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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 16 September 2016 — Criminal proceedings against Juraj Sokáč

(Case C-497/16)

(2017/C 022/02)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Party to the main proceedings

Juraj Sokáč

Question referred

Can medicinal products as defined in Directive 2001/83/EC ([1]) of the European Parliament and of the Council, which contain 'scheduled substances' as laid down by Regulation (EU) No 273/2004 ([2]) of the European Parliament and of the Council, be regarded as excluded, on the basis of Article 2(a) of that regulation, from the scope of the Regulation in accordance with the judgment of the Court of Justice of the European Union in Joined Cases C-627/13 and C-2/14, even after amendment of that provision by Regulation No 1258/2013 ([3]) and in view of the fact that Article 2(a) of Regulation No 111/2005 ([4]) as amended by Regulation No 1259/2013 ([5]) brings medicinal products containing ephedrine and pseudoephedrine within the system laid down by Regulation No 111/2005?

([1]) OJ 2001 L 311, p. 67.
([2]) OJ 2004 L 47, p. 1.
([3]) OJ 2013 L 330, p. 21.
([4]) OJ 2005 L 22, p. 1.
([5]) OJ 2013 L 330, p. 30.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 16 September 2016 — AZ v Minister Finansów

(Case C-499/16)

(2017/C 022/03)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

AZ, Minister Finansów

Question referred

Does the fact of making the rate of taxation for pastry goods and cakes depend solely on the criterion of the 'use-by date' and the 'best-before date', as in the case of those goods in Article 41(2) of the Ustawa o podatku od towarów i usług (Law on tax on goods and services) of 11 March [2004] (*Dziennik Ustaw* of 2011, No 177, item 1054, as amended), in conjunction with Heading 32 of Annex 3 to that law, infringe the principle of VAT neutrality and the prohibition of unequal treatment of goods within the meaning of Article 98(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax? ([1])

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

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 16 September 2016 — Caterpillar Financial Services Poland sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie

(Case C-500/16)

(2017/C 022/04)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Caterpillar Financial Services Poland sp. z o.o., Dyrektor Izby Skarbowej w Warszawie

Question referred

Having regard to the interpretation of the Court of Justice in its judgment of 17 January 2013 in Case C-224/11, *BGŻ Leasing sp. z o.o.* v *Dyrektor Izby Skarbowej w Warszawie*, do the principles of effectiveness, sincere cooperation and equivalence expressed in Article 4(3) of the Treaty on European Union, or any other principle laid down in EU law, preclude, in the field of value added tax, national legislation or a national practice which precludes the refund of overpayment resulting from the collection of VAT contrary to EU law where, as a result of the action of the national authorities, an individual was unable to exercise his or her rights until after the limitation period for the tax liability had expired?

Appeal brought on 26 September 2016 by Francisco Javier Rosa Rodríguez against the order of the General Court (Fifth Chamber) made on 20 July 2016 in Case T-358/16 *Rosa Rodríguez* v *Consejería de Educación de la Junta de Andalucía*

(Case C-509/16 P)

(2017/C 022/05)

Language of the case: Spanish

Parties

Appellant: Francisco Javier Rosa Rodríguez (represented by: J. Velasco Velasco, abogado)

Other party to the proceedings: Consejería de Educación de la Junta de Andalucía

By order of 8 December 2016, the Court of Justice (Ninth Chamber) dismissed the appeal and ordered Mr Rosa Rodríguez to bear his own costs.

Request for a preliminary ruling from the Sąd Apelacyjny w Gdańsku (Poland) lodged on 4 October 2016 — Stefan Czerwiński v Zakład Ubezpieczeń Społecznych Oddział w Gdańsku

(Case C-517/16)

(2017/C 022/06)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Gdańsku

Parties to the main proceedings

Appellant: Stefan Czerwiński

Respondent: Zakład Ubezpieczeń Społecznych Oddział w Gdańsku

Questions referred

(1) Can the classification, made by a Member State in a declaration submitted pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, of a particular benefit as concerning a specific branch of social security referred to in Article 3 of that regulation be subject to assessment by a national authority or court?

(2) Does a bridging pension arising under the Polish Law of 19 December 2008 on bridging pensions (*Dziennik Ustaw* of 2015, item 965, as subsequently amended) constitute an old-age benefit within the meaning of Article 3(1)(d) of Regulation No 883/2004?

(3) Does the exclusion — in relation to pre-retirement benefits — of the principle of aggregation of periods of insurance (Article 66 of Regulation No 883/2004 and recital 33 thereof) perform a protective function in the field of social security arising from Article 48(a) of the Treaty on the functioning of the European Union?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 October 2016 — Ma.t.i. Sud S.p.a. v Centostazioni S.p.a.

(Case C-523/16)

(2017/C 022/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Ma.t.i. Sud S.p.a.

Defendant: Centostazioni S.p.a.

Questions referred

1. Although the Member States have the ability to require payment for *soccorso istruttorio*, a procedure whereby the tenderer is given an opportunity to remedy shortcomings in its tendering documentation, which has the effect of remedying any irregularity, is Article 38(2a) of Legislative Decree No 163 of 2006, in the version in force at the time of the tendering procedure in question …, which makes provision for the payment of a 'pecuniary penalty', in so far as that penalty must be fixed by the contracting authority ('not less than 0.1 % and not more than 1 % of the value of the contract and in any event not more than EUR 50 000, the payment of which shall be guaranteed by the provisional security'), contrary to EU law in view of the excessively high amount and the predetermined nature of that penalty, which cannot be adjusted according to the specific situation to be regulated or the seriousness of the irregularity to be remedied?

2. Is Article 38(2a) of Legislative Decree No 163 of 2006 (in the version in force at the time indicated above) contrary to EU law, in that that requirement to pay for *soccorso istruttorio* may be regarded as contrary to the principle of opening up the market to competition as widely as possible, an aim which the *soccorso istruttorio* mechanism is intended to achieve, the facility which the contracting authority is required to offer in that regard therefore being a logical consequence of the duties imposed on that authority by law in the light of the public interest in achieving that aim?

Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 20 October 2016 — Volkswagen AG v Finančné riaditeľstvo Slovenskej republiky

(Case C-533/16)

(2017/C 022/08)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Volkswagen AG

Defendant: Finančné riaditeľstvo Slovenskej republiky

Questions referred

1. Must Directive 2008/9 ([1]) and the right to a tax refund be interpreted to the effect that the cumulative satisfaction of two conditions is required to exercise the right to a VAT refund, namely:

   (i) the supply of the goods or service and

   (ii) the inclusion of VAT on the invoice by the supplier?

   In other words, is it possible for a taxable person who has not been charged VAT on an invoice to claim a tax refund?

2. Is it in accordance with the principle of proportionality or VAT fiscal neutrality for the time-limit for the tax refund to be calculated from a point at which not all the substantive law conditions required to exercise the right to a tax refund were satisfied?

3. Are Articles 167 and 178(a) of the VAT Directive, in the light of the principle of fiscal neutrality, to be interpreted to the effect that, in circumstances such as those of the present case, and assuming that the other substantive law and procedural law conditions required to claim a right to a tax deduction are satisfied, they preclude an approach by the tax authorities which refuses the taxable person the right, claimed within the time-limit under Directive 2008/9, to be refunded VAT which was charged to it by the supplier on the invoice and removed by the supplier before the expiry of the limitation period for relying upon the right under national law?

4. Did the Slovak tax authorities, in the light of the principle of neutrality and the principle of proportionality, which are the fundamental principles of the common system of VAT, exceed the limits of what was necessary for achieving the objective defined by the VAT Directive when they refused the taxable person the right to a refund of the deducted tax on the ground that the limitation period laid down by national law for claiming a tax refund had expired, even though the taxable person could not exercise its right to a tax refund within that period and even though the tax was correctly collected and the risk of tax evasion or non-payment of the tax had been completely excluded?

5. May the principles of legal certainty, legitimate expectations and the right to good administration under Article 41 of the Charter of Fundamental Rights of the European Union be interpreted as precluding an interpretation of the national legislation under which, for the purposes of observance of the time-limit for claiming a tax refund, the time of the decision of the administrative authority on the tax refund is decisive, and not the time at which the tax refund is claimed by the taxable person?

(1) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 20 October 2016 — Tax Directorate of the Slovak Republic v BB construct s.r.o.

(Case C-534/16)

(2017/C 022/09)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Appellant: Tax Directorate of the Slovak Republic

Respondent: BB construct s.r.o.

Questions referred

1. Is it possible to interpret as in accordance with the objective of Article 273 of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax, that is, the prevention of VAT evasion, an approach on the part of a national body which considers the fact that the current director of a legal person was also the director of another legal person which has outstanding tax liabilities to be a ground under national law for requiring payment of a tax deposit of up to the value of EUR 500 000?

2. May it be held that the abovementioned tax deposit, given its amount, which may be up to the value of EUR 500 000 as in the present case, is consistent with the freedom to conduct a business under Article 16 [of the Charter of Fundamental Rights of the European Union], does not directly force the taxable person to declare bankruptcy, does not constitute discrimination under Article 21(1) [of the Charter] and does not constitute a breach, in the area of the levying of VAT, of the *ne bis in idem* principle or of the prohibition on retroactivity under Article 49(1) and (3) of the Charter?

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

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 24 October 2016 — DUEMMESGR SpA v Associazione Cassa Nazionale di Previdenza e Assistenza in favore dei Ragionieri e Periti Commerciali (CNPR)

(Case C-536/16)

(2017/C 022/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: DUEMMESGR SpA

Defendant: Associazione Cassa Nazionale di Previdenza e Assistenza in favore dei Ragionieri e Periti Commerciali (CNPR)

Questions referred

1. Although the Member States have the ability to require payment for *soccorso istruttorio*, a procedure whereby the tenderer is given an opportunity to remedy shortcomings in its tendering documentation, which has the effect of remedying any irregularity, is Article 38(2a) of Legislative Decree No 163 of 2006, in the version in force at the time of the tendering procedure in question …, which makes provision for the payment of a 'pecuniary penalty', in so far as that penalty must be fixed by the contracting authority ('not less than 0.1 % and not more than 1 % of the value of the contract and in any event not more than EUR 50 000, the payment of which shall be guaranteed by the provisional security'), contrary to EU law in view of the excessively high amount and the predetermined nature of that penalty, which cannot be adjusted according to the specific situation to be regulated or the seriousness of the irregularity to be remedied?

2. Is Article 38(2a) of Legislative Decree No 163 of 2006 (in the version in force at the time indicated above) contrary to EU law, in that that requirement to pay for *soccorso istruttorio* may be regarded as contrary to the principle of opening up the market to competition as widely as possible, an aim which the *soccorso istruttorio* mechanism is intended to achieve, the facility which the contracting authority is required to offer in that regard therefore being a logical consequence of the duties imposed on that authority by law in the light of the public interest in achieving that aim?

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 24 October 2016 — Garlsson Real Estate SA, in liquidation, and Others v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-537/16)

(2017/C 022/11)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellants: Garlsson Real Estate SA, in liquidation, Stefano Ricucci, Magiste International SA

Cross-appellant: Commissione Nazionale per le Società e la Borsa (Consob)

Questions referred

1. Does Article 50 of the Charter of Fundamental Rights of the European Union, interpreted in the light of Article 4 of Protocol No 7 to the European Convention on Protection of Human Rights and Fundamental Freedoms, the relevant case-law of the European Court of Human Rights and national law, preclude the possibility of conducting administrative proceedings in respect of an act (unlawful conduct consisting in market manipulation) for which the same person has been convicted by a decision that has the force or *res judicata*?

2. May the national court directly apply EU principles in connection with the *ne bis in idem* principle, on the basis of Article 50 of the Charter of Fundamental Rights of the European Union, interpreted in the light of Article 4 of Protocol No 7 to the European Convention on the Protection of Human Rights and Fundamental Freedoms, the relevant case-law of the European Court of Human Rights and national law?

Request for a preliminary ruling from the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Spain) lodged on 28 October 2016 — Montte SL v Musikene

(Case C-546/16)

(2017/C 022/12)

Language of the case: Spanish

Referring court

Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi

Parties to the main proceedings

Applicant: Montte SL

Defendant: Musikene

Questions referred

1. Does Directive 2014/24/EU ([1]) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC preclude national legislation such as Article 150(4) TRLCSP, ([2]) or a practice for interpreting and implementing that legislation, which authorises contracting authorities to establish in the documents governing an open tendering procedure award criteria which apply in successive elimination stages for tenders which do not exceed a predetermined minimum score threshold?

