Official Journal of the European Union

C 173

English edition

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Volume 66

15 May 2023

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(2023/C 173/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 23 March 2023 — PV v European Commission

(Case C-640/20 P) [1]

(Appeal — Civil service — Psychological harassment — Medical opinions — Unjustified absences — Remuneration — Staff Regulations of Officials of the European Union — Article 11a — Conflict of interests — Article 21a — Manifestly illegal order — Article 23 — Compliance with laws and police regulations — Disciplinary procedure — Removal from post — Withdrawal of removal — New disciplinary procedure — Fresh removal from post)

(2023/C 173/02)

Language of the case: French

Parties

Appellant: PV (represented by: D. Birkenmaier, Rechtsanwalt)

Other party to the proceedings: European Commission (represented initially by: T.S. Bohr, B. Mongin and A.-C. Simon, and subsequently by T.S. Bohr and A.-C. Simon, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

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

[1] OJ C 98, 22.3.2021.

Judgment of the Court (Sixth Chamber) of 23 March 2023 — European Commission v Hellenic Republic

(Case C-70/21) [1]

(Failure of a Member State to fulfil obligations — Environment — Directive 2008/50/EC — Ambient air quality — Article 13(1) — Annex XI — Systematic and persistent exceedance of the daily limit value for microparticles (PM10) in the conurbation of Thessaloniki (EL0004) — Article 23(1) — Annex XV — Exceedance period to be 'as short as possible' — Appropriate measures)

(2023/C 173/03)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Konstantinidis and M. Noll-Ehlers, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, acting as Agent)

Operative part of the judgment

The Court:

1. Declares that,

   — by failing to ensure that the daily limit value for PM10 was not exceeded systematically and persistently from 2005 to 2012 inclusive, in 2014 and again from 2017 to 2019 inclusive, in the EL0004 conurbation of Thessaloniki, the Hellenic Republic has failed to fulfil its obligations under Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008, on ambient air quality and cleaner air for Europe,

   and

   — by failing to adopt, from 11 June 2010, appropriate measures to ensure compliance with the limit values for PM10 concentrations in the EL0004 conurbation of Thessaloniki, the Hellenic Republic has failed to meet the obligations under Article 23(1) of Directive 2008/50/EC, read in conjunction with Annex XV to that directive, and in particular the obligation to ensure that air quality plans provide for appropriate measures to ensure that the duration of the exceedance of limit values is as short as possible.

2. Orders the Hellenic Republic to pay the costs.

(1) OJ C 128, 12.4.2021.

Judgment of the Court (Fifth Chamber) of 23 March 2023 (request for a preliminary ruling from the Oberlandesgericht Bamberg — Germany) — Criminal proceedings against MR

(Case C-365/21, (1) **Generalstaatsanwaltschaft Bamberg (Reservation in relation to the principle *ne bis in idem*))**

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Convention implementing the Schengen Agreement — Article 54 — Principle ne bis in idem — Article 55(1)(b) — Exception to the application of the principle ne bis in idem — Offence against the security or other essential interests of the Member State — Article 50 of the Charter of Fundamental Rights of the European Union — Principle ne bis in idem — Article 52(1) — Limitations to the principle ne bis in idem — Compatibility of a national declaration providing for an exception to the principle ne bis in idem — Criminal organisation — Financial crime)

(2023/C 173/04)

Language of the case: German

Referring court

Oberlandesgericht Bamberg

Criminal proceedings against

MR

joined party: Generalstaatsanwaltschaft Bamberg

Operative part of the judgment

1. Consideration of the first question has disclosed no factor of such a kind as to affect the validity of Article 55(1)(b) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990, which entered into force on 26 March 1995, in the light of Article 50 of the Charter of Fundamental Rights of the European Union.

2. Article 55(1)(b) of the Convention implementing the Schengen Agreement, read in conjunction with Article 50 and Article 52(1) of the Charter of Fundamental Rights of the European Union,

must be interpreted as not precluding the courts of a Member State from interpreting the declaration made by that Member State under Article 55(1) of that convention as meaning that, so far as concerns the offence of forming a criminal organisation, that Member State is not bound by the provisions of Article 54 of that convention where the criminal organisation in which the person prosecuted participated has engaged exclusively in financial crime, in so far as the prosecution of that person is, in the light of the actions of that organisation, intended to punish harm to the security or other equally essential interests of that Member State.

([1]) OJ C 320, 9.8.2021.

Judgment of the Court (Fourth Chamber) of 23 March 2023 (request for a preliminary ruling from the Tribunalul Satu Mare — Romania) — Dual Prod SRL v Direcția Generală Regională a Finanțelor Publice Cluj-Napoca — Comisia regională pentru autorizarea operatorilor de produse supuse accizelor armonizate

(Case C-412/21, ([1]) **Dual Prod)**

(Reference for a preliminary ruling — Excise duties — Directive 2008/118/EC — Article 16(1) — Authorisation to operate as a tax warehouse for products subject to excise duty — Successive suspension measures — Whether criminal in nature — Articles 48 and 50 of the Charter of Fundamental Rights of the European Union — Principle of the presumption of innocence — Principle ne bis in idem — Proportionality)

(2023/C 173/05)

Language of the case: Romanian

Referring court

Tribunalul Satu Mare

Parties to the main proceedings

Applicant: Dual Prod SRL

Defendant: Direcția Generală Regională a Finanțelor Publice Cluj-Napoca — Comisia regională pentru autorizarea operatorilor de produse supuse accizelor armonizate

Operative part of the judgment

1. Article 48(1) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorisation has been formally charged in those criminal proceedings, if that suspension constitutes a criminal penalty.

2. Article 50 of the Charter of Fundamental Rights must be interpreted as not precluding a criminal penalty, for infringement of the rules on products subject to excise duty, from being imposed on a legal person who has already been subject, in respect of the same facts, to a criminal penalty that has become final, provided:

— that the possibility of duplicating those two penalties is provided for by law;

— that national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides for only the possibility of a duplication of proceedings and penalties under different legislation;

— that those proceedings and penalties pursue complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue;

— that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities; that the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate time frame; and that any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed.

(1) OJ C 401, 4.10.2021.

Judgment of the Court (Fourth Chamber) of 23 March 2023 (requests for a preliminary ruling from the Court of Appeal — Ireland) — Execution of two European arrest warrants issued against LU (C-514/21), PH (C-515/21)

(Joined Cases C-514/21 and C-515/21, (1) **Minister for Justice and Equality (Lifting of the suspension) and Others)**

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Surrender procedure between the Member States — Conditions for execution — Grounds for optional non-execution — Article 4a(1) — Warrant issued for the purpose of executing a custodial sentence — Concept of 'trial resulting in the decision' — Scope — First conviction, with a suspension — Second conviction — Absence of the person concerned at the trial — Revocation of the suspension — Rights of the defence — Convention for the Protection of Human Rights and Fundamental Freedoms — Article 6 — Charter of Fundamental Rights of the European Union — Articles 47 and 48 — Infringement — Consequences)

(2023/C 173/06)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

LU (C-514/21), PH (C-515/21)

Intervener: Minister for Justice and Equality

Operative part of the judgment

1. Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and a European arrest warrant, for the purpose of serving that sentence, is issued, that criminal conviction, handed down in absentia, constitutes a 'decision' within the meaning of that provision. That is not the case for the decision revoking the suspension of that sentence.

2. Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299,

must be interpreted as authorising the executing judicial authority to refuse to surrender the requested person to the issuing Member State where it is apparent that the proceedings resulting in a second criminal conviction of that person, which was decisive for the issue of the European arrest warrant, took place in absentia, unless the European arrest warrant contains, in respect of those proceedings, one of the statements referred to in subparagraphs (a) to (d) of that provision.

3. Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding the executing judicial authority from refusing to surrender the requested person to the issuing Member State, on the ground that the proceedings resulting in the revocation of the suspension of the custodial sentence for the execution of which the European arrest warrant was issued took place in absentia, or from making the surrender of that person subject to a guarantee that he or she will be entitled, in that Member State, to a retrial or to an appeal allowing for the re-examination of such a revocation decision or of the second criminal conviction which was handed down against that person in absentia and which proves decisive for the issue of that warrant.

([1]) OJ C 119, 14.3.2022.

Judgment of the Court (Third Chamber) of 23 March 2023 (request for a preliminary ruling from the Nejvyšší soud — Czech Republic) — QT v O2 Czech Republic a.s.

(Case C-574/21, ([1]) **02 Czech Republic)**

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653/EEC — Article 17(2)(a) — Termination of the agency contract — Entitlement of the commercial agent to an indemnity — Conditions for granting — Equitable indemnity — Assessment — Concept of 'commission lost by the commercial agent' — Commission on future transactions — New customers brought by the commercial agent — Existing customers with whom the commercial agent has significantly increased the volume of business — One-off commission payments)

(2023/C 173/07)

Language of the case: Czech

Referring court

Nejvyšší soud

Parties to the main proceedings

Applicant: QT

Defendant: O2 Czech Republic a.s.

Operative part of the judgment

1. Article 17(2)(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents

is to be interpreted as meaning that the commission which the commercial agent would have received in the event of a hypothetical continuation of the agency contract, in respect of transactions which would have been concluded after the termination of that agency contract with new customers which he or she brought to the principal before that termination, or with customers with which he or she significantly increased the volume of business before that termination, must be taken into account in determining the indemnity provided for in Article 17(2) of that directive.

2. Article 17(2)(a) of Directive 86/653

is to be interpreted as meaning that the payment of one-off commissions does not exclude from the calculation of the indemnity, provided for in Article 17(2), the commission lost by the commercial agent resulting from transactions carried out by the principal, after the termination of the commercial agency contract, with new customers which he or she brought to the principal before that termination, or with customers with which he or she significantly increased the volume of business before that termination, where those commissions correspond to flat-rate remuneration under any new contract concluded with those new customers or with existing customers of the principal, through the commercial agent.

([1]) OJ C 481, 29.11.2021.

Judgment of the Court (Eighth Chamber) of 23 March 2023 (request for a preliminary ruling from the Conseil d'État — France) — Syndicat Uniclima v Minister for the Interior

(Case C-653/21, [1] Syndicat Uniclima)

(Reference for a preliminary ruling — Internal market — Harmonisation of the laws of the Member States relating to machinery, electrical equipment and pressure equipment — Directive 2006/42/EC — Directive 2014/35/EU — Directive 2014/68/EU — 'CE marking' — Imposition, by national regulations, of requirements additional to the essential safety requirements laid down by those directives — Conditions — National safety regulations to counter the risks of fire and panic in establishments open to the public)

(2023/C 173/08)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Syndicat Uniclima

Defendant: Minister for the Interior

Operative part of the judgment

Article 3(2) of Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment, read in conjunction with point 31 of Article 2 and the first subparagraph of Article 5(1) of Directive 2014/68,

must be interpreted as precluding national legislation which, in order to protect the health and safety of persons against risks of fire in premises open to the public, imposes on pressure equipment and assemblies using flammable refrigerants, requirements which do not appear among the essential safety requirements laid down by that directive, for the purposes of the making available on the market or the putting into service of such equipment and assemblies, even though they bear the CE marking.

[1] OJ C 37, 24.1.2022.

Judgment of the Court (Tenth Chamber) of 23 March 2023 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Proceedings brought by Booky.fi Oy

(Case C-662/21, [1] Booky.fi)

(Reference for a preliminary ruling — Articles 34 and 36 TFEU — Free movement of goods — Measure having equivalent effect to a quantitative restriction — Recordings of audiovisual programmes — Online sale — Legislation of a Member State requiring classification according to age and labelling of programmes — Protection of minors — Recordings already classified and labelled in another Member State — Proportionality)

(2023/C 173/09)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Subject matter of the main proceedings

Applicant: Booky.fi Oy

Third party: Kansallinen audio-visuaalinen instituutti (KAVI)

Operative part

Articles 34 and 36 TFEU must be interpreted as meaning that they do not preclude legislation of a Member State which, with the objective of protecting minors against audiovisual content capable of harming their well-being and their development, requires that audiovisual programmes recorded on a physical medium and marketed via an online store have previously been the subject of an inspection procedure and classification, according to age limits, and corresponding labelling in accordance with the law of that Member State, including where those programmes have already been the subject of a comparable procedure and of comparable classification and labelling in application of the law of another Member State, provided that that legislation is appropriate for securing the attainment of that objective and does not go beyond what is necessary in order to attain it;

In that regard, the fact that some of the recordings that may be marketed in the Member State in question from another Member State are excluded from the scope of that legislation is not of decisive importance, provided that such a limitation does not compromise the attainment of the objective pursued. Nor is it decisive that the national legislation concerned does not provide for a derogation from that requirement where it may be established that the purchaser of a recording covered by that legislation is of full age.

([1]) OJ C 24, 17.1.2022.

Order of the Court (Ninth Chamber) of 7 March 2023 (request for a preliminary ruling from the Bundesverwaltungsgericht (Innsbruck) — Austria) — Willy Hermann Service GmbH, DI v Präsidentin des Landesgerichts Feldkirch

(Case C-561/22, ([1]) **Willy Hermann Service)**

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Directive 2013/34/EU — Articles 30 and 51 — Publication of financial statements — Penalties for failure to publish — Imposition of periodic penalty payments by a civil court — Administrative procedure for the recovery of those periodic penalty payments, which have become final — Legislation precluding the review of those periodic penalty payments by an administrative court — Res judicata — Principle of effectiveness — Proportionality)

(2023/C 173/10)

Language of the case: German

Referring court

Bundesverwaltungsgericht (Innsbruck)

Parties to the main proceedings

Applicants: Willy Hermann Service GmbH, DI

Defendant: Präsidentin des Landesgerichts Feldkirch

Operative part of the order

EU law must be interpreted as not precluding national legislation which provides that an administrative court, which rules on the recovery of periodic penalty payments imposed on a company and its manager for failure to publish annual accounts, is bound by the decision of the civil court, which has become final, imposing those periodic penalty payments and setting their amount with a view to ensuring compliance with obligations under Articles 30 and 51 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as transposed into national law.

([1]) Date lodged: 24.8.2022.

Request for a preliminary ruling from the Sąd Rejonowy dla Warszawy-Woli w Warszawie (Poland) lodged on 5 February 2022 — QI v Santander Bank Polska S.A.

(Case C-76/22)

(2023/C 173/11)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy-Woli w Warszawie

Parties to the main proceedings

Applicant: QI

Defendant: Santander Bank Polska S.A.

Questions referred

1. Must Article 25(1) of Directive 2014/17/EU ([1]) be interpreted in the same way as Article 16(1) of Directive 2008/48/EC, ([2]) that is to say must that provision be interpreted as meaning that the consumer's right to reduce the total cost of the mortgage in the case of early repayment thereof includes all the costs imposed on the consumer, including the commission for granting the mortgage?

2. Must the obligation to reduce the total cost of a mortgage in the case of early repayment thereof, as provided for in Article 25(1) of Directive 2014/17/EU, be interpreted as meaning that the total cost of the mortgage should be reduced in proportion to the relationship of the length of the period between the date of the early repayment of the mortgage and the date originally agreed as the date of repayment of the mortgage to the length of the period originally agreed between the date of the drawdown of the mortgage and the date of the full repayment of the mortgage, or should the reduction of the total cost of the mortgage be proportionate to the loss of the expected benefits to the lender, that is to say to the relationship of the remaining interest to be paid after early repayment of the mortgage (due for the period from the date after actual full repayment to the date of the full repayment originally agreed) to the interest due for the entire duration of the mortgage originally agreed (from the date of the drawdown of the mortgage to the date of the full repayment of the mortgage agreed)?

([1]) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014 L 60, p. 34).

([2]) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Appeal brought on 18 August 2022 by Asociación de Delineantes de Hacienda against the order of the General Court (Second Chamber) delivered on 13 July 2022 in Case T-280/22, Asociación de Delineantes de Hacienda v Spain

(Case C-552/22 P)

(2023/C 173/12)

Language of the case: Spanish

Parties

Appellant: Asociación de Delineantes de Hacienda (represented by: D. Álvarez Cabrera, abogado)

Other party to the proceedings: Kingdom of Spain

By order of 17 March 2023, the Court of Justice (Sixth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellant to bear its own costs.

Appeal brought on 16 September 2022 by Hijos de Moisés Rodríguez González, SA against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 29 June 2022 in Case T-306/20, Hijos de Moisés Rodríguez González v EUIPO — Irlande et Ornua (La Irlandesa 1943)

(Case C-605/22 P)

(2023/C 173/13)

Language of the case: English

Parties

Appellant: Hijos de Moisés Rodríguez González, SA (represented by: J. García Domínguez, abogado)

Other parties to the proceedings: European Union Intellectual Property Office, Irlande et Ornua Co-operative Ltd

By order of 8 March 2023, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Hijos de Moisés Rodríguez González should bear its own costs.

Appeal brought on 28 November 2022 by G-Core Innovations Sàrl against the judgment of the General Court (Fifth Chamber) delivered on 28 September 2022 in Case T-454/21, G-Core Innovations v EUIPO — Coretransform (G CORELABS)

(Case C-732/22 P)

(2023/C 173/14)

Language of the case: English

Parties

Appellant: G-Core Innovations Sàrl (represented by: L. Axel Karnøe Søndergaard, advokat)

Other parties to the proceedings: European Union Intellectual Property Office, Coretransform

By order of 23 March 2023, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that G-Core Innovations Sàrl should bear its own costs.

Appeal brought on 29 November 2022 by Primagran sp. z o.o. against the order of the General Court (Ninth Chamber) delivered on 22 September 2022 in Case T-624/21, Primagran v EUIPO — Primagaz (prımagran)

(Case C-735/22 P)

(2023/C 173/15)

Language of the case: English

Parties

Appellant: Primagran sp. z o.o. (represented by: E. Jaroszyńska-Kozłowska, radca prawny)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Compagnie des gaz de pétrole Primagaz

By order of 24 March 2023, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Primagran sp. z o.o. should bear its own costs.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 20 December 2022 — M.S.G. and Others v Banco Santander, S.A.

(Case C-775/22, Banco Santander)

(2023/C 173/16)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellants: M.S.G. and Others

Respondent: Banco Santander, S.A.

Question referred

Must the provisions of Article 34(1)(a) and (b), in relation to those of Article 53(1) and (3), Article 60(2), first subparagraph, points (b) and (c), and Article 64(4)(b), of Directive 2014/59/EU [1] be interpreted as meaning that, following the conversion into shares — and the subsequent transfer of those shares, without effective consideration — of subordinated obligations (tier 2 capital instruments) issued by a credit institution that is the subject of a resolution procedure and which were not accrued when that resolution procedure was adopted, persons who purchased those subordinated obligations before the start of such a resolution procedure are precluded from bringing, against that institution or against its successor entity, an action for a declaration of nullity in respect of the subscription contract for those subordinated obligations, seeking the reimbursement of the price paid to subscribe for the subordinated obligations, plus the interest accrued from the date of conclusion of the contract?

[1] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 22 December 2022 — M.C.S. v Banco Santander, S.A.

(Case C-779/22, Banco Santander)

(2023/C 173/17)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: M.C.S.

Respondent: Banco Santander, S.A.

Question referred

Must the provisions of Article 34(1)(a) and (b), read together with those of Article 53(1) and (3) and Article 60(2), first subparagraph, points (b) and (c), of Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014, ([1]) be interpreted as meaning that the possible claim or right that arises from a judgment against the successor entity to Banco Popular Español, S.A., as a consequence of the nullity of the purchase of a capital instrument (preference shares) which was ultimately converted into ordinary shares before the measures for the resolution of Banco Popular were adopted (7 June 2017), could be considered a liability affected by the write-down provision of Article 53(3) of Directive 2014/59, in as much as it relates to 'unaccrued' obligations or claims, such that it would be discharged and would not be enforceable against Banco Santander, as the successor entity to Banco Popular, where the claim from which that obligation arises was brought after the procedure for the resolution of the bank had been concluded?

Or, conversely, must those provisions be interpreted as meaning that the abovementioned claim or right constitutes an 'accrued' obligation (Article 53(3) of the Directive) or 'liability already accrued' at the time of the resolution of the bank (Article 60(2)(b)) — and, as such, excluded from the effects of the discharge or cancellation of those obligations or claims, even if the ordinary shares had been written off and cancelled — and, consequently, [that the abovementioned claim or right] is enforceable against Banco Santander, as the successor to Banco Popular, even where the claim from which that judgment ordering payment of compensation arises was brought after the procedure for the resolution of the bank had been concluded?

([1]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 23 December 2022 — FSC v Banco Santander, S.A.

(Case C-794/22, Banco Santander)

(2023/C 173/18)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: FSC

Respondent: Banco Santander, S.A.

Question referred

Must Article 34(1)(a) and (b), read together with Article 53(1) and (3) as well as Article 60(2), first subparagraph, points (b) and (c), of Directive 2014/59/EU ([1]) be interpreted as meaning that the possible claim or right that arises from a judgment ordering payment of compensation given against the successor entity to Banco Popular Español, S.A. following an action for damages arising from the marketing of a financial product (subordinated bonds necessarily convertible into shares in the same bank) not included among the additional capital instruments to which the resolution measures for Banco Popular refer, which were ultimately converted into ordinary shares in the bank before the bank resolution measures were adopted (7 June 2017), could be considered a liability affected by the write-down or cancellation provision of Article 53(3) of Directive 2014/59/EU, as an 'unaccrued' obligation or claim, such that it would be discharged and would not be enforceable against Banco Santander, as the successor entity to Banco Popular, where the claim from which that judgment ordering payment of compensation arises was brought after the procedure for the resolution of the bank had been concluded?

Or, conversely, must those provisions be interpreted as meaning that the abovementioned claim or right constitutes an 'accrued' obligation or claim — Article 53(3) of the Directive — or 'liability already accrued' at the time of the resolution of the bank — Article 60(2)(b) — and, as such, excluded from the effects of the discharge or settlement of those obligations or claims, and, consequently, [that the abovementioned claim or right] is enforceable against Banco Santander, as the successor to Banco Popular, even where the claim from which that judgment ordering payment of compensation arises was brought after the procedure for the resolution of the bank had been concluded?

(1) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

Request for a preliminary ruling from the Okresný súd Bratislava III (Slovakia) lodged on 24 January 2023 — NFŠ a.s. v Slovenská republika (Slovak Republic), acting through the Ministerstvo školstva, vedy, výskumu a športu Slovenskej republiky, and Ministerstvo školstva, vedy, výskumu a športu Slovenskej republiky

(Case C-28/23, NFŠ)

(2023/C 173/19)

Language of the case: Slovak

Referring court

Okresný súd Bratislava III

Parties to the main proceedings

Applicant: NFŠ a.s.

Defendants: Slovenská republika (Slovak Republic), acting through the Ministerstvo školstva, vedy, výskumu a športu Slovenskej republiky, and Ministerstvo školstva, vedy, výskumu a športu Slovenskej republiky

Questions referred

1. Do a grant agreement and an agreement to enter into a future sales agreement, concluded between a ministry (the State) and a person governed by private law selected outside competition procedures, constitute 'public works contracts' within the meaning of Article 1(2)(b) of Directive 2004/18 (1) or Article 2(6)(c) of Directive 2014/24 (2) where the grant agreement constitutes State aid approved by the European Commission for the purposes of Article 107(3)(c) TFEU, the grant agreement contains an obligation on the State to grant a subsidy as well as an obligation on the person governed by private law to construct the building in accordance with conditions specified by the ministry and to allow a sports organisation to use a part of that building, and the agreement to enter into a future agreement contains a unilateral option conferred on the person governed by private law in the form of an obligation on the State to purchase the constructed building, while those agreements constitute a framework of mutual obligations between the ministry and the person governed by private law which are linked in terms of time and subject matter?

2. Does Article 1(2)(b) of Directive 2004/18 or Article 2(6)(c) of Directive 2014/24 preclude national legislation of a Member State under which any legal act which by its content or purpose contravenes or circumvents the law or is contrary to accepted principles of morality is absolutely invalid (that is to say, from the outset/*ex tunc*) where that infringement of the law consists of a serious infringement of the rules on public procurement?

3. Do Article 2d(1)(a) and Article 2d(2) of Directive 89/665 (3) preclude national legislation of a Member State under which any legal act which by its content or purpose contravenes or circumvents the law or is contrary to accepted principles of morality is absolutely invalid (that is to say, from the outset/*ex tunc*) where that infringement of the law consists of a serious infringement (circumvention) of the rules on public procurement, as in the main proceedings?

4. Must Article 1(2)(b) of Directive 2004/18 or Article 2(6)(c) of Directive 2014/24 be interpreted as precluding *ex tunc* the assumption that an agreement to enter into a future sales agreement, such as that at issue in the main proceedings, has produced legal effects?

(1) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).
(2) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).
(3) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395. p. 33).

Appeal brought on 26 January 2023 by European Commission against the judgment of the General Court (Seventh Chamber — Extended Composition) delivered on 16 November 2022 in Case T-469/20, Kingdom of the Netherlands v Commission

(Case C-40/23 P)

(2023/C 173/20)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: B. Stromsky, H. van Vliet, I. Georgiopoulos, acting as Agents)

Other party to the proceedings: Kingdom of the Netherlands

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber — Extended Composition) of 16 November 2022 in Case T-469/20, *Kingdom of the Netherlands* v *Commission*, EU:T:2022:713;

— reject the fourth and fifth pleas in Case T-469/20;

— exercise its jurisdiction under the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union and itself give final judgment in the matter and declare the action unfounded in its entirety, and

— order the Kingdom of the Netherlands to pay the costs.

Grounds of appeal and main arguments

The appellant puts forward a single ground of appeal, consisting of two branches.

The Commission decision contested at first instance (1) ('the decision') declared a measure compatible with the internal market, without making a final ruling in that regard on whether that measure constituted State aid within the meaning of Article 107(1) TFEU.

By the first branch, the Commission maintains that the General Court committed an error of law in holding that the Commission may only issue a decision not to raise objections within the meaning of Article 4(3) of Regulation 2015/1589 (2) where it first pronounces on the question whether the measure under examination constitutes State aid. The Commission argues that the various methods of interpretation of EU law do not support that conclusion. The Commission argues inter alia that the judgment under appeal runs counter to the aim of the EU legislature of swiftly gaining clarity on whether measures are compatible with the internal market. After all, if the judgment stands, it may result in the Commission being compelled to carry out lengthy and unnecessary examinations into whether a given measure contains all the elements of Article 107(1), despite the fact that it is in any event convinced that that measure is compatible with the internal market.

By the second branch, the Commission argues that the General Court committed an error of law in holding that the decision infringes the principle of legal certainty. On the contrary, the decision increased legal certainty, in declaring that the measure is compatible with the internal market as soon as the Commission has reached that conclusion.

(1) Commission Decision C(2020) final 2998 of 12 May 2020 concerning State Aid SA.54537 (2020/NN) — Netherlands — Prohibition of coal for the production of electricity in the Netherlands.

(2) 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 (OJ 2015 L 248, p. 9).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 3 February 2023 — WY v Laudamotion GmbH, Ryanair DAC

(Case C-54/23, Laudamotion and Ryanair)

(2023/C 173/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: WY

Defendants: Laudamotion GmbH, Ryanair DAC

Questions referred

1. Is a right to compensation for a flight delay of at least three hours precluded in general under Articles 5, 6 and 7 of the Regulation (1) where, faced with a long delay, the passenger uses a self-booked replacement flight and thereby reaches the final destination with a delay of less than three hours, or can a right to compensation exist in that situation in any event where, before the time by which the passenger must present himself for check-in, there is already sufficiently reliable information indicating that the flight will arrive at its final destination with a delay of at least three hours?

2. In the event that Question 1 is to be answered in the latter sense: does a right to compensation for a flight delay of at least three hours under Articles 5, 6 and 7 of the Regulation in that situation require the passenger to present himself for check-in in good time under Article 3(2)(a) of the Regulation?

(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 2 February 2023 — JH v Policejní prezidium

(Case C-57/23, Policejní prezidium)

(2023/C 173/22)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: JH

Defendant: Policejní prezidium

Questions referred

1. What degree of distinction between individual data subjects is required by Article 4(1)(c) or Article 6 in conjunction with Article 10 of Directive 2016/680? ([1]) Is it compliant with the obligation to minimise personal data processing, and with the obligation to distinguish between various categories of data subjects, for national law to permit the collection of genetic data in respect of all persons suspected or accused of having committed an intentional criminal offence?

2. Is it in accordance with Article 4(1)(e) of Directive 2016/680 if the necessity of continued retention of a DNA profile is assessed, with a reference to the general prevention, investigation, and detection of criminal activity, by Police authorities on the basis of their internal regulations, which frequently means in practice that sensitive personal data is retained for an unspecified period without a maximum limit for the duration of the retention of that personal data being set? If not, by what criteria should the proportionality of the period of the retention of the personal data collected and retained for that purpose be assessed?

3. In the case of particularly sensitive personal data falling under Article 10 of Directive 2016/680, what is the minimal scope of the substantive or procedural conditions for obtaining, retaining, and deleting such data that must be regulated by a 'provision of general application' in the law of a Member State? Can judicial case-law qualify as 'Member State law' within the meaning of Article 8(2) in conjunction with Article 10 of Directive 2016/680?

([1]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo n.º 5 de Barcelona (Spain) lodged on 6 February 2023 — Pedro Francisco v Subdelegación del Gobierno en Barcelona

(Case C-62/23, Pedro Francisco)

(2023/C 173/23)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo n.º 5 de Barcelona

Parties to the main proceedings

Applicant: Pedro Francisco

Defendant: Subdelegación del Gobierno en Barcelona

Questions referred

1. Is Article 27 of Directive 2004/38/EC ([1]) to be interpreted as meaning that a police record may be the basis or foundation of the personal conduct of the individual concerned for the purposes of assessing whether a genuine threat exists when the purpose of a criminal trial is to prove whether that threat is genuine?

2. If the answer to the first question is in the affirmative, in the light of Article 27 of the directive, must the interpretation be that the governmental authority is required to set out expressly and in detail the facts on which that record is based and any judicial proceedings which have been brought and their outcome in order to confirm that we are not merely dealing with initial presumptions?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo n.º 5 de Barcelona (Spain) lodged on 6 February 2023 — Sagrario and Others v Subdelegación del Gobierno en Barcelona

(Case C-63/23, Sagrario)

(2023/C 173/24)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo n.º 5 de Barcelona

Parties to the main proceedings

Applicants: Sagrario, Joaquín, Prudencio

Defendant: Subdelegación del Gobierno en Barcelona

Questions referred

1. Must Article 15(3), *in fine*, and Article 17 of Directive 2003/86, ([1]) when they refer to 'particularly difficult circumstances', be understood as automatically including all circumstances involving a minor and/or circumstances that are similar to those provided for in Article 15?

2. Is national legislation that does not provide for the grant of an autonomous residence permit, which ensures that reunited family members are no longer unlawful residents in the event of such particularly difficult circumstances, compatible with Article 15(3), *in fine*, and Article 17 of Directive 2003/86?

3. Can Article 15(3), *in fine*, and Article 17 of Directive 2003/86 be interpreted as meaning that that right to an autonomous permit arises when the reunited family is left without a residence permit for reasons beyond their control?

4. Is national legislation that does not provide for the necessary and mandatory assessment of the circumstances set out in Article 17 of Directive 2003/86 before a refusal to renew the residence permit of reunited family members compatible with Article 15(3) and Article 17 of that directive?

5. Is national legislation that does not provide, as a step that must be taken before the refusal to grant or renew a residence permit as a reunited family member, for a specific procedure for hearing minors, where the grant or renewal of the sponsor's residence permit has been refused, compatible with Article 15(3) and Article 17 of Directive 2003/86, Article 6(1) and Article 8(1) and (2) of the European Convention on Human Rights, and Articles 47, 24, 7 and Article 33(1) of the Charter of Fundamental Rights of the European Union?

6. Is national legislation that does not provide, as a step that must be taken before the refusal to grant or renew a residence permit as a reunited spouse, where the grant or renewal of the sponsor's residence permit has been refused, for that spouse to be able to plead the circumstances provided for in Article 17 of Directive 2003/86 in order to request that he or she be granted an option to remain resident without interruption vis-à-vis his or her previous residence status compatible with Article 15(3) and Article 17 of Directive 2003/86, Article 6(1) and Article 8(1) and (2) of the European Convention on Human Rights, and Articles 47, 24, 7 and Article 33(1) of the Charter of Fundamental Rights of the European Union?

([1]) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 8 February 2023 — MK v K GmbH

(Case C-65/23, K GmbH)

(2023/C 173/25)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: MK

Defendant: K GmbH

Questions referred

1. Is a national legal provision that has been adopted pursuant to Article 88(1) of Regulation (EU) 2016/679 ([1])– such as Paragraph 26(4) of the Bundesdatenschutzgesetz (German Federal Law on data protection, 'the BDSG') — and which provides that the processing of personal data, including special categories of personal data, of employees for the purposes of the employment relationship is permissible on the basis of collective agreements subject to compliance with Article 88(2) of Regulation 2016/679, to be interpreted as meaning that the other requirements of Regulation 2016/679 — such as Article 5, Article 6(1) and Article 9(1) and (2) of Regulation 2016/679 — must always also be complied with?

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

   May a national legal provision adopted pursuant to Article 88(1) of Regulation 2016/679 — such as Paragraph 26(4) of the BDSG — be interpreted as meaning that the parties to a collective agreement (in this case, the parties to a works agreement) are entitled to a margin of discretion in assessing the necessity of data processing within the meaning of Article 5, Article 6(1) and Article 9(1) and (2) of Regulation 2016/679 that is subject to only limited judicial review?

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

   In such a case, to what is the judicial review to be limited?

4. Is Article 82(1) of Regulation 2016/679 to be interpreted as meaning that a person is entitled to compensation for non-material damage when his or her personal data have been processed contrary to the requirements of Regulation 2016/679, or does the right to compensation for non-material damage additionally require that the data subject demonstrate non-material damage — of some weight — suffered by him or her?

5. Does Article 82(1) of Regulation 2016/679 have a specific or general preventive character, and must that be taken into account in the assessment of the amount of non-material damage to be compensated at the expense of the controller or processor on the basis of Article 82(1) of Regulation 2016/679?

6. Is the degree of fault on the part of the controller or processor a decisive factor in the assessment of the amount of non-material damage to be compensated on the basis of Article 82(1) of Regulation 2016/679? In particular, can non-existent or minor fault on the part of the controller or processor be taken into account in their favour?

([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 Symvoulio tis Epikrateias (Greece) lodged on 7 February 2023 — Elliniki Ornithologiki Etaireia, Syllogos Diktyo Oikologikon Organoseon Aigaiou, Perivallontikos Syllogos Rethymnou, Politistikos Syllogos Thronos Kleisidiou, KX and Others v Ypourgos Esoterikon, Ypourgos Oikonomikon, Ypourgos Anaptyxis kai Ependyseon, Ypourgos Perivallontos kai Energeias, Ypourgos Agrotikis Anaptyxis kai Trofimon

(Case C-66/23)

(2023/C 173/26)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicants: Elliniki Ornithologiki Etaireia

Syllogos Diktyo Oikologikon Organoseon Aigaiou

Perivallontikos Syllogos Rethymnou

Politistikos Syllogos Thronos Kleisidiou

KX and Others

Defendants: Ypourgos Esoterikon

Ypourgos Oikonomikon

Ypourgos Anaptyxis kai Ependyseon

Ypourgos Perivallontos kai Energeias

Ypourgos Agrotikis Anaptyxis kai Trofimon

Questions referred

(1) Must Article 4(1) and (2) of Directive 2009/147/EC, ([1]) read in combination with Article 6(2) to (4) of Directive 92/43/EEC, ([2]) be interpreted as precluding national regulatory provisions, such as those set out [in the grounds for the judgment], which provide that measures for the special protection, conservation and restoration of wild bird species and habitats in special protection areas (SPAs) apply only to the 'classification species', that is to say only to the species of wild birds listed in Annex I to Directive 2009/147/EC and to the regularly occurring migratory birds in each SPA which, combined with the criteria for the classification of SPAs contained in the national legislation, are used as indicators to justify the classification of an area as an SPA?

(2) Is the answer to the preceding question affected by the fact that the measures referred to above for the special protection, conservation and restoration of wild bird species and habitats in special protection areas (SPAs) are, in essence, basic preventive measures to safeguard SPAs ('precautionary safeguards') that apply horizontally, that is to say, to all SPAs, or by the fact that management plans for each specific SPA setting out the targets and measures needed to achieve or ensure satisfactory conservation of each SPA and the species living within it have not been adopted to date in Greek law?

(3) Is the answer to the two preceding questions affected by the fact that, based on the obligation to assess the environmental effects of projects and activities in accordance with Directive 2011/92/EU ([3]) and to carry out an 'appropriate assessment' in accordance with Article 6(2) to (4) of Directive 92/43/EEC, all the species listed in Annex I to Directive 2009/147/EC or the regularly occurring migratory birds in each SPA must be recorded as part of the assessment of the environmental effects of each specific planned public or private project?

([1]) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Codified version) (OJ 2010 L 20, p. 7).

([2]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

([3]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) Text with EEA relevance (OJ 2012 L 26, p. 1).

Request for a preliminary ruling from the Administratīvā apgabaltiesa (Latvia) lodged on 15 February 2023 — Biedrība 'Latvijas Informācijas un komunikācijas tehnoloģijas asociācija' v Valsts ieņēmumu dienests

(Case C-87/23, Latvijas Informācijas un komunikācijas tehnoloģijas asociācija)

(2023/C 173/27)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: Biedrība 'Latvijas Informācijas un komunikācijas tehnoloģijas asociācija'

Defendant: Valsts ieņēmumu dienests

Questions referred

(1) Must Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) be interpreted as meaning that a not-for-profit organisation whose activity is aimed at implementing State aid schemes financed by the European Regional Development Fund is to be treated as a taxable person who carries out an economic activity?

(2) Must Article 28 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax be interpreted as meaning that an association which does not actually supply training services is nevertheless to be equated with a supplier of services where the services were acquired from another economic operator in order to ensure the implementation of a State aid project financed by the European Regional Development Fund?

(3) Pursuant to Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, if a supplier of services receives only partial consideration from the recipient of the service for the service supplied (30 %) but the remaining cost of the service is covered by an aid payment from the European Regional Development Fund, is the taxable consideration the total amount received by the supplier of services from both the recipient of the service and a third party in the form of an aid payment?

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

Request for a preliminary ruling from the Amtsgericht Groß-Gerau (Germany) lodged on 23 February 2023 — PU v SmartSport Reisen GmbH

(Case C-108/23, SmartSport Reisen)

(2023/C 173/28)

Language of the case: German

Referring court

Amtsgericht Groß-Gerau

Parties to the main proceedings

Applicant: PU

Defendant: SmartSport Reisen GmbH

Question referred

Is Article 18(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) to be interpreted as meaning that, in addition to regulating international jurisdiction, the provision also lays down a rule to be observed by the adjudicating court as to the territorial jurisdiction of the national courts in matters pertaining to travel contracts where both the consumer, as the traveller, and his or her contractual partner, as the tour operator, are domiciled in the same Member State, however the destination is not in that Member State but is located abroad, with the consequence that the consumer can bring contractual claims against the tour operator before the court for his or her place of domicile as a supplement to national rules?

([1]) OJ 2012 L 351, p. 1.

Appeal brought on 22 February 2023 by the Autoridad Portuaria de Bilbao against the judgment of the General Court (Fifth Chamber) delivered on 14 December 2022 in Case T-126/20, Autoridad Portuaria de Bilbao v Commission

(Case C-110/23 P)

(2023/C 173/29)

Language of the case: Spanish

Parties

Appellant: Autoridad Portuaria de Bilbao (represented by: D. Sarmiento Ramírez-Escudero and X. Codina García-Andrade, abogados)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court for the reasons set out in the three grounds of appeal and declare that the judgment is vitiated by an error of law;

— rule on the substance of the case, in accordance with Article 61 of the Statute and Article 170 of the Rules of Procedure, by declaring that the action for annulment of the decisions contested before the General Court, brought at first instance by the Autoridad Portuaria de Bilbao, must be upheld;

— order the Commission to pay the costs incurred by the Autoridad Portuaria de Bilbao both in the proceedings at first instance and in the present proceedings before the Court of Justice.

Grounds of appeal and main arguments

First ground of appeal:

The judgment of the General Court is vitiated by an error of law, based on an infringement of Article 107(1) TFEU, in that the General Court accepted that, when the Commission found that the Exención Fiscal de Bizkaia (Biscay Tax Exemption) is an advantage, the Commission did not assess it as being a complex arrangement.

In support of the first ground of appeal, the appellant claims that the reasoning relied on by the General Court to conclude that there is no measure of a complex nature is based on purely formal grounds which depart from the substantive assessment required by the case-law of the Court of Justice.

Second ground of appeal:

The judgment is vitiated by an error of law in that the General Court infringed Article 107 TFEU, Regulation 2015/1589 ([1]) and the relevant case-law, in conjunction with Article 4(3) TEU, Article 296 TFEU and Article 41 of the Charter, by concluding that the Commission does not have to carry out a full analysis of the available data where it is clear that there is only one beneficiary of the aid scheme.

In support of the second ground of appeal, the appellant claims that it is a well-known fact under the Spanish legal system that only one entity benefits from the Biscay Tax Exemption (the Autoridad Portuaria de Bilbao). In that case, even though the measure can be classified as an 'aid scheme' for the purposes of Regulation 2015/1589, the Commission must carry out a full analysis of the available data. That is the case according to the original purpose of the case-law, which allows the Commission not to carry out such an analysis, interpreted in the light of Article 4(3) TEU, Article 296 TFEU and Article 41 of the Charter.

Third ground of appeal:

The judgment is vitiated by an error of law in that the General Court infringed Article 108 TFEU and Regulation 2015/1589, in the light of Article 4(3) TEU, by finding that, in cooperation procedures, the Commission's obligations are less extensive than in investigation procedures.

In support of the third ground of appeal, the appellant claims that the General Court states in its judgment, without any justification whatsoever, that in a cooperation procedure under Article 21 of Regulation 2015/1589, the Member State has fewer guarantees than in an investigation procedure. With respect to that ground of appeal, the appellant argues that both the wording of Articles 21 to 23 of Regulation 2015/1589 and the close connection between Article 108 TFEU, from which the cooperation procedure in Regulation 2015/1589 derives, and the principle of sincere cooperation in Article 4(3) TEU mean that the Commission must examine the information provided by the Member State.

(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 — OJ 2015 L 248, p. 9.

Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas (Lithuania) lodged on 28 February 2023 — Virgilijus Valančius v Lietuvos Respublikos vyriausybė

(Case C-119/23, Valančius)

(2023/C 173/30)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: Virgilijus Valančius

Defendant: Lietuvos Respublikos vyriausybė

Questions referred

1. Does Article 254 of the Treaty on the Functioning of the European Union, read in conjunction with Article 19(2) of the Treaty on European Union, which provides that the members of the General Court of the European Union are to be chosen from persons 'whose independence is beyond doubt and who possess the ability required for appointment to high judicial office', require that a candidate for appointment to the General Court of the European Union be selected in a Member State of the European Union exclusively on the basis of professional ability?

2. Is a national practice, such as that at issue in the present case, whereby, in order to ensure the transparency of the selection of a particular candidate, the Government of a Member State responsible for proposing a candidate for appointment to the office of Judge of the General Court of the European Union establishes a group of independent experts to assess the candidates, which, after interviewing all the candidates, draws up a ranked list of the candidates on the basis of clear and objective selection criteria laid down in advance and, in accordance with the conditions announced in advance, puts forward to the Government the candidate who has been ranked the highest on the basis of his or her professional ability and competence, but the Government proposes for appointment as a Judge of the European Union a candidate other than the candidate in first place on the ranked list, compatible with the requirement that the independence of the judge be beyond doubt and with the other requirements for judicial office laid down in Article 254 of the Treaty on the Functioning of the European Union, read in conjunction with Article 19(2) of the Treaty on European Union, taking account of the fact that a judge who may have been appointed unlawfully might influence the decisions of the General Court of the European Union?

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 1 March 2023 — Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite v Legafact EOOD

(Case C-122/23, Legafact)

(2023/C 173/31)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant on a point of law: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Respondent on a point of law: Legafact EOOD

Questions referred

1. Is a national provision which treats taxable persons differently in respect of the tax exemption provided for under Title XII, Chapter 1, of Council Directive 2006/112 ([1]) on the common system of value added tax depending on the rapidity with which they reach the turnover threshold for compulsory VAT registration in breach of the principles of the common system of value added tax in the European Union?

2. Does Council Directive 2006/112 preclude a national provision under which the tax exemption of a supply under Title XII, Chapter 1, of Council Directive 2006/112 depends on the supplier fulfilling the obligation to apply for compulsory VAT registration in due time?

3. What criteria arising from the interpretation of the VAT Directive must be used to assess whether the aforementioned national provision, which provides for the incurrence of a tax debt in the event of late submission of the application for compulsory VAT registration, is a penalty provision?

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

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 3 March 2023 — Müller Reisen GmbH v Stadt Olsberg

(Case C-128/23, Müller Reisen)

(2023/C 173/32)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant and appellant: Müller Reisen GmbH

Defendant and respondent: Stadt Olsberg

Other party: Tuschen Transporte

Question referred

Having regard to Article 14 TFEU, must Article 32(2)(c) of Directive 2014/24/EU [1] be interpreted restrictively as meaning that, in cases of extreme urgency, a public service contract for services of general interest may be awarded by competitive procedures with negotiation without prior publication even in the case where the event is foreseeable by the contracting authority and the circumstances invoked to justify extreme urgency are attributable to that contracting authority?

[1] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Action brought on 17 March 2023 — European Commission v Republic of Bulgaria

(Case C-165/23)

(2023/C 173/33)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: Gr. Koleva and C. Hermes, acting as Agents)

Defendant: Republic of Bulgaria

Pleas in law and main arguments

The present case concerns the failure on the part of the Republic of Bulgaria to fulfil its obligations under Article 13(2) and (5) Regulation (EU) No 1143/2014 [1] of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species ('the regulation').

In accordance with Article 14(1) of the regulation, the Republic of Bulgaria should have, by 13 January 2018, established a surveillance system of invasive alien species of Union concern or included that surveillance in its existing system, which collects and records data on the occurrence in the environment of invasive alien species by survey, monitoring or other procedures to prevent the spread of invasive alien species into or within the Union. The surveillance system must meet the requirements of Article 14(2) of the regulation.

In accordance with Article 13(2) and (5) of the regulation, the Republic of Bulgaria should have, by 13 July 2019, established and implemented one single action plan or a set of action plans and transmitted that plan or those plans to the Commission without delay.

The Republic of Bulgaria has failed to fulfil the abovementioned obligations.

Form of order sought

The applicant claims that the Court should:

1. declare that, by failing to establish (or failing to integrate into its existing system) a surveillance system of invasive alien species of Union concern, including all the information referred to in Article 14(2), the Republic of Bulgaria failed to fulfil its obligations under Article 14(1) and (2) of Regulation (EU) No 1143/2014;

2. declare that, by failing to establish or implement a single action plan or set of actions, and failing to transmit that plan or those plans to the Commission, the Republic of Bulgaria failed to fulfil its obligations under Article 13(2) and (5) of Regulation (EU) No 1143/2014;

3. order the Republic of Bulgaria to pay the costs of the proceedings.

(1) OJ 2014 L 317, p. 35.

Action brought on 17 March 2023 — European Commission v Hellenic Republic

(Case C-167/23)

(2023/C 173/34)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Bouchagiar and C. Hermes, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court of Justice should

— declare that:

by failing to adopt all the measures necessary to establish a surveillance system of invasive alien species of Union concern and to adopt, implement and transmit action plans for tackling priority pathways of unintentional introduction and spread of invasive alien species, the Hellenic Republic has failed to fulfil its obligations under Article 14(1) and (2) and Article 13(2) and (5) of Regulation (EU) No 1143/2014 (1) and under the Treaty on the Functioning of the European Union; and

— order Hellenic Republic to pay the costs.

Pleas in law and main arguments

The European Commission takes the view that the Hellenic Republic has yet to establish (and makes no provision in its existing legal order for) a surveillance system of invasive alien species of Union concern, as required by Article 14(1) of Regulation (EU) No 1143/2014. In the absence of any surveillance system, the Hellenic Republic has also infringed the substantive requirements to be met by such a surveillance system pursuant to Article 14(2) of that regulation.

Furthermore, the European Commission considers that the Hellenic Republic has failed either to develop or implement one single action plan or a set of action plans, and has failed to transmit those plans to the Commission without delay. Consequently, the Hellenic Republic has failed to comply with Article 13(2) and (5) of the regulation in question.

On those grounds, the Hellenic Republic has infringed Article 14(1) and (2) and Article 13(2) and (5) of Regulation (EU) No 1143/2014, and the Treaty on the Functioning of the European Union.

(1) Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of alien species (OJ 2014 L 317, p. 35).

Action brought on 21 March 2023 — European Commission v Ireland

(Case C-172/23)

(2023/C 173/35)

Language of the case: English

Parties

Applicant: European Commission (represented by: C. Hermes and E. Sanfrutos Cano, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that Ireland has failed to fulfil its obligations under Article 13(2) and (5) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species ([1]) by failing to establish and implement action plans for all identified priority pathways and to transmit them to the Commission without delay;

— order Ireland to pay the costs.

Pleas in law and main arguments

According to Article 13(2) and (5) of Regulation 1143/2014, Ireland had three years from the adoption of the Union list to establish, implement and transmit to the Commission action plans to address the priority pathways of unintentional introduction and spread of invasive alien species of Union concern identified pursuant to Article 13(1) of Regulation 1143/2014. The Commission had adopted the Union list referred to in Article 13 of Regulation 1143/2014 on 13 July 2016 so that the three years deadline expired on 13 July 2019.

Ireland identified three priority pathways (angling, recreational boating and transportation of habitat material) pursuant to Article 13(1) of the Regulation.

However, Ireland has established and transmitted to the Commission action plans for only two out of the three identified priority pathways.

([1]) OJ 2014 L 317, p. 35.

Action brought on 21 March 2023 — European Commission v Hellenic Republic

(Case C-180/23)

(2023/C 173/36)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: D. Triantafyllou and P. Messina, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court should:

— declare that the Hellenic Republic, by failing to conclude and publish the contractual agreement between the Greek authorities and OSE, the Greek infrastructure manager, has failed to fulfil its obligations under Article 30(2) and (6) of Directive 2012/34, ([1]) read in conjunction with Annex V thereof,

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Hellenic Republic has failed to conclude the agreement provided for by Article 30 of Directive 2012/34 on railway infrastructure with the infrastructure manager (OSE). However, the agreement should have been concluded before 16 June 2015 (Article 64 of the directive) and should have included all the information set out in Annex V.

([1]) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ 2012 L 343, p. 32).

Action brought on 21 March 2023 — European Commission v Republic of Malta

(Case C-181/23)

(2023/C 173/37)

Language of the case: English

Parties

Applicant: European Commission (represented by: C. Ladenburger, E. Montaguti, J. Tomkin, Agents)

Defendant: Republic of Malta

The applicant claims that the Court should:

— declare that by establishing and operating an institutionalised programme, such as, the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment based on Article 10(9) of the Maltese Citizenship Act as amended by the Maltese Citizenship (Amendment No. 2) Act, 2020, and the Granting of citizenship for Exceptional Services Regulations, 2020, that offers naturalisation in the absence of a genuine link of the applicants with the country, in exchange for pre-determined payments or investments, the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU;

— order the Republic of Malta to pay the costs.

Pleas in law and main arguments

Following an amendment to the Maltese Citizenship Act in November 2013, Malta introduced its first investor citizenship programme in 2014.

The 2014 Scheme was subsequently replaced in 2020 by the 'Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment' programme. The new scheme was established by the Maltese Citizenship (Amendment No. 2) Act, 2020 and the Granting of Citizenship for Exceptional Services Regulations, 2020.

Union law precludes national citizenship investor schemes that allow for the systematic granting of nationality of a Member State in exchange for pre-determined payments or investments in the absence of a requirement for a genuine link between the State and the individuals concerned.

The Commission considers that the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment scheme (2020) constitutes such an unlawful citizenship investor scheme. By establishing and maintaining such a scheme, Malta compromises and undermines the essence and integrity of Union citizenship in breach of Article 20 TFEU and in violation of the principle of sincere cooperation enshrined in Article 4(3) TEU.

Action brought on 24 March 2023 — European Commission v Portuguese Republic

(Case C-191/23)

(2023/C 173/38)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: C. Hermes and L. Santiago de Albuquerque, acting as Agents)

Defendant: Portuguese Republic

The applicant's claims

The applicant claims that the Court should:

1. declare that the Portuguese Republic has failed to fulfil its obligations under Article 13(2) and (5) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species ([1]) by failing to establish and implement action plans that comply with the requirements specified in Article 13 of that regulation and to transmit them to the Commission without delay;

2. order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

According to Article 13(2) and (5) of Regulation No 1143/2014, the Portuguese Republic had three years from the adoption of the list of invasive alien species of Union concern ('the Union list') to establish, implement and transmit to the Commission action plans to address the priority pathways of unintentional introduction and spread of those species in its territory and marine waters.

The Portuguese Republic identified eleven priority pathways covered by seven proposed action plans.

However, the Portuguese Republic has not indicated the anticipated date for the completion and approval of those plans, nor has it transmitted them to the Commission.

([1]) OJ 2014 L 317, p. 35.

Action brought on 24 March 2023 — European Commission v Republic of Latvia

(Case C-192/23)

(2023/C 173/39)

Language of the case: Latvian

Parties

Applicant: European Commission (represented by: C. Hermes and I. Naglis, acting as Agents)

Defendant: Republic of Latvia

Form of order sought

The applicant claims that the Court should:

— declare that the Republic of Latvia has failed to fulfil its obligations under Article 13(2) and (5) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species ([1]) by failing to establish and implement action plans for all identified priority pathways and to transmit them to the Commission without delay;

— order the Republic of Latvia to pay the costs.

Pleas in law and main arguments

According to Article 13(2) and (5) of Regulation No 1143/2014, the Republic of Latvia had three years from the adoption of the Union list to establish, implement and transmit to the Commission action plans to address the priority pathways of unintentional introduction and spread of invasive alien species of Union concern identified pursuant to Article 13(1) of Regulation No 1143/2014. The Commission had adopted the Union list referred to in Article 13 of Regulation No 1143/2014 on 13 July 2016 so that the three years deadline expired on 13 July 2019.

The Republic of Latvia has identified at least five priority pathways (horticulture, secondary introduction and aquariums in respect of plants, and secondary introduction and escape from holding facilities in respect of animals) pursuant to Article 13(1) of that regulation.

However, the Republic of Latvia has established and transmitted to the Commission an action plan for only one out of the five identified priority pathways.

(1) OJ 2014 L 317, p. 35.

Action brought on 24 March 2023 — European Commission v Italian Republic

(Case C-193/23)

(2023/C 173/40)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: C. Hermes and G. Gattinara, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should

— declare that, by failing to establish and implement one single action plan or a set of action plans to address the priority pathways of invasive alien species and by failing to transmit it or them to the Commission without delay, the Italian Republic has failed to fulfil its obligations under Article 13(2) and (5) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species; (1)

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

In a single plea in law, the Commission claims that, by failing to establish and implement one single action plan or a set of action plans to address the priority pathways of invasive alien species and by failing to transmit it or them to the Commission without delay, the Italian Republic has failed to fulfil its obligations under Article 13(2) and (5) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

In particular, on the date of expiry of the time limit laid down in the reasoned opinion, namely 9 April 2022, the defendant had neither established nor implemented one single action plan or a set of action plans to address the priority pathways of invasive alien species pursuant to Article 13(2) of that regulation, nor had it transmitted without delay that plan or set of plans pursuant to Article 13(5) of the regulation.

(1) OJ 2014 L 317, p. 35.

GENERAL COURT

Action brought on 20 February 2023 — ABLV Bank v ECB

(Case T-100/23)

(2023/C 173/41)

Language of the case: English

Parties

Applicant: ABLV Bank AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the ECB's decision dated 8 December 2022 with respect to the applicant by which the ECB rejected the applicant's request for access to ECB documents pursuant to the rules governing public access to documents;

— order the defendant to bear the costs of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the list of documents provided by the defendant in the contested decision was manifestly incomplete.

2. Second plea in law, alleging that the ECB illegitimately referred the applicant to the website of the authorities of a third country instead of disclosing the relevant document held by itself.

3. Third plea in law, alleging that the defendant illegally denied access to seven documents.

   — The applicant claims that the defendant failed to provide specific grounds for the denial of access with respect to each document, that the defendant incorrectly interpreted and applied the concept of 'information which is protected as such under Union law', pursuant to Article 4(1)(c) of the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents, [1] that the ECB incorrectly interpreted and applied the commercial interest exception under the first indent of Article 4(2) of the said ECB decision, that the ECB failed to consider the public interest in disclosure and that the ECB incorrectly relied on, and failed to provide adequate reasons in relation to, the protection of documents for internal use or preliminary consultations with the relevant national authorities, pursuant to Article 4(3) of the said ECB decision.

4. Fourth plea in law, alleging that the ECB failed to provide access to the file.

5. Fifth plea in law, alleging that the defendant illegitimately and without any legal basis discontinued the processing of part of the request for access.

[1] Decision 2004/258/EC (ECB/2004/3) (OJ 2004 L 80, p. 42).

Action brought on 27 February 2023 — Kargins v Commission

(Case T-110/23)

(2023/C 173/42)

Language of the case: English

Parties

Applicant: Rems Kargins (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision dated 12 December 2022 and received on 16 December 2022 with respect to the applicant by which the Commission rejected the applicant's request for access to documents pursuant to the rules governing public access to documents;

— order the defendant to bear the costs of the applicant.

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 list of documents provided by the defendant in the contested decision is manifestly incomplete.

2. Second plea in law, alleging that the defendant illegitimately redacted significant parts of the documents.

3. Third plea in law, alleging that the defendant illegally denied access to fourteen documents and that it did so on the basis of an incorrect interpretation and application of Article 4(2) of Regulation 1049/2001 ([1]) with respect to the potential undermining of court proceedings.

4. Fourth plea in law, alleging that the defendant's position as to a potential overriding public interest is vitiated by a number of defects including, inter alia, that the defendant did not refer to any harm in disclosure, that it did not consider the political and economic significance of the present case, and it did not consider the public interest in being able to assess the difference between a legitimate *amicus curiae* letter and an illegitimate interference by the Commission with the administration of justice in a Member State, by pointing out to the national court in charge of hearing an appeal adverse consequences for the Member State concerned as a result of adverse action taken by the Commission if the decision of the lower courts is not overturned.

5. Fifth plea in law, alleging that the defendant failed to grant the applicant access to the file.

6. Sixth plea in law, alleging that, by issuing the contested decision to the applicant almost one year after the confirmatory application was sent, the deadline pursuant to Article 8(1) and (2) of Regulation 1049/2001 was violated in such an egregious manner as to constitute a denial of access at the relevant time.

([1]) 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.

Action brought on 2 March 2023 — Debreceni Egyetem v Council

(Case T-115/23)

(2023/C 173/43)

Language of the case: Hungarian

Parties

Applicant: Debreceni Egyetem (Debrecen, Hungary) (represented by: J. Rausch and Á. Papp, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— on the basis of Article 263 TFEU, annul, with *ex tunc* effect, that is to say retroactively from the moment of its adoption, Article 2(2) of Council Implementing Decision (EU) 2022/2506 [1] of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary;

— order the defendant to pay all the costs incurred by the applicant in respect of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on 19 pleas in law.

1. First plea in law, alleging infringement of Article 2 TEU

   — Failure to respect the rule of law and miscarriage of justice: educational establishments maintained by public-interest trusts did not participate in the procedure that preceded the adoption of the implementing decision and are sanctioned as a result of legislative acts approved by the Hungarian legislature.

   — Failure to respect the principle of legal certainty and normative clarity: the group of persons accused of having conflicts of interests, that is to say, 'senior political executives', is not a precise concept, and thus gives rise to arbitrary interpretations and an application of the law that is liable to lead to abuse.

   — Failure to respect the principle of equality and failure to comply with the prohibition of discrimination: the implementing decision discriminates against Hungarian educational establishments maintained by public-interest trusts vis-à-vis those operating under another maintenance model.

2. Second plea in law, alleging infringement of Article 4 TEU

   — Failure to comply with the prohibition on depriving Member States of their competences: education and scientific research — and, therefore, the tasks of guaranteeing the functioning of higher-education establishments and designing the framework in which they operate — fall within the exclusive competence of the Member States, a competence which the implementing decision denies Hungary, since there is direct interference in the functioning of Hungarian educational establishments.

3. Third plea in law, alleging infringement of Article 5 TEU

   — Failure to respect the principle of subsidiarity: the decision makes it possible to impose financial penalties directly on legal entities other than the addressee of that decision, having failed to consider beforehand whether Hungary is in a position to protect the financial interests of the European Union.

   — Failure to respect the principle of proportionality: the suspension of payments is a form of financial retaliation so serious that its application is only justified in the event of a manifest and immediate breach of rights; moreover, it has long-term effects.

4. Fourth plea in law, alleging infringement of Article 7 TEU

   — Lack of an impact evaluation: the possible consequences for the rights and obligations of natural and legal persons were not taken into account.

5. Fifth plea in law, alleging infringement of Article 9 TEU

   — Failure to respect the equality of EU citizens: those adversely affected by the measure are teaching staff, researchers and students who have submitted the relevant applications, whose own studies, teaching and research are made impossible due to the suspension of payment.

6. Sixth plea in law, alleging infringement of Article 11 TEU

— No consultations were carried out with higher-education establishments maintained by public-interest trusts, nor with their students, teaching staff, researchers or partners.

7. Seventh plea in law, alleging infringement of Article 2 TFEU

— The FEU Treaty did not confer on the European Union, in the area of policy relating to education and scientific research, the powers that were exercised in the implementing decision.

8. Eighth plea in law, alleging infringement of Article 9 TFEU

— The implementing decision does not contribute to a high level of education and training; furthermore, it leads to long-term negative effects on the academic, scientific and training levels for students, teaching staff and researchers at Hungarian higher-education establishments maintained by foundations.

9. Ninth plea in law, alleging infringement of Article 56 TFEU

— The implementing decision limits the rights of EU citizens who are not Hungarian nationals (students, teaching staff, researchers) who carry on their activity in Hungarian educational establishments maintained by public-interest trusts.

10. Tenth plea in law, alleging infringement of Article 67 TFEU

— By withdrawing funding, the implementing decision makes it impossible for establishments maintained by public-interest funds to function and represents an attack on the legal framework in which those establishments operate, that is to say, an indirect attack on the (different) autonomous Hungarian legal system and traditions particular to Hungary.

11. Eleventh plea in law, alleging infringement of Article 120 TFEU

— The discriminatory and disproportionate effects of the measure are manifest and also create an unjustified competitive disadvantage for higher-education establishments maintained by public-interest trusts.

12. Twelfth plea in law, alleging infringement of Article 124 TFEU

— The implementing decision suspended funding to various recipients and, at the same time, distributed those funds to other entities.

13. Thirteenth plea in law, alleging infringement of Article 165 TFEU

— The implementing decision does not contribute to the development of quality education but, in reality, seriously harms it and stands in its way.

14. Fourteenth plea in law, alleging infringement of Article 179 TFEU

— The withdrawal of funding from the Erasmus+ programme for cooperation and educational exchange and from the Horizon Europe framework programme for research and innovation is a clear obstacle to the free movement of researchers, scientific knowledge and technology, and to the development of its competitivity.

15. Fifteenth plea in law, alleging infringement of Article 13 of the Charter of Fundamental Rights of the European Union ('the Charter')

— An obvious effect of the implementing decision is the change in how Hungarian higher-education establishments operating under the new model function.

16. Sixteenth plea in law, alleging infringement of Article 2 TEU

— In the defendant's view, the conflict of interests that provides the basis and reasons for the implementing decision does not exist.

17. Seventeenth plea in law, alleging infringement of Article 48 of the Charter

— The implementing decision directly sanctions the applicant despite the fact that in its case the political conflict of interests relied on to justify that sanction does not exist, which amounts to a serious and manifest breach of the presumption of innocence.

18. Eighteenth plea in law, alleging infringement of Article 52 of the Charter

— Given that, as regards the applicant, there is no de facto political conflict of interests, the implementing decision fails to comply with the requirements of necessity and proportionality.

19. Nineteenth plea in law, alleging infringement of the Enabling Regulation [2]

— The Council has adopted the implementing decision without having verified, on the merits and specifically, the existence of the political conflict of interests that formed the basis of that decision.

[1] OJ 2022 L 325, p. 94.
[2] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1).

Action brought on 8 March 2023 — Synapsa Med v EUIPO — Gravity Products (Gravity)

(Case T-125/23)

(2023/C 173/44)

Language in which the application was lodged: Polish

Parties

Applicant: Synapsa Med sp. z o.o. (Jelcz Laskowice, Poland) (represented by: G. Kuchta, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gravity Products LLC (New York, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'Gravity' — EU trade mark No 17 982 729

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 January 2023 in Case R 923/2022-5

Form of order sought

The applicant claims that the Court should:

— alter the decision of 9 January 2023 of the Fifth Board of Appeal of EUIPO by upholding the appeal against the decision of 11 April 2022 declaring the EU word mark GRAVITY ZTUE-017982729 invalid and dismiss the application for a declaration of invalidity.

Pleas in law

— Infringement of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, and of Articles 7(2), 7(3), 16 and 17(3) of Commission Delegated Regulation (EU) 2018/625;

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

Action brought on 15 March 2023 — Vintae Luxury Wine Specialists v EUIPO — Grande Vitae (vintae)

(Case T-136/23)

(2023/C 173/45)

Language in which the application was lodged: English

Parties

Applicant: Vintae Luxury Wine Specialists SLU (Logroño, Spain) (represented by: L. Broschat García and L. Polo Flores, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Grande Vitae GmbH (Delmenhorst, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark vintae — European Union trade mark No 5 851 092

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 16 January 2023 in Case R 2238/2021-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to declare valid the trade mark at issue for goods and services in Classes 33 and 35;

— order EUIPO and the intervener, Grande Vitae GmbH, to pay all the costs of the dispute before the General Court, including those relating to the procedure before the First Board of Appeal.

Pleas in law

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

— Infringement of Article 61 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 23 March 2023 — Kirov v EUIPO — Pasticceria Cristiani (CRISTIANI)

(Case T-149/23)

(2023/C 173/46)

Language in which the application was lodged: English

Parties

Applicant: Georgi Kirov (Prague, Czech Republic) (represented by: J. Matzner, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pasticceria Cristiani Sas di Sergio Cristiani & C. (Livorno, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark CRISTIANI — European Union trade mark No 13 498 381

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 16 January 2023 in Case R 835/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— order the defendant and the intervener to pay the costs.

Pleas in law

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

— Infringement of Article 58 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 23 March 2023 — Poland v European Commission

(Case T-156/23)

(2023/C 173/47)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna and S. Żyrek, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission contained in the letter of 13 January 2023 ([1]) relating to the offsetting of the amounts receivable by way of the daily penalty payments imposed by the order of the Vice-President of the Court of Justice of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), with regard to the period from 30 August to 28 October 2022;

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law: infringement of Articles 101 and 102 of Regulation 2018/1046, ([2]) read in conjunction with Article 98 thereof, as a result of the application of the procedure for recovering the amounts receivable by offsetting despite the fact that the order of 27 October 2021 imposed daily penalties during the period until the date of compliance with the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), and, on 15 July 2022, the provisions the suspension of whose application was required by the order of 14 July 2021 ceased to apply.

([1]) Letter from the European Commission dated 13 January 2023, Ref. ARES(2023)240070.

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

Action brought on 24 March 2023 — Kneipp v EUIPO — Patou (Joyful by nature)

(Case T-157/23)

(2023/C 173/48)

Language in which the application was lodged: English

Parties

Applicant: Kneipp GmbH (Würzburg, Germany) (represented by: M. Pejman, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Jean Patou (Paris, France)

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 word mark Joyful by nature — Application for registration No 18 159 946

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 19 January 2023 in Case R 532/2022-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismissed the applicant's appeal against the refusal of the application for goods and services in Classes 3, 4, 35 and 44;

— order EUIPO to pay the applicant`s fees and costs of the action as well as the applicant`s fees and costs of the opposition proceedings.

Plea in law

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 24 March 2023 — VO v Commission

(Case T-160/23)

(2023/C 173/49)

Language of the case: French

Parties

Applicant: VO (represented by: É. Boigelot, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of 20 May 2022 notified on the same date via Ares(2022)3814828 [*confidential*] ([1]) pursuant to which, in its capacity as appointing authority, the Commission decided to downgrade the applicant from grade AST 2/3 to grade AST 1/3 with an effective date of the first day of the following month, namely 1 June 2022;

— order the Commission to pay, by way of compensation for material damage, subject to increase or decrease in the course of the proceedings, the amount of EUR 533,88 corresponding to the difference between the applicant's remuneration and benefits due by virtue of her grade AST2/3 and those actually received following the contested downgrading;

— order the Commission to pay, by way of compensation for non-material damage and damage to the applicant's reputation, subject to increase or decrease in the course of the proceedings, the amount of EUR 10 000;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 51 of the Staff Regulations of Officials of the European Union and of the internal provisions adopted in implementation thereof, in particular Decision C(2019) 6855 of 4 October 2019 on procedures for dealing with professional incompetence and, in particular, Articles 4 to 7 thereof, and replacing Commission Decision C(2004) 1597/7 of 28 April 2004 on maintaining professional standards.

2. Second plea in law, alleging breach of the principle requiring the administration to adopt a decision solely on the basis of legally admissible grounds, that is to say, grounds which are relevant and not vitiated by any manifest error of assessment, fact or law, as well as the obligation to provide a fair and adequate statement of reasons.

3. Third plea in law, alleging, first, breach of the principles of the duty of care, legitimate expectations, sound administration and equal treatment and, second, abuse and misuse of powers.

([1]) Confidential information omitted.

Action brought on 25 March 2023 — Schönegger Käse-Alm v EUIPO — Jumpseat3D plus Germany (Rebell)

(Case T-161/23)

(2023/C 173/50)

Language in which the application was lodged: German

Parties

Applicant: Schönegger Käse-Alm GmbH (Prem, Germany) (represented by: M.-C. Seiler, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Jumpseat3D plus Germany GmbH (Berlin, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark Rebell — EU trade mark No 2 810 950

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 13 January 2023 in Case R 295/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as EU trade mark No 2 810 950 Rebell is declared invalid for the following goods in Class 29: 'Milk products, in particular butter, butter preparations, clarified butter, butter oils, quark, quark desserts, milk products, dried milk products, dietetic foodstuffs made using milk and milk products';

— annul the contested decision in so far as the applicant was ordered to pay the costs of the appeal proceedings;

— order EUIPO and Jumpseat3D plus Germany GmbH, should the other party to the proceedings intervene in the action brought against the defendant, to pay the costs, including those incurred by the applicant in the proceedings before the Board of Appeal.

Pleas in law

— Infringement of Article 58(1)(a) and (2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in conjunction with Article 21(1)(e) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 58(1)(a) and (2), in conjunction with the second sentence of Article 94(1), of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 58(1)(a) and (2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in conjunction with the fourth sentence of Article 19(1) and Article 10(3) of Commission Delegated Regulation (EU) 2018/625.

Action brought on 27 March 2023 — Sengül Ayhan v EUIPO — Pegase (Rock Creek)

(Case T-162/23)

(2023/C 173/51)

Language in which the application was lodged: English

Parties

Applicant: Sengül Ayhan eK (Essen, Germany) (represented by: M. Boden, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pegase SAS (Saint-Malo, France)

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 word mark Rock Creek — Application for registration No 18 352 299

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 10 January 2023 in Case R 1237/2022-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and the decision of the Opposition Division of 12 May 2022;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 28 March 2023 — Dekoback v EUIPO — DecoPac (DECOPAC)

(Case T-166/23)

(2023/C 173/52)

Language in which the application was lodged: German

Parties

Applicant: Dekoback GmbH (Helmstadt-Bargen, Germany) (represented by: V. von Moers, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DecoPac, Inc. (Anoka, Minnesota, United States)

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: EU word mark DECOPAC — EU word mark No 160 747

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 30 January 2023 in Case R 754/2022-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— cancel in full trade mark No 160 747 DECOPAC registered for the other party to the proceedings, DecoPac, Inc.

Plea in law

— Infringement of Article 52 of Council Regulation (EC) No 207/2009.

Action brought on 29 March 2023 — RT France v Council

(Case T-169/23)

(2023/C 173/53)

Language of the case: French

Parties

Applicant: RT France (Boulogne-Billancourt, France) (represented by: E. Piwnica, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Council Decision (CFSP) 2023/191 of 27 January 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine;

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

with all the legal consequences that entails.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant infringed the freedom of expression guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging that the defendant infringed the freedom to conduct a business protected by Article 16 of the Charter of Fundamental Rights.

3. Third plea in law, alleging that the defendant infringed the principle of non-discrimination under Article 21 of the Charter of Fundamental Rights.

Action brought on 30 March 2023 — VR v Parliament

(Case T-171/23)

(2023/C 173/54)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

and consequently,

— annul the decision of 9 June 2022 notifying the applicant that his contract would be terminated and, in so far as necessary, the decision of 20 December 2022 rejecting the applicant's complaint against the decision of 9 June 2022;

— order the defendant to make good the damage suffered by the applicant;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment as regards the grounds for the decision and breach of the principle of proportionality.

2. Second plea in law, alleging infringement of Article 41 of the Charter of Fundamental Rights of the European Union and, more specifically, the right to be heard, the obligation to state reasons, compliance with the requirement of impartiality on the part of the administration and the duty of diligence.

3. Third plea in law, alleging breach of the duty of care.

Order of the General Court of 20 March 2023 — ZK v Commission

(Case T-627/18) ([1])

(2023/C 173/55)

Language of the case: French

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

([1]) OJ C 4, 7.1.2019.

Order of the General Court of 17 March 2023 — NV v EIB

(Case T-16/22) ([1])

(2023/C 173/56)

Language of the case: French

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

([1]) OJ C 95, 28.2.2022.

Order of the General Court of 16 March 2023 — Ilunga Luyoyo v Council

(Case T-97/22) ([1])

(2023/C 173/57)

Language of the case: French

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

([1]) OJ C 148, 4.4.2022.

Order of the General Court of 17 March 2023 — NV v EIB

(Case T-447/22) ([1])

(2023/C 173/58)

Language of the case: French

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

([1]) OJ C 359, 19.9.2022.

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

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

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