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Information and Notices

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(2017/C 006/01)

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These texts are available on:

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

GENERAL COURT

Appointment of the Registrar

(2017/C 006/02)

The term of office of Mr Emmanuel Coulon, Registrar of the General Court of the European Union, will expire on 5 October 2017.

The General Court has decided, on 16 November 2016, to renew the term of office of Mr Emmanuel Coulon, in accordance with Article 32(4) of the Rules of Procedure, for the period from 6 October 2017 to 5 October 2023 inclusive.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 9 November 2016 (request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof — Germany) — Davitas GmbH v Stadt Aschaffenburg

(Case C-448/14) ([1])

(Reference for a preliminary ruling — Novel foods and novel food ingredients — Regulation (EC) No 258/97 — Article 1(2)(c) — Concept of foods and food ingredients with a new primary molecular structure)

(2017/C 006/03)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Davitas GmbH

Defendant: Stadt Aschaffenburg

Intervener: Landesanwaltschaft Bayern

Operative part of the judgment

Article 1(2)(c) of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009, must be interpreted as meaning that the expression 'new primary molecular structure' relates to foods or food ingredients which were not used for human consumption in the territory of the European Union before 15 May 1997.

([1]) OJ C 448, 15.12.2014.

Judgment of the Court (First Chamber) of 27 October 2016 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — Raad van bestuur van de Sociale verzekeringsbank v F. Wieland, H. Rothwangl

(Case C-465/14) ([1])

(Reference for a preliminary ruling — Articles 18 and 45 TFEU — Social security for migrant workers — Regulation (EEC) No 1408/71 — Articles 3 and 94 — Regulation (EC) No 859/2003 — Article 2(1) and (2) — Old-age and survivor's insurance — Former seafarers who are nationals of a third country which became a Member State of the European Union in 1995 — Excluded from entitlement to old-age benefit)

(2017/C 006/04)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Appellant: Raad van bestuur van de Sociale verzekeringsbank

Respondents: F. Wieland, H. Rothwangl

Operative part of the judgment

1. *Article 94(1) and (2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as not precluding legislation of a Member State that does not take into account, when determining rights to old-age pension, an insurance period claimed to have been completed under its own legislation by a foreign worker when the State of which that worker is a national acceded to the European Union after the completion of that period;*

2. *Articles 18 and 45 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which a seafarer who, over a specified period, was part of the crew of a vessel which had its home port in the territory of that Member State and who resided aboard that vessel, is excluded from benefiting from old-age insurance in respect of that period on the ground that he was not a national of a Member State during that period;*

3. *Article 2(1) and (2) of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, must be interpreted as not precluding legislation of a Member State which provides that a period of employment — completed pursuant to the legislation of that Member State by an employed worker who was not a national of a Member State during that period but who, when he requests the payment of an old-age pension, falls within the scope of Article 1 of that regulation — is not to be taken into consideration by that Member State for the determination of that worker's pension rights.*

([1]) OJ C 448, 15.12.2014.

Judgment of the Court (Sixth Chamber) of 26 October 2016 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Yara Suomi Oy, Borealis Polymers Oy, Neste Oil Oyj, SSAB Europe Oy v Työ- ja elinkeinoministeriö

(Case C-506/14) ([1])

(Reference for a preliminary ruling — Greenhouse gas emission allowance trading scheme within the European Union — Directive 2003/87/EC — Article 10a — Method of allocating free allowances — Calculation of the uniform cross-sectoral correction factor — Decision 2013/448/EU — Article 4 — Annex II — Validity — Application of uniform cross-sectoral correction factor to facilities in sectors which are deemed to be exposed to a significant risk of carbon leakage — Determination of the product benchmark for hot metal — Decision 2011/278/EU — Article 10(9) — Annex I — Validity)

(2017/C 006/05)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicants: Yara Suomi Oy, Borealis Polymers Oy, Neste Oil Oyj, SSAB Europe Oy

Defendant: Työ- ja elinkeinoministeriö

Operative part of the judgment

1. *Examination of the third and fourth questions has revealed no factor of such a kind as to affect the validity of Article 15(3) of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council.*

2. *Examination of the sixth and seventh questions has revealed no factor of such a kind as to affect the validity of Annex I to Decision 2011/278.*

3. *Examination of the fifth question referred has revealed no factor of such a kind as to affect the validity of the first subparagraph of Article 10(9) of Decision 2011/278.*

4. *Article 4 of, and Annex II to, Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council are invalid.*

5. *The temporal effects of the declaration of invalidity of Article 4 of, and Annex II to, Decision 2013/448 are limited so that, first, that declaration does not produce effects until 10 months following the date of delivery of the judgment in Borealis Polyolefine and Others (C-191/14, C-192/14, C-295/14, C-389/14 and C-391/14 to C-393/14, EU:C:2016:311), so as to enable the European Commission to adopt the necessary measures and, second, measures adopted during that period on the basis of the invalidated provisions cannot be called into question.*

([1]) OJ C 34, 2.2.2015.

Judgment of the Court (Eighth Chamber) of 27 October 2016 — Debonair Trading Internacional Ld[a] v Groupe Léa Nature SA, European Union Intellectual Property Office

(Case C-537/14 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) and (5) — Figurative mark including the word elements 'SO'BiO ētic' — Opposition by the proprietor of the EU and national word and figurative marks including the word element 'SO…?' — Refusal of registration)

(2017/C 006/06)

Language of the case: English

Parties

Appellant: Debonair Trading Internacional Ld[a] (represented by: D. Selden, Advocate, and T. Alkin, Barrister)

Other party to the proceedings: Groupe Léa Nature SA (represented by: S. Arnaud, avocat), European Union Intellectual Property Office (represented by: D. Gája and P. Geroulakos, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 23 September 2014, Groupe Léa Nature v OHIM — Debonair Trading Internacional (SO'BiO ētic) (T-341/13, not published, EU:T:2014:802);*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 118, 13.4.2015.

Judgment of the Court (Grand Chamber) of 8 November 2016 (request for a preliminary ruling from the Sofiyski gradski sad — Bulgaria) — Criminal proceedings against Atanas Ognyanov

(Case C-554/14) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2008/909/JHA — Article 17 — Law governing the enforcement of a sentence — Interpretation of a national rule of the executing State providing for reduction of a custodial sentence on account of work carried out by the sentenced person while detained in the issuing State — Legal effects of framework decisions — Obligation to interpret national law in conformity with EU law)

(2017/C 006/07)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Party in the main proceedings

Atanas Ognyanov

intervening party: Sofiyska gradska prokuratura

Operative part of the judgment

1. *Article 17(1) and (2) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding a national rule being interpreted in such a way that it permits the executing State to grant to the sentenced person a reduction in sentence by reason of work he carried out during the period of his detention in the issuing State, although no such reduction in sentence was granted by the competent authorities of the issuing State, in accordance with the law of the issuing State;*

2. *EU law must be interpreted as meaning that a national court is bound to take into consideration the whole body of rules of national law and to interpret them, so far as possible, in accordance with Framework Decision 2008/909, as amended by Framework Decision 2009/299, in order to achieve the result sought by that framework decision, and if necessary to disapply, on its own authority, the interpretation adopted by the national court of last resort, if that interpretation is not compatible with EU law.*

([1]) OJ C 73, 2.3.2015.

Judgment of the Court (Tenth Chamber) of 26 October 2016 — Dimosia Epicheirisi Ilektrismou AE (DEI) v Alouminion tis Ellados VEAE, previously Alouminion AE, European Commission

(Case C-590/14 P) ([1])

(Appeal — State aid — Production of aluminium — Preferential electricity tariff granted by a contract — Decision declaring the aid compatible with the internal market — Termination of the contract — Judicial suspension of the effects of termination of the contract — Decision declaring the aid unlawful — Article 108(3) TFEU — Concepts of 'existing aid' and 'new aid' — Distinction)

(2017/C 006/08)

Language of the case: Greek

Parties

Appellant: Dimosia Epicheirisi Ilektrismou AE (DEI) (represented by: E. Bourtzalas, avocat, and by E. Salaka, C. Synodinos, C. Tagaras and A. Oikonomou, dikigoroi)

Other parties to the proceedings: Alouminion tis Ellados VEAE, previously Alouminion AE (represented by: G. Dellis, N. Korogiannakis, E. Chrysafis, D. Diakopoulos and N. Keramidas, dikigoroi)

European Commission (represented by: É. Gippini Fournier and A. Bouchagiar, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 8 October 2014 in Alouminion v Commission (T-542/11, EU:T:2014:859);*

2. *Refers Case T-542/11 back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 65, 23.2.2015.

Judgment of the Court (Fifth Chamber) of 26 October 2016 (request for a preliminary ruling from the Retten i Glostrup — Denmark) — Criminal proceedings against Canal Digital Danmark A/S

(Case C-611/14) ([1])

(Reference for a preliminary ruling — Unfair commercial practices — Directive 2005/29/EC — Articles 6 and 7 — Advertising relating to a satellite TV subscription — Subscription price including, in addition to the monthly subscription charge, a six-monthly charge for the card required for decoding emissions — Six-monthly charge omitted or presented in a less conspicuous manner than the monthly charge — Misleading action — Misleading omission — Transposition of a provision of a directive only in the preparatory work for the national transposing legislation and not in the wording of that legislation itself)

(2017/C 006/09)

Language of the case: Danish

Referring court

Retten i Glostrup

Party in the main proceedings

Canal Digital Danmark A/S

Operative part of the judgment

1. *Article 7(1) and (3) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as meaning that, for the purposes of assessing whether a commercial practice must be regarded as a misleading omission, consideration should be given to the context in which that practice takes place, in particular the limitations of the communications medium used for the purposes of that commercial practice, the limitations of time and space imposed by that communications medium and any measures taken by the trader to make the information available to consumers by other means, even though that requirement is not expressly referred to in the wording of the national legislation in question.*

2. *Article 6(1) of Directive 2005/29 must be interpreted as meaning that a commercial practice which consists of dividing the price of a product into several components and highlighting one of them, must be regarded as misleading, since that practice would be likely, first, to give the average consumer the false impression that he has been offered a favourable price and, secondly, cause him to take a transactional decision that he would not have taken otherwise, which it is for the referring court to ascertain, taking into account all the relevant circumstances of the main proceedings. However, the time constraints that may apply to certain communication media, such as television commercials, cannot be taken into account when assessing whether a commercial practice is misleading under Article 6(1) of that directive.*

3. *Article 7 of Directive 2005/29 must be interpreted as meaning that, where a trader has opted to state the price for a subscription so that the consumer must pay both a monthly charge and a six-monthly charge, that practice must be regarded as a misleading omission if the price of the monthly charge is particularly highlighted in the marketing, whilst the six-monthly charge is omitted entirely or presented only in a less conspicuous manner, if such failure causes the consumer to take a transactional decision that he would not have taken otherwise. It is for the referring court to assess this, taking into account the limitations of the communication medium used, the nature and characteristics of the product and the other measures that the trader has actually taken to make material information about the product available to the consumer.*

4. *Article 7(4) of Directive 2005/29 must be interpreted as meaning that it contains an exhaustive list of the material information that must be included in an invitation to purchase. It is for the national court to determine whether the trader at issue has satisfied its duty to provide information, taking into account the nature and characteristics of the product but also the communication medium used for the invitation to purchase and additional information possibly provided by that trader. The fact that a trader provides, in an invitation to purchase, all the information listed in Article 7(4) of that directive does not preclude that invitation from being regarded as a misleading commercial practice within the meaning of Article 6(1) or Article 7(2) of that directive.*

(1) OJ C 73, 2.3.2015.

Judgment of the Court (Third Chamber) of 27 October 2016 (request for a preliminary ruling from the Supreme Court — Ireland) — James Elliott Construction Limited v Irish Asphalt Limited

(Case C-613/14) (1)

(Reference for a preliminary ruling — Article 267 TFEU — Jurisdiction of the Court — Concept of 'provision of EU law' — Directive 89/106/EEC — Approximation of laws, regulations and administrative provisions of the Member States relating to construction products — Standard approved by the European Committee for Standardisation (CEN) pursuant to a mandate given by the European Commission — Publication of the standard in the Official Journal of the European Union — Harmonised standard EN 13242:2002 — National standard incorporating harmonised standard EN 13242:2002 — Contractual dispute between individuals — Method used to establish (non —) compliance of a product with a national standard transposing a harmonised standard — Date of establishing (non —) compliance of a product with that standard — Directive 98/34/EC — Procedure for the provision of information in the field of technical standards and regulations — Scope)

(2017/C 006/10)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: James Elliott Construction Limited

Defendant: Irish Asphalt Limited

Operative part of the judgment

1. *The first paragraph of Article 267 TFEU must be interpreted as meaning that the Court of Justice of the European Union has jurisdiction to give a preliminary ruling concerning the interpretation of a harmonised standard within the meaning of Article 4(1) of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Council Directive 93/68/EEC of 22 July 1993, references to that standard having been published by the Commission in the 'C' series of the Official Journal of the European Union.*

2. *Harmonised standard EN 13242:2002, entitled 'Aggregates for unbound and hydraulically bound materials for use in civil engineering work and road construction', must be interpreted as not binding a national court seised of a dispute concerning a contract governed by private law requiring a party to supply a product compliant with a national standard transposing that harmonised standard, either as regards the method of establishing the conformity of such a construction product with the contractual specifications or the time at which its conformity must be established.*

3. *Article 4(2) of Directive 89/106, as amended by Directive 93/68, read in the light of the twelfth recital of that directive, must be interpreted as meaning that the national court is not obliged to apply the presumption of fitness for use of a construction product manufactured pursuant to a harmonised standard for the purposes of establishing that such a product is of merchantable quality or fit for its purpose where a national law of a general nature governing the sale of goods, such as that at issue in the case in the main proceedings, requires that a construction product have such characteristics.*

4. *Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as last amended, by Council Directive 2006/96/EC of 20 November 2006, must be interpreted as meaning that national provisions such as those at issue in the case in the main proceedings, specifying, unless the parties agree otherwise, implied contractual terms concerning merchantable quality and fitness for purpose of the products sold are not 'technical regulations', within the meaning of that provision, drafts of which must be communicated in advance, as provided for in the first subparagraph of Article 8(1) of Directive 98/34, as amended by Directive 2006/96.*

([1]) OJ C 96, 23.3.2015.

Judgment of the Court (Grand Chamber) of 8 November 2016 (request for a preliminary ruling from the High Court — Ireland) — Gerard Dowling and Others v Minister for Finance

(Case C-41/15) ([1])

(Regulation (EU) No 407/2010 — European Financial Stabilisation Mechanism — Implementing Decision 2011/77/EU — European Union financial assistance to Ireland — Recapitalisation of national banks — Company law — Second Directive 77/91/EEC — Articles 8, 25 and 29 — Recapitalisation of a bank by means of judicial direction order — Increase in share capital without general meeting decision and without the shares issued being offered on a pre-emptive basis to existing shareholders — Issue of new shares at a price lower than their nominal value)

(2017/C 006/11)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: Gerard Dowling, Padraig McManus, Piotr Skoczylas, Scotchstone Capital Fund Limited

Defendant: Minister for Finance

Intervening parties: Permanent TSB Group Holdings plc, formerly Irish Life and Permanent Group Holdings plc, Permanent TSB plc, formerly Irish Life and Permanent plc

Operative part of the judgment

Article 8(1) and Articles 25 and 29 of the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of [the second paragraph of Article 54 TFEU], in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, must be interpreted as not precluding a measure, such as the Direction Order at issue in the main proceedings, adopted in a situation where there is a serious disturbance of the economy and the financial system of a Member State threatening the financial stability of the European Union, the effect of that measure being to increase the share capital of a public limited liability company, without the agreement of the general meeting of that company, new shares being issued at a price lower than their nominal value and the existing shareholders being denied any pre-emptive subscription right.

([1]) OJ C 138, 27.4.2015

Judgment of the Court (Third Chamber) of 9 November 2016 (request for a preliminary ruling from the Okresný súd Dunajská Streda — Slovakia) — Home Credit Slovakia, a.s. v Klára Bíróová

(Case C-42/15) ([1])

(Reference for a preliminary ruling — Directive 2008/48/EC — Consumer protection — Consumer credit — Article 1, Article 3(m), Article 10(1) and (2), Article 22(1) and Article 23 — Interpretation of the expressions 'on paper' and 'on another durable medium' — Contract referring to another document — Requirement for the agreement to be in 'written form' within the meaning of national law — Indication of information required by reference to objective criteria — Information to be included in a fixed-term credit agreement — Effect of failure to include mandatory information — Proportionality)

(2017/C 006/12)

Language of the case: Slovak

Referring court

Okresný súd Dunajská Streda

Parties to the main proceedings

Applicant: Home Credit Slovakia, a.s.

Defendant: Klára Bíróová

Operative part of the judgment

1. *Article 10(1) and (2) 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, read in conjunction with Article 3(m), thereof, must be interpreted as meaning that:*

   — *a credit agreement need not necessarily be drawn up in a single document, but all the information referred to in Article 10(2) of the directive must be set out on paper or on another durable medium;*

   — *it does not preclude a Member State from providing in its national legislation, first, that a credit agreement falling within the scope of Directive 2008/48 which is drawn up on paper must be signed by the parties and, second, that the requirement that the agreement be signed applies to all the details of that agreement referred to in Article 10(2) of that directive.*

2. *Article 10(2)(h) of Directive 2008/48 must be interpreted as meaning that a credit agreement need not indicate the specific date on which every payment to be made by the consumer falls due, provided that the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty.*

3. *Article 10(2)(h) and (i) of Directive 2008/48 must be interpreted as meaning that a fixed-term credit agreement, providing for amortisation of the capital in consecutive instalments, need not state, in the form of an amortisation table, the part of each instalment that will be allocated to repayment of capital. Those provisions, read in conjunction with Article 22(1) of that directive, preclude a Member State from imposing such an obligation under national law.*

4. *Article 23 of Directive 2008/48 must be interpreted as not precluding a Member State from providing, under national law, that, where a credit agreement does not include all the information required under Article 10(2) of the directive, the agreement is deemed to be interest-free and free of charges, provided that the information covers matters which, if not included, may compromise the ability of the consumer to assess the extent of his liability.*

([1]) OJ C 155, 11.5.2015.

Judgment of the Court (Grand Chamber) of 8 November 2016 — BSH Bosch und Siemens Hausgeräte GmbH v European Union Intellectual Property Office (EUIPO), LG Electronics Inc.

(Case C-43/15 P) ([1])

(Appeal — EU trade mark — Application for registration of a figurative mark including the word elements 'compressor technology' — Opposition of the proprietor of the word marks KOMPRESSOR PLUS and KOMPRESSOR — Partial refusal of registration — Regulation (EC) No 207/2009 — Article 60 — Regulation (EC) No 216/96 — Article 8(3) — 'Ancillary' appeal — Regulation (EC) No 40/94 — Article 8(1)(b) — Weak distinctive character of the earlier national marks — Likelihood of confusion)

(2017/C 006/13)

Language of the case: German

Parties

Appellant: BSH Bosch und Siemens Hausgeräte GmbH (represented by: S. Biagosch and R. Kunz-Hallstein, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: M. Fischer, acting as Agent), LG Electronics Inc.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders BSH Bosch und Siemens Hausgeräte GmbH to pay the costs.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Fourth Chamber) of 27 October 2016 (request for a preliminary ruling from the Cour d'appel de Pau — France) — Criminal proceedings against Association des utilisateurs et distributeurs de l'agrochimie européenne (Audace) and Others

(Case C-114/15) ([1])

(Reference for a preliminary ruling — Free movement of goods — Articles 34 and 36 TFEU — Quantitative restrictions — Parallel imports of veterinary medicinal products — Directive 2001/82/EC — Article 65 — National system of prior authorisation — Livestock farmers excluded from simplified marketing authorisation procedure — Obligation to hold a wholesale trading authorisation — Obligation to have an establishment within the Member State of import — Pharmacovigilance obligations)

(2017/C 006/14)

Language of the case: French

Referring court

Cour d'appel de Pau

Parties in the main proceedings

Association des utilisateurs et distributeurs de l'agrochimie européenne (Audace), Association des éleveurs solidaires, Cruzalebes EARL, Des deux rivières EARL, Mounacq EARL, Soulard Max EARL, Francisco Xavier Erneta Azanza, Amestoya GAEC, La Vinardière GAEC reconnu, Lagunarte GAEC, André Jacques Iribarren, Ramuntcho Iribarren, Phyteron 2000 SAS, Cataloune SCL

intervening party: Conseil national de l'Ordre des vétérinaires, formerly Conseil supérieur de l'Ordre des vétérinaires, Syndicat national des vétérinaires d'exercice libéral, Administration des douanes et des droits indirects

Operative part of the judgment

1. *Articles 34 and 36 TFEU must be interpreted as precluding national legislation which restricts access to parallel imports of veterinary medicinal products to wholesale distributors holding the authorisation laid down in Article 65 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 and which, consequently, excludes from access to such imports the livestock farmers wishing to import veterinary medicinal products for the needs of their own livestock farms;*

2. *Articles 34 and 36 TFEU must be interpreted as not precluding national legislation which requires livestock farmers who import in parallel veterinary medicinal products for the needs of their own livestock farms to have an establishment in the Member State of destination and to fulfil all the pharmacovigilance obligations laid down in Articles 72 to 79 of Directive 2001/82, as amended by Regulation No 596/2009.*

([1]) OJ C 171, 26.5.2015.

Judgment of the Court (Fifth Chamber) of 9 November 2016 (request for a preliminary ruling from the Cour d'appel de Liège — Belgium) — Sabrina Wathelet v Garage Bietheres & Fils SPRL

(Case C-149/15) ([1])

(Reference for a preliminary ruling — Directive 1999/44/EC — Sale of consumer goods and associated guarantees — Scope — Concept of 'seller' — Intermediary — Exceptional circumstances)

(2017/C 006/15)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Applicant: Sabrina Wathelet

Defendant: Garage Bietheres & Fils SPRL

Operative part of the judgment

The concept of 'seller', for the purposes of Article 1(2)(c) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, must be interpreted as covering also a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual, which it is for the referring court to determine, taking into account all the circumstances of the case. The above interpretation does not depend on whether the intermediary is remunerated for acting as intermediary

([1]) OJ C 213, 29.6.2015.

Judgment of the Court (Fifth Chamber) of 26 October 2016 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — SCI Senior Home, in administration v Gemeinde Wedemark, Hannoversche Volksbank eG

(Case C-195/15) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Insolvency proceedings — Regulation (EC) No 1346/2000 — Article 5 — Notion of 'third parties' rights in rem' — Public charge against immovable property to ensure payment of real property tax)

(2017/C 006/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: SCI Senior Home, in administration

Defendants: Gemeinde Wedemark, Hannoversche Volksbank eG

Operative part of the judgment

Article 5 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted to the effect that security created by virtue of a provision of national law, such as that at issue in the main proceedings, by which the real property of a person owing real property taxes is, by operation of law, to be subject to a public charge and that property owner must accept enforcement of the decision recording that tax debt against that property, constitutes a 'right in rem' for the purposes of that article.

([1]) OJ C 254, 3.8.2015.

Judgment of the Court (First Chamber) of 26 October 2016 — Orange, formerly France Télécom v European Commission

(Case C-211/15 P) ([1])

(Appeal — Competition — State aid — Aid granted by the French Republic to France Télécom — Reform of the arrangements for financing the retirement pensions of civil servants working for France Télécom — Reduction of the compensation to be paid to the State by France Télécom — Decision declaring the aid compatible with the internal market under certain conditions — Definition of aid — Definition of economic advantage — Selective nature — Adverse effect on competition — Distortion of the facts — No statement of reasons — Substitution of grounds)

(2017/C 006/17)

Language of the case: French

Parties

Appellant: Orange, formerly France Télécom (represented by: S. Hautbourg and S. Cochard-Quesson, avocats)

Other party to the proceedings: European Commission (represented by: B. Stromsky and L. Flynn, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Orange to pay the costs.*

(1) OJ C 245, 27.7.2015.

Judgment of the Court (Fifth Chamber) of 9 November 2016 (request for a preliminary ruling from the Tribunalul Mureş — Romania) — ENEFI Energiahatékonysági Nyrt v Direcția Generală Regională a Finanțelor Publice Brașov (DGRFP)

(Case C-212/15) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Insolvency proceedings — Regulation (EC) No 1346/2000 — Article 4 — Effects provided for by legislation of a Member State on claims which were not pursued by means of insolvency proceedings — Forfeiture — Fiscal nature of the claim — No effect — Article 15 — Concept of 'lawsuits pending' — Enforcement proceedings — Excluded)

(2017/C 006/18)

Language of the case: Romanian

Referring court

Tribunalul Mureş

Parties to the main proceedings

Applicant: ENEFI Energiahatékonysági Nyrt

Defendant: Direcția Generală Regională a Finanțelor Publice Brașov (DGRFP)

Operative part of the judgment

1. *Article 4 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that provisions of domestic law of the Member State on the territory of which insolvency proceedings are opened which provide, in relation to a creditor who has not taken part in those proceedings, for the forfeiture of its right to pursue its claim or for the suspension of the enforcement of such a claim in another Member State come within its scope of application.*

2. *The fiscal nature of the claim pursued by means of enforcement in a Member State other than that on the territory of which the insolvency proceedings are opened, in a situation such as that at issue in the main proceedings, has no bearing on the answer to be given to the first question referred for a preliminary ruling.*

(1) OJ C 262, 10.8.2015, p. 4.

