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Contents

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

Court of Justice of the European Union

2023/C 83/01 Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union* 1

V *Announcements*

COURT PROCEEDINGS

Court of Justice

2023/C 83/02 Case C-632/20 P: Judgment of the Court (Grand Chamber) of 17 January 2023 — Kingdom of Spain v European Commission (Appeal — External relations — Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part — Electronic communications — Regulation (EU) 2018/1971 — Body of European Regulators for Electronic Communications (BEREC) — Article 35(2) — Participation of the regulatory authority of Kosovo in that body — Concepts of 'third country' and 'third State' — Competence of the European Commission) 2

2023/C 83/03 Case C-680/20, Unilever Italia Mkt. Operations: Judgment of the Court (Fifth Chamber) of 19 January 2023 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Unilever Italia Mkt. Operations Srl v Autorità Garante della Concorrenza e del Mercato (Reference for a preliminary ruling — Competition — Article 102 TFEU — Dominant position — Imputation, to the producer, of actions of its distributors — Existence of contractual links between the producer and the distributors — Concept of 'economic unit' — Scope — Abuse — Exclusivity clause — Need to demonstrate the effects on the market) 3

EN

2023/C 83/04 Case C-147/21, CIHEF and Others: Judgment of the Court (Third Chamber) of 19 January 2023 (request for a preliminary ruling from the Conseil d'État — France) — Comité interprofessionnel des huiles essentielles françaises (CIHEF) and Others v Ministre de la Transition écologique, Premier ministre (Reference for a preliminary ruling — Approximation of laws — Biocidal products — Regulation (EU) No 528/2012 — Article 72 — Free movement of goods — Article 34 TFEU — Possibility for Member States to adopt restrictive measures on commercial and advertising practices — Selling arrangements falling outside the scope of Article 34 TFEU — Whether justified — Article 36 TFEU — Objective of protecting human and animal health and the environment — Proportionality) 3

2023/C 83/05 Case C-162/21, Pesticide Action Network Europe and Others: Judgment of the Court (First Chamber) of 19 January 2023 (request for a preliminary ruling from the Conseil d'État — Belgium) — Pesticide Action Network Europe, Nature and Progrès Belgique ASBL, TN v État belge (Reference for a preliminary ruling — Environment — Regulation (EC) No 1107/2009 — Placing of plant protection products on the market — Article 53(1) — Emergency situations in plant protection — Derogation — Scope — Seeds treated with plant protection products — Neonicotinoids — Active substances posing high risks to bees — Prohibition of the placing on the market and outside use of seeds treated with plant protection products containing those active substances — Implementing Regulation (EU) 2018/784 and Implementing Regulation (EU) 2018/785 — Non-applicability of the derogation — Protection of human and animal health and the environment — Precautionary principle) 5

2023/C 83/06 Case C-292/21, CNAE and Others: Judgment of the Court (Third Chamber) of 19 January 2023 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Administración General del Estado, Confederación Nacional de Autoescuelas (CNAE), UTE CNAE-ITT-FORMASTER-ECT v Asociación para la Defensa de los Intereses Comunes de las Autoescuelas (AUDICA), Ministerio Fiscal (Reference for a preliminary ruling — Directive 2006/123/EC — Services in the internal market — Article 2(2)(d) — Substantive scope — Service in the field of transport — Provision of road safety awareness and re-education courses for the recovery of driving licence points — Concession to operate a public service — Article 15 — Requirements — Division of the relevant territory into five lots — Quantitative and territorial limit on access to the activity concerned — Overriding reasons in the public interest — Justification — Road safety — Proportionality — Service of general economic interest) 6

2023/C 83/07 Joined Cases C-495/21 and C-496/21, Bundesrepublik Deutschland (Nasal drops) and Others: Judgment of the Court (Seventh Chamber) of 19 January 2023 (requests for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — L. GmbH (C-495/21), H. Ltd (C-496/21) v Bundesrepublik Deutschland (Reference for a preliminary ruling — Medical devices — Directive 93/42/EEC — Article 1(2)(a) — Definition — Article 1(5)(c) — Scope — Medicinal products for human use — Directive 2001/83/EC — Article 1(2) — Definition of the concept of 'medicinal product' — Article 2(2) — Applicable legal framework — Classification as a 'medical device' or as a 'medicinal product') 6

2023/C 83/08 Case C-506/22, SNI: Order of the Court (Sixth Chamber) of 12 January 2023 (request for a preliminary ruling from the Judecătoria Câmpina — Romania) — criminal proceedings against SNI (Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Requirement to provide reasons justifying the need for an answer from the Court — Requirement to state the link between the provisions of European Union law whose interpretation is sought and the applicable national legislation — Lack of sufficient details — Manifest inadmissibility) 7

2023/C 83/09 Case C-137/22 P: Appeal brought on 26 February 2022 by Georgios Theodorakis and Maria Theodoraki against the order of the General Court (First Chamber, Extended Composition) delivered on 17 December 2021 in Case T-495/14, Theodorakis and Theodoraki v Council 8

2023/C 83/10 Case C-691/22: Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 9 November 2022 — RTL Belgium SA and RTL BELUX SA & Cie SECS v Conseil supérieur de l'audiovisuel (CSA) 8

2023/C 83/11 Case C-692/22: Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 9 November 2022 — RTL Belgium SA and RTL BELUX SA & Cie SECS v Conseil supérieur de l'audiovisuel (CSA) 9

2023/C 83/12 Case C-716/22: Request for a preliminary ruling from the Tribunal judiciaire d'Auch (France) lodged on 23 November 2022 — EP v Préfet du Gers, Institut national de la statistique et des études économiques (INSEE) 10

2023/C 83/13 Case C-738/22 P: Appeal brought on 30 November 2022 by Google LLC, Alphabet, Inc. against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 14 September 2022 in Case T-604/18, Google and Alphabet v Commission 11

2023/C 83/14 Case C-23/23: Action brought on 20 January 2023 — European Commission v Republic of Malta . 13

2023/C 83/15 Case C-26/23 P: Appeal brought on 21 January 2023 by Citizens' Committee of the European Citizens' Initiative 'Minority SafePack — one million signatures for diversity in Europe' against the judgment of the General Court (Eighth Chamber) delivered on 9 November 2022 in Case T-158/21, Minority SafePack — one million signatures for diversity in Europe v Commission 14

General Court

2023/C 83/16 Case T-617/17 RENV: Judgment of the General Court of 21 December 2022 — Vialto Consulting v Commission (Non-contractual liability — Instrument for Pre-accession Assistance — Investigation by OLAF — On-site inspection — Irregularities and failures allegedly committed by the Commission — Right to be heard — Non-material damage — Causal link) 15

2023/C 83/17 Case T-537/18: Judgment of the General Court of 21 December 2022 — Vialto Consulting v Commission (Instrument for Pre-accession Assistance — Grants — Investigations by OLAF — Administrative penalty — Exclusion, for a period of two years, from public procurement procedures and from procedures for the award of grants financed from the general budget of the European Union — Obligation to state reasons — Article 7(1) of Regulation (EC) No 2185/96 — Principle of good administration — Legitimate expectations — Unlimited jurisdiction — Proportionality of the penalty) 15

2023/C 83/18 Case T-626/20: Judgment of the General Court of 21 December 2022 — Landwärme v Commission (State aid — Biogas market — Tax exemptions compensating for additional production costs — Decisions not to raise objections — Action for annulment — Interest in bringing proceedings — Admissibility — Failure to initiate the formal investigation procedure — Serious difficulties — Article 108(2) and (3) TFEU — Article 4(3) and (4) of Regulation (EU) 2015/1589 — Guidelines on State aid for environmental protection and energy 2014-2020 — Cumulation of aid — Aid granted by several Member States — Imported biogas — Principle of non-discrimination — Article 110 TFEU) 16

2023/C 83/19 Case T-746/20: Judgment of the General Court of 21 December 2022 — Grünig v Commission (Dumping — Imports of certain polyvinyl alcohols originating in China — Definitive anti-dumping duties — Exemption of imports for a particular end-use — Action for annulment — Severability — Regulatory act entailing implementing measures — Direct concern — Actionable measure — Admissibility — First subparagraph of Article 9(5) of Regulation (EU) 2016/1036 — Duty imposed on a non-discriminatory basis — Equal treatment) 17

2023/C 83/20 Case T-747/20: Judgment of the General Court of 21 December 2022 — EOC Belgium v Commission (Dumping — Imports of certain polyvinyl alcohols originating in China — Definitive anti-dumping duties — Exemption of imports for a particular end-use — Action for annulment — Severability — Regulatory act entailing implementing measures — Direct concern — Actionable measure — Admissibility — First subparagraph of Article 9(5) of Regulation (EU) 2016/1036 — Duty imposed on a non-discriminatory basis — Equal treatment) 18