2. If the reply to question 1 is in the negative, does the aforementioned Directive 2014/24 preclude national legislation, or a practice for interpreting and implementing that legislation, which uses in the open procedure the aforementioned system of award criteria which apply in successive elimination stages in such a way that in the last stage there are not sufficient tenders to ensure genuine competition?

3. If the reply to question 2 is in the affirmative, does the aforementioned Directive 2014/24 preclude, because it does not ensure genuine competition or circumvents the mandate to award the contract to the tender with the best quality/price ratio, a clause such as that at issue, in which the price factor is evaluated only for tenders which have obtained 35 out of 50 points in the technical criteria?

([1]) OJ 2014 L 94, p. 65.
([2]) Consolidated text of the Law on Public Sector Contracts.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 28 October 2016 — Gasorba, S.L., Josefa Rico Gil and Antonio Ferrándiz González v Repsol Comercial de Productos Petrolíferos, S.A.

(Case C-547/16)

(2017/C 022/13)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Gasorba, S.L., Josefa Rico Gil and Antonio Ferrándiz González

Defendant: Repsol Comercial de Productos Petrolíferos, S.A.

Questions referred

1. Under Article 16 ('Uniform application of Community competition law') of Council Regulation (EC) No 1/2003 ([1]) of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, does Commission Decision ([2]) of 12 April 2006 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/B-1/38.348 — Repsol C.P.P.) preclude a national court from declaring that the agreements to which that decision applies are invalid on account of the duration of the exclusive supply period, even though they may be declared invalid for other reasons such as, for example, the imposition of a minimum retail price by the supplier on the buyer (or reseller)?

2. If so, are long-term contracts to which the Commitment Decision applies to be regarded as benefiting from an individual exemption, under Article 101(3) TFEU, as a consequence of that decision?

([1]) OJ 2003 L 1, p. 1.
([2]) OJ 2006 L 176, p. 104.

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 2 November 2016 — WIND INNOVATION 1 EOOD, in liquidation v Direktor na Direktsia 'Obzhalvane I danachno-osiguritelna praktika' — Sofia

(Case C-552/16)

(2017/C 022/14)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: WIND INNOVATION 1 EOOD, in liquidation

Defendant: Direktor na Direktsia 'Obzhalvane I danachno-osiguritelna praktika' — Sofia

Questions referred

1. Is the second paragraph of Article 176 of Directive 2006/112/EC ([1]) to be interpreted as precluding an amendment to the ZDDS (Law on VAT) as at 1 January 2007, which provides for the compulsory removal of a person from the VAT register, and the loss of the court-appointed liquidator's right to decide that the legal person whose dissolution has been ordered by a court decision is to continue to be registered under the ZDDS until its deletion from the companies register, and which instead makes dissolution of a commercially active legal person, by reason of liquidation or otherwise, a ground for compulsory removal from the VAT register?

2. Is the second paragraph of Article 176 of Directive 2006/112/EC to be interpreted as precluding compulsory removal from the VAT register under an amendment to the ZDDS (Law on VAT) as at 1 January 2007 where, at the time of compulsory removal from the VAT register, the taxable person meets the conditions for compulsory re-registration for VAT, the taxable person is party to current contracts and states that it has not ceased business and continues to carry on an economic activity, and where the taxable person must actually pay the tax calculated and payable upon the compulsory removal in order to retain entitlement to deduct VAT input tax on assets taxed upon removal from the register and available on subsequent registration? If compulsory removal from the register under the circumstances set out is permissible, may entitlement to deduct input tax on assets taxed upon removal from the register, which are available on the subsequent registration for VAT and with which the person effects or will effect taxable transactions, be made dependent on the actual payment of the tax to the exchequer or may the tax calculated upon removal from the register be set off against the amount of tax credit determined on subsequent registration for VAT, in particular where the tax is payable by a person in respect of whom entitlement to deduct input tax arises …?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 2 November 2016 — 'TTL' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia

(Case C-553/16)

(2017/C 022/15)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant: 'TTL' EOOD

Respondent: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia

Questions referred

1. Is a provision of national law such as Article 175(2), point 3, DOPK, which requires domestic companies which pay out income subject to withholding tax to pay interest for the period from the point at which the time limit laid down for the payment of the tax on such income expires until the day on which a non-resident company established in another Member State furnishes evidence that the requirements for the application of a double taxation convention have been fulfilled, including in cases in which, pursuant to the convention, no such tax or a lower amount thereof is to be paid, compatible with Articles 5(4) TEU and 12(b) TEU?

2. Are a provision of law such as Article 175(2), point 3, DOPK and a tax practice in accordance with which companies which pay out income subject to withholding tax are charged interest for the period from the point at which the time limit laid down for the payment of the tax on such income expires until the day on which a non-resident company established in another Member State furnishes evidence that the requirements for the application of a double taxation convention entered into with the Republic of Bulgaria have been fulfilled, which is charged also in cases in which, pursuant to the convention, no such tax or a lower amount thereof is to be paid, compatible with Articles 49 TFEU, 54 TFEU, 63 TFEU and 65(1) and (3) TFEU?

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 4 November 2016 — Astellas Pharma GmbH

(Case C-557/16)

(2017/C 022/16)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Astellas Pharma GmbH

Other parties: Helm AG, Lääkealan turvallisuus- ja kehittämiskeskus (Fimea)

Questions referred

1. Are Articles 28(5) and 29(1) of Directive 2001/83/EC ([1]) of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use to be as interpreted as meaning that the competent authorities of the concerned Member State in the decentralised procedure for marketing authorisations for generic medicinal products in accordance with Article 28(3) of that directive are not themselves competent when issuing a national marketing authorisation to determine the time from which the data exclusivity period for the reference medicinal product begins to run?

2. If the answer to the first question is that, when issuing a national marketing authorisation, the competent authorities of a Member State are not competent to determine the time from which the period of data exclusivity of the reference medicinal product starts to run:

   — is the court of that Member State when dealing with an appeal by the holder of the marketing authorisation for the reference medicinal product required to determine the time from which the period of data exclusivity starts to run, or is it subject to the same limit as the national authorities of that Member State?

   — in those circumstances, how is the national court to give effect to the right of the holder of the marketing authorisation of the reference medicinal product under Article 47 of the Charter of Fundamental Rights of the European Union and Article 10 of Directive 2001/83 to effective legal protection with regard to data exclusivity?

   — does the claim for effective legal protection require the national court to examine whether the original marketing authorisation granted in another Member State was issued in accordance with the rules laid down by Directive 2001/83?

([1]) 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 (OJ 2001 L 311, p. 67).

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 4 November 2016 — Michael Dědouch and Others v Jihočeská plynárenská, a.s., E.ON Czech Holding AG

(Case C-560/16)

(2017/C 022/17)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicants: Michael Dědouch, MUDr. Petr Streitberg, Pavel Suda

Defendants: Jihočeská plynárenská, a.s., E.ON Czech Holding AG

Questions referred

1. Must Article 22(2) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels I Regulation') be interpreted as also covering proceedings for the review of the reasonableness of the consideration which a majority shareholder is required to provide, as equivalent value for participating securities, to the previous owners of participating securities which were transferred to it as a result of a decision at a general meeting of a public limited company on the compulsory transfer of the other participating securities to that majority shareholder (otherwise known as a 'squeeze out'), where the resolution adopted at the general meeting of the public limited company determines the amount of the reasonable consideration and where there is a court decision granting entitlement to a different amount of consideration which is binding on the majority shareholder and on the company as regards the basis of the right granted, as well as vis-à-vis the other owners of the participating securities?

2. If the answer to the preceding question is [in the] negative, must Article 5(1)(a) of the Brussels I Regulation be interpreted as also covering proceedings for review of the reasonableness of the consideration described in the previous question?

3. If the answer to both the preceding questions is in the negative, must Article 5(3) of the Brussels I Regulation be interpreted as also covering proceedings for review of the reasonableness of the consideration described in the first question?

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

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 November 2016 — Saras Energía SA v Administración del Estado

(Case C-561/16)

(2017/C 022/18)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Saras Energía SA

Defendant: Administración del Estado

Questions referred

(1) Is legislation of a Member State establishing a national energy efficiency obligation scheme whose main method of compliance consists in an annual financial contribution to an Energy Efficiency National Fund established under the provisions of Article 20(4) of Directive 2012/27/EU ([1]) compatible with Article 7(1) and (9) of that directive?

(2) Is national legislation which provides for the possibility of fulfilling the energy savings obligations through the accreditation of savings as an alternative to the financial contribution to the Energy Efficiency National Fund compatible with Articles 7(1) and 20(6) of Directive 2012/27/EU?

(3) If the above question is answered in the affirmative, is the provision of that alternative possibility for the fulfilment of the energy savings obligations compatible with the abovementioned Articles 7(1) and 20(6) of the directive when its actual existence depends on whether the Government establishes it on a discretionary basis through legislation?

In that respect, is such legislation compatible when the Government does not implement that alternative?

(4) Is a national scheme which considers only retail energy sales companies and not distributors to be parties subject to energy savings obligations compatible with Article 7(1) and (4) of the directive?

(5) If the answer to the above question is in the affirmative, is the definition of retail companies as 'obligated parties', without the reasons being determined for energy distributors not being so defined, compatible with the abovementioned provisions of Article 7?

([1]) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC. OJ 2012 L 315, p. 1.

Request for a preliminary ruling from the Irinodikio Lerou (Greece) lodged on 9 November 2016 — Alessandro Saponaro and Kalliopi-Chloi Xylina

(Case C-565/16)

(2017/C 022/19)

Language of the case: Greek

Referring court

Irinodikio Lerou (Greece)

Parties to the main proceedings

Applicant: Alessandro Saponaro and Kalliopi-Chloi Xylina

Question referred

In the event that a petition for leave to renounce an inheritance is brought before a Greek court by the parents of a minor child who is habitually resident in Italy, is it the case that, if there is to be a valid prorogation of jurisdiction under Article 12 (3)(b) of Regulation No 2201/2003 ([1]): (a) the unequivocal agreement to the prorogation by the parents is demonstrated by merely the lodging of the application before the Greek court, (b) the prosecutor before the first instance courts is one of the parties who must agree to the prorogation at the time of the lodging of the application, given that under Greek law he is

legally a party to the relevant proceedings, (c) the prorogation of jurisdiction is in the best interests of the child, given that the child and the applicants, who are the child's parents, are habitually resident in Italy, while the place of residence of the person from whom property is inherited at the time of his death was Greece and the property inherited is in Greece.

(1) 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 (OJ 2003 L 338, p. 1).

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 10 November 2016 — Merck Sharp v Comptroller-General of Patents, Designs and Trade Marks

(Case C-567/16)

(2017/C 022/20)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Merck Sharp

Defendant: Comptroller-General of Patents, Designs and Trade Marks

Questions referred

1. Is an End of Procedure Notice issued by the reference member state under Article 28(4) of European Parliament and Council Directive 2001/83/EC (1) of 6 November 2001 on the Community code relating to medicinal products for human use before expiry of the basic patent to be treated as equivalent to a granted marketing authorisation for the purposes of Article 3(b) of European Parliament and Council Regulation 469/2009/EC (2) of 6 May 2009 concerning the supplementary protection certificate for medicinal products (codified version) (the 'SPC Regulation'), such that an applicant for an SPC in the Member State in question is entitled to apply for and be granted an SPC on the basis of the End of Procedure Notice?

2. If the answer to question (1) is no; in the circumstances in question 1, is the absence of a granted marketing authorisation in the Member State in question at the date of the application for an SPC in that member state an irregularity that can be cured under Article 10(3) of the SPC Regulation once the marketing authorisation has been granted?

(1) OJ L 311, p. 67
(2) OJ L 152, p. 1

Request for a preliminary ruling from the Amtsgericht Nürtingen (Germany) lodged on 10 November 2016 — Criminal proceedings against Faiz Rasool

(Case C-568/16)

(2017/C 022/21)

Language of the case: German

Referring court

Amtsgericht Nürtingen

Parties to the main proceedings

Faiz Rasool, Rasool Entertainment GmbH, Staatsanwaltschaft Stuttgart

Questions referred

1. Must point (o) of Article 3 of the Directive on payment services in the internal market (Directive 2007/64/EC) ([1]) be interpreted as meaning that the possibility to withdraw cash in an officially authorised gaming arcade by means of a debit card and PIN from a cash terminal, also functioning as a change machine, where the bank- and account-related processing is carried out by an external service provider ('network provider') and the cash is dispensed to the customer only when the network provider, after checking whether funds are available, sends an authorisation code to the terminal, whereas the arcade operator merely loads the multi-functional change machine with cash and receives a credit from the bank whose customer withdrew cash corresponding to the amount withdrawn, constitutes an activity within the meaning of point (o) of Article 3 of the Directive and is consequently not subject to authorisation?

