Official Journal of the European Union

C 104

English edition

Information and Notices

Volume 66

20 March 2023

Contents

EN

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

General Court

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 104/01)

Last publication

OJ C 94, 13.3.2023

Past publications

OJ C 83, 6.3.2023

OJ C 71, 27.2.2023

OJ C 63, 20.2.2023

OJ C 54, 13.2.2023

OJ C 45, 6.2.2023

OJ C 35, 30.1.2023

These texts are available on:

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

COURT OF JUSTICE

DECISION OF THE COURT OF JUSTICE

of 7 February 2023

on official holidays and judicial vacations

(2023/C 104/02)

THE COURT,

having regard to Article 24(2), (4) and (6) of the Rules of Procedure,

whereas it is necessary, in accordance with that provision, to establish the list of official holidays and to set the dates of the judicial vacations,

HAS ADOPTED THIS DECISION:

Article 1

The list of official holidays within the meaning of Article 24(4) and (6) of the Rules of Procedure is established as follows:

— New Year's Day,

— Easter Monday,

— 1 May,

— 9 May,

— Ascension,

— Whit Monday,

— 23 June,

— 15 August,

— 1 November,

— 25 December,

— 26 December.

Article 2

For the period from 1 November 2023 to 31 October 2024, the dates of the judicial vacations within the meaning of Article 24(2) and (6) of the Rules of Procedure are set as follows:

— Christmas 2023: from Monday 18 December 2023 to Sunday 7 January 2024 inclusive,

— Easter 2024: from Monday 25 March 2024 to Sunday 7 April 2024 inclusive,

— Summer 2024: from Tuesday 16 July 2024 to Saturday 31 August 2024 inclusive.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Luxembourg, 7 February 2023.

Registrar	*President*
A. CALOT ESCOBAR	K. LENAERTS

GENERAL COURT

DECISION OF THE GENERAL COURT

of 15 February 2023

on judicial vacations

(2023/C 104/03)

THE GENERAL COURT,

having regard to Article 41(2) of the Rules of Procedure,

HAS DECIDED:

Article 1

For the judicial year beginning on 1 September 2023, the dates of the judicial vacations within the meaning of Article 41(2) and (6) of the Rules of Procedure are as follows:

— Christmas 2023: from Monday 18 December 2023 to Sunday 7 January 2024 inclusive,

— Easter 2024: from Monday 25 March 2024 to Sunday 7 April 2024 inclusive,

— Summer 2024: from Tuesday 16 July 2024 to Saturday 31 August 2024 inclusive.

Article 2

This decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Luxembourg, 16 February 2023.

Registrar — E. COULON

President — M. VAN DER WOUDE

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 2 February 2023 — Kingdom of Spain (C-649/20 P), Lico Leasing SA, Pequeños y Medianos Astilleros Sociedad de Reconversión SA (C-658/20 P), Caixabank SA and Others (C-662/20 P) v European Commission

(Joined Cases C-649/20 P, C-658/20 P and C-662/20 P) [1]

(Appeal — State aid — Article 107(1) TFEU — Tax regime applicable to certain finance lease agreements for the purchase of ships (Spanish tax lease system) — Condition relating to selectivity — Obligation to state reasons — Principle of the protection of legitimate expectations — Principle of legal certainty — Recovery of the aid)

(2023/C 104/04)

Language of the case: Spanish

Parties

Appellants: Kingdom of Spain (represented by: S. S. Centeno Huerta, A. Gavela Llopis, I. Herranz Elizalde and S. Jiménez García, acting as Agents) (C-649/20 P), Lico Leasing SA, Pequeños y Medianos Astilleros Sociedad de Reconversión SA (represented by: J.M. Rodríguez Cárcamo and A. Sánchez, abogados) (C-658/20 P), Caixabank SA, Asociación Española de Banca, Unicaja Banco SA, Liberbank SA, Banco de Sabadell SA, Banco Bilbao Vizcaya Argentaria SA, Banco Santander SA, Santander Investment SA, Naviera Séneca AIE, Industria de Diseño Textil SA (Inditex), Naviera Nebulosa de Omega AIE, Abanca Corporación Bancaria SA, Ibercaja Banco SA, Naviera Bósforo AIE, Joyería Tous SA, Corporación Alimentaria Guissona SA, Naviera Muriola AIE, Poal Investments XXI SL, Poal Investments XXII SL, Naviera Cabo Vilaboa C-1658 AIE, Naviera Cabo Domaio C-1659 AIE, Caamaño Sistemas Metálicos SL, Blumaq SA, Grupo Ibérica de Congelados SA, RNB SL, Inversiones Antaviana SL, Banco de Albacete SA, Bodegas Muga SL, Aluminios Cortizo SAL (represented by: E. Abad Valdenebro, J.L. Buendía Sierra, R. Calvo Salinero and A. Lamadrid de Pablo, abogados) (C-662/20 P)

Other party to the proceedings: European Commission (represented by: J. Carpi Badía, V. Di Bucci, É. Gippini Fournier and P. Němečková, acting as Agents)

Intervener in support of the appellants (C-662/20 P): Decal España SA (represented by: M.-J. Silva Sánchez, abogado)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 23 September 2020, *Spain and Others* v *Commission* (T-515/13 RENV and T-719/13 RENV, EU:T:2020:434) to the extent that, by that judgment, the General Court dismissed the actions is so far as they sought annulment of Article 1 of Commission Decision 2014/200/EU of 17 July 2013 on the aid scheme SA.21233 C/11 (ex NN/11, ex CP 137/06) implemented by Spain — Tax scheme applicable to certain finance lease agreements, also known as the 'Spanish Tax Lease System', inasmuch as it designates the economic interest groupings and their investors as the sole recipients of the aid referred to in that decision, and Article 4(1) of that decision, inasmuch as it orders the Kingdom of Spain to recover in full the amount of the aid referred to in that decision from the economic interest groupings' investors which benefited from it;

2. Dismisses the appeals as to the remainder;

3. Annuls Article 1 of Decision 2014/200 inasmuch as it designates the economic interest groupings and their investors as the sole recipients of the aid referred to in that decision;

4. Annuls Article 4(1) of that decision inasmuch as it orders the Kingdom of Spain to recover in full the amount of the aid referred to in that decision from the investors of the economic interest groupings which benefited from it;

5. Orders the Kingdom of Spain, Lico Leasing SA, Pequeños y Medianos Astilleros Sociedad de Reconversión SA, Caixabank SA, Asociación Española de Banca, Unicaja Banco SA, Liberbank SA, Banco de Sabadell SA, Banco Bilbao Vizcaya Argentaria SA, Banco Santander SA, Santander Investment SA, Naviera Séneca AIE, Industria de Diseño Textil SA (Inditex), Naviera Nebulosa de Omega AIE, Abanca Corporación Bancaria SA, Ibercaja Banco SA, Naviera Bósforo AIE, Joyería Tous SA, Corporación Alimentaria Guissona SA, Naviera Muriola AIE, Poal Investments XXI SL, Poal Investments XXII SL, Naviera Cabo Vilaboa C-1658 AIE, Naviera Cabo Domaio C-1659 AIE, Caamaño Sistemas Metálicos SL, Blumaq SA, Grupo Ibérica de Congelados SA, RNB SL, Inversiones Antaviana SL, Banco de Albacete SA, Bodegas Muga SL and Aluminios Cortizo SAU to bear all their own costs and to pay three quarters of the costs incurred by the European Commission both at first instance and in connection with the appeals in Case C-128/16 and Joined Cases C-649/20 P, C-658/20 P and C-662/20 P;

6. Orders Decal España SA to bear its own costs;

7. Orders the European Commission to bear one quarter of the costs it has incurred both at first instance and in connection with the appeals in Case C-128/16 and Joined Cases C-649/20 P, C-658/20 P and C-662/20 P.

([1]) OJ C 110, 29.3.2021.

Judgment of the Court (Ninth Chamber) of 2 February 2023 (request for a preliminary ruling from the Sąd Rejonowy dla Warszawy-Woli w Warszawie — Poland) — K.D. v Towarzystwo Ubezpieczeń Ż S.A.

(Case C-208/21, ([1]) Towarzystwo Ubezpieczeń Ż (Misleading standard assurance contracts))

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Article 5 — Obligation to draft contractual clauses in plain intelligible language — Directive 2005/29/EC — Unfair business-to-consumer commercial practices — Article 3 — Scope — Article 7 — Misleading omission — Article 13 — Penalties — 'Unit-linked' life assurance contracts linked to investment funds — Information on the nature and structure of the assurance product and the risks associated with that product — Misleading standard contracts — Entity that is responsible — Legal consequences)

(2023/C 104/05)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy-Woli w Warszawie

Parties to the main proceedings

Applicant: K.D.

Defendant: Towarzystwo Ubezpieczeń Ż S.A.

Operative part of the judgment

1. Article 3(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'),

must be interpreted as meaning that the drafting by an assurance undertaking of a standard group life assurance contract linked to an investment fund which does not enable a consumer who is acceding to that group contract on the basis of a proposal from a second undertaking, the policyholder, to understand the nature and structure of the assurance product offered and the risks associated with it may constitute an 'unfair commercial practice' within the meaning of that provision and that that assurance undertaking must be held liable for that unfair commercial practice.

