the data subject only the categories of recipient in question.

(1) OJ C 217, 7.6.2021.

Judgment of the Court (Third Chamber) of 12 January 2023 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas -Lithuania) — P.I. v Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos

(Case C-280/21) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Common asylum policy — Eligibility for refugee status — Directive 2011/95/EU — Article 10(1)(e) and (2) — Reasons for persecution — Concepts of 'political opinion' and 'attributed political opinion' — Attempts by an applicant for asylum to defend himself, in his country of origin, by legal means against non-State actors acting illegally and in a position to exploit the mechanism by which that State imposes penalties for criminal offences)

(2023/C 71/08)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: P.I.

Defendant: Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos

Operative part of the judgment

Article 10(1)(e) and (2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

must be interpreted as meaning that the concept of 'political opinion' includes attempts by an applicant for international protection, within the meaning of Article 2(h) and (i) of that directive, to defend his personal material and economic interests by legal means against non-State actors acting illegally, where those actors, on account of their connections with the State via corruption, are in a position to exploit, to the applicant's detriment, the mechanism by which that State imposes penalties for criminal offences, in so far as those attempts are perceived by the actors of persecution as opposition or resistance as part of a matter related to those actors or their policies and/or methods.

([1]) OJ C 278, 12.7.2021.

Judgment of the Court (First Chamber) of 12 January 2023 (requests for a preliminary ruling from the Raad van State — Netherlands) — Staatssecretaris van Justitie en Veiligheid v B (C-323/21), F (C-324/21) and K v Staatssecretaris van Justitie en Veiligheid (C-325/21)

(Joined Cases C-323/21 to C-325/21) ([1])

(References for a preliminary ruling — Regulation (EU) No 604/2013 — Determining the Member State responsible for examining an application for international protection — Lodging of multiple applications for international protection in three Member States — Article 29 — Time limit for transfer — Expiry — Transfer of responsibility for examining the application — Article 27 — Remedy — Scope of judicial review — Possibility for the applicant to rely on the transfer of responsibility for examining the application)

(2023/C 71/09)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Staatssecretaris van Justitie en Veiligheid (C-323/21), (C-324/21), K (C-325/21)

Defendants: B (C-323/21), F (C-324/21), Staatssecretaris van Justitie en Veiligheid (C-325/21)

Operative part of the judgment

1. Cases C-323/21, C-324/21 and C-325/21 are joined for the purposes of the judgment.

2. Articles 23 and 29 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

   must be interpreted as meaning that, where a time limit for the transfer of a third-country national between a requested Member State and a first requesting Member State has started to run, responsibility for examining the application for international protection lodged by that person is transferred to that requesting Member State by reason of the expiry of that time limit, even though that person, in the meantime, lodged a new application for international protection in a third Member State, which led to the acceptance by the requested Member State of a take back request made by that third Member State, provided that that responsibility has not been transferred to that third Member State by reason of the expiry of one of the time limits provided for in Article 23.

   Following such a transfer of responsibility, the Member State in which that person is present cannot transfer him or her to a Member State other than the newly responsible Member State, but it may, however, within the time limits laid down in Article 23(2) of that regulation, submit a take back request to the latter Member State.

3. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 of that regulation, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a third-country national who has lodged an application for international protection successively in three Member States must be able, in the third of those Member States, to have available an effective and rapid remedy which enables him or her to rely on the fact that responsibility for examining his or her application was transferred, by reason of the expiry of the time limit for transfer provided for in Article 29(1) and (2) of that regulation, to the second of those Member States.

(1) OJ C 320, 9.8.2021.

Judgment of the Court (Second Chamber) of 12 January 2023 (request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie — Poland) — J.K. v TP S.A.

(Case C-356/21) (1)

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 3(1)(a) and (c) — Conditions for access to self-employment — Employment and working conditions — Prohibition of discrimination based on sexual orientation — Self-employed person working on the basis of a contract for specific work — Termination and non-renewal of contract — Freedom to choose a contracting party)

(2023/C 71/10)

Language of the case: Polish

Referring court

Sąd Rejonowy dla m.st. Warszawy w Warszawie

Parties to the main proceedings

Applicant: J.K.

Defendant: TP S.A.

Intervening party: PTPA

Operative part of the judgment

Article 3(1)(a) and (c) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

must be interpreted as precluding national legislation which has the effect of excluding, on the basis of the freedom of choice of contracting parties, from the protection against discrimination to be conferred by that directive, the refusal, based on the sexual orientation of a person, to conclude or renew with that person a contract concerning the performance of specific work by that person in the context of the pursuit of a self-employed activity.

(1) OJ C 391, 27.9.2021.

Judgment of the Court (Fourth Chamber) of 12 January 2023 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — D.V. v M.A.

(Case C-395/21) (1)

(Reference for a preliminary ruling — Unfair terms in consumer contracts — Directive 93/13/EEC — Contract for the provision of legal services concluded between a lawyer and a consumer — Article 4(2) — Assessment of the unfairness of contractual terms — Exclusion of terms relating to the main subject matter of the contract — Term providing for the payment of lawyers' fees on the basis of an hourly rate — Article 6(1) — Powers of the national court when dealing with a term considered to be 'unfair')

(2023/C 71/11)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: D.V.

Defendant: M.A.

Operative part of the judgment

1. Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011,

must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the cost of the services provided on the basis of an hourly rate, is covered by that provision.

2. Article 4(2) of Directive 93/13, as amended by Directive 2011/83,

must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer which sets the price of those services on the basis of an hourly rate, without the consumer being provided, before the conclusion of the contract, with information that enables him or her to take a prudent decision in full knowledge of the economic consequences of concluding that contract, does not satisfy the requirement of being drafted in plain intelligible language, within the meaning of that provision.

3. Article 3(1) of Directive 93/13, as amended by Directive 2011/83,

must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the price of those services on the basis of an hourly rate and therefore falls within the main subject matter of that contract, is not to be considered unfair simply on the ground that it does not satisfy the requirement of transparency laid down in Article 4(2) of that directive, as amended, unless the Member State whose national law applies to the contract in question has, in accordance with Article 8 of that directive, as amended, expressly provided for classification as an unfair term simply on that ground.

4. Article 6(1) and Article 7(1) of Directive 93/13, as amended by Directive 2011/83,

must be interpreted as not precluding the national court, where a contract for the provision of legal services concluded between a lawyer and a consumer is not capable of continuing in existence after a term, found to be unfair, which sets the price of the services on the basis of an hourly rate has been removed and those services have already been provided, from restoring the situation in which the consumer would have been in the absence of that term, even if, as a result, the seller or supplier does not receive any remuneration for the services provided. If the invalidity of the contract in its entirety would expose the consumer to particularly unfavourable consequences, which it is for the referring court to ascertain, those provisions do not preclude the national court from remedying the invalidity of that term by replacing it with a supplementary provision of national law or a provision of national law applied by mutual agreement of the parties to that contract. On the other hand, those provisions preclude the national court from replacing the unfair term that has been annulled with a judicial assessment of the level of remuneration due for those services.

(1) OJ C 368, 13.9.2021.

