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COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2016/C 165/01)

Last publication

OJ C 156, 2.5.2016

Past publications

OJ C 145, 25.4.2016

OJ C 136, 18.4.2016

OJ C 118, 4.4.2016

OJ C 111, 29.3.2016

OJ C 106, 21.3.2016

OJ C 98, 14.3.2016

These texts are available on:

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

GENERAL COURT

Taking of the oath by new Members of the General Court

(2016/C 165/02)

Following their appointment as Judges at the General Court for the period from 3 April 2016 to 31 August 2016 by decision of the Representatives of the Governments of the Member States of the European Union of 23 March 2016 ([1]), Mr Csehi, Mr Iliopoulos, Ms Marcoulli, Ms Półtorak and Mr Spielmann took the oath before the Court of Justice on 13 April 2016.

Following their appointment as Judges at the General Court for the period from 3 April 2016 to 31 August 2019 by the same decision, Mr Calvo-Sotelo Ibáñez-Martín and Mr Valančius took the oath before the Court of Justice on 13 April 2016.

([1]) OJ L 87, 2.4.2016, p. 31.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Taking of the oath by new Members of the Civil Service Tribunal

(2016/C 165/03)

Following their appointment as Judges at the Civil Service Tribunal for the period from 1 April 2016 by decision of the Council of 22 March 2016 ([1]), Mr Sant'Anna and Mr Kornezov took the oath before the Court of Justice on 13 April 2016.

([1]) OJ L 79, 30.3.2016, p. 30.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 7 September 2015 by Grupo Bimbo, S.A.B de C.V., against the judgment of the General Court (Third Chamber) delivered on 29 June 2015 in Case T-618/14 *Grupo Bimbo* v *OHIM*

(Case C-476/15 P)

(2016/C 165/04)

Language of the case: Spanish

Parties

Appellant: Grupo Bimbo, S.A.B. de C.V. (represented by: N. Fernández Fernández-Pacheco, abogado)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

By order of 15 March 2016, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Grupo Bimbo S.A.B. de C.V., to bear its own costs.

Request for a preliminary ruling from the Judecătoria Câmpulung (Romania) lodged on 23 November 2015 — Dumitru Gavrilescu, Liana Gavrilescu v SC Volksbank România SA, SC Volksbank România SA — sucursala Câmpulung

(Case C-627/15)

(2016/C 165/05)

Language of the case: Romanian

Referring court

Judecătoria Câmpulung

Parties to the main proceedings

Applicant: Dumitru Gavrilescu, Liana Gavrilescu

Defendants: SC Volksbank România SA, SC Volksbank România SA — sucursala Câmpulung

Questions referred

1. Must Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) be interpreted as meaning that the expressions 'main subject matter of the contract' and 'the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other' cover a term in a credit agreement denominated in a foreign currency concluded between a seller or a supplier and a consumer, which was not the subject of individual negotiation, and which provides, in respect of the loan repayment instalments, that the debtor alone must bear the 'currency risk', that is to say the potential negative effect of an increase in the monthly repayment instalments caused by fluctuations in the exchange rates of the currency, which the consumer must bear as a consequence of concluding the loan agreement and the requirement to repay the amounts disbursed under the agreement in a currency other than the national currency of Romania?

2. For the purposes of Article 4(2) of Directive 93/13, does the consumer's obligation to bear the cost, when repaying the loan, of the difference arising from an increase in the exchange rate of the currency in which the loan was granted (CHF) represent remuneration whose adequacy as against the service supplied may not be examined for the purpose of assessing whether it is unfair?

3. If the reply to the above question is that such a term escapes the assessment of unfairness, may that term be regarded as satisfying the requirements of good faith, balance and transparency laid down by the directive in question, by enabling the consumer to be able to foresee, on the basis of clear and intelligible criteria, the consequences for him of such a term?

4. Does a contractual term such as that referred to in [point] 4.2 of the General conditions of the contract, to the effect that the bank is given the right to convert a loan granted in CHF into national currency in the event of a rise in the exchange rate of more than 10 % in relation to the value at the time when the contract was concluded, in order to prevent the bank continuing to increase its exposure to the currency risk, without a similar right being given to the consumer, fall within the scope of protection of Directive 93/13 or does it escape the assessment of unfairness?

([1]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Amtsgericht Dresden (Germany) lodged on 19 January 2016 — Ute Wunderlich v Bulgarian Air Charter Limited

(Case C-32/16)

(2016/C 165/06)

Language of the case: German

Referring court

Amtsgericht Dresden

Parties to the main proceedings

Applicant: Ute Wunderlich

Defendant: Bulgarian Air Charter Limited

Question referred

Is there a flight cancellation within the meaning of Article 2(l) of Regulation No 261/2004 ([1]) in the case where a scheduled flight departed on time and arrived at its scheduled destination with a delay of not more 3 hours but with an unscheduled stopover?

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

Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 10 February 2016 — Peter Puškár v Finančné riaditeľstvo Slovenskej republiky, Kriminálny úrad finančnej správy

(Case C-73/16)

(2016/C 165/07)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Peter Puškár

Defendant bodies: Finančné riaditeľstvo Slovenskej republiky, Kriminálny úrad finančnej správy

Questions referred

1. Does Article 47(1) of the Charter of Fundamental Rights of the European Union, under which everyone whose rights, in particular their right to privacy with respect to the processing of personal data laid down in Article 1(1) et seq. of Directive 95/46/EC ([1]) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ['Directive 95/46/EC'], are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in Article 47 of that Charter, preclude a provision of national law which renders the exercise of an effective remedy before a tribunal, that is the submission of an application in administrative proceedings, conditional on the fact that the applicant, to protect his rights and freedoms, must have exhausted beforehand the procedures available to him under specific legislation, such as the Slovak Law on Administrative Complaints?

2. Is it possible to interpret the right to respect for private and family life, home and communications, laid down in Article 7 of the Charter of Fundamental Rights of the European Union, and the right to the protection of personal data laid down in Article 8 thereof to the effect that, where there is an alleged infringement of the right to the protection of personal data, which, with respect to the European Union, is implemented primarily through Directive 95/46/EC, and entails, in particular:

   — the obligation on Member States to protect the right to privacy of persons with respect to the processing of their personal data (Article [1](1)) and,

— the authorisation conferred on Member States to process personal data where the processing is necessary for the performance of a task carried out in the public interest (Article 7, point (e)) or the processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed,

— and having regard to the authorisation [to restrict that right], by way of an exception, conferred on a Member State (Article 13(1)(e) and (f)), when such a restriction constitutes necessary measures to safeguard an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters,

those rights do not allow a Member State to create, without the consent of the person concerned, a register of personal data for the purposes of tax administration, so that the fact that personal data is rendered at the disposal of a public authority for the purposes of countering tax fraud in itself constitutes a risk?

3. Can a register held by a financial body of a Member State, which contains the applicant's personal data and whose inaccessibility has been provided for by appropriate technical and organisational measures for the protection of personal data against unauthorised disclosure or access within the meaning of Article 17(1) of Directive 95/46/EC, be designated, by virtue of the fact that it was obtained by the applicant without the lawful agreement of the relevant financial body, as unlawful evidence, which the referring court must refuse to admit in accordance with the requirements of EU law on a fair trial laid down in the second paragraph of Article 47 of the Charter of Fundamental Rights?

4. Is the abovementioned right to an effective remedy and to a fair trial (in particular under Article 47 of the Charter of Fundamental Rights of the European Union) infringed by an approach taken by the referring court whereby, where there is case-law from the European Court of Human Rights cited in the case before it which differs from the answer obtained from the Court of Justice of the European Union, the referring court, in accordance with the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union, gives precedence to the Court of Justice's legal opinion?

([1]) OJ 1995 L 281, p. 31.

Request for a preliminary ruling from the Tribunal de grande instance de Lyon (France) lodged on 19 February 2016 — Jean-Philippe Lahorgue v Ordre des avocats du barreau de Lyon, Conseil national des barreaux 'CNB', Conseil des barreaux européens 'CCBE', Ordre des avocats du barreau de Luxembourg

(Case C-99/16)

(2016/C 165/08)

Language of the case: French

Referring court

Tribunal de grande instance de Lyon

Parties to the main proceedings

Applicant: Jean-Philippe Lahorgue

Defendants: Ordre des avocats du barreau de Lyon, Conseil national des barreaux 'CNB', Conseil des barreaux européens 'CCBE', Ordre des avocats du barreau de Luxembourg

Question referred

Is the refusal to issue a secure router for accessing the Private Virtual Network for Lawyers (RPVA) to a lawyer duly registered at the Bar of a Member State in which he wishes to practise his profession as a free provider of services contrary to Article 4 of Directive 77/249/EC, ([1]) on the basis that it constitutes a discriminatory measure which could impede the practice of his profession as a free provider of services?

([1]) Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17).

Request for a preliminary ruling from the Raad van State (Belgium) lodged on 19 February 2016 — Vaditrans BVBA v Belgische Staat

(Case C-102/16)

(2016/C 165/09)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Vaditrans BVBA

Defendant: Belgische Staat

Questions referred

1. Must Article 8(6) and (8) of Regulation (EC) No 561/2006 ([1]) of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 be interpreted as meaning that the regular weekly rest periods referred to in Article 8(6) of the same regulation may not be spent inside the vehicle?

2. If the answer to the first question is in the affirmative, does Article 8(6) and (8) of Regulation No 561/2006, read in conjunction with Article 19 of the same regulation, then breach the principle of legality in criminal proceedings as expressed in Article 49 of the Charter of Fundamental Rights of the European Union ([2]) in so far as the abovementioned provisions of Regulation No 561/2006 do not expressly provide for the prohibition on spending the regular weekly rest periods referred to in Article 8(6) of the same regulation inside the vehicle?

3. If the answer to the first question is in the negative, does Regulation No 561/2006 then permit Member States to lay down a prohibition in their national law on spending the regular weekly rest periods referred to in Article 8(6) of the same regulation inside a vehicle?

([1]) OJ 2006 L 102, p. 1
([2]) OJ 2000 C 364, p. 1

Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña — Sala Social (Spain) lodged on 19 February 2016 — Jessica Porras Guisado v Bankia, S.A. and Others

(Case C-103/16)

(2016/C 165/10)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña — Sala Social

Parties to the main proceedings

Claimant and appellant: Jessica Porras Guisado

Defendants and respondents: Bankia, S.A., Sección Sindical de Bankia de CCOO, Sección Sindical de Bankia de UGT, Sección Sindical de Bankia de ACCAM, Sección Sindical de Bankia de SATE, Sección Sindical de Bankia de CSICA, Fondo de Garantía Salarial (Fogasa)

Questions referred

1. On a proper construction of Article 10(1) of Directive 92/85, ([1]) does the notion of 'exceptional cases not connected with their condition which are permitted under national legislation and/or practice', constituting an exception to the prohibition of dismissing pregnant workers and workers who have recently given birth or are breastfeeding, correspond to the notion of 'one or more reasons not related to the individual workers concerned' referred to in Article 1(1)(a) of Directive 98/59/EEC ([2]) of 20 July 1998, or is it more restricted?

2. In the event of collective redundancy, in order to decide whether exceptional cases exist that justify the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding, in accordance with Article 10(1) of Directive 92/85, is there a requirement that the worker affected cannot be reassigned to another work post or is it sufficient that proof should be given of economic, technical and productive reasons that affect her work post?

3. Is legislation, such as the Spanish legislation, that transposes that prohibition by providing a guarantee by virtue of which, failing any proof of reasons justifying her dismissal, the dismissal is declared void (reparative protection), but does lay down a prohibition of dismissal (preventive protection), compatible with Article 10(1) of Directive 92/85/EEC of 19 October 1992?

4. Is legislation, such as the Spanish legislation, which does not provide for priority for retention in the undertaking in the event of collective redundancy for pregnant workers and workers who have recently given birth or are breastfeeding, compatible with Article 10(1) of Directive 92/85/EEC of 19 October 1992?

5. For the purposes of Article 10(2) of Directive 92/85, is national legislation compatible with this provision if it treats as sufficient a letter of dismissal like that in these proceedings, whereby a worker who is pregnant is dismissed by virtue of the decision to effect a collective termination of contracts, even though that letter makes no reference whatsoever to the existence of any exceptional grounds over and above those which prompted the collective redundancy?

([1]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

([2]) Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

Request for a preliminary ruling from the Tribunale di Pordenone (Italy) lodged on 22 February 2016 — Criminal proceedings against Giorgio Fidenato

(Case C-107/16)

(2016/C 165/11)

Language of the case: Italian

Referring court:

Tribunale di Pordenone

Criminal proceedings against:

Giorgio Fidenato

Questions referred for a preliminary ruling

1. When requested to do so by a Member State, is the Commission required, for the purposes of Article 54(1) of Regulation No 178/2002, ([1]) to adopt emergency measures even if the Commission does not consider there to be a serious and evident risk to human and animal health or to the environment?

2. If the Commission has notified the Member State that the conditions for the adoption of emergency measures do not exist, may the Member State take measures pursuant to Article 53 of Regulation No 178/2002?

3. May the Member State, on the basis of the precautionary principle, adopt emergency measures pursuant to Article 34 of Regulation No 1829/2003 ([2]) even where the conditions of serious and evident risk are not present, and may it maintain such measures in force when the Commission, after examining the opinion of EFSA, notifies it that the conditions necessary for the adoption of emergency measures are not met?

([1]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p 1).

([2]) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p 1).

Request for a preliminary ruling from the Rechtbank Midden-Nederland (Netherlands) lodged on 26 February 2016 — Federatie Nederlandse Vakvereniging and Others v Smallsteps BV

(Case C-126/16)

(2016/C 165/12)

Language of the case: Dutch

Referring court

Rechtbank Midden-Nederland

Parties to the main proceedings

Applicants: Federatie Nederlandse Vakvereniging, Karin van den Burg-Vergeer, Lyoba Tanja Alida Kukupessy, Danielle Paase-Teeuwen, Astrid Johanna Geertruda Petronelle Schenk

Defendant: Smallsteps BV

Questions referred

1. Is Netherlands insolvency procedure, in the event of the transfer of the insolvent undertaking in the case where insolvency is preceded by a judicially-monitored pre-pack procedure, which is expressly aimed at securing the survival of (parts of) the undertaking, compatible with the objective and purport of Directive 2001/23/EC, ([1]) and is Article 7:666 (1)(a) of the Burgerlijk Wetboek (Civil Code), in that light, (still) in conformity with the Directive?

2. Is Directive 2001/23/EC applicable in the case where a so-called 'prospective insolvency administrator' ('beoogd curator') appointed by the Rechtbank acquaints himself, prior to commencement of the insolvency procedure, with the situation of the debtor and investigates the possibilities for a restructuring of the activities of the undertaking by a third party and also prepares for acts which must be carried out shortly after the insolvency in order to enable the restructuring to take place by means of an asset transaction through which the undertaking of the debtor, or part thereof, will be transferred at the date of the insolvency or shortly thereafter, and those activities, in their totality or in part, are continued (virtually) without interruption?

3. Does it make any difference in this regard whether the continuation of the undertaking is the primary objective of the pre-pack, or whether the (prospective) insolvency administrator's primary objective with the pre-pack and the sale of the assets in the form of a 'going concern' immediately after the insolvency is to maximise the proceeds for all of the creditors, or that, in the context of the pre-pack, consensus on the transfer of assets (continuation of the undertaking) is achieved before the insolvency and its implementation is formalised and/or effected after the insolvency? And how should the matter be viewed if it is sought to secure both the continuation of the undertaking and the maximisation of proceeds?

4. Is the date of the transfer of the undertaking for purposes of the applicability of Directive 2001/23/EC and of Article 7:662 et seq. of the Civil Code arising from it, in the context of a pre-pack preceding the insolvency of the undertaking, determined by the actual consensus on the transfer of the undertaking achieved prior to the insolvency, or is that date determined by the point in time at which responsibility as employer for carrying on the business of the unit in question shifts from the transferor to the transferee?

([1]) Council Directive of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 7 March 2016 — Sociedade Metropolitana de Desenvolvimento SA v Banco Santander Totta SA

(Case C-136/16)

(2016/C 165/13)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Appellant: Sociedade Metropolitana de Desenvolvimento SA

Respondent: Banco Santander Totta SA

Questions referred

1. In a dispute between two national undertakings of a Member State concerning agreements, does the fact that such agreements contain clauses conferring jurisdiction to another Member State constitute a sufficient international element to give rise to the application of Regulation (EC) No 44/2001 ([1]) and Regulation No 1215/2012 ([2]) to determine international jurisdiction, or must there be other international elements?

2. May application of the jurisdiction agreement be waived where the choice of the courts of a Member State other than that of the nationality of the parties causes serious inconvenience for one of those parties and the other party has no good reason to justify such choice?

In the event that it is held that other international elements are necessary in addition to the jurisdiction agreement:

3. Do the swap agreements concluded between [Sociedade Metropolitana de Desenvolvimento, S.A.] ('SMD') and Banco Santander Totta have sufficient international elements to give rise to the application of Regulation (EC) No 44/2001 and Regulation (EU) No 1215/2012 in order to determine which courts have international jurisdiction to settle disputes relating to them where:

(a) Those entities are nationals of a Member State, Portugal, that concluded two swap agreements in Portugal consisting of an ISDA Master Agreement and two confirmations, negotiated by the Autonomous Region of Madeira on behalf of SMD;

(b) In that negotiation, the Autonomous Region of Madeira, assisted by Banco BPI, S.A., and by a law firm, invited more than one international bank to submit proposals, one of those invited banks being JP Morgan;

(c) Banco Santander Totta is wholly owned by Banco Santander, with domicile in Spain;

(d) Banco Santander Totta acted in its capacity as an international bank with subsidiaries in various Member States and under the single brand Santander;

(e) Banco Santander Totta was considered in the ISDA Master Agreement as a Multibranch Party, able to make and receive payments in any transaction through its subsidiaries in London or Luxemburg;

(f) Under the terms of the ISDA Master Agreement concluded, the parties may, in certain cases, transfer their rights and obligations to other representative offices or subsidiaries;

(g) The parties to the swap agreements specified that English law was applicable and concluded jurisdiction agreements that confer exclusive jurisdiction on the English courts;

(h) The agreements were drafted in English and the terminology and concepts used are Anglo-Saxon;

(i) The swap agreements were concluded with the objective of covering the risk of variation in the interest rates of two financing agreements, both drafted in English and concluded with foreign entities (one based in the Netherlands and the other in Italy), and in one of the financing agreements it is provided that borrowers' payments must be made to the HSBC Bank Plc account in London, on dates defined by reference to the London time zone and subject to English law and the English courts;

(j) Banco Santander Totta acted as an intermediary of the international market, having concluded hedging agreements in the context of the international market?

(1) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

(2) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

Action brought on 9 March 2016 — *European Commission* v *Federal Republic of Germany*

(Case C-142/16)

(2016/C 165/14)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, in so far as it authorised the construction of a coal-fired power station in Hamburg-Moorburg without carrying out a proper and comprehensive assessment of its environmental impact, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(3) and (4) of Council Directive 92/43/EEC ([1]) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

— order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

The City of Hamburg issued a water-law permit for the Moorburg coal-fired power station by which the drawing of water from the river Elbe was authorised for purposes of the cooling operations of the power station. The environmental impact assessment underlying the permit identified the danger that the drawing of cooling water would kill fish migrating up the Elbe and thus be significantly detrimental to upstream Natura 2000 areas, the conservation objectives of which include the corresponding species. Ultimately, however, the environmental impact assessment concluded that the areas of conservation would not be adversely affected in any significant way because the assessment characterised a fish ladder installation set up between the power station and the relevant conservation areas as a damage limitation measure. Furthermore, the environmental impact assessment did not investigate the possible cumulative effects of power stations upstream from Moorburg which already exist or have been applied for.

Under the second sentence of Article 6(3) of Directive 92/43/EEC, projects may be agreed to, the light of the impact assessment, only on condition that significant deterioration of Natura 2000 areas can be excluded. If that is not the case, a project may be agreed to only under the strict conditions laid down in Article 6(4) of the directive.

The Commission takes the view that the impact assessment for the site in question is incorrect or incomplete in two respects. First, the assessment assessed the fish ladder as a damage limitation measure in the context of Article 6(3) of the directive, whereas, in accordance with the criteria set out in the judgment of the Court of Justice in *Briels* (C-521/12 ([2])) it is, at most, a compensatory measure within the meaning of Article 6(4) of the directive. Second, the assessment fails to investigate the potential cumulative effects mentioned above, contrary to Article 6(3) of the directive. Since, on that basis, the City of Hamburg ruled out any significant adverse effects for areas of conservation under Article 6(3) of the directive, it failed to satisfy the conditions laid down in Article 6(4) of the directive, such as considering alternative solutions and the overriding public interest.

([1]) OJ 1992 L 206, p. 7.
([2]) ECLI:EU:C:2014:330

GENERAL COURT

Action brought on 16 February 2016 — Ateknea Solutions Catalonia v Commission

(Case T-69/16)

(2016/C 165/15)

Language of the case: English

Parties

Applicant: Ateknea Solutions Catalonia, SA (Barcelona, Spain) (represented by: M. Troncoso Ferrer, C. Ruixó Claramunt and S. Moya Izquierdo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the action is admissible and well founded;

— declare that the Commission has breached its contractual obligations and order it to pay the applicant a total amount of EUR 1 634 990,62 (corresponding to (i) EUR 943 046,54 due to declaring the costs of CTT as in-house consultants, together with their corresponding indirect costs; (ii) EUR 96 358,10 as unlawfully claimed liquidated damages; and (iii) EUR 595 585,98 as contractual damage) to be increased by interests under Article II.28.7 of the Contract at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Communities, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points until full and entire payment;

— alternatively, order the Commission to pay the applicant a total amount of EUR 1 303 303,98 (corresponding to (i) EUR 753 533,00 due to declaring the costs of CTT as third party resources, together with their corresponding indirect costs, (ii) EUR 73 873,27 as unlawfully claimed liquidated damages and (iii) EUR 475 897,71 as contractual damage) to be increased by interests under Article II.28.7 of the Contract at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Communities, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points until full and entire payment; and

— condemn the Commission to pay all the legal costs.

Pleas in law and main arguments

The action brought by the applicant is based in article 272 TFEU in relation to the arbitration clause contained in several contracts signed between the applicant and the European Commission within the 6th Framework Programme for Research and Technological Development ('FP 6').

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

1. First plea in law, alleging that the Commission committed manifest errors of assessment concerning the facts which result in a violation of the General Conditions applicable to FP 6 contracts and the Financial Guidelines.

2. Second plea in law, alleging an infringement of the principle of legitimate expectations.

3. Third plea in law, alleging an infringement of the principal of equal treatment.

4. Fourth plea in law, alleging a violation of the principles governing the execution of contracts by the Commission, i.e. principle of good faith and principle of good administration.

Action brought on 19 February 2016 — Ryanair and Airport Marketing Services v Commission

(Case T-77/16)

(2016/C 165/16)

Language of the case: English

Parties

Applicants: Ryanair Ltd (Dublin, Ireland) and Airport Marketing Services Ltd (Dublin) (represented by: G. Berrisch, E. Vahida and I. Metaxas-Maragkidis, lawyers, and B. Byrne, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul, insofar as it affects the applicants, Articles 1(2), 3, 4 and 5 of the European Commission Decision of 1 October 2014 in State aid case SA.27339 finding that Ryanair and Airport Marketing Services had received unlawful State aid from *Flugplatz GmbH Aeroville Zweibrücken* ('FGAZ')/*Flughafen Zweibrücken GmbH* ('FZG') and the Land Rhineland-Palatine, incompatible with the internal market; and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

1. First plea in law, alleging that the decision violates Article 41 of the EU Charter of Fundamental Rights, the principle of good administration, and the applicants' rights of defence, as the Commission failed to allow the applicants access to the file of the investigation and put them in a position where they could effectively make known their views.

2. Second plea in law, alleging a breach of Article 107(1) TFEU, in that the Commission misapplied the market economy operator ('MEO') test by carrying out a joint analysis of the airport services agreement with Ryanair and the marketing services agreement with AMS. Further, the Commission erroneously refused to rely on a comparator analysis. In the alternative, the Commission failed to attribute an appropriate value to marketing services, wrongly dismissed the rationale behind the Land's decision to purchase such services, erroneously dismissed the possibility that part of the marketing services may have been purchased for general interest purposes, based its conclusions on incomplete and inappropriate data for its calculation of profitability, applied an excessively short time horizon, wrongly based its assessment on the agreed route only, and disregarded the network externalities that the airport could expect to gain from its relationship with Ryanair.

3. Third plea in law, alleging a breach of Article 107(1) TFEU because the Commission failed to establish selectivity.

4. Fourth plea in law, alleging on a subsidiary basis, a breach of Articles 107(1) and 108(2) TFEU, in that the Commission committed a manifest error of assessment and an error of law by finding that the aid to Ryanair and AMS was equal to the cumulated marginal losses of the airport instead of the actual benefit to Ryanair and AMS. The Commission should have examined the extent to which the alleged benefit had actually been passed on to Ryanair's passengers. Further, the Commission failed to quantify any competitive advantage that Ryanair enjoyed through the airport's (supposedly) below-cost payment flows. Finally, the Commission failed to explain properly why the recovery of the amount of aid specified in the decision was necessary to ensure the re-establishment of the situation prior to the grant of the aid.

Action brought on 16 March 2016 — Puma v EUIPO (FOREVER FASTER)

(Case T-104/16)

(2016/C 165/17)

Language of the case: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke, lawyer)

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 'FOREVER FASTER' — Application for registration No 1 217 411

Contested decision: Decision of the First Board of Appeal of EUIPO of 7 January 2016 in Case R 770/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and order the defendant to allow the registration of the term 'FOREVER FASTER' for the contested goods;

— order EUIPO to pay the costs, including those incurred before the Board of Appeal.

Pleas in law

— Infringement of Article 7(1)(b) Regulation No 207/2009;

— Infringement of the principles of equality and sound administration established by European laws.

Action brought on 18 March 2016 — Laboratoire de la mer v EUIPO — Boehringer Ingelheim Pharma (RESPIMER)

(Case T-109/16)

(2016/C 165/18)

Language in which the application was lodged: English

Parties

Applicant: Laboratoire de la mer (Saint-Malo, France) (represented by: S. Szilvasi, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Boehringer Ingelheim Pharma GmbH & Co. KG (Ingelheim, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'RESPIMER' — Application for registration No 11 228 004

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 January 2016 in Case R 3109/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the EU trade mark application 'RESPIMER' No 11 228 004 to mature to registration for all designated goods in classes 3, 5 and 10;

— order Boehringer Ingelheim Pharma GmbH & Co. KG to reimburse all costs to the applicant before the Opposition division of the EUIPO, the Fifth Board of Appeal of the EUIPO and the General Court of the European Union.

Pleas in law

— By refusing to take into consideration the decision of April 4, 2013 of the French national institute of industrial property as regards the same marks, the fifth board of appeal has failed to provide legal basis to its decision of January 21, 2016;

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 18 March 2016 — Delfin Wellness v EUIPO — Laher (infrared cabins and saunas)

(Case T-114/16)

(2016/C 165/19)

Language in which the application was lodged: German

Parties

Applicant: Delfin Wellness GmbH (Leonding, Austria) (represented by: T. Riedler, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sabine Laher (Weyer, Austria)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 1058812-0001, No 1058812-0002 and No 1058812-0003

Contested decision: Decisions of the Third Board of Appeal of EUIPO of 12 January 2016 in Cases R 849/2014-3, R 850/2014-3 und R 851/2014-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decisions of the Third Board of Appeal in Cases R 849/2014-3, R 850/2014-3 und R 851/2014-3;

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

Pleas in law

— Infringement of Article 64 Regulation No 6/2002;

— Infringement of Article 65[(1)](f) of Regulation No 6/2002;

— Infringement of Article 65(1)(d) of Regulation No 6/2002.

Action brought on 23 March 2016 — Deutsche Post v EUIPO — bpost (BEPOST)

(Case T-118/16)

(2016/C 165/20)

Language in which the application was lodged: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: K. Hamacher and G. Müllejans, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: bpost NV (Brussels, Belgium)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'BEPOST' — Application No 8 897 829

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 18 January 2016 in Case R 3107/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009;

— Infringement of Article 8(4) and (5) of Regulation No 207/2009.

Action brought on 22 March 2016 — 1. FC Köln v EUIPO (SPÜRBAR ANDERS)

(Case T-126/16)

(2016/C 165/21)

Language of the case: German

Parties

Applicant: 1. FC Köln GmbH & Co. KGaA (Cologne, Germany) (represented by: G. Hasselblatt, V. Töbelmann and S. Stier, lawyers)

Defendant: European Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'SPÜRBAR ANDERS' — Application No 13 468 103

Contested decision: Decision of the First Board of Appeal of EUIPO of 7 January 2016 in Case R 718/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and Article 7(2) of Regulation No 207/2009.

Action brought on 29 March 2016 — Coesia v EUIPO (Depiction of a circular shape formed by two oblique, symmetrical red lines)

(Case T-130/16)

(2016/C 165/22)

Language of the case: Italian

Parties

Applicant: Coesia SpA (Bologna, Italy) (represented by S. Rizzo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark (Depiction of a circular shape formed by two oblique, symmetrical red lines) — Application for registration No 13 681 151

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 January 2016 in Case R 1933/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 75 of Regulation No 207/2009.

Order of the General Court of 21 March 2016 — Al Naggar v Council

(Case T-375/14) ([1])

(2016/C 165/23)

Language of the case: French

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

([1]) OJ C 245, 28.7.2014.

Order of the General Court of 21 March 2016 — Yassin v Council

(Case T-376/14) ([1])

(2016/C 165/24)

Language of the case: French

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

([1]) OJ C 245, 28.7.2014.

Order of the General Court of 21 March 2016 — Ezz v Council

(Case T-377/14) ([1])

(2016/C 165/25)

Language of the case: French

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

([1]) OJ C 245, 28.7.2014.

Order of the General Court of 21 March 2016 — Salama v Council

(Case T-378/14) ([1])

(2016/C 165/26)

Language of the case: French

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

([1]) OJ C 245, 28.7.2014.

Order of the General Court of 16 March 2016 — Bimbo v OHIM — Globo (Bimbo)

(Case T-528/15) ([1])

(2016/C 165/27)

Language of the case: English

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

([1]) OJ C 381, 16.11.2015.

Order of the General Court of 18 March 2016 — Eurorail v Commission and INEA

(Case T-589/15) ([1])

(2016/C 165/28)

Language of the case: English

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

([1]) OJ C 27, 25.1.2016.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 19 February 2016 — ZZ v Frontex

(Case F-12/16)

(2016/C 165/29)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Pappas, lawyer)

Defendant: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

Subject-matter and description of the proceedings

Application for annulment of the decision not to renew the applicant's contract as a member of the temporary staff and for damages for the harm allegedly suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the contested decision;

— grant the applicant the sum of EUR 12 000 in respect of the harm suffered in connection with the adoption of that decision;

— order the defendant to pay the costs.

Action brought on 14 March 2016 — ZZ v Parliament

(Case F-14/16)

(2016/C 165/30)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Tymen, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application for annulment of the decision not to renew the applicant's contract as a member of the contract staff for auxiliary tasks and for damages in respect of the non-material harm allegedly suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 28 May 2015 refusing to renew his contract;

— so far as necessary, annul the implied decision of 31 May 2015 refusing to renew his contract;

— so far as necessary, annul the decision of 7 December 2015 rejecting his complaint;

— order the defendant to pay damages, fixed on equitable principles at EUR 115 000, by way of compensation for the non-material harm he has suffered;

— order the defendant to pay all the costs.

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