2. If the activity described in Question 1 is not considered to constitute an activity within the meaning of point (o) of Article 3:

   Must point (e) of Article 3 of Directive 2007/64/EC be interpreted as meaning that the possibility described in Question 1 to withdraw cash using a PIN constitutes an activity within the meaning of this provision if, together with the cash withdrawal, a voucher to the value of EUR 20 is generated for encashment with the arcade supervisor in order to have the supervisor feed coins into a gaming machine?

If the activity described in Questions 1 and 2 is not considered to constitute an activity excluded from the scope of the Directive on the basis of points (o) and/or (e) of Article 3:

3a. Must paragraph 2 in the Annex to Directive 2007/64/EC be interpreted as meaning that the activity of arcade operator described in Questions 1 and 2 constitutes a payment service subject to authorisation notwithstanding the fact that the arcade operator does not operate any account of the customer withdrawing cash?

3b. Must point (3) of Article 4 of Directive 2007/64/EC be interpreted as meaning that the activity of arcade operator described in Questions 1 and 2 constitutes a payment service within the meaning of that provision where the arcade operator provides this service free of charge?

If the Court considers the activity outlined to constitute a payment service subject to authorisation:

4. Must EU law and the Directive on payment services in the internal market be interpreted as precluding criminal penalties for the operation of a cash terminal in the circumstances of the present case if cash terminals of the same kind were or are operated without authorisation in numerous officially authorised gaming arcades and in officially authorised and, in part, publicly operated casinos and the competent authorisation and supervisory authority does not raise any objections?

If the answer to Question 4 is also in the negative:

5. Must the Directive on payment services and the EU-law principles of legal certainty and legal clarity and Article 17 of the Charter be interpreted as precluding, in the circumstances of the present case, an administrative and judicial practice ordering such amounts to be surrendered to the public purse ('confiscation') as have been received by the operator of the gaming arcade — as a result of a service effected by the network provider — from bank customers, who by means of debit card and PIN withdrew the cash loaded by the operator and/or the vouchers to play the gaming machines notwithstanding the fact that all credits correspond only to those amounts received by customers from the cash machines in cash and vouchers to play the gaming machines?

([1]) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1).

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 14 November 2016 — Air Berlin plc v Commissioners for Her Majesty's Revenue & Customs

(Case C-573/16)

(2017/C 022/22)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Air Berlin plc

Defendant: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Is the levying by a member state of Stamp Duty of 1,5 % on the transfer, as set out in the reference, in the circumstances set out in the reference, contrary to one or more of:

   1) Article 10 or Article 11 of the First Directive ([1]);

   2) Article 4 or Article 5 of the Second Directive ([2]); or

   3) Articles 12, 43, 48, 49 or 56 of the EC Treaty?

2. Does the answer to the first question differ in circumstances where the transfer of shares to the clearance service was required in order to facilitate a listing of the company in question on a stock exchange in that member state or another member state?

3. Does the answer to the first question or the second question differ in circumstances where the national law of the member state enabled an operator of a clearance service, where it receives approval from the taxation authority, to elect that no Stamp Duty is payable on the transfer of shares into the clearance service but that SDRT is instead charged on each subsequent sale of shares within the clearance service (at the rate of 0,5 % of the sale consideration)?

4. Does the answer to the third question differ in circumstances where the structure of the transactions chosen by the company in question means that the benefit of the election cannot be enjoyed?

(1) Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital OJ L 249, p. 25
(2) Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital OJ L 46, p. 11

Action brought on 14 November 2016 — European Commission v Czech Republic

(Case C-575/16)

(2017/C 022/23)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: H. Støvlbæk and K. Walkerová, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that, by laying down a condition of nationality for the exercise of the profession of notary, the Czech Republic has failed to fulfil its obligations under Article 49 of the Treaty on the Functioning of the European Union; and

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the condition of nationality laid down for the exercise of the profession of notary in the Czech legal system is discriminatory and constitutes a disproportionate restriction of the freedom of establishment. The Czech Republic has therefore failed to fulfil its obligations under Article 49 of the Treaty on the Functioning of the European Union.

The Commission considers that the functions entrusted to notaries by the legislation of the Czech Republic are not by their nature linked to the exercise of public powers, so that the condition of nationality laid down for access to the profession of notary in the Czech legal system cannot be justified by the exception laid down in Article 51 of the Treaty on the Functioning of the European Union.

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 17 November 2016 — C. K., H. F., A. S. v Republic of Slovenia

(Case C-578/16)

(2017/C 022/24)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Appellants: C. K., H. F., A. S.

Respondent: Republic of Slovenia

Questions referred

1. Is the interpretation of the rules relating to the application of the discretionary clause under Article 17(1) of the Dublin III Regulation, having regard to the nature of that provision, ultimately a matter for the courts and tribunals of the Member State, and do those rules release the courts and tribunals against whose decisions there is no judicial remedy from the obligation to refer the case to the Court of Justice under the third paragraph of Article 267 of the Treaty on the Functioning of the European Union?

In the alternative, if the answer to the above question is in the negative:

2. Is the assessment of circumstances under Article 3(2) of the Dublin III Regulation (in a case such as the one forming the subject matter of the present reference for a preliminary ruling) sufficient to satisfy the requirements of Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union, in conjunction with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 33 of the Geneva Convention?

and, in connection with that question:

3. Does it follow from the interpretation of Article 17(1) of the Dublin III Regulation that the application of the discretionary clause by the Member State is mandatory for the purposes of ensuring effective protection against an infringement of the rights under Article 4 of the Charter of Fundamental Rights of the European Union in cases such as the one forming the subject matter of the present reference for a preliminary ruling, and that such application prohibits the transfer of the applicant for international protection to a competent Member State which has accepted its competence in accordance with that regulation?

If the answer to the above question is in the affirmative:

4. Can the discretionary clause under Article 17(1) of the Dublin III Regulation be used as a basis permitting an applicant for international protection, or another person, in a transfer procedure under that regulation, to make a claim that that provision should be applied, which the competent authorities and courts and tribunals of the Member State must assess, or are those administrative authorities and courts and tribunals required to establish the circumstances cited of their own motion?

GENERAL COURT

Judgment of the General Court of 29 November 2016 — T & L Sugars and Sidul Açúcares v Commission

(Case T-279/11) ([1])

(Non-contractual liability — Agriculture — Sugar — Exceptional measures — Availability of supply on the EU market — 2010/11 marketing year — Rule of law intended to confer rights on individuals — Sufficiently serious infringement — Regulation (EC) No 1234/2007 — Principle of non-discrimination — Proportionality — Legitimate expectations — Duty of diligence and the principle of sound administration)

(2017/C 022/25)

Language of the case: English

Parties

Applicants: T & L Sugars Ltd (London, United Kingdom), Sidul Açúcares, Unipessoal Lda (Santa Iria de Azóia, Portugal) (represented initially by D. Waelbroeck, lawyer, and D. Slater, Solicitor, and subsequently by D. Waelbroeck)

Interveners in support of the applicants: DAI — Sociedade de Desenvolvimento Agro-Industrial, SA (Coruche, Portugal) (represented by M. Mendes Pereira, lawyer), RAR — Refinarias de Açúcar Reunidas, SA (Porto, Portugal) (represented by M. Mendes Pereira) and SFIR Società Fondiaria Industriale Romagnola SpA (Cesena, Italy) and SFIR Raffineria di Brindisi SpA (Cesena) (represented by P. Buccarelli and M. Todino, lawyers)

Defendant: European Commission (represented by: initially by A. Demeneix, P. Rossi and N. Donnelly, and subsequently by P. Rossi and P. Ondrůšek, acting as Agents)

Interveners in support of the defendant: French Republic (represented by G. de Bergues, D. Colas and C. Candat, acting as Agents), Council of the European Union (represented by E. Sitbon and A. Westerhof Löfflerová, acting as Agents) and Comité européen des fabricants de sucre (CEFS) (Brussels, Belgium) (represented by C. Pitschas, lawyer)

Re:

Action based on Article 268 TFEU for damages for the loss which the applicants allegedly suffered, first, as a result of the adoption of Commission Regulation (EU) No 222/2011 of 3 March 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/11 (OJ 2011 L 60, p. 6), Commission Implementing Regulation (EU) No 293/2011 of 23 March 2011 fixing the allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy (OJ 2011 L 79, p. 8), Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year (OJ 2011 L 81, p. 8) and Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences (OJ 2011 L 104, p. 39), and secondly, as a result of the Commission's refusal to take the necessary measures to re-establish availability of supply in raw cane sugar.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders T & L Sugars Ltd and Sidul Açúcares, Unipessoal Lda, on the one hand, and the European Commission, on the other, to bear their own costs relating to the plea of inadmissibility which gave rise to the judgment of 6 June 2013, T & L Sugars and Sidul Açúcares v Commission (T-279/11, EU:T:2013:299);*

3. *Orders T & L Sugars and Sidul Açúcares to bear their own costs and to pay those incurred by the Commission, relating to the merits of the action;*

4. *Orders the French Republic and the Council of the European Union to bear their own costs, including those relating to the plea of inadmissibility which gave rise to the judgment of 6 June 2013, T & L Sugars and Sidul Açúcares v Commission (T-279/11, EU:T:2013:299);*

5. *Orders DAI Sociedade de Desenvolvimento Agro-Industrial, SA, RAR — Refinarias de Açùcar Reunidas, SA, SFIR — Società Fondiaria Industriale Romagnola SpA, SFIR Raffineria di Brindisi SpA and the Comité européen des fabricants de sucre (CEFS) to bear their own costs.*

(1) OJ C 232, 6.8.2011.

Judgment of the General Court of 29 November 2016 — T & L Sugars and Sidul Açúcares v Commission

(Case T-103/12) (1)

(Non-contractual liability — Agriculture — Sugar — Exceptional measures — Availability of supply on the EU market — 2011/12 marketing year — Rule of law intended to confer rights on individuals — Sufficiently serious infringement — Regulation (EC) No 1234/2007 — Principle of non-discrimination — Proportionality — Legal certainty — Legitimate expectations — Duty of diligence and the principle of sound administration)

(2017/C 022/26)

Language of the case: English

Parties

Applicants: T & L Sugars Ltd (London, United Kingdom), Sidul Açúcares, Unipessoal Lda (Santa Iria de Azóia, Portugal) (represented initially by D. Waelbroeck, lawyer, and D. Slater, Solicitor, and subsequently by D. Waelbroeck)

Interveners in support of the applicants: DAI — Sociedade de Desenvolvimento Agro-Industrial, SA (Coruche, Portugal) (represented by M. Mendes Pereira, lawyer), RAR — Refinarias de Açúcar Reunidas, SA (Porto, Portugal) (represented by M. Mendes Pereira), Lemarco SA (Bucharest, Romania), Lemarco Cristal Srl (Urziceni, Romania) and Zaharul Liesti SA (Lieşti, Romania) (represented by L.-I. Van de Waart and D. Gruia Dufaut, lawyers) and SFIR Società Fondiaria Industriale Romagnola SpA (Cesena, Italy) and SFIR Raffineria di Brindisi SpA (Cesena) (represented by P. Buccarelli and M. Todino, lawyers)

Defendant: European Commission (represented initially by P. Rossi and N. Donnelly, and subsequently by P. Rossi and P. Ondrůšek, acting as Agents)

Interveners in support of the defendant: Council of the European Union (represented by E. Sitbon and A. Westerhof Löfflerová, acting as Agents) and Comité européen des fabricants de sucre (CEFS) (Brussels, Belgium) (represented by C. Pitschas, lawyer)

Re:

(i) Application pursuant to Article 263 TFEU for annulment of Commission Implementing Regulation (EU) No 1239/2011 of 30 November 2011 opening a standing invitation to tender for the 2011/12 marketing year for imports of sugar of CN code 1701 at a reduced customs duty (OJ 2011 L 318, p. 4), of Commission Implementing Regulation (EU) No 1240/2011 of 30 November 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2011/12 (OJ 2011 L 318, p. 9), of Commission Implementing Regulation (EU) No 1281/2011 of 8 December 2011 on the minimum customs duty to be fixed in response to the first partial invitation to tender within the tendering procedure opened by Implementing Regulation No 1239/2011 (OJ 2011 L 327, p. 60), of Commission Implementing Regulation (EU) No 1308/2011 of 14 December 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy during marketing year 2011/12 (OJ 2011 L 332, p. 8), of Commission Implementing Regulation (EU) No 1316/2011 of 15 December 2011 on the minimum customs duty to be fixed in response to the second partial invitation to tender within the tendering procedure opened by Implementing Regulation No 1239/2011 (OJ 2011 L 334, p. 16), of Commission Implementing Regulation (EU) No 1384/2011 of 22 December 2011 on the minimum customs duty to be fixed in response to the third partial invitation to tender within the tendering procedure opened by Implementing Regulation No 1239/2011 (OJ 2011 L 343, p. 33), of Commission Implementing Regulation (EU) No 27/2012 of 12 January 2012 on the minimum customs duty for sugar to be fixed in response to the fourth partial invitation to tender within the tendering procedure opened by Implementing Regulation No 1239/2011 (OJ 2012 L 9, p. 12), and of Commission Implementing Regulation (EU) No 57/2012 of 23 January 2012, suspending the tendering procedure

opened by Implementing Regulation No 1239/2011 (OJ 2012 L 19, p. 12), and (ii) action pursuant to Article 268 TFEU for damages for the loss which the applicants allegedly suffered as a result of the adoption of those measures and of the Commission's refusal to take the necessary measures to re-establish availability of supply of raw cane sugar.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders T & L Sugars Ltd and Sidul Açúcares, Unipessoal Lda to bear their own costs and to pay those incurred by the European Commission;*

3. *Orders the Council of the European Union, DAI Sociedade de Desenvolvimento Agro-Industrial, SA, RAR — Refinarias de Açùcar Reunidas, SA, Lemarco SA, Lemarco Cristal Srl, Zaharul Liesti SA, SFIR — Società Fondiaria Industriale Romagnola SpA, SFIR Raffineria di Brindisi SpA and the Comité européen des fabricants de sucre (CEFS) to bear their own costs.*

([1]) OJ C 151, 26.5.2012.

Judgment of the General Court of 30 November 2016 — Bank Refah Kargaran v Council

(Case T-65/14) ([1])

(Common Foreign and Security Policy — Restrictive measures against Iran — Freezing of funds — Further listing of the applicant after annulment of the initial listing by the General Court — Error in law — Error in fact — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Proportionality)

(2017/C 022/27)

Language of the case: French

Parties

Applicant: Bank Refah Kargaran (Teheran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union (represented by: V. Piessevaux, M. Bishop and B. Driessen, agents)

Intervener in support of the defendant: European Commission (represented by: A. Aresu and D. Gauci, agents)

Re:

Application based on Article 263 TFEU and seeking, principally, annulment of Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2010 L 306, p. 18), and of Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013, implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 306, p. 3), in so far as those acts concern the applicant, and, in the alternative, annulment of Decision 2013/661 and of Implementing Regulation No 1154/2013 in so far as those acts concern the applicant as from 20 January 2014.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bank Refah Kargaran to pay, in addition to its own costs, the costs incurred by the Council of the European Union;*

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

(1) OJ C 135, 5.5.2014.

Judgment of the General Court of 30 November 2016 — Export Development Bank of Iran v Council

(Case T-89/14) (1)

(Common Foreign and Security Policy — Restrictive measures against Iran — Freezing of funds — Further listing of the applicant after annulment of the initial listing by the General Court — Error in law — Error in fact — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Proportionality — Equal treatment)

(2017/C 022/28)

Language of the case: French

Parties

Applicant: Export Development Bank of Iran (Teheran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union (represented by: V. Piessevaux and M. Bishop, agents)

Intervener in support of the defendant: European Commission (represented by: A. Aresu and D. Gauci, agents)

Re:

Application based on Article 263 TFEU and seeking, principally, annulment of Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2010 L 306, p. 18), and of Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013, implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 306, p. 3), in so far as those acts concern the applicant, and, in the alternative, annulment of Decision 2013/661 and of Implementing Regulation No 1154/2013 in so far as those acts concern the applicant as from 20 January 2014.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Export Development Bank of Iran to pay, in addition to its own costs, the costs incurred by the Council of the European Union;*

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

(1) OJ C 135, 5.5.2014.

Judgment of the General Court of 30 November 2016 — Rotenberg v Council

(Case T-720/14) ([1])

(Common foreign and security policy — Restrictive measures in respect of actions undermining or threatening Ukraine — Freezing of funds — Restrictions on admission to the territories of the Member States — Natural person actively supporting or implementing actions undermining or threatening Ukraine — Natural person benefiting from Russian decision-makers responsible for the annexation of Crimea — Rights of defence — Obligation to state reasons — Manifest errors of assessment — Right to property — Freedom to conduct a business — Right to respect for private life — Proportionality)

(2017/C 022/29)

Language of the case: English

Parties

Applicant: Arkady Romanovich Rotenberg (Saint Petersburg, Russia) (represented initially by D. Pannick QC, M. Lester, Barrister, and M. O'Kane, Solicitor, subsequently by D. Pannick and M. Lester, by S. Hey and H. Brunskill, Solicitors, and by Z. Al-Rikabi, Barrister, and finally by D. Pannick, M. Lester and Z. Al-Rikabi)

Defendant: Council of the European Union (represented by: J.-P. Hix and B. Driessen, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment in part of (i) Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended, first, by Council Decision 2014/508/CFSP of 30 July 2014 (OJ 2014 L 226, p. 23), secondly, by Council Decision (CFSP) 2015/432 of 13 March 2015 (OJ 2015 L 70, p. 47), thirdly, by Council Decision (CFSP) 2015/1524 of 14 September 2015 (OJ 2015 L 239, p. 157), and, fourthly, by Council Decision (CFSP) 2016/359 of 10 March 2016 (OJ 2016 L 67, p. 37), and (ii) Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as implemented, first, by Council Implementing Regulation (EU) No 826/2014 of 30 July 2014 (OJ 2014 L 226, p. 16), secondly, by Council Implementing Regulation (EU) 2015/427 of 13 March 2015 (OJ 2015 L 70, p. 1), thirdly, by Council Implementing Regulation (EU) 2015/1514 of 14 September 2015 (OJ 2015 L 239, p. 30), and, fourthly, by Council Implementing Regulation (EU) 2016/353 of 10 March 2016 (OJ 2016 L 67, p. 1), in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended by Council Decision 2014/508/CFSP of 30 July 2014, and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as implemented by Council Implementing Regulation (EU) No 826/2014 of 30 July 2014, in so far as they concern Mr Arkady Romanovich Rotenberg;*

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

3. *Orders each party to bear its own costs.*

([1]) OJ C 7, 12.1.2015.

Judgment of the General Court of 30 November 2016 — Fiesta Hotels & Resorts v EUIPO — Residencial Palladium (PALLADIUM PALACE IBIZA RESORT & SPA)

(Case T-217/15) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark PALLADIUM PALACE IBIZA RESORT & SPA — Earlier national trade name GRAND HOTEL PALLADIUM — Relative ground for refusal — Use in the course of trade of a sign of more than mere local significance — Article 8(4) and Article 53(1)(c) of Regulation (EC) No 207/2009)

(2017/C 022/30)

Language of the case: Spanish

Parties

Applicant: Fiesta Hotels & Resorts (Ibiza, Spain) (represented by: J.-B. Devaureix, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Residencial Palladium, SL (Ibiza, Spain) (represented by: D. Solana Giménez, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 23 February 2015 (Case R 2391/2013-2) relating to invalidity proceedings between Residencial Palladium and Fiesta Hotels & Resorts.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Fiesta Hotels & Resorts, SL to pay the costs.*

([1]) OJ C 205, 22.6.2015.

Judgment of the General Court of 29 November 2016 — *ANKO* v *REA*

(Case T-270/15) ([1])

(Arbitration clause — Subsidy agreement entered into in the context of the Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — ESS project — Conformity with the contractual provisions of the suspension of payments to the applicant and of the conditions for lifting that suspension of payments — Default interest)

(2017/C 022/31)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: Research Executive Agency (represented by S. Payan-Lagrou and V. Canetti, acting as agents, assisted initially by O. Lytra and subsequently by A. Saratsi, lawyers)

Re:

Application based on Article 272 TFEU seeking a declaration that the suspension, imposed by REA, of the payment of the balance of the financial contribution owed to the applicant in respect of the implementation of Subsidy Agreement No 217951, for the financing of the 'Emergency Support System' project, entered into in the context of the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), amounts to an infringement of its contractual obligations and that that sum must be paid to the applicant, together with default interest, to be calculated from the date of service of the action.

Operative part of the judgment

The General Court:

1. *Declares that the Research Executive Agency (REA) suspended its payments to ANKO AE Antiprosopeion, Emporiou kai Viomichanias in breach of Section II.5 (3)(d) of the general conditions annexed to Subvention Agreement No 217951 for the financing of the 'Emergency Support System' project, entered into in the context of the Seventh Framework Programme for research, technological development and demonstration activities (2007-2013);*

2. *Orders REA to pay to ANKO AE Antiprosopeion, Emporiou kai Viomichanias a sum corresponding to the intermediate payments which should not have been suspended concerning the latter's participation in the 'Emergency Support System' project, within the limits of the balance of the financial aid available at the time of their suspension, together with default interest, starting from, for each reporting period, the expiry of the period for payment of 105 days following receipt of the corresponding reports, at the rate in force on the first day of the month of the payment default, as published in the Official Journal of the European Union, C series, increased by three and a half percentage points;*

3. *Orders REA to pay the costs.*

([1]) OJ C 279, 24.8.2015.

Judgment of the General Court of 30 November 2016 — Automobile Club di Brescia v EUIPO — Rebel Media (e-miglia)

(Case T-458/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark e-miglia — Earlier EU word marks MILLE MIGLIA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/32)

Language of the case: English

Parties

Applicant: Automobile Club di Brescia (Brescia, Italy) (represented by: F. Celluprica and F. Fischetti, lawyers)

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, intervener before the General Court: Rebel Media Ltd (Wilmslow, United Kingdom) (represented by: P. Schotthöfer and F. Steiner, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 9 June 2015 (Case R 1990/2014-5), relating to opposition proceedings between Automobile Club di Brescia and Rebel Media.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the cross-claim;*

3. *Orders Automobile Club di Brescia and Rebel Media Ltd to bear their own costs and each pay half of the costs of EUIPO.*

(1) OJ C 328, 5.10.2015.

Judgment of the General Court of 1 December 2016 — Z v *Court of Justice of the European Union*

(Case T-532/15 P) (1)

(Appeal — Civil service — Officials — Staff report — Impartiality of the Civil Service Tribunal — Application for recusal of the members of the formation of the Tribunal which delivered judgment — Rights of defence — Right to effective judicial protection)

(2017/C 022/33)

Language of the case: French

Parties

Appellant: Z (Luxembourg, Luxembourg) (represented by: F. Rollinger, lawyer)

Other party to the proceedings: Court of Justice of the European Union (represented initially by A. Placco, and subsequently by J. Inghelram and Á. Almendros Manzano, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 30 June 2015, Z v *Court of Justice* (F-64/13, EU:F:2015:72), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Z to pay the costs.*

(1) OJ C 16, 18.1.2016.

Judgment of the General Court of 29 November 2016 — Pi-Design v EUIPO — Société des produits Nestlé (PRESSO)

(Case T-545/15) (1)

(EU trade mark — Opposition proceedings — International registration — Application for territorial extension of the protection — Word mark PRESSO — Earlier national word mark PRESSO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/34)

Language of the case: German

Parties

Applicant: Pi-Design AG (Triengen, Switzerland) (represented by: M. Apelt, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Société des produits Nestlé SA (Vevey, Switzerland)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 2 July 2015 (Case R 428/2014-1), relating to opposition proceedings between the Société des produits Nestlé and Pi-Design.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pi-Design AG to pay the costs.*

(1) OJ C 371, 9.11.2015.

Judgment of the General Court of 1 December 2016 — Universidad Internacional de la Rioja v EUIPO — Universidad de la Rioja (UNIVERSIDAD INTERNACIONAL DE LA RIOJA uniR)

(Case T-561/15) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark UNIVERSIDAD INTERNACIONAL DE LA RIOJA uniR — Earlier EU word mark UNIRIOJA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/35)

Language of the case: Spanish

Parties

Applicant: Universidad Internacional de la Rioja, SA (Logroño, Spain) (represented by: C. Lema Devesa and A. Porras Fernandez-Toledano, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Universidad de la Rioja (Logroño, Spain) (represented initially by: J. Diez-Hochleitner Rodríguez, D. Garayalde Niño and A. I. Alpera Plazas, lawyers, and subsequently by J Diez-Hochleitner Rodríguez and D Garayalde Niño

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 22 June 2015 (Case R 1914/2014-5), relating to opposition proceedings between Universidad de la Rioja and Universidad Internacional de la Rioja.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Universidad Internacional de la Rioja, SA to pay the costs.*

(1) OJ C 389, 23.11.2015.

Judgment of the General Court of 24 November 2016 — Azur Space Solar Power GmbH v EUIPO (Representation of white lines and bricks on a black background)

(Case T-578/15) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark representing white lines and bricks on a black background — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/36)

Language of the case: English

Parties

Applicant: Azur Space Solar Power GmbH (Heilbronn, Germany) (represented by: J. Nicodemus and S. Stöcker, lawyers)

Defendant: European Union Intellectual Property Office (represented by: initially by E. Zaera Cuadrado, and subsequently by A. Folliard-Monguiral, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 27 July 2015 (Case R 2780/2014-4), concerning the international registration designating the European Union of a figurative mark representing white lines and bricks on a black background.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Azur Space Solar Power GmbH to pay the costs.*

([1]) OJ C 414, 14.12.2015.

Judgment of the General Court of 24 November 2016 — Azur Space Solar Power v EUIPO (Representation of black lines and bricks)

(Case T-614/15) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark representing black lines and bricks — Absolute ground for refusal — No distinctive character — Article 7 (1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/37)

Language of the case: English

Parties

Applicant: Azur Space Solar Power GmbH (Heilbronn, Germany) (represented by: J. Nicodemus and S. Stöcker, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 September 2015 (Case R 3233/2014-4), concerning the international registration designating the European Union of a figurative mark representing black lines and bricks.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Azur Space Solar Power GmbH to pay the costs.*

([1]) OJ C 38, 1.2.2016

Judgment of the General Court of 29 November 2016 — Chic Investments v EUIPO (eSMOKING WORLD)

(Case T-617/15) ([1])

(EU trade mark — Application for EU figurative mark eSMOKING WORLD — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Obligation to state reasons)

(2017/C 022/38)

Language of the case: Polish

Parties

Applicant: Chic Investments sp. z o.o. (Poznań, Poland) (represented by: K. Jarosiński, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 25 June 2015 (R 3227/2014-5) concerning an application for registration of the figurative sign eSMOKING WORLD as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Chic Investments sp. z o.o. to pay the costs.*

([1]) OJ C 16, 18.1.2016.

Judgment of the General Court of 6 December 2016 — Tuum v EUIPO — Thun (TUUM)

(Case T-635/15) ([1])

(EU trade mark — Application for EU figurative mark TUUM — Earlier national figurative mark THUN — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/39)

Language of the case: Italian

Parties

Applicant: Tuum Srl (San Giustino, Italy) (represented by: B. Saguatti, 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, intervener before the General Court: Thun SpA (Bolzano, Italy) (represented by: L. Sergi and G. Muscas, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 3 September 2015 (Case R 2624/2014-1), relating to opposition proceedings between Thun and Tuum.

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 3 September 2015 (Case R 2624/2014-1);*

2. *Rejects the opposition;*

3. *Orders EUIPO to bear its own costs and to pay half of the costs incurred by Tuum Srl in the proceedings before the General Court and the Board of Appeal;*

4. *Orders Thun SpA to bear its own costs and to pay half of the costs incurred by Tuum in the proceedings before the General Court and the Board of Appeal.*

([1]) OJ C 16, 18.1.2016.

Judgment of the General Court of 6 December 2016 — Groupe Go Sport v EUIPO — Design Go (GO SPORT)

(Case T-703/15) ([1])

(EU trade mark — Opposition proceedings — Application for an EU word mark GO SPORT — Earlier national word marks GO — Partial refusal of registration by the Opposition Division — Late filing of the statement of grounds of appeal — Inadmissibility of the appeal brought before the Board of Appeal — Article 60 of Regulation (EC) No 207/2009 — Rule 49(1) of Regulation (EC) No 2868/95)

(2017/C 022/40)

Language of the case: English

Parties

Applicant: Groupe Go Sport (Sassenage, France) (represented by: G. Arbant and E. Henry-Mayer, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Design Go Ltd (London, United Kingdom)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 September 2015 (Case R 569/2015-2), relating to opposition proceedings between Design Go and Groupe Go Sport.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Groupe Go Sport to pay the costs.*

([1]) OJ C 48, 8.2.2016.

Judgment of the General Court of 6 December 2016 — The Art Company B & S v EUIPO — Manifatture Daddato and Laurora (SHOP ART)

(Case T-735/15) ([1])

(EU trade mark — Opposition proceedings — Application for an EU figurative mark SHOP ART — Earlier EU figurative mark art — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 022/41)

Language of the case: English

Parties

Applicant: The Art Company B & S, SA (Quel, Spain) (represented by: L. Sánchez Calderón and J. Villamor Muguerza, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Manifatture Daddato SpA (Barletta, Italy) (represented by: D. Russo, lawyer)

Other party to the proceedings before the Board of Appeal of EUIPO: Sabina Laurora (Trani, Italy)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 8 October 2015 (Case R 3050/2014-1), relating to opposition proceedings between The Art Company B & S, on the one hand, and Manifatture Daddato and Ms Laurora, on the other.

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 8 October 2015 (Case R 3050/2014-1);*

2. *Orders each party to bear its own costs.*

([1]) OJ C 68, 22.2.2016.

Judgment of the General Court of 1 December 2016 — EK/servicegroup v EUIPO (FERLI)

(Case T-775/15) ([1])

(EU trade mark — Application for the EU word mark FERLI — Requirement of clarity — Article 28 of Regulation (EC) No 207/2009 — Rights of the defence — Second sentence of Article 75 of Regulation No 207/2009)

(2017/C 022/42)

Language of the case: German

Parties

Applicant: EK/servicegroup eG (Bielefeld, Germany) (represented by: T. Müller and T. A. Müller, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 28 October 2015 (Case R 1233/2015-4), concerning an application for registration of the word sign FERLI as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders EK/servicegroup eG to pay the costs.*

(1) OJ C 78, 28.2.2016.

Judgment of the General Court of 30 November 2016 — K&K Group v EUIPO — Pret A Manger (Europe) (Pret A Diner)

(Case T-2/16) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark Pret A Diner — Earlier EU figurative mark PRET A MANGER — Earlier national word mark PRET — Relative ground for refusal — Genuine use of the earlier mark — Article 42 (2) and (3) of Regulation (EC) No 207/2009 — Unfair advantage taken of the distinctiveness or the repute of the earlier marks — Article 8(5) of Regulation No 207/2009)

(2017/C 022/43)

Language of the case: English

Parties

Applicant: K&K Group AG (Cham, Switzerland) (represented by: N. Lützenrath, U. Rademacher, C. Fürsen and N. Bertram, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Pret A Manger (Europe) Ltd (London, United Kingdom) (represented by: M. Edenborough QC)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 29 October 2015 (Case R 2825/2014-5), relating to opposition proceedings between Pret A Manger (Europe) and K&K Group.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders K&K Group AG to pay the costs.*

(1) OJ C 78, 29.2.2016.

Order of the General Court of 1 December 2016 — STC v Commission

(Case T-355/14) ([1])

(Public services contracts — Tendering procedure — Construction and maintenance of a tri-generation plant with a gas turbine — Rejection of the tender submitted by a tenderer — Withdrawl of the contested measure — No need to adjudicate)

(2017/C 022/44)

Language of the case: Italian

Parties

Applicant: STC SpA (Forlì, Italy) (represented by: A. Marelli and G. Delucca, lawyers)

Defendant: European Commission (represented by: initially L. Di Paolo, F. Moro and L. Cappelletti, then L. Di Paolo and F. Moro, acting as Agents)

Intervener in support of the defendant: CPL Concordia Soc. coop. (Concordia Sulla Secchia, Italy) (represented by: A. Penta, lawyer)

Re:

First, an application based on Article 263 TFEU and seeking annulment, (i), of the Commission's decision of 3 April 2014 rejecting the tender submitted by the applicant in tendering procedure JRC IPR 2013 C04 0031 OC for the construction and maintenance of a tri-generation plant with a gas turbine (OJ 2013/S 137-237146) on the site of the Joint Research Centre (JRC) in Ispra (Italy), (ii) of the Commission's decision awarding the contract to CPL Concordia and any connected measure, prior or subsequent to that decision, including the potential decision approving the contract and, where appropriate, the contract itself, (iii) the Commission's letter of 15 April 2014 rejecting the applicant's request for access to the tendering documents, and second, application requesting, principally, an order for the Commission to revoke the award of the contract and to grant that contract to the applicant, and alternatively, if the harm cannot be repaired, to order the Commission to compensate the applicant for the harm suffered.

Operative part of the order

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

2. *CPL Concordia Soc. coop's forms of order sought are rejected as being manifestly inadmissible.*

3. *Each party shall bear its own costs relating to the present proceedings and to the proceedings for interim relief.*

([1]) OJ C 223, 14.7.2014.

Order of the General Court of 1 December 2016 — Europower v Commission

(Case T-383/14) ([1])

(Public works contracts — Tendering procedure — Construction of a gas-turbine tri-generation power plant and associated maintenance — Rejection of a tenderer's bid — Withdrawal of the contested act — No need to adjudicate)

(2017/C 022/45)

Language of the case: Italian

Parties

Applicant: Europower SpA (Milan, Italy) (represented by: G. Cocco and L. Salomoni, lawyers)

Defendant: European Commission (represented initially by: L. Cappelletti, F. Moro and L. Di Paolo, and subsequently by L. Di Paolo and F. Moro, acting as Agents)

Intervener in support of the defendant: CPL Concordia Soc. coop. (Concordia Sulla Secchia, Italy) (represented by: A. Penta, lawyer)

Re:

Action, first, on the basis of Article 263 TFEU and seeking the annulment of the Commission decision of 3 April 2014 rejecting the tender submitted by the applicant in the context of the call for tenders JRC IPR 2013 C04 0031 OC, concerning the construction of a gas-turbine tri-generation power plant and associated maintenance (OJ 2013/S 137-237146) on the site of the Joint Research Centre (JRC) at Ispra (Italy), of the Commission decision awarding the contract to CPL Concordia, of any other related prior or subsequent act including the actual decision approving the contract and the contract itself, and of the Commission decision refusing to disclose to the applicant the documents in the call for tenders and, secondly, on the basis of Article 268 TFEU and seeking compensation in respect of the harm allegedly suffered by the applicant.

Operative part of the order

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

2. *The form of order sought by CPL Concordia Soc. coop. seeking dismissal of the application for a declaration that there is no need to adjudicate is rejected as manifestly inadmissible.*

3. *The European Commission shall bear its own costs and shall pay those incurred by Europower SpA, including those relating to the interlocutory proceedings.*

4. *CPL Concordia shall bear its own costs, relating both to the present proceedings and to the interlocutory proceedings.*

([1]) OJ C 235, 21.7.2014.

Order of the General Court of 25 November 2016 — Stichting Accolade v Commission

(Case T-598/15) ([1])

(State aid — Sale of land at prices allegedly below market price — Complaint made by a third party to the Commission — Decision declaring that the contested measure does not constitute aid — Procedure governing the preliminary examination stage under Article 108(2) TFEU and under Article 10(1), Article 13(1) and Article 4(2) of Regulation (EC) No 659/1999 concerning allegedly unlawful individual aid — Action for annulment brought by a third party — Admissibility — Locus standi — Action designed to safeguard procedural rights — Action challenging the merits of the contested measure — No substantial effect on the competitive position — Inadmissibility)

(2017/C 022/46)

Language of the case: Dutch

Parties

Applicant: Stichting Accolade (Drachten, the Netherlands) (represented by: H. de Boer and J. Abma, lawyers)

Defendant: European Commission (represented by: P.-J. Loewenthal and S. Noë, acting as agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of Commission Decision C(2015) 4411 final of 30 June 2015 on State aid SA.34676 (2015/NN) — The Netherlands (alleged sale of land below market price by the municipality of Harlingen), by which the Commission decided that the sale of that land to Ludinga Vastgoed BV did not constitute State aid within the meaning of Article 107(1) TFEU.

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *Stichting Accolade shall pay the costs.*

([1]) OJ C 406, 7.12.2015.

Order of the General Court of 28 November 2016 — SureID v EUIPO (SUREID)

(Case T-128/16) ([1])

(EU trade mark — Application for the EU word mark SUREID — Absolute ground for refusal — Lack of descriptive character — Article 7(1)(c) of Regulation No 207/2009 — Descriptive character — Action manifestly lacking any foundation in law)

(2017/C 022/47)

Language of the case: English

Parties

Applicant: SureID, Inc. (Hillsboro, Oregon, United States) (represented by: B. Brandreth, Barrister)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral and S. Crabbe, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 18 January 2016 (Case R 1478/2015-4), relating to the application for registration of the word sign SUREID as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *SureID, Inc. shall pay the costs.*

([1]) OJ C 175, 17.5.2016.

Order of the General Court of 28 November 2016 — Italy v Commission

(Case T-147/16) ([1])

(Failure to comply with a judgment of the Court of Justice establishing that a Member State has failed to fulfil obligations — Periodic penalty payment — Judgment quantifying the amount of the periodic penalty — No need to adjudicate)

(2017/C 022/48)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato)

Defendant: European Commission (represented by: B. Stromsky and D. Recchia, acting as Agents)

Subject matter

Application under Article 263 TFEU for annulment of Commission Decision C(2016) 366 final of 28 January 2016, by which, in order to ensure compliance with the judgment of 17 November 2011, *Commission* v *Italy*, (C-496/09, EU:C:2011:740), the Commission fixed the amount of the periodic penalty owed by the Italian Republic for the six months from 18 November 2012 to 17 May 2013 and for the six months from 18 May 2013 to 17 November 2013.

Operative part of the order

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

2) *The European Commission shall pay the costs.*

(1) OJ C 191, 30.5.2016.

Order of the General Court of 28 November 2016 — Matratzen Concord v EUIPO

(Case T-225/16) (1)

(EU trade mark — Application for EU word mark Ganz schön ausgeschlafen — Mark consisting of an advertising slogan — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law)

(2017/C 022/49)

Language of the case: German

Parties

Applicant: Matratzen Concord GmbH (Cologne, Germany) (represented by: I. Selting, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf and A. Graul, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 24 February 2016 (Case R 1234/2015-1) concerning an application for registration of the word mark Ganz schön ausgeschlafen as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Matratzen Concord GmbH shall pay the costs.*

(1) OJ C 232, 27.6.2016.

Order of the General Court of 24 November 2016 — ED v EUIPO

(Case T-512/16) (1)

(Civil service — Temporary staff — Teleworking — Request for extension — Refusal — Actions — Subsequent grant of invalidity — No need to adjudicate)

(2017/C 022/50)

Language of the case: English

Parties

Applicant: ED (Barcelona, Spain) (represented by: S. Pappas, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė, P. Saba and D. Botis, acting as Agents)

Re:

Action brought under Article 270 TFEU, seeking annulment of the decision of EUIPO of 15 January 2014 refusing to grant the applicant's request of 26 September 2013 to be allowed essentially to continue teleworking from Barcelona (Spain) until her health was restored.

Operative part of the order

1. *There is no need to adjudicate in the present case.*

2. *ED shall bear one third of her own costs*

3. *The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay two thirds of the costs incurred by ED.*

([1]) OJ C 184, 16.6.2014 (case initially registered before the Civil Service Tribunal of the European Union under number F-35/14 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 24 November 2016 — ED v EUIPO

(Case T-520/16) ([1])

(Civil service — Temporary staff — Teleworking — Request for extension — Refusal — Actions — Subsequent grant of invalidity — No need to adjudicate)

(2017/C 022/51)

Language of the case: English

Parties

Applicant: ED (Barcelona, Spain) (represented by: S. Pappas, lawyer)

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

Re:

Action brought under Article 270 TFEU, seeking annulment of the decision of EUIPO of 15 January 2014 refusing to grant the applicant's request of 26 September 2013 to be allowed essentially to continue teleworking from Barcelona (Spain) until her health was restored and annulment of the decision of the President of EUIPO of 3 June 2014 rejecting her complaint of 7 February 2014.

Operative part of the order

1. *There is no need to adjudicate in the present case.*

2. *ED shall bear one third of her own costs.*

3. *The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay two thirds of the costs incurred by ED.*

([1]) OJ C 7, 12.1.2015 (case initially registered before the Civil Service Tribunal of the European Union under number F-93/14 and transferred to the General Court of the European Union on 1.9.2016).

Action brought on 28 September 2016 — Enrico Colombo and Giacomo Corinti v Commission

(Case T-690/16)

(2017/C 022/52)

Language of the case: Italian

Parties

Applicants: Enrico Colombo SpA (Sesto Calende, Italy) and Giacomo Corinti (Ispra, Italy) (represented by: R. Colombo and G. Turri, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the award decision (details and content unknown) communicated by note of 20 July 2016, Ref. Ares (2016) 371182, in which the European Commission (JRC — Ispra site management) awarded the contract in procedure JRC/IPR/2016/C.4/0002/OC concerning a framework agreement for works to construct and maintain water pipes and district heating/cooling substations at the Joint Research Centre in Ispra to the tender submitted by the concession holder;

— annul the note of 20 July 2016 Ref. Ares (2016) 371182, in which the European Commission (JRC — Ispra site management) communicated the result of the tendering procedure;

— annul the minutes of the award committee of 13 May 2016 and 28 June 2016;

— order, primarily, that compensation be awarded for the harm suffered, in kind, including by means of a declaration of invalidity, annulment or ineffectiveness of the contract, whose content and details are unknown, signed on 19 August 2016 by the Commission and the concession holder, the latter being subsequently replaced;

— order, in the alternative, that commensurate compensation be paid for the harm suffered, equivalent to EUR 500 000,00or whatever greater or lesser amount the Court considers fair, together with interest and monetary indexation to the date of actual payment.

Pleas in law and main arguments

In support of its action, the applicant relies on the following pleas in law: (i) infringement of Articles 105 and 107 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), (ii) infringement of the *Lex specialis* concerning the tender in question, (iii) infringement of the principle of equal treatment and the right to due process, and (iv) misuse of power in the present case.

The applicants claim in that regard that the tender submitted by the concession holder should have been excluded on the ground that it does not meet the requirements of legal capacity and technical requirements imposed by the *Lex specialis.*

Action brought on 22 October 2016 — QH v Parliament

(Case T-748/16)

(2017/C 022/53)

Language of the case: English

Parties

Applicant: QH (Woluwé-Saint-Pierre, Belgium) (represented by: N. Lhoëst and S. Michiels, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of 26 January 2016 rejecting the applicant's request for assistance and, as a consequence, annul the decision of 12 July 2016 rejecting his complaint and award the applicant compensation for the damage allegedly suffered by him;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging conflict of interests, breach of the rights of defence, breach of the adversarial principle, breach of the principle of equality of arms and infringement of Article 41(2) and 42 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging manifest error of assessment in the appointment of the investigator, lack of independence and impartiality of the investigator and breach by the investigator of his mandate.

3. Third plea in law, alleging violation of the obligation to state reasons for a decision closing an administrative investigation.

4. Fourth plea in law, alleging breach of the right to good administration and duty of care.

5. Fifth plea in law, alleging manifest error in the assessment of the grounds for moral harassment.

Action brought on 09 November 2016 — Government of Gibraltar v Commission

(Case T-783/16)

(2017/C 022/54)

Language of the case: English

Parties

Applicant: Government of Gibraltar (Gibraltar) (represented by: M. Llamas, QC, J. Temple Lang, solicitor, F.-C. Laprévote and C. Froitzheim, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission decision of 1 October 2014 in the State aid case SA.34914(C/2013) (ex 2013/NN) — Gibraltar Corporate Income Tax Regime;

— order the defendant to pay the applicant's legal and other costs and expenses in relation to this matter.

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, in finding that the tax rulings could be a new aid, the contested decision errs in fact and law and is based on inadequate reasoning.

   In support of this plea, the applicant submits as follows: first, that the Commission erred in law in not concluding from the outset that, should the practice of tax rulings or the individual tax rulings constitute State aid, they would be an existing aid; second, that the Commission erred in fact in stating that section 42 of the Income Tax Act of 2010 is the legal basis of the tax rulings; and third, that the decision lacks reasoning when claiming that the tax rulings practice constitutes new aid, an assertion that is contradicted by the claim that the rulings practice amounts to a '*de facto* scheme'.

2. Second plea in law, alleging that the contested decision errs in fact and law and is based on inadequate reasoning.

In support of this plea, the applicant submits as follows: first, that the elements needed to justify an extension of the opening of a State aid investigation are manifestly absent from the case; second, that the Commission made a manifest error of assessment and an error of fact in finding that the tax rulings provide an advantage; third, that the Commission made a manifest error of assessment and an error of fact in finding that the tax rulings are selective; fourth, that the Commission made a manifest error of assessment and an error of fact in finding that the tax rulings are liable to distort competition and/or have an effect on intra-Community trade; and fifth, that the contested decision lacks reasoning.

3. Third plea in law, alleging that the contested decision errs in law in diverting the Commission's initial investigation and artificially 'extending' the Income Tax Act procedure to rulings.

Action brought on 11 November 2016 — QD v EUIPO

(Case T-787/16)

(2017/C 022/55)

Language of the case: English

Parties

Applicant: QD (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office

Form of order sought

The applicant claims that the Court should:

— annul the decision of EUIPO of 4 March 2016 not to adopt a definitive decision regarding the applicant's request of 19 January 2016 for a second renewal of her contract concluded under Art. 2(f) CEOS and to defer a definitive decision about the applicant's request of 19 January 2016 for a second renewal of her contract concluded under Art. 2(f) CEOS to a 'specific procedure' in the future; and

— order EUIPO to pay the procedural 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 EUIPO has infringed the relevant provisions of the SR and CEOS, namely Art. 90(1) SR (in connection with Art. 46 CEOS), Annex III to the SR, Art. 2, 8, 53, CEOS, 110 SR;

2. Second plea in law, alleging that the EUIPO breached its fiduciary duty;

3. Third plea in law, alleging that the EUIPO breached the principle of sound administration (Art. 41 (1), Art. 41 (2)(3) of the Charter of Fundamental Rights of the EU (CFR);

4. Fourth plea in law, alleging that the EUIPO committed a misuse of power.

Action brought on 14 November 2016 — N & C Franchise v EUIPO — Eschenbach Optik (ojo sunglasses)

(Case T-792/16)

(2017/C 022/56)

Language in which the application was lodged: English

Parties

Applicant: N & C Franchise Ltd (Nicosia, Cyprus) (represented by: C. Chrysanthis, P.-V. Chardalia and A. Vasilogamvrou, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Eschenbach Optik GmbH (Nürnberg, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: figurative mark containing the word elements 'ojo sunglasses' – EU trade mark No 13 224 761

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 September 2016 in Case R 32/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs and legal fees of the applicant.

Plea in law

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

Action brought on 11 November 2016 — Şölen Çikolata Gıda Sanayi ve Ticaret v EUIPO — Zaharieva (Boxes)

(Case T-793/16)

(2017/C 022/57)

Language in which the application was lodged: English

Parties

Applicant: Şölen Çikolata Gıda Sanayi ve Ticaret AŞ (Şehitkamil Gaziantep, Turkey) (represented by: T. Tsenova, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Elka Zaharieva (Plovdiv, Bulgaria)

Details of the proceedings before EUIPO

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

Design at issue: Community design 'Boxes' — Community design No 002 343 244-0002

Contested decision: Decision of the Third Board of Appeal of EUIPO of 12 September 2016 in Case R 1143/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare invalid RCD No. 002343244-0002 'Bobo Cornet'; and

— order EUIPO and Elka Zaharieva to bear the costs of Solen in relation to the proceedings before the General Court and in relation to the administrative phase of the proceedings, in particular the invalidity and appeal proceedings before the EUIPO.

Pleas in law

— Infringement of Article 25(1)(e) of Regulation No 6/2002;

— Infringement of Article 25(1)(f) of Regulation No 6/2002;

— Infringement of Articles 62 and 63(1) of Regulation No 6/2002.

Action brought on 11 November 2016 — Şölen Çikolata Gıda Sanayi ve Ticaret v EUIPO — Zaharieva (Packaging for ice cream cornets)

(Case T-794/16)

(2017/C 022/58)

Language in which the application was lodged: English

Parties

Applicant: Şölen Çikolata Gıda Sanayi ve Ticaret AŞ (Şehitkamil Gaziantep, Turkey) (represented by: T. Tsenova, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Elka Zaharieva (Plovdiv, Bulgaria)

Details of the proceedings before EUIPO

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

Design at issue: Community design 'Packaging for ice cream cornets' — Community design No 002 343 244-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 12 September 2016 in Case R 1144/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare invalid RCD No. 002343244-0001 'Bobo Cornet'; and

— order EUIPO and Elka Zaharieva to bear the costs of Solen in relation to the proceedings before the General Court and in relation to the administrative phase of the proceedings, in particular the invalidity and appeal proceedings before the EUIPO.

Pleas in law

— Infringement of Article 25(1)(e) of Regulation No 6/2002;

— Infringement of Article 25(1)(f) of Regulation No 6/2002,

— Infringement of Article 62 of Regulation No 6/2002;

— Infringement of Article 63(1) of Regulation No 6/2002.

Action brought on 16 November 2016 — Xiaomi v EUIPO — Dudingen Develops (MI)

(Case T-799/16)

(2017/C 022/59)

Language in which the application was lodged: English

Parties

Applicant: Xiaomi, Inc. (Beijing, China) (represented by: T. Raab and C. Tenkhoff, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dudingen Develops, SL (Numancia de la Sagra, Spain)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: figurative mark 'MI' — EU trade mark application No 13 498 423

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 September 2016 in Case R 337/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in part, namely in so far as it held that there was no likelihood of confusion as regards:

— 'Electrical cables; Sheaths for electric cables; Cable covers [conduits]; Electrical power extension cords; Enamelled electric wires; Cable locators; Adapter cables (Electric -); Insulated electrical cables; Resistance wires; Thermocouple wires; Metallic cables [electric]; Cable connectors; Measuring cables; Connection cables; Ducting for electric cables; Cable splices for electric cables; Mounting cords [electrical]; Conduit for electric cables; Cable channels (Electric -); Cable boxes (ElectriC -); Cable junctions for electric cables; Wire connectors [electricity}; Heat resistant electric wires; Connection blocks [electric cable]; Helmets for use in spotts; Tags for identifying electric cables; Connections for electric cables; Markers for electric wire; Mineral insulated electric cables; Male connectors for electrical cables; Flexible sheaths for electric cables; Electricity mains (Materials for -) [wires, cables]; Junction sleeves for electric cables; Junction boxes for electric wires; Joint boxes for housing cable joints; Apparatus, instruments and cables for electricity; Electrical power adaptors; Plug adaptors; Adapter connectors (Electric -); Adapters for connecting telephones to hearing aids; Travel adaptors for electric plugs' in Class 9 and

— 'Rucksacks; small rucksacks; bags for climbers' in Class 18;

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

Plea(s) in law

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

Action brought on 16 November 2016 — Mayekawa Europe v Commission

(Case T-800/16)

(2017/C 022/60)

Language of the case: English

Parties

Applicant: Mayekawa Europe NV/SA (Zaventem, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium ([1]);

— in the alternative, annul Articles 2-4 of the Decision;

— in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an 'excess profit ruling' as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary's tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration; and

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

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 a manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision alleges the existence of an aid scheme.

2. Second plea in law, alleging a violation of Article 107 TFUE and of the duty to state reasons and manifest error of assessment in so far as the contested decision asserts that the purported scheme as granting a selective advantage.

3. Third plea in law, alleging a violation of Article 107 TFUE and manifest error of assessment in so far as the contested decision asserts that the purported scheme gives rise to an advantage.

4. Fourth plea in law, alleging a violation of Article 107 TFUE, infringement of legitimate expectations and of the proportionality principle, manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision orders Belgium to recover aid.

(1) Commission Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (notified under document C(2015) 9837) (OJ L 260, 2016, p. 61)

Action brought on 08 November 2016 — Endoceutics v EUIPO — Merck (FEMIBION)

(Case T-802/16)

(2017/C 022/61)

Language in which the application was lodged: English

Parties

Applicant: Endoceutics, Inc. (Quebec, Canada) (represented by: M. Wahlin, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Merck KGaA (Darmstadt, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'FEMIBION' — EU trade mark No 898 924

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 July 2016 in Case R 1608/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in part and revoke the EUTM for 'pharmaceutical preparations for immune system support, for menopause, for menstruation, for treatment and management of pregnancy, for the prevention, treatment and management of stress, for the prevention, treatment and management of stress ill-balanced or deficient nutrition';

— order the EUTM proprietor to pay the Applicant's costs on the appeal and with regard to the proceedings at the EUIPO.

Plea in law

— Infringement of Article 51(1)(a) of Regulation No 207/2009.

Action brought on 15 November 2016 — Glaxo Group v EUIPO — Celon Pharma (SALMEX)

(Case T-803/16)

(2017/C 022/62)

Language in which the application was lodged: English

Parties

Applicant: Glaxo Group Ltd (Brentford, United Kingdom) (represented by: S. Baran, S. Wickenden, Barristers, R. Jacob, E. Morris, Solicitors,)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Celon Pharma S.A. (Łomianki, 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 colours light brown/coffee and white containing the word element 'SALMEX' — EU trade mark No 9 849 191

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 31 August 2016 in Case R 2108/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Other Party to bear their own costs and pay those costs of the Applicant for Annulment at every stage of the opposition and appeal process, including the costs of these proceedings.

Plea in law

— The Board of Appeal erred in law in reaching a decision contrary to Article 8(1)(b) of Regulation No 207/2009 in that, first, it incorrectly held that the Cancellation Applicant's genuine use of the French mark was not an acceptable form of use under Article 15(1)(a) of Regulation No 207/2009 and, second, it incorrectly held that Cancellation Applicant's genuine use of the French mark was not use of the French mark in relation to the goods 'inhalers'.

Action brought on 16 September 2016 — LG Electronics/EUIPO (Dual Edge)

(Case T-804/16)

(2017/C 022/63)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'Dual Edge' – Application for registration No 14 463 178

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 September 2016 in Case R 832/2016-2

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

Action brought on 16 November 2016 — IPPT PAN v Commission and REA

(Case T-805/16)

(2017/C 022/64)

Language of the case: English

Parties

Applicant: Instytut Podstawowych Problemów Techniki Polskiej Akademii Nauk (IPPT PAN) (Warsaw, Poland) (represented by: M. Le Berre, lawyer)

Defendants: European Commission, Research Executive Agency (REA)

Form of order sought

The applicant claims that the Court should:

— annul the contested Commission decision;

— declare that the Commission erred in issuing debit note N° 3241514040 (as reduced by credit note N° 3233160082) and that the corresponding amount of EUR 67 984,13 is not due by the applicant;

— declare that the Commission and REA shall pay to the applicant under the project SMART-NEST the amount of EUR 69 623,94 together with interest from the date of the decision;

— declare that the applicant should not pay liquidated damages to the Commission with regard to the projects KMM-NOE and BOOSTING BALTIC;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action for annulment based on Article 263 TFEU, the applicant relies on seven pleas in law.

1. First plea in law, alleging breach of Articles 47 and 43 of the Charter of Fundamental Rights of the European Union on access to justice and access to the Ombudsman.

2. Second plea in law, alleging breach of the contracts for projects KMM-NOE, BOOSTING BALTIC and SMART-NEST and of applicable Belgian law.

3. Third plea in law, alleging breach of the Financial Regulation and of the Commission delegated Financial Regulation.

4. Fourth plea in law, alleging breach of the principle of legitimate expectations.

5. Fifth plea in law, alleging breach of the principle of non-discrimination.

6. Sixth plea in law, alleging breach of essential procedural requirements.

7. Seventh plea in law, alleging misuse of power by the Commission.

In support of the action for contractual remedies based on Article 272 TFEU, the applicant relies on six pleas in law.

1. First plea in law, alleging that the applicant has satisfied its obligation under article II.19.1 of the contracts for the projects KMM NOE and BOOSTING BALTIC.

2. Second plea in law, alleging that the Commission has not provided evidence in support of its claim.

3. Third plea in law, alleging that the Commission has not validly established its claim.

4. Fourth plea in law, alleging that the Commission has not implemented its contractual rights in good faith.

5. Fifth plea in law, alleging that liquidated damages claimed under Article II.30 are excessive and should be reduced under Article 1231 of the Belgian Civil Code.

6. Sixth plea in law, alleging that a payment is due to the applicant under project SMART-NEST as the remaining part of the refund of the applicant's contribution to the Guarantee Fund.

Action brought on 17 November 2016 — MIP Metro v EUIPO — Afnor (N & NF TRADING)

(Case T-807/16)

(2017/C 022/65)

Language in which the application was lodged: German

Parties

Applicant: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Association française de normalisation (Afnor) (La Plaine Saint-Denis, France)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the mark 'N & NF TRADING' — International registration No 1 086 884 designating the European Union

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 July 2016 in Case R 1109/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Plea in law

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

Action brought on 21 November 2016 — Barmenia Krankenversicherung v EUIPO (Mediline)

(Case T-810/16)

(2017/C 022/66)

Language of the case: German

Parties

Applicant: Barmenia Krankenversicherung a.G. (Wuppertal, Germany) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the procedure before EUIPO

Mark at issue: EU word mark 'Mediline' — EU trade mark No 14 655 385

Contested decision: decision of the First Board of Appeal of EUIPO of 8 September 2016 in Case R 2437/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Pleas in law

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

— infringement of Article 7(1)(c) of Regulation No 207/2009.

Action brought on 21 November 2016 — Vans v EUIPO — Deichmann (V)

(Case T-817/16)

(2017/C 022/67)

Language in which the application was lodged: German

Parties

Applicant: Vans, Inc. (Wilmington, Delaware, United States) (represented by: M. Hirsch, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Deichmann SE (Essen, Germany)

Details of the procedure before EUIPO

Party applying for the mark: Applicant

Mark at issue: EU figurative mark (Representation of a 'V') — Application No 10 263 978

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 September 2016 in Case R 2030/2015-4

Form of order sought

The applicant claims that the Court should:

— amend the contested decision by rejecting the opposition in its entirety;

— in the alternative, amend the contested decision by declaring that the opposition is also rejected for the goods 'Goods made of leather or imitations of leather; trunks and travelling bags; umbrellas; parasols and walking sticks; wallets; bags and pouches; rucksacks; belt bags; briefcases; school satchels; school satchels for sport; beach bags; keyrings; hip bags; card cases' in Class 18 and 'Clothing, footwear, headgear; belts; gloves' in Class 25;

— in the further alternative, annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Pleas in law

— infringement of Rule 19(2) and (3) and Rule 20(1) of Regulation No 2868/95;

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

— infringement of the first sentence of Article 60, Article 63(2) and the first sentence of Article 75 of Regulation No 207/2009 and of the principle of *reformatio in peius* as well as of the right to be heard.

Action brought on 21 November 2016 — KiK Textilien und Non-Food v EUIPO — FF Group Romania (_kix)

(Case T-822/16)

(2017/C 022/68)

Language in which the application was lodged: German

Parties

Applicant: KiK Textilien und Non-Food GmbH (Bönen, Germany) (represented by: S. Körber and L. Pechan, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: FF Group Romania SRL (Bucharest, Romania)

Details of the procedure before EUIPO

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

Mark at issue: EU figurative mark with the word element '_kix' — EU trade mark No 12 517 901

Procedure before EUIPO: opposition proceedings

Contested decision: decision of the Fourth Board of Appeal of EUIPO of 6 September 2016 in Case R 2323/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant and, if appropriate, the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred in the proceedings before the Board of Appeal.

Pleas in law

— infringement of the first sentence of Article 75 of Regulation No 207/2009;

— infringement of Article 42(2) and (3), in conjunction with Article 15, of Regulation No 207/2009.

Action brought on 21 November 2016 — Kiosked Oy v EUIPO — VRT, NV van Publiek Recht (k)

(Case T-824/16)

(2017/C 022/69)

Language in which the application was lodged: English

Parties

Applicant: Kiosked Oy Ab (Espoo, Finland) (represented by: L. Laaksonen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: VRT, NV van Publiek Recht (Brussels, Belgium)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark in black and white containing the word element 'K' — International registration designating the European Union No 1 112 969

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 September 2016 in Case R 279/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision of the Fourth Board of Appeal of the European Union Intellectual Property Office ('EUIPO') of 21 September 2016, in case No. R0279/2016-4 to accept the opposition by VRT, NV van publiek recht and reject the registration of International registration designating European No W01112969 K (fig.) (hereinafter the 'K LOGO') for the following services in classes 35 'Advertising, business management, business administration, office functions' and 42 'Design and development of computer software' and allows the K LOGO to proceed for registration for the above said services;

— order the Opponent to bear all the Appellant's costs of the opposition proceedings, including the costs of legal representation, in accordance with the cost specification to be submitted by the Appellant within the deadline referred to in Article 85 of EUTMR, and should such specification fail to be submitted, in accordance with the relevant legislation.