Judgment of the Court (Second Chamber) of 12 January 2023 (request for a preliminary ruling from the Landgericht München I — Germany) — KT, NS v FTI Touristik GmbH

(Case C-396/221) (1)

(Reference for a preliminary ruling — Directive (EU) 2015/2302 — Article 14(1) — Package travel and linked travel arrangements — Performance of a package travel contract — Liability of the organiser concerned — Measures to fight the worldwide spread of an infectious disease — COVID-19 pandemic — Restrictions imposed at the travel destination and in the place of residence of the traveller concerned and in other countries — Lack of conformity of the services provided as part of the package concerned — Appropriate reduction in the price of that package)

(2023/C 71/12)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicants: KT, NS

Defendant: FTI Touristik GmbH

Operative part of the judgment

Article 14(1) of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC,

must be interpreted as meaning that a traveller is entitled to a reduction in the price of his or her package holiday where a lack of conformity of the travel services included in the package is due to restrictions that have been imposed at the travel destination to fight the spread of an infectious disease and such restrictions have also been imposed in the traveller's place of residence and in other countries due to the worldwide spread of that disease. In order for that price reduction to be appropriate, it must be assessed in the light of the services included in the package concerned and must correspond to the value of the services for which a lack of conformity has been found.

(1) OJ C 382, 20.9.2021.

Judgment of the Court (Ninth Chamber) of 12 January 2023 — Frédéric Jouvin v European Commission

(Case C-719/21 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Complaint submitted to the European Commission — Commission Decision rejecting the complaint — Action for annulment — Time limit for lodging a response)

(2023/C 71/13)

Language of the case: French

Parties

Appellant: Frédéric Jouvin (represented by: L. Bôle-Richard, lawyer)

Other party to the proceedings: European Commission (represented by: A. Boitos, B. Ernst and A. Keidel, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

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

(1) OJ C 64, 7.2.2022.

Judgment of the Court (Second Chamber) of 12 January 2023 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — criminal proceedings against MV

(Case C-583/22 PPU) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Police and judicial cooperation in criminal matters — Framework Decision 2008/675/JHA — Article 3(1) — Principle of assimilation of earlier convictions handed down in another Member State — Obligation to ensure that the effects attached to those convictions are equivalent to those attached to previous national convictions — National rules concerning subsequent formation of a cumulative sentence — Multiple offences — Determination of an aggregate sentence — Maximum of 15 years for non-life custodial sentences — Article 3(5) — Exception — Offence committed before the handing down or execution of sentences in another Member State)

(2023/C 71/14)

Language of the case: German

Referring court

Bundesgerichtshof

Party in the main proceedings

MV

Intervening party: Generalbundesanwalt beim Bundesgerichtshof

Operative part of the judgment

1. Article 3(1) and (5) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings

must be interpreted as meaning that a Member State is not required, in criminal proceedings brought against a person, to attach to previous convictions handed down in another Member State, against that person and in respect of different facts, effects equivalent to those attached to previous national convictions in accordance with the rules of the national law concerned relating to the formation of a cumulative sentence where, first, the offence giving rise to those previous proceedings was committed before the previous convictions were handed down and, secondly, taking account of the previous convictions in accordance with those rules of national law would prevent the national court hearing the proceedings from imposing a sentence that could be executed against the person concerned.

2. The second subparagraph of Article 3(5) of Framework Decision 2008/675

must be interpreted as meaning that the taking into account of previous convictions handed down in another Member State, within the meaning of that provision, does not require the national court to establish and give specific reasons for the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence which is laid down for earlier national convictions.

(1) OJ C 424, 7.11.2022.

Order of the President of the Court of Justice of 12 January 2023 (request for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — 'MS Konsultanti' SIA v Valsts ieņēmumu dienests

(Case C-359/21) (1)

(Removal from the Register)

(2023/C 71/15)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: 'MS Konsultanti' SIA

Defendant: Valsts ieņēmumu dienests

Operative part of the order

Case C-359/21 is removed from the Register of the Court.

(1) Date of filing: 8.6.2021

Order of the Court (Eighth Chamber) of 10 January 2023 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Ambisig — Ambiente e Sistemas de Informação Geográfica SA v Fundação do Desporto, ANO — Sistemas de Informática e Serviços Lda, Link Consulting — Tecnologias de Informação SA

(Case C-469/22) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Public procurement of service, supply and works contracts — Directive 2014/24/EU — Conduct of the procedure — Choice of participants and award of contracts — Article 63 — Economic operator relying on the capacities of another entity in order to meet the requirements of the contracting authority — Obligation of that economic operator to submit the qualification documents of a subcontractor after the tender has been awarded — Incompatibility)

(2023/C 71/16)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Ambisig — Ambiente e Sistemas de Informação Geográfica SA

Defendants: Fundação do Desporto, ANO — Sistemas de Informática e Serviços Lda, Link Consulting — Tecnologias de Informação SA

Operative part of the order

Article 63 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, read in conjunction with Article 59 and recital 84 of that directive,

must be interpreted as precluding national legislation under which an economic operator which intends to use the capacities of another entity in order to perform the contract is required to submit the qualification documents of that entity and the declaration of commitment it has made only after the contract in question has been awarded.

([1]) Date lodged: 13.7.2022.

Order of the Court (Eighth Chamber) of 22 December 2022 — Council v FI (C-313/21 P) and Commission v FI (C-314/21 P)

(Joined Cases C-313/21 P and C-314/21 P) ([1])

(Appeal — Article 182 of the Rules of Procedure of the Court of Justice — Civil service — Pension — Staff Regulations of Officials of the European Union — Article 20 of Annex VIII — Grant of a survivor's pension — Surviving spouse of a former official who was in receipt of invalidity allowance — Marriage entered into after that official became entitled to invalidity allowance — Condition that the marriage must have lasted for at least five years at the date of the official's death — Article 19 of Annex VIII — Marriage entered into before that official became entitled to invalidity allowance — No condition as to the minimum duration of the marriage — Plea of illegality in respect of Article 20 of Annex VIII — Charter of Fundamental Rights of the European Union — Article 20 — Principle of equal treatment — Article 21 (1) — Principle of non-discrimination — Article 52(1) — No arbitrary or manifestly inappropriate differentiation in the light of the objective pursued by the EU legislature)

(2023/C 71/17)

Language of the case: French

Parties

In Case C-313/21 P:

Appellant: Council of the European Union (represented by: M. Bauer, M. Alver, acting as Agents)

Other parties to the proceedings: FI, European Commission, European Parliament

In Case C-314/21 P:

Appellant: European Commission (represented by: T.S. Bohr, B. Mongin, acting as Agents)

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

By order of 22 December 2022, the Court of Justice (Eighth Chamber) set aside the judgment of the General Court of the European Union of 10 March 2021, *FI* v *Commission* (T-694/19, not published, EU:T:2021:122), dismissed the action brought by FI in Case T-694/19, ordered FI to bear his own costs and to pay those incurred by the Council of the European Union and the European Commission in Case T-694/19 and in Cases C-313/21 P and C-314/21 P and ordered the European Parliament to bear the costs incurred in Case T-694/19.

(1) Date of filing: 19.5.2021.

