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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 7 February 2023 by Neoperl AG against the judgment of the General Court (Tenth Chamber, Extended Composition) delivered on 7 December 2022 in Case T-487/21, Neoperl AG v European Union Intellectual Property Office

(Case C-64/23 P)

(2023/C 338/02)

Language of the case: German

Parties

Appellant: Neoperl AG (represented by: U. Kaufmann, Rechtsanwältin)

Other party to the proceedings: European Union Intellectual Property Office

By order of 11 July 2023, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 27 February 2023 — Criminal proceedings against KB

(Case C-114/23, [1] **Sapira)**

(2023/C 338/03)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Party to the main proceedings

KB

Questions referred

1. Must the second subparagraph of Article 19(1) of the Treaty on European Union (TEU), Article 47 of the Charter of Fundamental Rights, and the general principles of European Union law: the principles of legal certainty, inviolability of final court judgments, proportionality, and procedural autonomy, be interpreted as precluding any national legislation which prevents a court, in proceedings for enforcement of a final criminal conviction, from examining whether an enforceable judgment was given by a court which satisfies the requirements relating to establishment by law and also independence and impartiality and, if it is established that those requirements have not been satisfied, in accordance with the previous case-law of the Court of Justice of the European Union, from drawing the necessary consequences from that fact, inter alia disregarding the judgment thus given and discontinuing the enforcement proceedings?

2. If the answer to Question 1 is in the affirmative, is the carrying out of such an examination contingent on the initiative being taken by the convicted person or other authorised body or, in the light of the principles of European Union law referred to above, is the court required, in proceedings for enforcement of a final conviction, to carry out such an examination of its own motion?

(1) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings

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Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 27 February 2023 — Criminal proceedings against RZ

(Case C-115/23, (1) **Jurckow)**

(2023/C 338/04)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Party to the main proceedings

RZ

Questions referred

1. Must the second subparagraph of Article 19(1) of the Treaty on European Union (TEU), Article 47 of the Charter of Fundamental Rights, and the general principles of European Union law: the principles of legal certainty, inviolability of final court judgments, proportionality, and procedural autonomy, be interpreted as precluding any national legislation which prevents a court, in proceedings for enforcement of a final criminal conviction, from examining whether an enforceable judgment was given by a court which satisfies the requirements relating to establishment by law and also independence and impartiality and, if it is established that those requirements have not been satisfied, in accordance with the previous case-law of the Court of Justice of the European Union, from drawing the necessary consequences from that fact, inter alia disregarding the judgment thus given and discontinuing the enforcement proceedings?

2. If the answer to Question 1 is in the affirmative, is the carrying out of such an examination contingent on the initiative being taken by the convicted person or other authorised body or, in the light of the principles of European Union law referred to above, is the court required, in proceedings for enforcement of a final conviction, to carry out such an examination of its own motion?

(1) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 6 March 2023 — Criminal proceedings against AN

(Case C-132/23, (1) **Kosieski)**

(2023/C 338/05)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Party to the main proceedings

AN

Questions referred

1. Must the second subparagraph of Article 19(1) of the Treaty on European Union (TEU), Article 47 of the Charter of Fundamental Rights, and the general principles of European Union law: the principles of legal certainty, inviolability of final court judgments, proportionality, and procedural autonomy, be interpreted as precluding any national legislation which prevents a court, in proceedings for enforcement of a final criminal conviction, from examining whether an enforceable judgment was given by a court which satisfies the requirements relating to establishment by law and also independence and impartiality and, if it is established that those requirements have not been satisfied, in accordance with the previous case-law of the Court of Justice of the European Union, from drawing the necessary consequences from that fact, inter alia disregarding the judgment thus given and discontinuing the enforcement proceedings?

2. If the answer to Question 1 is in the affirmative, is the carrying out of such an examination contingent on the initiative being taken by the convicted person or other authorised body or, in the light of the principles of European Union law referred to above, is the court required, in proceedings for enforcement of a final conviction, to carry out such an examination of its own motion?

(1) The present case is designated by a fictitious name which does not correspond to the actual name of a party to the proceedings.

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 15 March 2023 — Criminal proceedings against CG

(Case C-160/23, Oczka (1)**)**

(2023/C 338/06)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Party to the main proceedings

CG

Questions referred

1. Must the second subparagraph of Article 19(1) of the Treaty on European Union (TEU), Article 47 of the Charter of Fundamental Rights, and the general principles of European Union law: the principles of legal certainty, inviolability of final court judgments, proportionality, and procedural autonomy, be interpreted as precluding any national legislation which prevents a court, in proceedings for enforcement of a final criminal conviction, from examining whether [the] enforceable judgment was given by a court which satisfies the requirements relating to establishment by law and also independence and impartiality and, if it is established that those requirements have not been satisfied, in accordance with the previous case-law of the Court of Justice of the European Union, from drawing the necessary conclusions from that fact, inter alia disregarding the judgment thus given and discontinuing the enforcement proceedings?

2. If the answer to Question 1 is in the affirmative, is the carrying out of such an examination contingent on the initiative being taken by the convicted person or other authorised body or, in the light of the principles of European Union law referred to above, is the court required, in proceedings for enforcement of a final conviction, to carry out such an examination of its own motion?

(1) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Request for a preliminary ruling from the Bayerisches Verwaltungsgericht Regensburg (Germany) lodged on 20 April 2023 — European Chemicals Agency v Hallertauer Hopfenveredelungsges. m.b.H.

(Case C-256/23, ECHA)

(2023/C 338/07)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht Regensburg

Parties to the main proceedings

Applicant: European Chemicals Agency

Defendant: Hallertauer Hopfenveredelungsges. m.b.H.

Intervening party: Regierung von Niederbayern (Government of Lower Bavaria) as a representative of the public interest

Questions referred

1. Is Article 94(1) of Regulation (EC) No 1907/2006, ([1]) according to which an action may be brought before the Court of Justice of the European Union against a decision of the agency, to be interpreted as meaning that the enforceability of decisions of the agency may also be the subject of an action?

2. If the first question is to be answered in the negative: Is the first paragraph of Article 299 TFEU to be interpreted as meaning that it applies not only to acts adopted by the Council, the Commission or the European Central Bank, but also to decisions of the European Chemicals Agency imposing an administrative charge?

3. If the second question is to be answered in the affirmative: Is the second paragraph of Article 299 TFEU to be interpreted as meaning that the reference to the Member State's rules of civil procedure encompasses not only the rules of procedure but also the rules governing jurisdiction?

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

Request for a preliminary ruling from the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Germany) lodged on 8 May 2023 — European Chemicals Agency v B. GmbH

(Case C-290/23, ECHA)

(2023/C 338/08)

Language of the case: German

Referring court

Oberverwaltungsgericht des Landes Sachsen-Anhalt

Parties to the main proceedings

Applicant and appellant: European Chemicals Agency

Defendant and respondent: B. GmbH

Questions referred

1. Must the first half-sentence of the first paragraph of Article 299 of the Treaty on the Functioning of the European Union (TFEU) be interpreted as applying only to decisions taken by the Council, the Commission or the European Central Bank, or does it also apply to decisions of the European Chemicals Agency imposing an administrative charge under Article 13(4) of Commission Regulation (EC) No 340/2008 ([1]) of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 ([2]) of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)?

2. In the event that the decision of the European Chemicals Agency on the imposition of such an administrative charge is not enforceable:

   Must the third subparagraph of Article 13(4) in conjunction with the second subparagraph of Article 11(3) of Regulation (EC) No 340/2008 be interpreted as meaning that an action for enforcement of payment of the administrative charge should be ruled out?

([1]) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6).

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

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 24 May 2023 — DocLX Travel Events GmbH v Bundesarbeiterkammer

(Case C-320/23, Bundesarbeitskammer)

(2023/C 338/09)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: DocLX Travel Events GmbH

Defendant: Bundesarbeitskammer

Questions referred

The following questions concerning Article 12 of Directive (EU) 2015/2302 ([1]) of the European Parliament and of the Council are referred to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union (TFEU):

1. Must the reasonableness, and therefore the amount, of the termination fee be examined by reference to when the organiser's offer was made, when the package travel contract was concluded, when the traveller made a declaration of termination, when the package was scheduled to end, or some other point in time?

2. Must the reasonableness, and therefore the amount, of the termination fee be examined on the basis of a commercially and economically correct calculation of that amount or on the basis of other criteria, such as, for example, a standardised estimate based on a percentage of the price of the package?

3. Must that provision be interpreted as meaning that, where the termination fee agreed in the package travel contract is unreasonably high, the organiser retains his or her right to the payment of a reasonable termination fee (as determined by the answers to Questions 1 and 2) or must that fee be calculated specifically on the basis of the actual disadvantage to the organiser, or does the organiser lose that right altogether?

4. Is it possible, for the purposes of assessing the reasonableness of the termination fee, in particular where that fee was agreed on a standardised basis, to apply national law, inasmuch as this allows the court to set the amount of a claim at its own discretion if the proceedings are expected to be disproportionately expensive?

([1]) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 25 May 2023 — Verbraucherzentrale Baden-Württemberg e.V. v Aldi Süd Dienstleistungs-SE & Co. OHG

(Case C-330/23, Aldi Süd)

(2023/C 338/10)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: Verbraucherzentrale Baden-Württemberg e.V.

Defendant: Aldi Süd Dienstleistungs-SE & Co. OHG

Questions referred

1. Is Article 6a(1) and (2) of the Price Indication Directive ([1]) to be interpreted as meaning that a percentage mentioned in an announcement of a price reduction may relate only to the prior price within the meaning of Article 6a(2) of the Price Indication Directive?

2. Is Article 6a(1) and (2) of the Price Indication Directive to be interpreted as meaning that emphasis in advertising which is intended to stress the reasonable price of an offer (such as the description of the price as a 'Price Highlight'), where it is used in an announcement of a price reduction, must relate to the prior price within the meaning of Article 6a(2) of the Price Indication Directive?

([1]) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ 1998 L 80, p. 27), last amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ 2019 L 328, p. 7).

Request for a preliminary ruling from the Verwaltungsgericht Karlsruhe (Germany) lodged on 6 June 2023 — HB v Federal Republic of Germany

(Case C-349/23, Zetschek ([1])**)**

(2023/C 338/11)

Language of the case: German

Referring court

Verwaltungsgericht Karlsruhe

Parties to the main proceedings

Applicant: HB

Defendant: Federal Republic of Germany

Questions referred

1. Does it constitute direct discrimination on grounds of age within the meaning of Article 2(2)(a) of Directive 2000/78/EC, ([2]) when, under Paragraph 48(2) of the German Law on Judges (Deutsches Richtergesetz, 'the DRiG'), federal judges cannot postpone the start of their retirement, even though federal civil servants and, for example, judges in the service of Land Baden-Württemberg are allowed to do so?

2. In the context of the first subparagraph of Article 6(1) of Directive 2000/78/EC, do elements derived from the general context of the measure at issue also include aspects that are not mentioned at all in the legislative material or in the course of the entire parliamentary legislative process, but are presented only during the judicial proceedings?

3. How are the terms 'objectively' and 'reasonably' in the first subparagraph of Article 6(1) of Directive 2000/78/EC to be interpreted and what is their point of reference? Does the first subparagraph of Article 6(1) of the Directive require a twofold examination of reasonableness?

4. Is the first subparagraph of Article 6(1) of Directive 2000/78/EC to be interpreted as precluding, from the point of view of coherence, national legislation which precludes federal judges from postponing their retirement whereas federal public servants and, for example, judges in the service of Land Baden-Württemberg are allowed to do so?

([1]) The present case is designated by a fictitious name which does not correspond to the actual name of a party to the proceedings.
([2]) Council Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 7 June 2023 — Vorstand für den Geschäftsbereich II der Agrarmarkt Austria

(Case C-350/23, Agrarmarkt Austria)

(2023/C 338/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Vorstand für den Geschäftsbereich II der Agrarmarkt Austria

Interested party: T F

Questions referred

1. In the case of a livestock aid application within the meaning of point 15 of Article 2(2) of Regulation (EU) No 640/2014, ([1]) submitted for the year 2020 for the grant of coupled support, for which, for the purposes of Article 21(4) of Regulation (EU) No 809/2014, ([2]) use is made of the information in the computerised database for bovine animals, is a notification that is made only after the expiry of the period of 15 days after the animals (bovine animals) have been moved to a mountain pasture pursuant to Article 2(2) and (4) of Commission Decision 2001/672/EC ([3]) of 20 August 2001, in conjunction with Article 7(2) of Regulation (EC) No 1760/2000, ([4]) an incorrect entry in the computerised database for bovine animals that, pursuant to Article 30(4)(c) of Regulation (EU) No 640/2014, is not of relevance for the verification of the compliance with the eligibility conditions other than the condition referred to in Article 53(4) of Regulation (EU) No 639/2014 ([5]) under the aid scheme or support measure concerned, with the result that the animals concerned are only to be considered not to be determined if such an incorrect entry is found during at least two checks within a period of 24 months?

2. If the first question is answered in the negative:

For the purposes of Article 15(1) and Article 34 of Regulation (EU) No 640/2014, do the administrative penalties provided for in Chapter IV of Regulation (EU) No 640/2014 apply to the application for coupled support referred to in the first question where the farmer makes a notification in writing to the competent authority in accordance with Article 2(2) and (4) of Commission Decision 2001/672/EC of 20 August 2001, in conjunction with Article 7(1) and (2) of Regulation (EC) No 1760/2000, concerning the movement of the animals to a mountain pasture, where it is evident from the notification that it is late with regard to the 15-day period laid down in those provisions, in so far as the competent authority has not previously informed the applicant of an intention to carry out an on-the-spot check and has also not already informed that applicant of any non-compliances in the aid application?

(1) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48).

(2) Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69).

(3) 2001/672/EC: Commission Decision of 20 August 2001 laying down special rules applicable to movements of bovine animals when put out to summer grazing in mountain areas (OJ 2001 L 235, p. 23).

(4) Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 2014 L 181, p. 1).

(5) Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ 2014 L 181, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 26 June 2023 — Novel Nutriology GmbH v Verband Sozialer Wettbewerb e.V.

(Case C-386/23, Novel Nutriology)

(2023/C 338/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Defendant and appellant in the appeal on a point of law: Novel Nutriology GmbH

Applicant and respondent in the appeal on a point of law: Verband Sozialer Wettbewerb e.V.

Questions referred

The following question is referred to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Article 10(1) and (3) and Article 28(5) and (6) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, (1) as last amended by Commission Regulation (EU) No 1047/2012 (2) of 8 November 2012, and recitals 10 and 11 of Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health, (3) and recitals 4 and 5 of Commission Regulation (EU) No 536/2013 (4) of 11 June 2013 amending Regulation (EU) No 432/2012:

May plant or herbal substances ('botanicals') be advertised with health claims (Article 10(1) of Regulation [EC] No 1924/2006) or with references to general, non-specific benefits of the nutrient or food for overall good health or health-related well-being (Article 10(3) of Regulation [EC] No 1924/2006) without those claims being authorised under that regulation and included in the list of authorised claims pursuant to Articles 13 and 14 of the Regulation (Article 10(1) of the Regulation) or without those references being accompanied by a specific health claim contained in one of the lists referred to in Articles 13 or 14 of the Regulation (Article 10(3) of the Regulation), pending completion of the evaluation by the Authority and the examination by the Commission of the inclusion of the claims notified in respect of 'botanicals' in the Community lists referred to in Articles 13 and 14 of Regulation [EC] No 1924/2006?

(1) OJ 2006 L 404, p. 9.
(2) Commission Regulation (EU) No 1047/2012 of 8 November 2012 amending Regulation (EC) No 1924/2006 with regard to the list of nutrition claims (OJ 2012 L 310, p. 36).
(3) OJ 2012 L 136, p. 1.
(4) Commission Regulation (EU) No 536/2013 of 11 June 2013 amending Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods other than those referring to the reduction of disease risk and to children's development and health (OJ 2013 L 160, p. 4).

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 27 June 2023 — Rzecznik Finansowy

(Case C-390/23, Rzecznik Finansowy)

(2023/C 338/14)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: Rzecznik Finansowy

Other parties to the proceedings: Bank AG S.A., M.S., A.K.

Question referred

Does the second [subparagraph] of Article 19(1) of the Treaty on European Union, in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, preclude national legislation which provides that a court of last instance (the Sąd Najwyższy) hearing an extraordinary appeal (extraordinary action) against a final judgment of an ordinary court is to sit in a panel which includes a person (a lay judge of the Sąd Najwyższy) who:

1. is not a judge of the Sąd Najwyższy;

2. has been appointed to perform his or her function:

   (a) directly by the legislature — by a simple majority,

   (b) on the basis of general and unverifiable selection criteria,

   (c) in a procedure which does not allow judicial review of the appointment,

   (d) for a term of four years;

3. and may be dismissed by the legislature, which is also not subject to judicial review?

Request for a preliminary ruling from the Helsingin hallinto-oikeus (Finland) lodged on 6 July 2023 — Metsä Fibre Oy

(Case C-414/23, Metsä Fibre)

(2023/C 338/15)

Language of the case: Finnish

Referring court

Helsingin hallinto-oikeus

Parties to the main proceedings

Applicant: Metsä Fibre Oy

Questions referred

1. Are the provisions of Articles 70 and 40 of the Commission Registry Regulation ([1]) regarding the timeframes for reversal of transactions and the final and irrevocable nature of transactions invalid when the right to property under Article 17 of the Charter of Fundamental Rights of the European Union and the other rights protected in the Charter of Fundamental Rights are taken into account, in as much as the provisions at issue prevent the retransfer of the allowances to Metsä Fibre Oy in a situation where the surrender of excessive allowances to the Union Registry was based on the application of the provisions which were found in the *Schaefer Kalk* judgment ([2]) to be invalid, and the company cannot use the positive compliance status of the compliance account because of the current low level of emissions from the Äänekoski installation?

2. If Question 1 is answered in the negative, are the provisions of Articles 70 and 40 of the Commission Registry Regulation at all applicable in a situation where the surrender of excessive allowances to the Union Registry was based on application of the provisions which were found in the *Schaefer Kalk* judgment to be invalid and not on a transaction unintentionally or erroneously initiated by an account holder or a national administrator acting on behalf of the account holder?

3. If Question 1 is answered in the negative and Question 2 is answered in the affirmative, is there any other way made possible by EU law to put Metsä Fibre Oy in the position, with respect to use of the allowances, in which it would have been if the provisions which were found in the *Schaefer Kalk* judgment to be invalid had not existed and the company had not surrendered excessive allowances on the basis of them?

([1]) Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ 2013 L 122, p. 1).

([2]) Judgment of 19 January 2017, *Schaefer Kalk* (C-460/15, EU:C:2017:29).

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 6 July 2023 — Slagelse Almennyttige Boligselskab — Afdeling Schackenborgvænge, XM, ZQ, FZ, DL, WS, JI, PB, VT, YB, TJ, RK v MV, EH, LI, AQ, LO, Social-, Bolig- og Ældreministeriet

(Case C-417/23, Slagelse Almennyttige Boligselskab — Afdeling Schackenborgvænge)

(2023/C 338/16)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicants: Slagelse Almennyttige Boligselskab — Afdeling Schackenborgvænge, XM, ZQ, FZ, DL, WS, JI, PB, VT, YB, TJ, RK

Defendants: MV, EH, LI, AQ, LO, Social-, Bolig- og Ældreministeriet

Questions referred

1. Must the term 'ethnic origin' in Article 2(2)(a) and (b) of Directive 2000/43 ([1]) be interpreted as meaning that that term, in circumstances such as those in the present case — where, under the Danish Law on social housing, there must be a reduction in the proportion of social family housing in 'transformation areas', and where it is a condition for categorisation as a transformation area that more than 50 % of residents in a housing area are 'immigrants and their descendants from non-Western countries' — covers a group of persons defined as 'immigrants and their descendants from non-Western countries'?

2. If the answer to the first question is wholly or partly in the affirmative, must Article 2(2)(a) and (b) be interpreted as meaning that the scheme described in this case constitutes direct or indirect discrimination?

([1]) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

Request for a preliminary ruling from the Tribunale di Bologna (Italy) lodged on 21 July 2023 — Criminal proceedings against OB

(Case C-460/23, Kinshasa ([1]))

(2023/C 338/17)

Language of the case: Italian

Referring court

Tribunale di Bologna

Party to the main proceedings

OB

Questions referred

1. Does the Charter of Fundamental Rights, in particular the principle of proportionality referred to in Article 52(1), read in conjunction with the right to personal liberty and the right to property referred to in Articles 6 and 17, as well as the rights to life and physical integrity referred to in Articles 2 and 3, the right to asylum referred to in Article 18 and respect for family life referred to in Article 7, preclude the provisions of Directive 2002/90/EC ([2]) and Framework Decision 2002/946/JHA ([3]) (implemented in Italian law by the rules laid down in Article 12 of Legislative Decree No 286 ([4])), in so far as they impose on Member States the obligation to provide for penalties of a criminal nature against any person who intentionally facilitates or engages in acts intended to facilitate the unauthorised entry of foreign nationals into the territory of the Union, even where the conduct is carried out on a non-profit-making basis, without providing, at the same time, an obligation on Member States to exclude from criminalisation conduct facilitating unauthorised entry aimed at providing humanitarian assistance to the foreign national?

2. Does the Charter of Fundamental Rights, in particular the principle of proportionality referred to in Article 52(1), read in conjunction with the right to personal liberty and the right to property referred to in Articles 6 and 17, as well as the rights to life and physical integrity referred to in Articles 2 and 3, the right to asylum referred to in Article 18 and respect for family life referred to in Article 7, preclude the criminal offence provisions laid down in Article 12 of Legislative Decree No 286, in so far as it penalises the conduct of a person who engages in acts intended to procure the unauthorised entry of a foreign national into the territory of the State, even where the conduct is carried out on a non-profit-making basis, without at the same time excluding from criminalisation conduct facilitating unauthorised entry aimed at providing humanitarian assistance to the foreign national?

([1]) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.
([2]) Council Directive of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 17).
([3]) Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 1).
([4]) Legislative Decree No. 286 of 25 July 1998 (Consolidated Act of Provisions concerning immigration and the condition of third country nationals)

Action brought on 8 August 2023 — Republic of Poland v European Parliament and Council of the European Union

(Case C-505/23)

(2023/C 338/18)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendant: European Parliament and Council of the European Union

Form of order sought

— The applicant claims that the Court should: annul in its entirety Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system ([1])

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

Pleas in law and main arguments

1. Infringement of Article 192(2)(c) TFEU on account of having adopted the entirety of the directive on an incorrect legal basis (Article 192(1) TFEU)

   In Poland's view, the defendant institutions infringed Article 192(2)(c) TFEU on account of failing to adopt the contested directive on the basis of the abovementioned provision, which requires unanimity within the Council, whereas that directive significantly affects the choice of a Member State between different energy sources and the general structure of its energy supply.

2. Infringement of Article 192(2)(a) TFEU on account of having adopted the ETS laid down in Directive 2023/959 on an incorrect legal basis (Article 192(1) TFEU) where that system entails provisions primarily of a fiscal nature

   In Poland's view, the defendant institutions infringed Article 192(2) TFEU in so far as they adopted the provisions of the directive relating to the ETS for buildings and road transport on the basis of Article 192(1) TFEU, whereas that system contains provisions primarily of a fiscal nature, and its adoption should have been based on Article 192(2)(a) TFEU which requires unanimity in the Council.

3. Infringement of the principle of energy solidarity referred to in Article 194(1)(b) TFEU by extending the subject matter of the amendment of Directive 2003/87 and of its scope despite not taking into consideration the interests of the Member States (including Poland) and the weighing of those interests against the interests of the European Union

   In Poland's view, the defendant institutions infringed Article 194(1)(b) TFEU by adopting Directive 2003/87 without taking into consideration the interests of the Member States (including Poland) and the weighing of those interests against the interests of the European Union.

4. Infringement of the principle of subsidiarity referred to in Article 5(3) TEU by adopting the ETS for buildings and road transport while there already exists in the European Union an equivalent system that allows Member States to achieve the objectives referred to in that directive at regional and local level to a greater degree than guaranteed in Directive 2023/959

In Poland's view, the defendant institutions infringed the principle of subsidiarity since there already exists in the European Union a legal system by means of which it is possible achieve the declared objectives for the ETS for buildings and road transport. Following the adoption of the contested directive, there are now two competing systems, whereby based on the existing system it is possible to achieve the objectives for the ETS for buildings and road transport at local level to a higher degree than at the level of the European Union as a whole.

5. Infringement of the principle of proportionality referred to in Article 5(4) TEU, read in conjunction with Article 191(2) TFEU by establishing the ETS for buildings and road transport, which is not necessary and entails disproportionate costs as compared with the intended objectives

   In Poland's view, the defendant institutions infringed the principle of proportionality in so far as the contested directive goes beyond what is necessary to achieve its objectives and moreover, it entails high costs as compared with the intended objectives.

6. Infringement of the principle of equal treatment (prohibition of discrimination) by precluding the possibility of using free allocation of allowances for the purposes of calculating the emissions generated by the operators of facilities in other sectors in the context of the ETS for buildings and road transport

   In Poland's view, the defendant institutions infringed the principle of equal treatment in so far as, by ruling out the right to use free allocation of allowances for the purposes of calculating emissions in ancillary sectors, the contested directive discriminated against operators of facilities in other sectors compared with operators of facilities in ETS sectors.

7. Infringement of the principle of sincere cooperation referred to in Article 4(3) TEU, in disregarding, during the legislative procedure, the reservations expressed by Poland

   In Poland's view, the defendant institutions infringed the principle of sincere cooperation in so far as they disregarded, during the legislative procedure, the reservations expressed by Poland as regards the social and legal consequences of the adoption of the directive and in so far as they adopted that directive without duly taking into consideration the reservations expressed.

([1]) OJ 2023 L 130, p. 134.

Action brought on 8 August 2023 — Republic of Poland v European Parliament and Council of the European Union

(Case C-512/23)

(2023/C 338/19)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendant: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul in its entirety Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism ([1])

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

Pleas in law and main arguments

Poland invokes against the contested Regulation 2023/956 a plea in law alleging infringement of point (a) of the first subparagraph of Article 192(2) TFEU in so far as that regulation is incorrectly based on Article 192(1) TFEU, whereas the measures it lays down establishing a carbon border adjustment mechanism ('CBAM') are provisions of a primarily fiscal nature.

The contested regulation lays down taxation rules, and in any event fiscal provisions. Both the objective and nature of the provisions introducing the CBAM are above all fiscal. The provisions of the contested regulation establish a new public charge and set out all the conditions for its collection. The fiscal function of the CBAM takes precedence over the environmental function of that measure. In addition, unlike the Emission Trading System (ETS) of the European Union, the CBAM is not a market-based measure and, therefore, the conditions set out in the Court's case-law, which preclude a measure which forms part of the EU ETS from being regarded as a fiscal measure, are not satisfied.

([1]) OJ 2023 L 130, p. 52

Action brought on 10 August 2023 — European Commission v Italian Republic

(Case C-519/23)

(2023/C 338/20)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B.-R. Killman, D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic has failed to fulfil the obligations imposed by Article 45 TFEU, not having reconstructed the former assistants' careers in order to guarantee the economic treatment due to them and the corresponding payment of arrears

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission maintains that the Italian Republic has not correctly applied Article 45 TFEU relating to the career reconstruction of university staff, hired previously by many Italian State universities with the qualification of 'assistant'.

The Commission recalls that the Court has already had the opportunity to rule on the former assistants' situation, at the time hired by six Italian State universities. In the judgment in case C-212/99, ([1]) the Court stated that the principle of equal treatment, of which Article 45 TFEU is an expression, not only prohibits overt discrimination based on nationality, but also any covert form of discrimination that, in fact, leads to the same result, ([2]) and that the legal framework then in force in Italy allowed six Italian universities to put in place discriminatory administrative and contractual practices failing to recognise career reconstruction for former assistants that ensured the same rights as national workers (including increases in salary, seniority and payment of social security contributions from the original recruitment date) . ([3])

In the judgment in case C-119/04, ([4]) the Court examined the evolution of the Italian legal framework leading to decreto-legge 14 gennaio 2004, n. 2 — Disposizioni urgenti relative al trattamento economico dei collaboratori linguistici presso talune università ed in materia di titoli equipollenti ([5]) (Decree-Law of 14 January 2004, No 2 — Urgent provisions relating to the economic treatment of linguistic associates in certain universities and concerning equivalent qualifications). The Court concluded that that legal framework, not incorrect, allowed the universities concerned to reconstruct the career of the former assistants. ([6])

Despite the abovementioned Decree-Law and notwithstanding the annual appropriations of more than EUR 8 million since 2017 to be allocated to the universities that employ or have employed former assistants (funds that were initially subject to the conclusion of supplementary contracts, but at present, are released from that requirement), many former assistants still have not obtained appropriate career reconstruction. Therefore, according to the Commission, a situation of discrimination prohibited by Article 45 TFEU persists for these former assistants.

(1) Judgment of 26 June 2001, *Commission* v *Italy*, C-212/99, EU:C:2001:357.
(2) Judgment of 26 June 2001, *Commission* v *Italy*, C-212/99, EU:C:2001:357, paragraph 24.
(3) Judgment of 26 June 2001, *Commission* v *Italy*, C-212/99, EU:C:2001:357, paragraph 30 et seq.
(4) Judgment of 18 July 2006, *Commission* v *Italy*, C-119/04, EU:C:2006:489.
(5) GURI No 11 of 15 January 2004. The Decree-Law 2/2004 was converted with amendments into the Law of 5 March 2004 No 36 (GURI No 60 of 12 March 2004).
(6) Judgment of 18 July 2006, *Commission* v *Italy*, C-119/04, EU:C:2006:489, paragraphs 38 and 39.

GENERAL COURT

Judgment of the General Court of 26 July 2023 — SMA Mineral v Commission

(Case T-215/21) ([1])

(Environment — Directive 2003/87/EC — System for greenhouse gas emission allowance trading — Transitional free allocation of greenhouse gas emission allowances — Installation using an intermediate product covered by a product benchmark — Rejection of data relating to the free allocation of allowances concerning that installation — Manifest errors of assessment)

(2023/C 338/21)

Language of the case: Swedish

Parties

Applicant: SMA Mineral AB (Filipstad, Sweden) (represented by: E. Larsson, lawyer)

Defendant: European Commission (represented by: G. Wils, B. De Meester and P. Carlin, acting as Agents)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of Article 1(2) of Commission Decision (EU) 2021/355 of 25 February 2021 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2021 L 68, p. 221).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders each party to bear its own costs.

([1]) OJ C 297, 26.7.2021.

Judgment of the General Court of 26 July 2023 — Luossavaara-Kiirunavaara v Commission

(Case T-244/21) ([1])

(Environment — Directive 2003/87/EC — System for greenhouse gas emission allowance trading — Transitional free allocation of greenhouse gas emission allowances — Installations producing a product which is not covered by a product benchmark — No direct substitutability between the products — Rejection of data relating to the free allocation of allowances concerning those installations — Obligation to state reasons — Manifest errors of assessment — Equal treatment — Duty of diligence — International obligations and commitments of the European Union — Plea of illegality)

(2023/C 338/22)

Language of the case: English

Parties

Applicant: Luossavaara-Kiirunavaara AB (Luleå, Sweden) (represented by: A. Bryngelsson, F. Sjövall and A. Johansson, lawyers)

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

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

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of Article 1(3) of Commission Decision (EU) 2021/355 of 25 February 2021 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2021 L 68, p. 221).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Luossavaara-Kiirunavaara AB to bear its own costs and to pay those incurred by the European Commission;

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

([1]) OJ C 289, 19.7.2021.

Judgment of the General Court of 26 July 2023 — Arctic Paper Grycksbo v Commission

(Case T-269/21) ([1])

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — National implementing measures — Transitional free allocation of greenhouse gas emission allowances — Decision to exclude an installation exclusively using biomass — Duty of diligence — Right to be heard — Obligation to state reasons — Manifest error of assessment — Equal treatment — Legitimate expectations — Plea of illegality — Paragraph 1 of Annex I to Directive 2003/87)

(2023/C 338/23)

Language of the case: Swedish

Parties

Applicant: Arctic Paper Grycksbo AB (Grycksbo, Sweden) (represented by: A. Bryngelsson, A. Johansson and F. Sjövall, lawyers)

Defendant: European Commission (represented by: G. Wils, B. De Meester and P. Carlin, acting as Agents)

Interveners in support of the defendant: European Parliament (represented by: C. Ionescu Dima, W. Kuzmienko and P. Biström, acting as Agents), Council of the European Union (represented by: A. Norberg and J. Himmanen, acting as Agents)

Re:

By its action based on Article 263 TFEU, the applicant seeks annulment, in so far as it is concerned, of Article 1(1) of, and Annex I to, Commission Decision (EU) 2021/355 of 25 February 2021 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2021 L 68, p. 221).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders each party to bear its own costs.

(1) OJ C 297, 26.7.2021.

Judgment of the General Court of 26 July 2023 — Schneider v EUIPO — Frutaria Innovation (frutania)

(Case T-109/22) (1)

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

(2023/C 338/24)

Language of the case: English

Parties

Applicant: Markus Schneider (Bonn, Germany) (represented by: M. Bergermann and D. Graetsch, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Frutaria Innovation, SL, formerly Frutaria Comercial de Frutas y Hortalizas, SL (Saragossa, Spain) (represented by: J. Learte Álvarez and C. Anadón Giménez, lawyers)

Re:

By his action under Article 263 TFEU, the applicant seeks the annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 17 December 2021 (Case R 1058/2017-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Markus Schneider to pay the costs.

(1) OJ C 158, 11.4.2022.

Judgment of the General Court of 26 July 2023 — Pšonka v Council

(Case T-243/22) (1)

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

(2023/C 338/25)

Language of the case: Czech

Parties

Applicant: Artem Viktorovyč Pšonka (Kramatorsk, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by: M. Vobořil, R. Pekař and A. Boggio-Tomasaz, acting as Agents)

Re:

By his action under Article 263 TFEU, the applicant seeks annulment of Council Decision (CFSP) 2022/376 of 3 March 2022, amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2022 L 70, p. 7), and Council Implementing Regulation (EU) 2022/375 of 3 March 2022 implementing Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, (OJ 2022 L 70, p. 1), in so far as those measures maintain his name on the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2022/376 of 3 March 2022, amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2022/375 of 3 March 2022 implementing Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Artem Viktorovych Pšonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

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

(1) OJ C 244, 27.6.2022.

Judgment of the General Court of 26 July 2023 — Pšonka v Council

(Case T-244/22) (1)

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

(2023/C 338/26)

Language of the case: Czech

Parties

Applicant: Viktor Pavlovyč Pšonka (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by: R. Pekař and A. Boggio-Tomasaz, acting as Agents)

Re:

By his action under Article 263 TFEU, the applicant seeks annulment of Council Decision (CFSP) 2022/376 of 3 March 2022, amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2022 L 70, p. 7), and Council Implementing Regulation (EU) 2022/375 of 3 March 2022 implementing Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, (OJ 2022 L 70, p. 1), in so far as those measures maintain his name on the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2022/376 of 3 March 2022, amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2022/375 of 3 March 2022 implementing Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Viktor Pavlovyč Pšonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

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

(1) OJ C 244, 27.6.2022.

Judgment of the General Court of 26 July 2023 — Yayla Türk v EUIPO — Marmara Import-Export (Sütat)

(Case T-315/22) (1)

(EU trade mark — Invalidity proceedings — EU word mark Sütat — Absolute ground for invalidity — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Right to be heard)

(2023/C 338/27)

Language of the case: German

Parties

Applicant: Yayla Türk Lebensmittelvertrieb GmbH (Krefeld, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Marmara Import-Export GmbH (Ratingen, Germany) (represented by: T. Moll, lawyer)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment and alteration of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 March 2022 (Case R 1184/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Yayla Türk Lebensmittelvertrieb GmbH to pay the costs.

(1) OJ C 276, 18.7.2022.

Judgment of the General Court of 26 July 2023 — Topas v EUIPO — Tarczyński (VEGE STORY)

(Case T-434/22) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark VEGE STORY — Earlier EU word mark végé' — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2023/C 338/28)

Language of the case: English

Parties

Applicant: Topas GmbH (Mössingen, Germany) (represented by: S. Hofmann and W. Göpfert, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Tarczyński S.A. (Trzebnica, Poland) (represented by: E. Gryc-Zerych, lawyer)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 May 2022 (Case R 1977/2021-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Topas GmbH to bear its own costs and to pay those incurred by Tarczyński S.A.;

3. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs.

([1]) OJ C 326, 29.8.2022.

Judgment of the General Court of 26 July 2023 — Mood Media Netherlands v EUIPO — Tailoradio (RADIO MOOD In-store Radio, made easy)

(Case T-663/22) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark RADIO MOOD In-store Radio, made easy — Earlier EU figurative mark MOOD:MIX — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 338/29)

Language of the case: English

Parties

Applicant: Mood Media Netherlands BV (Naarden, Netherlands) (represented by: A. M. Pecoraro, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Tailoradio Srl (Milan, Italy) (represented by A. Sobol and S. Bernardini, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 23 August 2022 (Case R 1853/2018-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mood Media Netherlands BV to bear its own costs and to pay the costs incurred by Tailoradio Srl in the proceedings before the General Court;

3. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs.

(1) OJ C 7, 9.1.2023.

Judgment of the General Court of 26 July 2023 — Mood Media Netherlands v EUIPO — Tailoradio (VIDEO MOOD Digital Signage, made easy)

(Case T-664/22) (1)

(EU trade mark — Opposition proceedings — Application for the EU figurative mark VIDEO MOOD Digital Signage, made easy — Earlier EU figurative mark MOOD:MIX — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2023/C 338/30)

Language of the case: English

Parties

Applicant: Mood Media Netherlands BV (Naarden, Netherlands) (represented by: A. M. Pecoraro, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Tailoradio Srl (Milan, Italy) (represented by A. Sobol and S. Bernardini, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 23 August 2022 (Case R 1852/2018-5).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mood Media Netherlands BV to bear its own costs and to pay the costs incurred by Tailoradio Srl in the proceedings before the General Court;

3. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs.

(1) OJ C 7, 9.1.2023.

Order of the President of the General Court of 21 July 2023 — Arysta Lifescience v EFSA

(Case T-222/23 R)

(Interim relief — Access to documents — Regulation (EC) No 1049/2001 — Documents related to the procedure for renewing the approval of an active substance — Documents originating from a third party — Decision to grant a third party access to the documents — Application for suspension of operation of a measure — Concept of 'information relating to emissions into the environment' — Regulation (EC) No 1367/2006 — Prima facie case — Urgency — Balancing of competing interests)

(2023/C 338/31)

Language of the case: English

Parties

Applicant: Arysta Lifescience (Noguères, France) (represented by: D. Abrahams, Z. Romata, H. Widemann and R. Spangenberg, lawyers)

Defendant: European Food Safety Authority (EFSA) (represented by: D. Detken, S. Gabbi and C. Pintado, acting as Agents, and by S. Raes, J. Degrooff, and E. Kairis, lawyers)

Re:

By its application on the basis of Articles 278 and 279 TFEU, the applicant seeks the suspension of operation of the decision of the European Food Safety Authority (EFSA) of 17 February 2023 notifying it of the full disclosure of the list of co-formulants present in the formulation for representative uses of Captan 80 WG submitted in the framework of the renewal of the approval of the active substance Captan.

Operative part of the order

1. Operation of the decision of the European Food Safety Authority (EFSA) of 17 February 2023 notifying Arysta Lifescience of the full disclosure of the list of co-formulants present in the formulation for representative uses of Captan 80 WG submitted in the framework of the renewal of the approval of the active substance Captan is suspended.

2. The costs are reserved.

3. The order of 8 May 2023, Arysta Lifescience v EFSA (T-222/23 R) is set aside.

Order of the President of the General Court of 19 July 2023 — Neuraxpharm Pharmaceuticals v Commission

(Case T-226/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/32)

Language of the case: English

Parties

Applicant: Neuraxpharm Pharmaceuticals, SL (Barcelona, Spain) (represented by: K. Roox, T. De Meese, J. Stuyck, M. Van Nieuwenborgh and C. Dumont, lawyers)

Defendant: European Commission (represented by: E. Mathieu and C. Valero, acting as Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, in essence, first, suspension of operation of the decision of the European Commission contained in its letter of 17 March 2023, by which the Commission requires it to comply with the protection period for the reference medicinal product Tecfidera — Dimethyl fumarate as regards the placing on the market of the medicinal product Dimethyl fumarate Neuraxpharm — Dimethyl fumarate ('DMF Neuraxpharm') and to give written undertakings to that effect and any subsequent decision or act extending or replacing the contested measure, in so far as they concern it, and, second, an injunction requiring the Commission to refrain from taking any other measures which would amount to a withdrawal of the marketing authorisation enjoyed by it or a prohibition on placing DMF Neuraxpharm on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Order of the President of the General Court of 19 July 2023 — Mylan Ireland v Commission

(Case T-227/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/33)

Language of the case: English

Parties

Applicant: Mylan Ireland Ltd (Dublin, Ireland) (represented by: K. Roox, T. De Meese, J. Stuyck, M. Van Nieuwenborgh and C. Dumont, lawyers)

Defendant: European Commission (represented by: E. Mathieu and C. Valero, acting as Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, in essence, first, suspension of operation of the decision of the European Commission contained in its letter of 17 March 2023, by which the Commission requires it to comply with the protection period for the reference medicinal product Tecfidera — Dimethyl fumarate as regards the placing on the market of the medicinal product Dimethyl fumarate Mylan — Dimethyl fumarate ('DMF Mylan') and to give written undertakings to that effect and any subsequent decision or act extending or replacing the contested measure, in so far as they concern it, and, second, an injunction requiring the Commission to refrain from taking any other measures which would amount to a withdrawal of the marketing authorisation enjoyed by it or a prohibition on placing DMF Mylan on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Order of the President of the General Court of 19 July 2023 — Zaklady Farmaceutyczne Polpharma v Commission

(Case T-228/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/34)

Language of the case: English

Parties

Applicant: Zaklady Farmaceutyczne Polpharma S.A. (Starogard Gdański, Poland) (represented by: K. Roox, T. De Meese, J. Stuyck, M. Van Nieuwenborgh and C. Dumont, lawyers)

Defendant: European Commission (represented by: E. Mathieu and C. Valero, acting as Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, in essence, first, suspension of operation of the decision of the European Commission contained in its letter of 17 March 2023, by which the Commission requires it to comply with the protection period for the reference medicinal product Tecfidera — Dimethyl fumarate as regards the placing on the market of the medicinal product Dimethyl fumarate Polpharma — Dimethyl fumarate ('DMF Polpharma') and to give written undertakings to that effect and any subsequent decision or act extending or replacing the contested measure, in so far as they concern it, and, second, an injunction requiring the Commission to refrain from taking any other measures which would amount to a withdrawal of the marketing authorisation enjoyed by it or a prohibition on placing DMF Polpharma on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Order of the President of the General Court of 24 July 2023 — Mylan Ireland v Commission

(Case T-256/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/35)

Language of the case: English

Parties

Applicant: Mylan Ireland Ltd (Dublin, Ireland) (represented by: K. Roox, T. De Meese, J. Stuyck and C. Dumont, lawyers)

Defendant: European Commission (represented by: E. Mathieu, L. Haasbeek and A. Spina, acting as Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, in essence, first, suspension of operation of Commission Implementing Decision C(2023) 3067 final of 2 May 2023 amending Commission Implementing Decision C(2014) 601 final of 30 January 2014 granting marketing authorisation ('MA') for the medicinal product for human use Tecfidera — Dimethyl fumarate under Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended, and any subsequent decision or act extending or replacing the contested decision in so far as they concern it, and, second, an injunction requiring the European Commission to refrain from taking any other measures which would amount to a withdrawal of the MA enjoyed by it or a prohibition on placing generic Dimethyl fumarate products on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. There is no longer any need to rule on the application to intervene submitted by Biogen Netherlands BV or on the application for confidential treatment submitted by Mylan Ireland Ltd.

3. The costs relating to the proceedings for interim relief are reserved.

4. Each party shall bear its own costs relating to the application to intervene submitted by Biogen Netherlands.

Order of the President of the General Court of 24 July 2023 — Neuraxpharm Pharmaceuticals v Commission

(Case T-257/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/36)

Language of the case: English

Parties

Applicant: Neuraxpharm Pharmaceuticals, SL (Barcelona, Spain) (represented by: K. Roox, T. De Meese, J. Stuyck and C. Dumont, lawyers)

Defendant: European Commission (represented by: E. Mathieu, L. Haasbeek and A. Spina, acting as Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, in essence, first, suspension of operation of Commission Implementing Decision C(2023) 3067 final of 2 May 2023 amending Commission Implementing Decision C(2014) 601 final of 30 January 2014 granting marketing authorisation ('MA') for the medicinal product for human use Tecfidera — Dimethyl fumarate under Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended, and any subsequent decision or act extending or replacing the contested decision in so far as they concern it, and, second, an injunction requiring the European Commission to refrain from taking any other measures which would amount to a withdrawal of the MA enjoyed by it or a prohibition on placing generic Dimethyl fumarate products on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. There is no longer any need to rule on the application to intervene submitted by Biogen Netherlands BV or on the application for confidential treatment submitted by Neuraxpharm Pharmaceuticals, SL.

3. The costs relating to the proceedings for interim relief are reserved.

4. Each party shall bear its own costs relating to the application to intervene submitted by Biogen Netherlands.

Order of the President of the General Court of 24 July 2023 — Zaklady Farmaceutyczne Polpharma v Commission

(Case T-258/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/37)

Language of the case: English

Parties

Applicant: Zaklady Farmaceutyczne Polpharma S.A. (Starogard Gdański, Poland) (represented by: K. Roox, T. De Meese, J. Stuyck and C. Dumont, lawyers)

Defendant: European Commission (represented by: E. Mathieu, L. Haasbeek and A. Spina, acting as Agents)

Re:

By its application based on Articles 278 and 279 TFEU, the applicant seeks, in essence, first, suspension of operation of Commission Implementing Decision C(2023) 3067 final of 2 May 2023 amending Commission Implementing Decision C(2014) 601 final of 30 January 2014 granting marketing authorisation ('MA') for the medicinal product for human use Tecfidera — Dimethyl fumarate ('Tecfidera') under Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended, and any subsequent decision or act extending or replacing the contested decision in so far as they concern it, and, second, an injunction requiring the European Commission to refrain from taking any other measures which would amount to a withdrawal of the MA enjoyed by it or a prohibition on placing generic Dimethyl fumarate products on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. There is no longer any need to rule on the applications to intervene submitted by Biogen Netherlands BV and Biogaran SAS or on the applications for confidential treatment submitted by Zaklady Farmaceutyczne Polpharma S.A.

3. The costs relating to the proceedings for interim relief are reserved.

4. Each party shall bear its own costs relating to the applications to intervene submitted by Biogen Netherlands and Biogaran.

Order of the President of the General Court of 24 July 2023 — Zentiva and Zentiva Pharma v Commission

(Case T-278/23 R)

(Interim relief — Medicinal products for human use — Marketing authorisation — Application for interim measures — Application for injunction — Lack of urgency)

(2023/C 338/38)

Language of the case: English

Parties

Applicants: Zentiva k.s. (Prague, Czech Republic), Zentiva Pharma GmbH (Frankfurt am Main, Germany) (represented by: K. Roox, T. De Meese and J. Stuyck, lawyers)

Defendant: European Commission (represented by: E. Mathieu, L. Haasbeek and A. Spina, acting as Agents)

Re:

By their application based on Articles 278 and 279 TFEU, the applicants seek, in essence, first, suspension of operation of Commission Implementing Decision C(2023) 3067 final of 2 May 2023 amending Commission Implementing Decision C(2014) 601 final of 30 January 2014 granting marketing authorisation ('MA') for the medicinal product for human use Tecfidera — Dimethyl fumarate under Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended, and any subsequent decision or act extending or replacing the contested decision in so far as they concern them, and, second, an injunction requiring the European Commission to refrain from taking any other measures which would amount to a withdrawal of the MAs enjoyed by them or a prohibition on placing generic Dimethyl fumarate products on the market.

Operative part of the order

1. The application for interim measures is dismissed.

2. There is no longer any need to rule on the application to intervene submitted by Biogen Netherlands BV or on the application for confidential treatment submitted by Zentiva k.s. and Zentiva Pharma GmbH.

3. The costs relating to the proceedings for interim relief are reserved.

4. Each party shall bear its own costs relating to the application to intervene submitted by Biogen Netherlands.

Order of the President of the General Court of 26 July 2023 — OT v Council

(Case T-286/23 R)

(Interim relief — Common foreign and security policy — Restrictive measures taken in respect of Russia's actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine — Freezing of funds — Application for interim measures — No urgency)

(2023/C 338/39)

Language of the case: French

Parties

Applicant: OT (represented by: J.-P. Hordies, C. Sand and P. Blanchetier, lawyers)

Defendant: Council of the European Union (represented by: M.-C. Cadilhac, V. Piessevaux and A. Boggio-Tomasaz, Agents)

Re:

By his application based on Articles 278 and 279 TFEU, the applicant seeks suspension of the operation of Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 1), and of Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 134), in so far as those acts concern him.

Operative part of the order

1. The application for interim relief is dismissed.

2. The costs are reserved.

Action brought on 26 June 2023 — Kargins v Commission

(Case T-350/23)

(2023/C 338/40)

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:

— declare that the defendant is liable for the damage caused to the applicant as a result of the defendant's interference in national judicial proceedings;

— order the defendant to compensate the applicant for such damage;

— determine that the material damage is at least EUR 15 028 841,93 plus 12 % interest per annum payable from 23 June 2016 until payment in full; and

— 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 three pleas in law including a plea of illegality.

1. First plea in law, alleging that the Commission committed a sufficiently serious infringement of a rule of law that is intended to confer rights on individuals.

   — The Commission, it is alleged, intervened in proceedings on a national level without acting in accordance with Article 29(2) of Council Regulation (EU) 2015/1589. ([1]) Article 29(2) of Council Regulation (EU) 2015/1589 was violated for the following reasons: The Commission failed to act on its own initiative. Instead it acted upon request by and following discussions with a party to the proceedings as well as the relevant Member State. The Commission failed to be impartial and maintain an objective and neutral stance. The Commission did not act in order ensure a coherent application of Article 107(1) or Article 108 TFEU. The Commission merely explained to the national courts how an unchanged outcome would result in negative consequences for Latvia and was likely to trigger negative action by the Commission.

— The Commission acted without a proper legal basis because of the illegality of Article 29(2) of Council Regulation (EU) 2015/1589. The applicant claims that Article 29(2) of Council Regulation (EU) 2015/1589 is illegal because it lacks a sufficient legal basis, because it is inconsistent with Article 267 TFEU, because it is inconsistent with Article 108(2), second subparagraph, TFEU and because it lacks sufficient substantive and procedural safeguards. It is in any case illegal if it is interpreted as permitting the type of intervention which occurred in the present case.

— The Commission moreover violated the applicant's right pursuant to Article 47 of the Charter on Fundamental Rights of the European Union.

2. Second plea in law, alleging that the applicant sustained damage in the amount of EUR 15 028 841,93 plus 12 % interest per annum payable from 23 June 2016, this being the amount which the applicant would have received pursuant to the national court orders if it were not for the Commission's intervention.

3. Third plea in law, alleging that there is a causal link between the Commission's improper intervention and the fact that the national courts fundamentally changed their approach following the intervention of the Commission after two instances of the national courts had previously decided in favour of the applicant.

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

Action brought on 7 July 2023 — Raiffeisen Bank International v SRB

(Case T-389/23)

(2023/C 338/41)

Language of the case: German

Parties

Applicant: Raiffeisen Bank International AG (Vienna, Austria) (represented by: G. Wilfling)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the defendant of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23); in the alternative

— annul the decision of the defendant of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23), in so far as it concerns the applicant Raiffeisen Bank International AG; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 70(2) of Regulation (EU) No 806/2014 ([1])

The aggregate contribution calculated annually from individual contributions of the institutions authorised in the territories of all of the participating Member States may not exceed 12,5 % of the target level in any year in the initial period. The defendant has thereby infringed Article 70(2) of Regulation (EU) No 806/2014, by failing to observe that absolute limit in determining the annual target level.

2. Second plea in law, alleging infringement of Article 69(1) of Regulation (EU) No 806/2014

The applicant disputes that the amount of the target level was correctly determined. Even if the view of the defendant were followed and a dynamic policy chosen, the wording of the legislation does not leave room to link the calculation of the contributions for 2023 to 2024 values and accordingly a time period outside the initial period.

3. Third plea in law, alleging infringement of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union ([2]) due to a failure to state adequate reasons for the decision

The requirements for an adequate statement of reasons for an act of individual application in accordance with case-law of the Court of Justice of the European Union ([3]) are not met in the present decision. The individual contributions are calculated pro-rata to the amount of the liabilities less covered deposits of an institution with respect to the aggregate liabilities less covered deposits of all the institutions concerned. The statement of reasons for the decision does not contain detailed information concerning the data of the other institutions.

The details of the calculations concerning the applicant, relied, in essence, on information, which the applicant had reported using the SRB data template. That further included how many classes it gives for each factor and the classes into which they fall. All the information, which was provided by the statement of reasons, was only sufficient to precisely determine the accuracy of the calculation of the applicant's contribution up to a certain point.

4. Fourth plea in law, alleging infringement of Article 47 of the Charter and the principle of legal certainty due to the fact that the decision is not subject to review

On the basis of the information provided in the decision and the annexes thereto, the applicant is not able to determine the accuracy of the calculation of its contribution to the Single Resolution Fund. Considering that the decision refers to a contribution in the (mid) tens of millions for the applicant, that is unequivocally incompatible with principles of the rule of law.

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
([2]) OJ 2012, C 326, p. 391.
([3]) Judgment of 15 July 2021, Commission v Landesbank Baden-Württemberg and SRB, C-584/20 P and C-621/20 P, EU:C:2021:601.

Action brought on 7 August 2023 — ePlus v EUIPO — Telefónica Germany (E-Plus)

(Case T-462/23)

(2023/C 338/42)

Language in which the application was lodged: English

Parties

Applicant: ePlus Inc. (Herndon, Virginia, United States) (represented by: A. Mottet, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Telefónica Germany GmbH & Co. OHG (Munich, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark E-Plus — European Union trade mark No 17 698 846

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 June 2023 in Case R 1463/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and to pay those incurred by the applicant, including those incurred for the purposes of the proceedings before the Cancellation Division and the First Board of Appeal of EUIPO;

— order any intervener to bear its own costs.

Pleas in law

— Insufficient assessment of genuine use and implications for bad faith assessment;

— Misinterpretation of evidence pertaining to cessation of use;

— Disregard for proprietor's discontinuation of use and implication for bad faith assessment.

Action brought on 7 August 2023 — ePlus v EUIPO — Telefónica Germany (E-Plus)

(Case T-463/23)

(2023/C 338/43)

Language in which the application was lodged: English

Parties

Applicant: ePlus Inc. (Herndon, Virginia, United States) (represented by: A. Mottet, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Telefónica Germany GmbH & Co. OHG (Munich, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark E-Plus — European Union trade mark No 17 781 791

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 June 2023 in Case R 951/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and to pay those incurred by the applicant, including those incurred for the purposes of the proceedings before the Cancellation Division and the First Board of Appeal of EUIPO;

— order any intervener to bear its own costs.

Pleas in law

— Insufficient assessment of genuine use and implications for bad faith assessment;

— Misinterpretation of evidence pertaining to cessation of use;

— Disregard for proprietor's discontinuation of use and implication for bad faith assessment.

Action brought on 31 July 2023 — DZ Bank v SRB

(Case T-477/23)

(2023/C 338/44)

Language of the case: German

Parties

Applicant: DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main (Frankfurt am Main, Germany) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the joint decision of 6 April 2023 (RC/JD/2022/22) determining the minimum requirement for own funds and eligible liabilities;

— order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

— declare that the contested decision is legally non-existent;

— order the SRB to pay the costs.

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 joint decision infringes Article 81(1) of Regulation (EU) No 806/2014 ([1]) in conjunction with Article 3 of Regulation No 1, ([2]) since it is not worded in German, which is the official language chosen by the applicant.

2. Second plea in law, alleging that the joint decision infringes Article 12d(8) of Regulation (EU) No 806/2014 and the second paragraph of Article 296 TFEU, since it does not contain a comprehensive and sufficiently detailed and specific statement of reasons.

3. Third plea in law, alleging that the joint decision infringes the fourth subparagraph of Article 12d(3) in conjunction with Article 27(7)(a) of Regulation (EU) No 806/2014, since it determines the minimum requirements for own funds and eligible liabilities as including liabilities from pass-through promotional loans.

4. Fourth plea in law, alleging that the joint decision infringes Article 12c(4) of Regulation (EU) No 806/2014, since it determines and provides the minimum requirements for own funds and eligible liabilities as including liabilities financed through pass-through promotional loans, the minimum requirements for own funds and eligible liabilities, at least in so far as they are excessive on account of the incorrect inclusion of liabilities from pass-through promotional loans, must be met by subordinated instruments.

5. Fifth plea in law, alleging, in the alternative, that the fourth subparagraph of Article 12d(3) in conjunction with Article 27(7)(a) of Regulation (EU) No 806/2014 and Article 12c(4) of Regulation (EU) No 806/2014 infringe higher-ranking law (Articles 16, 17, 20 and 52 of the European Charter of Fundamental Rights), ([3]) at least in so far as they authorise the inclusion of liabilities from pass-through promotional loans in total liabilities including own funds in the determination of the minimum requirements for own funds and eligible liabilities.

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
([2]) Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59).
([3]) OJ 2012 C 326, p. 391.

Action brought on 9 August 2023 — Plahotniuc v Council

(Case T-480/23)

(2023/C 338/45)

Language of the case: English

Parties

Applicant: Vladimir Gheorghe Plahotniuc (Chisinau, Moldova) (represented by: J. Pobjoy, Barrister-at-Law)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul, pursuant to Article 263 TFEU, Council Decision (CFSP) 2023/1047 of 30 May 2023 amending Decision (CFSP) 2023/891 concerning restrictive measures in view of actions destabilising the Republic of Moldova ([1]) insofar as it applies to the applicant; and Council Implementing Regulation (EU) 2023/1045 of 30 May 2023 implementing Regulation (EU) 2023/888 concerning restrictive measures in view of actions destabilising the Republic of Moldova, ([2]) insofar as it applies to the applicant;

— order that the defendant pays the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest errors of assessment in considering that there was a sufficiently solid factual basis for determining that the criteria for listing the applicant in Article 1 of the contested Decision and Article 2 of the contested Regulation were satisfied.

2. Second plea in law, alleging the violation of the applicant's rights under Article 6, read with Article 2 and 3 of the Treaty on European Union, and Articles 47 and 48 of the Charter of Fundamental Rights of the EU.

([1]) Council Decision (CFSP) 2023/1047 of 30 May 2023 amending Decision (CFSP) 2023/891 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L140I, p. 9).
([2]) Council Implementing Regulation (EU) 2023/1045 of 30 May 2023 implementing Regulation (EU) 2023/888 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 140I, p. 1).

Action brought on 8 August 2023 — Banco Credibom v SRB

(Case T-481/23)

(2023/C 338/46)

Language of the case: English

Parties

Applicant: Banco Credibom, SA (Porto Salvo, Portugal) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the Decision of the SRB of 2 May 2023, document no. SRB/ES/2023/23, including Annexes I, II and III, as far as it concerns the *ex-ante* contribution of the applicant;

— order the SRB to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the SRB has infringed Article 70(2) of Regulation (EU) No 806/2014 ([1]) by not applying the binding 12,5 % cap to the target level when determining the annual target level.

2. Second plea in law, alleging that the Commission Delegated Regulation (EU) 2015/63 ([2]) is in breach of the delegated powers conferred on the Commission by Article 103(7) of the Directive 2014/59/EU ([3]), the principle of equal treatment and the principle of risk-based contributions, respectively the principle of proportionality, in that it does not allow the SRB to exclude the applicant's additional liabilities arising from a securitisation transaction carried out in 2021.

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

([2]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

([3]) 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 Text with EEA relevance (OJ 2014 L 173, p. 190).

Action brought on 28 July 2023 — Deutsche Kreditbank v SRB

(Case T-483/23)

(2023/C 338/47)

Language of the case: German

Parties

Applicant: Deutsche Kreditbank AG (Berlin, Germany) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23) together with annexes, at least in so far as the contested decision together with Annexes I, II and III concern the applicant's contribution,

— order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

— declare that the contested decision is legally non-existent;

— order the SRB to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the decision infringes Article 81(1) of Regulation (EU) No 806/2014 ([1]) in conjunction with Article 3 of Regulation No 1, ([2]) since it is not worded in German, which is the official language chosen by the applicant.

2. Second plea in law, alleging that the decision infringes the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and Articles 41(1) and 41(2)(c) of the Charter of Fundamental Rights of the European Union ([3]) and the fundamental right to effective judicial protection under the first paragraph of Article 47 of the Charter, because it contains instances of failure to state reasons and a judicial review of the decision is practically impossible.

3. Third plea in law, alleging that the decision infringes Articles 69 and 70 of Regulation (EU) No 806/2014 and Articles 16, 17, 41 and 53 of the Charter, because the defendant erroneously determined the annual target level; in the alternative, Articles 69 and 70 of Regulation (EU) No 806/2014 infringe higher-ranking law.

4. Fourth plea in law, alleging that Article 6 and Step 2 of Annex I to Delegated Regulation (EU) 2015/63 ([4]) infringe higher-ranking law because they fail to observe the principles of the *Meroni* ([5]) case-law, in that the Commission exceeded the areas of competence conferred on it and that they infringe the requirement to assess contributions in a risk-appropriate manner, the principle of proportionality and the requirement to take full account of the facts.

5. Fifth plea in law, alleging in the alternative that the decision infringes Articles 16, 20 and 52 of the Charter and the principle of proportionality, because it is based on clear errors of assessment concerning the determination of the risk indicators in Risk Pillar IV.

6. Sixth plea in law, alleging that the decision infringes Articles 16, 20, 41 and 52 of the Charter and the principle of proportionality and the right to good administration, because the risk adjustment was erroneous.

7. Seventh plea in law, alleging that the first and second sentences of Article 20(1) of Delegated Regulation (EU) 2015/63 infringe higher-ranking law, because the regulation provides for the non-application of one or more risk indicators for an indefinite period where the information required therefor is not subject to a supervisory reporting requirement.

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

([2]) Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59).

([3]) OJ 2012, C 326, p. 391.

([4]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

([5]) Judgment of 13 June 1958, *Meroni* v *High Authority*, 10/56, EU:C:1958:8.

Action brought on 28 July 2023 — DZ Bank v SRB

(Case T-484/23)

(2023/C 338/48)

Language of the case: German

Parties

Applicant: DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main (Frankfurt am Main, Germany) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23) together with annexes, at least in so far as the contested decision together with Annexes I, II and III concern the applicant's contribution,

— order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

— declare that the contested decision is legally non-existent;

— order the SRB to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on relies on nine pleas in law which are identical to those relied on in Case T-440/23, *Berlin Hyp* v *SRB*.

Action brought on 28 July 2023 — Deutsche Bank v SRB

(Case T-485/23)

(2023/C 338/49)

Language of the case: German

Parties

Applicant: Deutsche Bank AG (Frankfurt am Main, Germany) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23) together with annexes, at least in so far as the contested decision together with Annexes I, II and III concern the applicant's contribution;

— order the SRB to pay the costs.

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 decision infringes the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and Articles 41(1) and 41(2)(c) of the Charter of Fundamental Rights of the European Union ([1]) and the fundamental right to effective judicial protection under the first paragraph of Article 47 of the Charter, because it contains instances of failure to state reasons and a judicial review of the decision is practically impossible.

2. Second plea in law, alleging that the decision infringes Articles 69 and 70 of Regulation (EU) No 806/2014 ([2]) and Articles 16, 17, 41 and 53 of the Charter, because the defendant erroneously determined the annual target level; in the alternative, Articles 69 and 70 of Regulation (EU) No 806/2014 infringe higher-ranking law.

3. Third plea in law, alleging that Article 6 and Step 2 of Annex I to Delegated Regulation (EU) 2015/63 ([3]) infringe higher-ranking law because they fail to observe the principles of the *Meroni* ([4]) case-law, in that the Commission exceeded the areas of competence conferred on it and that they infringe the requirement to assess contributions in a risk-appropriate manner, the principle of proportionality and the requirement to take full account of the facts.

4. Fourth plea in law, alleging in the alternative that the decision infringes Articles 16, 20 and 52 of the Charter and the principle of proportionality, because it is based on clear errors of assessment concerning the determination of the risk indicators in Risk Pillar IV.

5. Fifth plea in law, alleging that the decision infringes Articles 16, 20, 41 and 52 of the Charter and the principle of proportionality and the right to good administration, because the risk adjustment was erroneous.

6. Sixth plea in law, alleging that the first and second sentences of Article 20(1) of Delegated Regulation (EU) 2015/63 infringe higher-ranking law, because the regulation provides for the non-application of one or more risk indicators for an indefinite period where the information required therefor is not subject to a supervisory reporting requirement.

([1]) OJ 2012, C 326, p. 391.
([2]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
([3]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).
([4]) Judgment of 13 June 1958, *Meroni* v *High Authority*, 10/56, EU:C:1958:8.

Action brought on 31 July 2023 — Bayerische Landesbank v SRB

(Case T-486/23)

(2023/C 338/50)

Language of the case: German

Parties

Applicant: Bayerische Landesbank (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23) together with annexes, at least in so far as the contested decision together with Annexes I, II and III concern the applicant's contribution,

— order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

— declare that the contested decision is legally non-existent;

— order the SRB to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on nine pleas in law which are identical to those relied on in Case T-440/23, *Berlin Hyp* v *SRB*.

Action brought on 31 July 2023 — Landesbank Hessen-Thüringen Girozentrale v SRB

(Case T-487/23)

(2023/C 338/51)

Language of the case: German

Parties

Applicant: Landesbank Hessen-Thüringen Girozentrale (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23) together with annexes, at least in so far as the contested decision together with Annexes I, II and III concern the applicant's contribution,

— order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

— declare that the contested decision is legally non-existent;

— order the SRB to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on nine pleas in law which are identical to those relied on in Case T-440/23, *Berlin Hyp* v *SRB*.

Action brought on 31 July 2023 — BHW Bausparkasse v SRB

(Case T-488/23)

(2023/C 338/52)

Language of the case: German

Parties

Applicant: BHW Bausparkasse (Hameln, Germany) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund (SRB/ES/2023/23) together with annexes, at least in so far as the contested decision together with Annexes I, II and III concern the applicant's contribution,

— order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

— declare that the contested decision is legally non-existent;

— order the SRB to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are identical to those relied on in Case T-483/23, *Deutsche Kreditbank* v *SRB*.

Action brought on 12 August 2023 — Fidia farmaceutici v EUIPO — Vorwarts Pharma (HYALERA)

(Case T-497/23)

(2023/C 338/53)

Language in which the application was lodged: English

Parties

Applicant: Fidia farmaceutici SpA (Abano Terme, Italy) (represented by: R. Kunz-Hallstein, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vorwarts Pharma sp. z o.o. (Białystok, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark HYALERA — Application for registration No 18 195 287

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 17 May 2023 in Case R 230/2023-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs; in the alternative, should the other party to the proceedings before the Board of Appeal intervene, order EUIPO and the intervener jointly and severally to pay the costs.

Pleas in law

— Violation of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and of the principle of coexistence of national and Union trade marks as regards the characterisation of the earlier registered trade mark as descriptive, indistinctive and incapable to give rise to confusion;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and of the principle of coexistence of national and Union trade marks as regards the decisions and evidence relied upon and the line of argument used;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council as regards the absence of a likelihood of confusion.

Action brought on 14 August 2023 — Enterprise Holdings v EUIPO — Qommute (COMMUTE WITH ENTERPRISE)

(Case T-499/23)

(2023/C 338/54)

Language in which the application was lodged: English

Parties

Applicant: Enterprise Holdings, Inc. (Saint Louis, Missouri, United States) (represented by: M. Forde, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Qommute SARL (Marseille, 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 trade mark COMMUTE WITH ENTERPRISE — Application for registration No 17 925 816

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 June 2023 in Case R 1015/2022-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, alter the contested decision in the sense that the opposition is remitted to the Opposition Division;

— order the defendant to pay the applicant's costs in the present proceedings and before the Board of Appeal of EUIPO; in the alternative, should the other party before the Board of Appeal of EUIPO intervene, order the defendant and intervener jointly and severally to pay the applicant's costs in the present proceedings and before the Board of Appeal of EUIPO.

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 14 August 2023 — Enterprise Holdings v EUIPO — Qommute (COMMUTE WITH ENTERPRISE)

(Case T-500/23)

(2023/C 338/55)

Language in which the application was lodged: English

Parties

Applicant: Enterprise Holdings, Inc. (Saint Louis, Missouri, United States) (represented by: M. Forde, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Qommute SARL (Marseille, 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 trade mark COMMUTE WITH ENTERPRISE — Application for registration No 17 947 155

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 June 2023 in Case R 989/2022-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, alter the contested decision in the sense that the opposition is remitted to the Opposition Division;

— order the defendant to pay the applicant's costs in the present proceedings and before the Board of Appeal of EUIPO; in the alternative, should the other party before the Board of Appeal of EUIPO intervene, order the defendant and intervener jointly and severally to pay the applicant's costs in the present proceedings and before the Board of Appeal of EUIPO.

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 15 August 2023 — Listan v EUIPO (Silent Loop)

(Case T-501/23)

(2023/C 338/56)

Language of the case: German

Parties

Applicant: Listan GmbH (Glinde, Germany) (represented by: S. Pietzcker and C. Spintig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the word mark 'Silent Loop'– Application No 1 624 519

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 June 2023 in Case R 187/2023-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including those of the applicant.

Pleas in law

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

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

Action brought on 15 August 2023 — HX v Council

(Case T-502/23)

(2023/C 338/57)

Language of the case: Bulgarian

Parties

Applicant: HX (represented by: St. Koev, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the action admissible and well founded in its entirety and find that all the pleas in law set out therein are well founded;

— hold that the contested acts may be annulled in part;

— annul Council Decision (CFSP) 2023/1035 of 25 May 2023 amending Decision 2013/255/CFSP concerning restrictive measures in view of the situation in Syria, ([1]) in so far as it concerns the applicant;

— annul Council Implementing Regulation (EU) 2023/1027 of 25 May 2023 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, ([2]) in so far as it concerns the applicant, and

— order the Council of the European Union to pay all of the applicant's costs, expenses, fees and other expenditure linked to his defence.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest infringement of the rights of the defence and the right to a fair trial.

2. Second plea in law, alleging failure to state reasons on the part of the Council.

3. Third plea in law, alleging infringement of the right to effective judicial protection.

4. Fourth plea in law, alleging an error of assessment on the part of the Council.

5. Fifth plea in law, alleging infringement of the right to property, of the principle of proportionality and of the freedom to conduct a business.

6. Sixth plea in law, alleging infringement of the right to a normal life.

7. Seventh plea in law, alleging a serious infringement of the right to the protection of reputation.

(1) OJ 2023 L 139, p. 49.
(2) OJ 2023 L 139, p. 1.

Action brought on 16 August 2023 — Freistaat Bayern v EUIPO — BSGE (Neuschwanstein)

(Case T-506/23)

(2023/C 338/58)

Language in which the application was lodged: German

Parties

Applicant: Freistaat Bayern (represented by: M. Müller, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: BSGE Bundesverband Souvenir Geschenke Ehrenpreise eV (Veitsbronn, Germany)

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 'Neuschwanstein' — EU trade mark No 15 687 353

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 May 2023 in Case R 1013/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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