Plea in law

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

Action brought on 24 November 2016 — Republic of Cyprus v EUIPO — POCF (Pallas Halloumi)

(Case T-825/16)

(2017/C 022/70)

Language in which the application was lodged: English

Parties

Applicant: Republic of Cyprus (represented by: S. Malynicz, QC and V. Marsland, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pancyprian Organisation of Cattle Farmers (POCF) (Latsia, Cyprus)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word elements 'Pallas Halloumi' — Application for registration No 11 180 536

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 22 September 2016 in Case R 2065/2014-4

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.

Plea in law

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

Action brought on 28 November 2016 — Casasnovas Bernad v Commission

(Case T-826/16)

(2017/C 022/71)

Language of the case: French

Parties

Applicant: Luis Javier Casasnovas Bernad (Saint-Dominique, Dominican Republic) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

— Declare and order

— that the decision of 27 September 2016 terminating the applicant's contract is annulled;

— that the Commission is to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Article 3(3) of the Commission's decision of 2 March 2011 is inapplicable.

2. Second plea in law, alleging infringement of Article 85 of the Conditions of Employment of Other Servants of the European Union, in that the authority competent to conclude contracts of employment (AECC) renewed the applicant's contract for an indefinite period while providing for a termination clause based on the occurrence of an event which may be assimilated to termination.

3. Third plea in law, alleging infringement of the duty of care in that, firstly, the AECC terminated the applicant's contract before taking a decision on the renewal of his leave on personal grounds, secondly, it acted thus without even making an initial offer of reinstatement to him and, thirdly, nor did it inform him whether it was possible under the budget to pay him at the end of his leave.

4. Fourth plea in law, alleging infringement of Articles 12b and 40(1a) of the Staff Regulations of Officials of the European Union by the AECC.

Action brought on 24 November 2016 — QB v ECB

(Case T-827/16)

(2017/C 022/72)

Language of the case: French

Parties

Applicant: QB (Frankfurt-am-Main, Germany) (represented by: L. Levi, lawyer)

Defendant: European Central Bank

Form of order sought

— Declare the present action admissible and well founded;

In consequence:

— Annul the staff report for 2015 and the decision of 15 December 2015, served on 7 January 2016, refusing the applicant the benefit of a salary progression;

— In so far as necessary, annul the decisions of 2 May 2016 and 15 September 2016 rejecting the applicant's administrative appeal and claim respectively;

— Order the defendant to pay damages in respect of the non-pecuniary harm valued *ex aequo et bono* at EUR 15 000;

— Order the defendant to pay all 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 infringement of the General Instructions on the preparation of staff reports and of the procedure, infringement of the rights of the defence and infringement of the duty of care, committed by the defendant in adopting the staff report for 2015 ('the contested staff report'). The applicant raises the following complaints in particular:

   — the lack of dialogue and the infringement of the rights of the defence;

   — the contested staff report does not set out any suggestions for improvement or set any objectives in the manner required by the General Instructions for the preparations of staff reports, which constitutes an infringement of the duty of care;

   — the lack of any intervention by an uninvolved supervisor.

2. Second plea in law, alleging infringement of the rules of objectivity and impartiality and infringement of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') vitiating the contested staff report.

   — The applicant is of the opinion that the particular circumstances of the present case show that the reporting officers, and particularly the second reporting officers, were not capable of fulfilling their role objectively and impartially.

3. Third plea in law, alleging a manifest error. The applicant has set out evidence which renders the assessments of the facts in the contested staff report implausible.

4. Fourth plea in law, alleging that the decision of 15 December 2015 refusing the applicant the benefit of a salary progression is based on an unlawful staff report.

5. Fifth plea in law, alleging infringement of the 2015 guidelines and the procedure and infringement of Article 41 of the Charter in that the decision of 15 December 2015 does not state any reasons and the applicant was not heard in advance.

Action brought on 25 November 2016 — CRDO Torta del Casar v EUIPO — CRDOP 'Queso de La Serena' (QUESO Y TORTA DE LA SERENA)

(Case T-828/16)

(2017/C 022/73)

Language in which the application was lodged: Spanish

Parties

Applicant: Consejo Regulador de la Denominación de Origen Torta del Casar (Casar de Cáceres, Spain) (represented by: A. Pomares Caballero and M. Pomares Caballero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Consejo Regulador de la Denominación de Origen Protegida 'Queso de La Serena' (Castuera, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word elements 'QUESO Y TORTA DE LA SERENA' — Application for registration No 10 486 447

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 26 September 2016 in Case R 2573/2014-4

Form of order sought

The applicant claims that the Court should:

— vary the contested decision, finding that the conditions for applying the relative ground for refusal of registration in Article 8(4) of Regulation No 207/2009, in conjunction with Article 13(1) of Regulation No 510/2006, are met;

— alternatively, annul the contested decision; and

— in any event, order EUIPO to bear its own costs and to pay those incurred by the applicant (including the costs relating to the proceedings before the Board of Appeal).

Pleas in law

— Infringement of Article 2(2) and Article 3(1) of Regulation No 510/2006, read in conjunction with Article 13(1) of the same regulation, and with reference, lastly, to Article 8(4) of Regulation No 207/2009.

— Infringement of Article 13(1) of Regulation No 510/2006, with reference to Article 8(4) of Regulation No 207/2009.

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

— Infringement of the general principles of legal certainty and sound administration.

Action brought on 25 November 2016 — Mouvement pour une Europe des nations et des libertés v Parliament

(Case T-829/16)

(2017/C 022/74)

Language of the case: French

Parties

Applicant: Mouvement pour une Europe des nations et des libertés (Paris, France) (represented by: A. Varaut, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul Decision D106185 of the Bureau of the European Parliament of 12 September 2016, notified by Mr [X] on 26 September 2016, declaring ineligible the expenditure resulting from the posters for MENL's 'Schengen' campaign;

— order the Bureau of the European Parliament to pay the costs.

Pleas in law and main arguments

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

1. First plea, alleging infringement of the principle of sound administration resulting from the fact that neither the material in the case file nor the objections of the Mouvement pour une Europe des nations et des libertés ('MENL') were brought to the attention of the Bureau of the European Parliament.

2. Second plea, alleging that, according to the applicant, the concept of 'indirect funding' of national parties by European parties is an imprecise concept that is contrary to all legal certainty.

3. Third plea, alleging that the logo featuring on the posters for MENL's 'Schengen' campaign ('the logo at issue') conveys on national territories an exclusively European campaign, contrary to the view taken by the defendant in adopting the decision which the present action seeks to have annulled. In support of this plea, the applicant primarily puts forward three arguments, namely:

   — the campaign was orchestrated by MENL alone, without agreement or involvement of the national parties;

   — the campaign and the poster concern a problem of European scope which is that of the Schengen agreements;

   — the logo at issue is therefore not the logo of the national parties but the logo of the delegations of those parties within the European Parliament.

4. Fourth plea, alleging that, according to the applicant, the logo at issue is of much smaller size than MENL's logo. However, the case-law and the texts dealing with the question provide for sanctions only in respect of national logos of a size greater than or equal to that of the European logos.

Action brought on 23 November 2016 — Monolith Frost v EUIPO — Dovgan (PLOMBIR)

(Case T-830/16)

(2017/C 022/75)

Language in which the application was lodged: German

Parties

Applicant: Monolith Frost GmbH (Leopoldshöhe, Germany) (represented by: E. Liebich and S. Labesius, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dovgan GmbH (Hamburg, Germany)

Details of the procedure before EUIPO

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

Mark at issue: EU word mark 'PLOMBIR'

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 22 September 2016 in Case R 1812/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision pursuant to Article 65(3) of Regulation (EC) No 207/2009;

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

Pleas in law

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

— infringement of Article 76(1) of Regulation No 207/2009;

— infringement of the obligation to state reasons under the first sentence of Article 75 of Regulation No 207/2009.

Action brought on 28 November 2016 — Kabushiki Kaisha Zoom v EUIPO — Leedsworld (ZOOM)

(Case T-831/16)

(2017/C 022/76)

Language in which the application was lodged: English

Parties

Applicant: Kabushiki Kaisha Zoom (Tokyo, Japan) (represented by: M. de Arpe Tejero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Leedsworld, Inc. (New Kensington, Pennsylvania, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'ZOOM' — Application for registration No 11 766 111

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 September 2016 in Case R 1235/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject entirely the EU trade mark No 11 766 111 'ZOOM' for class 9;

— order EUIPO and the intervener to pay the costs.

Plea in law

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

Action brought on 2 December 2016 — Cyprus v EUIPO — POCF (COWBOYS HALLOUMI)

(Case T-847/16)

(2017/C 022/77)

Language in which the application was lodged: English

Parties

Applicant: Republic of Cyprus (represented by: S. Malynicz, QC, and V. Marsland, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pancyprian Organisation of Cattle Farmers (POCF) (Latsia, Cyprus)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colours containing the word elements 'COWBOYS HALLOUMI' — Application for registration No 11 281 375

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 22 September 2016 in Case R 2781/2014-4

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 5 December 2016 — Techniplan v Commission

(Case T-853/16)

(2017/C 022/78)

Language of the case: Italian

Parties

Applicant: Techniplan Srl (Rome, Italy) (represented by: R. Giuffrida and A. Bonavita, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the European Commission infringed Article 265 TFEU by failing to take a position on the request sent by Techniplan by means of a formal letter of notice;

— order the European Commission to meet the obligation to *act* provided for in Article 266 TFEU and to pay compensation in respect of the damage for each day on which it fails to meet that obligation, as well as to pay its costs and other disbursements.

Pleas in law and main arguments

The applicant is an engineering company which was awarded a number of projects in African countries (supervision and surveillance of the planning and asphalting works on the Banikoara-Kandi road in Benin, supervision of the works on the Ouallah-Miringoni Road RN32 in the Comoros, supervision of the regular maintenance works on the asphalted roads in Ajouan and Moheli in the Comoros, supervision and monitoring of the regular maintenance works on Grande Comore in the Comoros, monitoring and surveillance of the construction works on the Kinkala-Mindouli National Road No 1 in Congo, supervision and surveillance of the planning and asphalting works on the Bouar-Fambélé road in the Central African Republic, and preparation and monitoring of works in the context of SP NP/HD (support project for the national plans for health development) in the Democratic Republic of Congo).

The applicant states in this respect that all of those projects were completed and certified by the national authorising officers, and that the corresponding invoices were paid and approved by the bodies of the European Commission, which finances the projects. Nevertheless, entirely unexpectedly, invoices started to be paid only in part. The defendant even applied, again according to the applicant, an arbitrary penalty for the benefit of the European Development Fund, without any specific objection being raised. In particular, the European Commission also intended arbitrarily to use credits claimed by Techniplan in order to offset alleged unspecified debts.

The defendant sent a formal letter of notice on the basis of Article 265 TFEU in which it called on the European Commission to adopt a measure or take an official position on its request for payment and the real nature of the penalties applied.

In support of its action, the applicant claims that the competent bodies of the European Commission acted in contravention of the principles of legal certainty and transparency. This situation, Techniplan submits, severely damaged its subjective rights, even though it has a legitimate expectation to know with certainty, at all times and in every situation, what are its EU-law rights and obligations.

Action brought on 5 December 2016 — Rare Hospitality International v EUIPO (LONGHORN STEAKHOUSE)

(Case T-856/16)

(2017/C 022/79)

Language of the case: English

Parties

Applicant: Rare Hospitality International, Inc. (Orlando, Florida, United States) (represented by: I. Lázaro Betancor, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'LONGHORN STEAKHOUSE' — Application for registration No 13 948 682

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 September 2016 in Case R 2149/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of principle of equal treatment and sound administration.

Order of the General Court of 14 November 2016 — Trost Auto Service Technik v EUIPO (AUTOSERVICE.COM)

(Case T-259/16) ([1])

(2017/C 022/80)

Language of the case: German

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

([1]) OJ C 251, 11.7.2016.

Order of the General Court of 29 November 2016 — Gulli v EUIPO — Laverana (Lybera)

(Case T-284/16) ([1])

(2017/C 022/81)

Language of the case: English

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

([1]) OJ C 270, 25.7.2016.

Order of the General Court of 21 November 2016 — TBWA\London v EUIPO (MEDIA ARTS LAB)

(Case T-361/16) ([1])

(2017/C 022/82)

Language of the case: English

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

([1]) OJ C 314, 29.8.2016.

Order of the General Court of 14 November 2016 — Dulière v Commission

(Case T-503/16) ([1])

(2017/C 022/83)

Language of the case: French

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

([1]) OJ C 129, 4.5.2013 (case initially registered before the Civil Service Tribunal of the European Union under number F-15/13 and transferred to the General Court of the European Union on 1.9.2016).

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