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Information and Notices

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(2017/C 112/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 16 February 2017 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 6 de Murcia — Spain) — IOS Finance EFC SA v Servicio Murciano de Salud

(Case C-555/14) ([1])

(Reference for a preliminary ruling — Combating late payment in commercial transactions — Directive 2011/7/EU — Commercial transactions between private undertakings and public authorities — National legislation making the immediate recovery of the principal amount of a debt conditional upon the waiver of interest for late payment and of compensation for recovery costs)

(2017/C 112/02)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 6 de Murcia

Parties to the main proceedings

Applicant: IOS Finance EFC SA

Defendant: Servicio Murciano de Salud

Operative part of the judgment

Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, and Article 7(2) and (3) thereof in particular, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a creditor to waive his right to interest for late payment and compensation for recovery costs in exchange for immediate payment of the principal amount of debts owed, on condition that such a waiver is freely agreed to, this being a matter for the referring court to verify.

([1]) OJ C 56, 16.2.2015.

Judgment of the Court (Fifth Chamber) of 16 February 2017 — Brandconcern BV v European Union Intellectual Property Office (EUIPO)

(Case C-577/14 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 51(2) — Word mark LAMBRETTA — Genuine use of the mark — Application for revocation — Partial revocation — Communication No 2/12 of the President of EUIPO — Limitation of the temporal effects of a judgment of the Court)

(2017/C 112/03)

Language of the case: English

Parties

Appellant: Brandconcern BV (represented by: A. von Mühlendahl and H. Hartwig, Rechtsanwälte, and by G. Casucci, N. Ferretti and C. Galli, avvocati)

Other parties to the proceedings: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent), Scooters India Ltd, (represented by: C. Wolfe, Solicitor, and by B. Brandreth and A. Edwards-Stuart, Barristers)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Brandconcern BV to pay the costs.*

([1]) OJ C 89, 16.3.2015, p. 3.

Opinion of the Court (Grand Chamber) of 14 February 2017 — European Commission

(Opinion 3/15) ([1])

(Opinion pursuant to Article 218(11) TFEU — Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled — Article 3 TFEU — Exclusive external competence of the European Union — Article 207 TFEU — Common commercial policy — Commercial aspects of intellectual property — International agreement that may affect common rules or alter their scope — Directive 2001/29/EC — Article 5(3)(b) and (4) — Exceptions and limitations for the benefit of people with a disability.)

(2017/C 112/04)

Language of the case: all the official languages

Requested by

European Commission (represented by: B. Hartmann, F. Castillo de la Torre and J. Samnadda, agents)

Operative part

The conclusion of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled falls within the exclusive competence of the European Union.

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (Fifth Chamber) of 16 February 2017 — Hansen & Rosenthal KG, H&R Wax Company Vertrieb GmbH v European Commission

(Case C-90/15 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — European market for paraffin wax and the German market for slack wax — Price-fixing and market-sharing — Evidence of the infringement — Unlimited jurisdiction — Distortion of evidence — Obligation to state reasons — Regulation (EC) No 1/2003 — Article 23(2) — Calculation of the amount of the fine — Principle of legality — The 2006 Guidelines on the method of setting fines — Principle of proportionality)

(2017/C 112/05)

Language of the case: German

Parties

Appellants: Hansen & Rosenthal KG, H&R Wax Company Vertrieb GmbH (represented by: J. Schulte, M. Dallmann and K. Künstner, lawyers)

Other party to the proceedings: European Commission (represented by: R. Sauer, C. Vollrath and L. Wildpanner, acting as Agents, and by A. Böhlke, lawyer)

Operative part of the judgment

The Court:

1. *Dimsisses the appeal;*

2. *Orders Hansen & Rosenthal KG and H&R Wax Company Vertrieb GmbH to pay the costs.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Fifth Chamber) of 16 February 2017 — Tudapetrol Mineralölerzeugnisse Nils Hansen KG v European Commission

(Case C-94/15 P) ([1])

(Appeal — Agreements, decisions and concerted practices — European market for paraffin wax and the German market for slack wax — Price-fixing and market-sharing — Obligation to state reasons — Evidence of the infringement — Distortion of the evidence)

(2017/C 112/06)

Language of the case: German

Parties

Appellant: Tudapetrol Mineralölerzeugnisse Nils Hansen KG (represented by: U. Itzen and J. Ziebarth, lawyers)

Other party to the proceedings: European Commission (represented by: R. Sauer, C. Vollrath and L. Wildpanner, acting as Agents, and by A. Böhlke, lawyer)

Operative part of the judgment

The Court:

1. *Dimsisses the appeal;*

2. *Orders Tudapetrol Mineralölerzeugnisse Nils Hansen KG to pay the costs.*

(1) OJ C 127, 20.4.2015.

Judgment of the Court (Fifth Chamber) of 16 February 2017 — H&R ChemPharm GmbH v European Commission

(Case C-95/15 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — European market for paraffin wax and the German market for slack wax — Price-fixing and market-sharing — Obligation to state reasons — Distortion of the evidence — Regulation (EC) No 1/2003 — Article 23(3) — Calculation of the amount of the fine — The 2006 Guidelines on the method of setting fines — Principle of proportionality)

(2017/C 112/07)

Language of the case: German

Parties

Appellant: H&R ChemPharm GmbH (represented by: M. Klusmann, lawyer and S. Thomas, Professor)

Other party to the proceedings: European Commission (represented by: R. Sauer, C. Vollrath and L. Wildpanner, acting as Agents, and by A. Böhlke, lawyer)

Operative part of the judgment

The Court:

1. *Dimsisses the appeal;*

2. *Orders H&R ChemPharm GmbH to pay the costs.*

(1) OJ C 138, 27.4.2015.

Judgment of the Court (First Chamber) of 16 February 2017 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Elisabeth Schmitt v TÜV Rheinland LGA Products GmbH

(Case C-219/15) (1)

(Reference for a preliminary ruling — Approximation of laws — Industrial policy — Directive 93/42/EEC — Checks on the conformity of medical devices — Notified body appointed by the manufacturer — Obligations of that body — Defective breast implants — Implants manufactured using silicone — Liability of the notified body)

(2017/C 112/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Elisabeth Schmitt

Defendant: TÜV Rheinland LGA Products GmbH

Operative part of the judgment

1. *The provisions of Annex II to Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, read in the light of Article 11(1) and (10) and Article 16(6) of the directive, are to be interpreted as meaning that the notified body is not under a general obligation to carry out unannounced inspections, to examine devices and/or to examine the manufacturer's business records. However, in the face of evidence indicating that a medical device may not comply with the requirements laid down in Directive 93/42, as amended by Regulation No 1882/2003, the notified body must take all the steps necessary to ensure that it fulfils its obligations under Article 16(6) of the directive and Sections 3.2, 3.3, 4.1 to 4.3 and 5.1 of Annex II to the directive;*

2. *Directive 93/42, as amended by Regulation No 1882/2003, is to be interpreted as meaning that, in the procedure relating to the EC declaration of conformity, the purpose of the notified body's involvement is to protect the end users of medical devices. The conditions under which culpable failure by that body to fulfil its obligations under the directive in connection with that procedure may give rise to liability on its part vis-à-vis those end users are governed by national law, subject to the principles of equivalence and effectiveness.*

([1]) OJ C 279, 24.8.2015.

Judgment of the Court (Ninth Chamber) of 15 February 2017 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X v Staatssecretaris van Financiën

(Case C-317/15) ([1])

(Reference for a preliminary ruling — Free movement of capital — Article 64 TFEU — Movement of capital to or from third countries involving the provision of financial services — Financial assets held in a Swiss bank account — Additional assessment for recovery — Recovery period — Extension of the recovery period in the case of assets held outside the Member State of residence)

(2017/C 112/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

1. *Article 64(1) TFEU must be interpreted as applying to national legislation which imposes a restriction on the movements of capital referred to in that provision, such as the extended recovery period at issue in the main proceedings, even where that restriction can also be applied to situations which have nothing to do with direct investment, establishment, the provision of financial services or the admission of securities to capital markets.*

2. *The opening of a securities account by a resident of a Member State with a banking institution outside the European Union, such as that at issue in the main proceedings, comes within the concept of a movement of capital involving the provision of financial services, within the meaning of Article 64(1) TFEU.*

3. *The possibility, provided for in Article 64(1) TFEU, for Member States to apply restrictions on capital movements involving the provision of financial services also applies to restrictions which, like the extended recovery period at issue in the main proceedings, are not related to either the provider of the services or the conditions and mechanisms of the provision of services.*

(1) OJ C 311, 21.9.2015.

Judgment of the Court (First Chamber) of 15 February 2017 (request for a preliminary ruling from the Vilniaus miesto apylinkės teismas — Lithuania) — W, V v X

(Case C-499/15) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Articles 8 to 15 — Jurisdiction concerning maintenance obligations — Regulation (EC) No 4/2009 — Article 3(d) — Conflicting judgments given in the courts of different Member States — Child habitually resident in the Member State of residence of his mother — The courts of the father's Member State of residence without jurisdiction to vary a decision that has become final which they adopted earlier concerning the residence of the child, maintenance obligations and contact arrangements)

(2017/C 112/10)

Language of the case: Lithuanian

Referring court

Vilniaus miesto apylinkės teismas

Parties to the main proceedings

Applicants: W, V

Defendant: X

Operative part of the judgment

Article 8 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as meaning that, in a case such as that in the main proceedings, the courts of the Member State which made a decision that has become final concerning parental responsibility and maintenance obligations with regard to a minor child no longer have jurisdiction to decide on an application for variation of the provisions ordered in that decision, inasmuch as the habitual residence of the child is in another Member State. It is the courts of the Member State of habitual residence that have jurisdiction to decide on that application.

(1) OJ C 414, 14.12.2015.

Judgment of the Court (Fifth Chamber) of 16 February 2017 (request for a preliminary ruling from the Secretario Judicial del Juzgado de Violencia sobre la Mujer Único de Terrassa — Spain) — Ramón Margarit Panicello v Pilar Hernández Martínez

(Case C-503/15) ([1])

(Request for a preliminary ruling — Article 267 TFEU — Registrar — Definition of 'a court or tribunal' — Compulsory jurisdiction — Exercise of judicial functions — Independence — Lack of jurisdiction of the Court)

(2017/C 112/11)

Language of the case: Spanish

Referring court

Secretario Judicial del Juzgado de Violencia sobre la Mujer Único de Terrassa

Parties to the main proceedings

Applicant: Ramón Margarit Panicello

Defendant: Pilar Hernández Martínez

Operative part of the judgment

The Court of Justice of the European Union has no jurisdiction to rule on the request for a preliminary ruling submitted by the Secretario Judicial del Juzgado de Violencia sobre la Mujer Único de Terrassa (Registrar of the Single-Member Court dealing with matters involving violence against women, Terrassa, Spain).

([1]) OJ C 414, 14.12.2015.