2. Article 3(2) of Directive 2005/29, read in conjunction with Article 13 thereof,

must be interpreted as meaning that it does not preclude an interpretation of national law which confers on a consumer who has concluded a contract as a result of an unfair commercial practice on the part of a trader the right to seek the annulment of that contract.

(1) OJ C 289, 19.7.2021.

Judgment of the Court (Third Chamber) of 2 February 2023 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Freikirche der Siebenten-Tags-Adventisten in Deutschland KdöR v Bildungsdirektion für Vorarlberg

(Case C-372/21, (1) **Freikirche der Siebenten-Tags-Adventisten in Deutschland)**

(Reference for a preliminary ruling — Status under EU law of churches and religious associations or communities in the Member States — Article 17(1) TFEU — Freedom of establishment — Article 49 TFEU — Restrictions — Justification — Proportionality — Subsidies for a private school — Application submitted by a religious society established in another Member State — Establishment recognised by that society as a denominational school)

(2023/C 104/06)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Freikirche der Siebenten-Tags-Adventisten in Deutschland KdöR

Defendant: Bildungsdirektion für Vorarlberg

Operative part of the judgment

1. Article 17(1) TFEU must be interpreted as not having the effect of excluding from the scope of EU law a situation in which a church or religious association or community, which has the status of a legal person governed by public law in one Member State and which recognises and supports a private school in another Member State as a denominational school, applies for a subsidy for that school which is reserved for churches and religious associations or communities recognised under the law of that other Member State.

2. Article 49 TFEU, read in conjunction with Article 17(1) of that treaty, must be interpreted as not precluding national legislation which makes the grant of public subsidies to private schools recognised as denominational schools conditional upon the church or religious society which submits the application for a subsidy for such a school being recognised under the law of the Member State concerned, including where that church or religious society is recognised under the law of its Member State of origin.

(1) OJ C 382, 20.9.2021.

Judgment of the Court (Eighth Chamber) of 2 February 2023 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Proceedings brought by A

(Case C-676/21, (1) **Veronsaajien oikeudenvalvontayksikkö (Tax on vehicles))**

(Reference for a preliminary ruling — Internal taxation — Article 110 TFEU — Motor vehicles — Tax on vehicles — Second-hand vehicles imported from other Member States — Second-hand vehicles exported to other Member States — Refund of that tax on export — Restriction on that refund to vehicles which were put into circulation less than ten years ago)

(2023/C 104/07)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: A

Intervening party: Veronsaajien oikeudenvalvontayksikkö

Operative part of the judgment

Primary Union law, specifically Article 110 TFEU, must be interpreted as not precluding national legislation under which a motor vehicle tax included in the value of each vehicle is not refunded to the owner of a motor vehicle in the event of its export for permanent use in another Member State, where that vehicle was first put into circulation at least ten years before the time of its export. It is irrelevant in that regard that such a vehicle was intended to be used primarily in the territory of the Member State which levied the vehicle tax on a permanent basis and that it was in fact also used in that way.

(1) OJ C 57, 31.1.2022.

Judgment of the Court (Seventh Chamber) of 2 February 2023 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Criminal proceedings against TF

(Case C-806/21, (1) **TF (Drug precursors))**

(Reference for a preliminary ruling — Drug precursors — Framework Decision 2004/757/JHA — Article 2(1)(d) — Person involved in the transport and distribution of precursors used for the illicit production or manufacture of drugs — Regulation (EC) No 273/2004 — Scheduled substances — Article 2 — Concept of 'operator' — Article 8(1) — Circumstances suggesting that scheduled substances might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances — Obligation to notify those circumstances — Concept of 'circumstance' — Scope)

(2023/C 104/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Party in the main proceedings

TF

Other party to the proceedings: Openbaar Ministerie

Operative part of the judgment

Article 2(d) of Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors, as amended by Regulation (EU) No 1258/2013 of the European Parliament and of the Council of 20 November 2013,

must be interpreted as meaning that a person who participates, in the context of an illegal activity, in the placing on the market of scheduled substances in the European Union is not an 'operator' for the purposes of that provision.

(1) OJ C 138, 28.3.2022.

Order of the Court (Sixth Chamber) of 7 November 2022 — (requests for a preliminary ruling from the Înalta Curte de Casație şi Justiție — Romania) — Criminal proceedings against FX, CS, ND (C-859/19), BR, CS, DT, EU, FV, GW (C-926/19), CD, CLD, GLO, ŞDC, PVV (C-929/19)

(Joined Cases C-859/19, C-859/19, C-926/19 and C-929/19, (1) **FX and Others (Effect of the decisions of a constitutional court III)**

(References for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Second subparagraph of Article 19(1) TEU — Article 47 of the Charter of Fundamental Rights of the European Union — Fight against corruption — Protection of the European Union's financial interests — Article 325(1) TFEU — PFI Convention — Decision 2006/928/EC — Criminal proceedings — Decisions of the Curtea Constituțională (Constitutional Court, Romania) concerning the composition of panels hearing cases relating to serious corruption — Duty on national courts to give full effect to decisions of the Curtea Constituțională (Constitutional Court) — Disciplinary liability of judges in the event of non-compliance with such decisions — Power to disapply decisions of the Curtea Constituțională (Constitutional Court) that are inconsistent with EU law — Principle of primacy of EU law)

(2023/C 104/09)

Language of the case: Romanian

Referring court

Înalta Curte de Casație şi Justiție

Criminal proceedings against

FX, CS, ND (C-859/19), BR, CS, DT, EU, FV, GW (C-926/19), CD, CLD, GLO, ŞDC, PVV (C-929/19)

Other parties: Parchetul de pe lângă Înalta Curte de Casație şi Justiție — Direcția Națională Anticorupție (C-859/19, C-926/19 and C-929/19), Parchetul de pe lângă Înalta Curte de Casație şi Justiție — Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism — Structura Centrală (C-926/19), Parchetul de pe lângă Înalta Curte de Casație şi Justiție — Secția pentru Investigarea Infracțiunilor din Justiție (C-926/19), Agenția Națională de Administrare Fiscală (C-926/19 and C-929/19), HX (C-926/19), IY (C-926/19), SC Uranus Junior 2003 SRL (C-926/19), SC Complexul Energetic Oltenia SA (C-929/19)

Operative part of the order

1. Article 325(1) TFEU, read in conjunction with Article 2 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995, and Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption,

are to be interpreted as precluding national rules or a national practice under which judgments in matters of corruption and value added tax fraud, which were not delivered, at first instance, by panels specialised in such matters or, on appeal, by panels all the members of which were selected by drawing lots, are rendered absolutely null and void, such that the cases of corruption and value added tax fraud concerned must, as the case may be further to an extraordinary appeal against final judgments, be re-examined at first and/or second instance, where the application of those national rules or that national practice is capable of giving rise to a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished. The obligation to ensure that such offences are subject to criminal penalties that are effective and act as a deterrent does not exempt the referring court from verifying the necessary observance of the fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. The requirements arising from the first sentence of the second paragraph of Article 47 of the Charter do not preclude the non-application of such national rules or such a national practice where the latter are capable of giving rise to such a systemic risk of impunity.

2. Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928

are to be interpreted as not precluding national rules or a national practice under which the decisions of the national constitutional court are binding on the ordinary courts, provided that national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive, as required by those provisions. However, those provisions of the EU Treaty and that decision are to be interpreted as precluding national rules under which any failure to comply with the decisions of the national constitutional court by national judges of the ordinary courts can trigger their disciplinary liability.

3. The principle of primacy of EU law is to be interpreted as precluding national rules or a national practice under which national ordinary courts are bound by decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgment of the Court of Justice, that that case-law is contrary to the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU or Decision 2006/928.

([1]) OJ C 201, 15.6.2020.

Order of the Court (Ninth Chamber) of 26 October 2022 (request for a preliminary ruling from the Úřad pro přístup k dopravní infrastruktuře — Czech Republic) — RegioJet a.s. v České dráhy a.s.

(Case C-104/21, ([1]) **RegioJet)**

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Article 267 TFEU — Concept of 'court or tribunal' — Criteria relating to the constitution and function of that body — Exercise of judicial or administrative functions — Directive 2012/34/EU — Articles 55 and 56 — Single national regulatory body for the railway sector — Independent regulatory authority for the sector — Entitlement to act on an ex officio basis — Power to impose penalties — Decisions that are open to challenge before the courts — Inadmissibility of the request for a preliminary ruling)

(2023/C 104/10)

Language of the case: Czech

Referring court

Úřad pro přístup k dopravní infrastruktuře

Parties to the main proceedings

Applicant: RegioJet a.s.

Defendant: České dráhy a.s.

Operative part of the order

The request for a preliminary ruling from the Úřad pro přístup k dopravní infrastruktuře (Transport infrastructure access authority, Czech Republic), made by decision of 19 February 2021, is manifestly inadmissible.

(1) OJ C 148, 26.4.2021.