Judgment of the Court (Third Chamber) of 27 October 2016 — European Commission v Federal Republic of Germany

(Case C-220/15) ([1])

(Failure of a Member State to fulfil obligations — Free movement of goods — Directive 2007/23/EC — Placing on the market of pyrotechnic articles — Article 6 — Free movement of pyrotechnical articles compliant with the requirements of Directive 2007/23/EC — National rules making the placing on the market of pyrotechnic articles subject to additional requirements — Obligation to make a prior notification before a national body entitled to review and modify instructions for use of pyrotechnic articles)

(2017/C 006/19)

Language of the case: German

Parties

Applicant: European Commission (represented by: D. Kukovec and A. C. Becker, acting as Agents, assisted by B. Wägenbaur, Rechtsanwalt)

Defendant: Federal Republic of Germany (represented by: T. Henze, J. Möller and K. Petersen, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by providing, over and above the requirements of Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles, and notwithstanding a previous conformity assessment of pyrotechnic articles, that (i) those articles are to be subject to the procedure laid down in Paragraph 6(4) of the Erste Verordnung zum Sprengstoffgesetz (First Regulation relating to the Law on Explosives), as amended by the Law of 25 July 2013, before being placed on the market; and that (ii) pursuant to that paragraph, the Bundesanstalt für Materialforschung und-prüfung (Federal Institute for Materials Research and Testing, Germany) is to have the power to review and, where required, to modify their instructions for use, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(1) of Directive 2007/23/EC;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 228, 13.7.2015.

Judgment of the Court (Grand Chamber) of 8 November 2016 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín

(Case C-243/15) ([1])

(Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Article 6(3) — Aarhus Convention — Public participation in decision-making and access to justice in environmental matters — Articles 6 and 9 — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection — Project to construct an enclosure — Protected site 'Strážovské vrchy' — Administrative authorisation procedure — Environmental organisation — Request for the status of party to the procedure — Rejection — Legal action)

(2017/C 006/20)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Appellant: Lesoochranárske zoskupenie VLK

Respondent: Obvodný úrad Trenčín

Third party: Biely potok a.s.

Operative part of the judgment

Inasmuch as Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 9(2) and (4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, enshrines the right to effective judicial protection, in conditions ensuring wide access to justice, of the rights which an environmental organisation meeting the conditions laid down in Article 2(5) of that convention derives from EU law, in this instance from Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended by Council Directive 2006/105/EC of 20 November 2006, read in conjunction with Article 6(1)(b) of that convention, it must be interpreted as precluding, in a situation such as that at issue in the main proceedings, an interpretation of rules of national procedural law to the effect that an action against a decision refusing such an organisation the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to Directive 92/43 as amended by Directive 2006/105 does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive.

(1) OJ C 279, 24.8.2015.

Judgment of the Court (Tenth Chamber) of 26 October 2016 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Rijksdienst voor Pensioenen v Willem Hoogstad

(Case C-269/15) (1)

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Article 4 — Material scope — Deductions from statutory old-age pensions and all other supplementary benefits — Article 13 — Determination of the applicable legislation — Residence in another Member State)

(2017/C 006/21)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Applicant: Rijksdienst voor Pensioenen

Defendant: Willem Hoogstad

Intervener: Rijksinstituut voor ziekte- en invaliditeitsverzekering

Operative part of the judgment

Article 13(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, precludes a national law, such as that at issue in the main proceedings, which imposes levies of contributions that have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 of that regulation on payments made under supplementary pension schemes even though the beneficiary of that supplementary pension scheme does not reside in that Member State and is subject, in accordance with Article 13(2)(f) of that regulation, to the social security legislation of the Member State in which he resides.

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (First Chamber) of 26 October 2016 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Hecht-Pharma GmbH v Hohenzollern Apotheke, owned by Winfried Ertelt

(Case C-276/15) ([1])

(Reference for a preliminary ruling — Medicinal products for human use — Directive 2001/83/EC — Scope — Article 2(1) — Medicinal products prepared industrially or manufactured by a method involving an industrial process — Point 2 of Article 3 — Officinal formula)

(2017/C 006/22)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Hecht-Pharma GmbH

Defendant: Hohenzollern Apotheke, owned by Winfried Ertelt

Operative part of the judgment

Article 2(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011, must be interpreted as meaning that a medicinal product for human use, such as that at issue in the main proceedings, which, under national legislation, does not require a marketing authorisation by reason of the proven frequency with which it is the subject of medical and dental prescriptions, the essential manufacturing steps for such products are carried out in a pharmacy as part of the normal pharmacy business producing in the course of one day up to 100 packages ready for dispensation and intended for supply under the existing pharmacy operating licence, cannot be regarded as having been prepared industrially or manufactured by a method involving an industrial process, within the meaning of that provision, and consequently does not come within the scope of that directive, subject to the findings of fact which it is for the referring court to make.

However, should those findings lead the referring court to take the view that the medicinal product at issue in the main proceedings has been prepared industrially or manufactured by a method involving an industrial process, the answer must also be that point 2 of Article 3 of Directive 2001/83, as amended by Directive 2011/62, must be interpreted as meaning that it does not preclude provisions such as those laid down in Paragraph 21(2), point 1, of the Law on the marketing of medicinal products, read in conjunction with Paragraph 6 (1) of the Regulation on the operation of pharmacies, in so far as those provisions, in essence, require pharmacists to comply with the pharmacopoeia when manufacturing officinal formulae. It is, however, for the referring court to determine whether, on the facts of the case before it, the medicinal product at issue in the main proceedings has been prepared in accordance with the prescriptions of a pharmacopoeia.

([1]) OJ C 294, 7.9.2015.

Judgment of the Court (Second Chamber) of 27 October 2016 (request for a preliminary ruling from the Conseil d'État — Belgium) — Patrice D'Oultremont and Others v Région wallonne

(Case C-290/15) ([1])

(Reference for a preliminary ruling — Assessment of the effects of certain plans and programmes on the environment — Directive 2001/42/EC — Articles 2(a) and 3(2)(a) — Definition of 'plans and programmes' — Conditions concerning the installation of wind turbines laid down by a regulatory order — Provisions concerning, inter alia, safety, inspection, site restoration and financial collateral and permitted noise levels set having regard to area use)

(2017/C 006/23)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Patrice D'Oultremont, Henri Tumelaire, François Boitte, Éoliennes à tout prix? ASBL

Defendant: Région wallonne

Intervening parties: Fédération de l'Énergie d'origine renouvelable et alternative ASBL (EDORA)

Operative part of the judgment

Articles 2(a) and 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment must be interpreted as meaning that a regulatory order, such as that at issue in the main proceedings, containing various provisions on the installation of wind turbines which must be complied with when administrative consent is granted for the installation and operation of such installations comes within the notion of 'plans and programmes', within the meaning of that directive.

(1) OJ C 279, 24.8.2015.

Judgment of the Court (Fourth Chamber) of 27 October 2016 (request for a preliminary ruling from the Vergabekammer Südbayern — Germany) — Hörmann Reisen GmbH v Stadt Augsburg, Landkreis Augsburg

(Case C-292/15) (1)

(Reference for a preliminary ruling — Public procurement — Public passenger transport services by bus — Regulation (EC) No 1370/2007 — Article 4(7) — Subcontracting — Requirement that the operator perform a major part of the public passenger transport services itself — Scope — Article 5(1) — Contract-award procedure — Award of the contract in accordance with Directive 2004/18/EC)

(2017/C 006/24)

Language of the case: German

Referring court

Vergabekammer Südbayern

Parties to the main proceedings

Applicant: Hörmann Reisen GmbH

Defendant: Stadt Augsburg, Landkreis Augsburg

Operative part of the judgment

1. *Article 5(1) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 must be interpreted as meaning that, in a contract award procedure for public passenger transport services by bus, Article 4(7) of that regulation remains applicable to that contract;*

2. *Article 4(7) of Regulation No 1370/2007 must be interpreted as meaning that it does not preclude the contracting authority from setting at 70 % the proportion of self-provision by the operator responsible for the administration and performance of a contract for public passenger transport by bus, such as that at issue in the main proceedings.*

(1) OJ C 294, 7.9.2015.

Judgment of the Court (Third Chamber) of 27 October 2016 (request for a preliminary ruling from the Supreme Court — Ireland) — Child and Family Agency v J. D.

(Case C-428/15) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer of a case to a court of another Member State — Scope — Conditions under which applicable — Court better placed — Best interests of the child)

(2017/C 006/25)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Child and Family Agency

Defendant: J. D.

Other party to proceedings: R. P. D.

Operative part of the judgment

1. *Article 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that it is applicable where a child protection application brought under public law by the competent authority of a Member State concerns the adoption of measures relating to parental responsibility, such as the application at issue in the main proceedings, where it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other Member State thereafter commence proceedings that are separate from those brought in the first Member State, pursuant to its own domestic law and possibly relating to different factual circumstances.*

2. *Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that:*

   — *in order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction in a Member State must be satisfied that the transfer of the case to that other court is such as to provide genuine and specific added value to the examination of that case, taking into account, inter alia, the rules of procedure applicable in that other Member State;*

   — *in order to determine that such a transfer is in the best interests of the child, the court having jurisdiction in a Member State must be satisfied, in particular, that that transfer is not liable to be detrimental to the situation of the child.*

3. *Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court having jurisdiction in a Member State must not take into account, when applying that provision in a given case relating to parental responsibility, either the effect of a possible transfer of that case to a court of another Member State on the right of freedom of movement of persons concerned other than the child in question, or the reason why the mother of that child exercised that right, prior to that court being seised, unless those considerations are such that there may be adverse repercussions on the situation of that child.*

([1]) OJ C 320, 28.9.2015.

Judgment of the Court (Ninth Chamber) of 26 October 2016 — PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union, European Commission, Sasol Olefins & Surfactants GmbH, Sasol Germany GmbH

(Case C-468/15 P P) ([1])

(Appeal — Dumping — Implementing Regulations (EU) No 1138/2011 and (EU) No 1241/2012 — Imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia — Regulation (EC) No 1225/2009 — Article 2(10)(i) — Adjustment — Functions similar to those of an agent working on a commission basis — First subparagraph of Article 2(10) — Symmetry between the normal value and the export price — Principle of sound administration)

(2017/C 006/26)

Language of the case: English

Parties

Appellant: PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) (represented by: D. Luff, avocat)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix, Agent, and by N. Tuominen, avocate), European Commission (represented by: J.-F. Brakeland and M. França, Agents), Sasol Olefins & Surfactants GmbH, Sasol Germany GmbH

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) to bear its own costs and to pay the costs incurred by the Council of the European Union;*

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

([1]) OJ C 354, 26.10.2015.

Judgment of the Court (Tenth Chamber) of 26 October 2016 — Westermann Lernspielverlage GmbH, formerly Westermann Lernspielverlag GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-482/15 P) ([1])

(Appeal — EU trade mark application — Figurative mark containing the word elements 'bambino' and 'lük' — Opposition proceedings — Earlier EU figurative mark containing the word element 'bambino' — Partial refusal of registration — Revocation of the earlier mark on which the opposition was based — Letter from the applicant informing the General Court of that revocation — Refusal of the General Court to add that letter to the case file — Failure to state reasons)

(2017/C 006/27)

Language of the case: English

Parties

Appellant: Westermann Lernspielverlage GmbH, formerly Westermann Lernspielverlag GmbH (represented by: A. Nordemann and M. Maier, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: J. Crespo Carrillo, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Westermann Lernspielverlage GmbH to pay the costs.*

([1]) OJ C 406, 7.12.2015.

Judgment of the Court (Fourth Chamber Chamber) of 27 October 2016 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against Emil Milev

(Case C-439/16 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Directive 2016/343/EU — Articles 3 and 6 — Temporal application — Review by the courts of the remand in custody pending trial of an accused — National legislation prohibiting, during the trial stage of the proceedings, inquiry into whether there are reasonable grounds to suspect that the accused has committed an offence — Incompatibility with Article 5(1)(c) and (4) of the European Convention on Human Rights — Discretion left by the national case-law to the national courts to decide whether or not to apply that convention)

(2017/C 006/28)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party in the main proceedings

Emil Milev

Operative part of the judgment

The opinion delivered on 7 April 2016 by the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) at the beginning of the transposition period of Directive 2016/343/EU of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, which confers on the national courts having jurisdiction to hear an action brought against a custody decision the ability to decide whether, during the trial stage of the criminal proceedings, the continued custody of an accused must be subject to a review by the court of whether, in addition, there are reasonable grounds to suspect that he committed the offence with which he is charged is not likely seriously to compromise, after the expiry of the period prescribed for transposition of the directive, the attainment of the objectives prescribed by that directive.

([1]) OJ C 364, 3.10.2016.

Appeal brought on 2 June 2016 by Ukraine against the order of the General Court (Ninth Chamber, Extended Composition) delivered on 11 March 2015 in Case T-346/14: Yanukovych v Council

(Case C-317/16 P)

(2017/C 006/29)

Language of the case: English

Parties

Appellant: Ukraine (represented by: M. Kostytska, avocat)

Other parties to the proceedings: Viktor Fedorovych Yanukovych, Council of the European Union, European Commission, Republic of Poland

By order of 5 October 2016 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 2 June 2016 by Ukraine against the order of the General Court (Ninth Chamber) delivered on 11 March 2015 in Case T-347/14: Yanukovych v Council

(Case C-318/16 P)

(2017/C 006/30)

Language of the case: English

Parties

Appellant: Ukraine (represented by: M. Kostytska, avocat)

Other parties to the proceedings: Viktor Viktorovych Yanukovych, Council of the European Union, European Commission

By order of 5 October 2016 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 2 June 2016 by Ukraine against the order of the General Court (Ninth Chamber, Extended Composition) delivered on 11 March 2015 in Case T-348/14: Yanukovych v Council

(Case C-319/16 P)

(2017/C 006/31)

Language of the case: English

Parties

Appellant: Ukraine (represented by: M. Kostytska, avocat)

Other parties to the proceedings: Oleksandr Viktorovych Yanukovych, Council of the European Union, European Commission

By order of 5 October 2016 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 13 September 2016 by Bundesverband Souvenir — Geschenke — Ehrenpreise e. V. against the judgment of the General Court (Third Chamber) of 5 July 2016 in Case T-167/15, *Bundesverband Souvenir — Geschenke — Ehrenpreise e.V.* v *European Union Intellectual Property Office*

(Case C-488/16 P)

(2017/C 006/32)

Language of the case: German

Parties

Appellant: Bundesverband Souvenir — Geschenke — Ehrenpreise e.V. (represented by: B. Bittner, Rechtsanwalt)

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

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of 5 July 2016 in Case T-167/15;

2. declare EU trade mark No 010144392 'Neuschwanstein' invalid;

3. order EUIPO to pay the costs of the proceedings.

Grounds of appeal and main arguments

The appellant submits that the judgment under appeal in Case T-167/15 infringes Articles 7(1)(c), 7(1)(b) and 52(1)(b) of Council Regulation (EC) No 207/2009 ([1]) on the following grounds:

1. The General Court disregarded the fact that the designation 'Neuschwanstein' is an indication of geographical origin. It states in paragraph 27 of the judgment — in itself contradictorily — that Neuschwanstein Castle is admittedly 'geographically locatable' but is not a 'geographical location', because the principal function of the location is the preservation of cultural heritage and not the manufacturing or marketing of souvenirs or services. The 'principal function' of a geographical location does not, however, play any role in the absolute ground for refusal of the indication of geographical origin. Neuschwanstein Castle is clearly and immutably locatable and is, contrary to the General Court's view, distinguishable from an ordinary museum that is determined by the exhibits displayed therein, which — unlike Neuschwanstein Castle — may also be relocated.

   The relevant public will not take up the analytical assessment, set out in the judgment under appeal, of the name as meaning 'the new stone of the swan', but will associate the fantasy name exclusively with the world-famous castle. Consequently, the judgment under appeal is also at variance with the requirements laid down by the Court of Justice in its *Chiemsee* judgment, ([2]) since the relevant public will associate goods bearing the designation 'Neuschwanstein' with Neuschwanstein Castle as a world renowned tourist centre. That location is therefore undoubtedly liable to have an impact on consumers' choices and preferences by reason of its positive connotations. Thus, the sign, as an indication of geographical origin, lacks the capacity to be protected. There is a general interest in keeping the names of famous tourist sights, at least for typical souvenirs that are marketed and purchased in order to remind visitors of the sight concerned, free from monopolisation through trade-mark protection. An analysis of the goods and services in respect of which registration was sought in terms of their suitability as souvenirs was, however, not undertaken in the judgment under appeal. This was, however, necessary, in particular because registration of the mark at issue was sought for headings that also include typical souvenirs. The fact that in this case the Freistaat Bayern is the applicant in no way alters those principles, as the General Court stressed in its *Monaco* judgment, ([3]) since the same principles apply to a State *qua* applicant for registration of a trade mark as to other market participants.

2. Contrary to the requirements of the previous case-law, the General Court came to the conclusion, with regard to the ground for refusal relating to the absence of distinctive character under Article 7(1)(b) of Regulation No 207/2009, that the relevant public would recognise that all goods bearing the designation 'Neuschwanstein' were manufactured, marketed or supplied under the control of the Freistaat Bayern (see, in this regard, paragraph 43 of the judgment under appeal). However, purchasers of goods that are traditionally offered in close proximity to a tourist sight and that bear its name will not see any reference in that designation to the owner of the sight and will not expect that they are manufactured or marketed by that owner. The designation 'Neuschwanstein' serves exclusively to remind them of their visit to the tourist sight and the point of sale. The relevant public is unconcerned as to who the manufacturer may be.

3. Bad faith on the part of the applicant for the mark Neuschwanstein under Article 52(1)(b) must be assumed, since it was already well known to the relevant public and demonstrably also to the applicant before the application for registration of the EU trade mark at issue that a variety of goods are offered in the direct vicinity of Neuschwanstein Castle that are labelled with the name of that tourist sight.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).
([2]) Judgment of 4 May 1999, *Windsurfing Chiemsee* (C-108/97 and C-109/97, EU:C:1999:230).
([3]) Judgment of 15 January 2015, *Marques de l'État de Monaco* v *OHIM* (MONACO) (T-197/13, EU:T:2015:16).

Request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Coimbra (Portugal) lodged on 5 October 2016 — Superfoz — Supermercados Lda v Fazenda Pública

(Case C-519/16)

(2017/C 006/33)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Coimbra

Parties to the main proceedings

Applicant: Superfoz — Supermercados Lda

Defendant: Fazenda Pública

Questions referred

1. Can Article 27(10) of Regulation (EC) No 882/2004 ([1]) of 29 April 2004, or any other rule of law or general principle of the European Union that the Court of Justice of the European Union deems applicable, be interpreted as meaning that they preclude a national provision that introduces a tax to fund official controls related to food safety, to be paid by the owners of food or mixed retail outlets only, where that tax does not correspond to any specific official control that has been caused by, or that is for the benefit of, those taxpayers?

2. Would the answer would be different if, instead of a tax, a financial contribution was introduced in favour of a public body, to be levied on the same taxpayers, intended to cover the costs of food quality controls, although with the sole aim of extending the responsibility for funding such controls to all operators in the food chain?

3. Does the exemption of certain economic operators from a food safety tax, which is levied on certain retail food outlets (essentially large retail food undertakings) and which is intended to fund the costs related to carrying out official controls in the area of food safety, animal protection and animal health, plant protection and plant health, constitute State aid incompatible with the internal market, in so far as it distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods within the meaning of Article 107(1) of the TFEU or, at least, does that tax exemption constitute an integral part of a State aid that is subject to notification to the European Commission within the meaning of Article 108(3) of the TFEU?

4. Do the principles of EU law, notably the principles of equality, non-discrimination, competition (including the prohibition of reverse discrimination) and freedom to conduct business preclude a national provision that:

   (a) Imposes the obligation to pay the 'Tax' on large retail food undertakings only?

   (b) Excludes from the scope of the 'Tax' outlets or micro-enterprises with a sales area of less than 2 000 m^2 and which are not integrated in a group, or which do not belong to an undertaking, that uses one or more ensigns and which has, at national level, a cumulative sales area of 6 000 m^2 or more?

([1]) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1).

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 18 October 2016 — *Šiaulių regiono atliekų tvarkymo centras* v *'Specializuotas transportas' UAB*

(Case C-531/16)

(2017/C 006/34)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellants in cassation: Šiaulių regiono atliekų tvarkymo centras, 'Specializuotas transportas' UAB

Other parties: 'VSA Vilnius' UAB, 'Švarinta' UAB, 'Specialus autotransportas' UAB, 'Ecoservice' UAB

Questions referred

1. Must the free movement of persons and services set out, respectively, in Articles 45 TFEU and 56 TFEU, the principles of equality of tenderers and of transparency set out in Article 2 of Directive 2004/18 ([1]) and the principle, which flows from the aforementioned principles, of free and fair competition between economic operators (together or separately, but without limitation to those provisions) be understood and interpreted as meaning that:

   if related tenderers, whose economic, management, financial or other links may give rise to doubts as to their independence and the protection of confidential information and/or may provide the preconditions (potential) for them to have an advantage over other tenderers, have decided to submit separate (independent) tenders in the same public procurement procedure, are they, in any event, under a duty to disclose those links between them to the contracting authority, even if the contracting authority does not inquire of them separately, irrespective of whether or not the national legal rules governing public procurement state that such a duty does in fact exist?

2. If the answer to the first question:

   (a) is in the affirmative (that is to say, tenderers must in any event disclose their links to the contracting authority), is the circumstance that that duty was not complied with in such a case, or that it was not properly complied with, sufficient for the contracting authority to take the view, or for a review body (court) to decide, that related tenderers which have submitted separate tenders in the same public procurement procedure are participating without being genuinely in competition (and are engaged in a pretence of competition)?

   (b) is in the negative (that is to say, tenderers do not have any additional duty — which is not laid down in legislation or in the tendering conditions — to disclose their links), must the risk posed by participation of related economic operators and the risk of the consequences flowing from this then be borne by the contracting authority, if the contracting authority did not indicate in the public tendering documentation that tenderers were under such a duty of disclosure?

3. Irrespective of the answer to the first question, and having regard to the judgment of the Court of Justice in Case C-538/13, *eVigilo*, must the provisions of law referred to in the first question and the third subparagraph of Article 1(1) of Directive 89/665 ([2]) and Article 2(1)(b) of that directive (together or separately, but without limitation to those provisions) be understood and interpreted as meaning that:

   (a) if, in the course of the public procurement procedure, it becomes clear, in whatever way, to the contracting authority that significant links (connections) exist between certain tenderers, that contracting authority must, irrespective of its own assessment of that fact and (or) of other circumstances (for example, the formal and substantive dissimilarity of the tenders submitted by the tenderers, the public commitment given by a tenderer to engage in fair competition with other tenderers, and so forth), separately address the related tenderers and request them to clarify whether and how their personal situation is compatible with free and fair competition between tenderers?

(b) if the contracting authority has such a duty but fails to discharge it, is there a sufficient basis for the court to declare the actions of that contracting authority to be unlawful, as having failed to ensure procedural transparency and objectivity, and as having failed to request evidence from the applicant or having failed to take a decision, on its own initiative, as to the possible influence that the personal situation of related persons might have on the outcome of the tendering procedure?

4. Must the legal provisions referred to in the third question and Article 101(1) TFEU (together or separately, but without limitation to those provisions), be understood and interpreted, in the light of the judgments of the Court of Justice in Case C-538/13, *eVigilo*, Case C-74/14, *Eturas and Others*, and Case C-542/14, *VM Remonts*, as meaning that:

(a) where a tenderer (the applicant) has become aware of the rejection of the lowest-priced tender submitted by one of two related tenderers in a public tendering procedure (tenderer A) and of the fact that the other tenderer (tenderer B) has been declared the successful tenderer, and also having regard to other circumstances connected with those tenderers and their participation in the tendering procedure (*the fact that tenderers A and B have the same board of directors; the fact that they have the same parent company, which did not take part in the tendering procedure; the fact that tenderers A and B did not disclose their links to the contracting authority and did not separately provide additional clarifications as to those links, inter alia because no inquiries had been made of them; the fact that tenderer A provided, in its tender, inconsistent information on the compliance by the proposed means of transport (refuse lorries) with the EURO V condition of the call for tenders; the fact that that tenderer, which submitted the lowest-priced tender, which was rejected because of deficiencies identified in it, first, did not challenge the contracting authority's decision and, second, lodged an appeal against the judgment of the court of first instance, in which appeal, inter alia, it [challenged] the lawfulness of the rejection of its tender; etc.*), and where, in respect of all of those circumstances, the contracting authority did not take any action, is that information alone sufficient to found a claim addressed to the review body that it should regard as unlawful the actions of the contracting authority in failing to ensure procedural transparency and objectivity, and, in addition, in not requiring the applicant to provide concrete evidence that tenderers A and B were acting unfairly?

(b) tenderers A and B did not prove to the contracting authority that they were genuinely and fairly taking part in the public tendering procedure solely because tenderer B voluntarily submitted a declaration of genuine participation, the management quality standards for participating in public tendering were applied by tenderer B, and, in addition, the tenders submitted by those tenderers were not formally and substantively identical?

5. Can the actions of mutually related economic operators (both of which are subsidiaries of the same company) which are participating separately in the same tendering procedure, the value of which reaches the value for international competitive tendering, and where the seat of the contracting authority which announced the tendering procedure and the place where the services are to be provided are not very far distant from another Member State (the Republic of Latvia), be in principle assessed — regard being had to, inter alia, the voluntary submission by one of those economic operators that it would be engaging in fair competition — under the provisions of Article 101 TFEU and the case-law of the Court of Justice which interprets those provisions?

([1]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

([2]) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 18 October 2016 — *Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos* v *AB SEB bankas*

(Case C-532/16)

(2017/C 006/35)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Other party: AB SEB bankas

Questions referred

1. Must Articles 184 to 186 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the deduction adjustment mechanism provided for in Directive 2006/112 is not applicable in cases where an initial deduction of value added tax (VAT) could not have been made at all because the transaction in question was an exempt transaction relating to the supply of land?

2. Is the answer to the first question affected by the fact that (1) the VAT on the purchase of the plots of land was initially deducted because of the tax administration's practice under which the supply in question was incorrectly regarded as being a supply of building land subject to VAT, as provided for in Article 12(1)(b) of Directive 2006/112, and/or (2) after the initial deduction made by the purchaser, the supplier of the land issued a VAT credit note to the purchaser adjusting the amounts of VAT indicated (specified) on the initial invoice?

3. If the answer to the first question is in the affirmative, are, in circumstances such as those at issue in the main proceedings, Articles 184 and/or 185 of Directive 2006/112 to be interpreted as meaning that, in a case where an initial deduction could not have been made at all because the transaction in question was exempt from VAT, the taxable person's obligation to adjust that deduction must be considered to have arisen immediately or only when it became known that the initial deduction could not have been made?

4. If the answer to the first question is in the affirmative, is, in circumstances such as those at issue in the main proceedings, Directive 2006/112, and in particular Articles 179, 184 to 186 and 250 thereof, to be interpreted as meaning that the adjusted amounts of deductible input VAT must be deducted in the tax period in which the taxable person's obligation and/or right to adjust the initial deduction arose?

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

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 25 October 2016 — *UAB 'Spika', AB 'Senoji Baltija', UAB 'Stekutis', UAB 'Prekybos namai Aistra'* v *Žuvininkystės tarnyba prie Lietuvos Respublikos žemės ūkio ministerijos*

(Case C-540/16)

(2017/C 006/36)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellants: UAB 'Spika', AB 'Senoji Baltija', UAB 'Stekutis', UAB 'Prekybos namai Aistra'

Respondent: Žuvininkystės tarnyba prie Lietuvos Respublikos žemės ūkio ministerijos

Other parties: Lietuvos Respublikos žemės ūkio ministerija, BUAB 'Sedija', UAB 'Starkis', UAB 'Baltijos šprotai', UAB 'Ramsun', AB 'Laivitė', UAB 'Baltlanta', UAB 'Strimelė', V. Malinausko gamybinė-komercinė firma 'Stilma', UAB 'Banginis', UAB 'Monistico', UAB 'Rikneda', UAB 'Baltijos jūra', UAB 'Grinvita', BUAB 'Baltijos žuvys'

Question referred

Are Articles 17 and 2(5)(c) of Regulation (EU) No 1380/2013 ([1]) of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, in the light of Articles 16 and 20 of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that, when a Member State exercises the discretion provided for in Article 16(6), it is prohibited from choosing a method of allocation of the fishing quotas allocated to it which causes unequal conditions of competition for economic operators engaging in activity in this field on account of a greater quantity of fishing opportunities, even if that method is based on a transparent and objective criterion?

([1]) OJ 2013 L 354, p. 22.

Action brought on 25 October 2016 — European Commission v Kingdom of Denmark

(Case C-541/16)

(2017/C 006/37)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: L. Grønfeldt and J. Hottiaux, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— Declare that the Kingdom of Denmark has failed to fulfil its obligations under Article 2(6) Regulation (EC) No 1072/2009 ([1]) on common rules for access to the international road haulage market;

— order Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

— The Commission submits that Article 8(2) of Regulation (EC) No 1072/2009 regulates exhaustively how hauliers may to carry out cabotage operations on the terms laid down in that article. The provision does not provide for a maximum number of loading and/or unloading sites within the same cabotage operation. The limit of a maximum of three cabotage operations does not mean that a cabotage operation must include a set number of loading and/or unloading sites.

— Under the Danish rules cabotage can consist either of a number of loading sites or a number of unloading sites, but not both. The Danish rules preclude non-resident hauliers from carrying out cabotage operations consisting of a number of loading and unloading sites, which constitutes a restriction on how those hauliers may carry out cabotage operations in Denmark as provided for under Regulation (EC) No 1072/2009.

([1]) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72).

Action brought on 27 October 2016 — European Commission v Federal Republic of Germany

(Case C-543/16)

(2017/C 006/38)

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 Commission claims that the Court should:

— declare that, by failing to adopt additional measures or reinforced actions as soon as it became clear that the measures of the action programme were insufficient to achieve the objectives of the directive, and by not revising its action programme in order to bring it into conformity with the mandatory requirements of Annexes II and III, the Federal Republic of Germany has failed to fulfil its obligations under Article 5(5) and (7) of, in conjunction with Annexes II and III to, Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources; ([1])

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

Pleas in law and main arguments

By failing to adopt additional measures or reinforced actions, even though it would have become clear at the latest by the time of Germany's submission, on 4 July 2012, of the fifth report pursuant to Article 10 of the directive for the period from 2008 to 2011 that the measures of the German action programme would be insufficient to achieve the objectives of the directive, the Federal Republic of Germany infringed Article 5(5) of Directive 91/676/EEC.

Moreover, by failing to update the German action programme, even though that was required in view of the situation demonstrated in the abovementioned report of 4 July 2012, the Federal Republic of Germany infringed Article 5(7) of the directive. Thus the Federal Republic of Germany was in any event required to take measures that would fully and properly correspond to the substantive requirements of Article 5(3) and (4) of, in conjunction with Annexes II and III to, the directive.

That is not the case under the applicable German rules, given that they:

— include, in relation to the principle of balanced use of fertilisers, a calculation of fertiliser requirements which is not be consistent with the actual nutritional needs of individual crops, or with the requirements in the different climactic soil regions and the monitoring of the effect of the use of fertilisers on water protection, and allow an operational excess of nutrients of up to 60 kilograms of nitrogen per hectare per year (see Annex III, point 1, number 3, to the directive);

— provide for an exception for '*solid manure without poultry manure*' during restricted periods, which does not include a distinction on the basis of climactic soil regions, types of fertiliser, practices relating to the use of fertilisers and other environmental factors, and prescribe, in relation to restricted periods, only periods of two and a half to three months (see Annex III, point 1, number 1, and Annex II, Part A, point 1, to the directive);

— prescribe, in relation to the prescribed capacity of vessels for the storage of manure, storage capacities which are based on restricted periods which are too short and, with the exception of the requirements for Berlin, Saxony and Thuringia, relate only to the storage of liquid manure (see Annex II, Part A, point 5, to the directive);

— allow the land application of a maximum amount of manure corresponding to 230 kilograms of nitrogen per hectare per year on grassland and pastures under certain conditions (see Annex III, point 2, first subparagraph, to the directive);

— provide, in relation to the land application of fertiliser to steeply sloping land, exceptions for solid manure, with the exception of poultry manure, and provide for limitations on the land application of fertilisers high in nitrogen only in relation to a slope with more than a 10 % gradient and prohibitions in that case only within a distance of three meters to the upper edge of the bank of the waters, and therefore depart in several respects from the relevant scientific study (see Annex II, Part A, point 2, and Annex III, point 1, number 3(a), to the directive);

— prohibit the land application of fertilisers only in situations where there is snow cover of more than five centimetres and in relation to '*land which is constantly frozen and does not superficially thaw over the course of the day*' (see Annex II, Part A, point 3, and Annex III, point 1, numbers 3(a) and (b), to the directive).

The regular notifications of the German Government regarding the scheduled amendment of the Düngeverordnung (German decree on fertilisers) do not, in the Commission's view, disprove the infringements of Article 5(5) and (7) of the directive that are alleged, as the rules in question did not enter into force before the expiry, on 11 September 2014, of the period set in the reasoned opinion and have not entered into force since that time.

(1) OJ 1991 L 375, p. 1.

GENERAL COURT

Judgment of the General Court of 9 November 2016 — Birkenstock Sales v EUIPO (representing a pattern of wavy, crisscrossing lines)

(Case T-579/14) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark representing a pattern of wavy, crisscrossing lines — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Surface pattern — Application of a pattern on the packaging of a product)

(2017/C 006/39)

Language of the case: German

Parties

Applicant: Birkenstock Sales GmbH (Vettelschoß, Germany) (represented by: C. Menebröcker and V. Töbelmann, lawyers)

Defendant: European Union Intellectual Property Office (represented by: initially G. Schneider and D. Walicka, and subsequently D. Walicka, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 15 May 2014 (Case R 1952/2013-1), concerning the international registration designating the European Union of the figurative mark representing a pattern of wavy, crisscrossing lines.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 15 May 2014 (Case R 1952/2013-1) in so far as it concerns the following goods: 'artificial limbs, eyes and teeth', 'suture materials; suture materials for operations' and 'animal skins, hides';*

2. *Dismisses the action as to the remainder;*

3. *Orders Birkenstock Sales GmbH to bear its own costs and to pay half of those incurred by EUIPO, and EUIPO to bear half of its own costs.*

([1]) OJ C 351, 6.10.2014.

Judgment of the General Court of 10 November 2016 — Polo Club v EUIPO — Lifestyle Equities (POLO CLUB SAINT-TROPEZ HARAS DE GASSIN)

(Case T-67/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark POLO CLUB SAINT-TROPEZ HARAS DE GASSIN — Earlier EU figurative marks BEVERLY HILLS POLO CLUB — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Production of additional evidence — Discretion conferred by Article 76(2) of Regulation No 207/2009 — Remittal of the case in part to the Opposition Division — Article 64(1) and (2) of Regulation No 207/2009)

(2017/C 006/40)

Language of the case: English

Parties

Applicant: Polo Club (Gassin, France) (represented by: D. Masson, lawyer)

Defendant: European Union Intellectual Property Office (represented initially by V. Melgar and H. Kunz and subsequently by H. O'Neil, Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Lifestyle Equities CV (Amsterdam, Netherlands) (represented by: D. Russo and V. Wellens, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 21 November 2014 (Case R 1882/2013-5), relating to opposition proceedings between Lifestyle Equities and Polo Club.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Polo Club to pay the costs of the present proceedings.*

(1) OJ C 118, 13.4.2015.

Judgment of the General Court of 9 November 2016 — Trivisio Prototyping v Commission

(Case T-184/15) (1)

(Funding — Sixth framework programme for research, technological development and demonstration activities — Contracts concerning the projects ULTRA, CINeSPACE and IMPROVE — Partial reclassification of the action — Enforceable decision — Article 299 TFEU — Arbitration clause — Eligible costs — Recovery of sums paid)

(2017/C 006/41)

Language of the case: German

Parties

Applicant: Trivisio Prototyping GmbH (Trier, Germany) (represented initially by A. Bartosch and A. Böhlke, and subsequently by A. Böhlke, lawyers)

Defendant: European Commission (represented by: S. Delaude and F. Moro, acting as agents, and R. van der Hout and S. Blazek, lawyers)

Re:

First, application based on Article 263 TFEU seeking the annulment of Commission Decision C(2015) 633 final of 2 February 2015 concerning recovery of the sum of EUR 385 112,19 together with interest and, second, application based on Article 272 TFEU seeking a declaration that the debt claimed by the Commission against Trivisio Prototyping is non-existent.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Trivisio Prototyping GmbH to bear its own costs and to pay those incurred by the European Commission.*

(1) OJ C 262, 10.8.2015.

Judgment of the General Court of 9 November 2016 — Smarter Travel Media v EUIPO (SMARTER TRAVEL)

(Case T-290/15) ([1])

(EU trade mark — Application for the figurative EU trade mark SMARTER TRAVEL — Absolute grounds for refusal — Descriptive character — No distinctive character — Article 7(1)(b) and (c) and Article 7(2) of Regulation (EC) No 207/2009 — Equal treatment)

(2017/C 006/42)

Language of the case: English

Parties

Applicant: Smarter Travel Media LLC (Boston, Massachusetts, United States) (represented by: P. Olson, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, Agent)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 20 March 2015 (Case R 1986/2014-2), relating to an application for registration of the figurative sign SMARTER TRAVEL as an EU trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Smarter Travel Media LLC to pay the costs.*

([1]) OJ C 262, 10.8.2015.

Judgment of the General Court of 17 November 2016 — Vince v EUIPO (ELECTRIC HIGHWAY)

(Case T-315/15) ([1])

(EU trade mark — Application for the EU word mark ELECTRIC HIGHWAY — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2017/C 006/43)

Language of the case: English

Parties

Applicant: Dale Vince (Stroud, United Kingdom) (represented by: B. Longstaff, Barrister)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 3 March 2015 (Case R 1442/2014-5), concerning an application for registration of the word sign ELECTRIC HIGHWAY as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Dale Vince to pay the costs.*

(1) OJ C 406, 7.12.2015.

Judgment of the General Court of 8 November 2016 — For Tune v EUIPO — Gastwerk Hotel Hamburg (fortune)

(Case T-579/15) (1)

(EU trade mark — Opposition proceedings — Application for the EU figurative mark fortune — Earlier German word mark FORTUNE-HOTELS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 006/44)

Language of the case: English

Parties

Applicant: For Tune sp. z o.o. (Warsaw, Poland) (represented by: K. Popławska, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Gastwerk Hotel Hamburg GmbH & Co. KG (Hamburg, Germany)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 7 August 2015 (Case R 2808/2014-5), relating to opposition proceedings between Gastwerk Hotel Hamburg and For Tune.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders For Tune sp. z o.o. to pay the costs.*

(1) OJ C 398, 30.11.2015.

Judgment of the General Court of 17 November 2016 — Fedtke v EESC

(Case T-157/16 P) (1)

(Appeal — Civil Service — Officials — Purely confirmatory act — New substantive facts — Burden of proof)

(2017/C 006/45)

Language of the case: French

Parties

Appellant: Ingrid Fedtke (Wezembeek-Oppem, Belgium) (represented by: M.-A. Lucas, lawyer)

Other party to the proceedings: European Economic and Social Committee (EESC) (represented by: M. Pascua Mateo, K. Gambino, X. Chamodraka, A. Carvajal and L. Camarena Januzec, acting as Agents, and B. Wagenbäur, lawyer)

Re:

Appeal lodged against the order of the European Union Civil Service Tribunal (Second Chamber) of 5 February 2016, Fedtke v EESC (F-107/15, EU:2016:F:15), seeking to have that order set aside.

Operative part of the judgment

The Court:

1. *Sets aside the order of the European Union Civil Service Tribunal (Second Chamber) of 5 February 2016, Fedtke v EESC (F-107/15);*

2. *Refers the action to a Chamber of the General Court other than that which has ruled in the present appeal;*

3. *Reserves the costs.*

([1]) OJ C 191, 30.5.2016.

Order of the General Court of 9 November 2016 — Biofa v Commission

(Case T-746/15) ([1])

(Action for annulment — Plant protection products — Implementing Regulation (EU) 2015/2069 — Approval of the basic substance sodium hydrogen carbonate — Lack of direct concern — Inadmissibility)

(2017/C 006/46)

Language of the case: German

Parties

Applicant: Biofa AG (Münsingen, Germany) (represented by: C. Stallberg and S. Knoblich, and subsequently by C. Stallberg, lawyers)

Defendant: European Commission (represented by: P. Ondrůšek, G. von Rintelen and F. Moro, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Commission Implementing Regulation (EU) 2015/2069 of 17 November 2015 approving the basic substance sodium hydrogen carbonate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2015 L 301, p. 42).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the application to intervene of the Kingdom of Denmark.*

3. *Biofa AG shall pay the costs, including those relating to the proceedings for interim measures.*

4. *The Kingdom of Denmark shall bear its own costs relating to the application to intervene.*

([1]) OJ C 59, 15.2.2016.

Order of the General Court of 7 October 2016 — Slovenia v Commission

(Case T-12/16) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Slovenia — Adoption of Implementing Decision (EU) 2016/1059 — No need to adjudicate)

(2017/C 006/47)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: L. Bembič, acting as agent)

Defendant: European Commission (represented by: B. Rous Demiri and D. Triantafyllou, acting as agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission Implementing Decision (EU) 2015/2098 of 13 November 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 303, p. 35), in so far as that decision concerns the Republic of Slovenia.

Operative part of the order

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

2. *The European Commission is ordered to bear its own costs and to pay those incurred by the Republic of Slovenia.*

([1]) OJ C 98, 14.3.2016.

Order of the President of the General Court of 11 November 2016 — *Solelec and Others* v *Parliament*

(Case T-281/16 R)

(Interim measures — Public works contracts — Tendering procedure — Electrical work (high-voltage current) as part of the project for the extension and refurbishment of the Parliament's Konrad Adenauer building in Luxembourg — Rejection of the bid submitted by a tenderer and decision to award the contract to another tenderer — Application for suspension of operation of a measure — Lack of urgency)

(2017/C 006/48)

Language of the case: French

Parties

Applicants: Solelec SA (Esch-sur-Alzette, Luxembourg), Mannelli & Associés SA (Bertrange), Paul Wagner et fils SA (Luxembourg), Socom SA (Foetz) (represented by: S. Marx, lawyer)

Defendant: European Parliament (represented by: M. Mraz and L. Chrétien, agents)

Re:

Action on the basis of Articles 278 TFEU and 279 TFEU seeking suspension of the operation, first, of the decision of the Parliament of 27 May 2016 to reject the tender submitted by the applicants for lot No 75 in connection with a call for tenders with reference INLO-D-UPIL-T-15-AO6, concerning the project for the extension and refurbishment of the Konrad Adenauer building in Luxembourg and, secondly, of the decision awarding that lot to another tenderer.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The order of 9 June 2016 delivered in Case T-281/16 R is set aside.*

3. *The costs are reserved.*

Action brought on 25 October 2016 — *La Quadrature du Net and Others* v *Commission*

(Case T-738/16)

(2017/C 006/49)

Language of the case: French

Parties

Applicants: La Quadrature du Net (Paris, France), French Data Network (Amiens), Fédération des Fournisseurs d'Accès à Internet Associatifs (Fédération FDN) (Amiens) (represented by: H. Roy, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 to be contrary to Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union;

— annul that decision.

Pleas in law and main arguments

In support of the action, the applicants put forward four pleas in law.

1. First plea, alleging infringement of the Charter of Fundamental Rights of the European Union ('the Charter') by reason of the generalised nature of the collections allowed under the US regulatory regime. Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-US Privacy Shield ('the contested decision') committed such an infringement by failing to draw the conclusion that the US regulatory regime is in particular contrary to the essence of the fundamental right to respect for private life guaranteed by Article 7 of the Charter.

2. Second plea, alleging infringement of the Charter, insofar as the contested decision wrongly found that the EU-US Privacy Shield assures a level of protection of fundamental rights that is substantially equivalent to that guaranteed within the European Union despite the fact that the operations allowed under the US regulatory regime are not limited to what is strictly necessary.

3. Third plea, alleging infringement of the Charter, to the extent that the contested decision failed to take into consideration the lack of effective remedy provided for under the US regulatory regime and concluded, notwithstanding that failure, that the abovementioned protection was equivalent.

4. Fourth plea, alleging infringement of the Charter, as the contested decision was manifestly incorrect in finding that the EU-US Privacy Shield assured protection equivalent to that guaranteed within the European Union, despite the lack of provision of independent monitoring under the US regulatory regime.

Action brought on 28 October 2016 — BPCE v ECB

(Case T-745/16)

(2017/C 006/50)

Language of the case: French

Parties

Applicant: BPCE (Paris, France) (represented by: A. Gosset-Grainville, C. Renner and P. Kupka, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

— annul the European Central Bank's Decision No ECB/SSM/2016-9695005MSXI0YEMGDF46/195 of 24 August 2016;

— order the European Central Bank to pay all the costs in any event.

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 lack of competence vitiates the decision of the European Central Bank (ECB) of 24 August 2016 rejecting the request of the applicant for exposure on the French Caisse des Dépôts et Consignations, resulting from centralised funds in the context of regulated savings, to be excluded from the leverage ratio calculation ('the contested decision'), in so far as, having confirmed that the conditions laid down in the applicable EU legislation had been met, the ECB was not competent to refuse to grant the exclusion requested.

2. Second plea in law, alleging several errors of law on the part of the ECB. The applicant claims that, even if the ECB had been competent to adopt the contested decision, that decision would not be valid since it is vitiated by several errors of law in relation to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1; 'Regulation No 575/2013') and the intentions of the EU legislature by reason of the fact that the ECB misinterpreted the legislation in question and thus adopted a decision which:

   — is contrary to the objectives and purpose of the rules on leverage ratio since it disregards not only the objective of leverage ratio legislation itself but also the legislature's intention as expressed in Article 429(14) of Regulation No 575/2013;

   — alters the basic provision by taking into consideration two additional conditions that are not included in the provision at issue;

   — renders Article 429(14) of Regulation No 575/2013 ineffective.

3. Third plea in law, alleging that the contested decision is vitiated by several manifest errors of assessment, in particular with regard to the nature of centralised regulated saving funds, with regard to the implications associated with inclusion of the funds in the bank's balance sheet and with regard to the adjustment mechanism for centralised funds.

4. Fourth plea in law, alleging infringement of several general principles of EU law, namely the principle of proportionality, the principle of legal certainty and the principle of sound administration, in so far as the ECB breached its duty to exercise due diligence.

5. Fifth plea in law, alleging a failure to state reasons for the contested decision inasmuch as, although the ECB was subject to an enhanced obligation to state reasons, the contested decision is inadequately and ambiguously reasoned.

Action brought on 28 October 2016 — Stemcor London and Samac Steel Supplies v Commission

(Case T-749/16)

(2017/C 006/51)

Language of the case: English

Parties

Applicants: Stemcor London Ltd (London, United Kingdom), Samac Steel Supplies Ltd (London) (represented by: F. Di Gianni and C. Van Hemelrijck, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ 2016, L 210, p. 27), and

— order the Commission to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the interpretation and application of the 'importer's awareness' condition laid down in Article 10(4)(c) of the Basic Anti-dumping Regulation (EU) 2016/1036 is wrong and unlawful.

   — First limb: the interpretation contained in the Regulation (EU) 2016/1329 (the 'Contested Regulation') about the importer's awareness condition laid down in Article 10(4)(c) of the Basic Anti-dumping Regulation (EU) 2016/1036 is wrong and unlawful.

   — Second limb: an interpretation of Article 10(4)(c) of the Basic Anti-dumping Regulation (EU) 2016/1036 in light of the well-established means of interpretation of EU law and of the WTO AD Agreement shows that, in order to determine whether such condition is satisfied, the Commission must assess the actual knowledge of the importer.

2. Second plea in law, alleging that the assessment of the 'substantial rise in imports' condition was wrongfully based on a period starting in the first full month after publication of the initiation of the investigation in the Official Journal and ending in the last full month preceding the imposition of provisional measures.

3. Third plea in law, alleging that the interpretation relied upon in the Contested Regulation about the 'seriously undermining of the remedial effect' condition laid down in Article 10(4)(d) of the Basic Anti-dumping Regulation (EU) 2016/1036 is wrong and unlawful.

   — First limb: the Commission wrongfully carried out a global assessment of the 'seriously undermining of the remedial effect' condition laid down in Article 10(4)b of the Basic regulation, while it should have carried out an individual analysis of the conduct of each importer to determine whether its imports did contribute to the alleged serious undermining of the remedial effects of the duties.

   — Second limb: the Contested Regulation is flawed insofar as it concludes that the retrospective application of duties on imports occurred during the registration period would avoid the remedial effect of the duties from being seriously undermined.

Action brought on 28 October 2016 — FV v Council

(Case T-750/16)

(2017/C 006/52)

Language of the case: French

Parties

Applicant: FV (Rhode-St-Genèse, Belgium) (represented by: L. Levi and A. Tymen, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the present action to be admissible and well-founded;

consequently:

— annul the decision of 8 December 2015, taken on the basis of Article 42c of the Staff Regulations;

— annul, as necessary, the decision of 19 July 2016 rejecting the applicant's complaint of 8 March 2016;

— order the defendant to pay damages of EUR 151 101 subject to increase, as compensation for the pecuniary damage suffered by the applicant;

— order the defendant to pay damages, set ex aequo et bono at EUR 70 000, as compensation for the non-pecuniary damage suffered by the applicant;

— order the defendant to pay all of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a plea of illegality directed against Article 42c of the Staff Regulations of Officials of the European Union, infringement of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, infringement of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16), and infringement of Article 1d of the Staff Regulations.

2. Second plea in law, alleging infringement of Article 42c of the Staff Regulations, infringement of the Communication to Staff No 71/15 to provide information on the implementation of Article 42c of the Staff Regulations, and manifest inaccuracies and irregularities in fact and in law of the grounds which would have led to the applicant's compulsory leave;

3. Third plea in law, alleging infringement of the right to be heard and of the rights of the defence;

4. Fourth plea in law, alleging infringement of the duty of care;

5. Fifth plea in law, alleging misuse of powers.

Action brought on 28 October 2016 — Confédération Nationale du Crédit Mutuel v ECB

(Case T-751/16)

(2017/C 006/53)

Language of the case: French

Parties

Applicant: Confédération Nationale du Crédit Mutuel (Paris, France) (represented by: M. Grégoire, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

— annul, on the basis of Article 263 TFEU, the decision of the European Central Bank of 24 August 2016 (ECB/SSM/2016 — 9695000CG7B84NLR5984/92) concerning the application made by Crédit Mutuel for authorisation to exclude exposure to the public sector from the leverage ratio calculation, in accordance with Article 429(14) of Regulation (EU) No 575/2013, as regards Crédit Mutuel and all the entities of the group subject to the leverage ratio;

— order the European Central Bank to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is *ultra vires*. According to the applicant, the European Central Bank (ECB) is competent only to verify compliance with the conditions governing whether an establishment may be granted a derogation from the leverage ratio calculation rules in order to ensure the practical application of those conditions, without bolstering them or assessing their relevance, and is competent only to apply those conditions as they have been definitively and precisely laid down by the Commission, on the basis of its exclusive powers, by means of a delegated regulation designed to take into account the specific nature of the banking and financial industry in the European Union.

2. Second plea in law, which is presented in the alternative to the preceding plea, alleging that the ECB committed an error of law in the contested decision. According to the applicant, exposure to public sector entities, when treated in the same way as exposure at central government level, should be regarded as representing zero risk where they are denominated in the domestic currency of that government.

3. Third plea in law, which is presented in the alternative to the two preceding pleas, alleging manifest error of assessment. According to the applicant, the contested decision is manifestly inappropriate in relation to the objectives pursued by prudential requirements, having regard to the characteristics of regulated savings, and is manifestly disproportionate due to the negative consequences that will result for the establishment in question.

4. Fourth plea in law, alleging infringement of the obligation to state reasons and infringement of the principle of sound administration in so far as the ECB failed to examine or take into account all the relevant factors in the present case.

Action brought on 2 November 2016 — Euro Castor Green v EUIPO — Netlon France (Concealed trellis)

(Case T-756/16)

(2017/C 006/54)

Language in which the application was lodged: French

Parties

Applicant: Euro Castor Green (Bagnolet, France) (represented by: B. Lafont, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Netlon France (Saint Saulve, France)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: European Union design No 001 197 966-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 11/08/2016 in Case R 754/2014-3

Form of order sought

The applicant claims that the Court should:

— declare that the application, and its annexes, are admissible;

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1) of Regulation No 6/2002;

— Infringement of Article 5 of Regulation No 6/2002;

— Infringement of Article 3(1)(b) of Regulation No 6/2002;

— Infringement of Article 6 of Regulation No 6/2002;

— Infringement of Article 8(1) of Regulation No 6/2002.

Action brought on 28 October 2016 — Société générale v ECB

(Case T-757/16)

(2017/C 006/55)

Language of the case: French

Parties

Applicant: Société générale (Paris, France) (represented by: A. Gosset-Grainville, C. Renner and P. Kupka, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

— annul the European Central Bank's Decision No ECB/SSM/2016-02RNE8IBXP4ROTD8PU41/72 of 24 August 2016;

— order the European Central Bank to pay all the costs in any event.

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 lack of competence vitiates the decision of the European Central Bank (ECB) of 24 August 2016 rejecting the request of the applicant for exposure on the French Caisse des Dépôts et Consignations, resulting from centralised funds in the context of regulated savings, to be excluded from the leverage ratio calculation ('the contested decision'), in so far as, having confirmed that all of the conditions laid down in the applicable EU legislation had been met, the ECB was not competent to refuse to grant the exclusion requested.

2. Second plea in law, alleging several errors of law on the part of the ECB. The applicant claims that, even if the ECB had been competent to adopt the contested decision, that decision would not be valid as it is vitiated by several errors of law in relation to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1; 'Regulation No 575/2013') and the intentions of the EU legislature by reason of the fact that the ECB misinterpreted the legislation in question and thus adopted a decision which:

   — is contrary to the objectives and purpose of the rules on leverage ratio since it disregards not only the objective of leverage-ratio legislation itself but also the legislature's intention as expressed in Article 429(14) of Regulation No 575/2013;

— alters the basic provision by taking into consideration two additional conditions that are not included in the provision at issue;

— renders Article 429(14) of Regulation No 575/2013 ineffective.

3. Third plea in law, alleging that the contested decision is vitiated by several manifest errors of assessment, in particular with regard to the nature of the centralised regulated saving funds, with regard to the implications associated with inclusion of the funds in the bank's balance sheet and with regard to the adjustment mechanism for centralised funds.

4. Fourth plea in law, alleging infringement of several general principles of EU law, namely the principle of proportionality, the principle of legal certainty and the principle of sound administration in so far as the ECB breached its duty to exercise due diligence.

5. Fifth plea in law, alleging a failure to state reasons for the contested decision inasmuch as, although the ECB was subject to an enhanced obligation to state reasons, the contested decision was inadequately and ambiguously reasoned.

Action brought on 31 October 2016 — Crédit Agricole v ECB

(Case T-758/16)

(2017/C 006/56)

Language of the case: French

Parties

Applicant: Crédit Agricole SA (Montrouge, France) (represented by: A. Champsaur and A. Delors, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

— annul, pursuant to Articles 256 TFEU and 263 TFEU, Decision ECB/SSM/2016 — 969500TJ5KRTCJQWXH05/165 adopted by the European Central Bank on 24 August 2016;

— order the European Central Bank to pay all of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law committed by the European Central Bank (ECB) in interpreting the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1) ('Regulation No 575/2013').

   The applicant thus criticises, inter alia, the decision of the ECB of 24 August 2016 dismissing the application which it had submitted for authorisation to exclude public-sector exposures from the calculation of the leverage ratio ('the contested decision'):

   — for being at variance with the intention of the European legislature and the objectives pursued by Regulation No 575/2013;

   — for rendering Article 429(14) of that regulation entirely ineffective;

   — for constituting an encroachment by the ECB on the powers of the European legislature.

2. Second plea in law, alleging a manifest error of law vitiating the contested decision in the assessment of the prudential risk associated with regulated savings, in so far as the ECB failed to take into consideration the legal framework, the empirical data relating to such savings and the relevant reports of the European Banking Authority, and in so far as it also committed such an error of assessment in regard to the risk of leverage as well as other associated prudential risks.

3. Third plea in law, alleging infringement of the principle of proportionality, vitiating the contested decision, in so far as that decision (i) infringes the general principle of proportionality enshrined in Article 5 of the Treaty on European Union and (ii) fails to meet the specific requirements attached to the principle of proportionality in matters of prudential supervision, which require that prudential requirements be adapted to the business model of the bank and to the associated risks for the financial sector and the economy.

Action brought on 4 November 2016 — Basil v EUIPO — Artex (Bicycle baskets)

(Case T-760/16)

(2017/C 006/57)

Language in which the application was lodged: German

Parties

Applicant: Basil BV (Silvolde, Netherlands) (represented by: N. Weber and J. von der Thüsen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Artex SpA (Zeno di Cassola, Italy)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design No 142 245-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 7 July 2016 in Case R 535/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant and, if applicable, the other parties involved to pay the costs of the proceedings.

Pleas in law

— Infringement of Article 52(3) of Regulation No 6/2002;

— Infringement of Article 7 of Regulation No 6/2002, infringement of principles relating to the burden of proof and infringement of rules of logic in the evaluation of evidence;

— Infringement of Article 6 of Regulation No 6/2002.

Action brought on 31 October 2016 — PY v EUCAP Sahel Niger

(Case T-763/16)

(2017/C 006/58)

Language of the case: French

Parties

Applicant: PY (Souffelweyersheim, France) (represented by: S. Rodrigues and A. Tymen, lawyers)

Defendant: EUCAP Sahel Niger (Niamey, Niger)

Form of order sought

The applicant claims that the General Court should:

— declare the present action to be admissible and well founded;

and accordingly,

— declare the Mission to be liable within the meaning of Article 340 TFEU;

— order the payment of compensation for the material damage suffered by the applicant;

— order the payment of compensation for the non-material damage suffered by the applicant, assessed at EUR 70 000;

— order the defendant to pay all of the costs.

Pleas in law and main arguments

In support of the action, the applicant invokes a single plea in law, alleging contractual breaches on the part of the Mission EUCAP Sahel Niger ('the Mission') which render it contractually liable within the meaning of Article 340 TFEU.

The applicant, a former member of staff of the Mission, alleges that the Mission committed contractual breaches in relation to internal investigation procedures and procedures for the protection of victims where a claim of harassment in the workplace has been made. Due to the Mission's failure to act and its failure to open an internal investigation, the harassment reported by the applicant continued, intensified and resulted in substantial adverse effects on his health, leading to his emergency repatriation. It was not possible for the applicant to resume his duties before the expiry of his contract.

The applicant consequently seeks compensation for the non-material damage that he has suffered as a result of (i) being forced to endure harassment, despite having reported it, for many months, something that the Mission could have prevented, (ii) being laid off from work and (iii) the deterioration in his health and particularly the depression from which he has been suffering ever since. The applicant also seeks compensation for the financial damage resulting from the loss of his remuneration after 30 days on sick leave and from loss of the chance to have his contract of employment renewed.

Action brought on 5 November 2016 — Grupo Ganaderos de Fuerteventura v EUIPO (EL TOFIO El sabor de CANARIAS)

(Case T-765/16)

(2017/C 006/59)

Language in which the application was lodged: Spanish

Parties

Applicant: Grupo Ganaderos de Fuerteventura, SL (Puerto del Rosario, Spain) (represented by: E. Manresa Medina, lawyer)

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 'EL TOFIO El sabor de CANARIAS' — Application for registration No 13 308 259

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 28 July 2016 in Case R 1404/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(c) and (j) of Regulation No 207/2009.

Action brought on 7 November 2006 — Hércules Club de Fútbol v Commission

(Case T-766/16)

(2017/C 006/60)

Language of the case: Spanish

Parties

Applicant: Hércules Club de Fútbol, SAD (Alicante, Spain) (represented by: S. Rating and Y. Martínez Mata, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul European Commission Decision C (2016) 4060 final; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision, in so far as it relates to Hércules, concerns a loan of EUR 18 million granted by a private body to the Fundación de la Comunidad Valenciana Hércules de Alicante, another private body, which used a substantial share of the amount loaned to subscribe for shares in Hércules CF in the context of a capital increase. That loan was guaranteed by a public financial body, namely the Institut Valencià de Finances.

The Commission claims that, as a result of that transaction, Hércules CF benefitted from State aid, amounting to the difference between the actual costs of the guaranteed loan and the costs which it would have incurred under ostensible market conditions, that difference being updated from the date on which the loan was issued to the date of the decision.

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

1. First plea in law, alleging misapplication of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees.

   — The applicant claims in this respect that it was not 'a firm in difficulty' within the meaning of the 2004 Guidelines and that the loan granted took into account the risk of default and the collateral of the loan.

2. Second plea in law, raised in the alternative, alleging the lack of effect on competition and trade between Member States.

   — Hercules CF claims in this respect that it was unable to compete in Europe and that the alleged aid did not confer upon it any competitive advantage.

3. Third plea in law, also raised in the alternative, alleging an incorrect valuation of hypothetical aid.

Action brought on 31 October 2016 — BNP Paribas v ECB

(Case T-768/16)

(2017/C 006/61)

Language of the case: French

Parties

Applicant: BNP Paribas (Paris, France) (represented by: A. Champsaur and A. Delors, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul, on the basis of Articles 256 and 263 TFEU, decision ECB/SSM/2016 — R0MUWSFPU8MPRO8K5P83/136 adopted by the European Central Bank on 24 August 2016;

— order the European Central Bank to pay the entirety of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Central Bank (ECB) committed an error in law in the interpretation of the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1; 'Regulation No 575/2012').

   Accordingly, the applicant in particular criticises ECB decision of 24 August 2016 for rejecting the request which it had made in order to obtain the authorisation to exclude the exposure of public sector entities to the calculation of the leverage ratio ('the contested decision'):

   — as being contrary to the intention of the European legislature and to the objectives pursued by Regulation No 575/2013;

   — as rendering Article 429(14) of that regulation wholly ineffective;

   — as constituting an encroachment by the ECB on the powers of the European legislature.

2. Second plea in law, alleging that the contested decision is marred by a manifest error in the assessment of the prudential risk relating to the regulated savings, inasmuch as the ECB failed to take account of the legal framework and the empirical data relating to those savings as well as the relevant reports of the European Banking Authority, and made such an error of assessment both as regards the leverage risk and the other prudential risks relating thereto.

3. Third plea in law, alleging infringement of the principle of proportionality which mars the contested decision, in so far as it, first, infringes the general principle of proportionality laid down in Article 5 of the Treaty on the European Union, and second, it does not comply with the specific requirements of the principle of proportionality with regard to prudential supervision, requiring that the prudential requirements be adapted to the bank's business model and to the risks associated with it for the financial sector and for the economy.

Action brought on 2 November 2016 — Korwin-Mikke v Parliament

(Case T-770/16)

(2017/C 006/62)

Language of the case: French

Parties

Applicant: Janusz Korwin-Mikke (Jozefow, Poland) (represented by: M. Cherchi, lawyer)

Defendant: European Parliament

Form of order sought

— Declare the present action admissible and well founded;

In consequence:

— Annul the decision of the Bureau of the European Parliament of 1 August 2016;

— Annul the earlier decision of the President of the Parliament of 5 July 2016 imposing the same sanctions;

— Order compensation of the pecuniary and non-pecuniary harm caused by the contested decisions; in the alternative award the applicant the sum of EUR 13 306;

— In any event, order the European Parliament to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 166 of the Rules of Procedure of the European Parliament, infringement of the freedom of speech and of expression of EU citizens, with the particular circumstance that the comments referred to in the decision were made by an MEP in the exercise of his duties and inside the EU institutions, and infringement of the principle that reasons must be stated for the acts of the EU institutions.

2. Second plea in law, alleging infringement of the principle that reasons must be stated for the acts of the EU institutions and of Article 6 of the European Convention on Human Rights, and/or infringement of the general principle of impartial treatment.

3. Third plea in law, alleging infringement of Article 6 of the European Convention on Human Rights, the rights of the defence and Article 166(1) of the Rules of Procedure of the European Parliament.

4. Fourth plea in law, alleging infringement of the principle that reasons must be given for acts of the EU institutions and infringement of the principles of proportionality and *ne bis in idem*.

Action brought on 7 November 2016 — Consejo Regulador del Cava v EUIPO — Cave de Tain L'Hermitage, union des propriétaires (CAVE DE TAIN)

(Case T-774/16)

(2017/C 006/63)

Language in which the application was lodged: English

Parties

Applicant: Consejo Regulador del Cava (Villafranca del Penedès, Spain) (represented by: C. Prat, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cave de Tain L'Hermitage, union des proprietaires (Tain L'Hermitage, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word figurative mark in colours containing the word elements 'CAVE DE TAIN' – EU trade mark No 11 345 824

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 September 2016 in Case R 980/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it does not invalidate the Contested EUTM with regard to 'sparkling wines with a registered designation of origin';

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 52(1)(a) of Regulation No 207/2009 in relation to Articles 102(1)(b) and 103(2)(b) of Regulation No 1308/2013.

Action brought on 8 November 2016 — Mediaexpert v EUIPO — Mediaexpert (mediaexpert)

(Case T-780/16)

(2017/C 006/64)

Language in which the application was lodged: English

Parties

Applicant: Mediaexpert sp. z o.o. (Warsaw, Poland) (represented by: J. Aftyka, (lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mediaexpert S.A. (Warsaw, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colour black, yellow and white, containing the word element 'mediaexpert' — EU trade mark No 11 674 132

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 11 August 2016 in Case R 2583/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of Cancellation Division dated 29/10/2015 in application for a declaration of invalidity proceedings N 000009371 C;

— refer the case back to EUIPO so it can amend the decision on the substance of the case and invalidate European Union Trade Mark No 011674132 in respect of all the services covered;

— charge the EUIPO with the costs of the proceedings before the Cancellation Division, Board of Appeal and General Court.

Plea in law

— Infringement of Article 53(1) (a) in conjunction with Article 8(1) (a) and (b) of Regulation No 207/2009.

Action brought on 1 November 2016 – Pilla v Commission and EACEA

(Case T-784/16)

(2017/C 006/65)

Language of the case: Italian

Parties

Applicant: Rinaldo Pilla (Venafro, Italy) (represented by: A. Silvestri, lawyer)

Defendants: European Commission, Agenzia esecutiva per l'istruzione, gli audiovisivi e la cultura

Form of order sought

The applicant claims that the Court should:

— suspend the selection procedure in progress and annul in its entirety the Commission decision of 2 September 2016 (Directorate General for Education and Culture, Ref. Ares 2016 4930111) excluding Rinaldo Pilla from participation in a funding project, on the grounds of serious infringement of the law, and, failing that, annul the selection in its entirety, on the ground that it is unlawful;

— if, which is denied, the Court finds that Rinaldo Pilla is not a suitable candidate, order the defendants to compensate the applicant for loss of opportunity as a result of his unjustifiable and unsubstantiated exclusion from the European funding project in question, assessed, in the first instance, at EUR 1 050 000,00, and, in the alternative, at EUR 400 000,00.

Pleas in law and main arguments

The present action is brought against the decision excluding the applicant from selection for participation in European funding (Call for proposals EAC/S05/2016, Support for a preparatory action to create an EU Festival Award and an EU Festival Label in the field of Culture: EFFE (Europe for Festivals — Festivals for Europe)).

The applicant relies on two pleas in law in support of his action.

1. First plea in law, alleging serious infringement relating to Title I of the Annex to Commission Recommendation 2003/361/EC of 6 May 2013, Article 2(28) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320), the Council's forecasts of 17 December 2013, and Article 1(821) of the 2016 Stability Law.

   — In support of the first plea in law, the applicant claims that a self-employed individual, even if not registered with a professional association, is equivalent to an undertaking, irrespective of legal form, for the purposes of access to the structural funds. Self-employed individuals may access the funds for scientific research and cultural and industrial innovation. The applicant claims that the contested decision did not take into account the fact that the 2016 Stability Law, which implements a 2013 European recommendation, definitively stated that self-employed individuals are equivalent to undertakings. The applicant must be regarded as a suitable applicant since he is a VAT-registered self-employed individual.

2. Second plea in law concerning the claim for damages.

   — The applicant claims in this regard that his exclusion from the selection procedure caused him serious harm since there can be no doubt that the failure to include him in the selection procedure for the 'VENAFRO EUROPEAN FESTIVAL OF LITERATURE' project clearly constitutes loss of opportunity, which must be assessed fairly, taking into account the nature and scale of that project, and which, prima facie, can only be regarded as equivalent to the value of the funding for that project.

Action brought on 9 November 2016 — BSH Electrodomesticos España v EUIPO — DKSH International (Ufesa)

(Case T-785/16)

(2017/C 006/66)

Language in which the application was lodged: English

Parties

Applicant: BSH Electrodomesticos España, SA (Huarte-Pamplona, Spain) (represented by: M. de Justo Bailey, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DKSH International Ltd. (Zurich, Switzerland)

Details of the proceedings before EUIPO

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'Ufesa' — Application for registration No 10 857 29

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 13 July 2016 in Case R 1691/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) and 8(5) of Regulation No 207/2009.

Action brought on 9 November 2016 — Krasnyiy oktyabr v EUIPO — Kondyterska korporatsiia 'Roshen' (CRABS)

(Case T-795/16)

(2017/C 006/67)

Language in which the application was lodged: English

Parties

Applicant: Moscow Confectionery Factory 'Krasnyiy oktyabr' OAO (Moscow, Russia) (represented by: O. Spuhler and M. Geitz, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' (Kiev, Ukraine)

Details of the proceedings before EUIPO

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word element 'CRABS' — Application for registration No 1 186 110

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 11 August 2016 in Case R 2507/2015-1

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) of Regulation No 207/2009.

Action brought on 11 November 2016 — CEDC International v EUIPO — Underberg (Representation of a greeny-brown blade of grass in a bottle)

(Case T-796/16)

(2017/C 006/68)

Language in which the application was lodged: English

Parties

Applicant: CEDC International sp. z o.o. (Oborniki Wielkopolskie, Poland) (represented by: M. Siciarek, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Underberg AG (Dietlikon, Switzerland)

Details of the proceedings before EUIPO

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU tridimensional mark (Representation of a greeny-brown blade of grass in a bottle) — Application for registration No 33 266

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 August 2016 in Case R 1248/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the Board of Appeal to pay the costs incurred by the applicant in the proceedings before the General Court and the Board of Appeal.

Plea in law

— Infringement of Articles 8(1)(a) and (b), 42(2) and (3), 75 and 76(1) of Regulation No 207/2009.

Action brought on 14 November 2016 — Hanso Holding v EUIPO (REAL)

(Case T-798/16)

(2017/C 006/69)

Language of the case: English

Parties

Applicant: Hanso Holding AS (Tomasjord, Norway) (represented by: M. Wirtz, 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 'REAL' — Application for registration No 14 020 093

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 September 2016 in Case R 2405/2015-2

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 Articles 7(1)(b)(c) and 7(3) of Regulation No 207/2009.

Order of the General Court of 16 September 2016 — Commission v CINAR

(Case T-720/15) ([1])

(2017/C 006/70)

Language of the case: English

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

([1]) OJ C 59, 15.2.2016.

Order of the General Court of 16 September 2016 — ICA Laboratories and Others v Commission

(Case T-732/15) ([1])

(2017/C 006/71)

Language of the case: English

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

([1]) OJ C 78, 29.2.2016.

CORRIGENDA

Corrigendum to the Notice in the Official Journal in Case T-698/16

(Official Journal of the European Union C 441 of 28 November 2016)

(2017/C 006/72)

The Notice in Case T-698/16 Trasta Komercbanka a.o. v ECB should read as follows:

Action brought on 23 September 2016 — Trasta Komercbanka a.o. v ECB

(Case T-698/16)

(2016/C 441/34)

Language of the case: English

Parties

Applicants: Trasta Komercbanka AS (Riga, Latvia) and 6 others (represented by: O. Behrends, L. Feddern and M. Kirchner, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the ECB's decision dated 11 July 2016 withdrawing the banking license of Trasta Komercbanka AS; and

— order the defendant to pay all costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB violated Article 24 SSM Regulation ([1]), and related provisions in connection with the review of the ECB's earlier decision by the Administrative Board of Review.
2. Second plea in law, alleging that the ECB failed to examine and appraise carefully and impartially all factual aspects including without limitation that the ECB did not respond appropriately to the fact that the information and documents submitted by the local Latvian regulatory authority were inaccurate.
3. Third plea in law, alleging that the ECB violated the principle of proportionality by failing to recognize the availability of alternative measures.
4. Fourth plea in law, alleging that the ECB violated the principle of equal treatment.
5. Fifth plea in law, alleging that the ECB violated Article 19 and Recital 75 SSM Regulation and committed a *détournement de pouvoir.*
6. Sixth plea in law, alleging that the ECB violated the principles of legitimate expectations and legal certainty.
7. Seventh plea in law, alleging that the ECB violated procedural rules including the right to be heard, the right of access to the file, the right to an adequately reasoned decision, and violation of Article 83(1) SSM Framework Regulation.

([1]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

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