Judgment of the Court (First Chamber) of 16 February 2017(request for a preliminary ruling from the rechtbank van Koophandel te Gent — Belgium) — Agro Foreign Trade & Agency Ltd v Petersime NV

(Case C-507/15) ([1])

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653/EEC — Coordination of the laws of the Member States — Belgian transposition measure — Commercial agency contract — Principal established in Belgium and agent established in Turkey — Choice of Belgian law clause — Applicable law — EEC-Turkey Association Agreement — Compatibility)

(2017/C 112/12)

Language of the case: Dutch

Referring court

Rechtbank van Koophandel te Gent

Parties to the main proceedings

Applicant: Agro Foreign Trade & Agency Ltd

Defendant: Petersime NV

Operative part of the judgment

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents and the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 must be interpreted as not precluding national legislation transposing that directive into the law of the Member State concerned, which excludes from its scope of application a commercial agency contract in the context of which the commercial agent is established in Turkey, where it carries out activities under that contract, and the principal is established in that Member State, so that, in such circumstances, the commercial agent cannot rely on rights which that directive guarantees to commercial agents after the termination of such a commercial agency contract.

([1]) OJ C 414, 14.12.2015.

Judgment of the Court (Fourth Chamber) of 15 February 2017 (request for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v British Film Institute

(Case C-592/15) ([1])

(Reference for a preliminary ruling — Value added tax — Sixth Directive 77/388/EEC — Article 13A(1)(n) — Exemptions for certain cultural services — No direct effect — Determination of the exempt cultural services — Discretion of the Member States)

(2017/C 112/13)

Language of the case: English

Referring court

Court of Appeal of England and Wales (Civil Division)

Parties to the main proceedings

Appellant: Commissioners for Her Majesty's Revenue and Customs

Respondent: British Film Institute

Operative part of the judgment

Article 13A(1)(n) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, exempting 'certain cultural services', must be interpreted as not being of direct effect, so that in the absence of transposition that provision may not be relied on directly by a body governed by public law or other cultural body recognised by the Member State concerned supplying cultural services.

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Second Chamber) of 16 February 2017 (request for a preliminary ruling from the Handelsgericht Wien — Austria) — Verwertungsgesellschaft Rundfunk GmbH v Hettegger Hotel Edelweiss GmbH

(Case C-641/15) ([1])

(Reference for a preliminary ruling — Intellectual property — Directive 2006/115/EC — Article 8(3) — Exclusive right of broadcasting organisations — Communication to the public — Places accessible to the public against payment of an entrance fee — Communication of broadcasts by TV sets installed in hotel rooms)

(2017/C 112/14)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Verwertungsgesellschaft Rundfunk GmbH

Defendant: Hettegger Hotel Edelweiss GmbH

Operative part of the judgment

Article 8(3) of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property must be interpreted as meaning that the communication of television and radio broadcasts by means of TV sets installed in hotel rooms does not constitute a communication made in a place accessible to the public against payment of an entrance fee.

([1]) OJ C 90, 7.3.2016.

Judgment of the Court (Sixth Chamber) of 16 February 2017 (request for a preliminary ruling from the Gerechtshof Amsterdam — Netherlands) — Aramex Nederland BV v Inspecteur van de Belastingdienst/Douane

(Case C-145/16) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Validity — Regulation (EU) No 301/2012 — Headings 8703 and 8711 — Three-wheeled motor vehicle called 'Spyder')

(2017/C 112/15)

Language of the case: Dutch

Referring court

Gerechtshof Amsterdam

Parties to the main proceedings

Applicant: Aramex Nederland BV

Defendant: Inspecteur van de Belastingdienst/Douane

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that a three-wheeled vehicle, such as that at issue in the main proceedings, fitted with tyres manufactured for three-wheeled motorcycles but similar to those for motor cars, steered using a handlebar and fitted with a steering system based on the Ackermann principle, falls within heading 8703 of that nomenclature.

(1) OJ C 200, 6.6.2016.

Judgment of the Court (Fifth Chamber) of 16 February 2017 (request for a preliminary ruling from the Vrhovno sodišče Republika Slovenija — Slovenia) — C.K., H.F., A.S. v Republika Slovenija

(Case C-578/16 PPU) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Borders, asylum and immigration — Dublin system — Regulation (EU) No 604/2013 — Article 4 of the Charter of Fundamental Rights of the European Union — Inhuman or degrading treatment — Transfer of a seriously ill asylum seeker to the State responsible for examining his application — No substantial grounds for believing that there are proven systemic flaws in that Member State — Obligations imposed on the Member State having to carry out the transfer)

(2017/C 112/16)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republika Slovenija

Parties to the main proceedings

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

Defendant: Republika Slovenija

Operative part of the judgment

1. *Article 17(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.*

2. *Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:*

— *even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;*

— *in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;*

— *it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member States concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and*

— *where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of Regulation No 604/2013.*

Article 17(1) of Regulation No 604/2013, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.

([1]) OJ C 22, 23.01.2017.

Order of the Court (Sixth Chamber) of 12 January 2017 (request for a preliminary ruling from the Kúria — Hungary) — Magyar Villamos Művek Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-28/16) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Value added tax — Directive 2006/112/EC — Articles 2, 9, 26, 167, 168 and 173 — Deduction of input tax — Taxable person simultaneously carrying out economic and non-economic activities — Holding company supplying services to its subsidiaries free of charge)

(2017/C 112/17)

Language of the case: Hungarian

Referring court

Kúria — Hungary

Parties to the main proceedings

Applicant: Magyar Villamos Művek Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Operative part of the order

Articles 2, 9, 26, 167, 168 and 173 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in so far as the involvement of a holding company, such as that at issue in the main proceedings, in the management of its subsidiaries, where it has charged those subsidiaries neither for the cost of the services procured in the interest of the group of companies as a whole or in the interest of certain of its subsidiaries, nor for the corresponding VAT, does not constitute an 'economic activity', within the meaning of that directive, such a holding company does not have the right to deduct input VAT paid in respect of those services in so far as those services relate to transactions falling outside the scope of that directive.

([1]) OJ C 156, 2.5.2016.

Order of the Court (Sixth Chamber) of 12 January 2017 — Amrita Soc. coop. Arl and Others v European Commission

(Case C-280/16 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Protection of plant health — Directive 2000/29/EC — Protection against the introduction into and spread within the European Union of organisms harmful to plants or plant products — Implementing Decision (EU) 2015/789 — Measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Wells and Raju) — Action for annulment — Fourth paragraph of Article 263 TFEU — Regulatory act — Implementing measures — Person individually concerned)

(2017/C 112/18)

Language of the case: Italian

Parties

Appellants: Amrita Soc. coop. arl, Cesi Marta, Comune Agricola Lunella Soc. mutua coop. arl, Rollo Olga, Borrello Claudia, Società agricola Merico Maria Rosa di Consiglia, Marta e Vito Lisi, Marzo Luigi, Stasi Anna Maria, Azienda Agricola Crie di Miggiano Gianluigi, Castriota Maria Grazia, Azienda Agricola di Canioni Fiorella, Azienda Agricola Spirdo ss agr., Impresa Agricola Stefania Stamerra, Azienda Agricola Clemente Pezzuto di Pezzuto Francesco, Simone Cosimo Antonio, Masseria Alti Pareti Soc. agr. arl (represented by: L. Paccione and V. Stamerra, avvocati)

Other party to the proceedings: European Commission (represented by: F. Moro and I. Galindo Martín, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Amrita Soc. coop. arl, Dei Agre di Cesi Marta, Comune agricola Lunella Soc. mutua coop. arl, Azienda agricola Rollo Olga, Azienda agricola Borrello Claudia, Società agricola Merico Maria Rosa SNC, Azienda agricola di Marzo Luigi, Azienda agricola Stasi Anna Maria, Azienda agricola Crie di Miggiano Gianluigi, Azienda agricola di Castriota Maria Grazia, Azienda agricola di Cagnoni Fiorella, Azienda agricola Spirdo ss agr., Impresa Agricola Stamerra Stefania, Azienda agricola Clemente Pezzuto di Pezzuto Francesco, Azienda agricola di Simone Cosimo Antonio and Masseria Alti Pareti Soc. agr. Arl are ordered to pay the costs.*

([1]) OJ C 260, 18.7.2016.

Appeal brought on 7 March 2016 by Juozas Edvardas Petraitis against the order of the General Court (Seventh Chamber) of 18 December 2015 in Case T-460/15, *Petraitis* v *Commission*

(Case C-137/16 P)

(2017/C 112/19)

Language of the case: Lithuanian

Parties

Appellant: Juozas Edvardas Petraitis, represented by T. Veščiūnas, advocatas

Other party to the proceedings: European Commission

By order of 24 November 2016, the Court of Justice (Tenth Chamber) dismissed the appeal and ordered Mr Juozas Edvardas Petraitis to bear his own costs.

Appeal brought on 22 September 2016 by Monster Energy Company against the judgment of the General Court (Sixth Chamber) delivered on 14 July 2016 in Case T-429/15: Monster Energy v EUIPO — MAD CATZ INTERACTIVE (MAD CATZ)

(Case C-501/16 P)

(2017/C 112/20)

Language of the case: English

Parties

Appellant: Monster Energy Company (represented by: P. Brownlow, Solicitor)

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

By order of 16 February 2017 the Court of Justice (Ninth Chamber) held that the appeal was inadmissible.

Appeal brought on 22 September 2016 by Monster Energy Company against the judgment of the General Court (Sixth Chamber) delivered on 14 July 2016 in Case T-567/15: Monster Energy v EUIPO — MAD CATZ INTERACTIVE (REPRESENTATION OF A BLACK SQUARE WITH FOUR WHITE LINES)

(Case C-502/16 P)

(2017/C 112/21)

Language of the case: English

Parties

Appellant: Monster Energy Company (represented by: P. Brownlow, Solicitor)

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

By order of 16 February 2017 the Court of Justice (Ninth Chamber) held that the appeal was inadmissible.

Appeal brought on 1 December 2016 by Anikó Pint against the order of the General Court (First Chamber) of 14 November 2016 in Case T-660/16 Anikó Pint v European Commission

(Case C-625/16 P)

(2017/C 112/22)

Language of the case: German

Parties

Appellant: Anikó Pint (represented by: D. Lazar, Rechtsanwalt)

Other party to the proceedings: European Commission

By order of 2 March 2017, the Court of Justice of the European Union (Eighth Chamber) dismissed the appeal and ordered the appellant to bear her own costs.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 22 December 2016 — Minister Finansów v Gmina Wrocław

(Case C-665/16)

(2017/C 112/23)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant in cassation: Minister Finansów

Respondent in the appeal in cassation: Gmina Wrocław

Questions referred

Does the transfer, pursuant to the law, of the ownership of immovable property owned by a municipality to the State Treasury in return for payment of compensation, in the case where, under the rules of national law, that immovable property continues to be managed by the mayor of the municipality, who is simultaneously the representative of the State Treasury and the executive body of the municipality, constitute a taxable transaction within the meaning of Article 14(2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax? ([1])

In answering that question, is it significant whether the compensation paid to the municipality consists of an actual payment or is a mere internal accounting transfer within the municipal budget?

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

Request for a preliminary ruling from the Corte di Appello di Torino (Italy) lodged on 2 January 2017 — Petronas Lubricants Italy SpA v Mr Livio Guida

(Case C-1/17)

(2017/C 112/24)

Language of the case: Italian

Referring court

Corte di Appello di Torino

Parties to the main proceedings

Appellant: Petronas Lubricants Italy SpA

Respondent: Mr Livio Guida

Questions referred

1. Under Article 20(2) of Regulation No 44/2001, may an employer domiciled in the territory of an EU Member State, against which an action is brought by its former employee before the courts of a Member State in which that employer is domiciled (within the meaning of Article 19 of the regulation), bring a counter-claim against the employee before the same court hearing the original action?

2. If the answer to question 1 is in the affirmative, does Article 20(2) of Regulation No 44/2001 include the jurisdiction of the court hearing the original action even when the employer's counter-claim is not based on a claim originating with the employer but on a claim originating with another party (which is, at the same time, an employer of the same employee under a parallel employment contract), and the counter-claim is based on an assignment-of-claim agreement, concluded by the employer and the party from which the claim originally derives, after the date on which the original action was brought by the employee?

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 3 January 2017 — Sporting Odds Limited v Nemzeti Adó- és Vámhivatal Központi Irányítása

(Case C-3/17)

(2017/C 112/25)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Sporting Odds Limited

Defendant: Nemzeti Adó- és Vámhivatal Központi Irányítása

Questions referred

1. Must Article 56 of the Treaty on the Functioning of the European Union ('TFEU'), the prohibition of discrimination and the requirement that the restriction of gambling activities by the Member States be carried out consistently and systematically — a legal objective which the Member State justifies essentially by reference to the fight against compulsive gambling and the protection of consumers — be interpreted as meaning that the national State monopoly over online and offline sports betting and betting on horse-racing is contrary to those rules if, in addition, in the Member State, since the reorganisation of the market carried out by the latter, private service providers with physical casinos operated under a concession may organise — both online and offline — other games of chance (casino games, card games, slot machines, online casino games, online card games) which entail a considerable risk of addiction?

2. Must Article 56 TFEU, the prohibition of discrimination and the requirement that the restriction of gambling activities by the Member States be carried out consistently and systematically be interpreted as meaning that that article is infringed and that requirement is not fulfilled if it is determined that the reorganisation of the market, on the grounds of combating compulsive gambling and pursuing the statutory objective of protecting consumers, has, since the market reorganisation carried out by the Member State, effectively had as its consequence, or given rise to, a continuous increase in the number of casinos, the annual tax on the casinos' games of chance, the national budget forecast of revenue from casino concession fees, the amount of gambling chips bought by players and the amount of money needed to be entitled to play slot machines?

3. Must Article 56 TFEU, the prohibition of discrimination and the requirement that the restriction of gambling activities by the Member States be carried out consistently and systematically be interpreted as meaning that that article is infringed and that requirement is not fulfilled if it is determined that the establishment of a national State monopoly and the authorised organisation of games of chance by private service providers, essentially on the grounds of combating compulsive gambling and pursuing the statutory objective of protecting consumers, have, in addition, the economic policy objective of obtaining increased net revenue from gambling and generating an exceptionally high level of revenue from the casinos market in the least amount of time possible, with the aim of financing other budgetary expenses and State public services?

4. Must Article 56 TFEU, the prohibition of discrimination and the requirement that the restriction of gambling activities by the Member States be carried out consistently and systematically be interpreted as meaning that that article is infringed and that requirement is not fulfilled, and that there is an unjustified discrimination between the service providers, if it is determined that the Member State, invoking the same public policy ground, reserves certain online gambling services for the national State monopoly whilst it allows access to other gambling services by granting an increasing number of concessions?

5. Must Article 56 TFEU and the prohibition of discrimination be interpreted as precluding a situation in which only service providers with physical casinos (and a concession) in Hungary may obtain a licence to offer online casino games, since service providers which do not have a physical casino in Hungary (including service providers with a physical casino in another Member State) cannot access the licence to offer online casino games?

6. Must Article 56 TFEU and the prohibition of discrimination be interpreted as precluding a situation in which the Member State — through the possible initiation of a tender procedure in order to award concessions for physical casinos and through the possibility, for those with the status of trustworthy operators of games of chance, of submitting an offer [to contract] in order to obtain a concession in respect of a physical casino — provides the theoretical possibility that any service provider that fulfils the legal requirements, including a service provider established in another Member State, may obtain a concession to operate a physical casino and, once in possession of that concession, a licence to operate an online casino, but, in reality, the Member State in question does not initiate any public and transparent tender procedure to award concessions, and the service provider does not, in practice, have the possibility of submitting an offer [to contract], and, nevertheless, the authorities of the Member State declare that the service provider acted illegally by providing the service without a licence and impose an administrative penalty on it?

7. Must Article 56 TFEU, the prohibition of discrimination and the requirement that the authorisation procedure be transparent, objective and public be interpreted as meaning that the Member State is precluded from establishing a system of awarding concessions in respect of certain gambling services while, at the same time, the body that decides on concessions may also, rather than initiating a tender procedure to award the concessions, conclude concession contracts with certain persons considered to be trustworthy operators of games of chance, instead of giving all the service providers the possibility of participating in the tender procedure under the same conditions, by initiating a single tender procedure?

8. In the event that the answer to the seventh question is in the negative, and a Member State may validly establish a plurality of procedures for the award of the same concession: must the Member State ensure, under Article 56 TFEU, the equivalence of those procedures, in the interests of the effectiveness of EU law on fundamental freedoms, taking into account the requirement that the authorisation procedure be transparent, objective and public and the requirement of equal treatment?

9. Are the answers to the sixth to eighth questions affected by the fact that in neither case is judicial review or any other effective remedy against the decision awarding the concession available?

10. Must Article 56 TFEU, the sincere cooperation clause in Article 4(3) of the Treaty on European Union ('TEU') and the institutional and procedural autonomy of the Member States, in conjunction with Articles 47 and 48 of the Charter of Fundamental Rights ('the Charter'), as well as the right to effective judicial review mechanisms and the rights of defence laid down in those provisions, be interpreted as meaning that, in examining the requirements of EU law deriving from the case-law of the Court of Justice, and the necessity and proportionality of the restriction adopted by the Member State in question, the national court ruling on the dispute may order and carry out of its own motion the examination and the taking of evidence, even if this is not provided for under the national procedural legislation of the Member State?

11. Must Article 56 TFEU, in conjunction with Articles 47 and 48 of the Charter, as well as the right to effective judicial review mechanisms and the rights of defence laid down in those provisions, be interpreted as meaning that in examining the requirements of EU law deriving from the case-law of the Court of Justice, and the necessity and proportionality of the restriction adopted by the Member State in question, the national court ruling on the dispute cannot place the burden of proof on the service providers affected by the restriction, but that rather it is for the Member State — and, in particular, for the State authority that adopts the contested decision in question — to justify and demonstrate the compliance with EU law, as well as the necessity and proportionality of the national legislation, and that failure to do so has, by itself, the consequence that the national legislation breaches EU law?

12. Must Article 56 TFEU be interpreted, in the light also of the right to a fair procedure under Article 41(1), the right to be heard under Article 41(2)(a), and of the obligation to give reasons under 41(2)(c) of the Charter, as well as the sincere cooperation clause laid down in Article 4(3) TEU, and the institutional and procedural autonomy of the Member States, as meaning that those requirements are not fulfilled if the competent authority of the Member State does not notify the operator of games of chance of the initiation of administrative penalty proceedings in accordance with national law, and does not subsequently, in the course of the administrative proceedings, obtain that operator's views on the compliance of the Member State's legislation with EU law, and — without explaining in detail, in the reasons stated for the decision, that compliance and the evidence supporting it — imposes, in a single-instance procedure, a penalty classified as administrative under national law?

13. In the light of Article 56 TFEU, Article 41(1) and (2)(a) and (c) of the Charter and Articles 47 and 48 thereof, as well as the right to effective judicial review mechanisms and the rights of the defence that those provisions entail, are the requirements laid down in those provisions fulfilled if the operator of games of chance may question the compatibility of the national legislation with EU law for the first time only before the national court?

14. May Article 56 TFEU and the obligation for the Member States to justify and state reasons for the restriction of the free movement of services be interpreted as meaning that the Member State has not fulfilled that obligation if the relevant impact assessment on which the public policy objectives of the restriction are based was not available at either the time it adopted the restriction or at the time of the examination?

15. Having regard to the framework laid down by the law for setting the amount of the administrative penalty that may be imposed, the nature of the activity penalised by the penalty, and, in particular, the extent to which the activity affects public policy and public security, as well as the punitive purpose of the penalty, may the administrative penalty in question be regarded as being 'of a criminal nature', for the purpose of Articles 47 and 48 of the Charter? Does this influence the answers to be given to the eleventh to fourteenth questions?

16. Must Article 56 TFEU be interpreted as meaning that if, by virtue of the answers given to the foregoing questions, the court ruling on the dispute declares the legislation and its application unlawful, must it also declare that the penalty based on the national legislation that does not comply with Article 56 TFEU infringes EU law?

Request for a preliminary ruling from the Amtsgericht Aue, Zweigstelle Stollberg (Germany) lodged on 10 January 2017 — Thomas Hübner v LVM Lebensversicherungs AG

(Case C-11/17)

(2017/C 112/26)

Language of the case: German

Referring court

Amtsgericht Aue, Zweigstelle Stollberg

Parties to the main proceedings

Applicant: Thomas Hübner

Defendant: LVM Lebensversicherungs AG

Questions referred

1. Must Point A of Annex II of Council Directive 92/96/EEC ([1]) of 10 November 1992 [read in conjunction with] the third subparagraph of Article 15(1) [of Directive 90/619/EEC] ([2]) be interpreted as meaning that a consumer is entitled to cancel a life assurance or pension insurance policy at any time during the entire payment period thereof, if he has paid into the policy for several years on the basis of the contract, unaware of his right of cancellation in relation to that contract owing to the failure of the life assurance or pension insurance undertaking to give proper notice thereof?

2. Does a provision of national law, under which, on grounds of good faith, a consumer's right of cancellation is considered to be forfeit where a policy holder who was unaware of his right to cancel a contract continues to make payments under that contract until the time when he becomes aware of that right, comply with the above directive?

(1) Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).
(2) Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50).

Request for a preliminary ruling from the Kammergericht Berlin (Germany) lodged on 18 January 2017 — Vincent Pierre Oberle

(Case C-20/17)

(2017/C 112/27)

Language of the case: German

Referring court

Kammergericht Berlin

Parties to the main proceedings

Applicant: Vincent Pierre Oberle

Question referred

Is Article 4 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (1) (Regulation No 650/2012) to be interpreted as meaning that it also determines exclusive international jurisdiction in respect of the granting, in the Member States, of national certificates of succession which have not been replaced by the European certificate of succession (see Article 62(3) of Regulation No 650/2012), with the result that divergent provisions adopted by national legislatures with regard to international jurisdiction in respect of the granting of national certificates of succession — such as Paragraph 105 of the Familiengesetzbuch (the Family Code) in Germany — are ineffective on the ground that they infringe higher-ranking European law?

(1) OJ 2012 L 201, p. 107.

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 18 January 2017 — Catlin Europe SE v O.K. Trans Praha spol. s.r.o.

(Case C-21/17)

(2017/C 112/28)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Appellant: Catlin Europe SE

Applicant in the original proceedings: O.K. Trans Praha spol. s.r.o.

Question referred

Is Article 20(2) of Regulation (EC) No 1896/2006 ([1]) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure to be interpreted to the effect that a failure to notify the addressee of the possibility of refusing to accept the documents to be served, as provided for under Article 8(1) of Regulation (EC) No 1393/2007 ([2]) of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 ([3]) ('the Service of documents Regulation'), gives grounds for a right on the part of the defendant (the addressee) to apply for review of the European order for payment under Article 20(2) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ('the European order for payment Regulation')?

([1]) OJ 2006 L 399, p. 1.
([2]) OJ 2007 L 324, p. 79.
([3]) OJ 2000 L 160, p. 37.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 18 January 2017 — Österreichischer Gewerkschaftsbund, Gewerkschaft öffentlicher Dienst v Republik Österreich

(Case C-24/17)

(2017/C 112/29)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Österreichischer Gewerkschaftsbund, Gewerkschaft öffentlicher Dienst

Defendant: Republik Österreich

Questions referred

1.1. Is European Union law, in particular Articles 1, 2 and 6 of Directive 2000/78/EC, ([1]) in conjunction with Article 21 of the Charter of Fundamental Rights, to be interpreted as precluding national legislation under which a remuneration system which (in relation to the accreditation of previous service periods completed before the age of 18) discriminates on grounds of age is replaced by a new remuneration system, under which, however, the transition of existing public servants to the new remuneration system occurs in such a way that the new system is implemented retroactively to the date on which the original law entered into force, but the initial grading in the new remuneration system is based on the salary actually paid under the old remuneration system for a specific transition month (February 2015), with the result that the previously existing age discrimination continues in terms of its financial effects?

1.2. If the answer to Question 1.1. is in the affirmative:

Is European Union law, in particular Article 17 of Directive 2000/78/EC, to be interpreted as meaning that existing public servants who were discriminated against in the old remuneration system in relation to the accreditation of previous service periods completed before the age of 18 must receive financial compensation if that age discrimination continues in terms of its financial effects even after transition to the new remuneration system?

1.3. If the answer to Question 1.1. is in the negative:

Is European Union law, in particular Article 47 of the Charter of Fundamental Rights, to be interpreted as meaning that the fundamental right to effective legal protection enshrined therein precludes national legislation under which the age-discriminatory remuneration system is no longer to apply in current and future procedures and the transition of the remuneration of existing public servants to the new remuneration system is to be based solely on the salary calculated or paid for the transition month?

2. Is European Union law, in particular Article 45 TFEU, Article 7(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the EU, ([2]) and Articles 20 and 21 of the Charter of Fundamental Rights, to be interpreted as precluding legislation under which previous service periods completed by a contractual public servant

— in an employment relationship with a local authority or municipal association of a Member State of the European Economic Area, the Republic of Turkey or the Swiss Confederation, or with an organisation of the European Union or an intergovernmental organisation of which Austria is a member, or with any similar body, must be accredited in their entirety,

— in an employment relationship with another employer, only when exercising a relevant occupation or relevant administrative traineeship, up to a maximum of ten years in total?

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; OJ 2000 L 303, p. 16.
([2]) OJ 2011 L 141, p. 1.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 23 January 2017 — Sucrerie de Toury SA v Ministre de l'économie et des finances

(Case C-31/17)

(2017/C 112/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant on a point of law: Sucrerie de Toury SA

Respondent in the appeal on a point of law: Ministre de l'économie et des finances

Question referred

Do energy products used for combined heat and electricity generation come exclusively within the scope of the optional power to exempt conferred by Article 15(1)(c) of Council Directive 2003/96/EC of 27 October 2003 ([1]) or do they also come, as regards the proportion of those products the consumption of which corresponds to the generation of electricity, within the scope of the obligation to exempt provided for by Article 14(1)(a) of that directive?

([1]) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 25 January 2017 — Lubrizol France SAS v Caisse nationale du Régime social des indépendants (RSI) participations extérieures

(Case C-39/17)

(2017/C 112/31)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Lubrizol France SAS

Defendant: Caisse nationale du Régime social des indépendants (RSI) participations extérieures

Question referred

Is it contrary to Articles 28 and 30 of the Treaty on the Functioning of the European Union for the value of goods transferred from France to another Member State of the European Union by or on behalf of an entity subject to the social solidarity contribution payable by companies and to the contribution additional to the latter or on that account, for the purposes of its business, to be taken into account for determining the overall turnover that constitutes the basis of assessment to those contributions?

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 26 January 2017 — Fashion ID GmbH & Co.KG v Verbraucherzentrale NRW eV

(Case C-40/17)

(2017/C 112/32)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Fashion ID GmbH & Co.KG

Defendant: Verbraucherzentrale NRW eV

Questions referred

1. Do the rules in Articles 22, 23 and 24 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([1]) preclude national legislation which, in addition to the powers of intervention conferred on the data-protection authorities and the remedies available to the data subject, grants public-service associations the power to take action against the infringer in the event of an infringement in order to safeguard the interests of consumers?

   If Question 1 is answered in the negative:

2. In a case such as the present one, in which someone has embedded a programming code in his website which causes the user's browser to request content from a third party and, to this end, transmits personal data to the third party, is the person embedding the content the 'controller' within the meaning of Article 2(d) of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) if that person is himself unable to influence this data- processing operation?

3. If Question 2 is answered in the negative: Is Article 2(d) of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data to be interpreted as meaning that it definitively regulates liability and responsibility in such a way that it precludes civil claims against a third party who, although not a 'controller', nonetheless creates the cause for the processing operation, without influencing it?

4. Whose 'legitimate interests', in a situation such as the present one, are the decisive ones in the balancing of interests to be undertaken pursuant to Article 7(f) of Directive 95/46/EC? Is it the interests in embedding third-party content or the interests of the third party?

5. To whom must the consent to be declared under Articles 7(a) and 2(h) of Directive 95/46/EC be made in a situation such as that in the present case?

6. Does the duty to inform under Article 10 of Directive 95/46/EC also apply in a situation such as that in the present case to the operator of the website who has embedded the content of a third party and thus creates the cause for the processing of personal data by the third party?

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

Request for a preliminary ruling from the Rechtbank Den Haag, sitting in Haarlem (Netherlands) lodged on 1 February 2017 — X v Staatssecretaris van Veiligheid en Justitie

(Case C-47/17)

(2017/C 112/33)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in Haarlem

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Veiligheid en Justitie

Questions referred

(1) Should the requested Member State, having regard to the objective, the content and the scope of the Dublin Regulation (1) and the Procedures Directive, (2) respond within two weeks to a re-examination request as contained in Article 5(2) of the Implementing Regulation? (3)

(2) If the answer to the first question is in the negative, does the time limit of a maximum of one month as provided for in Article 20(1)(b) of Regulation No 343/2003 (4) (now Article 25(1) of the Dublin Regulation) apply, having regard to the last sentence of Article 5(2) of the Implementing Regulation?

(3) If the answer to the first and second questions is in the negative, does the requested Member State, due to the use of the word 'beijvert' [English: 'shall endeavour'] in Article 5(2) of the Implementing Regulation, have a reasonable period of time to respond to the re-examination request?

(4) If there is indeed a reasonable period of time within which the requested Member State should respond to the re-examination request under Article 5(2) of the Implementing Regulation, can there, after ***over six months*** have passed, as in the present case, still be talk of a reasonable period of time? If the answer to that question is in the negative, what qualifies as a reasonable period of time?

(5) What should be the consequence of the requested Member State not responding within two weeks, one month or a reasonable period of time to a re-examination request? Is the requesting Member State then responsible for the substantive assessment of the foreign national's asylum application or is that the responsibility of the requested Member State?

(6) If one should proceed on the assumption that the requested Member State becomes responsible for the substantive examination of the asylum application due to the lack of a timely response to the re-examination request as referred to in Article 5(2) of the Implementing Regulation, within what period of time should the requesting Member State, the defendant in the present case, notify the foreign national of that?

([1]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

([2]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

([3]) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3).

([4]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

Request for a preliminary ruling from the Rechtbank Den Haag, sitting in Haarlem (Netherlands) lodged on 3 February 2017 — X v Staatssecretaris van Veiligheid en Justitie

(Case C-48/17)

(2017/C 112/34)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in Haarlem

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Veiligheid en Justitie

Questions referred

(1) Should the requested Member State, having regard to the objective, the content and the scope of the Dublin Regulation ([1]) and the Procedures Directive, ([2]) respond within two weeks to a re-examination request as laid in Article 5(2) of the Implementing Regulation? ([3])

(2) If the answer to the first question is in the negative, does the time limit of a maximum of one month as provided for in Article 20(1)(b) of Regulation No 343/2003 ([4]) (now Article 25(1) of the Dublin Regulation) apply, having regard to the last sentence of Article 5(2) of the Implementing Regulation?

(3) If the answer to the first and second questions is in the negative, does the requested Member State, due to the use of the word 'beijvert' [English: 'shall endeavour'] in Article 5(2) of the Implementing Regulation, have a reasonable period of time within which to respond to the re-examination request?

(4) If there is indeed a reasonable period of time within which the requested Member State should respond to the re-examination request under Article 5(2) of the Implementing Regulation, can there, after the passage of seven and a half weeks, as in the present case, still be talk of a reasonable period of time? If the answer to that question is in the negative, what qualifies as a reasonable period of time?

(5) What should be the consequence be of the requested Member State not responding within two weeks, or a reasonable period of time, to a re-examination request? Is the requesting Member State then responsible for the substantive assessment of the foreign national's asylum application or is that the responsibility of the requested Member State?

(6) If one should proceed on the assumption that the requested Member State becomes responsible for the substantive examination of the asylum application due to the lack of a timely response to the re-examination request as referred to in Article 5(2) of the Implementing Regulation, within what period of time should the requesting Member State, the defendant in the present case, notify the foreign national of that?

([1]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

([2]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

([3]) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3).

([4]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 1 February 2017 — Koppers Denmark ApS v Skatteministeriet

(Case C-49/17)

(2017/C 112/35)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Koppers Denmark ApS

Defendant: Skatteministeriet

Questions referred

'1. Is Article 21(3) of Council Directive 2003/96/EC ([1]) of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that the consumption of self-produced energy products for the production of other energy products is tax exempt in a situation such as that in the main proceedings, in which the energy products produced are not used as motor fuels or as heating fuels?

2. Is Article 21(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that the Member States may restrict the scope of the exemption so as to cover only consumption of an energy product used in the production of an equivalent energy product (i.e. an energy product which, like the energy product consumed, is also subject to tax)?'

([1]) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (Text with EEA relevance).
OJ 2003 L 283, p. 51.

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 3 February 2017 — Bahtiar Fathi v Predsedatel na Darzhavna agentsia za bezhantsite

(Case C-56/17)

(2017/C 112/36)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Bahtiar Fathi

Defendant: Predsedatel na Darzhavna agentsia za bezhantsite

Questions referred

1. Does it follow from Article 3(1) of Regulation (EU) No 604/2013, ([1]) interpreted in conjunction with recital 12 and Article 17 of the regulation, that a Member State may issue a decision that constitutes an examination of an application made to it for international protection within the meaning of Article 2(d) of the regulation, without expressly deciding on the responsibility of that Member State under the criteria in the regulation if, in the particular case, there are no indications for a derogation pursuant to Article 17 of the Regulation?

2. Does it follow from the second sentence of Article 3(1) of Regulation (EU) No 604/2013, interpreted in conjunction with recital 54 of Directive 2013/32/EU, ([2]) that, in the circumstances of the main proceedings, where there is no derogation pursuant to Article 17(1) of the regulation, a decision must be issued in respect of an application for international protection within the meaning of Article 2(b) of the regulation by which the Member State undertakes to examine the application in accordance with the criteria in the regulation and which is based on the fact that the provisions of the regulation apply to the applicant?

3. Is Article 46(3) of Directive 2013/32/EU to be interpreted as meaning that, in proceedings against a decision refusing international protection, the court must rule pursuant to recital 54 of the directive on whether the provisions of Regulation (EU) No 604/2013 apply to the applicant if the Member State has not expressly decided on its responsibility for examining the application for international protection in accordance with the criteria in the regulation? Must it be presumed on the basis of recital 54 of Directive 2013/32/EU that, where there are no indications suggesting that Article 17 of Regulation (EU) No 604/2013 applies and the application for international protection was examined on the basis of Directive 2011/95/EU ([3]) by the Member State to which it was made, the legal situation of the person concerned is within the scope of the regulation even if the Member State has not expressly decided on its responsibility in accordance with the criteria in the regulation?

4. Does it follow from Article 10(1)(b) of Directive 2011/95/EU that, in the circumstances of the main proceedings, the reason for persecution of 'religion' exists where the applicant has not made statements and presented documents relating to all the components covered by the concept of religion as defined in this provision which are of fundamental importance for the membership of the person concerned of a particular religion?

5. Does it follow from Article 10(2) of Directive 2011/95/EU that reasons for persecution based on religion within the meaning of Article 10(1)(b) of the directive exist where the applicant, in the circumstances of the main proceedings, claims that he has been persecuted on grounds of his membership of a religion but has not made any statements or presented any evidence regarding the circumstances that are characteristic of a person's membership of a particular religion and would be a reason for the actor of persecution to believe that the person concerned belonged to this religion — including circumstances linked to taking part in or abstaining from religious actions or religious expressions of view — or regarding the forms of individual or communal conduct based on or mandated by a religious belief?

6. Does it follow from Article 9(1) and (2) of Directive 2011/95/EU, interpreted in conjunction with Articles 18 and 10 of the Charter of Fundamental Rights of the European Union and the concept of religion as defined in Article 10(1)(b) of the directive, that in the circumstances of the main proceedings:

   a) the concept of religion as defined in EU law does not encompass any acts considered to be criminal in accordance with the national law of the Member States? Is it possible for such acts that are considered to be criminal in the applicant's country of origin to constitute acts of persecution?

   b) In connection with the prohibition of proselytism and the prohibition of acts contrary to the religion on which the laws and regulations in the country in question are based, are limitations to be regarded as permitted that are established to protect the rights and freedoms of others and public order in the applicant's country of origin? Do these prohibitions as such constitute acts of persecution within the meaning of the cited provisions of the directive when violation of them is threatened with the death penalty even if the laws are not explicitly aimed against a particular religion?

7. Does it follow from Article 4(2) of Directive 2011/95/EU, interpreted in conjunction with Article 4(5)(b) of the directive, Article 10 of the Charter of Fundamental Rights of the European Union and Article 46(3) of Directive 2013/32/EU, that, in the circumstances of the main proceedings, an appraisal of the facts and circumstances may be conducted only on the basis of the statements made and the documents presented by the applicant, but it is still permitted to require proof of the missing components covered by the concept of religion as defined in Article 10(1)(b) of the directive where:

   — without this information the application for international protection would be considered unfounded within the meaning of Article 32 in conjunction with Article 31(8)(e) of Directive 2013/32/EU and

   — national legislation provides that the competent authority must establish all the relevant circumstances for the examination of the application for international protection and the court, should the refusal decision be contested, must point out that the person concerned has not offered and presented any evidence?

(1) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

(2) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

(3) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 3 February 2017 — SCI Château du Grand Bois v Etablissement national des produits de l'agriculture et de la mer (FranceAgriMer)

(Case C-59/17)

(2017/C 112/37)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: SCI Château du Grand Bois

Defendant: Etablissement national des produits de l'agriculture et de la mer (FranceAgriMer)

Questions referred

1. Do Articles 76, 78 and 81 of [Commission] Implementing Regulation [No 555/2008] of 27 June 2008 ([1]) authorise officials carrying out an on-the-spot check to enter agricultural land without having obtained the farmer's permission?

2. If the first question is answered in the affirmative: must a distinction be made depending on whether or not the land in question is enclosed?

3. If the first question is answered in the affirmative: are Articles 76, 78 and 81 of [Commission] Implementing Regulation [No 555/2008] of 27 June 2008 compatible with the principle of the inviolability of the home as guaranteed by Article 8 of the European Convention on Human Rights?

([1]) Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector (OJ 2008 L 170, p. 1).

Request for a preliminary ruling from the Tribunal da Relação do Porto (Portugal) lodged on 7 February 2017 — Saey Home & Garden NV/SA v Lusavouga — Máquinas e Acessórios Industriais, S.A.

(Case C-64/17)

(2017/C 112/38)

Language of the case: Portuguese

Referring court

Tribunal da Relação do Porto

Parties to the main proceedings

Applicant: Saey Home & Garden NV/SA

Defendant: Lusavouga — Máquinas e Acessórios Industriais, S.A.

Questions referred

1 Must the action be brought before the Belgian courts, in accordance with the basic rule set out in Article 4(1) of Regulation No 1215/2012, ([1]) because Belgium is the Member State in which the defendant has its seat and is in fact domiciled?

2 Must the action be brought before the Portuguese courts, in accordance with Article 7(1)(a) and (c) of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a commercial concession agreement and Portugal is the Member State where the mutual obligations under the agreement should have been performed?

3 Must the action be brought before the Spanish courts, in accordance with Article 7(1)(a) and (c) of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a commercial concession agreement and Spain is the Member State where the mutual obligations under the agreement should have been performed?

4 Must the action be brought before the Portuguese courts, in accordance with Article 7(1)(a) and (b), first indent, of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a framework commercial concession agreement which, as between the applicant and the defendant, can be broken down into various contracts of sale and all the goods sold were due to be delivered in Portugal, and were actually delivered there on 21 January 2014?

5 Must the action be brought before the Belgian courts, in accordance with Article 7(1)(a) and (b), first indent, of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a framework commercial concession agreement which, as between the applicant and the defendant, can be broken down into various contracts of sale and all the goods sold were delivered by Saey to Lousavaga in Belgium?

6 Must the action be brought before the Spanish courts, in accordance with Article 7(1)(a) and (b), first indent, of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a framework commercial concession agreement which, as between Lousavaga and Saey, can be broken down into various contracts of sale and all the goods sold were intended to be delivered to Spain, pursuant to transactions carried out in that Member State?

7 Must the action be brought before the Portuguese courts, in accordance with Article 7(1)(a) and (b), second indent, of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a framework commercial concession agreement which, as between Lousavaga and Saey, took the form of a supply of services by Lousavaga to Saey, with the former promoting business that was indirectly in the latter's interests?

8 Must the action be brought before the Spanish courts, in accordance with Article 7(1)(a) and (b), second indent, of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a framework commercial concession agreement which, as between Lousavaga and Saey took the form of a supply of services by Lousavaga to Saey, with the former promoting business that was indirectly in the latter's interests through activity carried out in Spain?

9 Must the action be brought before the Portuguese courts, in accordance with Article 7(5) of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a commercial concession agreement and the dispute between Lousavaga and Saey is comparable to a dispute between a principal (or 'grantor' of the concession) and an agent in Portugal?

10 Must the action be brought before the Spanish courts, in accordance with Article 7(5) of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), because it relates to a commercial concession agreement and the dispute between Lousavaga and Saey is comparable to a dispute between a principal (or 'grantor' of the concession) and an agent deemed to be situated in Spain because the contractual obligations are to be performed there?

11 Must the action be brought before the Belgian courts, specifically before a court in Kortrijk, in accordance with Article 25(1) of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), since under point 20 of the general conditions applicable to all the sales made by Saey to Lousavaga the parties entered into an agreement conferring jurisdiction, which was in writing and fully valid under Belgian law, according to which 'any dispute of any nature whatsoever shall be the exclusive jurisdiction of the courts of Kortrijk'?

12 Under the provisions of Sections 2 to 7 of Chapter II of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), must the action be brought before the Portuguese courts because the main connecting factors of the contractual relationship between the applicant and the defendant are with the territory and legal system of Portugal?

13 Under the provisions of Sections 2 to 7 of Chapter II of Regulation No 1215/2012 (by virtue of Article 5(1) of the same regulation), must the action be brought before the Spanish courts because the main connecting factors of the contractual relationship between the applicant and the defendant are with the territory and legal system of Spain?

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

Request for a preliminary ruling from the Rayonen sad — Varna (Bulgaria), lodged on 7 February 2017 — Todor Iliev v Blagovesta Ilieva

(Case C-67/17)

(2017/C 112/39)

Language of the case: Bulgarian

Referring court

Rayonen sad — Varna

Parties to the main proceedings

Applicant: Todor Iliev

Defendant: Blagovesta Ilieva

Questions referred

1. Does an action between former spouses on the division of movable property acquired during the marriage as joint property of the spouses constitute a legal dispute relating to rights in property arising out of a matrimonial relationship within the meaning of Article 1(2)(a) of Regulation No 44/2001 ([1])?

2. Is a dispute concerning the division of a movable property acquired during the marriage, but registered with the competent national authorities only in the name of one of the spouses, excluded from its scope under Article 1(2)(a) of Regulation No 44/2001?

3. Which court has jurisdiction over a dispute between former spouses on the ownership of immovable property acquired during their civil marriage, when the spouses are nationals of an EU Member State, but it has been established in the proceedings that at the time of entering the marriage, acquisition of the property, ending the marriage and the application for division of the property after the marriage had ended, they had their place of residence in another Member State?

([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 Korkein oikeus (Finland) lodged on 17 February 2017 — Zurich Insurance PLC, Metso Minerals Oy v Abnormal Load Services (International) Ltd

(Case C-88/17)

(2017/C 112/40)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicants: Zurich Insurance PLC, Metso Minerals Oy

Defendant: Abnormal Load Services (International) Ltd

Question referred

How are the place or places where the service is provided to be determined in accordance with the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 ([1]) where a contract for the carriage of goods between Member States is concerned and the transport consists of several parts in which different means of transport are used?

([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).

Order of the President of the Court of 23 January 2017 (request for a preliminary ruling from the Audiencia Provincial de Castellón — Spain) — Banco Popular Español SA v Elena Lucaciu, Cristian Laurentiu Lucaciu

(Case C-349/15) ([1])

(2017/C 112/41)

Language of the case: Spanish

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

([1]) OJ C 302, 4.9.2015.

Order of the President of the Court of 23 January 2017 (request for a preliminary ruling from the Audiencia Provincial de Zamora — Spain) — Javier Ángel Rodríguez Sánchez v Caja España de Inversiones, Salamanca y Soria SAU (Banco CEISS)

(Case C-381/15) ([1])

(2017/C 112/42)

Language of the case: Spanish

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

([1]) OJ C 302, 14.9.2015.

Order of the President of the Court of 23 January 2017 (request for a preliminary ruling from the Juzgado de Primera Instancia de Alicante — Spain) — Manuel González Poyato, Ana Belén Tovar García v Banco Popular Español SA

(Case C-34/16) ([1])

(2017/C 112/43)

Language of the case: Spanish

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

([1]) OJ C 136, 18.4.2016.

Order of the President of the Court of 26 January 2017 (request for a preliminary ruling from the Audiencia Provincial de Navarra — Spain) — Instituto de Religiosas Oblatas del Santísimo Redentor v Joaquín Taberna Carvajal

(Case C-352/16) ([1])

(2017/C 112/44)

Language of the case: Spanish

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

([1]) OJ C 326, 5.9.2016.

GENERAL COURT

Judgment of the General Court of 17 February 2017 — ASPLA and Armando Álvarez v European Union

(Case T-40/15) ([1])

(Non-contractual liability — Precision of the application — Prescription — Admissibility — Article 47 of the Charter of Fundamental Rights — Reasonable time for adjudication — Material damage — Interest on the amount of the unpaid fine — Bank guarantee charges — Causal link)

(2017/C 112/45)

Language of the case: Spanish

Parties

Applicants: Plásticos Españoles, SA (ASPLA) (Torrelavega, Spain) and Armando Álvarez, SA (Madrid, Spain) (represented: initially by M. Troncoso Ferrer, C. Ruixó Claramunt and S. Moya Izquierdo, and subsequently by M. Troncoso Ferrer and S. Moya Izquierdo, lawyers)

Defendant: European Union, represented by the Court of Justice of the European Union (represented: initially by A. Placco, and subsequently by J. Inghelram, Á. Almendros Manzano and P. Giusta, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: P. van Nuffel, F. Castilla Contreras and C. Urraca Caviedes, acting as Agents)

Re:

Application on the basis of Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicants as a result of the length of the proceedings, before the General Court, in the context of the cases which gave rise to the judgments of 16 November 2011, *ASPLA* v *Commission* (T-76/06, not published, EU:T:2011:672) and *Álvarez* v *Commission* (T-78/06, not published, EU:T:2011:673).

Operative part of the judgment

The Court:

1. *Orders the European Union, represented by the Court of Justice of the European Union, to pay damages of EUR 44 951,24 to Plásticos Españoles, SA (ASPLA) and damages of EUR 111 042,48 to Armando Álvarez, SA for the material damage suffered by each of those companies as a result of the failure to comply with the requirement to adjudicate within a reasonable period of time in the cases which gave rise to the judgments of 16 November 2011, ASPLA v Commission (T-76/06, not published, EU:T:2011:672) and Álvarez v Commission (T-78/06, not published, EU:T:2011:673). Each of those heads of damages will be reassessed by adding on compensatory interest, to be calculated as from 27 January 2015 and until delivery of the present judgment, at the annual rate of inflation recorded, for the period at issue, by Eurostat (Statistical Office of the European Union) in the Member State in which those companies are established;*

2. *Orders that each of the heads of damages referred to in paragraph 1 above be increased by default interest, to be calculated as from the date of delivery of the present judgment and until full payment, at the rate set by the ECB for its principal refinancing operations, plus two percentage points;*

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

4. *Orders ASPLA and Armando Álvarez, on the one hand, and the European Union, represented by the Court of Justice of the European Union, on the other, to bear their own respective costs;*

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

([1]) OJ C 89, 16.3.2015.

Judgment of the General Court of 17 February 2017 — Hernández Zamora v EUIPO — Rosen Tantau (Paloma)

(Case T-369/15) ([1])

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

(2017/C 112/46)

Language of the case: English

Parties

Applicant: Hernández Zamora, SA (Murcia, Spain) (represented by: J.L. Rivas Zurdo and I. Munilla Muños, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Rosen Tantau KG (Uetersen, Germany) (represented by: R. Kunze and G. Würtenberger, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 21 April 2015 (Case R 1697/2014-2), relating to opposition proceedings between Hernández Zamora and Rosen Tantau.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hernández Zamora, SA to pay the costs.*

([1]) OJ C 320, 28.9.2015.

Judgment of the General Court of 17 February 2017 — European Dynamics Luxembourg and Others v EMA

(Case T-441/15) ([1])

(Arbitration clause — Multiple framework contract involving the 'cascade' system EMA/2012/10/ICT — External service provision for software applications — Request to provide services addressed to the applicants — Rejection of the candidates proposed by the applicants — Proportionality — Reclassification in part of the action — Non-contractual liability)

(2017/C 112/47)

Language of the case: Greek

Parties

Applicants: European Dynamics Luxembourg SA (Luxembourg, Luxembourg), Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece), European Dynamics Belgium SA (Brussels, Belgium) (represented by: initially I. Ampazis and M. Sfyri, then M. Sfyri, D. Papadopoulou and C.-N. Dede, lawyers)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, N. Rampal Olmedo, G. Gavriilidou and P. Eyckmans, acting as Agents)

Re:

First, application based on Article 263 TFEU and asking for annulment of the EMA's decision of 4 June 2015, notified to the applicants by means of an e-mail from the IT Resource Manager, rejecting two of the candidates whom the applicants had proposed in response to the request for services SC001, in the context of the EMA/2012/10/ICT framework-agreement, and, second, application based on Article 268 TFEU and asking for compensation for the harm that the applicants had allegedly suffered as a result of that decision.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders European Dynamics Luxembourg SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE and European Dynamics Belgium SA to pay the costs.*

(1) OJ C 328, 5.10.2015.

Judgment of the General Court of 17 February 2017 — Batmore Capital v EUIPO — Univers Poche (POCKETBOOK)

(Case T-596/15) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative trade mark POCKETBOOK — Earlier national figurative marks POCKET — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 112/48)

Language of the case: English

Parties

Applicant: Batmore Capital Ltd (Tortola, British Virgin Islands) (represented by: D. Masson, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Univers Poche (Paris, France) (represented by: F. Dumont, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 30 July 2015 (Case R 1952/2014-1), relating to opposition proceedings between Univers Poche and Batmore Capital.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Batmore Capital Ltd to pay the costs, including the costs necessarily incurred by Univers Poche before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 414, 14.12.2015.

Order of the General Court of 9 February 2017 — Dröge and Others v Commission

(Case T-142/16) ([1])

(Action for annulment — Declaration of intent and two Commission decisions on the arrangements for accessing documents concerning the negotiations on a transatlantic trade and investment partnership between the European Union and the United States (TTIP) — Right of access of staff of members of national parliaments to certain confidential documents relating to the TTIP negotiations — Measures against which no action may be brought — Inadmissibility)

(2017/C 112/49)

Language of the case: German

Parties

Applicants: Katharina Dröge (Berlin, Germany), Britta Haßelmann (Berlin), Anton Hofreiter (Berlin) (represented by: Professor W. Cremer)

Defendant: European Commission (represented by: F. Erlbacher, R. Vidal Puig and B. Hartmann, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking (i) annulment of the Commission's declaration of intent concerning the conclusion of a treaty binding on the contracting parties — the European Union and the United States of America — as regards the arrangements for accessing documents concerning the negotiations on a transatlantic trade and investment partnership (TTIP), and, in the alternative, a declaration that it is contrary to EU law; (ii) annulment of the Commission's prior decision concerning the submission of the aforementioned declaration of intent on the authorisation of the agreement and (iii) annulment of the Commission's oral decision connected with the conclusion of a treaty or a non-binding political agreement with the United States of America on the 'TTIP access regime' and classifying that regime as binding under EU law, in so far as it strictly prohibits members of the parliaments of the Member States from being accompanied by vetted staff, including staff of their political group, when viewing documents relating to the TTIP in reading rooms established for that purpose.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Katharina Dröge, Britta Haßelmann and Anton Hofreiter are ordered to pay the costs.*

([1]) OJ C 221, 13.6.2016.

Order of the General Court of 10 February 2017 — Acerga v Council

(Case T-153/16) ([1])

(Action for annulment — Fisheries — Conservation of fisheries resources — Fishing opportunities for certain fish stocks and groups of fish stocks in Union waters and, for Union fishing vessels, in certain non-Union waters — Association — No individual concern — Act entailing implementing measures — Inadmissibility)

(2017/C 112/50)

Language of the case: Spanish

Parties

Applicant: Asociación de armadores de cerco de Galicia (Acerga) (Sada, Spain) (represented by: B. Huarte Melgar, lawyer)

Defendant: Council of the European Union (represented by: A. Westerhof Löfflerová and F. Florindo Gijón, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking annulment in part of Council Regulation (EU) 2016/72 of 22 January 2016 fixing for 2016 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2015/104 (OJ 2016 L 22, p. 1).

Operative part of the order

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

2. *There is no need to adjudicate on the application for leave to intervene by the European Commission.*

3. *Asociación de armadores de cerco de Galicia (Acerga) shall pay the costs.*

([1]) OJ C 200, 6.6.2016.

Order of the General Court of 7 February 2017 — Stips v Commission

(Case T-593/16) ([1])

(Action for damages — Civil service — Temporary staff — No request within the meaning of Article 90(1) of the Staff Regulations — Manifest inadmissibility)

(2017/C 112/51)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: G. Berscheid and C. Berardis-Kayser, acting as Agents)

Re:

Application under Article 268 TFEU seeking compensation for the harm allegedly suffered by the applicant due to the delay in the organisation of the 2013 reclassification procedure.

Operative part of the order

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

2. *Adolf Stips shall pay the costs.*

([1]) OJ C 251, 11.7.2016 (case initially registered before the Civil Service Tribunal of the European Union under number F-23/16 and transferred to the General Court of the European Union on 1 September 2016).

Order of the General Court of 13 February 2017 — Pipiliagkas v Commission

(Case T-598/16) ([1])

(Action for annulment — Civil service — Officials — Assignment — Transfer in the interest of the service — Reassignment of the applicant — Implementation of a judgment — Pre-litigation procedure — Measure not open to challenge — Inadmissibility)

(2017/C 112/52)

Language of the case: French

Parties

Applicant: Nikolaos Pipiliagkas (Brussels, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Gattinara, acting as Agents)

Re:

Application based on Articles 266 TFEU and 270 TFEU for annulment, first, of the Commission's decision not to adopt the measures for compliance with the judgment of 15 April 2015, *Pipiliagkas* v *Commission* (F-96/13, EU:F:2015:29), and, secondly, of the Commission's decision of 22 December 2015 reassigning the applicant from the European Union delegation to the West Bank and the Gaza Strip, East Jerusalem, to the Directorate-General for Mobility and Transport.

Operative part of the order

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

2. *Mr Nikolaos Pipiliagkas shall pay the costs.*

([1]) OJ C 296, 16.8.2016 (case initially registered before the Civil Service Tribunal of the European Union under number F-28/16 and transferred to the General Court of the European Union on 1 September 2016).

Order of the President of the General Court of 6 February 2017 — Vorarlberger Landes- und Hypothekenbank v SRB

(Case T-645/16 R)

(Interim measures — Single Resolution Board — Single Resolution Fund — Ex-ante contributions — Application for stay of execution — No urgency)

(2017/C 112/53)

Language of the case: German

Parties

Applicant: Vorarlberger Landes- und Hypothekenbank (Bregenz, Austria) (represented by: G. Eisenberger, lawyer)

Defendant: Single Resolution Board (SRB) (represented by: B. Meyring and S. Schelo, lawyers)

Re:

Application on the basis of Article 278 TFEU and 279 TFEU seeking the grant of interim measures as regards, firstly, a stay of execution of the decision of the Executive Session of the SRB (SRB/ES/SRF/2016/06) of 15 April 2016 concerning the ex-ante contributions to the Single Resolution Fund for 2016 and, secondly, an order that the SRB reimburse the ex-ante contributions paid by the applicant.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 30 January 2017 — Healy v Commission

(Case T-55/17)

(2017/C 112/54)

Language of the case: French

Parties

Applicant: John Morrison Healy (Celbridge, Ireland) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of 11 April 2016 by which the selection board excluded the applicant from participating in Competition COM/02/AST/16 (AST 2);

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging breach of the first paragraph of Article 27 of the Staff Regulations.

The applicant is of the view that the admission condition at issue, namely that of demonstrating 42 months of service within the Commission, is not justified in view of the requirements of the positions to be filled.

In addition, the applicant claims that Article 82(7) of the Conditions of Employment of Other Servants (CEOS) is incompatible with Article 27 of the Staff Regulations in so far as it excludes, in all cases, contract staff who have completed less than 36 months of service from participating in internal competitions. In the present case, the applicant maintains, the Commission took the view that 36 months was a minimum threshold which vitiated the Appointing Authority's assessment of the admission condition at issue.

Action brought on 27 January 2017 — PO and Others v EEAS

(Case T-56/17)

(2017/C 112/55)

Language of the case: French

Parties

Applicants: PO, PP, PQ (represented by: N. de Montigny and J.-N. Louis, lawyers)

Defendant: European External Action Service

Form of order sought

The parties claim that the Court should:

— annul the decision published on 15 April 2016 amending the Rights and obligations of officials, temporary and contract agents: Education Allowances;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the decision of the European External Action Service (EEAS) of 15 April 2016 ('the contested decision') is unlawful in that it was adopted in infringement of Article 1 of Annex X to the Staff Regulations and of Article 110 of the Staff Regulations in the absence of EEAS general implementing provisions.

   The applicants also claim the total absence of any statement of reasons for the dismissal of their complaint against the contested decision.

2. Second plea in law, alleging failure to implement a social dialogue before the adoption of the contested decision, in infringement of Article 27 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging infringement of the acquired rights of officials and agents who have been employed for several years and whose children have also been in school for several years. That infringement is the result of the contested decision in so far as it alters the previously-established system whereby the vast majority of officials and agents who applied for a supplementary reimbursement obtained full reimbursement of the cost exceeding the statutory ceiling.

4. Fourth plea in law, alleging infringement of the precautionary principle, and the principles of legitimate expectations and legal certainty and infringement of the principle of sound administration, which result from the contested decision, in particular as it provides only for a transitional measure for one year and the new terms of reimbursement thus adopted will have been imposed on employed officials and agents the time of their adoption.

5. Fifth plea in law, alleging that there is no balancing of interests and observance of the proportionality principle which vitiated the contested decision, the sole objective of which is the reduction of the financial impact involved in an additional reimbursement of education costs whereas the EEAS could have prioritised other measures in order to attain such an objective, without infringing the rights of its staff. The defendant thus chose the solution which was the most prejudical to its officials and agents.

6. Sixth plea in law, alleging infringement of the principle of non-discrimination, in so far as the contested decision introduces discrimination by establishing a principle of reimbursement on an identical basis for officials and other agents located in different delegations and, therefore, identical treatment of different situations.

7. Seventh ground of appeal, alleging infringement of the right to family and the right to education allegedly committed by the EEAS since the effect of the adoption of the contested decision is to force the applicants to choose between their professional life and those fundamental rights.

Action brought on 26 January 2017 — France.com v EUIPO — France (FRANCE.com)

(Case T-71/17)

(2017/C 112/56)

Language in which the application was lodged: English

Parties

Applicant: France.com, Inc. (Coral gables, Florida, Unite States) (represented by: A. Bertrand, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: French Republic

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'FRANCE.com' — Application for registration No 13 158 597

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 20 October 2016 in Case R 2452/2015-1

Form of order sought

The applicant claims that the Court should:

— submit the following preliminary questions to the Court of Justice: (i) In the light of Articles 8(2) and 41(1) of the European Trade Marks Regulation and of Rules 15(2)(b) and 17 of the European Union Trade Marks Implementing Regulation, in an opposition procedure, does the Applicant, as the defendant to the opposition have the right to invoke prior rights, which could constitute prior rights to the earlier trademark used as a prior right in the opposition? (ii) Does the French State have any kind of prior intellectual property right on the word 'France' which is not the official name of the French State and which is just a geographical entity? (iii) If the answer to the question (ii) is 'No', should the name 'France' be considered as a word which is in the public domain and on which no one can claim any intellectual property right? (iv) If the answer to the question (ii) is 'Yes', should the fact that the French State as of this day has never claim any rights in the word 'France' except against France.com be considered as a discrimination against the Applicant?

— annul the contested decision;

— rejects the opposition filed by the French State against the registration of the European semi-figurative trademark 'France.com' applied for by France.com Inc.;

— dismiss the action as to the remainder;

— order EUIPO to bear its own costs and to pay those incurred by France.com Inc. for the purpose of the proceedings before the Court;

— order EUIPO and the French State each to pay half of the costs necessarily incurred by France.com Inc. for the purpose of the proceedings before the Board of Appeal of EUIPO.

Pleas in law

— Infringement of Articles 8(1), 8(2) and 41(1) of Regulation No 207/2009;

— Infringement of Rules 15(2)(b) and 17 of Regulation No 2868/95.

Action brought on 3 February 2017 — RS v Commission

(Case T-73/17)

(2017/C 112/57)

Language of the case: French

Parties

Applicant: RS (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule that

— The decision of the selection board of the competition of 11 April 2016 rejecting the applicant's application for internal competition COM/02/AST/16 is annulled;

— The European Commission is ordered to pay the applicant the sum of EUR 5 000 in respect of the non-pecuniary harm which he has suffered;

— The European Commission is ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of the first paragraph of Article 27 of the Staff Regulations of Officials.

The applicant thus puts forward a plea of illegality of the notice of the contested internal competition insofar as it lays down a condition for admission to the competition which has the effect of refusing access to it to those temporary agents who have not been in an administrative position of active employment, on leave for military service, on parental or family leave or on secondment during the 12 months preceding the closing date for filing applications.

Action brought on 6 February 2017 — Schoonjans v Commission

(Case T-79/17)

(2017/C 112/58)

Language of the case: French

Parties

Applicant: Alain Schoonjans (Brussels, Belgium) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule that

— The decision of the selection board of the competition of 11 April 2016 rejecting the applicant's candidature in Internal Competition COM/02/AST/16 is annulled;

— The European Commission is ordered to pay the applicant a sum of EUR 5 000 in respect of the non-pecuniary harm which he has suffered;

— The European Commission is ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant raises a plea of illegality of the competition notice based on two pleas in law.

1. First plea in law, alleging infringement of Article 82(7) of the Conditions of Employment of Other Servants (CEOS), inasmuch as the Commission restricted access to the internal competition organised for grade AST 2 to those members of the contractual staff in Function Group III.

2. Second plea in law, alleging infringement of the first paragraph of Article 27 of the Staff Regulations of Officials of the European Union, inasmuch as that condition for admission is not, in any event, justified by the interest of the service or the type of posts to be filled.

Action brought on 6 February 2017 — Steiniger v EUIPO — ista Deutschland (IST)

(Case T-80/17)

(2017/C 112/59)

Language in which the application was lodged: German

Parties

Applicant: Ingo Steiniger (Nümbrecht, Germany) (represented by: K. Schulze Horn, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ista Deutschland GmbH (Essen, Germany)

Details of the proceedings before EUIPO

Applicant for registration of the trade mark at issue: The applicant

Trade mark at issue: EU figurative mark containing the word element 'IST' — Application for registration No 10 673 812

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 December 2016 in Case R 2242/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and the decision of the Opposition Division of EUIPO of 24 September 2015;

— vary the contested decision in such a way that the objection is rejected in its entirety;

— order EUIPO to pay the costs, including the costs incurred in the course of the appeal proceedings.

Pleas in law

— Infringement of Article 8 of Regulation No 207/2009;

— Infringement of Rule 20(6) of Regulation No 2868/95.

Action brought on 7 February 2017 — Erwin Müller v EUIPO — Novus Tablet Technology Finland (NOVUS)

(Case T-89/17)

(2017/C 112/60)

Language in which the application was lodged: German

Parties

Applicant: Erwin Müller GmbH (Lingen, Germany) (represented by: N. Grüger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Novus Tablet Technology Finland Oy (Turku, Finland)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'NOVUS' — Application for registration No 13 206 611

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 November 2016 in Case R 2413/2015-4

Form of order sought

The applicant claims that the Court should:

— Annul in part the contested decision and the decision of the Opposition Division of the European Union Intellectual Property Office of 2 October 2015, Application No B 2 456 336, namely in so far as they relate to goods in Class 9 — 'bags adapted for laptops; holders adapted for mobile phones; computer peripheral devices';

— order EUIPO to pay the costs of the proceedings.

Pleas in law

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

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

Action brought on 13 February 2017 — ACTC v EUIPO — Taiga (tigha)

(Case T-94/17)

(2017/C 112/61)

Language in which the application was lodged: English

Parties

Applicant: ACTC GmbH (Erkrath, Germany) (represented by: V. Hoene, D. Eickemeier and S. Gantenbrink, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Taiga AB (Varberg, Sweden)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'tigha' — Application for registration No 11 459 617

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 December 2016 in Case R 693/2015-4

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 Articles 8(1)(b) and 42(2) of Regulation No 207/2009.

Action brought on 13 February 2017 — King.com v EUIPO — TeamLava (Screen displays and icons)

(Case T-95/17)

(2017/C 112/62)

Language in which the application was lodged: English

Parties

Applicant: King.com Ltd (St. Julians, Malta) (represented by: M. Hawkins, Solicitor and T. Dolde, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: TeamLava LLC (Redwood Suite, California, United States)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design No 2216416-0054

Contested decision: Decision of the Third Board of Appeal of EUIPO of 1/12/2016 in Case R 1947/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party, should it intervene, to pay the costs.

Plea in law

— Infringement of Article 25(1)(b) in conjunction with Articles 5, 6 and 7 of Regulation No 6/2002;

Action brought on 13 February 2017 — King.com v EUIPO — TeamLava (Animated icons)

(Case T-96/17)

(2017/C 112/63)

Language in which the application was lodged: English

Parties

Applicant: King.com Ltd (St. Julians, Malta) (represented by: M. Hawkins, Solicitor and T. Dolde, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: TeamLava LLC (Redwood Suite, California, United States)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design No 2216416-0049

Contested decision: Decision of the Third Board of Appeal of EUIPO of 1/12/2016 in Case R 1948/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party, should it intervene, to pay the costs.

Plea in law

— Infringement of Article 25(1)(b) in conjunction with Articles 5, 6 and 7 of Regulation No 6/2002.

Action brought on 16 February 2017 — Franmax v EUIPO — R. Seelig & Hille (her- bea)

(Case T-97/17)

(2017/C 112/64)

Language in which the application was lodged: English

Parties

Applicant: Franmax UAB (Vilnius, Lithuania) (represented by: E. Saukalas, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: R. Seelig & Hille OHG (Düsseldorf, Germany)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'her- bea'– Application for registration No 12 689 964

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 1 December 2016 in Case R 371/2016-2

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

Action brought on 17 February 2017 — HSBC Holdings and Others v Commission

(Case T-105/17)

(2017/C 112/65)

Language of the case: English

Parties

Applicants: HSBC Holdings plc (London, United Kingdom), HSBC Bank plc (London), HSBC France (Paris, France) (represented by: K. Bacon, QC, D. Bailey, Barrister, M. Simpson, Solicitor, Y. Anselin and C. Angeli, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1 of the European Commission decision of 7 December 2016, notified on 9 December 2016, in Case AT.39914 — Euro Interest Rate Derivatives — C(2016) 8530 final (the 'Contested Decision');

— in the alternative, annul Article 1(b) of the Contested Decision;

— in the further alternative, partially annul Article 1(b) of the Contested Decision in so far as it holds that the applicants participated in a single and continuous infringement;

— annul Article 2(b) of the Contested Decision;

— in the alternative, substantially reduce the fine imposed on the applicants under Article 2(b) of the Contested Decision to such amount as the Court may deem appropriate, and

— order the Commission to pay the costs or, in the alternative, an appropriate proportion of the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant wrongly concluded that the applicants engaged in conduct that has as its object the restriction and/or distortion of competition within the meaning of Article 101(1) TFEU.

2. Second plea in law, alleging that the defendant erred in law and fact and/or gave insufficient reasons for finding that the conduct subject to the Contested Decision pursued a single economic aim of distorting competition. Accordingly, the defendant's finding of a single and continuous infringement ('SCI') is fundamentally flawed.

3. Third plea in law, alleging that the defendant's finding that the applicants intentionally contributed to the SCI described in the Contested Decision is vitiated by manifest errors of assessment and/or lack of reasoning.

4. Fourth plea in law, alleging that the defendant's finding that the applicants were or ought to have been aware of the conduct of the other alleged participants in the SCI is vitiated by manifest errors of assessment and/or a lack of reasoning.

5. Fifth plea in law, alleging that the defendant has infringed essential procedural requirements in the process leading to the adoption of the Contested Decision. Specifically, the defendant infringed the applicants' rights of defence, the principle of the presumption of innocence and the principle of good administration by adopting a staggered administrative procedure.

6. Sixth plea in law, alleging, in the alternative, that the defendant wrongly calculated the fine imposed on the applicants and as such the fine is unjustified and disproportionate.

Action brought on 17 February 2017 — JPMorgan Chase and Others v Commission

(Case T-106/17)

(2017/C 112/66)

Language of the case: English

Parties

Applicants: JPMorgan Chase & Co. (New York, New York, United States), JPMorgan Chase Bank, National Association (Columbus, Ohio, United States), J.P. Morgan Services LLP (London, United Kingdom) (represented by: D. Rose, QC, J. Boyd, M. Lester, D. Piccinin and D. Heaton, Barristers, and B. Tormey, N. French, N. Frey and D. Das, Solicitors)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the European Commission decision C(2016) 8530 final, in case AT.39914 — Euro Interest Rate Derivatives — (the 'Decision'), of 7 December 2016, in so far as it applies to the applicants;

— in the alternative, reduce the penalty imposed on the applicants;

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has failed to show that the applicants' conduct pursued the object of manipulating EURIBOR tenors or EONIA (benchmark interest rates); the evidence shows that the applicants did not pursue any anti-competitive object within the meaning of Article 101(1) TFEU and Article 53(1) of the EEA Agreement ('Article 101').

2. Second plea in law, alleging that, further or alternatively, the Commission erred in law in finding that the object of the alleged manipulation of EURIBOR tenors or EONIA is an object of preventing, restricting or distorting competition within the meaning of Article 101.

3. Third plea in law, alleging that the challenged decision does not find, and the Commission cannot now argue or establish, any other anti-competitive object against the applicants than manipulating EURIBOR tenors or EONIA.

4. Fourth plea in law alleging that, in the alternative, the Commission has failed to establish that the applicants participated in a single and continuous infringement. In particular, the conduct found by the Commission to infringe Article 101 did not pursue a single aim; alternatively the applicants were not aware of the infringing conduct of the other parties and could not reasonably have foreseen it; and alternatively the applicants did not intend to contribute by their conduct to a common plan with an anti-competitive object.

5. Fifth plea in law alleging that the Commission has acted contrary to the fundamental principles of EU law, good administration, the presumption of innocence, and the applicants' rights of defence, by having pre-judged the case against them in the way it applied the 'hybrid' settlement process, and by expressions of pre-judgment by Commissioner Almunia.

6. Sixth plea in law alleging that, further or alternatively, the Commission has erred in calculating the fine imposed on the applicants in a number of ways and the Court should reduce it. The Commission (a) should have applied greater mitigation and lower gravity and 'entry fee' adjustments to reflect the applicants' peripheral and different role as found by the Commission; (b) failed to apply the same method for calculating value of sales to each party, with the result that the applicants have been treated less favourably without objective justification; (c) should have applied a greater discount in relation to the applicants' cash receipts figures to reflect their relative economic strength; and (d) should not have included EONIA sales in its value of sales calculations.

Action brought on 28 February 2017 — BASF Grenzach v ECHA

(Case T-125/17)

(2017/C 112/67)

Language of the case: English

Parties

Applicant: BASF Grenzach GmbH (Grenzach-Wyhlen, Germany) (represented by: K. Nordlander and M. Abenhaïm, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— declare the application for annulment admissible;

— annul the decision of the Board of Appeal of the European Chemicals Agency (ECHA) of 19 December 2016 concerning the substance evaluation of Triclosan pursuant to Article 46(1) of Regulation (EC) No. 1907/2006 ([1]) (case No A-018-2014) ('the Triclosan Decision'), in so far as the Board of Appeal dismissed the applicant's administrative appeal, confirmed the rat test, the fish test and the persistence test previously requested by ECHA, and decided that the remaining information was to be provided by 28 December 2018;

— order ECHA to pay the applicant's costs for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a breach of essential procedural requirements

   — The applicant puts forward that by confining its role to a limited legality review instead of conducting a full administrative review of the Triclosan Decision, the Board of Appeal breached an essential procedural requirement. According to the applicant, the Board of Appeal also breached two essential procedural requirements in disregarding — without addressing their merits — numerous key arguments and pieces of scientific evidence which the applicant had brought forward. In so doing, so the applicant claims, the Board of Appeal not only failed to exercise its power of administrative review, but also breached the applicant's right of defense.

2. Second plea in law, alleging a breach of proportionality principle, read in conjunction with Article 13 TFUE, Article 25 (1) REACH, Article 47 REACH and the General Court's consistent case law concerning judicial review and burden of proof.

   — As regards the rat test, the applicant puts forward that both ECHA and the Board of Appeal recognized the differences between the thyroid systems of, respectively, rats and humans, but relied essentially on data from studies on rats to posit potential effects on human thyroxine (while existing studies on humans showed the absence of such effects). In so doing, the applicant claims, the Triclosan Decision (i) fails to take account of all the relevant information available, (ii) is contradictory, (iii) relies on inconsistent evidence, and, for these reasons it is vitiated by a manifest error in assessment of the necessity of the rat test, in so far as it addresses an alleged human developmental neurotoxicity concern. With respect to the sexual reproductive toxicity endpoints in the rat study, so the applicant goes further, both ECHA and the Board of Appeal also failed to take account of all the relevant information available and relied on inconsistent evidence. According to the applicant, in so doing, ECHA and the Board of Appeal committed a manifest error in assessment of the necessity of the rat test for any reproductive toxicity endpoints. According to the applicant, the rat test is also manifestly inappropriate because the test results cannot possibly help ECHA clarify the alleged endocrine disruption concerns on humans. Finally, the applicant puts forward that the Triclosan Decision is illegal in that the Board of Appeal upheld the rat test without verifying whether all the requirements of the proportionality principle were satisfied; in particular, the Board of Appeal failed to review whether less restrictive means were available to clarify the alleged endocrine disruption concerns of Triclosan.

   — As regards the fish test, the applicant claims that (i) the Board of Appeal failed to actually exercise its discretion and determine whether, based on the scientific evidence available, there existed a 'potential risk' that could justify requiring further testing; (ii) ECHA and Board of Appeal (both) failed to demonstrate that, based on the available scientific evidence, there existed a potential risk of endocrine disruption justifying further testing on fish; and (iii) ECHA and the Board of Appeal (both) reversed the burden of proof and breached Article 25(1) REACH, by requiring the applicant to demonstrate the absence of such risk.

— As regards the persistence test, the applicant puts forward that, in requiring the applicant to carry out the persistence test in both freshwater and marine water in order to allegedly clarify a potential risk of persistence of Triclosan in the environment, ECHA and the Board of Appeal failed to pay due regard both to the weight-of-evidence concerning the persistence of Triclosan, and the requirement to consider environmentally relevant conditions as set forth under Annex XIII. The applicant further claims that, by requiring the applicant to carry out the persistence test in pelagic water (i.e., clear water without sediment), ECHA and the Board of Appeal also failed to respect the clear directive in Annex XIII REACH to consider the evidence that reflects environmentally 'relevant' conditions. Moreover, so the applicant claims, having decided that the derogation simulation test need to reflect environmentally relevant conditions, both ECHA and the Board of Appeal then failed to exercise the appropriate expert judgment to identify the appropriate test conditions.

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

Order of the General Court of 10 February 2017 — Tarmac Trading v Commission

(Case T-267/16) ([1])

(2017/C 112/68)

Language of the case: English

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

([1]) OJ C 287, 8.8.2016.

Order of the General Court of 3 February 2017 — Bank Saderat Iran v Council

(Case T-349/16) ([1])

(2017/C 112/69)

Language of the case: English

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

([1]) OJ C 305, 22.8.2016.

Order of the General Court of 14 February 2017 — HP v Commission and eu-LISA

(Case T-596/16) ([1])

(2017/C 112/70)

Language of the case: English

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

([1]) OJ C 296, 16.8.2016 (case initially registered before the European Union Civil Service Tribunal under number F-26/16 and transferred to the General Court of the European Union on 1 September 2016).

Order of the General Court of 9 February 2017 — IPA v Commission

(Case T-635/16) ([1])

(2017/C 112/71)

Language of the case: English

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

([1]) OJ C 428, 21.11.2016.

Order of the General Court of 7 February 2017 — Starbucks (HK) v EUIPO — Now Wireless (nowwireless)

(Case T-908/16) ([1])

(2017/C 112/72)

Language of the case: English

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

([1]) OJ C 46, 13.2.2017.

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