Order of the Court (Ninth Chamber) of 15 November 2022 (request for a preliminary ruling from the Okrazhen sad — Vidin — Bulgaria) — Corporate Commercial Bank, in liquidation v Elit Petrol AD

(Case C-260/21, (1) **Corporate Commercial Bank)**

(Reference for a preliminary ruling — Article 53(2) and Articles 94 and 99 of the Rules of Procedure of the Court of Justice — Insolvency proceedings — Mutual set-offs with an insolvent credit institution — Retroactive amendment to the conditions for the enforcement of those set-offs — National legislation declared unconstitutional — Purely internal situation — Manifest inadmissibility)

(2023/C 104/11)

Language of the case: Bulgarian

Referring court

Okrazhen sad — Vidin

Parties to the main proceedings

Applicant: Corporate Commercial Bank, in liquidation

Defendant: Elit Petrol AD

Operative part of the order

1. The second subparagraph of Article 19(1) TEU must be interpreted as not precluding the adoption by a Member State of general rules on set-off in the context of the insolvency of a bank, even if they are retroactive.

2. The first to fourth and sixth questions submitted by the Okrazhen sad Vidin (Regional Court, Vidin, Bulgaria) are manifestly inadmissible.

(1) OJ C 252, 28.6.2021.

Order of the Court (Sixth Chamber) of 9 December 2022 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — The Navigator Company SA, Navigator Pulp Figueira SA v Autoridade Tributária e Aduaneira

(Case C-459/21, (1) **The Navigator Company and Navigator Pulp Figueira)**

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Value added tax (VAT) — Directive 2006/112/EC — Article 176 — Exclusions from the right to deduct VAT — Less favourable scheme compared to the mechanism for deducting expenses provided for in respect of a direct tax governed by national law — Principle of equivalence — Inapplicability)

(2023/C 104/12)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: The Navigator Company SA, Navigator Pulp Figueira SA

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

The principle of equivalence must be interpreted as not precluding national legislation, maintained pursuant to the second paragraph of Article 176 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, and which establishes a total or partial exclusion of the right to deduct VAT paid in respect of certain motor vehicle expenses, travel and accommodation expenses and entertainment expenses as well as legal costs, even though such expenses are covered by a scheme which is allegedly more favourable, in terms of the deductibility of those expenses, in the context of a direct tax governed by national law.

(1) OJ C 11, 10.1.2022.

Order of the Court (Ninth Chamber) of 7 December 2022 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — S v AA

(Case C-566/21, (1) **S (Amendment of an unfair term))**

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Reply to the question referred for a preliminary ruling which may be clearly deduced from existing case-law or which leaves no room for reasonable doubt — Consumer protection — Directive 93/13/EEC — Article 6(1) — Unfair terms in consumer contracts — Loan agreement denominated in a foreign currency (Swiss francs) — Effects of a declaration that a term is unfair — Power of the national court — Prohibition, in principal, on modifying the contract by revising the content of the unfair term)

(2023/C 104/13)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant: S

Respondent: AA

Operative part of the order

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

must be interpreted as precluding a national court — which has found that a term contained in a loan agreement concluded between a seller or supplier and a consumer is unfair and that its removal does not prevent the contract from continuing to exist — from altering the scope of that term, in such a way that the right, granted to the seller or supplier alone, under certain conditions, to convert the currency in which the contract was drawn up into the national currency, is replaced by an obligation to do so at the consumer's request.

(1) OJ C 2, 3.1.2022.

Order of the Court (Tenth Chamber) of 14 November 2022 (request for a preliminary ruling from the Tribunal Judicial da Comarca do Porto — Juízo Central Cível da Póvoa de Varzim — Portugal) — Gencoal S.A. v Conceito Norte — Consultadoria de Gestão, Lda., BT

(Case C-669/21, [1] **Gencoal)**

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Requirement to present the factual and regulatory context of the main proceedings and the reasons justifying the need for an answer to the question referred for a preliminary ruling — Absence of sufficient information — Manifest inadmissibility)

(2023/C 104/14)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca do Porto — Juízo Central Cível da Póvoa de Varzim

Parties to the main proceedings

Applicant: Gencoal S.A.

Defendants: Conceito Norte — Consultadoria de Gestão, Lda., BT

Other party: Companhia de Seguros Allianz Portugal SA

Operative part of the order

The request for a preliminary ruling made by the Tribunal Judicial da Comarca do Porto — Juízo Central Cível da Póvoa de Varzim (District Court, Oporto — Central Civil Court No 5, Póvoa de Varzim, Portugal), made by decision of 21 October 2021, is manifestly inadmissible.

[1] OJ C 64, 7.2.2022.

Order of the Court of Justice (Ninth Chamber) of 21 December 2022 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Fallimento Villa di Campo Srl v Agenzia delle Entrate

(Case C-250/22, [1] **Fallimento Villa di Campo)**

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Requirement to indicate the relationship between the provisions of EU law in respect of which interpretation is sought and the national legislation applicable to the dispute in the main proceedings — Failure to supply sufficient information — Manifestly inadmissible)

(2023/C 104/15)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Fallimento Villa di Campo Srl

Cross-appellant: Agenzia delle Entrate

Operative part of the order

The request for a preliminary ruling lodged by the Corte suprema di Cassazione (Supreme Court of Cassation, Italy) by decision of 31 March 2022 is manifestly inadmissible.

(1) OJ C 266, 11.7.2022.

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny we Wrocławiu (Poland) lodged on 17 November 2022 — Syndyk Masy Upadłości A v Dyrektor Izby Administracji Skarbowej we Wrocławiu

(Case C-709/22, Syndyk Masy Upadłości A)

(2023/C 104/16)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: Syndyk Masy Upadłości A

Defendant: Dyrektor Izby Administracji Skarbowej we Wrocławiu

Questions referred

1. Must the provisions of Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (1) [and] the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (2) in particular Articles 395 and 273 thereof, as well as the principle of proportionality and the principle of neutrality, be interpreted as precluding national legislation and practice which, in the circumstances of the case at hand, preclude the grant of consent for the transfer, by an insolvency administrator, of funds held in the VAT account of a taxable person (split payment mechanism) to a bank account which has been designated by that taxable person?

2. Must Article 17(1) of the Charter of Fundamental Rights of the European Union — [concerning the] right to property — in conjunction with Article 51(1) and Article 52(1) thereof, be interpreted as precluding national legislation and practice which, in the circumstances of the case at hand, by precluding the grant of consent for the transfer, by an insolvency administrator, of funds held in the VAT account of a taxable person (split payment mechanism), consequently result in the funds owned by the insolvent taxable person in that VAT account being frozen, and thus make it impossible for the insolvency administrator to carry out his or her duties in the course of the insolvency proceedings?

3. Having regard to the context and objectives of Council [Implementing] Decision 2019/310, as well as the provisions of [the VAT Directive], must the principle of the rule of law stemming from Article 2 of the Treaty on European Union and the principle of legal certainty which implements it, the principle of sincere cooperation stemming from Article 4(3) TEU, and the principle of good administration stemming from Article 41(1) of the Charter, be interpreted as precluding national practice which, by precluding the grant of consent for the transfer, by an insolvency administrator, of funds held in the VAT account of a taxable person (split payment mechanism), seeks to frustrate the objectives of the insolvency proceedings defined by an insolvency court as falling within Polish jurisdiction for the purposes of Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), (3) and consequently leads to a situation as a result of which, through the application of an inappropriate national measure, the State Treasury is treated preferentially as a creditor at the expense of the general body of creditors?

(1) OJ 2019 L 51, p. 19.
(2) OJ 2006 L 347, p. 1.
(3) OJ 2015 L 141, p. 19.

Request for a preliminary ruling from the Symvoulio tis Epikrateias (Greece) lodged on 2 December 2022 — Micreos Food Safety BV v Eniaios Foreas Elegchou Trofimon (EFET)

(Case C-745/22)

(2023/C 104/17)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicant: Micreos Food Safety BV

Defendant: Eniaios Foreas Elegchou Trofimon (EFET)

Questions referred

1. Must Regulation (EC) No 853/2004 ([1]) be interpreted as meaning that a product such as Listex™ P100 manufactured by the applicant, which has the characteristics described in the opinion of 7 July 2016 of the European Food Safety Authority (EFSA) and, moreover, according to the applicant's submissions, is applied outside of slaughterhouses during the final stages of the production process and is intended to prevent rather than to remove surface contamination on products of animal origin, comes within the scope of Article 3(2) of the regulation (and its distribution on the European market is therefore subject to prior approval by the Commission in accordance with Article 11a of the regulation)?

   If the answer to Question 1 is in the negative:

2. Must Regulation (EC) No 1333/2008 ([2]) be interpreted as meaning that the applicant's product referred to above is a food additive or a processing aid (Article 3(2)(a) and (b) of Regulation (EC) No 1333/2008)?

([1]) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55).