Appeal brought on 4 November 2022 by DD against the judgment of the General Court (Fourth Chamber) delivered on 7 September 2022 in Case T-470/20, DD v FRA

(Case C-680/22 P)

(2023/C 71/18)

Language of the case: English

Parties

Appellant: DD (represented by: N. Lorenz, Rechtsanwältin)

Other party to the proceedings: European Union Agency for Fundamental Rights

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment under appeal in its entirety and

— consequently,

  — annul the decision of the FRA Director dated 11 November 2019 to issue the disciplinary sanction of removal from post effective 15 November 2019;

  — if need be, annul the decision of the FRA Director dated 15 April 2020 rejecting the complaint by the Applicant;

  — compensate the material and the moral prejudices suffered by the Applicant;

  — order the Defendant to pay all the costs, including the costs at first instance and at appeal.

Pleas in law and main arguments

In support of his appeal, the Appellant raises the following pleas and principal arguments in relation to the contested judgment:

1. Error of law, wrong legal classification of facts, distortion of evidence, manifest error of assessment, incomplete examination of the plea of the Applicant, insufficient reasoning, distortion of evidence, incorrect legal classification of facts, insufficient reasoning, illegal rejection of the measures of organisation of procedure requested, irregular procedure regarding the seventh plea in law.

2. Error of law, insufficient reasoning, incomplete examination of the plea of the Applicant, distortion of evidence, manifest error of assessment, action ultra vires and ultra petita, violation of Article 11 Charter of Fundamental Rights of the European Union regarding the first plea in law.

3. Error of law, incorrect legal classification, distortion of evidence and manifest error of appraisal regarding the statement of facts.

4. Error of law, distortion of evidence, manifest error of appraisal, insufficient reasoning, incomplete examination of the plea of the Applicant, failure to establish the legally relevant facts, legal examination of the relevant facts, incomplete examination of the plea, insufficient reasoning regarding the fifth plea in law.

5. Error of law, distortion of evidence, incomplete examination of the plea, insufficient reasoning, irregular procedure and action ultra vires regarding the sixth plea in law.

6. Incomplete examination of the plea and insufficient reasoning regarding the eighth plea in law.

7. Distortion of evidence, manifest error of appraisal and incomplete examination of the plea of the Applicant regarding the second and third plea in law.

8. Violation of Article 47 Charter of Fundamental Rights of the European Union by the General Court.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 17 November 2022 — Konzernbetriebsrat der O SE & Co. KG

(Case C-706/22)

(2023/C 71/19)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant, appellant and appellant on a point of law: Konzernbetriebsrat der O SE & Co. KG

Intervener: Vorstand der O Holding SE

Questions referred

1. Is Article 12(2) of Regulation (EC) No 2157/2001, ([1]) in conjunction with Articles 3 to 7 of Directive 2001/86/EC, ([2]) to be interpreted as meaning that, where a holding SE is formed by participating companies which do not employ employees, and do not have subsidiaries employing employees, and the holding SE was registered in the register of a Member State (a so-called 'SE without employees') without a negotiation procedure for the involvement of employees in the SE having first been conducted, under that directive that negotiation procedure has to be conducted retrospectively if the SE becomes the controlling undertaking of subsidiaries in several Member States of the European Union which employ employees?

2. If the Court's answer to Question 1 is in the affirmative:

   Is the retrospective conduct of the negotiation procedure in such a case possible and necessary for an unlimited time?

3. If the Court's answer to Question 2 is in the affirmative:

   Does Article 6 of Directive 2001/86 preclude the application of the law of the Member State where the SE now has its registered office for the purpose of retrospective conduct of the negotiation procedure if the 'SE without employees' was registered in the register in another Member State without such a procedure having first been conducted and before the transfer of its registered office became the controlling company of subsidiaries in several Member States of the European Union which employ employees?

4. If the Court's answer to Question 3 is in the affirmative:

   Is this also the case where the State where that 'SE without employees' was first registered has withdrawn from the European Union after the transfer of the registered office and its law no longer contains any provisions on the conduct of a negotiation procedure for the involvement of employees in the SE?

(1) Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ 2001 L 294, p. 1).
(2) Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ 2001 L 294, p. 22).

Request for a preliminary ruling from the Rayonen sad Nessebar (Bulgaria) lodged on 5 December 2022 — Vodosnabdyavane i kanalizatsia EAD v PQ

(Case C-744/22)

(2023/C 71/20)

Language of the case: Bulgarian

Referring court

Rayonen sad Nessebar

Parties to the main proceedings

Applicant: Vodosnabdyavane i kanalizatsia EAD

Defendant: PQ

Questions referred

1. Are the provisions of Article 2(5) and Article 7(2)(1) of the Naredba 1 ot 09.07.2004g. za minimalnite razmeri na advokatskite vaznagrazhdenia (Regulation No. 1 of 9 July 2004 on the minimum amount of lawyers' fees), which are applicable pursuant to Article 47(6) of the Grazhdanski protsesualen kodeks (Code of Civil Procedure; 'the GPK') and which concern the rules for setting the fee of the special representative of an absent defendant for the purposes of proceedings such as the main proceedings, which relate to an action against a consumer for payment for insignificant water consumption — consistent with Article 19(1) of the Treaty on European Union, read in conjunction with Article 169(1) of the Treaty on the Functioning of the European Union,, if the consumer, should he or she be unsuccessful in that claim, will also be ordered, in accordance with Article 78(1) of the GPK, to pay the costs of the special representative?

2. Is the provision in Article 47(6) of the GPK, read in conjunction with Article 26(1) of the Zakon za pravnta pomosht (Law on legal aid), on the appointment of a special representative in the event that the consumer cannot be found at his or her address — according to which the fee is to be set by the court, and may be set at an amount below the minimum, whereas another body, the Bar Council, is responsible for designating special representatives, the Bar Council having the ability, in its discretion and solely for the reason that it does not agree with the fee set by the court, to refuse to designate a special representative — consistent with Article 19(1) TEU, read in conjunction with Article 169(1) TFEU?

3. Is the court entitled, by applying EU law directly, in particular the provisions of Article 19(1) TEU, read in conjunction with Article 169(1) TFEU, in the event of a refusal to designate a lawyer as a special representative, to apply other rules for ensuring the protection of consumer rights in judicial proceedings which do not, in principle, apply in such situations under the national law of the Republic of Bulgaria, such as the granting of legal aid under Article 95(1) of the GPK without the consumer having so requested?

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 9 December 2022 — EP v Maahanmuuttovirasto

(Case C-752/22)

(2023/C 71/21)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: EP

Defendant: Maahanmuuttovirasto

Questions referred

1. Does Directive 2003/109/EC [1] concerning the status of third-country nationals who are long-term residents apply to the deportation from the European Union of a person who entered the territory of a Member State during the period of validity of an entry ban imposed on him, whose stay in the Member State was therefore illegal under national law and who did not apply for a residence permit in that Member State if the person has been issued with a long-term residence permit for third-country nationals in another Member State?

   If the first question is answered in the affirmative:

2. Are Article 12(1) and (3) and Article 22(3) of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, so far as their subject matter is concerned, so unconditional and sufficiently precise that they can be relied upon by a third-country national against a Member State?

[1] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 15 December 2022 — Criminal proceedings against FP, QV, IN, YL, VD, JF and OL

(Case C-760/22)

(2023/C 71/22)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Defendants

FP, QV, IN, YL, VD, JF and OL

Question referred

Is the right of a defendant to be present at his or her trial, as provided for in Article 8(1) of Directive 2016/343, [1] read in conjunction with recitals 33 and 44 of that directive, infringed if, at his or her express request, he or she takes part in the court hearings being conducted in the criminal case in question via an online link, in a situation where he or she is defended by a lawyer mandated by him or her and present in the courtroom, and where that link enables him or her to follow the course of the proceedings and to adduce and be given access to evidence, where he or she can be heard without technical hindrances and he or she is guaranteed an effective and confidential means of conferring with his or her lawyer?

[1] 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 (OJ 2016 L 65, p. 1).

GENERAL COURT

Judgment of the General Court of 21 December 2022 — Tradición CZ v EUIPO — Rivero Argudo (TRADICIÓN CZ, S.L.)

(Case T-250/19) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark TRADICIÓN CZ, S.L. — Earlier EU word mark RIVERO CZ — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 71/23)

Language of the case: Spanish

Parties

Applicant: Tradición CZ, SL (Jerez de la Frontera, Spain) (represented by: M. Aznar Alonso, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: María Dolores Rivero Argudo (Jerez de la Frontera, Spain) (represented by: A. Vela Ballesteros, lawyer)

Re:

By its action under Article 263 TFEU, the applicant seeks the partial annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 February 2019 (Case R 257/2018-2).

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office of 4 February 2019 (Case R 257/2018-2) in so far as it concerns 'wholesale and retail services in shops and via global computer networks related to vinegar' in Class 35 of the Nice Agreement of 15 June 1957 concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised and amended;

2. Dismisses the action as to the remainder;

3. Orders Tradición CZ, SL, the European Union Intellectual Property Office (EUIPO) and Ms María Dolores Rivero Argudo each to bear their own costs.

([1]) OJ C 187, 3.6.2019.

Judgment of the General Court of 21 December 2022 — Pshonka v Council

(Case T-242/21) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of the persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Council's obligation to verify that the decision of an authority of a third State was taken in accordance with the rights of defence and the right to effective judicial protection)

(2023/C 71/24)

Language of the case: Czech

Parties

Applicant: Artem Viktorovych Pshonka (Kramatorsk, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by: M. Vobořil, R. Pekař and S. Van Overmeire, Agents)

Re:

By his action based on Article 263 TFEU, the applicant seeks annulment of Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 29) and of Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 2), in so far as those acts maintain his name on the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Mr Artem Viktorovych Pshonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

2. Orders the Council of the European Union to pay the costs.

(1) OJ C 263, 5.7.2021.

Judgment of the General Court of 21 December 2022 — Pshonka v Council

(Case T-243/21) (1)

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of the persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Council's obligation to verify that the decision of an authority of a third State was taken in accordance with the rights of defence and the right to effective judicial protection)

(2023/C 71/25)

Language of the case: Czech

Parties

Applicant: Viktor Pavlovych Pshonka (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by: M. Vobořil, R. Pekař and S. Van Overmeire, Agents)

Re:

By his action based on Article 263 TFEU, the applicant seeks annulment of Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 29) and of Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 2), in so far as those acts maintain his name on the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Mr Viktor Pavlovych Pshonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

2. Orders the Council of the European Union to pay the costs.

(1) OJ C 263, 5.7.2021.

Judgment of the General Court of 21 December 2022 — E. Breuninger v Commission

(Case T-260/21) (1)

(State aid — Framework system to grant support for uncovered fixed costs in the context of the COVID-19 pandemic in Germany — Decision not to raise any objections — Temporary Framework for State aid measures — Individual examination of the aid scheme notified — Measure aimed at remedying a serious disturbance in the economy of a Member State — Proportionality)

(2023/C 71/26)

Language of the case: German

Parties

Applicant: E. Breuninger GmbH & Co. (Stuttgart, Germany) (represented by: R. Velte and W. Meilicke, lawyers)

Defendant: European Commission (represented by: V. Bottka, G. Braga da Cruz and C. Kovács, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: P.-L. Krüger and J. Möller, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of Commission Decision C(2020) 8318 final of 20 November 2020 on State aid SA.59289 (2020/N) — Germany COVID-19 — Support for uncovered fixed costs (OJ 2022 C 124, p. 1), as amended by Commission Decision C(2021) 1066 final of 12 February 2021 on State aid SA.61744 (2021/N) — Collective notification of a modification adapting aid schemes approved under the Temporary Framework, in particular following the fifth amendment to the Temporary Framework (OJ 2021 C 77, p. 18).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders E. Breuninger GmbH & Co to bear its own costs and those of the European Commission;

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

(1) OJ C 263, 5.7.2021.

Judgment of the General Court of 21 December 2022 — Falke v Commission

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

(State aid — Framework system to grant support for uncovered fixed costs in the context of the COVID-19 pandemic in Germany — Decision not to raise any objections — Temporary Framework for State aid measures — Individual examination of the aid scheme notified — Measure aimed at remedying a serious disturbance in the economy of a Member State — Proportionality)

(2023/C 71/27)

Language of the case: German

Parties

Applicant: Falke KGaA (Schmallenberg, Germany) (represented by: R. Velte and W. Meilicke, lawyers)

Defendant: European Commission (represented by: V. Bottka, G. Braga da Cruz and C. Kovács, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: P.-L. Krüger and J. Möller, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of Commission Decision C(2020) 8318 final of 20 November 2020 on State aid SA.59289 (2020/N) — Germany COVID-19 — Support for uncovered fixed costs (OJ 2022 C 124, p. 1), as amended by Commission Decision C(2021) 1066 final of 12 February 2021 on State aid SA.61744 (2021/N) — Collective notification of a modification adapting aid schemes approved under the Temporary Framework, in particular following the fifth amendment to the Temporary Framework (OJ 2021 C 77, p. 18).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Falke KGaA to bear its own costs and those of the European Commission;

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

([1]) OJ C 278, 12.7.2021.

Judgment of the General Court of 21 December 2022 — E. Breuninger v Commission

(Case T-525/21) ([1])

(Action for annulment — State aid — Framework system to establish a federal compensation scheme in Germany for losses caused by lockdown decisions — Decision not to raise any objections — Aid to make good the damage caused by natural disasters or other exceptional occurrences — No interest in bringing proceedings — Inadmissibility)

(2023/C 71/28)

Language of the case: German

Parties

Applicant: E. Breuninger GmbH & Co. (Stuttgart, Germany) (represented by: R. Velte and W. Meilicke, lawyers)

Defendant: European Commission (represented by: V. Bottka, G. Braga da Cruz and C. Kovács, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: J. Möller and P.-L. Krüger, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of Commission Decision C (2021) 3999 final of 28 May 2021 on State aid SA.62784 (2021/N) — Germany COVID-19 — Federal Damage Compensation Scheme (OJ 2021 C 223, p. 25).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders E. Breuninger GmbH & Co to bear its own costs and those of the European Commission;

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

([1]) OJ C 431, 25.10.2021.

Judgment of the General Court of 21 December 2022 — European Lotto and Betting v EUIPO — Tipp24 Services (Cash4Life)

(Case T-554/21) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Cash4Life — Absolute ground for invalidity — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

(2023/C 71/29)

Language of the case: English

Parties

Applicant: European Lotto and Betting Ltd (Ocean Village, Gibraltar) (represented by: D. Egan, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Tipp24 Services Ltd (London, United Kingdom)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 July 2021 (Case R 264/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders European Lotto and Betting Ltd to pay the costs.

([1]) OJ C 502, 13.12.2021.

Judgment of the General Court of 21 December 2022 — Ekobulkos v Commission

(Case T-702/21) ([1])

(State aid — Production of electricity from renewable sources — Complaint — Action for failure to act — Call to act — Admissibility — Obligation to act — None)

(2023/C 71/30)

Language of the case: Bulgarian

Parties

Applicant: Ekobulkos EOOD (Todorichene, Bulgaria) (represented by: M. Dimitrov, lawyer)

Defendant: European Commission (represented by: C.-M. Carrega and C. Georgieva, acting as Agents)

Re:

By its action under Article 265 TFEU, the applicant, Ekobulkos EOOD, requests that the General Court declare that the European Commission unlawfully failed to adopt a position on its complaint, submitted on 21 February 2020, concerning an alleged State aid measure granted by the Republic of Bulgaria and favouring certain producers of electricity from renewable sources.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ekobulkos EOOD and the European Commission each to bear their own costs.

([1]) OJ C 24, 17.1.2022.

Judgment of the General Court of 21 December 2022 — Trend Glass v EUIPO (ECO STORAGE)

(Case T-777/21) ([1])

(EU trade mark — Application for EU figurative mark ECO STORAGE — 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 — Obligation to state reasons — Legal certainty — Equal treatment)

(2023/C 71/31)

Language of the case: Polish

Parties

Applicant: Trend Glass sp. z o.o. (Radom, Poland) (represented by: J. Gwiazdowska, lawyer)

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

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 11 October 2021 (Case R 1315/2021-4).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Trend Glass sp. z o.o. to pay the costs.

(1) OJ C 51, 31.1.2022.

Judgment of the General Court of 21 December 2022 — Sanrio v EUIPO — Miroglio Fashion (SANRIO CHARACTERS)

(Case T-43/22) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark SANRIO CHARACTERS — Earlier EU word mark CARACTÈRE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 71/32)

Language of the case: English

Parties

Applicant: Sanrio Co. Ltd (Tokyo, Japan) (represented by: V. Schmitz-Fohrmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO) (represented by: R. Raponi and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Miroglio Fashion Srl (Alba, Italy)

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 November 2021 (Case R 2460/2020-2).

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 November 2021 (Case R 2460/2020-2) in so far as it concerns:

   — 'wholesaling and retailing and mail order sales services relating to the sale of bags, purses and wallets; wholesaling and retailing and mail order services relating to the sale of articles of footwear and headgear; wholesaling and retailing and mail order services relating to the sale of sporting articles', in Class 35 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended;

   — 'life-saving apparatus and equipment; protection devices for personal use against accidents; divers' masks; goggles for sports; protective helmets for sports; protective masks; ear plugs for divers; ear plugs for swimming' in Class 9;

2. Dismisses the action as to the remainder;

3. Orders Sanrio Co. Ltd and EUIPO to bear their own costs.

(1) OJ C 119, 14.3.2022.

Judgment of the General Court of 21 December 2022 — International Masis Tabak v EUIPO — Philip Morris Brands (Representation of a pack of cigarettes)

(Case T-44/22) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark representing a pack of cigarettes — Earlier international figurative mark Marlboro SELECTED PREMIUM TOBACCOS — Relative ground for refusal — Damage to reputation — Article 8(5) of Regulation (EU) 2017/1001)

(2023/C 71/33)

Language of the case: English

Parties

Applicant: International Masis Tabak LLC (Masis, Armenia) (represented by: C. Bercial Arias and K. Dimidjian-Lecompte, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Philip Morris Brands Sàrl (Neuchâtel, Switzerland) (represented by: L. Alonso Domingo, lawyer)

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 15 November 2021 (Case R 261/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders International Masis Tabak LLC to pay the costs.

([1]) OJ C 119, 14.3.2022.

Judgment of the General Court of 21 December 2022 — Simba Toys v EUIPO — Master Gift Import (BIMBA TOYS)

(Case T-129/22) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark BIMBA TOYS — Earlier international word and figurative marks Simba — Earlier trade name Simba Toys GmbH & Co. KG — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Comparison of the goods — Article 8(4) of Regulation 2017/1001 — Proximity of the economic sectors)

(2023/C 71/34)

Language of the case: English

Parties

Applicant: Simba Toys GmbH & Co. KG (Fürth, Germany) (represented by: O. Ruhl, 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: Master Gift Import, SLU (Ronda, Spain)

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 20 December 2021 (Case R 629/2021-4).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Simba Toys GmbH & Co. KG to pay the costs.

(1) OJ C 171, 25.4.2022.

Order of the General Court of 8 December 2022 — HB v EIB

(Case T-234/20) (1)

(Civil service — Applicant who has ceased to reply to the Court's requests — No need to adjudicate)

(2023/C 71/35)

Language of the case: English

Parties

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

Defendant: European Investment Bank (EIB) (represented by: G. Faedo and K. Carr, acting as Agents, and by B. Wägenbaur, lawyer)

Re:

By her action under Article 270 TFEU, the applicant, HB, seeks annulment, first, of her 2017 performance appraisal and, second, of the decision of the Adjudication Panel of 21 October 2019, rejecting her appeal against her 2017 performance appraisal.

Operative part of the order

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

2. Each party shall bear its own costs.

(1) OJ C 215, 29.6.2020.

Order of the General Court of 15 December 2022 — MiMedx Group v EUIPO — DIZG (Epiflex)

(Case T-706/20) (1)

(EU trade mark — Revocation proceedings — Withdrawal of the application for revocation — No need to adjudicate)

(2023/C 71/36)

Language of the case: German

Parties

Applicant: MiMedx Group, Inc. (Marietta, Georgia, United States) (represented by: J. Bogatz and Y. Stone, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: DIZG Deutsches Institut für Zell- und Gewebeersatz gGmbH (Berlin, Germany) (represented by: M. Plesser and R. Heine, lawyers)

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 25 September 2020 (Case R 133/2020-2).

Operative part of the order

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

2. MiMedx Group, Inc. and DIZG Deutsches Institut für Zell- und Gewebeersatz gGmbH shall bear their own costs and each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 35, 1.2.2021.

Order of the General Court of 21 December 2022 — Swissgrid v Commission

(Case T-127/21) (1)

(Action for annulment — Energy — European platforms for the exchange of standard products for balancing energy — Switzerland's participation — Article 1(6) and (7) of Regulation (EU) 2017/2195 — Commission's letter refusing the participation of the Swiss transmission system operator — Act not open to challenge — Inadmissibility)

(2023/C 71/37)

Language of the case: English

Parties

Applicant: Swissgrid AG (Aarau, Switzerland) (represented by: P. De Baere, P. L'Ecluse, K. T'Syen and V. Lefever, lawyers)

Defendant: European Commission (represented by: O. Beynet and B. De Meester, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision allegedly contained in a letter signed by a Director of the Commission's Directorate-General for Energy, by which the Commission allegedly refused to authorise, pursuant to Article 1(7) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6), Switzerland's participation in European platforms for the exchange of standard products for balancing energy, in particular the Trans European Replacement Reserves Exchange platform.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Swissgrid AG shall pay the costs.

(1) OJ C 189, 17.5.2021.

Order of the General Court of 22 December 2022 — British Airways v Commission

(Case T-480/21) ([1])

(Action for annulment and for damages — Competition — Agreements, decisions and concerted practices — Market for airfreight — Decision finding an infringement of Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport — Annulment by the General Court — Refusal of the Commission to pay default interest — Remedies — Limitation period — Time limit for bringing proceedings — Out of time — Act confirming a previous measure — Inadmissibility)

(2023/C 71/38)

Language of the case: English

Parties

Applicant: British Airways plc (Harmondsworth, United Kingdom) (represented by: A. Lyle-Smythe and R. O'Donoghue, lawyers)

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

Re:

By its action, which it states is based on Article 263 TFEU, the first paragraph of Article 266 TFEU, Article 268 TFEU and the second paragraph of Article 340 TFEU, the applicant, British Airways plc, requests the Court, first, to order the European Commission to pay it the amount of default interest and compound interest allegedly due and, second, to annul the letter of 30 April 2021 and the letter of 2 July 2021, by which the Commission refused to pay it the said interest.

Operative part of the order

1. The action is dismissed.

2. British Airways plc shall pay the costs.

([1]) OJ C 391, 27.9.2021.

Order of the General Court of 7 December 2022 — Steinbach International v Commission

(Case T-566/21) ([1])

(Action for annulment — Customs union — Common Customs Tariff — Tariff and statistical nomenclature — Classification in the Combined Nomenclature — Tariff heading — Regulatory act entailing implementing measures — No individual concern — Inadmissibility)

(2023/C 71/39)

Language of the case: German

Parties

Applicant: Steinbach International GmbH (Schwertberg, Austria) (represented by: J. Gesinn, lawyer)

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

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of Commission Implementing Regulation (EU) 2021/957 of 31 May 2021 concerning the classification of certain goods in the Combined Nomenclature (OJ 2021 L 211, p. 48).

Operative part of the order

1. The action is dismissed as inadmissible.

2. Steinbach International GmbH shall pay the costs.

(1) OJ C 490, 6.12.2021.

Order of the General Court of 22 December 2022 — AL v Commission

(Case T-692/21) (1)

(Civil service — OLAF investigation — Acts adopted by OLAF — Identification of the defendant — No act adversely affecting the applicant — Article 76(d) of the Rules of Procedure — Inadmissibility)

(2023/C 71/40)

Language of the case: English

Parties

Applicant: AL (represented by: R. Rata, lawyer)

Defendant: European Commission (represented by: T. Bohr, J. Baquero Cruz and A.-C. Simon, acting as Agents)

Re:

By his action based on Article 270 TFEU, the applicant seeks, first, the annulment of (i) various acts adopted by the European Anti-Fraud Office (OLAF) in the context of an investigation concerning him and by which OLAF rejected, inter alia, two complaints lodged by him against the final report and recommendations made in that investigation, (ii) the European Commission's note of 3 March 2021 by which the Commission had informed him of its intention to recover certain allowances that had been paid to him, (iii) the Commission decision of 22 March 2021 by which it decided to recover those allowances, (iv) the Council of the European Union's internal note of 22 January 2021 recommending the opening of disciplinary proceedings against him and, secondly, compensation for the material and non-material damage that he claims to have suffered as a consequence of the recovery of various sums from his salary during 2021 and of the alleged illegal conduct of the OLAF investigation concerning him and its ensuing consequences.

Operative part of the order

1. The action is dismissed.

2. There is no need to rule on the application for leave to intervene lodged by the Council of the European Union.

3. AL shall bear his own costs and pay the costs incurred by the European Commission.

4. The Council shall bear its own costs relating to the application for leave to intervene.

(1) OJ C 37, 24.1.2022.

Order of the General Court of 8 December 2022 — Euranimi v Commission

(Case T-769/21) ([1])

(Action for annulment — Dumping — Imports of stainless steel cold-rolled flat products originating in China and Taiwan — Definitive anti-dumping duty — Act not of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

(2023/C 71/41)

Language of the case: English

Parties

Applicant: European Association of Non-Integrated Metal Importers & distributors (Euranimi) (Brussels, Belgium) (represented by: M. Campa, D. Rovetta, P. Gjørtler and V. Villante, lawyers)

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

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of Commission Implementing Regulation (EU) 2021/1483 of 15 September 2021 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2021 L 327, p. 1).

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the European Steel Association (Eurofer)'s application to intervene.

3. European Association of Non-Integrated Metal Importers & distributors (Euranimi) shall pay the costs.

4. Euranimi, the European Commission and Eurofer shall each bear their own costs relating to Eurofer's application to intervene.

([1]) OJ C 51, 31.1.2022.

Order of the President of the General Court of 6 December 2022 — Westpole Belgium v Parliament

(Case T-640/22 R)

(Interim measures — Public service contracts — External provision for IT services — Application for interim measures — Lack of urgency)

(2023/C 71/42)

Language of the case: French

Parties

Applicant: Westpole Belgium (Vilvoorde, Belgium) (represented by: A. Vercruysse, lawyer)

Defendant: European Parliament (represented by: K. Wójcik and E. Taneva, Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, first, suspension of the operation of the decisions of the European Parliament of 3 October 2022 to award Lot No 7 of the contract 'PE/ITEC-ITS 19 — External Provision of IT Services' to three tenderers and not to award that lot to the consortium InfraExpert, to which the applicant belongs, and, second, an order that the Parliament must not implement the contested decisions and must refrain from signing the framework contracts the subject of the tendering procedure relating to Lot No 7 of that contract.

Operative part of the order

1. The application for interim measures is dismissed.

2. The order of 14 October 2022, Westpole Belgium and Unisys Belgium v Parliament (T-640/22 R), is set aside.

3. The costs are reserved.

Action brought on 2 December 2022 — Electrawinds Shabla South EAD v Council

(Case T-759/22)

(2023/C 71/43)

Language of the case: Bulgarian

Parties

Applicant: Electrawinds Shabla South EAD (Sofia, Bulgaria) (represented by: M. Grozdev, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261, 2022, p. 1);

— annul that regulation in part, in so far as it sets a mandatory cap on producers' market revenues, obtained from the generation of electricity from the sources referred to in Article 7(1), and in so far as it gives each Member State the power to seize (nationalise) for the benefit of the State the 'surplus revenues' of those producers (as defined in Article 2 (9) of the Regulation);

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging lack of competence

   Council Regulation (EU) 2022/1854 of 6 October 2022 was adopted in breach of EU law, on account of a lack of competence on the part of the Council. Article 122 TFEU establishes the Council's competence for emergency intervention in the energy sector, but that Treaty provision has a very limited scope of application and the intervention measures provided for in the regulation go beyond that scope Pursuant to Article 122(1) TFEU, the Council of the European Union may decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. Article 122 TFEU therefore does not establish any legislative power for the Council of the European Union to adopt energy crisis management measures, but only a power to intervene in the event of severe difficulties in the supply of certain products, including energy.

2. Second plea in law, alleging failure to observe the principle of proportionality

   Council Regulation (EU) 2022/1854 of 6 October 2022 infringes the principle of proportionality. Article 122 TFEU allows only 'appropriate' measures, and the introduction of a mandatory cap on producers' market revenues is not an 'appropriate' measure, since it does not relate directly to the formation of energy prices. Prices will remain and will evolve as they always have, with or without imposing revenue caps. Furthermore, the demand for electricity and natural gas will not change by introducing revenue caps and market revenue taxes..

3. Third plea in law, alleging infringement of the right to property

The measures introduced by the regulation are not proportionate in so far as the mandatory cap on market revenues imposed on renewable energy producers, as provided for in the regulation, and the powers given to each Member State to seize (nationalise) for the benefit of the State the 'surplus revenues' of those producers infringe the fundamental right to property. The application of Article 122(1) of the Treaty on the Functioning of the European Union (TFEU) constitutes one of the aspects of the Community's public interest. Consequently, pursuant to that article, the exercise of the right to property may be restricted, provided that the cap on market revenues, imposed on renewable energy producers, and seizure for the benefit of the State of 'surplus revenues', introduced by Council Regulation (EU) 2022/1854, are not disproportionate and do not impair the very substance of that right.

Action brought on 12 December 2022 — Penguin Random House v EUIPO — Ediciones Literarias Independientes (PLAN B)

(Case T-777/22)

(2023/C 71/44)

Language in which the application was lodged: Spanish

Parties

Applicant: Penguin Random House Grupo Editorial, SAU (Barcelona, Spain) (represented by: E. Armijo Chávarri, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ediciones Literarias Independientes, SL (Barcelona)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: figurative mark PLAN B — EU trade mark No 17 887 136

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 28 September 2022 in Case R 2015/2021-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, annul the contested decision in respect of the goods in Classes 9 and 16 not covered by the Spanish mark PLAN B (mixed) No. 3 641 418 and covered by the contested EU mark;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 16 December 2022 — TT v Frontex

(Case T-787/22)

(2023/C 71/45)

Language of the case: Spanish

Parties

Applicant: TT (represented by: J. Navas Marqués, lawyer)

Defendant: European Border and Coast Guard Agency

Form of order sought

The applicant claims that the Court should:

— annul the undated decision notified on 17 October 2022 with internal reference number GSC/HR/2022 of the Management Board of the European Border Guard Agency (Frontex);

— annul the appraisal report of 2021 finalised in respect of the applicant by the notification of 18 March 2022 of the decision of the appeal assessor;

— agree to request the European Anti-Fraud Office (OLAF) to provide the Court with a copy of its report on the results of the 2021 investigation into employment harassment and misconduct against Frontex employees by its former executive director.

Pleas in law and main arguments

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

— First plea, claiming that the contested decision was issued by an incompetent body and infringed essential procedural requirements. The applicant alleges infringement by Frontex of Article 90(2) of the Regulation [1] laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community (Staff Regulations), of the principle of sound administration, of the right to be heard and of the legal principle of 'duty to act with due diligence', and that the management board of Frontex did not have competence to issue the contested decision.

— Second plea, alleging infringement of the right to be heard and of essential procedural requirements by infringement of Article 6(3) and (5) and Article 8 of Management Board Decision No 46/2015 of 20 November 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations. The applicant claims that there was no formal dialogue with the reporting officer prior to the 2021 appraisal report.

— Third plea, alleging failure to state reasons in the contested decision of the Frontex management board, infringement of the rights of defence and infringement of Article 2 of Frontex Management Board Decision No 46/2015 of 20 November 2015 with regard to the 2021 appraisal report.

— Fourth plea, alleging infringement of the principle of impartiality **and** misuse of power by the [*confidential*] [2] reporting officer and the [*confidential*] [3] appeal assessor who drafted the 2021 appraisal report. The applicant claims infringement of Article 41 of the Charter of Fundamental Rights of the European Union, and Article 3(2) and (3) of Frontex Management Board Decision No 46/2015 of 20 November 2015.

(1) Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and of the European Atomic Energy Community (OJ 1962 L 045, p. 1385).
(2) Confidential information omitted.
(3) Confidential information omitted.

Action brought on 21 December 2022 — Broad Far (Hong Kong) and M21 v Commission

(Case T-791/22)

(2023/C 71/46)

Language of the case: Italian

Parties

Applicants: Broad Far (Hong Kong) Ltd (Wanchai, Hong Kong, China) and M21 Srl (San Donato Milanese, Italy) (represented by: F. Specchiale, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Delegated Directive (EU) 2022/2100 ([1]) of 29 June 2022;

— annul and/or disapply Article 27(2) of Directive 2014/40/EU ([2]) of 3 April 2014 in so far as it provided for the tacit extension of the delegation which lapsed on 19 May 2019;

— order the defendant to pay the costs of the applicants' lawyer.

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 Article 290 TFEU of 25 March 1957, on the basis that it was misapplied, and infringement of Article 11(6) of Directive 2014/40/EU on the basis that the Commission acted ultra vires.

   — In that regard, the applicants claim that the Commission's power to adopt delegated measures is subject to rigorous limits and that delegated measures cannot modify the essential elements of the provisions underlying them. However, in the present case, the Commission goes so far as to equate heated tobacco products with smoking products, and in doing so modifies Community law (see Article 2 of Directive 2014/40/EU) which considers products for smoking to be only those involving a combustion process.

2. Second plea in law, alleging infringement of Article 290 TFEU of 25 March 1957, on the basis that it was misapplied in various senses.

   — In that regard, the applicants claim that the second subparagraph of Article 290(1) TFEU provides that 'the objectives, content, scope and **duration of the delegation of power** shall be explicitly defined in the legislative acts'. However, Article 27(2) of Directive 2014/40 provides that '… **the delegation of power shall be tacitly extended for periods of an identical duration** …'. In so far as Article 27(2) provides for the extension of the delegation of power, it runs counter to Article 290 TFEU because, in essence, it deprives the democratically elected and appointed institutions at the heart of the European Union (namely the European Parliament and the European Council) of their power.

([1]) Commission Delegated Directive (EU) 2022/2100 of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products (OJ 2022 L 283, p. 4).

([2]) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

Action brought on 21 December 2022 — Dehesa de Los Llanos v Commission

(Case T-794/22)

(2023/C 71/47)

Language of the case: Spanish

Parties

Applicant: Dehesa de Los Llanos, SL (Albacete, Spain) (represented by: J. Sedano Lorenzo, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare null and void point 4.1.8 of the 2023-2027 CAP Strategic Plan of Spain, approved by Commission Implementing Decision of 31 August 2022 approving the 2023-2027 CAP Strategic Plan of Spain for Union support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, which limits the basic income support to be received by each farmer to EUR 200 000 ('the measure').

Pleas in law and main arguments

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

1. First plea, alleging infringement of Article 17 of Regulation (EU) 2021/2115 ([1]) establishing rules on support for CAP strategic plans and repealing Regulations (EU) 1305/2013 and (EU) 1307/2013.

   — In that regard, the applicant claims that Regulation (EU) 2021/2115 allows Member States to determine which interventions, among those listed in Chapters II, III and IV of Title II, best fit their specific needs and how to articulate them. However, the contested decision contains an intervention other than those listed in that article, which constitutes misuse of powers and an overreach of the Commission's mandate under Regulation (EU) 2021/2115.

2. Second plea, alleging that there was no analysis or assessment whatsoever of the consequences of the absolute ceiling of EUR 200 000 on basic income support under the CAP.

   — In that regard, the applicant claims that no impact assessment of that measure was carried out when the contested decision was being prepared, either at Spanish or at European level. Had even a preliminary examination been carried out, the measure would have been shown to be contrary to the objectives of the CAP as laid down in Articles 5 and 6 of Regulation (EU) No 2021/2115.

3. Third plea, alleging distortion of the single market and competition to the detriment of Spanish farmers.

   — In that regard, the applicant claims that the contested decision leads to a serious and unjustified distortion of the internal market and undermines one of the essential mechanisms of the CAP. It also submits that the measure places Spanish farmers in a worse position than their European counterparts.

4. Fourth plea, alleging breach of the principle of proportionality.

   — In that regard, the applicant claims that the measure breaches the principle of proportionality in that it is neither appropriate nor necessary to achieve the aim pursued and imposes an excessive and unjustified sacrifice on farmers and their employees which is not in any way outweighed by the need to satisfy an overriding public interest.

([1]) Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ 2021 L 435, p. 1).

Action brought on 22 December 2022 — Thunus and Others v EIB

(Case T-799/22)

(2023/C 71/48)

Language of the case: French

Parties

Applicants: Vincent Thunus (Contern, Luxembourg) and eight other applicants (represented by: L. Levi, lawyer)

Defendant: European Investment Bank

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well-founded, including the plea of illegality contained therein;

consequently:

— annul the decision contained in the applicants' salary slips for the month of February 2022 (for nine applicants) or of April 2022 (for one applicant) indicating for the first time the implementation of the decision of the Board of Directors of 15 December 2021 setting out the salary increase for 2022 and the decision of the Management Committee of 25 January 2022 to use that salary budget as from 1 January 2022 and, therefore, annul similar decisions contained in subsequent salary slips;

— accordingly, order the defendant

  — to pay compensation for material damage of (i) the salary balance corresponding to the application of the annual adjustment for 2022 for the staff covered by SR I, that is an increase of 4,5 % for the period from 1 January 2022 to 31 December 2022; (ii) the salary balance corresponding to the consequences of the application of the annual adjustment of 0,9 % for the staff covered by SR I for 2022 on the amount of salaries to be paid as from January 2022; (iii) default interest on outstanding salary balances until full payment of the sums due, the rate of default interest to be applied being calculated on the basis of the rate set by the European Central Bank for the main refinancing operations, applicable during the period concerned, increased by 3 points;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicants put forward, respectively, one and three pleas in law, first, regarding the decision of the Board of Directors of 18 July 2017, and, second, regarding the decisions of the Board of Directors of 15 December 2021 and of the Management Committee of 25 January 2022.

Regarding the decision of the Board of Directors of 18 July 2017:

Infringement of Article 20 and Annex I to the Staff Regulation I ('SR I') and violation of legitimate expectations and acquired rights

Regarding the decisions of the Board of Directors of 15 December 2021 and of the Management Committee of 25 January 2022

1. First plea in law, alleging infringement of Article 20 and of Annex I to SR I

2. Second plea in law, alleging violation of the procedural guarantees of Article 41 of the Charter of Fundamental Rights of the European Union

3. Third plea in law, alleging violation of the right of consultation and negotiation of the College [of Representatives of the Staff of the EIB].

As regards the claim for compensation, the applicants demand payment of the difference in remuneration since 1 January 2022 (including the impact of that increase on pecuniary benefits) plus interest for late payment.

Action brought on 23 December 2022 — ACE v Council

(Case T-828/22)

(2023/C 71/49)

Language of the case: French

Parties

Applicant: ACE-Avocats, ensemble (Paris, France) (represented by: J.-P. Hordies, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare admissible and well-founded the action for annulment in part of the contested regulation, in Article 1(12) thereof, amending Article 5n(1), (2) and (5) of Regulation (EU) No 883/2014;

— annul Article 1(12), amending Article 5n(1), (2) and (5) of Regulation (EU) No 833/2014, in so far as it concerns the applicant;

— order the Council to pay the costs of the applicant and rule that it must bear its own costs.

Pleas in law and main arguments

In support of the action, the applicant puts forward three pleas in law.

1. First plea in law, alleging infringement of EU law and, in particular, of several judgments of the Court of Justice and of European directives recognising the right of lawyers to provide legal advice services without specific restrictions;

2. Second plea in law, alleging infringement of Article 47 of the Charter of Fundamental Rights of the European Union and of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

3. Third plea in law, alleging infringement of the first subparagraph of Article 52(1) of the Charter of Fundamental Rights of the European Union.

Action brought on 5 January 2023 — Romagnoli Fratelli v CPVO

(Case T-2/23)

(2023/C 71/50)

Language of the case: English

Parties

Applicant: Romagnoli Fratelli SpA (Bologna, Italy) (represented by: E. Truffo and A. Iurato, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Details of the proceedings before CPVO

Community Plant Variety at issue: Variety Melrose — Community Plant Variety Right No EU 31618

Contested decision: *Restitutio in Integrum* Decision of the Community Plant Variety Office (CPVO) of 7th November 2022 in file No 2009/240

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order CPVO to pay the costs.

Pleas in law

— Force majeure and hardship due to the Covid-19 pandemic;

— Excusable error;

— Missed or inaccurate interpretation of evidence; and

— Infringement of Article 65 of Commission Regulation (EC) 874/2009.

Action brought on 17 January 2023 — Light Tec v EUIPO — DecoTrend (lampshades)

(Case T-10/23)

(2023/C 71/51)

Language in which the application was lodged: German

Parties

Applicant: Light Tec Ltd (Tsuen Wan, Hong Kong, China) (represented by: M.-H. Hoffmann)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party in the proceedings before the Board of Appeal: DecoTrend GmbH (Weiden, Germany)

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: EU design lampshades / EU design No 4031201-0004

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 16 November 2022 in Case R 2105/2021-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and EU design No 4031201-0004;

— order EUIPO and the other party in the proceedings to pay the costs, including those incurred in the proceedings before EUIPO.

Pleas in law

— Infringement of Article 63(1) of Council Directive (EC) No 6/2002;

— Infringement of Article 63(2) of Council Directive (EC) No 6/2002;

— Infringement of the obligation to state reasons;

— Infringement of Article 60(2) of Council Directive (EC) No 6/2002;

— Infringement of the right to be heard.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN