Official Journal of the European Union

C 475

English edition

Information and Notices

Volume 59

19 December 2016

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 19 October 2016 (request for a preliminary ruling from the Szegedi közigazgatási és munkaügyi bíróság — Hungary) — EL-EM-2001 Ltd v Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-501/14) ([1])

(Reference for a preliminary ruling — Road transport — Regulation (EC) No 561/2006 — Article 10 (3) — Articles 18 and 19 — Fine imposed on the driver — Measures necessary to the execution of the penalty taken against the transport company — Immobilisation of the vehicle)

(2016/C 475/02)

Language of the case: Hungarian

Referring court

Szegedi közigazgatási és munkaügyi bíróság

Parties to the main proceedings

Applicant: EL-EM-2001 Ltd

Defendant: Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

Operative part of the judgment

Regulation (EC) No 561/2006 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 must be interpreted as precluding national legislation which authorises, as a precautionary measure, the immobilisation of a vehicle owned by a transport undertaking in a situation where, firstly, the driver of that vehicle, employed by the undertaking, drove it in breach of the provisions of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport and, secondly, the competent national authority did not establish the liability of that undertaking, since such a precautionary measure does not meet the requirements of the principle of proportionality.

([1]) OJ C 46, 9.2.2015.

Judgment of the Court (Second Chamber) of 19 October 2016 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Patrick Breyer v Bundesrepublik Deutschland

(Case C-582/14) ([1])

(Reference for a preliminary ruling — Processing of personal data — Directive 95/46/EC — Article 2 (a) — Article 7(f) — Definition of 'personal data' — Internet protocol addresses — Storage of data by an online media services provider — National legislation not permitting the legitimate interest pursued by the controller to be taken into account)

(2016/C 475/03)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Patrick Breyer

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1. *Article 2(a) of Directive 95/46/EC 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 must be interpreted as meaning that a dynamic IP address registered by an online media services provider when a person accesses a website that the provider makes accessible to the public constitutes personal data within the meaning of that provision, in relation to that provider, where the latter has the legal means which enable it to identify the data subject with additional data which the internet service provider has about that person.*

2. *Article 7(f) of Directive 95/46 must be interpreted as precluding the legislation of a Member State, pursuant to which an online media services provider may collect and use personal data relating to a user of those services, without his consent, only in so far as that the collection and use of that data are necessary to facilitate and charge for the specific use of those services by that user, even though the objective aiming to ensure the general operability of those services may justify the use of those data after a consultation period of those websites.*

([1]) OJ C 89, 16.3.2015.

Judgment of the Court (Fourth Chamber) of 20 October 2016 (request for a preliminary ruling from the Finanzgericht München — Germany) — Josef Plöckl v Finanzamt Schrobenhausen

(Case C-24/15) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax — Sixth Directive — Article 28c(A)(a) and (d) — Transfer of goods within the European Union — Right to an exemption — Failure to comply with an obligation to provide a VAT identification number issued by the Member State of destination — No specific evidence of tax evasion — Refusal to grant the exemption — Whether permissible)

(2016/C 475/04)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Josef Plöckl

Defendant: Finanzamt Schrobenhausen

Operative part of the judgment

Article 22(8) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2005/92/EC of 12 December 2005, in the version resulting from Article 28h of that Sixth Directive, and the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of that directive must be interpreted as precluding a tax authority of the Member State of origin from refusing to exempt an intra-Community transfer from VAT on the ground that the taxable person has not provided a VAT identification number issued by the Member State of destination, where there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met.

([1]) OJ C 138, 27.4.2015.

Judgment of the Court (Grand Chamber) of 18 October 2016 (request for a preliminary ruling from the Bundesarbeitsgericht — Germany) — Republik Griechenland v Grigorios Nikiforidis

(Case C-135/15) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Law applicable to an employment contract — Regulation (EC) No 593/2008 — Article 28 — Temporal scope — Article 9 — Concept of 'overriding mandatory provisions' — Application of overriding mandatory provisions of Member States other than the State of the forum — Legislation of a Member State imposing a reduction in public sector pay because of a budgetary crisis — Duty of sincere cooperation)

(2016/C 475/05)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant: Republik Griechenland

Respondent: Grigorios Nikiforidis

Operative part of the judgment

1. *Article 28 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that a contractual employment relationship that came into being before 17 December 2009 falls within the scope of the regulation only in so far as that relationship has undergone, as a result of mutual agreement of the contracting parties which has manifested itself on or after that date, a variation of such magnitude that a new employment contract must be regarded as having been concluded on or after that date, a matter which is for the referring court to determine.*

2. *Article 9(3) of Regulation No 593/2008 must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed from being applied, as legal rules, by the court of the forum, but as not precluding it from taking such other overriding mandatory provisions into account as matters of fact in so far as this is provided for by the national law that is applicable to the contract pursuant to the regulation. This interpretation is not affected by the principle of sincere cooperation laid down in Article 4(3) TEU.*

([1]) OJ C 198, 15.6.2015.

Judgment of the Court (First Chamber) of 19 October 2016 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Deutsche Parkinson Vereinigung eV v Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

(Case C-148/15) ([1])

(Reference for a preliminary ruling — Articles 34 TFEU and 36 TFEU — Free movement of goods — National legislation — Prescription-only medicinal products for human use — Sale by pharmacies — Setting of fixed prices — Quantitative restriction on imports — Measure having equivalent effect — Justification — Protection of the health and life of humans)

(2016/C 475/06)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Deutsche Parkinson Vereinigung eV

Defendant: Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

Operative part of the judgment

1. *Article 34 TFEU must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which provides for a system of fixed prices for the sale by pharmacies of prescription-only medicinal products for human use, constitutes a measure having equivalent effect to a quantitative restriction on imports, within the meaning of that article, since that legislation has a greater impact on the sale of prescription-only medicinal products by pharmacies established in other Member States than on the sale of the same medicinal products by pharmacies established within the national territory.*

2. *Article 36 TFEU must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which provides for a system of fixed prices for the sale by pharmacies of prescription-only medicinal products for human use, cannot be justified on grounds of the protection of health and life of humans, within the meaning of that article, inasmuch as that legislation is not appropriate for attaining the objectives pursued.*

([1]) OJ C 213, 29.6.2015.

Judgment of the Court (Third Chamber) of 20 October 2016 (request for a preliminary ruling from the Benelux Gerechtshof — BENELUX) — Montis Design BV v Goossens Meubelen BV

(Case C-169/15) ([1])

(Reference for a preliminary ruling — Industrial and commercial property — Copyright and related rights — Directive 93/98/EEC — Article 10(2) — Term of protection — No revival of protection due to Berne Convention)

(2016/C 475/07)

Language of the case: Dutch

Referring court

Benelux Gerechtshof

Parties to the main proceedings

Applicant: Montis Design BV

Defendant: Goossens Meubelen BV

Operative part of the judgment

Article 10(2) of Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights, read together with Article 13(1) of that directive, must be interpreted as meaning that the terms of protection laid down by that directive do not apply to copyright which was initially protected by national legislation but which was extinguished prior to 1 July 1995.

Directive 93/98 must be interpreted as not precluding national legislation which, initially, had granted, as in the main proceedings, copyright protection to a work, but which, subsequently, caused that copyright to be definitively extinguished, before 1 July 1995, by reason of non-compliance with a formal requirement.

([1]) OJ C 228, 13.7.2015.

Judgment of the Court (Second Chamber) of 19 October 2016 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Xabier Ormaetxea Garai, Bernardo Lorenzo Almendros v Administración del Estado

(Case C-424/15) ([1])

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/21/EC — Article 3 — Impartiality and independence of national regulatory authorities — Institutional reform — Merger of national regulatory authority with other regulatory authorities — Dismissal of the President and a board member of the merged national regulatory authority before the expiry of their terms of office — Ground for dismissal not provided for under national law)

(2016/C 475/08)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Xabier Ormaetxea Garai, Bernardo Lorenzo Almendros

Defendant: Administración del Estado

Operative part of the judgment

1. *Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, is to be interpreted as not precluding, in principle, national legislation which entails the merger of a national regulatory authority, within the meaning of Directive 2002/21, as amended by Directive 2009/140, with other national regulatory authorities, such as the authorities responsible for competition, the postal sector and the energy sector, in order to create a multisectoral regulatory body responsible, inter alia, for the tasks entrusted to national regulatory authorities, within the meaning of that directive, as amended, provided that, in performing those tasks, that body meets the requirements of competence, independence, impartiality and transparency laid down by that directive and that an effective right of appeal is available against its decisions to a body independent of the parties involved, which is a matter to be determined by the national court.*

2. *Article 3(3a) of Directive 2002/21, as amended by Directive 2009/140, is to be interpreted as precluding — on the sole ground that an institutional reform has taken place involving the merger of a national regulatory authority responsible for ex-ante market regulation or for resolution of disputes between undertakings with other national regulatory authorities in order to create a multisectoral regulatory body responsible, inter alia, for the tasks entrusted to national regulatory authorities, within the meaning of that directive, as amended — the dismissal of the President and a board member, members of the collegiate body running the merged national regulatory authority, before the expiry of their terms of office, in the absence of any rules guaranteeing that such dismissals do not jeopardise the independence and impartiality of such members.*

([1]) OJ C 363, 3.11.2015.

Judgment of the Court (Third Chamber) of 20 October 2016 (request for a preliminary ruling from the Court of Appeal — Ireland) — Evelyn Danqua v Minister for Justice and Equality, Ireland, Attorney General

(Case C-429/15) ([1])

(Reference for a preliminary ruling — Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — National procedural rule laying down, for the submission of an application for subsidiary protection, a period of 15 working days from notification of the rejection of the application for asylum — Procedural autonomy of the Member States — Principle of equivalence — Principle of effectiveness — Proper conduct of the procedure for examining the application for subsidiary protection — Proper conduct of the return procedure — Not compatible)

(2016/C 475/09)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Appellant: Evelyn Danqua

Respondents: Minister for Justice and Equality, Ireland, Attorney General

Operative part of the judgment

The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.

([1]) OJ C 320, 28.9.2015.

Order of the Court (Seventh Chamber) of 5 October 2016 — Diputación Foral de Bizkaia v European Commission

(Case C-426/15 P) ([1])

Appeal — Article 181 of the Rules of Procedure of the Court — State aid — Article 108(3) TFEU — Commission decision declaring aid to be unlawful — No prior notification — Determination of the date of award of the aid — Agreements granting aid — Unconditional commitment to award aid — Taking into account of national legislation — Formal investigation procedure — Principle of sound administration — Rights of the defence

(2016/C 475/10)

Language of the case: Spanish

Parties

Appellant: Diputación Foral de Bizkaia (represented by: I. Sáenz-Cortabarría Fernández, abogado)

Other party to the proceedings: European Commission (represented by: P. Němečková and É. Gippini Fournier, acting as agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Diputación Foral de Bizkaia shall pay the costs.*

([1]) OJ C 337, 12.10.2015.

Order of the Court (Sixth Chamber) of 12 October 2016 (request for a preliminary ruling from the Prekršajni sud u Bjelovaru — Croatia) — Renata Horžić (C-511/15), Siniša Pušić (C-512/15) v Privredna banka Zagreb d.d., Božo Prka

(Joined Cases C-511/15 and C-512/15) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Agreements concerning credit for consumers — Directive 2008/48/EC — Credit agreement for immovable property — Variable interest rates — Obligations on the creditor — National legislation applicable to agreements existing at the date on which that legislation comes into force — Inapplicability of Directive 2008/48)

(2016/C 475/11)

Language of the case: Croatian

Referring court

Prekršajni sud u Bjelovaru

Parties to the main proceedings

Applicants: Renata Horžić (C-511/15), Siniša Pušić (C-512/15)

Defendants: Privredna banka Zagreb d.d., Božo Prka

Operative part of the order

Articles 23 and 30(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as not precluding national provisions, such as those at issue in the main proceedings, which require the creditor, on pain of criminal penalties, to comply with obligations concerning variable interest rates in respect of credit agreements existing at the date on which those provisions came into force, since those credit agreements fall outside the material scope of that directive and, furthermore, those obligations do not constitute an implementation of that directive.

([1]) OJ C 27, 25.1.2016.

Order of the Court (Eighth Chamber) of 5 October 2016 (request for a preliminary ruling from the Amtsgericht Dresden — Germany) — Ute Wunderlich v Bulgarian Air Charter Limited

(Case C-32/16) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Absence of reasonable doubt — Air transport — Regulation (EC) No 261/2004 — Article 2(l) — Definition of 'cancellation' — Flight making an unscheduled stopover)

(2016/C 475/12)

Language of the case: German

Referring court

Amtsgericht Dresden

Parties to the main proceedings

Applicant: Ute Wunderlich

Defendant: Bulgarian Air Charter Limited

Operative part of the order

Article 2(l) of 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 must be interpreted as meaning that a flight in respect of which the places of departure and arrival accorded with the planned schedule but during which an unscheduled stopover took place cannot be regarded as cancelled.

([1]) OJ C 165, 10.5.2016.

Appeal brought on 23 May 2016 by Grupo Bimbo, S.A.B. de C.V against the judgment of the General Court (Sixth Chamber) delivered on 18 March 2016 in Case T-33/15, Grupo Bimbo v EUIPO (BIMBO)

(Case C-285/16 P)

(2016/C 475/13)

Language of the case: Spanish

Parties

Appellant: Grupo Bimbo, S.A.B. de C.V. (represented by: M. Edenborough QC)

Other party to the proceedings: European Union Intellectual Property Office

By order of 13 October 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.

Appeal brought on 27 May 2016 by Médis — Companhia portuguesa de seguros de saúde, SA against the order of the General Court (Sixth Chamber) delivered on 15 March 2016 in Case T-774/15: Médis v EUIPO — Médis

(Case C-313/16 P)

(2016/C 475/14)

Language of the case: English

Parties

Appellant: Médis — Companhia portuguesa de seguros de saúde, SA (represented by: M. Martinho do Rosário, advogada)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

By order of 19 October 2016 the Court of Justice (Eight Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 6 September 2016 — Julia Markmann and Others v TUIfly GmbH

(Case C-479/16)

(2016/C 475/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: Julia Markmann, Rene Markmann, Emilia Markmann, Jana Markmann

Defendant: TUIfly GmbH

The case was removed from the Register of the Court of Justice by order of the Court of 11 October 2016.

Request for a preliminary ruling from the Hanseatisches Oberlandesgericht in Bremen (Germany) lodged on 16 September 2016 — Criminal proceedings against Pál Aranyosi

(Case C-496/16)

(2016/C 475/16)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht in Bremen

Party to the main proceedings

Pál Aranyosi

Questions referred

1. Are Article 1(3), Article 5 and Article 6(1) of Council Framework Decision 2002/584/JHA ([1]) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States to be interpreted as meaning that the executing Member State, when taking a decision on extradition for the purposes of prosecution, must eliminate any real risk of inhuman or degrading treatment of the person sought, within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, attributable to the conditions of his detention only in the first prison in which that person will be imprisoned following his surrender to the issuing Member State?

2. Must the executing State, when taking that decision, also eliminate any real risk of inhuman or degrading treatment of the person whose surrender is sought that may be attributable to the conditions of his detention in the place of his subsequent imprisonment in the event of conviction?

3. Must the executing State eliminate that risk for the person whose surrender is sought also in the event of possible relocations to other prisons?

([1]) OJ 2002 L 190, p. 1.

Request for a preliminary ruling from the Finanzgericht Köln (Germany) lodged on 23 September 2016 — Deister Holding AG, as full legal successor to Traxx Investments N.V. v Bundeszentralamt für Steuern

(Case C-504/16)

(2016/C 475/17)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Deister Holding AG, as full legal successor to Traxx Investments N.V.

Defendant: Bundeszentralamt für Steuern

Questions referred

1. Does Article 43 in conjunction with Article 48 EC (now Article 49 in conjunction with Article 54 TFEU) preclude national tax legislation such as that at issue in the main proceedings which denies relief from investment income tax on distributions of profits made to a non-resident parent company whose sole shareholder is resident within the country,

   to the extent that persons have holdings in it who would not be entitled to the refund or exemption if they earned the income directly, and

   (1) there are no economic or other substantial reasons for the involvement of the non-resident parent company, or

   (2) the non-resident parent company does not earn more than 10 % of its entire gross income for the financial year in question from its own economic activity (there being no such activity, inter alia, if the foreign company earns its gross income from the management of assets), or

   (3) the non-resident parent company does not take part in general economic commerce with a business establishment suitably equipped for its business purpose,

   whereas resident parent companies are granted relief from investment income tax without regard to the aforementioned requirements?

2. Does Article 5(1) in conjunction with Article 1(2) of Directive 90/435/EEC ([1]) preclude national tax legislation such as that at issue in the main proceedings which denies relief from investment income tax on distributions of profits made to a non-resident parent company whose sole shareholder is resident within the country,

   to the extent that persons have holdings in it who would not be entitled to the refund or exemption if they directly earned the income, and

   (1) there are no economic or other substantial reasons for the involvement of the non-resident parent company, or

   (2) the non-resident parent company does not earn more than 10 % of its entire gross income for the financial year in question from its own economic activity (there being no such activity, inter alia, if the foreign company earns its gross income from the management of assets), or

   (3) the non-resident parent company does not take part in general economic commerce with a business establishment suitably equipped for its business purpose,

   whereas resident parent companies are granted relief from investment income tax without regard to the aforementioned requirements?

([1]) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6).

Request for a preliminary ruling from the Tribunal da Relação de Guimarães (Portugal) lodged on 3 October 2016 — Isabel Maria Pinheiro Vieira Rodrigues v José Manuel Proença Salvador and Others

(Case C-514/16)

(2016/C 475/18)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Guimarães

Parties to the main proceedings

Appellant: Isabel Maria Pinheiro Vieira Rodrigues

Respondents: José Manuel Proença Salvador, Crédito Agrícola Seguros — Companhia de Seguros de Ramos Reais, SA, Jorge Oliveira Pinto

Questions referred

1. Does the obligation, laid down in Article 3(1) of First Council Directive 72/166/EEC ([1]) of 24 April 1972, to have insurance in respect of the *use of vehicles* normally based in the territory of a Member State apply to the use of vehicles, in any place, be it public or private, solely in cases in which the vehicles are moving, or also in cases in which they are stationary but with the engine running?

2. Does the aforementioned concept of *use of vehicles*, within the meaning of Article 3(1) of First Directive 72/166, encompass an *agricultural tractor*, which was stationary on a flat mud track on a farm and was being used, as was usual, in the performance of agricultural work (*herbicide spraying in a vineyard*), with the engine running to drive the pump in the drum containing the herbicide, and which, in those circumstances, as the result of a *landslip* caused by the combination of the following factors:

   — the weight of the tractor,

   — the vibration produced by the tractor's engine and by the spraying device mounted on the back of the tractor,

   — heavy rain,

   fell downwards hitting four workers who were carrying out the same task on the lower terraces, causing the death of a worker who was supporting the hose that was being used for spraying?

3. If questions 1 and 2 are answered in the affirmative, does this interpretation of the concept of '*use of vehicles*' in Article 3 (1) of First Directive 72/166 preclude a rule of national law (Article 4(4) of Decreto-Lei No 291/2007 de 21 de agosto (Decree-Law No 291/2007 of 21 August 2007)) which excludes the obligation to have insurance laid down in Article 3 (1) in cases in which vehicles are used for purely agricultural or industrial purposes?

([1]) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360).

Request for a preliminary ruling from the Cour d'appel de Versailles (France) lodged on 3 October 2016 — Enedis SA, formerly Électricité Réseau Distribution de France (ERDF) v Axa Corporate Solutions SA and Ombrière Le Bosc SAS

(Case C-515/16)

(2016/C 475/19)

Language of the case: French

Referring court

Cour d'appel de Versailles

Parties to the main proceedings

Appellant: Enedis SA, formerly Électricité Réseau Distribution de France (ERDF)

Respondents: Axa Corporate Solutions SA and Ombrière Le Bosc SAS

Questions referred

1. Must Article 107(1) TFEU be interpreted as meaning that the obligation to purchase the electricity generated by plants which use solar radiation energy at a price higher than the market price, that is financed by all final consumers of electricity, as it results from the Ministerial Orders of 10 July 2006 (JORF No 171 of 26 July 2006, p. 11133) and 12 January 2010 (JORF No 0011 of 14 January 2010, p. 727) fixing the conditions for purchasing that electricity, read in conjunction with Law No 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service, Decree No 2000-1196 of 6 December 2000 and Decree No 2001-410 of 10 May 2001, constitutes State aid?

2. If so, must Article 108(3) TFEU be interpreted as meaning that the failure to notify the European Commission of that mechanism beforehand affects the validity of the abovementioned Orders giving effect to the aid at issue?

Order of the President of the Ninth Chamber of the Court of 22 September 2016 (request for a preliminary ruling from the Tribunalul Sibiu — Romania) — Nicolae Ilie Nicula v Administrația Județeană a Finanțelor Publice Sibiu formerly Administrația Finanțelor Publice a Municipiului Sibiu, Administrația Fondului pentru Mediu, intervener: Cristina Lenuța Stoica

(Case C-609/14) ([1])

(2016/C 475/20)

Language of the case: Romanian

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

([1]) OJ C 107, 30.3.2015.

Order of the President of the Court of 23 September 2016 (request for a preliminary ruling from the Curtea de Apel Oradea — Romania) — SC Vicdantrans SRL v Direcția Generală Regională a Finanțelor Publice Cluj Napoca prin Administrația Județeană a Finanțelor Publice Bihor, Administrația Fondului pentru Mediu

(Case C-73/15) ([1])

(2016/C 475/21)

Language of the case: Romanian

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

([1]) OJ C 155, 11.5.2015.

Order of the President of the Court of 23 September 2016 (request for a preliminary ruling from the Curtea de Apel Constanța — Romania) — Maria Bosneaga v Instituția Prefectului — județul Constanța — Serviciul Public Comunitar Regim Permise de Conducere și Înmatriculare a Vehiculelor

(Case C-235/15) ([1])

(2016/C 475/22)

Language of the case: Romanian

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

([1]) OJ C 270, 17.8.2015.

Order of the President of the Court of 23 September 2016 (request for a preliminary ruling from the Curtea de Apel Constanța — Romania) — Dinu Antoci v Instituția Prefectului — județul Constanța — Serviciul Public Comunitar Regim Permise de Conducere și Înmatriculare a Vehiculelor

(Case C-236/15) ([1])

(2016/C 475/23)

Language of the case: Romanian

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

([1]) OJ C 270, 17.8.2015.

Order of the President of the Court of 13 October 2016 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Regione autonoma della Sardegna v Comune di Portoscuso, interveners: Saromar Gestioni Srl, Giulio Pistis

(Case C-449/15) ([1])

(2016/C 475/24)

Language of the case: Italian

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

([1]) OJ C 381, 16.11.2015.

GENERAL COURT

Order of the General Court of 6 September 2016 — Vanbreda Risk & Benefits v Commission

(Case T-199/14) ([1])

(Non-contractual liability — Public service contracts — Agreement on the amounts of compensation calculated in respect of loss — No need to adjudicate — Costs)

(2016/C 475/25)

Language of the case: French

Parties

Applicant: Vanbreda Risk & Benefits (Antwerp, Belgium) (represented: initially by P. Teerlinck and P. de Bandt, and subsequently by P. Teerlinck, P. de Bandt and R. Gherghinaru, lawyers)

Defendant: European Commission (represented: initially by S. Delaude and L. Cappelletti, and subsequently by S. Delaude, acting as Agents)

Re:

Application, first, for annulment of the decision of 30 January 2014 by which the Commission rejected the tender submitted by the applicant for Lot No 1 in the call for tenders OIB.DR.2/PO/2013/062/591, relating to insurance cover for property and persons (OJ 2013/S 155-269617), and awarded that lot to another company and, second, for damages.

Operative part of the order

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

2. *The European Commission shall bear its own costs and pay the costs of Vanbreda Risk & Benefits incurred in the main proceedings and in the proceedings for interim measures before the General Court.*

([1]) OJ C 159, 26.5.2014.

Order of the General Court of 15 September 2016 — Kurchenko v Council

(Case T-339/14) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — Applicant not represented by a lawyer — Applicant having ceased to reply to the Court's requests — No need to adjudicate)

(2016/C 475/26)

Language of the case: English

Parties

Applicant: Serhiy Vitaliyovych Kurchenko (Chuhuiv, Ukraine) (represented by: B. Kennelly, QC, J. Pobjoy, Barrister, M. Drury, A. Swan, and J. Binns, Solicitors)

Defendant: Council of the European Union (represented by: Á. de Elera-San Miguel Hurtado and J.-P. Hix, Agents)

Intervener in support of the defendant: European Commission (represented by: S. Bartelt and D. Gauci, Agents)

Re:

Application under Article 263 TFEU for annulment, first, of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), and, secondly, Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119 (OJ 2015 L 62, p. 25) and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1), in so far as those measures apply to the applicant, and, in the alternative, an application under Article 277 TFEU for a declaration of the inapplicability to the applicant of Article 1(1) of Decision 2014/119, as amended by Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119 (OJ 2015 L 24, p. 16) and of Article 3(1) of Regulation No 208/2014, as amended by Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1).

Operative part of the order

1. *There is no need to adjudicate on this action.*

2. *Mr Serhiy Vitaliyovych Kurchenko shall bear his own costs and pay those of the Council of the European Union.*

3. *The European Commission shall bear its own costs.*

([1]) OJ C 253, 4.8.2014.

Action brought on 26 October 2016 — OP v Commission

(Case T-478/16)

(2016/C 475/27)

Language of the case: German

Parties

Applicant: OP (Bonn, Germany) (represented by: S. Conrad, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's implicit and explicit rejection decisions of 16 and 30 September 2016 respectively (Ref.: Ares (2016) 5716994), relating to the applicant's administrative complaint of 17 April 2016 under Article 22(1) of Regulation (EC) No 58/2003 seeking a review of the legality of the decision of the Executive Agency of the European Research Council of 18 March 2016 (Ref.: Ares (2016) 1371979), received by the applicant on 28 April 2016, stating that the applicant's grant application of 17 November 2015 (application number 716017 — QUASIMODO) within the Framework Programme 'Horizon 2020', ERC Work Programme 2016 (ERC Starting Grant) had been considered unsuitable and had been rejected;

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

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 infringement of the applicant's right to a review by the defendant of the legality of the actions of the Executive Agency of the European Research Council, since the defendant failed to reply to the applicant's administrative complaint within the deadline laid down by the third subparagraph of Article 22(1) of Regulation (EC) No 58/2003. ([1])

2. Second plea in law, alleging that the rejection of the applicant's grant application was unlawful.

   The applicant submits that the rejection of her administrative complaint was also unlawful because the decision by the Executive Agency of the European Research Council rejecting her grant application was itself unlawful.

([1]) Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2003 L 11, p. 1).

Action brought on 14 October 2016 — Tuerck v Commission

(Case T-728/16)

(2016/C 475/28)

Language of the case: French

Parties

Applicant: Sabine Tuerck (Woluwe-Saint-Pierre, Belgium) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule that

— the decision of 10 December 2015 confirming the transfer of the applicant's pension rights is annulled;

— the European Commission is ordered 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 infringement of Article 7(1) of the General Implementing Provisions (GIP) of Articles 11 and 12 of Annex VIII to the Staff Regulations concerning the transfer of pension rights of 3 March 2011. That infringement was committed by the Appointing Authority when calculating the deduction of the amount representing the capital appreciation between the date of the application for a transfer and the actual date of the transfer.

2. Second plea in law, alleging infringement of Article 11(2) of Annex VIII to the Staff Regulations insofar as the Appointing Authority took her promotion into account with retroactive effect in order to determine her basic pay at the date of the application for transfer of her pension rights.

Action brought on 17 October 2016 — PO and Others v EEAS

(Case T-729/16)

(2016/C 475/29)

Language of the case: French

Parties

Applicants: PO (Brussels, Belgium), PP (Beijing, China), PQ (Beijing), PR (Beijing) (represented by: N. de Montigny and J.-N. Louis, lawyers)

Defendant: European External Action Service

Form of order sought

The applicants claim that the Court should:

— annul:

  — the decisions of 17 December 2015 to limit to EUR 10 000 the school fees incurred by the applicants;

  — given the specific context of the notification of the measure adversely affecting the applicants, in so far as necessary, the email of 21 December 2015, which some of them received; in so far as necessary, the allowance evaluation form; and, last, in so far as necessary, their payslips mentioning the amount of the allowance received;

  — as necessary, last, the rejections of their claims of 5 July 2016;

— order the defendant 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: a plea of illegality, in so far as the contested decisions are based on the *Guidelines*, adopted by the European External Action Service (EEAS) on 31 July 2014, which infringe the Staff Regulations and Annex X thereto.

2. Second plea in law: a plea of illegality, in so far as the contested decisions infringe those *Guidelines*.

3. Third plea in law: divided into four parts, based on the illegality of the individual decisions.

   — The first part alleges infringement of acquired rights, breach of legitimate expectations, and infringement of the principles of legal certainty and of sound administration, in so far as each of the applicants decided to be accompanied by his or her family on delegation to the country concerned, proceeding on the assumption that school fees would be reimbursed in full.

   — The second part alleges infringement of the principles of equal treatment and of non-discrimination, in so far as a system of supplementary reimbursement limited to a flat-rate payment of EUR 10 000, established independently of the specific situation of each delegation, amounts to treating different situations in an identical manner.

   — The third part alleges infringement of the rights of the child, and of the right to family life and the right to education, in so far as the EEAS imposes a heavy financial burden on certain households of officials or temporary agents, those families being then obliged to decide whether to bear that burden in order to provide their children with an education equivalent to that of the children of their colleagues, or to separate and provide such an education, at a lower cost, in one of the countries of the European Union.

   — The fourth part alleges that there has been no effective weighing-up of interests and that there has been a failure to observe the principle of proportionality in each adopted decision, particularly in so far as the defendant has failed to show that the objective pursued justified the infringement of the applicants' fundamental rights.

4. Fourth plea in law, alleging an error of assessment, which is invoked by three of the applicants. Two of them take the view that such an error was made in the analysis of the exceptional circumstances which had been put forward in their applications for reimbursement, while the last applicant considers such an error to have arisen from the failure to take into account the additional costs of teaching in the mother tongue.

Action brought on 22 October 2016 — CX v Commission

(Case T-735/16)

(2016/C 475/30)

Language of the case: French

Parties

Applicant: CX (Bordeaux, France) (represented by: É. Boigelot, lawyer)

Defendant: European Commission

Form of order sought

— Declare the action admissible and well-founded;

— In consequence:

  — annul the decision of 18 December 2015, reference Ares(2015)5952489, insofar as it imposes on the applicant a reduction in his remuneration;

  — annul the decision of 12 July 2016, reference HR.E.2/CB/sa/Ares(2016), served on the same date, by which the Appointing Authority rejects that part of the applicant's claim, which he ground on 17 March 2016 under reference R/170/16, relating to the decision to reduce his remuneration;

  — order the defendant to pay the sums wrongfully withheld, together with legal penalties and interest;

  — order the defendant to pay all the costs, in accordance with Article 87(1) of the Rules of Procedure of the Civil Service Tribunal.

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 the Staff Regulations of Officials, in particular of Article 24(1) of Annex IX to those Staff Regulations, which was committed by the Commission's Appointing Authority by failing to set out in its decision the amount of the retention which it intended to make from the applicant's remuneration.

2. Second plea in law, alleging failure to observe the obligation to state reasons as regards the actual grounds of that reduction in the remuneration, a failure which forms the basis of the unequal treatment suffered by the applicant.

3. Third plea in law, alleging an abuse of process and a misuse of powers, an abuse of office and of power, insofar as the contested decision constitutes a disguised disciplinary sanction.

4. Fourth plea in law, alleging infringement of the reasonable time principle, the principles of good faith and of sound administration, inasmuch as the matters raised by the defendant against the applicant date from 2001 and 2003, that is to say, more than 14 and 12 years before the contested decision.

Action brought on 20 October 2016 — Amira and Others v Commission and ECB

(Case T-736/16)

(2016/C 475/31)

Language of the case: English

Parties

Applicants: Maria Amira (Athens, Greece) and 15 other applicants (represented by S. Pappas and I. Ioannidis, lawyers)

Defendants: European Central Bank, European Commission

Form of order sought

The applicants claim that the Court should:

— order the European Union and/or the European System of Central Banks (ESCB) to compensate for the amounts described in the application corresponding to the damage that the applicants suffered from their illegal participation in the restructuring of the Greek government debt, due to the activation of the retrofit Collective Action Clauses;

— alternatively, order the Union and/or the European Central Bank (ECB) to compensate the applicants for the amounts described in the application corresponding to the damage suffered from the illegal exclusion of Greece's official sector creditors from the restructuring of the Greek government debt;

— in any case, order the ECB to compensate the applicants for the damages described in the application for each applicant emanating from the illegal exclusion of the ESCB from the restructuring of the Greek government debt;

— order the ECB and/or the Union to bear the costs of the proceedings.

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 Union's and/or the ECB's and the ESCB's actions were taken ultra vires and contrary to Articles 120-126, 127 and 352(1) TFEU.

2. Second plea in law, alleging that the ECB's and the ESCB's actions regarding in particular the ESCB's exclusion from the restructuring violate Article 123 TFEU.

3. Third plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions violate the applicants' right to property protected under Article 17 of the Charter of Fundamental Rights.

4. Fourth plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions violate free movement of capital protected under Article 63 TFEU.

5. Fifth plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions violate the applicants' right to equal treatment protected under Article 20 of the Charter of Fundamental Rights.

Action brought on 25 October 2016 — Stips v Commission

(Case T-740/16)

(2016/C 475/32)

Language of the case: French

Parties

Applicant: Adolf Stips (Besozzo, Italy) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule that

— the European Commission is ordered to make good in full the harm suffered by the applicant as a result of the delay encountered in the organisation of the 2013 re-grading exercise;

— in any event, the European Commission is ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging the loss which he suffered which is attributable exclusively to the disregard by the Commission of its duty of sound administration, enshrined in Article 41 of the Charter of Fundamental Rights. The applicant argues, firstly, that the list of re-graded staff was not adopted by the Commission within a reasonable period, that is to say before 31 December 2013. He adds, secondly, that the material harm which is allegedly suffered is real and quantifiable and, thirdly, that there is a causal link between the Commission's administrative error and the loss which he suffered.

Action brought on 24 October 2016 — Generis — Farmacêutica/EUIPO — Corpak MedSystems (CORGRIP)

(Case T-744/16)

(2016/C 475/33)

Language in which the application was lodged: English

Parties

Applicant: Generis — Farmacêutica, SA (Amadora, Portugal) (represented by: J. Paulo Sena Mioludo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Corpak MedSystems, Inc. (Buffalo Grove, Illinois, United States)

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: EU word mark 'CORGRIP' — Application for registration No 12 437 919

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 July 2016 in Case R 2443/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— maintain the decision of the Opposition Division of 15 October 2015 in Opposition B 002334129;

— upheld the Opposition B 002334129;

— refuse in its entirety the EU Trademark Application No. 012437919 'CORGRIP';

— order EUIPO to bear its own costs and pay those of the Appellant.

Plea in law

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

Action brought on 31 October 2016 — Alessandro La Rocca v EUIPO (Take your time Pay After)

(Case T-755/16)

(2016/C 475/34)

Language of the case: Italian

Parties

Applicant: Alessandro La Rocca (Anzio, Italy) (represented by: A. Perani, J. Graffer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark containing the word elements 'Take your time Pay After' — Application for registration No 14 396 031

Contested decision: Decision of the First Board of Appeal of EUIPO of 4 August 2016 in Case R 406/2016-1

Form of order sought

The applicant claims that the Court should:

— rule that there has been an infringement and incorrect application of Article 7(1)(b) and 7(2) of Regulation No 207/2009;

— rule that there has been an infringement of Article 75 of Regulation No 207/2009 and, accordingly;

— annul the decision of the First Board of Appeal of EUIPO in Case R 406/2016-1, made on 4 August 2016 and notified on 31 August 2016;

— order EUIPO to pay the costs and fees incurred in the present proceedings.

Pleas in law

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

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

Action brought on 7 November 2016 — Nanogate v EUIPO (metals)

(Case T-767/16)

(2016/C 475/35)

Language of the case: German

Parties

Applicant: Nanogate AG (Quierschied, Germany) (represented by: A. Theis, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word element 'metals' — Application No 14 259 981

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 August 2016 in Case R 2361/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Pleas in law

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

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

Action brought on 8 November 2016 — Dochirnie pidpryiemstvo "Kondyterska korporatsiia 'Roshen' v EUIPO — 'Krasnyj Octyabr' (Representation of a crayfish)

(Case T-775/16)

(2016/C 475/36)

Language in which the application was lodged: English

Parties

Applicant: Dochirnie pidpryiemstvo "Kondyterska korporatsiia 'Roshen' (Kiev, Ukraine) (represented by: R. Žabolienė and I. Lukauskienė, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Joint-Stock Company 'Krasnyj Octyabr' (Moscow, Russia)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: International registration designating the European Union No 1 191 921

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 11 August 2016 in Case R 2419/2015-1

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 8(1)(b) Regulation No 207/2009.

Order of the General Court of 25 October 2016 — Czech Republic v Commission

(Case T-32/16) ([1])

(2016/C 475/37)

Language of the case: Czech

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

([1]) OJ C 98, 14.3.2016.

Order of the General Court of 21 October 2016 — Hungary v Commission

(Case T-50/16) ([1])

(2016/C 475/38)

Language of the case: Hungarian

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

([1]) OJ C 145, 25.4.2016.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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