([2]) Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (Text with EEA relevance) (OJ 2008 L 354, p. 16).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 12 December 2022 — QY v Federal Republic of Germany

(Case C-753/22)

(2023/C 104/18)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant and appellant: QY

Defendant and respondent: Federal Republic of Germany

Question referred

In the event that a Member State may not exercise the power conferred by Article 33(2)(a) of Directive 2013/32/EU ([1]) to reject as inadmissible an application for international protection with a view to the granting of refugee status in another Member State because living conditions in that Member State would expose the applicant to a serious risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, must the second sentence of Article 3(1) of Regulation (EU) No 604/2013, ([2]) the second sentence of Article 4(1) and Article 13 of Directive 2011/95/EU ([3]) as well as Article 10(2) and (3) and Article 33(1) and (2)(a) of Directive 2013/32/EU be interpreted as meaning that the fact that refugee status has already been granted prevents the Member State from carrying out an examination of the application for international protection submitted to it that is unbiased as to the outcome, and obliges the Member State to grant the applicant refugee status without examining the substantive conditions for that protection?

([1]) Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ 2013 L 180, p. 60).

([2]) Regulation of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ 2013 L 180, p. 31).

([3]) Directive of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 15 December 2022 — Meta Platforms Ireland Limited v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

(Case C-757/22, Meta Platforms Ireland)

(2023/C 104/19)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: Meta Platforms Ireland Limited

Respondent in the appeal on a point of law: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

Question referred

Is an infringement of rights 'as a result of the processing' within the meaning of Article 80(2) of Regulation (EU) 2016/679 (General Data Protection Regulation) ([1]) asserted when a consumer protection association invokes, in support of its action, infringement of a data subject's rights on the ground of non-compliance with the information obligations laid down in the first sentence of Article 12(1) of Regulation 2016/679, read in conjunction with Article 13(1)(c) and (e) of Regulation 2016/679, relating to the purpose of the data processing and the recipient of the personal data?

([1]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles (Belgium) lodged on 2 January 2023 — X, Y, A, legally represented by X and Y, B, legally represented by X and Y v État belge

(Case C-1/23, Afrin [1])

(2023/C 104/20)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicants: X, Y, A, legally represented by X and Y, B, legally represented by X and Y

Defendant: État belge

Question referred

Is the legislation of a Member State which only allows family members of a recognised refugee to submit an application for entry and residence at a diplomatic post of that State, even in a situation where it is impossible for those family members to travel to that post, compatible with Article 5(1) of Directive 2003/86/EC, [2] read, where appropriate, in conjunction with the objective pursued by that directive, to promote family reunification, Articles 23 and 24 of Directive 2011/95/EU, [3] Articles 7 and 24 of the Charter of Fundamental Rights [4] and the duty to ensure the effectiveness of EU law?

[1] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.
[2] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).
[3] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ 2011 L 337, p. 9).
[4] Charter of Fundamental Rights of the European Union.

Appeal brought on 14 January 2023 by Asociación Liberum and 926 other appellants against the order of the General Court (Fifth Chamber) delivered on 15 November 2022 in Case T-476/22 Asociación Liberum and Others v European Parliament and Council

(Case C-17/23 P)

(2023/C 104/21)

Language of the case: Spanish

Parties

Appellants: Asociación Liberum and 926 appellants (L.M. Pardo Rodríguez and F. Feliù Pamplona, abogados)

Other parties to the proceedings: European Parliament and Council of the European Union

Form of order sought

The appellants claim that the Court should:

— set aside the order of the General Court of 15 November 2022, *Liberum Association and Others* v *Parliament and Council*, T-476/22, EU:T:2022:714; to the extent that the Court considers that the state of the proceedings so permit, reject the plea of inadmissibility, declare the action admissible and refer the case back to the General Court for a ruling on the substance or, in the alternative, declare the contested measure to be of direct concern to the appellants and refer the case back to the General Court to rule on individual concern or join it to the substance.

— order the European Parliament and the Council to pay the costs of the proceedings before the General Court.

— order the European Parliament and the Council to pay the costs of the present proceedings.

— grant the appellants any additional remedy that it considers appropriate in law.

Grounds of appeal and main arguments

1. By the first ground of appeal, the appellants submit that the effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights, read in conjunction with Article 126 of the Rules of Procedure of the General Court, has been breached and that the General Court infringed the obligation to state reasons, because it distorted the subject matter of the action by holding that it corresponded to 'a duty to be vaccinated', set out in paragraphs 4, 8, 7, 9, 10 and 11 of the order under appeal. Consequently, the first ground of appeal is based on an error of law resulting from the absence of a valid legal basis for the decision at issue.

2. By the second ground of appeal, the appellants submit that the effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights, read in conjunction with Article 263 TFEU and Article 19 TEU, has been breached and, lastly, they claim that the Court did not correctly interpret the arguments put forward by the applicants at first instance. It is not disputed that the fourth paragraph of Article 263 TFEU extended the standing of natural and legal persons to institute proceedings. In the appellants' view, the Court interpreted the fourth paragraph of Article 263 TFEU in an excessively restrictive manner and disregarded the requirements of effective judicial protection.

Action brought on 18 January 2023 — Kingdom of Denmark v European Parliament and Council of the European Union

(Case C-19/23)

(2023/C 104/22)

Language of the case: Danish

Parties

Applicant: Kingdom of Denmark (represented by: C. Maertens, M.P. Brøchner Jespersen and J. Farver Kronborg, Agents)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims primarily that the Court should:

— annul Directive (EU) 2022/2041 ([1]) of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

— order the European Parliament and the Council of the European Union to pay the costs.

In the alternative, the Government claims that the Court should:

— annul Article 4(1)(d) of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

— annul Article 4(2) of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

Pleas in law and main arguments

In support of the principal claim, the Government claims in the first place that, in adopting the contested directive, the defendants infringed the principle of the conferral of powers and acted in breach of Article 153(5) TEU. The contested directive interferes directly with the determination of the level of pay in the Member States and concerns the right of association, which is excluded from the competence of the EU legislature pursuant to Article 153(5) TFEU.

In support of its principal claim, the Government submits, in the second place, that the contested directive could not validly be adopted on the basis of Article 153(1)(b) TFEU. That is because the Directive pursues both the objective set out in Article 153(1)(b) TFEU and the objective set out in Article 153(1)(f) TFEU. The latter objective is not ancillary to the first and presupposes the use of a decision-making procedure different from that followed when the contested directive was adopted (see Article 153(2) TFEU). The two decision-making procedures are incompatible since the adoption of acts under Article 153(1)(f) TFEU — in contrast to those adopted under Article 153(1)(b) TFEU — requires unanimity (see Article 153(2) TFEU).

In support of its claim put forward in the alternative, the Government submits that, in adopting Article 4(1)(d) and Article 4(2) of the contested directive, the defendants infringed the principle of the conferral of powers and acted in breach of Article 153(5) TFEU. Those provisions interfere directly with the determination of the level of pay in the Member States and concern the right of association, which is excluded from the competence of the EU legislature pursuant to Article 153(5) TFEU.

(1) OJ 2022 L 275, p. 33.

Appeal brought on 28 January 2023 by DL (*) against the order of the General Court (Fifth Chamber) delivered on 18 November 2022 in Case T-586/22, DL (*) v Parliament and Council

(Case C-43/23 P)

(2023/C 104/23)

Language of the case: French

Parties

Appellant: DL (*) (represented by: S. Manna, avocate)

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

Form of order sought

The appellant claims that the Court of Justice should set aside the order of 18 November 2022 in Case T-586/22 in its entirety, on the ground that the General Court of the European Union made a number of errors of law.

Grounds of appeal and main arguments

In support of its appeal, the appellant puts forward five grounds.

The first ground of appeal alleges that the General Court of the European Union erred in law by distorting the pleas in law relied on by DL (*). The General Court decided the case on the premiss that DL (*) relied on the freedom of movement in the European Union, whereas his application was based on the right to health and the right to life.

The second ground of appeal alleges an error of law as to the requirement that the contested regulation must directly affect the legal situation of the applicant. The General Court held that the contested regulations did not affect the applicant's legal situation on the ground that they merely lay down a technical framework.

Although Regulation (EU) 2022/1034 lays down a technical framework, that framework directly affects the legal situation of the applicant and any EU citizen who wishes to be eligible for an EU Digital COVID Certificate.

The third ground of appeal alleges an error of law as to the condition relating to the discretion of the addressees of the contested act. The General Court held that the contested regulations merely lay down a technical framework for the application of which Member States have a discretion, such that those regulations cannot be regarded as applying automatically.

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

However, the present case concerns a regulation of general application that lays down a technical framework making it possible to grant any EU citizen a digital COVID-19 certificate, which is directly applicable in national law. Member States have no discretion: either their national COVID-19 certificate satisfies the conditions set by the regulation and the citizen receives an EU Digital COVID Certificate, or it does not satisfy those conditions and the citizen does not receive the EU Digital COVID Certificate.

The fourth ground of appeal alleges an error of law as to whether the action is capable of procuring a personal advantage to the party who brought it. The General Court held that the annulment of the contested regulations is not likely to procure any advantage to citizens on the ground that the contested regulations only lay down a technical framework. However, it cannot be denied that the annulment of the contested regulations, due to their provisions granting the EU Digital COVID Certificate to people who have not been tested, will make it possible to protect the health and lives of EU citizens.