2023/C 83/21 Case T-33/21: Judgment of the General Court of 18 January 2023 — Romania v Commission (EAGGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Romania — National rural development programme 2007-2013 — Methods for calculating the rates of support relating to sub-measure '1a' of Measure 215 — Welfare payments for 'fattening pigs' and 'gilts' — Increase of at least 10 % of the available space allocated to each animal — Obligation to state reasons — Legitimate expectations — Legal certainty — Legal classification of the facts — Article 12(6) and (7) of Delegated Regulation (EU) No 907/2014 — Guidelines on the calculation of the financial corrections in the framework of the conformity and financial clearance of accounts procedures) 18

2023/C 83/22 Case T-187/21: Judgment of the General Court of 21 December 2022 — Firearms United Network and Others v Commission (REACH — Regulation (EU) 2021/57 — Updating of Annex XVII to Regulation (EC) No 1907/2006 — Restriction on lead — Use of lead shot for hunting in or around wetlands — Manifest error of assessment — Proportionality — Legal certainty — Presumption of innocence) . . 19

2023/C 83/23 Case T-330/21: Judgment of the General Court of 21 December 2022 — EWC Academy v Commission (Social policy — Grants for actions to promote corporate governance initiatives — Call for proposals VP/2020/008 — Exclusion of European works councils not having legal personality — Article 197(2)(c) of Regulation (EU) 2018/1046) 20

2023/C 83/24 Case T-443/21: Judgment of the General Court of 18 January 2023 — YAplus DBA Yoga Alliance v EUIPO — Vidyanand (YOGA ALLIANCE INDIA INTERNATIONAL) (EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark YOGA ALLIANCE INDIA INTERNATIONAL — Earlier EU figurative mark yoga ALLIANCE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Examination of the facts by EUIPO of its own motion — Article 95(1) of Regulation 2017/1001) . 20

2023/C 83/25 Case T-644/21: Judgment of the General Court of 21 December 2022 — Pharmadom v EUIPO — Wellbe Pharmaceuticals (WellBe PHARMACEUTICALS) (EU trade mark — Opposition proceedings — Application for the EU figurative mark WellBe PHARMACEUTICALS — Earlier national word mark WELL AND WELL — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)) 21

2023/C 83/26 Case T-726/21: Judgment of the General Court of 18 January 2023 — Rolex v EUIPO — PWT (Device of a crown) (EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark representing a crown — Earlier EU figurative marks representing a crown and ROLEX — Relative grounds 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) — No injury to reputation — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001)) 22

2023/C 83/27 Case T-758/21: Judgment of the General Court of 18 January 2023 — Dorsum v EUIPO — id Quantique (Clavis) (EU trade mark — Opposition proceedings — Application for EU word mark Clavis — Earlier EU word mark CLAVIS — Failure to identify the earlier trade mark in the notice of opposition — Conditions for admissibility of the opposition) 22

2023/C 83/28 Case T-4/22: Judgment of the General Court of 21 December 2022 — Puma v EUIPO — DN Solutions (PUMA) (EU trade mark — Opposition proceedings — Application for EU figurative mark PUMA — Earlier international figurative mark PUMA — Relative ground for refusal — Detriment to reputation — Article 8(5) of Regulation (EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001)) 23

2023/C 83/29 Case T-118/22: Judgment of the General Court of 21 December 2022 — OM v Commission (Civil service — Members of the temporary staff — Recruitment — Vacancy notice — Rejection of application — Appointment of another candidate — Position of Member of the Regulatory Scrutiny Board — Obligation to state reasons — Infringement of the vacancy notice — Legitimate expectation — Equal treatment — Manifest error of assessment) 24

2023/C 83/30 Case T-166/22: Order of the General Court of 18 January 2023 — Seifert v Council (Action for annulment — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Measures concerning Russian nationals, natural persons residing in Russia and legal persons, entities and bodies established in Russia — No legal interest in bringing proceedings — Inadmissibility) 24

2023/C 83/31 Case T-500/22 R: Order of the President of the General Court of 20 January 2023 — Vleuten Insects and New Generation Nutrition v Commission (Interim relief — Food safety — Novel foods — Regulation (EU) 2015/2283 — Marketing authorisation for Alphitobius diaperinus larva — Application for suspension of operation of a measure — No urgency) 25

2023/C 83/32 Case T-689/22: Action brought on 7 November 2022 — SN v Commission 25

2023/C 83/33 Case T-784/22: Action brought on 13 December 2022 — Zásilkovna v Commission 26

2023/C 83/34 Case T-7/23: Action brought on 13 January 2023 — France v Commission 27

2023/C 83/35 Case T-13/23: Action brought on 20 January 2023 — Balaban v EUIPO — Shenzhen Stahlwerk Welding Technology (STAHLWERK) 27

2023/C 83/36 Case T-19/23: Action brought on 23 January 2023 — Laboratorios Normon v EUIPO — Sofar (NORMOCARE) 28

2023/C 83/37 Case T-20/23: Action brought on 23 January 2023 — Japan Tobacco v EUIPO — Dunhill Tobacco of London (FLOW FILTER) 29

2023/C 83/38 Case T-21/23: Action brought on 23 January 2023 — Chart v EUIPO (ABSOLUTEFLOW) 30

2023/C 83/39 Case T-22/23: Action brought on 24 January 2023 — Markt-Pilot v EUIPO (MARKT-PILOT) 30

2023/C 83/40 Case T-518/22: Order of the General Court of 17 January 2023 — GKP v EUIPO — Cristalfarma (TIARA RUBIS) 31

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2023/C 83/01)

Last publication

OJ C 71, 27.2.2023

Past publications

OJ C 63, 20.2.2023

OJ C 54, 13.2.2023

OJ C 45, 6.2.2023

OJ C 35, 30.1.2023

OJ C 24, 23.1.2023

OJ C 15, 16.1.2023

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 17 January 2023 — Kingdom of Spain v European Commission

(Case C-632/20 P) [1]

(Appeal — External relations — Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part — Electronic communications — Regulation (EU) 2018/1971 — Body of European Regulators for Electronic Communications (BEREC) — Article 35(2) — Participation of the regulatory authority of Kosovo in that body — Concepts of 'third country' and 'third State' — Competence of the European Commission)

(2023/C 83/02)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented initially by: S. Centeno Huerta, and subsequently by A. Gavela Llopis, acting as Agents)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre, M. Kellerbauer and T. Ramopoulos, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of 23 September 2020, Spain v Commission (T-370/19, EU:T:2020:440);

2. Annuls the Commission Decision of 18 March 2019 on the participation of the National Regulatory Authority of Kosovo in the Body of European Regulators for Electronic Communications;

3. Orders that the effects of the Commission Decision of 18 March 2019 on the participation of the National Regulatory Authority of Kosovo in the Body of European Regulators for Electronic Communications be maintained until the entry into force, within a reasonable period, which may not exceed six months from the date of delivery of the present judgment, of any new working arrangements concluded pursuant to Article 35(2) of Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009, between the Body of European Regulators for Electronic Communications (BEREC), the Agency for Support for BEREC (BEREC Office) and the national regulatory authority of Kosovo;

4. Orders the European Commission to bear its own costs and to pay those incurred by the Kingdom of Spain in the present appeal and in the proceedings before the General Court of the European Union.

[1] OJ C 62, 22.2.2021.

Judgment of the Court (Fifth Chamber) of 19 January 2023 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Unilever Italia Mkt. Operations Srl v Autorità Garante della Concorrenza e del Mercato

(Case C-680/20, [1] **Unilever Italia Mkt. Operations)**

(Reference for a preliminary ruling — Competition — Article 102 TFEU — Dominant position — Imputation, to the producer, of actions of its distributors — Existence of contractual links between the producer and the distributors — Concept of 'economic unit' — Scope — Abuse — Exclusivity clause — Need to demonstrate the effects on the market)

(2023/C 83/03)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Unilever Italia Mkt. Operations Srl

Defendant: Autorità Garante della Concorrenza e del Mercato

Intervening party: La Bomba Snc

Operative part of the judgment

1. Article 102 TFEU must be interpreted as meaning that the actions of distributors forming part of the distribution network for goods and services of a producer in a dominant position may be imputed to that producer if it is established that those actions were not adopted independently by those distributors, but form part of a policy that is decided unilaterally by that producer and implemented through those distributors;

2. Article 102 TFEU must be interpreted as meaning that, where there are exclusivity clauses in distribution contracts, a competition authority is required, in order to find an abuse of a dominant position, to establish, in the light of all the relevant circumstances and in view of, where applicable, the economic analyses produced by the undertaking in a dominant position as regards the inability of the conduct at issue to exclude competitors that are as efficient as the dominant undertaking from the market, that those clauses are capable of restricting competition. The use of an 'as efficient competitor' test is optional. However, if the results of such a test are submitted by the undertaking concerned during the administrative procedure, the competition authority is required to assess the probative value of those results.

[1] OJ C 79, 8.3.2021.

Judgment of the Court (Third Chamber) of 19 January 2023 (request for a preliminary ruling from the Conseil d'État — France) — Comité interprofessionnel des huiles essentielles françaises (CIHEF) and Others v Ministre de la Transition écologique, Premier ministre

(Case C-147/21, [1] **CIHEF and Others)**

(Reference for a preliminary ruling — Approximation of laws — Biocidal products — Regulation (EU) No 528/2012 — Article 72 — Free movement of goods — Article 34 TFEU — Possibility for Member States to adopt restrictive measures on commercial and advertising practices — Selling arrangements falling outside the scope of Article 34 TFEU — Whether justified — Article 36 TFEU — Objective of protecting human and animal health and the environment — Proportionality)

(2023/C 83/04)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Comité interprofessionnel des huiles essentielles françaises (CIHEF), Florame, Hyteck Aroma-Zone, Laboratoires Gilbert, Laboratoire Léa Nature, Laboratoires Oméga Pharma France, Pierre Fabre Médicament, Pranarom France, Puressentiel France

Defendants: Ministre de la Transition écologique, Premier ministre

Operative part of the judgment

1. Article 72 of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products, as amended by Regulation (EU) No 334/2014 of the European Parliament and of the Council of 11 March 2014, must be interpreted as meaning that:

— it precludes national legislation which requires the affixing of a statement, in addition to that prescribed in that article, to advertisements addressed to professionals for biocidal products of product-types 2 and 4, included in group 1 of those product-types, listed in Annex V to that regulation, as well as of product-types 14 and 18, included in group 3 of those product-types, listed in Annex V to the said regulation;

— and that it does not preclude national legislation which prohibits advertising addressed to the general public for biocidal products of product-types 2 and 4, included in group 1 of those product-types, listed in Annex V to Regulation No 528/2012, as amended by Regulation No 334/2014, as well as of product-types 14 and 18, included in group 3 of those product-types, listed in Annex V to that regulation.

2. Articles 34 and 36 TFEU must be interpreted as meaning that:

— they do not preclude national legislation which prohibits certain commercial practices such as discounts, price reductions, rebates, the differentiation of general and specific sales conditions, the gift of free units or any equivalent practices, relating to biocidal products of product-types 14 and 18, included in group 3 of those product-types, listed in Annex V to Regulation No 528/2012, as amended by Regulation No 334/2014, provided that that legislation is justified by objectives of protection of the health and life of humans and of the environment, that it is suitable for securing the attainment of those objectives and that it does not go beyond what is necessary in order to attain them, which is for the referring court to verify;

— and that they do not preclude national legislation which prohibits advertising addressed to the general public for biocidal products of product-types 2 and 4, included in group 1 of those product-types, listed in Annex V to that regulation, as well as of product-types 14 and 18, included in group 3 of those product-types, listed in Annex V to the said regulation, provided that that legislation is justified by objectives of protection of the health and life of humans and of the environment, that it is suitable for securing the attainment of those objectives and that it does not go beyond what is necessary in order to attain them, which is for the referring court to verify.

([1]) OJ C 215, 29.6.2020.

Judgment of the Court (First Chamber) of 19 January 2023 (request for a preliminary ruling from the Conseil d'État — Belgium) — Pesticide Action Network Europe, Nature and Progrès Belgique ASBL, TN v État belge

(Case C-162/21, [1] Pesticide Action Network Europe and Others)

(Reference for a preliminary ruling — Environment — Regulation (EC) No 1107/2009 — Placing of plant protection products on the market — Article 53(1) — Emergency situations in plant protection — Derogation — Scope — Seeds treated with plant protection products — Neonicotinoids — Active substances posing high risks to bees — Prohibition of the placing on the market and outside use of seeds treated with plant protection products containing those active substances — Implementing Regulation (EU) 2018/784 and Implementing Regulation (EU) 2018/785 — Non-applicability of the derogation — Protection of human and animal health and the environment — Precautionary principle)

(2023/C 83/05)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Pesticide Action Network Europe, Nature et Progrès Belgique ASBL, TN

Defendant: État belge

Intervening parties: Sesvanderhave SA, Confédération des Betteraviers Belges ASBL, Société Générale des Fabricants de Sucre de Belgique ASBL (Subel), Isera & Scaldis Sugar SA (Iscal Sugar), Raffinerie Tirlemontoise SA

Operative part of the judgment

Article 53(1) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC

must be interpreted as not permitting a Member State to authorise the placing on the market of plant protection products for seed treatment, or the placing on the market and use of seeds treated with those products, where the placing on the market and use of seeds treated with those products have been expressly prohibited by an implementing regulation.

[1] OJ C 242, 21.6.2021.

Judgment of the Court (Third Chamber) of 19 January 2023 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Administración General del Estado, Confederación Nacional de Autoescuelas (CNAE), UTE CNAE-ITT-FORMASTER-ECT v Asociación para la Defensa de los Intereses Comunes de las Autoescuelas (AUDICA), Ministerio Fiscal

(Case C-292/21, [1] **CNAE and Others)**

(Reference for a preliminary ruling — Directive 2006/123/EC — Services in the internal market — Article 2(2)(d) — Substantive scope — Service in the field of transport — Provision of road safety awareness and re-education courses for the recovery of driving licence points — Concession to operate a public service — Article 15 — Requirements — Division of the relevant territory into five lots — Quantitative and territorial limit on access to the activity concerned — Overriding reasons in the public interest — Justification — Road safety — Proportionality — Service of general economic interest)

(2023/C 83/06)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellants: Administración General del Estado, Confederación Nacional de Autoescuelas (CNAE), UTE CNAE-ITT-FORMASTER-ECT

Respondents: Asociación para la Defensa de los Intereses Comunes de las Autoescuelas (AUDICA), Ministerio Fiscal

Operative part of the judgment

Article 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

must be interpreted as precluding national legislation under which the award of the contract for the provision of road safety awareness and training courses for the purposes of the recovery of driving licence points must be made by means of a public service concession, in so far as that legislation goes beyond what is necessary to attain the general interest objective pursued, namely the improvement of road safety.

[1] OJ C 329, 16.8.2021.

Judgment of the Court (Seventh Chamber) of 19 January 2023 (requests for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — L. GmbH (C-495/21), H. Ltd (C-496/21) v Bundesrepublik Deutschland

(Joined Cases C-495/21 and C-496/21, [1] **Bundesrepublik Deutschland (Nasal drops) and Others)**

(Reference for a preliminary ruling — Medical devices — Directive 93/42/EEC — Article 1(2)(a) — Definition — Article 1(5)(c) — Scope — Medicinal products for human use — Directive 2001/83/EC — Article 1(2) — Definition of the concept of 'medicinal product' — Article 2(2) — Applicable legal framework — Classification as a 'medical device' or as a 'medicinal product')

(2023/C 83/07)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: L. GmbH (C-495/21), H. Ltd (C-496/21)

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1. Article 2(2) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004,

   must be interpreted as meaning that it applies not only to 'medicinal products by function', as referred to in Article 1(2)(b) of Directive 2001/83, as amended, but also to 'medicinal products by presentation', as referred to in Article 1(2)(a) of that directive.

2. Article 1(2)(a) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007, and Article 1(2) of Directive 2001/83, as amended by Directive 2004/27,

   must be interpreted as meaning that where the principal mode of action of a product is not scientifically established, that product cannot meet the definition of the concept of 'medical device', within the meaning of Directive 93/42, as amended by Directive 2007/47, or that of 'medicinal product by function', as referred to in Directive 2001/83, as amended by Directive 2004/27. It is for the national courts to assess, on a case-by-case basis, whether the conditions relating to the definition of the concept of 'medicinal product by presentation', as referred to in Directive 2001/83, as amended by Directive 2004/27, are satisfied.

([1]) OJ C 471, 22.11.2021.

Order of the Court (Sixth Chamber) of 12 January 2023 (request for a preliminary ruling from the Judecătoria Câmpina — Romania) — criminal proceedings against SNI

(Case C-506/22, ([1]) **SNI)**

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Requirement to provide reasons justifying the need for an answer from the Court — Requirement to state the link between the provisions of European Union law whose interpretation is sought and the applicable national legislation — Lack of sufficient details — Manifest inadmissibility)

(2023/C 83/08)

Language of the case: Romanian

Referring court

Judecătoria Câmpina

Party to the main criminal proceedings

SNI

Operative part of the order

The request for a preliminary ruling made by the Judecătoria Câmpina (Court of First Instance, Câmpina, Romania) by decision of 1 July 2022 is manifestly inadmissible

([1]) Date lodged: 26.7.2022.

Appeal brought on 26 February 2022 by Georgios Theodorakis and Maria Theodoraki against the order of the General Court (First Chamber, Extended Composition) delivered on 17 December 2021 in Case T-495/14, Theodorakis and Theodoraki v Council

(Case C-137/22 P)

(2023/C 83/09)

Language of the case: Greek

Parties

Appellants: Georgios Theodorakis and Maria Theodoraki (represented by: Vasileios-Spyridon Christianos, Alexandros Politis and Maria-Christina Vlachou, dikigoroi)

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

By order of 17 January 2023, the Court of Justice (Sixth Chamber) dismissed the appeal as manifestly unfounded.

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 9 November 2022 — RTL Belgium SA and RTL BELUX SA & Cie SECS v Conseil supérieur de l'audiovisuel (CSA)

(Case C-691/22)

(2023/C 83/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: RTL Belgium SA, RTL BELUX SA & Cie SECS

Defendant: Conseil supérieur de l'audiovisuel (CSA)

Questions referred

1. Must Articles 1(1)(c) to (f), 2, 3 and 4 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, read in the light of the objective of avoiding a situation of double jurisdiction expressed in recitals 34 and 35 of that directive, and Articles 4(3) TEU and 49 TFEU, be interpreted as precluding a regulatory authority, which takes the view that the Member State to which it belongs is that in which the person who ought to be deemed to be the media service provider is established, from imposing a penalty on that person when a first Member State has already taken the view that it has jurisdiction in respect of that audiovisual media service for which it has granted a concession?

2. Must the principle of sincere cooperation, guaranteed by Article 4(3) TEU (formerly Article 10 TEC), be interpreted as requiring the Member State which intends to exercise jurisdiction over that service, when a first Member State has already exercised jurisdiction, to ask the first Member State to withdraw the concession relating to that audiovisual media service which it has granted and, where it refuses to do so, to bring the matter before the Court of Justice of the European Union by asking the European Union to bring an action against the first Member State for failure to fulfil its obligations (Article 258 TFEU) or itself bring an action for failure to fulfil an obligation (Article 259 TFEU), and to refrain from any physical or legal act which is the expression of its claim to have jurisdiction over that service, unless and until the Court of Justice of the European Union has ruled in its favour?

3. Does that principle necessarily mean that the Member State wishing to exercise jurisdiction over an audiovisual media service, when a first Member State already exercises such jurisdiction, should, before adopting any physical or legal act which is the expression of its claim to have jurisdiction with regard to that service, and, irrespective of whether the proceedings referred to in question 2 are initiated,

   (a) consult the first Member State with a view to reaching, if possible, a joint solution? and/or

   (b) request that the question be referred to the contact committee established by Article 29 of Directive 2010/13/EU? and/or

   (c) seek the advice of the European Commission? and/or

   (d) invite the first Member State, which granted a concession relating to that audiovisual media service, to withdraw that concession and, where the first Member State refuses to do so, make use of the judicial procedures which are available and effective in that first Member State to challenge that refusal to withdraw the concession?

4. Is the answer to the second and third questions influenced by the fact that the authority responsible for audiovisual regulation has separate legal personality and means of action from the Member State to which it belongs?

5. In a situation where an audiovisual media service is the subject of a concession granted by a first Member State, does Article 344 TFEU, read in conjunction with Article 4(3) TEU and Directive 2010/13/EU, prohibit a national court of a second Member State from holding that the regulatory authority of that second Member State has correctly assessed that it has jurisdiction to control that service, since in doing so that court would implicitly hold that the first Member State misinterpreted its jurisdiction and would indirectly render a decision in a dispute between two Member States relating to the interpretation and/or application of EU law? In such a situation, should the national court of the second Member State merely annul the decision of that regulatory authority, on the ground that the audiovisual media service in question has already been the subject of a concession granted by a first Member State?

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 9 November 2022 — RTL Belgium SA and RTL BELUX SA & Cie SECS v Conseil supérieur de l'audiovisuel (CSA)

(Case C-692/22)

(2023/C 83/11)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: RTL Belgium SA, RTL BELUX SA & Cie SECS

Defendant: Conseil supérieur de l'audiovisuel (CSA)

Questions referred

1. Must Articles 1(1)(c) to (f), 2, 3 and 4 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, read in the light of the objective of avoiding a situation of double jurisdiction expressed in recitals 34 and 35 of that directive, and Articles 4(3) TEU and 49 TFEU, be interpreted as precluding a regulatory authority, which takes the view that the Member State to which it belongs is that in which the person who ought to be deemed to be the media service provider is established, from imposing a penalty on that person when a first Member States has already taken the view that it has jurisdiction in respect of that audiovisual media service for which it has granted a concession?

2. Must the principle of sincere cooperation, guaranteed by Article 4(3) TEU (formerly Article 10 TEC), be interpreted as requiring the Member State which intends to exercise jurisdiction over that service, when a first Member State has already exercised jurisdiction, to ask the first Member State to withdraw the concession relating to that audiovisual media service which it has granted and, where it refuses to do so, to bring the matter before the Court of Justice of the European Union by asking the European Union to bring an action against the first Member State for failure to fulfil its obligations (Article 258 TFEU) or itself bring an action for failure to fulfil an obligation (Article 259 TFEU), and to refrain from any physical or legal act which is the expression of its claim to have jurisdiction over that service, unless and until the Court of Justice of the European Union has ruled in its favour?

3. Does that principle necessarily mean that the Member State wishing to exercise jurisdiction over an audiovisual media service, when a first Member State already exercises such jurisdiction, should, before adopting any physical or legal act which is the expression of its claim to have jurisdiction with regard to that service, and, irrespective of whether the proceedings referred to in question 2 are initiated,

   (a) consult the first Member State with a view to reaching, if possible, a joint solution? and/or

   (b) request that the question be referred to the contact committee established by Article 29 of Directive 2010/13/EU? and/or

   (c) seek the advice of the European Commission? and/or

   (d) invite the first Member State, which granted a concession relating to that audiovisual media service, to withdraw that concession and, where the first Member State refuses to do so, make use of the judicial procedures which are available and effective in that first Member State to challenge that refusal to withdraw the concession?

4. Is the answer to the second and third questions influenced by the fact that the authority responsible for audiovisual regulation has separate legal personality and means of action from the Member State to which it belongs?

5. In a situation where an audiovisual media service is the subject of a concession granted by a first Member State, does Article 344 TFEU, read in conjunction with Article 4(3) TEU and Directive 2010/13/EU, prohibit a national court of a second Member State from holding that the regulatory authority of that second Member State has correctly assessed that it has jurisdiction to control that service, since in doing so that court would implicitly hold that the first Member State misinterpreted its jurisdiction and would indirectly render a decision in a dispute between two Member States relating to the interpretation and/or application of EU law? In such a situation, should the national court of the second Member State merely annul the decision of that regulatory authority, on the ground that the audiovisual media service in question has already been the subject of a concession granted by a first Member State?

Request for a preliminary ruling from the Tribunal judiciaire d'Auch (France) lodged on 23 November 2022 — EP v Préfet du Gers, Institut national de la statistique et des études économiques (INSEE)

(Case C-716/22)

(2023/C 83/12)

Language of the case: French

Referring court

Tribunal judiciaire d'Auch

Parties to the main proceedings

Applicant: EP

Defendants: Préfet du Gers, Institut national de la statistique et des études économiques (INSEE)

Other party: Commune de Thoux represented by the Mayor of Thoux

Questions referred

1. Is Decision 2020/135 ([1]) on the conclusion of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community partially invalid in that the Agreement on the Withdrawal of the United Kingdom from the European Union infringes Articles 1, 7, 11, 21, 39 and 41 of the Charter of Fundamental Rights of the European Union, Article 6(3) of the Treaty on European Union and the principle of proportionality in Article 52 of that Charter in so far as it does not include a provision allowing the right to vote in European elections to be retained for British nationals who have exercised their freedom of movement and their freedom to settle freely in the territory of another Member State, whether or not dual nationality is permitted, in particular for those who have lived in the territory of another Member State for more than 15 years and who are subject to the United Kingdom's 15 year rule, thus aggravating the deprivation of any right to vote, for persons who have not had the right to vote against the loss of their Union citizenship and also for those who have sworn allegiance to the British Crown?

2. Must Decision 2020/135, the Agreement on the Withdrawal of the United Kingdom from the European Union, Article 1 of the Act concerning the election of the members of the European Parliament annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, ([2]) the judgment of the Court of Justice of the European Union of 12 September 2006, *Spain* v *United Kingdom*, C-145/04, Articles 1, 7, 11, 21, 39 and 41 of the Charter of Fundamental Rights of the European Union, Article 6(3) of the Treaty on European Union and the judgment of the Court of Justice of the European Union of 9 June 2022, *Préfet du Gers*, C-673/20, be interpreted as depriving former Union citizens who have exercised their right to free movement and the freedom to settle freely in the territory of the European Union of the right to vote and to stand as a candidate in European elections in a Member State, as well as, in particular, former Union citizens who no longer have any right to vote because they have exercised their private and family life in the territory of the European Union for more than 15 years and who were unable to vote against the withdrawal of their Member State from the European Union which entailed the loss of their Union citizenship?

([1]) Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1).
([2]) OJ 1976 L 278, p. 1.

Appeal brought on 30 November 2022 by Google LLC, Alphabet, Inc. against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 14 September 2022 in Case T-604/18, Google and Alphabet v Commission

(Case C-738/22 P)

(2023/C 83/13)

Language of the case: English

Parties

Appellants: Google LLC, Alphabet, Inc. (represented by: G. Forwood, J. Killick and N. Levy, avocats, A. Komninos, dikigoros, A. Lamadrid de Pablo, abogado, D. Gregory and H. Mostyn, Barristers, M. Pickford KC, J. Schindler, Rechtsanwalt, and P. Stuart, Barrister-at-Law)

Other parties to the proceedings: European Commission, Application Developers Alliance, Computer & Communications Industry Association, Gigaset Communications GmbH, HMD global Oy, Opera Norway AS, formerly Opera Software AS, BDZV — Bundesverband Digitalpublisher und Zeitungsverleger eV, formerly Bundesverband Deutscher Zeitungsverleger eV, Bureau européen des unions de consommateurs (BEUC), FairSearch AISBL, Qwant, Seznam.cz, a.s., Verband Deutscher Zeitschriftenverleger eV

Form of order sought

The appellants claim that the Court should:

— set aside the judgement under appeal;

— annul Commission Decision C(2018) 4761 final of 18 July 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.40099 — Google Android) ('the Decision');

— in the alternative, remand the case to the General Court;

— in the further alternative, set aside paragraph 2 of the operative part of the judgment under appeal and fix the amount of the fine imposed in Article 2 of the Decision to a significantly lower amount; and

— order the Commission to bear the appellants' costs and expenses in connection with these proceedings and the proceedings before the General Court.

Pleas in law and main arguments

In support of the appeal, the appellants rely on six pleas in law

First plea in law: the General Court erred in its review of the causal link between the Mobile Application Distribution Agreement (MADA) preinstallation conditions and their alleged exclusionary effects.

— The General Court wrongly reviewed the legality of the MADA preinstallation conditions by reference to the combined effects of impugned MADAs and legitimate Revenue Share Agreements (RSAs).

— The General Court failed to review whether users' choices not to download rivals more frequently were attributable to abusive preinstallation rather than user preferences.

— The General Court wrongly held that evidence relating to default setting was relevant to the analysis of the MADA preinstallation conditions.

— The General Court erred in its analysis of the effects of the MADA preinstallation conditions by failing to consider the lack of competition that would exist absent those conditions.

Second plea in law: the General Court erred in upholding the Decision despite its failure to establish capability to foreclose as-efficient rivals.

— The General Court failed to review whether tying the Search app (Google Search) to Play was capable of foreclosing as-efficient rival general search services.

— The General Court failed to review whether tying Chrome browser to Play and the Search app was capable of foreclosing as-efficient rival browsers.

Third plea in law: the General Court erred by rewriting the Decision's abuse finding on the antifragmentation obligations and attributing the alleged exclusionary effects to conduct that the Decision did not find to have been abusive.

— The General Court erred by rewriting the Decision's characterisation of the abusive conduct relating to the anti-fragmentation obligations.

— The General Court erred by attributing the alleged exclusionary effects to conduct that the Decision did not find to be abusive.

Fourth plea in law: the General Court erred in its assessment of the anti-fragmentation obligations' objective justifications.

— The General Court erred in failing to examine the need for the challenged anti-fragmentation obligations.

— The General Court erred in failing to consider Google's legitimate interest in protecting the entire Android ecosystem, including in particular non-GMS devices.

— The General Court erred in upholding the Decision despite the Decision's failure to properly assess the conditions under which Google adopted an open-source licence for Android.

— The General Court failed to properly assess the evidence in the file regarding the anti-fragmentation agreement's necessity, given the inadequacy of a branding solution.

Fifth plea in law: the General Court erred in upholding the Decision despite striking out the portfolio RSA abuse.

Sixth plea in law: the General Court erred in exercising its unlimited jurisdiction to vary the fine.

Action brought on 20 January 2023 — European Commission v Republic of Malta

(Case C-23/23)

(2023/C 83/14)

Language of the case: English

Parties

Applicant: European Commission (represented by: C. Hermes and R. Lindenthal, Agents)

Defendant: Republic of Malta

The applicant claims that the Court should:

— declare that by adopting a derogation scheme allowing the live-capturing of seven species of wild finches (Chaffinch *Fringilla coelebs*, Linnet *Carduelis cannabina*, Goldfinch *Carduelis carduelis*, Greenfinch *Carduelis chloris*, Hawfinch *Coccothraustes coccothraustes*, Serin *Serinus serinus* and Siskin *Carduelis spinus*), the Republic of Malta has failed to fulfil its obligations under Article 5 and Article 8(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [1] ('Birds Directive'), read in conjunction with Article 9(1) of the Birds Directive; and

— order Republic of Malta to pay the costs.

Pleas in law and main arguments

Malta introduced a derogation regime, invoking Article 9(1)(c) of the Birds Directive, for authorizing trapping seven species of wild finches for recreational purposes in 2014 under which it authorized trapping seasons in 2014 and 2015. In its judgment of 21 June 2018, *Commission v Malta* (C-557/15, EU:C:2018:477), the Court found that that derogation regime failed to meet the conditions of Article 9(1)(c) of the Birds Directive. Malta repealed that derogation regime.

In October 2020, Malta adopted a similar derogation regime for the trapping of the same finch species. This time, Malta invoked the derogation provision in Article 9(1)(b) of the Birds Directive arguing that the new derogation regime served research purposes. Malta opened trapping seasons for alleged 'research' in 2020, 2021 and 2022.

The Birds Directive obliges Member States to prohibit the capture and keeping of wild birds, such as the finches in question, and any capture of wild birds via non-selective means such as traps or nets. Any derogation from these prohibitions is subject to the strict conditions set out in Article 9 of the Birds Directive.

The Commission considers that Malta has not established that the conditions for a derogation pursuant to Article 9(1)(b) of the Birds Directive are met. Firstly, Malta failed to establish that its derogation regime pursues a genuine research purpose. Secondly, Malta failed to state reasons for the absence of another satisfactory solution. Thirdly, Malta failed to demonstrate the absence of another satisfactory solution on substance.

[1] OJ 2010, L 20, p. 7.

Appeal brought on 21 January 2023 by Citizens' Committee of the European Citizens' Initiative 'Minority SafePack — one million signatures for diversity in Europe' against the judgment of the General Court (Eighth Chamber) delivered on 9 November 2022 in Case T-158/21, Minority SafePack — one million signatures for diversity in Europe v Commission

(Case C-26/23 P)

(2023/C 83/15)

Language of the case: English

Parties

Appellant: Citizens' Committee of the European Citizens' Initiative 'Minority SafePack — one million signatures for diversity in Europe' (represented by: T. Hieber, Rechtsanwalt)

Other parties to the proceedings: European Commission, Hungary, Hellenic Republic and Slovak Republic

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 9 November 2022 in case T-158/21 and annul the Commission Communication C(2021) 171 final of 14 January 2021;

— or, alternatively, set aside the judgment of the General Court of 9 November 2022 in case T-158/21 and refer the case back to the General Court;

— order the European Commission to pay the costs.

Pleas in law and main arguments

— Violation of Article 47 (2) of the Charter. The reassignment of the case to another rapporteur was contrary to Article 47 (2) of the Charter.

— Violation of Article 9 TEU. The General Court disregarded that the Commission did not pay equal attention to all the European citizens' initiatives, which were able to gather at least one million signatures and meet all the other requirements laid down in the applicable ECI Regulation.

— Disregard of the competences of the European Commission. The General Court disregarded the competences of the Commission regarding the implementation of the Minority SafePack Initiative.

— Wrongful interpretation of the concept of 'manifest error of assessment'. The General Court made an error of law by adding additional requirements.

— Manifest error of assessment. The General Court made an error of law by rejecting the line of argument of the appellant according to which the Commission committed a manifest error of assessment regarding the measures brought forward in the contested communication to justify its refusal to adopt the proposals 1 and 3 of the Minority SafePack Initiative.

— Violation of the burden of proof. The General Court made an error of law as it wrongfully imposed the burden of proof to the appellant.

— Violation of the obligation to state reasons. The General Court disregarded the scope of the obligation to state reasons with regard to the contested communication.

— Violation of Article 36 of the Statute. The grounds provided by the General Court were contradictory and insufficient.

GENERAL COURT

Judgment of the General Court of 21 December 2022 — Vialto Consulting v Commission

(Case T-617/17 RENV) ([1])

(Non-contractual liability — Instrument for Pre-accession Assistance — Investigation by OLAF — On-site inspection — Irregularities and failures allegedly committed by the Commission — Right to be heard — Non-material damage — Causal link)

(2023/C 83/16)

Language of the case: Greek

Parties

Applicant: Vialto Consulting Kft. (Budapest, Hungary) (represented by: S. Paliou and A. Skoulikis, lawyers)

Defendant: European Commission (represented by: D. Triantafyllou, J. Baquero Cruz and A. Katsimerou, acting as Agents)

Re:

By its action based on Article 268 TFEU, the applicant seeks compensation for the damage which it claims to have suffered as a result of the unlawful acts committed, first, by the European Anti-Fraud Office (OLAF) in the course of an inspection carried out at the applicant's premises and, second, by the European Commission following that inspection.

Operative part of the judgment

The Court:

1. Orders the European Commission to pay Vialto Consulting Kft. compensation of EUR 5 000 in respect of the non-material damage suffered;

2. Orders that the compensation to be paid to Vialto Consulting be paid with default interest, as from the delivery of the present judgment to full payment of that compensation, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points;

3. Orders the Commission to pay the costs of the appeal proceedings before the Court of Justice in Case C-650/19 P, the costs of the initial proceedings in Case T-617/17 and the costs of the renvoi proceedings in Case T-617/17 RENV before the General Court.

([1]) OJ C 402, 27.11.2017.

Judgment of the General Court of 21 December 2022 — Vialto Consulting v Commission

(Case T-537/18) ([1])

(Instrument for Pre-accession Assistance — Grants — Investigations by OLAF — Administrative penalty — Exclusion, for a period of two years, from public procurement procedures and from procedures for the award of grants financed from the general budget of the European Union — Obligation to state reasons — Article 7(1) of Regulation (EC) No 2185/96 — Principle of good administration — Legitimate expectations — Unlimited jurisdiction — Proportionality of the penalty)

(2023/C 83/17)

Language of the case: Greek

Parties

Applicant: Vialto Consulting Kft. (Budapest, Hungary) (represented by: V. Christianos, A. Politis and G. Kelepouri, lawyers)

Defendant: European Commission (represented by: A. Katsimerou and R. Pethke, acting as Agents)

Re:

By its action, the applicant seeks, first, on the basis of Article 263 TFEU, annulment of the decision of the European Commission of 29 June 2018 by which the latter excluded the applicant for a period of two years from public procurement procedures, from procedures for the award of grants, from procedures for financial instruments (for dedicated investment vehicles and financial intermediaries) and from procedures for prizes governed by Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), and from award procedures governed by Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (OJ 2015 L 58, p. 17), and ordered the publication of that exclusion on its website and, second, on the basis of Article 268 TFEU, compensation for the damage which the applicant claims to have suffered as a result of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Vialto Consulting Kft.to pay the costs.

([1]) OJ C 427, 26.11.2018.

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

(Case T-626/20) ([1])

(State aid — Biogas market — Tax exemptions compensating for additional production costs — Decisions not to raise objections — Action for annulment — Interest in bringing proceedings — Admissibility — Failure to initiate the formal investigation procedure — Serious difficulties — Article 108(2) and (3) TFEU — Article 4(3) and (4) of Regulation (EU) 2015/1589 — Guidelines on State aid for environmental protection and energy 2014-2020 — Cumulation of aid — Aid granted by several Member States — Imported biogas — Principle of non-discrimination — Article 110 TFEU)

(2023/C 83/18)

Language of the case: German

Parties

Applicant: Landwärme GmbH (Munich, Germany) (represented by: J. Bonhage and M. Frank, lawyers)

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

Intervener in support of the defendant: Kingdom of Sweden (represented by: O. Simonsson, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, H. Shev, H. Eklinder and R. Shahsavan Eriksson, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment, first, of Commission Decision C(2020) 4489 final of 29 June 2020 on State aid SA.56125 (2020/N) — Sweden — Prolongation and modification of scheme SA.49893 (2018/N) — Tax exemption for non-food based biogas and bio-propane in heat generation, and, second, Commission Decision C(2020) 4487 final of 29 June 2020 on State aid SA.56908 (2020/N) — Sweden — Prolongation and modification of biogas scheme for motor fuel in Sweden.

Operative part of the judgment

The Court:

1. Annuls Commission Decision C(2020) 4489 final of 29 June 2020 on State aid SA.56125 (2020/N) — Sweden — Prolongation and modification of scheme SA.49893 (2018/N) — Tax exemption for non-food based biogas and bio-propane in heat generation;

2. Annuls Commission Decision C(2020) 4487 final of 29 June 2020 on State aid SA.56908 (2020/N) — Sweden — Prolongation and modification of biogas scheme for motor fuel in Sweden;

3. Orders the European Commission to bear its own costs and pay those incurred by Landwärme GmbH;

4. Orders the Kingdom of Sweden to bear its own costs.

([1]) OJ C 414, 30.11.2020.

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

(Case T-746/20) ([1])

(Dumping — Imports of certain polyvinyl alcohols originating in China — Definitive anti-dumping duties — Exemption of imports for a particular end-use — Action for annulment — Severability — Regulatory act entailing implementing measures — Direct concern — Actionable measure — Admissibility — First subparagraph of Article 9(5) of Regulation (EU) 2016/1036 — Duty imposed on a non-discriminatory basis — Equal treatment)

(2023/C 83/19)

Language of the case: French

Parties

Applicant: Grünig KG (Bad Kissingen, Germany) (represented by: Y. Melin and I. Fressynet, lawyers)

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

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of Article 1(4) of Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ 2020 L 315, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Grünig KG to pay the costs.

([1]) OJ C 53, 15.2.2021.

Judgment of the General Court of 21 December 2022 — EOC Belgium v Commission

(Case T-747/20) ([1])

(Dumping — Imports of certain polyvinyl alcohols originating in China — Definitive anti-dumping duties — Exemption of imports for a particular end-use — Action for annulment — Severability — Regulatory act entailing implementing measures — Direct concern — Actionable measure — Admissibility — First subparagraph of Article 9(5) of Regulation (EU) 2016/1036 — Duty imposed on a non-discriminatory basis — Equal treatment)

(2023/C 83/20)

Language of the case: French

Parties

Applicant: EOC Belgium (Oudenaarde, Belgium) (represented by: Y. Melin and I. Fressynet, lawyers)

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

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of Article 1(4) of Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ 2020 L 315, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders EOC Belgium to pay the costs.

([1]) OJ C 53, 15.2.2021.

Judgment of the General Court of 18 January 2023 — Romania v Commission

(Case T-33/21) ([1])

(EAGGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Romania — National rural development programme 2007-2013 — Methods for calculating the rates of support relating to sub-measure '1a' of Measure 215 — Welfare payments for 'fattening pigs' and 'gilts' — Increase of at least 10 % of the available space allocated to each animal — Obligation to state reasons — Legitimate expectations — Legal certainty — Legal classification of the facts — Article 12(6) and (7) of Delegated Regulation (EU) No 907/2014 — Guidelines on the calculation of the financial corrections in the framework of the conformity and financial clearance of accounts procedures)

(2023/C 83/21)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: E. Gane and L.-E. Baţagoi, acting as Agents)

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

Re:

By its action under Article 263 TFEU, Romania seeks annulment of Commission Implementing Decision (EU) 2020/1734 of 18 November 2020 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2020 L 390, p. 10), in so far as it excludes certain expenditure incurred by Romania for the financial years 2017 to 2019 in the amount of EUR 18 717 475,08.

Operative part of the judgment

The Court:

1. Annuls Commission Implementing Decision (EU) 2020/1734 of 18 November 2020 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes certain expenditure incurred by Romania under the EAFRD for the financial years 2017 to 2019 in the amount of EUR 18 717 475,08;

2. Orders the European Commission to pay the costs.

([1]) OJ C 163, 3.5.2021.

Judgment of the General Court of 21 December 2022 — Firearms United Network and Others v Commission

(Case T-187/21) ([1])

(REACH — Regulation (EU) 2021/57 — Updating of Annex XVII to Regulation (EC) No 1907/2006 — Restriction on lead — Use of lead shot for hunting in or around wetlands — Manifest error of assessment — Proportionality — Legal certainty — Presumption of innocence)

(2023/C 83/22)

Language of the case: Polish

Parties

Applicants: Firearms United Network (Warsaw, Poland), Tomasz Walter Stępień (Żelechów, Poland), Michał Budzyński (Cegłów, Poland), Andrzej Marcjanik (Złotokłos, Poland) (represented by: E. Woźniak, lawyer)

Defendant: European Commission (represented by: K. Herrmann and K. Mifsud-Bonnici, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: J. Möller, acting as Agent), French Republic (represented by: T. Stéhelin and G. Bain, acting as Agents), European Chemicals Agency (represented by: M. Heikkilä, W. Broere and N. Herbatschek, acting as Agents)

Re:

By their action under Article 263 TFEU, the applicants seek the annulment of Commission Regulation (EU) 2021/57 of 25 January 2021 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead in gunshot in or around wetlands (OJ 2021 L 24, p. 19).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Firearms United Network and Mr Tomasz Walter Stępień, Mr Michał Budzyński and Mr Andrzej Marcjanik to bear their own costs and to pay the costs incurred by the European Commission, including those relating to the proceedings for interim measures;

3. Orders the Federal Republic of Germany, the French Republic and the European Chemicals Agency (ECHA) to bear their own costs.

(1) OJ C 217, 7.6.2021.

Judgment of the General Court of 21 December 2022 — EWC Academy v Commission

(Case T-330/21) (1)

(Social policy — Grants for actions to promote corporate governance initiatives — Call for proposals VP/2020/008 — Exclusion of European works councils not having legal personality — Article 197(2)(c) of Regulation (EU) 2018/1046)

(2023/C 83/23)

Language of the case: German

Parties

Applicant: EWC Academy GmbH (Hamburg, Germany) (represented by: H. Däubler-Gmelin, lawyer)

Defendant: European Commission (represented by: R. Pethke and B.-R. Killmann, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the European Commission of 14 April 2021 by which the Commission rejected the application for a grant which it had submitted, as coordinator of a consortium, in the context of call for proposals VP/2020/008 relating to employee participation in corporate governance.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Commission of 14 April 2021 rejecting an application for a grant submitted by EWC Academy GmbH under call for proposals VP/2020/008;

2. Orders the Commission to bear, in addition to its own costs, those incurred by EWC Academy.

(1) OJ C 320, 9.8.2021.

Judgment of the General Court of 18 January 2023 — YAplus DBA Yoga Alliance v EUIPO — Vidyanand (YOGA ALLIANCE INDIA INTERNATIONAL)

(Case T-443/21) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark YOGA ALLIANCE INDIA INTERNATIONAL — Earlier EU figurative mark yoga ALLIANCE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Examination of the facts by EUIPO of its own motion — Article 95(1) of Regulation 2017/1001)

(2023/C 83/24)

Language of the case: English

Parties

Applicant: YAplus DBA Yoga Alliance (Arlington, Virginia, United States), (represented by: A. Thünken, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Swami Vidyanand (Villupuram, India) (represented by: L. Saglietti and E. Bianco, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 17 May 2021 (Case R 1062/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders YAplus DBA Yoga Alliance to pay the costs.

(1) OJ C 368, 13.9.2021.

Judgment of the General Court of 21 December 2022 — Pharmadom v EUIPO — Wellbe Pharmaceuticals (WellBe PHARMACEUTICALS)

(Case T-644/21) (1)

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

(2023/C 83/25)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of EUIPO: Wellbe Pharmaceuticals S.A. (Warsaw, Poland)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 July 2021 (Case R 1423/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Pharmadom to pay the costs.

(1) OJ C 37, 24.1.2022.

Judgment of the General Court of 18 January 2023 — Rolex v EUIPO — PWT (Device of a crown)

(Case T-726/21) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark representing a crown — Earlier EU figurative marks representing a crown and ROLEX — Relative grounds 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) — No injury to reputation — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2023/C 83/26)

Language of the case: English

Parties

Applicant: Rolex SA (Geneva, Switzerland) (represented by: C. Sueiras Villalobos, P. Tent Alonso and V. Gigante Pérez, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: PWT A/S (Aalborg, Denmark) (represented by: A. Skovfoged Melgaard and C. Barrett Christiansen, lawyers)

Re:

By its action based on 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 25 August 2021 (Case R 2389/2020-4).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Rolex SA to pay the costs.

([1]) OJ C 11, 10.1.2022.

Judgment of the General Court of 18 January 2023 — Dorsum v EUIPO — id Quantique (Clavis)

(Case T-758/21) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Clavis — Earlier EU word mark CLAVIS — Failure to identify the earlier trade mark in the notice of opposition — Conditions for admissibility of the opposition)

(2023/C 83/27)

Language of the case: English

Parties

Applicant: Dorsum Informatikai Fejlesztő és Szolgáltató Zrt. (Budapest, Hungary), (represented by: G. Hajdu, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: id Quantique SA (Carouge, Switzerland) (represented by: F. Nielsen, lawyer)

Re:

By its action based on Article 263 TFEU, the applicant seeks alteration or annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 September 2021 (Case R 189/2021-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dorsum Informatikai Fejlesztő és Szolgáltató Zrt. to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Declares that the intervener is to bear its own costs.

(1) OJ C 51, 31.1.2022.

Judgment of the General Court of 21 December 2022 — Puma v EUIPO — DN Solutions (PUMA)

(Case T-4/22) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark PUMA — Earlier international figurative mark PUMA — Relative ground for refusal — Detriment to reputation — Article 8(5) of Regulation (EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001))

(2023/C 83/28)

Language of the case: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: DN Solutions Co. Ltd, formerly Doosan Machine Tools Co. Ltd (Seongsan-gu, Changwon-si, South Korea) (represented by: R. Böhm and C. Brecht, lawyers)

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 28 October 2021 (Case R 1677/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Puma SE to pay the costs.

(1) OJ C 109, 7.3.2022.

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

(Case T-118/22) ([1])

(Civil service — Members of the temporary staff — Recruitment — Vacancy notice — Rejection of application — Appointment of another candidate — Position of Member of the Regulatory Scrutiny Board — Obligation to state reasons — Infringement of the vacancy notice — Legitimate expectation — Equal treatment — Manifest error of assessment)

(2023/C 83/29)

Language of the case: French

Parties

Applicant: OM (represented by: G. Paris, lawyer)

Defendant: European Commission (represented by: I. Melo Sampaio and A.-C. Simon, acting as Agents)

Re:

By his action under Article 270 TFEU, the applicant seeks annulment of the decision of 29 April 2021 by which the European Commission rejected his application for the position of Member of the Regulatory Scrutiny Board and informed him of the appointment of another candidate to that position.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders OM to pay the costs.

([1]) OJ C 191, 10.5.2022.

Order of the General Court of 18 January 2023 — Seifert v Council

(Case T-166/22) ([1])

(Action for annulment — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Measures concerning Russian nationals, natural persons residing in Russia and legal persons, entities and bodies established in Russia — No legal interest in bringing proceedings — Inadmissibility)

(2023/C 83/30)

Language of the case: German

Parties

Applicant: Evgenia Seifert (Munich, Germany) (represented by: T. Seifert, lawyer)

Defendant: Council of the European Union (represented by: T. Haas and A. Westerhof Löfflerová, acting as Agents)

Re:

By her action under Article 263 TFEU, the applicant seeks the annulment of Article 1(9) of Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 49, p. 1), in so far as that provision fails to have regard to the principle of non-discrimination read in conjunction with her right to respect for private life.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Ms Evgenia Seifert shall bear her own costs and pay those incurred by the Council of the European Union.

(1) OJ C 222, 7.6.2022.

Order of the President of the General Court of 20 January 2023 — Vleuten Insects and New Generation Nutrition v Commission

(Case T-500/22 R)

(Interim relief — Food safety — Novel foods — Regulation (EU) 2015/2283 — Marketing authorisation for Alphitobius diaperinus larva — Application for suspension of operation of a measure — No urgency)

(2023/C 83/31)

Language of the case: English

Parties

Applicants: Vleuten Insects vof (Hoogeloon, Netherlands), New Generation Nutrition BV (Helvoirt, Netherlands) (represented by: N. Carbonnelle, lawyer)

Defendant: European Commission (represented by: B. Rous Demiri and F. van Schaik, acting as Agents)

Re:

By their application based on Articles 278 and 279 TFEU, the applicants seek suspension of the operation of Commission Implementing Decision C(2022) 3478 final of 2 June 2022 terminating the procedure for authorising the placing on the market of *Alphitobius diaperinus* larva as a novel food without updating the Union list of novel foods.

Operative part of the order

1. The application for interim relief is dismissed.

2. The costs are reserved.

Action brought on 7 November 2022 — SN v Commission

(Case T-689/22)

(2023/C 83/32)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision dated 11 January 2022 insofar as it adds, as restriction that must be observed when the applicant is on leave on personal grounds, the condition of not being involved, participating or advising in proceedings and/or matters carried out by or involving the European Commission and EU Courts and of not entering into any direct or indirect (including written) professional contacts with the relevant services at the Commission in the context of his current work,

— annul the defendant's decision of 27 July 2022 rejecting the applicant's complaint,

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has breached its duty to state reasons.

2. Second plea in law, alleging that the defendant has infringed Article 40 of the EU Staff Regulations and Commission decision C(2018)4048 of 29 June 2018 on outside activity and assignments and on occupational activities after leaving the Service, as well as the principle of proportionality.

3. Third plea in law, alleging that the defendant has infringed the principle of equal treatment.

Action brought on 13 December 2022 — Zásilkovna v Commission

(Case T-784/22)

(2023/C 83/33)

Language of the case: English

Parties

Applicant: Zásilkovna s. r. o. (Praha, Czech Republic) (represented by: R. Kubáč, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision C(2022) 5136 final of 25 July 2022, in case SA.55208 (2020/C) — Compensation to Czech Post implemented by Czechia for the provision of the universal postal service obligation for the period 2018-2022, declaring the State aid to be compatible with the internal market;

— order the Commission to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the essential procedural requirement as its decision is not duly reasoned. In particular, the Commission has limited its reasoning to simple statements without any details and disregarded all other requirements laid down by the relevant case law. Thus, the Commission has not sufficiently substantiated this deviation from the case law and from its expressed preliminary views. Therefore, the Commission infringed the applicant's essential procedural right, since all EU institutions are obliged to state the reasons for the measure in question to ensure its reviewability before the courts.

2. Second plea in law, alleging the Commission made a manifest error of assessment in concluding that the Czech Post allocates costs separately for universal postal service obligations ('UPSO') and non-UPSO (commercial) activities. However, the applicant is convinced that costs for the infrastructure investment and network operation are not proportionally shared between the service of general economic interest ('SGEI') and other commercial business activities of the Czech Post, as some of the same relevant costs within the UPSO (such as personnel, equipment including cars, databases, etc.) are in practice used also for non-UPSO commercial activities. The Commission's conclusion that the net avoided cost ('NAC') calculation includes only the necessary costs to discharge the UPSO does not automatically mean that the Czech Post does not use the same costs (e.g., for personnel, equipment including cars, databases, etc.) also for non-UPSO commercial activities. Therefore, the Commission has incorrectly applied the State aid rules and thereby infringed the TFEU.

3. Third plea in law, alleging that the Commission made a manifest error of assessment in completely disregarding or not addressing sufficiently certain objections of the applicant regarding the presence of Czech Post's overcompensation, in particular that (i) the UPSO can be performed by private operators on the commercial basis without any aid; (ii) the depreciation periods for the purposes of entrustment period are completely unfounded; and (iii) there are wrong assumptions in the counterfactual scenario. Therefore, the Commission has incorrectly applied the State aid rules and thereby infringed the TFEU.

4. Fourth plea in law, alleging that the Commission made a manifest error of assessment in concluding that the Czech Post's cross-subsidization does not constitute State aid. However, according to the applicant, the Czech Post's cross-subsidization constitutes a stand-alone incompatible State aid under Article 107(1) TFEU taking place already at least in the 2013-2017 period (but very likely even before), which the Commission should thus have thoroughly assessed in separate administrative proceedings, and not as an ancillary issue within the proceedings in case SA.55208 (2020/C) limited to the 2018-2022 period. However, the Commission wrongly concluded that this cross-subsidization does not constitute State aid at all. This conclusion is incorrect from both factual and legal perspective. In addition, it is in stark contrast of the established case law of the Commission as well as the Court of the Justice of the EU. Therefore, the Commission has incorrectly applied the State aid rules and thereby infringed the TFEU.

Action brought on 13 January 2023 — France v Commission

(Case T-7/23)

(2023/C 83/34)

Language of the case: French

Parties

Applicant: French Republic (represented by: T. Stéhelin, B. Fodda and E. Leclerc, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Notice of open competition — EPSO/AD/401/22 — Administrators (AD 6) in the fields of energy, climate and environment;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law, which are, in essence, identical or similar to those raised in Case T-555/22, *France* v *Commission*.

Action brought on 20 January 2023 — Balaban v EUIPO — Shenzhen Stahlwerk Welding Technology (STAHLWERK)

(Case T-13/23)

(2023/C 83/35)

Language in which the application was lodged: German

Parties

Applicant: Okan Balaban (Bornheim, Germany) (represented by: T. Schaaf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Shenzhen Stahlwerk Welding Technology Co. Ltd (Shenzhen, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark STAHLWERK — EU trade mark No 11 554 201

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 31 October 2022 in Case R 2060/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

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

Action brought on 23 January 2023 — Laboratorios Normon v EUIPO — Sofar (NORMOCARE)
(Case T-19/23)

(2023/C 83/36)

Language in which the application was lodged: English

Parties

Applicant: Laboratorios Normon, SA (Tres Cantos, Spain) (represented by: I. Gonzalez-Mogena Gonzalez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sofar SpA (Trezzano Rosa, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark NORMOCARE — European Union trade mark No 17 767 294

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 26 October 2022 in Case R 916/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and, if appropriate, Sofar Spa to pay the costs of the present proceedings.

Pleas in law

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

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

Action brought on 23 January 2023 — Japan Tobacco v EUIPO — Dunhill Tobacco of London (FLOW FILTER)

(Case T-20/23)

(2023/C 83/37)

Language in which the application was lodged: English

Parties

Applicant: Japan Tobacco, Inc. (Tokyo, Japan) (represented by: J. Gracia Albero and E. Cebollero González, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dunhill Tobacco of London Ltd (London, United Kingdom)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark FLOW FILTER — European Union trade mark No 18 002 134

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 25 October 2022 in Case R 1774/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision to the extent that it upheld the rejection of the application for a declaration of invalidity in relation to the contested goods;

— order the defendant to bear the costs of the proceedings before the General Court under Article 190(2) of the Rules of Procedure of the General Court and order the intervener to bear the costs deriving from the proceedings before the Cancellation Division and the Fifth Board of Appeal.

Pleas in law

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

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

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

Action brought on 23 January 2023 — Chart v EUIPO (ABSOLUTEFLOW)

(Case T-21/23)

(2023/C 83/38)

Language in which the application was lodged: German

Parties

Applicant: Chart Inc. (Ball Ground, Georgia, United States of America) (represented by: R. Drożdż and J. Wachinger, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark ABSOLUTEFLOW — Application for registration No 18 669 744

Contested decision: Decision of the First Board of Appeal of EUIPO of 31 October 2022 in Case R 1583/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 24 January 2023 — Markt-Pilot v EUIPO (MARKT-PILOT)

(Case T-22/23)

(2023/C 83/39)

Language of the case: German

Parties

Applicant: Markt-Pilot GmbH (Beilstein, Germany) (represented by: M. Nielen and A. Puff, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for the EU word mark 'MARKT-PILOT' — Application No 18 531 626

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 November 2022 in Case R 672/2022-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

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

Order of the General Court of 17 January 2023 — GKP v EUIPO — Cristalfarma (TIARA RUBIS) (Case T-518/22) [1]

(2023/C 83/40)

Language of the case: English

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

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[1] OJ C 398, 17.10.2022.

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