The fifth ground of appeal alleges that the decision to extend the duration of the scheme until 30 June 2023 breached the principle of proportionality. The General Court held that the principle of proportionality was observed 'account being taken of the continuing uncertainty as to the future evolution of the pandemic'. However, in this the General Court relied on the precautionary principle, which is different from the principle of proportionality, requiring justification — scientific justification in the present case — and not vague conjecture.

Appeal brought on 6 February 2023 by the Republic of Austria against the judgment of the General Court (Third Chamber) delivered on 30 November 2022 in Case T-101/18, Republic of Austria v Commission

(Case C-59/23 P)

(2023/C 104/24)

Language of the case: German

Parties

Appellant: Republic of Austria (represented by: M. Klamert and F. Koppensteiner, acting as Agents, and H. Kristoferitsch, Rechtsanwalt)

Other parties to the proceedings: European Commission, Grand Duchy of Luxemburg, Czech Republic, French Republic, Hungary, Republic of Poland, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

Form of order sought

The Republic of Austria claims that the Court should:

— set aside in its entirety the judgment of the General Court of 30 November 2022 in Case T-101/18, *Austria* v *Commission*,

— grant, in its entirety, the action at first instance for annulment of Commission Decision (EU) 2017/2112 of 6 March 2017 on the measure/aid scheme/State aid SA.38454 — 2015/C (ex 2015/N) which Hungary is planning to implement for supporting the development of two new nuclear reactors at Paks II nuclear power station, ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

The Republic of Austria puts forward four grounds of appeal.

First ground of appeal: failure to carry out a public procurement procedure

The judgment under appeal appears to be unlawful in that, contrary to the view taken by the Court, the failure to carry out a public procurement procedure has an impact on the state aid procedure and renders the decision at issue unlawful.

Second ground of appeal: disproportionate nature of the measure

The judgment under appeal wrongly confirms that the Commission's proportionality review was sufficient. This applies all the more since, first, it is unclear what exactly the aid measure consists of and, second, the grant equivalent has not been determined.

Third ground of appeal: undue distortions of competition and creation of a dominant market position

The General Court wrongly denies the existence of undue distortions of competition and the creation of a dominant market position. The General Court fails to take into account the fact that through the closure of Paks I nuclear plant energy capacity would become available, which is subject to competition in a liberalised energy market. Moreover, Paks I and II being operated in parallel longer than expected, the independence of both undertakings cannot be guaranteed.

Fourth ground of appeal: inadequate definition of the aid

The General Court was wrong to deny that the aid elements were not defined adequately. The failure to carry out a public procurement procedure, the failure to take into account the costs of debt financing and the failure to calculate a grant equivalent all militate in favour of an inadequate determination of the level of aid.

([1]) OJ 2017 L 317, p. 45.

Order of the President of the Court of 30 November 2022 (request for a preliminary ruling from the Tribunal administratif — Luxembourg) — A, B, C, legally represented by his parents v Ministre de l'Immigration et de l'Asile

(Case C-153/21, ([1]) **Ministre de l'Immigration et de l'Asile)**

(2023/C 104/25)

Language of the case: French

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

([1]) OJ C 189, 17.5.2021.

Order of the President of the Court of 12 December 2022 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Istituto nazionale della previdenza sociale (INPS) v Ryanair DAC

(Case C-380/21, ([1]) **INPS)**

(2023/C 104/26)

Language of the case: Italian

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

([1]) OJ C 349, 30.8.2021.

Order of the President of the Court of 20 December 2022 — NB v Court of Justice of the European Union

(Case C-774/21 P) ([1])

(2023/C 104/27)

Language of the case: French

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

([1]) OJ C 198, 16.5.2022.

Order of the President of the Second Chamber of the Court of 3 November 2022 (request for a preliminary ruling from the Amtsgericht Düsseldorf — Germany) — EV v Alltours Flugreisen GmbH

(Case C-776/21, [1] **Alltours Flugreisen)**

(2023/C 104/28)

Language of the case: German

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

[1] OJ C 138, 28.3.2022.

Order of the President of the Eighth Chamber of the Court of 14 November 2022 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against ZhU, RD

(Case C-805/21, [1] **ZhU (Confiscation of an instrumentality of crime))**

(2023/C 104/29)

Language of the case: Bulgarian

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

[1] OJ C 138, 28.3.2022.

Order of the President of the Court of 21 December 2022 (request for a preliminary ruling from the Landgericht Erfurt — Germany) — XXX v Helvetia schweizerische Lebensversicherungs-AG

(Case C-41/22, [1] **Helvetia schweizerische Lebensversicherung)**

(2023/C 104/30)

Language of the case: German

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

[1] OJ C 198, 16.5.2022.

Order of the President of the Court of 16 November 2022 (request for a preliminary ruling from the Tribunal Judicial da Comarca do Porto Juízo Local Cível da Maia — Portugal) — WH, NX v TAP — Transportes Aéreos Portugueses, SGPS, SA

(Case C-202/22, [1] **TAP — Transportes Aéreos Portugueses)**

(2023/C 104/31)

Language of the case: Portuguese

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

[1] OJ C 244, 27.6.2022.

Order of the President of the Court of 2 December 2022 (request for a preliminary ruling from the Tribunalul Bucureşti — Romania) — VS, TU, RW v Ryanair DAC

(Case C-362/22, [1] **Ryanair)**

(2023/C 104/32)

Language of the case: Romanian

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

[1] OJ C 368, 26.9.2022.

Order of the President of the Court of 17 November 2022 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against NE

(Case C-373/22, [1] **NE)**

(2023/C 104/33)

Language of the case: Bulgarian

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

[1] OJ C 359, 19.9.2022.

Order of the President of the Court of 9 November 2022 (request for a preliminary ruling from the Amtsgericht Frankfurt am Main — Germany) — flightright GmbH v Transportes Aéreos Portugueses SA (TAP)

(Case C-388/22, [1] **flightright)**

(2023/C 104/34)

Language of the case: German

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

[1] OJ C 318, 22.8.2022.

Order of the President of the Court of 7 November 2022 (request for a preliminary ruling from the Landgericht Frankfurt am Main — Germany) — flightright GmbH v TAP Portugal

(Case C-578/22, [1] **flightright)**

(2023/C 104/35)

Language of the case: German

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

[1] OJ C 441, 21.12.2022.

GENERAL COURT

Judgment of the General Court of 1 February 2023 — BG v Parliament

(Case T-164/20) ([1])

(Civil service — Accredited parliamentary assistants — Psychological harassment — Article 12a of the Staff Regulations — Request for assistance — Refusal of the request — Article 24 of the Staff Regulations — Advisory Committee dealing with harassment complaints between Accredited Parliamentary Assistants and Members of the Parliament and its prevention at the workplace — Right to be heard — Refusal to disclose the report of the Advisory Committee — Liability — Non-material harm)

(2023/C 104/36)

Language of the case: English

Parties

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

Defendant: European Parliament (represented by: M. Windisch, C. González Argüelles and I. Lázaro Betancor, acting as Agents)

Re:

By her action under Article 270 TFEU, the applicant seeks, first, annulment of the decision of the European Parliament of 20 May 2019 by which the authority empowered to conclude contracts of employment refused her request for assistance and, second, compensation for the non-material harm she claims to have suffered.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Parliament of 20 May 2019 refusing the request for assistance lodged by BG;

2. Orders the Parliament to pay BG, in respect of non-material harm suffered, an amount of EUR 2 500;

3. Orders the Parliament to pay the costs.

([1]) OJ C 201, 15.6.2020.

Judgment of the General Court of 1 February 2023 — SJ v Commission

(Case T-659/20) ([1])

(Directive 2014/25/EU — Procurement procedures of entities operating in the water, energy, transport and postal services sectors — Implementing decision on the applicability of Article 34 of Directive 2014/25 to railway passenger transport in Sweden — Rights of the defence — Right to be heard)

(2023/C 104/37)

Language of the case: English

Parties

Applicant: SJ AB (Stockholm, Sweden) (represented by: J. Karlsson and M. Johansson, lawyers)

Defendant: European Commission (represented by: S. Baches Opi, P. Ondrůšek and G. Wils, acting as Agents)

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

Re:

By its action based on Article 263 TFEU, the applicant seeks the annulment of Article 2 of Commission Implementing Decision (EU) 2020/1193 of 2 July 2020 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to railway passenger transport in Sweden (OJ 2020 L 262, p. 18), by which the European Commission decided that Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243) continued to apply to contracts awarded by contracting entities and intended to enable activities related to the provision of commercially operated railway passenger services to be carried out in the territory of Sweden.

Operative part of the judgment

The Court:

1. Annuls Article 2 of Commission Implementing Decision (EU) 2020/1193 of 2 July 2020 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to railway passenger transport in Sweden;

2. Orders the European Commission to pay the costs;

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

([1]) OJ C 28, 25.1.2021.

Judgment of the General Court of 1 February 2023 — ClientEarth v Commission

(Case T-354/21) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Control system for ensuring compliance with the rules of the common fisheries policy — Regulation (EC) No 1224/2009 — Documents concerning the implementation of fisheries control in Denmark and France — Partial refusal of access — Exception relating to the protection of the purpose of inspections, investigations and audits — General presumption of confidentiality — Overriding public interest — Aarhus Convention — Regulation (EC) No 1367/2006)

(2023/C 104/38)

Language of the case: English

Parties

Applicant: ClientEarth AISBL (Brussels, Belgium) (represented by: O. Brouwer, T. Oeyen and T. van Helfteren, lawyers)

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

Re:

By its action based on Article 263 TFEU, the applicant seeks the annulment of Commission Decision C(2021) 4348 final of 7 April 2021 refusing access to certain documents requested pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), and pursuant to Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ClientEarth AISBL to pay the costs.

(1) OJ C 329, 16.8.2021.

Judgment of the General Court of 1 February 2023 — TJ v EEAS

(Case T-365/21) (1)

(Civil service — EEAS staff — Recruitment — Vacancy notice — Rejection of application — Article 98 of the Staff Regulations — Concept of 'staff from national diplomatic services of the Member States' — Liability)

(2023/C 104/39)

Language of the case: English

Parties

Applicant: TJ (represented by: A. Véghely, V. Luszcz and D. Karsai, lawyers)

Defendant: European External Action Service (represented by: S. Marquardt and R. Spáč, acting as Agents, and by M. Troncoso Ferrer, F.-M. Hislaire and L. Lence de Frutos, lawyers)

Re:

By his action under Article 270 TFEU, the applicant seeks, first, annulment of the decision of the European External Action Service (EEAS) of 4 September 2020 rejecting his application for the post of [*confidential*] and of the decision of 23 July 2020 by which A was appointed to that post and, secondly, compensation for the material and non-material damage he claims to have suffered as a result.

Operative part of the judgment

The Court:

1. Annuls the decision of 4 September 2020 of the European External Action Service (EEAS) rejecting TJ's application submitted pursuant to the vacancy notice [confidential];

2. Annuls the decision of 23 July 2020 of the EEAS appointing A to that post;

3. Dismisses the action as to the remainder;

4. Orders the EEAS to bear its own costs and to pay those incurred by TJ.

(1) OJ C 368, 13.9.2021.

Judgment of the General Court of 1 February 2023 — Klymenko v Council

(Case T-470/21) (1)

(Non-contractual liability — Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — List of the persons, entities and bodies subject to the freezing of funds and economic resources — Limitation — Partial inadmissibility — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Non-material damage — Fact of damage — Causal link)

(2023/C 104/40)

Language of the case: French

Parties

Applicant: Oleksandr Viktorovych Klymenko (Moscow, Russia) (represented by: M. Cessieux, lawyer)

Defendant: Council of the European Union (represented by: S. Lejeune and A. Vitro, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: C. Giolito and M. Carpus Carcea, acting as Agents)

Re:

By his action under Article 268 TFEU, the applicant seeks compensation for the damage which he allegedly suffered following the adoption, first, of Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 25), and of Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 1), second, of Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76), and of Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 1), third, of Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 34), and of Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 1), fourth, of Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 48), and of Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5), fifth, of Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 7), and of Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 1), sixth, of Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2020 L 71, p. 10), and of Council Implementing Regulation (EU) 2020/370 of 5 March 2020 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2020 L 71, p. 1), and, seventh, of Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 29), and of Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2021 L 77, p. 2), by which his name was maintained on the lists of persons and entities subject to the restrictive measures.

Operative part of the judgment

The Court:

1. Dismisses the action as in part inadmissible and in part unfounded;

2. Orders Mr Oleksandr Viktorovych Klymenko to bear his own costs and to pay those incurred by the Council of the European Union;

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

(1) OJ C 412, 11.10.2021.

Judgment of the General Court of 1 February 2023 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — Papouis Dairies (fino)

(Case T-558/21) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark fino Cyprus Halloumi Cheese — Earlier EU collective word mark HALLOUMI — Relative ground for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 104/41)

Language of the case: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: C. Milbradt, lawyer, and S. Malynicz, Barrister)

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: Papouis Dairies Ltd (Nicosia) (represented by: A. Pomares Caballero and M. Pomares Caballero, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 29 April 2021 (Case R 578/2019-2).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Papouis Dairies Ltd.

([1]) OJ C 452, 8.11.2021.

Judgment of the General Court of 1 February 2023 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — Papouis Dairies (Papouis Halloumi)

(Case T-565/21) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark Papouis Halloumi — Earlier EU collective word mark HALLOUMI — Relative ground for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 104/42)

Language of the case: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: C. Milbradt, lawyer, and S. Malynicz, Barrister)

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: Papouis Dairies Ltd (Nicosia) (represented by: A. Pomares Caballero and M. Pomares Caballero, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 29 April 2021 (Case R 575/2019-2).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Papouis Dairies Ltd.

([1]) OJ C 452, 8.11.2021.

Judgment of the General Court of 1 February 2023 — Harbaoui v EUIPO — Google (GC GOOGLE CAR)

(Case T-568/21) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark GC GOOGLE CAR — Earlier EU word mark GOOGLE — Relative ground for refusal — Taking unfair advantage of the distinctive character or repute of the earlier mark — Article 8(5) of Regulation (EU) 2017/1001)

(2023/C 104/43)

Language of the case: English

Parties

Applicant: Zoubier Harbaoui (Paris, France) (represented by: A. Bove, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Lapinskaite, M. Eberl and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Google LLC (Mountain View, California, United States) (represented by: M. Kinkeldey and C. Schmitt, lawyers)

Re:

By his 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 18 June 2021 (Case R 902/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Zoubier Harbaoui to pay the costs.

([1]) OJ C 431, 25.10.2021.

Judgment of the General Court of 1 February 2023 — Harbaoui v EUIPO — Google (GOOGLE CAR)

(Case T-569/21) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark GOOGLE CAR — Earlier EU word mark GOOGLE — Relative ground for refusal — Taking unfair advantage of the distinctive character or repute of the earlier mark — Article 8(5) of Regulation (EU) 2017/1001)

(2023/C 104/44)

Language of the case: English

Parties

Applicant: Zoubier Harbaoui (Paris, France) (represented by: A. Bove, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Lapinskaite, M. Eberl and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Google LLC (Mountain View, California, United States) (represented by: M. Kinkeldey and C. Schmitt, lawyers)

Re:

By his 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 29 June 2021 (Case R 904/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Zoubier Harbaoui to pay the costs.

([1]) OJ C 431, 25.10.2021.

Judgment of the General Court of 1 February 2023 — NFL Properties Europe v EUIPO — Groupe Duval (DUUUVAL)

(Case T-671/21) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark DUUUVAL — Earlier EU figurative mark GROUPE DUVAL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2023/C 104/45)

Language of the case: English

Parties

Applicant: NFL Properties Europe GmbH (Eschborn, Germany) (represented by: M. Kloth, R. Briske, D. Habel and M. Tillwich, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Groupe Duval (Boulogne-Billancourt, France)

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 4 August 2021 (Case R 243/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders NFL Properties Europe GmbH to pay the costs.

(1) OJ C 11, 10.1.2022.

Judgment of the General Court of 1 February 2023 — Brobet v EUIPO — Efbet Partners (efbet)

(Case T-772/21) (1)

(EU trade mark — Revocation proceedings — EU figurative mark efbet — Genuine use of a mark — Article 58(1)(a) of Regulation (EU) 2017/1001 — Proof of genuine use — Article 95 of Regulation 2017/1001 — Article 27(4) of Delegated Regulation (EU) 2018/625)

(2023/C 104/46)

Language of the case: English

Parties

Applicant: Brobet ltd. (Ta'Xbiex, Malta) (represented by: F. Bojinova, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Efbet Partners OOD (Sofia, Bulgaria)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment in part of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 September 2021 (Case R 624/2021-2).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Brobet ltd. to pay the costs.

(1) OJ C 73, 14.2.2022.

Judgment of the General Court of 1 February 2023 — Groschopp v EUIPO (Sustainability through Quality)

(Case T-253/22) (1)

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

(2023/C 104/47)

Language of the case: German

Parties

Applicant: Groschopp AG Drives & More (Viersen, Germany) (represented by: R. Schiffer, lawyer)

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

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 1 March 2022 (Case R 1076/2020-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Groschopp AG Drives & More to pay the costs.

(1) OJ C 237, 20.6.2022.

Judgment of the General Court of 1 February 2023 — Krematorium am Waldfriedhof Schwäbisch Hall v EUIPO (aquamation)

(Case T-319/22) (1)

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

(2023/C 104/48)

Language of the case: German

Parties

Applicant: Krematorium am Waldfriedhof Schwäbisch Hall GmbH & Co. KG (Schwäbisch Hall, Germany) (represented by: F. Dehn, L. Maritzen and C. Kleiner, lawyers)

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

Re:

By its action under Article 263 TFEU, the applicant seeks annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 29 March 2022 (Case: R 2154/2021-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the parties to bear their own costs.

(1) OJ C 276, 18.7.2022.

Judgment of the General Court of 1 February 2023 — Hacker-Pschorr Bräu v EUIPO — Vandělíková (HACKER SPACE)

(Case T-349/22) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark HACKER SPACE — Earlier EU word mark HACKER-PSCHORR and earlier EU figurative mark Hacker Pschorr, as well as earlier national word marks HACKERBRÄU and HACKER — Relative ground for refusal — Identification of the ground on which the opposition is based — Article 8(1)(a) and (b) of Regulation (EU) 2017/1001 — Article 2(2)(c) of Delegated Regulation (EU) 2018/625)

(2023/C 104/49)

Language of the case: English

Parties

Applicant: Hacker-Pschorr Bräu GmbH (Munich, Germany) (represented by: C. Tenkhoff and T. Herzog, lawyers)

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: Jana Vandělíková (Prague, Czech Republic)

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 1 April 2022 (Case R 1268/2021-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders each party to bear its own costs.

([1]) OJ C 284, 25.7.2022.

Order of the General Court of 19 January 2023 — Jeronimo Martins Polska v EUIPO — Aldi Einkauf (Vitalsss plus)

(Case T-325/21) ([1])

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

(2023/C 104/50)

Language of the case: English

Parties

Applicant: Jeronimo Martins Polska S.A. (Kostrzyn, Poland) (represented by: E. Jaroszyńska-Kozłowska and R. Skubisz, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Aldi Einkauf SE & Co. OHG (Essen, Germany) (represented by: N. Lützenrath, C. Fürsen, M. Minkner and A. Starcke, 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 7 April 2021(Cases R 503/2020-1 and R 647/2020-1).

Operative part of the order

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

2. Jeronimo Martins Polska S.A. shall bear its own costs and shall pay the costs incurred by the European Union Intellectual Property Office (EUIPO).

3. Aldi Einkauf SE & Co. OHG shall bear its own costs.

(1) OJ C 297, 26.7.2021.

Order of the General Court of 1 February 2023 — NO v Commission

(Case T-708/21) (1)

(Action for failure to act — Infringement of EU law by certain Irish authorities — State aid — No invitation to act — Partial inadmissibility — Agreements, decisions and concerted practices — Abuse of dominant position — Adoption of a position by the Commission — No need to adjudicate in part)

(2023/C 104/51)

Language of the case: English

Parties

Applicant: NO (represented by: E. Smartt, Solicitor)

Defendant: European Commission (represented by: I. Barcew, P. Caro de Sousa and L. Nicolae, acting as Agents)

Re:

By his action under Article 265 TFEU, the applicant asks the Court to declare that the European Commission unlawfully failed to define its position on his complaints submitted on 7 and 26 May 2020, his letter of 27 May 2021 and his letter of formal notice of 28 June 2021.

Operative part of the order

1. There is no longer any need to rule on the claim seeking a declaration that the European Commission failed to define its position on the complaints alleging infringement, in Ireland, of Articles 101 and 102 TFEU and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU].

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

3. NO shall pay the costs.

(1) OJ C 84, 21.2.2022.

Order of the General Court of 2 February 2023 — Motel One v EUIPO — Apartment One (APART MENT ONE SLEEP CLEVER.)

(Case T-15/22) [1]

(EU trade mark — Opposition proceedings — Application for EU figurative mark APART MENT ONE SLEEP CLEVER — Earlier EU figurative marks be one and motel one — Action which has become devoid of purpose — No need to adjudicate)

(2023/C 104/52)

Language of the case: German

Parties

Applicant: Motel One GmbH (Munich, Germany) (represented by: M. Hartmann, S. Fröhlich and H. Lerchl, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Apartment One GbR (Grasbrunn, Germany)

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 20 October 2021 (Case R 564/2021-5), relating to opposition proceedings between Motel One GmbH and the other party to the proceedings before the Board of Appeal, Apartment One GbR.

Operative part of the order

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

2. Motel One GmbH shall pay the costs.

[1] OJ C 84, 21.2.2022.

Order of the President of the General Court of 2 February 2023 — Nicoventures Trading and Others v Commission

(Case T-706/22 R)

(Interim relief — Public health — Withdrawal of certain exemptions for heated tobacco products — Application for interim measures — No urgency)

(2023/C 104/53)

Language of the case: English

Parties

Applicants: Nicoventures Trading Ltd (London, United Kingdom) and the other five applicants whose names are listed in the annex to the order (represented by: L. Van den Hende, M. Schonberg, J. Penz-Evren and P. Wytinck, lawyers)

Defendant: European Commission (represented by: H. van Vliet, A. Becker and F. van Schaik, acting as Agents)

Re:

By their application on the basis of Articles 278 and 279 TFEU, the applicants seek, first, in essence, the suspension of operation of Commission Delegated Directive (EU) 2022/2100 of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products (OJ 2022 L 283, p. 4) and, second, the grant of any other interim measures as appropriate.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 6 December 2022 — NO v Commission

(Case T-771/22)

(2023/C 104/54)

Language of the case: English

Parties

Applicant: NO (represented by: E. Smartt, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 27th September 2022;

— order the Commission to bear its costs; and,

— order the applicant's costs to be reimbursed.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission committed a manifest error of assessment and acted in violation of Article 24(2) of Regulation (EU) 2015/1589 ([1]).

2. Second plea in law, alleging that the European Commission committed a manifest error of assessment in its review of the lawfulness of the aid to the obligation to meet the conditions of Regulation (EU) No 1407/2013 ([2]).

3. Third plea in law, alleging that the European Commission failed to initiate a formal investigation procedure despite serious difficulties and violated the applicant's procedural rights to submit comments on the elements that raise serious doubts as to the compatibility of the aid with the Internal Market.

4. Fourth plea in law, alleging that the European Commission violated its duty to state reasons in its decision.

5. Fifth plea in law, alleging that that the European Commission failed to initiate a formal investigation procedure despite evidence of a failure by [the Member State] to secure the applicant's fundamental rights, in breach of Article 19(1) TEU.

6. Sixth plea in law, alleging that the European Commission's decision violates specific provisions of the TFEU and the general principles of European law regarding the prohibition of discrimination based on nationality, property or status and free movement of services and the principle of equality before the law. Regulation (EU) No 1407/2013 provides for an exception to the obligation to notify State aid under Article 108(3) TFEU, but it does not provide for an exception to the other rules and principles of the TFEU or EU law, including Article 107(1) TFEU.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification) (OJ 2015, L 248, p. 9).

([2]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ 2013, L 352, p. 1).

Action brought on 22 December 2022 — Wizz Air Hungary v Commission

(Case T-827/22)

(2023/C 104/55)

Language of the case: English

Parties

Applicant: Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) (Budapest, Hungary) (represented by: E. Vahida, S. Rating and I.-G. Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision (EU) of 29 April 2022 on State Aid SA.63360 (2021/N) — Romania COVID-19 — TAROM — damage compensation II ([1]); and

— order the European Commission to pay the costs.

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 European Commission misapplied Article 107(2)(b) TFEU and committed manifest errors of assessment in its review of the proportionality of the aid to the damage caused by the COVID-19 crisis.

2. Second plea in law, alleging that the European Commission violated specific provisions of the TFEU and the general principles of European law that have underpinned the liberalisation of air transport in the EU since the late 1980s (i.e., non-discrimination, the free provision of services — applied to air transport through Regulation (EC) No 1008/2008 ([2]) — and free establishment).

3. Third plea in law, alleging that the European Commission failed to initiate a formal investigation procedure despite serious difficulties and violated the applicant's procedural rights.

4. Fourth plea in law, alleging that the European Commission violated its duty to state reasons.

([1]) OJ 2022, C 378, p. 2.
([2]) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008, on common rules for the operation of air services in the Community, OJ 2008, L 293, p. 3.

Action brought on 12 January 2023 — UC v Council

(Case T-6/23)

(2023/C 104/56)

Language of the case: Dutch

Parties

Applicant: UC (represented by: P. Bekaert and S. Bekaert, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Council Implementing Decision (CFSP) 2022/2398 of 8 December 2022 implementing Decision 2010/788/CFSP concerning restrictive measures in view of the situation in the Democratic Republic of the Congo and Council Implementing Regulation (EU) 2022/2397 of 8 December 2022 implementing Regulation (EC) No 1183/2005 concerning restrictive measures in view of the situation in the Democratic Republic of the Congo ('the contested acts') to the extent that those acts concern the applicant, and

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

Pleas in law and main arguments

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

1. First plea in law, alleging exceedance of competences, infringement of Articles 75 and 215 TFEU, infringement of Article 13(1) TEU, infringement of Article 15(3) TFEU and infringement of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

   — Council Decision (CFSP) 2010/788 and Regulation (EC) No 1183/2005 infringe Article 31 TEU and Articles 75 and 215 TFEU, respectively;

   — in not making publicly accessible the minutes and voting results of this decision and this regulation, as well as the resulting amending decisions and regulations and the contested acts, in contrast to the other regulations and decisions of the Council, the transparency rules are also breached.

2. Second plea in law, alleging that the second indent of Article 3 of Decision (CFSP) and Article 2b(1) of Regulation (EC) No 1183/2005 infringe the principle of legal certainty, the principle of proportionality and the principle of effectiveness. In addition, Article 2b(1) of Regulation (EC) No 1183/2005 is broader than the legal act it implements.

   — the second indent of Article 3 of Decision (CFSP) 2010/788, as amended by Decision (CFSP) No 2022/2377 of 5 December 2022 and Article 2b(1) of Regulation (EC) No 1183/2005, as amended by Regulation (EC) 2022/2373 of 5 December 2022, each create, by using a criterion with a wording so general in nature, such a broad category of persons that the principle of legal certainty, the principle of proportionality and the principle of effectiveness are infringed;

   — in addition, the group of persons referred to in Article 2a(1) of Regulation (EC) No 1183/2005 is broader than the group described in the legal act which the regulation is intended to implement.

3. Third plea in law, alleging infringement of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 296 TFEU (obligation to state reasons).

   — the reasons given are defined in a highly general, brief and vague manner, and are also insufficiently concrete and precise. The applicant moreover challenges each of the reasons given in the contested acts, both in fact and in law. The Council breaches the obligation to state reasons, as enshrined in inter alia Article 41(2)(c) of the Charter and the second paragraph of Article 296 TFEU.

4. Fourth plea in law, alleging breach of the rights of the defence and infringement of Article 41(2)(a) of the Charter, as well as of Article 215 TFEU. Article 296 TFEU.

   — the rights of defence, including the right to be heard and the right of access, as referred to in inter alia Article 41(2)(a) and (b) of the Charter, have been breached. The absence of these legal safeguards also amounts to an infringement of Article 215 TFEU.

5. Fifth plea in law, alleging breach of the right to property and infringement of the principle of proportionality.

   — the freezing of the applicant's assets in the most general manner breaches the applicant's right to property and restricts that right disproportionately, both in view of its general application and its indefinite duration.

6. Sixth plea in law, alleging infringement of the freedom of movement, breach of the right of residence and of establishment provided for in Article 45(1) of the Charter, infringement of Articles 20 and 21 TFEU and of the principle of proportionality.

   — the applicant's only nationality is the Belgian nationality. A sanction by which he may no longer enter the European Union — not even in transit — and his access to the Belgian territory is obstructed infringes freedom of movement, breaches the right of residence and of establishment and is disproportionate.

7. Seventh plea in law, alleging breach of the right of defence and of the right to effective judicial protection, application of Article 47 of the Charter.

   — the right of defence and the right to effective judicial protection have been breached. The applicant requests the Council to provide the General Court and the parties with all necessary information in order for the EU judicature to be able to verify, also concretely and on their factual basis, the grounds cited by the Council in general terms for placing the applicant on the sanctions list.

Action brought on 27 January 2023 — D&G Laboratories v EUIPO — Holpindus (aleva NATURALS)

(Case T-28/23)

(2023/C 104/57)

Language in which the application was lodged: English

Parties

Applicant: D&G Laboratories Inc. (North York, Ontario, Canada) (represented by: M.-G. Marinescu, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Holpindus, SL (Barcelona, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark aleva NATURALS — Application for registration No 14 794 382

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 21 November 2022 in Case R 1078/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear the costs of the proceedings.

Pleas in law

— Infringement of Article 47(2) and (3) 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 30 January 2023 — Fly Persia and Barmodeh v EUIPO — Dubai Aviation (flyPersia)

(Case T-30/23)

(2023/C 104/58)

Language in which the application was lodged: English

Parties

Applicants: Fly Persia IKE (Athens, Greece), Ali Barmodeh (Athens) (represented by: R. Marano, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dubai Aviation Corp. (Dubai, United Arab Emirates)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for a European Union figurative mark flyPersia — Application for registration No 18 022 526

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 November 2022 in Case R 1723/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— refer the case back to the Board of Appeal;

— order EUIPO and the other party to the proceedings before the Board of Appeal to pay the costs of these proceedings and the earlier proceedings before the Board of Appeal.

Plea in law

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

Action brought on 30 January 2023 — Tradias v EUIPO — Triodos Bank (Tradias)

(Case T-32/23)

(2023/C 104/59)

Language in which the application was lodged: English

Parties

Applicant: Tradias GmbH (Frankfurt am Main, Germany) (represented by: P. Bär, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Triodos Bank NV (Zeist, Netherlands)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for a European Union word mark Tradias — Application for registration No 18 262 673

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 30 November 2022 in Case R 734/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, insofar as it upheld the opposition for 'Finance Services' in class 36 and reject the opposition in its entirety;

— order EUIPO and, as the case may be, Triodos Bank NV to pay the costs incurred before the Court and in the proceedings before EUIPO's Board of Appeals.

Plea in law

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

Action brought on 1 February 2023 — Roche Diagnostics/EUIPO — SAS Di'X (AVENIO)

(Case T-34/23)

(2023/C 104/60)

Language in which the application was lodged: English

Parties

Applicant: Roche Diagnostics GmbH (Mannheim, Germany) (represented by: M. Douglas, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: SAS Di'X (Avignon, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the mark AVENIO — International registration designating the European Union No 1 313 134

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 31 October 2022 in Case R 1291/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 95(1) 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;

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

— Incorrect assessment of the likelihood of confusion.

Action brought on 3 February 2023 — Häcker Küchen v EUIPO — Moura & Moura (MH Cuisines)

(Case T-42/23)

(2023/C 104/61)

Language in which the application was lodged: German

Parties

Applicant: Häcker Küchen GmbH & Co. KG (Rödinghausen, Germany) (represented by: F. Dehn, L. Maritzen, C. Krafft and K. Blükle, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Moura & Moura Fabricação e Comercialização de Mobiliário Lda (Sanfins de Ferreira, Portugal)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for the EU figurative mark MH Cuisines — Application No 18 233 301

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 24 November 2022 in Case R 1078/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and reject the defendant's opposition;

— order EUIPO to pay the costs, including the costs of the earlier appeal proceedings.

Plea in law

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

Action brought on 7 February 2023 — W.B. Studio v EUIPO — E.Land Italy (BELFE)

(Case T-50/23)

(2023/C 104/62)

Language in which the application was lodged: English

Parties

Applicant: W.B. Studio Sas di Wivian Bodini & C. (Milano, Italy) (represented by: V. Piccarreta and G. Romanelli, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: E.Land Italy Srl (Milano, Italy)

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 word mark BELFE — European Union trade mark No 139 501

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 30 November 2022 in Case R 869/2021-1

Form of order sought

The applicant claims that the Court should:

— Partially annul the contested decision to the extent it upheld the decision of the Cancellation Division and, consequently, declare the revocation of the trade mark at issue;

— Order the defendant to bear the costs of the present proceedings, including the costs deriving from the proceedings before the Cancellation Division and the First Board of Appeal.

Pleas in law

— Infringement of article 58(1)(a) in conjunction with article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of article 19 of Commission Delegated Regulation (EU) 2018/625.

Action brought on 7 February 2023 — OSR Entreprises v EUIPO — Möckel and Gramann (evolver)

(Case T-51/23)

(2023/C 104/63)

Language in which the application was lodged: German

Parties

Applicant: OSR Entreprises AG (Cham, Switzerland) (represented by: U. Lüken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Mathias Möckel (Chemnitz, Germany), Torsten Gramann (Chemnitz)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark evolver — EU trade mark No 3 313 335

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 November 2022 in Case R 1302/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and declare EU trade mark No 3 313 335 invalid in respect of all services;

— in the alternative, annul the contested decision and refer the case back to the Fifth Board of Appeal of EUIPO;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 95(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 18(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Failure to have regard for indicative value in the assessment of the evidence.

Action brought on 8 February 2023 — W.B. Studio v EUIPO — E.Land Italy (BF BELFE)

(Case T-54/23)

(2023/C 104/64)

Language in which the application was lodged: English

Parties

Applicant: W.B. Studio Sas di Wivian Bodini & C. (Milano, Italy) (represented by: V. Piccarreta and G. Romanelli, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: E.Land Italy Srl (Milano, Italy)

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 BF BELFE — European Union trade mark No 139 840

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 30 November 2022 in Case R 870/2021-1

Form of order sought

The applicant claims that the Court should:

— Partially annul the contested decision to the extent it upheld the decision of the Cancellation Division and, consequently, declare the revocation of the trade mark at issue;

— Order the defendant to bear the costs of the present proceedings, including the costs deriving from the proceedings before the Cancellation Division and the First Board of Appeal.

Pleas in law

— Infringement of article 58(1)(a) in conjunction with article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of article 19 of Commission Delegated Regulation (EU) 2018/625.

Order of the General Court of 2 February 2023 — Previsión Sanitaria Nacional, PSN, Mutua de Seguros y Reaseguros a Prima Fija v SRB

(Case T-623/17) ([1])

(2023/C 104/65)

Language of the case: Spanish

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

([1]) OJ C 437, 18.12.2017.

Order of the General Court of 30 January 2023 — JIB Overseas v Commission

(Case T-776/19) ([1])

(2023/C 104/66)

Language of the case: English

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

([1]) OJ C 45, 10.2.2020.

Order of the General Court of 31 January 2023 — EAA v Commission

(Case T-781/21) ([1])

(2023/C 104/67)

Language of the case: English

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

([1]) OJ C 73, 14.2.2022.

Order of the General Court of 31 January 2023 — EAA v Commission

(Case T-782/21) ([1])

(2023/C 104/68)

Language of the case: English

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

([1]) OJ C 73, 14.2.2022.

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

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN