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

(2017/C 195/01)

**Last publication**

OJ C 178, 6.6.2017.

**Past publications**

OJ C 168, 29.5.2017.

OJ C 161, 22.5.2017.

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# COURT PROCEEDINGS

# COURT OF JUSTICE

## Judgment of the Court (Second Chamber) of 26 April 2017 (request for a preliminary ruling from the Rechtbank Midden-Nederland — Netherlands) — Stichting Brein v Jack Frederik Wullems, also trading under the name Filmspeler

**(Case C-527/15)** ([1])

***(Reference for a preliminary ruling — Intellectual and industrial property — Directive 2001/29/EC — Harmonisation of certain aspects of copyright and related rights — Article 3(1) — Communication to the public — Definition — Sale of a multimedia player — Add-ons — Publication of works without the consent of the right holder — Access to streaming websites — Article 5(1) and (5) — Right of reproduction — Exceptions and limitations — Lawful use)***

(2017/C 195/02)

*Language of the case: Dutch*

### Referring court

Rechtbank Midden-Nederland

### Parties to the main proceedings

*Applicant:* Stichting Brein

*Defendant:* Jack Frederik Wullems, also trading under the name Filmspeler

### Operative part of the judgment

1. *The concept of 'communication to the public', within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as covering the sale of a multimedia player, such as that at issue in the main proceedings, on which there are pre-installed add-ons, available on the internet, containing hyperlinks to websites — that are freely accessible to the public — on which copyright-protected works have been made available to the public without the consent of the right holders.*

2. *Article 5(1) and (5) of Directive 2001/29 must be interpreted as meaning that acts of temporary reproduction, on a multimedia player, such as that at issue in the main proceedings, of a copyright-protected work obtained by streaming from a website belonging to a third party offering that work without the consent of the copyright holder does not satisfy the conditions set out in those provisions.*

([1]) OJ C 27, 25.1.2016.

# Judgment of the Court (Fourth Chamber) of 26 April 2017 (request for a preliminary ruling from the Kecskeméti közigazgatási és munkaügyi bíróság — Hungry) — Tibor Farkas v Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága

**(Case C-564/15)** ([1])

***(Reference for a preliminary ruling — Plea alleging infringement of EU law raised by the Court of its own motion — Principles of equivalence and effectiveness — Common system of value added tax — Directive 2006/112/EC — Right to deduct input tax — Reverse charge system — Article 199(1)(g) — Application only in the case of immovable property — Undue payment of the tax by the purchaser of property to the seller as a result of an incorrectly drawn up invoice — Tax authority's decision holding that the property purchaser has an outstanding tax liability, refusing payment of the deduction sought by the purchaser, and imposing a penalty tax)***

(2017/C 195/03)

*Language of the case: Hungarian*

## Referring court

Kecskeméti közigazgatási és munkaügyi bíróság

## Parties to the main proceedings

*Applicant:* Tibor Farkas

*Defendant:* Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága

## Operative part of the judgment

1. *Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted to the effect that it applies to the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.*

2. *The provisions of Directive 2006/112, as amended by Directive 2010/45, and the principles of fiscal neutrality, effectiveness and proportionality must be interpreted to the effect that, in a situation such as that in the main proceedings, they do not preclude the purchaser of an item of property from being deprived of the right to deduct the value added tax which he paid to the seller when that tax was not due, on the basis of an invoice drawn up in accordance with the rules of the ordinary value added tax regime, where the relevant transaction came under the reverse charge mechanism, and the seller paid that tax to the Treasury. However, to the extent that reimbursement of the unduly invoiced value added tax by the seller to the purchaser becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, those principles require that the purchaser be able to address his application for reimbursement to the tax authority directly.*

3. *The principle of proportionality must be interpreted to the effect that it precludes national tax authorities, in a situation such as that in the main proceedings, from imposing on a taxable person, who purchased an item of property the transfer of which comes under the reverse charge regime, a tax penalty of 50 % of the amount of value added tax which he is required to pay to the tax authority, where those authorities suffered no loss of tax revenue and there is no evidence of tax evasion, this being a matter for the referring court to determine.*

([1]) OJ C 90, 7.3.2016.

## Judgment of the Court (Fourth Chamber) of 26 April 2017 (request for a preliminary ruling from the Înalta Curte de Casație şi Justiție — Romania) — Costin Popescu v Guvernul României and Others

**(Case C-632/15)** ([1])

***(Reference for a preliminary ruling — Transport — Road transport — Driving licences — Directive 2006/126/EC — Article 13(2) — Concept of 'entitlement to drive granted before 19 January 2013' — National legislation transposing the directive — Obligation to obtain a driving licence imposed on persons who were allowed to ride a moped without a licence before the entry into force of that legislation)***

(2017/C 195/04)

*Language of the case: Romanian*

**Referring court**

Înalta Curte de Casație şi Justiție

**Parties to the main proceedings**

*Applicant:* Costin Popescu

*Defendants:* Guvernul României, Ministerul Afacerilor Interne, Direcția Regim Permise de Conducere si Înmatriculare a Vehiculelor, Direcția Rutieră, Serviciul Public Comunitar Regim Permise de Conducere și Înmatriculare a Vehiculelor

**Operative part of the judgment**

*The provisions of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, in particular Article 13(2), must be interpreted as not precluding national legislation, adopted in order to transpose that directive into national law, which terminates the authorisation to ride mopeds without holding a driving licence, the issue of which is subject to passing tests or examinations similar to those required for driving other motor vehicles.*

([1]) OJ C 68, 22.2.2016.

## Judgment of the Court (Eighth Chamber) of 26 April 2017 (request for a preliminary ruling from the Rechtbank Noord-Holland — Netherlands) — Stryker EMEA Supply Chain Services BV v Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond

**(Case C-51/16)** ([1])

***(Reference for a preliminary ruling — Common Customs Tariff — Tariff headings — Classification of goods — Implant screws intended to be inserted in the human body for the treatment of fractures or the stabilisation of prostheses — Combined Nomenclature — Heading 9021 — Implementing Regulation (EU) No 1212/2014 — Validity)***

(2017/C 195/05)

*Language of the case: Dutch*

**Referring court**

Rechtbank Noord-Holland

**Parties to the main proceedings**

*Applicant:* Stryker EMEA Supply Chain Services BV

*Defendant:* Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond

**Operative part of the judgment**

*Heading 9021 of the Combined Nomenclature of the Common Customs Tariff 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 1101/2014 of 16 October 2014, must be interpreted as meaning that medical implant screws such as those at issue in the main proceedings fall under that heading as those goods have characteristics which distinguish them from ordinary goods by the finish of their manufacture and their high degree of precision, as well as by their method of manufacture and the specificity of their purpose. In particular, the fact that medical implant screws such as those at issue in the main proceedings can be inserted in the body only by means of specific medical tools, not by means of ordinary tools, is a characteristic to be taken into consideration in order to distinguish those medical implant screws from ordinary products.*

([1]) OJ C 136, 18.4.2016.

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**Judgment of the Court (Second Chamber) of 26 April 2017 — European Commission v Federal Republic of Germany**

**(Case C-142/16)** ([1])

***(Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Article 6(3) — Conservation of natural habitats — Construction of a coal-fired power plant in Moorburg (Germany) — Natura 2000 areas situated upstream of that coal-fired power plant on the corridor of the Elbe river — Assessment of the implications of a plan or project for a protected site)***

(2017/C 195/06)

*Language of the case: German*

**Parties**

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

*Defendant:* Federal Republic of Germany (represented by T. Henze and J. Möller, acting as Agents, assisted by W. Ewer, Rechtsanwalt)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by authorising the construction of the coal-fired power plant in Moorburg, near Hamburg (Germany), without conducting an appropriate and comprehensive assessment of its implications, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 165, 10.5.2016.

## Order of the Court (Sixth Chamber) of 6 April 2017 — Pénzügyi Ismeretterjesztő és Érdek-képviseleti Egyesület (PITEE) v European Commission

**(Case C-464/16 P)** ([1])

***(Appeal — Article 181 of the Rules of Procedure of the Court — Request for access to Commission documents — Refusal — Action for annulment — Article 19 of the Statute of the Court of Justice of the European Union — Representation before the EU Courts — Lawyer who is not a third party in relation to the appellant — Action manifestly inadmissible — Article 47 of the Charter of Fundamental Rights of the European Union — Right to an effective remedy and to a fair trial — Appeal in part manifestly inadmissible and in part manifestly unfounded)***

(2017/C 195/07)

*Language of the case: German*

### Parties

*Appellant:* Pénzügyi Ismeretterjesztő és Érdek-képviseleti Egyesület (PITEE) (represented by: D. Lazar, Rechtsanwalt)

*Other party to the proceedings:* European Commission (represented by: H. Krämer and F. Erlbacher, acting as Agents)

### Operative part of the order

1. *The appeal is dismissed.*

2. *Pénzügyi Ismeretterjesztő és Érdek-képviseleti Egyesület (PITEE) shall pay the costs.*

([1]) OJ C 402, 31.10.2016.

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## Order of the Court (Eighth Chamber) of 2 March 2017 — Anikó Pint v European Commission

**(Case C-625/16 P)** ([1])

***(Appeal — Access to documents — Regulation (EC) No 1049/2001 — Documents from the Hungarian Government relating to the procedure EU Pilot No 8572/15 [CHAP(2015)00353 and 6874/14/JUST] concerning an alleged infringement by Hungary of Article 47 of the Charter of Fundamental Rights of the European Union — Request to be provided with documents — Lack of a response from the European Commission)***

(2017/C 195/08)

*Language of the case: German*

### Parties

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

*Other party to the proceedings:* European Commission

### Operative part of the order

1) *The appeal is dismissed.*

2) *Ms Anikó Pint shall bear her own costs.*

([1]) OJ C 112, 10.04.2017.

**Request for a preliminary ruling from the Tribunale di Salerno (Italy) lodged on 31 October 2016 — Criminal proceedings against Vincenzo D'Andria and Giuseppina D'Andria**

**(Case C-555/16)**

(2017/C 195/09)

*Language of the case: Italian*

**Referring court**

Tribunale di Salerno

**Parties to the main proceedings**

Vincenzo D'Andria and Giuseppina D'Andria

By order of 4 April 2017 the Court (Seventh Chamber) held that:

1. Articles 49 and 56 TFEU and the principles of equal treatment and effectiveness must be interpreted as not precluding national legislation on betting and gaming, such as that at issue in the main proceedings, which provides for the organisation of a new call for tenders for the award of licences with a shorter period of validity than that of the licences awarded in the past on account of the reorganisation of the system through the alignment of licence expiry dates.

2. Articles 49 and 56 TFEU must be interpreted as precluding a restrictive national provision, such as that at issue in the main proceedings, which requires a licensee of a betting and gambling service to transfer, free of charge, on the cessation of business as a result of the expiry of the final term of the licence, the rights to use tangible and intangible assets which he owns and which constitute his network for the management and collection of bets, in so far as that restriction goes beyond what is necessary to attain the objective actually pursued by that provision, which is for the referring court to verify.

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**Request for a preliminary ruling from the Tribunale di Salerno (Italy) lodged on 16 November 2016 — Criminal proceedings against Nicola Turco**

**(Case C-581/16)**

(2017/C 195/10)

*Language of the case: Italian*

**Referring court**

Tribunale di Salerno

**Party to the main proceedings**

Nicola Turco

By order of 4 April 2017 the Court (Seventh Chamber) held that:

1. Articles 49 and 56 TFEU and the principles of equal treatment and effectiveness must be interpreted as not precluding national legislation on betting and gaming, such as that at issue in the main proceedings, which provides for the organisation of a new call for tenders for the award of licences with a shorter period of validity than that of the licences awarded in the past on account of the reorganisation of the system through the alignment of licence expiry dates.

2. Articles 49 and 56 TFEU must be interpreted as precluding a restrictive national provision, such as that at issue in the main proceedings, which requires a licensee of a betting and gambling service to transfer, free of charge, on the cessation of business as a result of the expiry of the final term of the licence, the rights to use tangible and intangible assets which he owns and which constitute his network for the management and collection of bets, in so far as that restriction goes beyond what is necessary to attain the objective actually pursued by that provision, which is for the referring court to verify.

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**Request for a preliminary ruling from the Tribunale di Salerno (Italy) lodged on 16 November 2016 — Criminal proceedings against Alfonso Consalvo**

**(Case C-582/16)**

(2017/C 195/11)

*Language of the case: Italian*

**Referring court**

Tribunale di Salerno

**Party to the main proceedings**

Alfonso Consalvo

By order of 4 April 2017 the Court (Seventh Chamber) held that:

1. Articles 49 and 56 TFEU and the principles of equal treatment and effectiveness must be interpreted as not precluding national legislation on betting and gaming, such as that at issue in the main proceedings, which provides for the organisation of a new call for tenders for the award of licences with a shorter period of validity than that of the licences awarded in the past on account of the reorganisation of the system through the alignment of licence expiry dates.

2. Articles 49 and 56 TFEU must be interpreted as precluding a restrictive national provision, such as that at issue in the main proceedings, which requires a licensee of a betting and gambling service to transfer, free of charge, on the cessation of business as a result of the expiry of the final term of the licence, the rights to use tangible and intangible assets which he owns and which constitute his network for the management and collection of bets, in so far as that restriction goes beyond what is necessary to attain the objective actually pursued by that provision, which is for the referring court to verify.

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**Appeal brought on 28 November 2016 by Anastasia-Soultana Gaki against the order of the General Court (Eighth Chamber) made on 19 September 2016 in Case T-112/16, Gaki v Parliament**

**(Case C-610/16 P)**

(2017/C 195/12)

*Language of the Case: German*

**Parties**

*Appellant:* Anastasia-Soultana Gaki (represented by: G. Keisers, Rechtsanwalt)

*Other party to the proceedings:* European Parliament

By order of 6 April 2017, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal and ordered the appellant to bear her own costs.

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**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 19 January 2017 — Novartis Farma SpA v Agenzia Italiana del Farmaco (AIFA)**

**(Case C-29/17)**

(2017/C 195/13)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Appellant:* Novartis Farma SpA

*Respondent:* Agenzia Italiana del Farmaco (AIFA)

**Questions referred**

1. Do the provisions of Directive 2001/83/EC, ([1]) as subsequently amended, and in particular Articles 5 and 6 thereof, with reference in particular to the second recital of the directive, preclude the application of a national law (the provision several times cited being Article 1(4)bis of the Decree-Law), which, in order to pursue the objective of containing expenditure, encourages, by inclusion in the list of medicinal products reimbursable by the national health service, the use of a drug beyond the therapeutic indication authorised for patients in general, regardless of any consideration of the therapeutic needs of the individual patient and notwithstanding the existence and market availability of medicinal products authorised for the specific therapeutic indication?

2. Can Article 3(1) of Directive 2001/83/EC (magistral formula) be applicable when the preparation of the pharmaceutical product is done in a pharmacy on the strength of a medical prescription for an individual patient, but is nonetheless done in batches, in equal quantities and repeatedly, without taking account of the specific needs of the individual patient, and when the product is dispensed to the hospital and not to the patient (given that the pharmaceutical product is listed in class H-OSP) and is used in a facility other than that in which the product was prepared?

3. Do the provisions of Regulation (EC) No 726/2004 ([2]) as amended, and in particular Articles 3, 25 and 26 thereof together with the Annex, which confer on the European Medicines Agency (EMA) exclusive responsibility for evaluating the quality, safety and efficacy of medicinal products for which the therapeutic indication is the treatment of oncological pathologies, both in the context of the procedure for granting authorisation procedure for medicinal products to be placed on the market (compulsory centralised procedure) and for the purposes of the monitoring and coordination of pharmacovigilance activities after the product has been placed on the market, preclude the application of a national law that reserves to the national regulatory authority (AIFA) the power to judge the safety of medicines as regards their use 'off-label', the authorisation of which falls within the exclusive competence of the European Commission on the basis of the technical and scientific evaluations carried out by the European Medicines Agency (EMA)?

4. Do the provisions of Directive 89/105/EEC, ([3]) as subsequently amended, and in particular Article 1(3) thereof, preclude the application of a national law that permits the Member State, in its decisions on the reimbursability of health expenses borne by the patient, to provide for the reimbursability of a medicinal product used beyond the ambit of the therapeutic indications stated in the marketing authorisation issued by the European Commission, or by a specialised European agency, following a centralised evaluation procedure, when the conditions set out in Articles 3 and 5 of Directive 2001/83/EC are not satisfied?

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

([2]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance) (OJ 2004 L 136, p. 1).

([3]) Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ L 40, 11.2.1989, p. 8).

**Request for a preliminary ruling from the Corte costituzionale (Italy) lodged on 26 January 2017 — M.A.S., M.B.**

**(Case C-42/17)**

(2017/C 195/14)

*Language of the case: Italian*

**Referring court**

Corte costituzionale

**Parties to the main proceedings**

M.A.S., M.B.

**Questions referred**

1. Is Article 325(1) and (2) of the Treaty on the Functioning of the European Union to be interpreted as requiring the criminal court to disapply national legislation on limitation periods which precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or which imposes shorter limitation periods for fraud affecting the financial interests of the European Union than for fraud affecting the financial interests of the State, even where there is no sufficiently precise legal basis for such disapplication?

2. Is Article 325(1) and (2) of the Treaty on the Functioning of the European Union to be interpreted as requiring the criminal court to disapply national legislation on limitation periods which precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or which imposes shorter limitation periods for fraud affecting the financial interests of the European Union than for fraud affecting the financial interests of the State, even where, in the legal system of the Member State concerned, limitation periods form part of substantive criminal law and are subject to the principle of the legality of criminal proceedings?

3. Is the judgment of the Grand Chamber of the Court of Justice of the European Union of 8 September 2015 in Case C-104/15, *Taricco*, to be interpreted as requiring the criminal court to disapply national legislation on limitation periods which precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or which imposes shorter limitation periods for fraud affecting the financial interests of the European Union than for fraud affecting the financial interests of the State, even where such disapplication is at variance with the overriding principles of the constitution of the Member State concerned or with the inalienable rights of the individual conferred by the constitution of the Member State?

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**Appeal brought on 23 February 2017 by Verus Eood against the judgment of the General Court (Ninth Chamber) of 7 July 2016 in Case T-82/14, *Copernicus-Trademarks* v *European Union Intellectual Property Office (EUIPO)***

**(Case C-101/17 P)**

(2017/C 195/15)

*Language of the case: German*

**Parties**

*Appellant:* Verus Eood (represented by: C. Pfitzer, Rechtsanwalt)

*Other parties to the proceedings:* European Union Intellectual Property Office, Maquet

**Form of order sought**

The appellant claims that the Court should:

— set aside the judgment in Case T-82/14 in its entirety;

in the alternative: set aside the judgment in Case T-82/14 and, on the basis of a distortion of the facts in that judgment, refer the case back to the General Court;

— order the respondent to pay the costs of the proceedings in all instances.

**Grounds of appeal and main arguments**

The appellant puts forward the following grounds in support of its appeal:

(1) infringement of Regulation No 207/2009 of 26 February 2009, ([1]) in particular Article 52 thereof

(2) infringement of Regulation No 207/2009 of 26 February 2009, in particular Article 75 thereof

(3) infringement of Regulation No 207/2009 of 26 February 2009, in particular Article 76 thereof

(4) infringement of the case-law of the Court of Justice of the European Union on 'trade mark applications made in bad faith'

(5) infringement of the 'fundamental rights catalogue' of the Court of Justice of the European Union

(6) infringement of international law, namely the Paris Convention for the Protection of Industrial Property

(7) infringement of international law, namely the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual-Property Rights)

(8) infringement of Article 16 of the Charter of Fundamental Rights of the European Union

(9) infringement of Article 17(2) of the Charter of Fundamental Rights of the European Union

(10) infringement of Article 47 of the Charter of Fundamental Rights of the European Union

(11) infringement of Article 17 of the '1948 Universal Declaration of Human Rights'

(12) infringement of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) and its additional protocols, in particular Article 1 of Protocol No 1

(13) infringement of Article 6 ECHR — Right to a fair trial, in particular relating to distorted or false findings of fact, imputations, false accusations, denigrations, libel, slander

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, OJ 2009 L 78, p. 1.

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**Request for a preliminary ruling from the Tribunal Superior de Justicia del País Vasco (Spain) lodged on 21 March 2017 — José Luis Cabana Carballo v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)**

**(Case C-141/17)**

(2017/C 195/16)

*Language of the case: Spanish*

**Referring court**

Tribunal Superior de Justicia del País Vasco

**Parties to the main proceedings**

*Appellant:* José Luis Cabana Carballo

*Respondents:* Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS)

**Questions referred**

1. Must Article 53(3)(a) and (d) of Regulation (EC) No 883/2004 ([1]) be regarded as one of the contrary provisions referred to by Article 5 thereof and therefore as applicable instead of the provisions of Article 5(b)?

2. For the purposes of Article 53(3)(a) of that regulation, is the Spanish legislation concerning the 20 % supplement to the pension for total permanent incapacity to perform the normal occupation to be regarded as establishing that allowances and income acquired abroad are to be taken into account?

3. If the reply to the previous question is in the negative, is the Spanish administrative and judicial practice of suspending the 20 % supplement to the pension for total permanent capacity to perform the normal occupation when the beneficiary receives a retirement pension from another Member State contrary to that Community provision?

4. If the reply to question 2 is in the affirmative, is it to be regarded as incompatible with Article 53(3)(d) of the Regulation for the 20 % supplement to the pension for total permanent incapacity to perform the normal occupation also to be suspended in respect of that part which exceeds the amount of the pension from the other Member State?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), OJ 2004 L 166, p. 1.

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## Appeal lodged on 21 March 2017 by Internacional de Productos Metálicos, S.A. against the order of the General Court (Second Chamber) delivered on 25 January 2017 in Case T-217/16, Internacional de productos metálicos v Commission

**(Case C-145/17 P)**

(2017/C 195/17)

*Language of the case: Spanish*

**Parties**

*Appellant:* Internacional de Productos Metálicos, S.A. (represented by: C. Cañizares Pacheco, E. Tejedor de la Fuente and A. Monreal Lasheras, lawyers)

*Other party to the proceedings*: European Commission

**Forms of order sought**

The appellant claims that the Court of Justice should:

— set aside the order of the General Court of the European Union of 25 January 2017 in Case T-217/16;

— refer Case T-217/16 back to the General Court of the European Union, so that it may rule on the temporal limitation laid down in Article 2 of Commission Implementing Regulation (EU) 2016/278 of 26 February 2016;

— order the European Commission to pay the costs.

**Grounds of appeal and main arguments**

1. By its first ground of appeal, the appellant submits that it had standing to bring an action for annulment before the General Court of the European Union ('the General Court') against Regulation 2016/278 ([1]), since that regulation satisfies the requirements set out in paragraph 4 of Article 263 TFEU. As the Court knows, those requirements are: (i) that the contested act is of direct and individual concern or (ii) that the contested act is a regulatory act which is of direct concern and does not entail implementing measures.

   In relation to the requirement that t**he contested act must be of direct and individual concern,** the appellant submits that the General Court in no way disputed that it was directly concerned. In addition, IPM is individually concerned by the contested act since the regulation in question affects each and every importer that included TARIC nomenclature or codes in its Single Administrative Documents (SADs) in relation to the goods subject to the anti-dumping duties, between 2009 (when Regulation 91/2009 entered into force) and 2016 (when Regulation 2016/278 entered into force) inclusive. In that manner, those importers formed a 'limited class of economic operators', since the limitation of the effects of the derogation from the antidumping duties affected them in a concrete and specific way.

   Furthermore, as regards the requirement that the contested act must be a **regulatory act which is of direct concern and does not entail implementing measures**, the appellant's arguments seek to prove that Regulation 2016/278 does not entail implementing measures. Thus the collection of duties to which the General Court refers as implementing measures of the regulation are not actually implementing measures, since the only duties collected from the appellant in that respect derived from the provisions of Regulation 91/2009 ([2]), and in no case from the provisions of the contested regulation (Regulation 2016/278). This is demonstrated by that fact that the duties collected from IPM by the Spanish tax authorities were imposed before the entry into force of the contested regulation.

   Thus, the contested Article 2 is an autonomous provision that does require any subsequent measure in order to produce legal effects as from the date of its entry into force, since it merely repeals certain anti-dumping duties in the light of their incompatibility with the Anti-Dumping Agreement and the GATT treaty.

   Moreover, the regulation imposes an obligation not to act, since it orders the Spanish State not to issue any measure collecting anti-dumping duties, with the result that it precludes the issue of any tax measure capable of being challenged under national law, and bringing an action for annulment is therefore the only way in which IPM may challenge Article 2 of Regulation 2016/278.

   For all the foregoing reasons, the appellant submits that there is no doubt that IPM is entitled under Article 263 TFEU to bring an action for annulment against Article 2 of Regulation 2016/278, since that regulation, by virtue of its nature and content, does not entail any implementing measures.

2. By its second ground of appeal, the appellant refers to the claim it made before the General Court seeking **acknowledgement that Article 1 of the contested regulation has retroactive effects**. In that respect, contrary to what the General Court indicated in the order appealed against, in which it stated that it did not have jurisdiction to declare that Article 1 of the regulation has retroactive effects, the appellant submits that this is a necessary consequence of the annulment of Article 2 of the regulation, since that article establishes the temporal limitation, the validity of which formed the basis of the dismissed action for annulment. Accordingly, the claim made by the appellant seeking a declaration that Article 1 of that regulation has retroactive effects is entirely admissible, since that claim will be accepted implicitly once Article 2 of the regulation is declared invalid.

([1]) Commission Implementing Regulation (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ 2016, L 52 p. 24).

([2]) Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009, L 29, p. 1).

## Request for a preliminary ruling from the Augstākā tiesa (Latvia) lodged on 27 March 2017 — SIA 'E LATS'

**(Case C-154/17)**

(2017/C 195/18)

*Language of the case: Latvian*

### Referring court

Augstākā tiesa

### Parties to the main proceedings

*Appellant:* SIA 'E LATS'

*Respondent:* Valsts ieņēmumu dienests

### Questions referred

1. Must Article 311(1)(1) of Council Directive 2006/112/EC ([1]) on the common system of value added tax be interpreted as meaning that used articles, acquired by a trader, that contain precious metals or precious stones (as in the present case) and are resold principally in order for those precious metals or precious stones to be extracted, may be regarded as second-hand goods?

2. If the answer to question 1 is in the affirmative, is it relevant, for the purpose of limiting the application of the special arrangements, that the trader knows that the subsequent buyer intends to extract the precious metals or precious stones present in the used articles, or are the objective characteristics of the transaction (the quantity of goods, legal status of the counterparty to the transaction, etc.) relevant?

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

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## Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 3 April 2017 — Asociación Nacional de Productores de Ganado Porcino v Administración del Estado

**(Case C-169/17)**

(2017/C 195/19)

*Language of the case: Spanish*

### Referring court

Tribunal Supremo

### Parties to the main proceedings

*Applicant:* Asociación Nacional de Productores de Ganado Porcino

*Defendant:* Administración del Estado

### Questions referred

1. Are Articles 34 [TFEU] and 35 TFEU to be interpreted as precluding national legislation such as Article 8(1) of Royal Decree 4/2014 of 10 January approving the quality standard for Iberian meat, ham, shoulder ham and loin, which makes the use of the term 'ibérico' on products processed or marketed in Spain subject to the breeders of Iberian pigs in intensive farming systems (de cebo) increasing the total minimum unobstructed floor area per animal of more than 110 kg to 2 $m^2$, even if it can — if appropriate — be demonstrated that the aim of that measure is to improve the quality of the products covered by the legislation?

2. Are Article 3(1)(a) of Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs ([1]), and Article 12 thereof, to be interpreted as precluding national legislation such as Article 8(1) of Royal Decree 4/2014 of 10 January approving the quality standard for Iberian meat, ham, shoulder ham and loin, which makes the use of the term 'ibérico' on products prepared or marketed in Spain subject to the breeders of Iberian pigs in intensive farming systems (de cebo) increasing the total minimum unobstructed floor area per animal of more than 110 kg to 2 $m^2$ — even if the aim of the national legislation is to improve the quality of the products, and not specifically to provide better protection for pigs.

   If the answer to the previous question is in the negative, is Article 12 of Directive [2008/120/EC], in conjunction with Articles 34 and 35 of the Treaty on the Functioning of the European Union, to be interpreted as precluding a provision such as Article 8(1) of Royal Decree 4/2014 requiring the producers of other Member States, with the aim of improving the quality of the products processed and marketed in Spain — and not of providing better protection for pigs –, to fulfil the same conditions for rearing the animals as the Spanish producers in order that the products obtained from their pigs may use the sales descriptions which are regulated by that Royal Decree?

3. Are Articles 34 [TFEU] and 35 TFEU to be interpreted as precluding national legislation, such as Article 8(2) of Royal Decree 4/2014 of 10 January approving the quality standard for Iberian meat, ham, shoulder ham and loin, which imposes a minimum slaughter age of 10 months for pigs from which products in the de cebo category are made, with the aim of improving the quality of those products?

([1]) OJ 2009 L 47, p. 5.

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**Action brought on 7 April 2017 — European Commission v Kingdom of Spain**

**(Case C-181/17)**

(2017/C 195/20)

*Language of the case: Spanish*

**Parties**

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

*Defendant:* Kingdom of Spain

**Form of order sought**

The Commission claims that the Court should:

— declare, in accordance with Article 258 of the Treaty on the Functioning of the European Union, that, by laying down a minimum number of vehicles for obtaining a public transport authorisation, the Kingdom of Spain has failed to fulfil its obligations under Articles 3 and 5(b) of Regulation (EC) No 1071/2009 concerning access to the occupation of road transport operator;

— order the Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

The action brought by the European Commission against the Kingdom of Spain concerns the application of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC. ([1])

The Commission takes the view that, by imposing the requirement, for the purpose of obtaining a public transport authorisation, that undertakings should have at least three vehicles, the Kingdom of Spain has failed to fulfil its obligations under Article 3(1) and (2) and Article 5(b) of that regulation.

([1]) OJ 2009 L 300, p. 51.

# Action brought on 20 April 2017 — European Commission v Kingdom of Spain

**(Case C-205/17)**

(2017/C 195/21)

*Language of the case: Spanish*

## Parties

*Applicant:* European Commission (represented by: E. Manhaeve and E. Sanfrutos Cano, acting as Agents)

*Defendant:* Kingdom of Spain

## Form of order sought

The Commission claims that the Court should:

— declare that, by not taking all of the measures necessary to ensure compliance with the judgment of 14 April 2011, *Commission* v *Spain* (C-343/10, ECLI:EU:C:2011:260), the Kingdom of Spain has failed to fulfil its obligations under Article 260(1) TFEU;

— order the Kingdom of Spain to pay to the Commission a penalty payment in the amount of EUR 171 217,20 for each day of delay in ensuring compliance with the judgment of 14 April 2011, *Commission* v *Spain* (C-343/10, ECLI:EU:C:2011:260), from the date of judgment in the present case until the date on which the judgment in Case C-343/10 is complied with;

— order the Kingdom of Spain to pay to the Commission a lump sum payment of EUR 19 303,90 per day, from the date of delivery of the judgment of 14 April 2011, *Commission* v *Spain* (C-343/10, ECLI:EU:C:2011:260) until the date of the judgment in the present case or until the date of full compliance with the judgment in Case C-343/10, if the latter occurs earlier;

— order the Kingdom of Spain to pay the costs.

## Pleas in law and main arguments

The Commission takes the view that the Kingdom of Spain has failed to take all of the measures necessary to ensure compliance with the judgment of the Court of Justice concerning the lack of collection systems for urban waste water in the agglomeration of Valle de Güimar, in accordance with Article 3 of Directive 91/271 ([1]), and the lack of urban waste water treatment for the agglomerations of Alhaurín el Grande, Barbate, Isla Cristina, Matalascañas, Tarifa, Valle de Güimar, Peníscola, Aguiño-Carreira-Ribeira, Estepona (San Pedro de Alcántara), Coín, Nerja, Gijón-Este, Noreste (Valle Guerra), Benicarló, Teulada-Moraira, Vigo and Santiago, in accordance with Article 4(1), 4(3) and, as applicable, 4(4) of Directive 91/271.

([1]) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, OJ 1991 L 135, p. 40.

# GENERAL COURT

## Judgment of the General Court of 4 May 2017 — Green Source Poland v Commission

**(Case T-512/14)** ([1])

***(Action for annulment — ERDF — Article 41(3) of Regulation (EC) No 1083/2006 — Refusal to grant a financial contribution to a major project — Undertaking responsible for project implementation — Lack of direct concern — Inadmissibility)***

(2017/C 195/22)

*Language of the case: English*

**Parties**

*Applicant:* Green Source Poland sp. z o.o. (Warsaw, Poland) (represented by: M. Merola and L. Armati, lawyers)

*Defendant:* European Commission (represented by: initially by M. Clausen and B.-R. Killmann, and subsequently by B.-R. Killmann and R. Lyal, acting as Agents)

**Re:**

Application based on Article 263 TFEU seeking annulment of Commission Decision C(2014) 2289 final of 7 April 2014 refusing to make a financial contribution from the European Regional Development Fund (ERDF) to the major project 'Purchase and implementation of innovative manufacturing technology of biocomponents to produce biofuels' forming part of the operational programme 'Innovative Economy' for structural interventions under the 'Convergence' objective in Poland.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action as inadmissible;*

2. *Orders Green Source Poland sp. z o.o. to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 395, 10.11.2014.

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## Judgment of the General Court of 4 May 2017 — Meta Group v Commission

**(Case T-744/14)** ([1])

***(Arbitration clause — Grant agreements concluded within the context of the Sixth framework programme for research, technological development and demonstration activities (2002-2006) — Grant agreements concluded under the Competitiveness and Innovation Framework Programme (2007-2013) — Recovery of sums paid — Balance of the total amount of the financial contribution granted to the applicant — Eligible costs — Contractual liability)***

(2017/C 195/23)

*Language of the case: Italian*

**Parties**

*Applicant:* Meta Group Srl (Rome, Italy) (represented by: A. Bartolini and A. Formica, lawyers)

*Defendant:* European Commission (represented by: D. Recchia and R. Lyal, acting as Agents)

**Re:**

Action based on Article 272 TFEU and seeking a ruling that the Commission failed to fulfil its financial obligations resulting from several grant agreements which it concluded with the applicant under the Sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) and the Competitiveness and Innovation Framework Programme (2007-2013), a declaration that the Commission acted unlawfully in offsetting the amounts claimed by the applicant, an order for payment by the Commission of the sums owed to the applicant under those grant agreements, together with default interest and monetary revaluation, and compensation in respect of the damage which the applicant claims to have suffered.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Meta Group Srl to pay the costs.*

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([1]) OJ C 462, 22.12.2014.

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## Judgment of the General Court of 28 April 2017 — Gameart v Commission

**(Case T-264/15)** ([1])

***(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a procedure for failure to fulfil obligations — Documents drawn up by a Member State — Request for access to documents made to the Member State — Request forwarded to the Commission — Refusal of access — Competence of the Commission — Document originating from an institution — Article 5 of Regulation (EC) No 1049/2001)***

(2017/C 195/24)

*Language of the case: Polish*

**Parties**

*Applicant:* Gameart sp. z o.o. (Bielsko-Biała, Poland) (represented by: P. Hoffman, lawyer)

*Defendant:* European Commission (represented by: J. Hottiaux, A. Buchet and M. Konstantinidis, acting as Agents)

*Interveners in support of the defendant*: Republic of Poland (represented by: B. Majczyna, M. Kamejsza and M. Pawlicka, acting as Agents), European Parliament (represented by: D. Warin and A. Pospíšilová Padowska, acting as Agents) and Council of the European Union (represented initially by J.-B. Laignelot, K. Pleśniak and E. Rebasti, and subsequently by J.-B. Laignelot and E. Rebasti, acting as Agents)

**Re:**

Action under Article 263 TFEU for annulment of the decision of the Commission of 18 February 2015 in so far as it refused the request for access to documents drawn up by the Republic of Poland, a request which was forwarded to it by the Republic of Poland on the basis of the second paragraph of Article 5 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of the European Commission of 18 February 2015 in so far as it refused a request for access to documents drawn up by the Republic of Poland, a request which was forwarded to it by the Republic of Poland on the basis of the second paragraph of Article 5 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;*

2. *Orders the Commission to pay the costs;*

3. *Orders the Republic of Poland, the Council of the European Union and the European Parliament to bear their own costs.*

([1]) OJ C 254, 3.8.2015.

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**Judgment of the General Court of 27 April 2017 — Germanwings v Commission**

**(Case T-375/15)** ([1])

***(State aid — Aid for an airline using Zweibrücken airport — Benefit — Whether imputable to the State — Obligation to state reasons — Legitimate expectations — Access to documents — Documents relating to a procedure for reviewing State aid — Refusal to grant access to the documents requested — Exception relating to the protection of the purpose of inspections, investigations and audits)***

(2017/C 195/25)

*Language of the case: German*

**Parties**

*Applicant:* Germanwings GmbH (Cologne, Germany) (represented by: A. Martin-Ehlers, lawyer)

*Defendant:* European Commission (represented by: A. Buchet, T. Maxian Rusche, R. Sauer and K. Herrman, then by A. Buchet, T. Rusche, K. Herrman and S. Noë, acting as Agents)

**Re:**

Application based on Article 263 TFEU and seeking, first, partial annulment of Commission Decision (EU) 2016/152 of 1 October 2014 on State aid SA 27339 (12/C) (ex 11/NN) implemented by Germany for Zweibrücken airport and airlines using the airport (OJ 2016 L 34, p. 68), and, second, annulment of Commission Decision GESTDEM 2015/1288 of 11 May 2015 refusing partial access to the administrative file in respect of State Aid procedure SA.27339.

**Operative part of the judgment**

*The Court:*

1. *Annuls Article 1(2), in so far as it concerns the first agreement concluded between Flughafen Zweibrücken GmbH and Germanwings GmbH, and Article 3(4)(e) of Commission Decision (EU) 2016/152 of 1 October 2014 on State aid SA 27339 (12/C) (ex 11/NN) implemented by Germany for Zweibrücken airport and airlines using the airport (OJ 2016 L 34, p. 68);*

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

3. *Orders the European Commission to bear its own costs and to pay three quarters of those incurred by Germanwings;*

4. *Orders Germanwings to bear one quarter of its own costs.*

([1]) OJ C 337, 12.10.2015.

## Judgment of the General Court of 4 May 2017 — JYSK v Commission

**(Case T-403/15)** ([1])

***(Action for annulment — ERDF — Article 41(3) of Regulation (EC) No 1083/2006 — Refusal to grant a financial contribution to a major project — Undertaking responsible for project implementation — Lack of direct concern — Inadmissibility)***

(2017/C 195/26)

*Language of the case: English*

**Parties**

*Applicant:* JYSK sp. z o.o. (Radomsko, Poland) (represented by: H. Sønderby Christensen, lawyer)

*Defendant:* European Commission (represented initially by R. Lyal, B.-R. Killmann and M. Clausen, and subsequently by R. Lyal and B.-R. Killmann, acting as Agents)

**Re:**

Application based on Article 263 TFEU seeking annulment of Commission Decision C(2015) 3228 of 11 May 2015, refusing to make a financial contribution from the European Regional Development Fund (ERDF) to the major project 'European Shared Services Centre — Intelligent Logistics Systems' forming part of the operational programme 'Innovative Economy' drawn up by the Republic of Poland for the 2007-2013 programming period.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action as inadmissible;*

2. *Orders JYSK sp. z o.o. to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 311, 21.9.2015.

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## Judgment of the General Court of 27 April 2017 — Deere v EUIPO (EXHAUST-GARD)

**(Case T-622/15)** ([1])

***(EU trade mark — Application for the EU word mark EXHAUST-GARD — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation No 207/2009 — Rights of the defence — Article 75 of Regulation (EC) No 207/2009)***

(2017/C 195/27)

*Language of the case: German*

**Parties**

*Applicant:* Deere & Company (Wilmington, Delaware, United States) (represented initially by N. Weber and T. Heitmann, and subsequently by N. Weber, lawyers)

*Defendant:* European Union Intellectual Property Office (represented by: H. Kunz, acting as Agent)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 September 2015 (Case R 196/2014-4), concerning an application for registration of the word sign EXHAUST-GARD as an EU trade mark.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Deere & Company to pay the costs.*

(1) OJ C 7, 11.1.2016.

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**Judgment of the General Court of 3 May 2017 — Environmental Manufacturing v EUIPO — Société Elmar Wolf (Representation of a wolf's head)**

**(Case T-681/15)** (1)

***(EU trade mark — Opposition proceedings — Application for an EU figurative mark representing a wolf's head — Earlier international figurative mark Outils WOLF — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)***

(2017/C 195/28)

*Language of the case: English*

**Parties**

*Applicant:* Environmental Manufacturing LLP (Stowmarket, United Kingdom) (represented by: S. Malynicz QC)

*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:* Société Elmar Wolf (Wissembourg, France) (represented by: N. Boespflug, lawyer)

**Re:**

Action brought against the decision of the First Board of Appeal of EUIPO of 3 September 2015 (Case R 1252/2015-1), relating to opposition proceedings between Société Elmar Wolf and Environmental Manufacturing.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Environmental Manufacturing LLP to pay the costs.*

(1) OJ C 38, 1.2.2016.

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**Judgment of the General Court of 27 April 2017 — BASF v EUIPO — Evonik Industries (DINCH)**

**(Case T-721/15)** (1)

***(EU trade mark — Invalidity proceedings — EU word mark DINCH — Absolute grounds for refusal — Descriptiveness — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Article 52(1)(a) of Regulation No 207/2009)***

(2017/C 195/29)

*Language of the case: German*

**Parties**

*Applicant:* BASF SE (Ludwigshafen, Germany) (represented by: A. Schulz and C. Onken, lawyers)

*Defendant:* European Union Intellectual Property Office (represented by: R. Pethke and M. Fischer, acting as Agents)

*Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court:* Evonik Industries AG (Essen, Germany) (represented by A. Schabenberger, lawyer)

**Re:**

Action brought against the decision of the First Board of Appeal of EUIPO of 23 September 2015 (Case R 2080/2014-1), relating to invalidity proceedings between Evonik Industries and BASF.

**Operative part of the judgment**

*The Court:*

1. *dismisses the action;*

2. *orders BASF SE to pay the costs.*

([1]) OJ C 68, 22.2.2016.

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**Judgment of the General Court of 4 May 2017 — Haw Par v EUIPO — Cosmowell (GELENKGOLD)**

**(Case T-25/16)** ([1])

***(EU trade mark — Opposition proceedings — Application for EU figurative mark GELENKGOLD — Earlier EU figurative mark representing a tiger — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Force of res judicata — Enhanced distinctive character of the earlier mark acquired through use — Article 8(1)(b) of Regulation (EC) No 207/2009 — Right to be heard — Second sentence of Article 75 of Regulation No 207/2009 — Series of marks)***

(2017/C 195/30)

*Language of the case: German*

**Parties**

*Applicant:* Haw Par Corp. Ltd (Singapore, Singapore) (represented by: R.-D. Härer, C. Schultze, J. Ossing, C. Weber, H. Ranzinger, C. Gehweiler and C. Brockmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court:* Cosmowell GmbH (Sankt Johann in Tirol, Austria) (represented by: J. Sachs and C. Sachs, lawyers)

**Re:**

Action brought against the decision of the First Board of Appeal of EUIPO of 4 November 2015 (Case R 1907/2015-1) concerning opposition proceedings between Haw Par and Cosmowell.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Haw Par Corp. Ltd to bear the costs.*

([1]) OJ C 106, 21.3.2016.

**Judgment of the General Court of 3 May 2017 — Enercon v EUIPO — Gamesa Eólica (Blended shades of green)**

**(Case T-36/16)** ([1])

***(EU trade mark — Invalidity proceedings — EU trade mark consisting of blended shades of green — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Article 52(1)(a) of Regulation No 207/2009)***

(2017/C 195/31)

*Language of the case: English*

**Parties**

*Applicant:* Enercon GmbH (Aurich, Germany) (represented by: S. Overhage, R. Böhm and A. Silverleaf, lawyers)

*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:* Gamesa Eólica, SL (Sarriguren, Spain) (represented by: A. Sanz Cerralbo, lawyer)

**Re:**

Action brought against the decision of the Second Board of Appeal of EUIPO of 28 October 2015 (Case R 597/2015-2), concerning invalidity proceedings between Gamesa Eólica and Enercon.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Enercon GmbH to pay the costs.*

([1]) OJ C 111, 29.3.2016.

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**Judgment of the General Court of 4 May 2017 — Kasztantowicz v EUIPO — Gbb Group (GEOTEK)**

**(Case T-97/16)** ([1])

***(EU trade mark — Revocation proceedings — EU word mark GEOTEK — Article 51(1)(a) of Regulation (EC) No 207/2009 — Rule 40(5) of Regulation (EC) No 2868/95 — Evidence of genuine use of the mark — Delay — Rule 61(2) and (3) and Rule 65(1) of Regulation No 2868/95 — Notification by fax of the time limit given to the proprietor — Absence of circumstances capable of challenging the transmission report submitted by EUIPO — Article 78 of Regulation (EC) No 207/2009 — Rule 57 of Regulation No 2868/95 — Request for examination of witnesses — Discretion of EUIPO)***

(2017/C 195/32)

*Language of the case: German*

**Parties**

*Applicant:* Martin Kasztantowicz (Berlin, Germany) (represented by: R. Ronneburger, lawyer)

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

*Other party to the proceedings before the Board of Appeal of EUIPO:* Gbb Group Ltd (Letchworth, United Kingdom)

**Re:**

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 14 December 2015 (Case R 3025/2014-5) concerning revocation proceedings between Gbb Group and Mr Kasztantowicz.

**Operative part of the judgment**

*The Court:*

1. *dismisses the action;*

2. *orders Mr Martin Kasztantowicz to pay the costs.*

(1) OJ C 145, 25.4.2016.

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**Judgment of the General Court of 5 May 2017 — PayPal v EUIPO — Hub Culture (VENMO)**

**(Case T-132/16)** (1)

***(EU trade mark — Invalidity proceedings — EU word mark VENMO — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009)***

(2017/C 195/33)

*Language of the case: English*

**Parties**

*Applicant:* PayPal, Inc. (San José, California, United States) (represented by: A. Renck, lawyer, and I. Junkar, Solicitor)

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

*Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court:* Hub Culture Ltd (Hamilton, Bermuda, United Kingdom) (represented by: J. Hill, Barrister)

**Re:**

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 12 January 2016 (Case R 2974/2014-5), relating to invalidity proceedings between PayPal and Hub Culture.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 January 2016 (Case R 2974/2014-5);*

2. *Orders EUIPO to pay, in addition to its own costs, those incurred by PayPal, Inc.;*

3. *Orders Hub Culture Ltd to bear its own costs.*

(1) OJ C 191, 30.5.2016.

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**Judgment of the General Court of 3 May 2017 — Gfi PSF v Commission**

**(Case T-200/16)** (1)

***(Public service contracts — Public procurement procedure — Development, maintenance, evolution and assistance services for websites — Rejection of a tenderer's bid — Bid received already open — Article 111 (4)(b) of the Financial Regulation)***

(2017/C 195/34)

*Language of the case: French*

**Parties**

*Applicant:* Gfi PSF Sàrl (Leudelange, Luxembourg) (represented by: F. Moyse, lawyer)

*Defendant:* European Commission (represented by: S. Delaude and S. Lejeune, acting as Agents)

**Re:**

Firstly, action on the basis of Article 263 TFEU seeking the annulment of the decisions of 2 and 16 March 2016 of the Publications Office of the European Union rejecting the applicant's tender submitted in the context of the public procurement procedure concerning, in particular, the development, maintenance, evolution and assistance services for that office's websites (OJ 2015/S 251-459901) and, insofar as necessary, of the confirmatory decision of the POEU of 22 April 2016 and, secondly, action on the basis of Article 268 TFEU seeking compensation for the harm suffered by the applicant as a result of those decisions.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Gfi PSF Sàrl to pay the costs.*

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([1]) OJ C 222, 20.6.2016.

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## Judgment of the General Court of 5 May 2017 — Messe Friedrichshafen v EUIPO — El Corte Inglés (Out Door)

**(Case T-224/16)** ([1])

***(EU trade mark — Opposition proceedings — EU figurative mark Out Door — Earlier EU word mark OUTDOOR PRO — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — Article 76 of Regulation No 207/2009)***

(2017/C 195/35)

*Language of the case: English*

**Parties**

*Applicant:* Messe Friedrichshafen GmbH (Friedrichshafen, Germany) (represented by: W. Schulte Hemming, lawyer)

*Defendant:* European Union Intellectual Property Office (represented by: M. Eberl and D. Hanf, acting as Agents)

*Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court:* El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

**Re:**

Action brought against the decision of the Second Board of Appeal of EUIPO of 8 February 2016 (Case R 2302/2011-2), relating to opposition proceedings between El Corte Inglés and Messe Friedrichshafen.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Messe Friedrichshafen GmbH to pay the costs.*

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([1]) OJ C 232, 27.6.2016.

## Judgment of the General Court of 27 April 2017 — CC v Parliament

**(Case T-446/16 P)** ([1])

***(Appeal — Civil service — Recruitment — Notice of competition — Open competition — Errors in the management of the list of successful candidates — Non-contractual liability — Offers of further evidence — Material harm — Equal treatment — Distortion of the facts — Loss of an opportunity)***

(2017/C 195/36)

*Language of the case: French*

### Parties

*Appellant:* CC (represented by: G. Maximini and C. Hölzer, lawyers)

*Other party to the proceedings:* European Parliament (represented by: M. Ecker and E. Despotopoulou, acting as Agents)

### Re:

Appeal against the judgment of the European Union Civil Service Tribunal (sitting as a single judge) of 21 July 2016, CC v Parliament (F-9/12 RENV, EU:F:2016:165), seeking to have that judgment set aside.

### Operative part of the judgment

*The Court:*

1. *Sets aside the judgment of the European Union Civil Service Tribunal (sitting as a single judge) of 21 July 2016, CC v Parliament (F-9/12 RENV), in so far as the Civil Service Tribunal, first, calculated the loss of opportunity for Ms CC to be recruited as a probationary official by the Council of the European Union by excluding the period from 16 February 2006 to 31 August 2007, and secondly, calculated the loss of opportunity for Ms CC to be recruited as a probationary official by the other institutions and bodies of the European Union using a different method from that which it used in relation to the Council;*

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

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

4. *Reserves the costs.*

([1]) OJ C 371, 10.10.2016.

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## Judgment of the General Court of 26 April 2017 — OU v Commission

**(Case T-569/16)** ([1])

***(Civil service — Contract staff — Disciplinary proceedings — Suspension — Sums withheld from remuneration — Reprimand — Repayment — Article 24(4) of Annex IX to the Staff Regulations)***

(2017/C 195/37)

*Language of the case: French*

### Parties

*Applicant:* OU (represented by: J.-N. Louis and N. de Montigny, lawyers)

*Defendant:* European Commission (represented by: C. Ehrbar and F. Simonetti, acting as Agents)

### Re:

Action pursuant to Article 270 TFEU seeking, first, annulment of the decision of the Commission of 13 March 2015 rejecting the applicant's claim for repayment of the sums withheld from his remuneration during a period of six months as from 15 January 2007, and, second, repayment of those sums together with interest payable on them.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of 13 March 2015 by which the European Commission rejected the application of Mr OU for repayment of the sums withheld from his remuneration pursuant to the decision of the Commission of 14 December 2006;*

2. *Orders the Commission to repay to Mr OU the sums withheld from his remuneration pursuant to the decision of 14 December 2006;*

3. *Orders the Commission to pay the costs.*

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([1]) OJ C 211, 13.6.2016 (case initially registered before the Civil Service Tribunal of the European Union under number F-141/15 and transferred to the General Court of the European Union on 1.9.2016).

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**Judgment of the General Court of 28 April 2017 — Azoulay and Others v Parliament**

**(Case T-580/16)** ([1])

***(Civil service — Officials — Members of the temporary staff — Remuneration — Family allowances — Education allowance — Refusal to reimburse education costs — Article 3(1) of Annex VII to the Staff Regulations — Legitimate expectations — Equal treatment — Principle of sound administration)***

(2017/C 195/38)

*Language of the case: French*

**Parties**

*Applicants:* Irit Azoulay (Brussels, Belgium), Andrew Boreham (Wansin-Hannut, Belgium), Mirja Bouchard (Villers-la-Ville, Belgium) and Darren Neville (Ohain, Belgium) (represented by: M. Casado García-Hirschfeld, lawyer)

*Defendant:* European Parliament (represented by: E. Taneva and L. Deneys, acting as Agents)

**Re:**

Action brought under Article 270 TFEU, seeking annulment of the individual decisions of the Parliament of 24 April 2015 refusing to grant education allowances for the year 2014/2015 and, so far as necessary, annulment of the individual decisions of the Parliament of 17 and 19 November 2015 partially rejecting the applicants' complaints of 20 July 2015.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Ms Irit Azoulay, Mr Andrew Boreham, Ms Mirja Bouchard and Mr Darren Neville to pay the costs.*

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([1]) OJ C 145, 25.4.2016 (case initially registered before the European Union Civil Service Tribunal as Case F-9/16 and transferred to the General Court of the European Union on 1.9.2016).

## Judgment of the General Court of 28 April 2017 — HN v Commission

**(Case T-588/16)** ([1])

***(Civil Service — Officials — Regulation (EU, Euratom) No 1023/2013 — Reform of the Staff Regulations — New career rules and rules for promotion to grades AD 13 and AD 14 — Officials of grade AD 12 — Exercise of particular responsibilities — Article 30(3) of Annex XIII to the Staff Regulations — Promotion year 2014 — Request to be categorised in the type of post 'Adviser or equivalent' — Lack of response from the Appointing Authority — Promotion year 2015 — Fresh request to be categorised in the type of post 'Adviser or equivalent' or 'Head of unit or equivalent' — Rejected by the Appointing Authority — Confirmatory nature of the refusal of categorisation in the type of post 'Adviser or equivalent' — Requirements related to the pre-litigation procedure — Inadmissibility)***

(2017/C 195/39)

*Language of the case: French*

**Parties**

*Applicant:* HN (represented by: F. Sciaudone and R. Sciaudone, lawyers)

*Defendant:* European Commission (represented by: E. Ehrbar and A-C. Simon, acting as Agents, and B. Wägenbaur, lawyer)

**Re:**

Application on the basis of Article 270 TFEU seeking in particular the annulment of 'the decision rejecting the [applicant's] request to be regarded as exercising particular responsibilities giving rise to his categorisation in the type of post [of] "Adviser or equivalent" under Article 30(3) of Annex XIII of the [new] Staff Regulations' and Decision SEC(2013) 691 of 18 December 2013, entitled "Communication to the Commission amending the Rules governing the composition of the Members" Cabinets and the Spokespersons'.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Mr HN to pay the costs.*

([1]) OJ C 251, 11.7.2016 (case initially registered before the European Union Civil Service Tribunal under number F-18/16 and transferred to the General Court of the European Union on 1.9.2016)..

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## Order of the General Court of 17 March 2017 — Düll v EUIPO — Cognitect (DaToMo)

**(Case T-381/16)** ([1])

***(EU trade mark — Cancellation proceedings — Withdrawal of the application for revocation — No need to adjudicate)***

(2017/C 195/40)

*Language of the case: English*

**Parties**

*Applicant:* Klaus Düll (Südergellersen, Germany) (represented by: S. Wolff-Marting, lawyer)

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

*Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court:* Cognitect, Inc. (Durham, North Carolina, United States)

**Re:**

Action brought against the decision of the Second Board of Appeal of EUIPO of 19 April 2016 (Joined Cases R 1383/2015-2 and R 1481/2015-2), concerning cancellation proceedings between Cognitect, Inc. and Klaus Düll.

**Operative part of the order**

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

2) *Klaus Düll and Cognitect, Inc. shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

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([1]) OJ C 364, 3.10.2016.

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## Order of the Vice-President of the General Court of 10 April 2017 — Exaa Abwicklungsstelle für Energieprodukte v ACER

**(Case T-123/17 R)**

***(Application for interim measures — Energy — Decision of ACER rejecting an application for leave to intervene in Case A-001-2017 (consolidated) — Application for suspension of operation of a measure — No urgency)***

(2017/C 195/41)

*Language of the case: German*

**Parties**

*Applicant:* Exaa Abwicklungsstelle für Energieprodukte AG (Vienna, Austria) (represented by: B. Rajal, lawyer)

*Defendant:* Agency for the Cooperation of Energy Regulators (ACER) (represented by: P. Martinet and E. Tremmel, acting as Agents)

**Re:**

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of the decision of ACER of 17 February 2017 rejecting the application for leave to intervene lodged by the applicant in Case A-001-2017 (consolidated).

**Operative part of the order**

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

2. *The costs are reserved.*

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## Order of the Vice-President of the General Court of 21 April 2017 — Post Telecom v EIB

**(Case T-158/17 R)**

***(Interim measures — Public service contracts — Tendering procedure — Provision of communication services via a metropolitan area network for the buildings and offices of the European Investment Bank Group in Luxembourg — Rejection of a tenderer's bid and award of the contract to another tenderer — Application for suspension of operation — No urgency)***

(2017/C 195/42)

*Language of the case: French*

**Parties**

*Applicant:* Post Telecom SA (Luxembourg, Luxembourg) (represented by: M. Thewes, C. Saettel and T. Chevrier, lawyers)

*Defendant:* European Investment Bank (EIB) (represented by: T. Gilliams, P. Kiiver and C. Solazzo, acting as Agents, assisted by M. Belmessieri and B. Schutyser, lawyers)

**Re:**

Application based on Articles 278 TFEU and 279 TFEU seeking suspension of operation of the decision of the EIB of 6 January 2017 rejecting the tender submitted by the applicant for lot No 1 of call for tenders OP-1305, entitled 'Metropolitan area network and wide area network communication services for the European Investment Bank Group', and of the decision to award that lot to another tenderer.

**Operative part of the order**

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

2. *The order of 15 March 2017 in Case T-158/17 R is revoked.*

3. *The costs are reserved.*

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## Action brought on 10 March 2017 — Claro Sol Cleaning v EUIPO — Solemo (Claro Sol Facility Services desde 1972)

**(Case T-159/17)**

(2017/C 195/43)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Claro Sol Cleaning, SLU (Madrid, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Solemo Oy (Helsinki, Finland)

**Details of the proceedings before EUIPO**

*Applicant of the trade mark at issue:* Applicant

*Trade mark at issue:* EU figurative mark 'Claro Sol Facility Services desde 1972' — Application for registration No 13 318 993

*Procedure before EUIPO*: Opposition proceedings

*Contested decision*: Decision of the First Board of Appeal of EUIPO of 9 January 2017 in Case R 478/2016-1

**Form of order sought**

The applicant claims that the Court should:

— set aside the Decision of the First Board of Appeal of the European Union Intellectual Property Office of 9 January 2017 in Case R 478/2016-1, which partially upheld the appeal filed by Solemo Oy and partially annulled the decision ruling on opposition No. B 2472267, against the European Union trademark application No. 13.318.993 'Claro Sol Facility Services desde 1972' property of the appellant, by virtue of which the said trademark has been entirely rejected in classes 37 and 39 and partially rejected in class 35;

— grant the application for registration of the European Union trademark No. 13.318.993 'Claro Sol Facility Services desde 1972' for all services covered in classes 35, 37 and 39, due to the lack of existence of likelihood of confusion on the part of the public in the territory in which the earlier national trademark, registered in Finland under No. 250.356 'SOL', property of the intervener, is protected;

— order the intervener to bear the costs of the procedure.

**Plea in law**

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

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**Action brought on 31 March 2017 — Calhau Correia de Paiva v Commission**

**(Case T-202/17)**

(2017/C 195/44)

*Language of the case: English*

**Parties**

*Applicant:* Ana Calhau Correia de Paiva (Brussels, Belgium) (represented by: V. Villante and G. Pandey, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— Annul and set aside the following decisions and acts, where appropriate having previously declared illegal and not applicable to the applicant the Notice of Competition EPSO/AD/293/14 and the linguistic regime at issue under Article 277 TFEU:

  — the decision of the European Personnel Selection Office (EPSO) and of the Selection Board of 09/11/15 not to include the name of the candidate on the reserve list drawn from the competition EPSO/AD/293/14;

  — the decision of EPSO and of the Selection Board of 23/06/2016 not to reconsider the decision of 09/11/2015 and not to re-admit the candidate's name on the reserve list;

  — the decision of EPSO of 22/12/2016 to respond unfavorably to the applicant's administrative complaint under Article 90(2) of the Staff Regulations against the decision of the Selection Board not to enter her name in the reserve list of competition EPSO/AD/293/14 and against the negative review decision.

  — the reserve list of the competition EPSO/AD/293/14.

— Order the European Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging the breach of Article 1 of the Staff Regulations, of the principle of non-discrimination, of the principle of proportionality, and of the principle of equal opportunity with regard to the imposition by EPSO of a QWERTY EN, AZERTY FR/BE or QWERTZ DE keyboard for the realisation of the case study as well as a manifest error of assessment.

2. Second plea in law, alleging the breach of Regulation No 1 of 1958 with regard to the language regime endorsed and reinforced by the notice competition for EPSO/AD/293/14 together with a plea of illegality and inapplicability of the Notice of Competition EPSO/AD/293/14.

3. Third plea in law, alleging breach of Article 1 of the Staff Regulations, of the principle of non-discrimination and of the principle of proportionality with regard to EPSO's and/or the Selection Board's limiting of the choice of second language of candidates in the competition to German, English and French.

4. Fourth plea in law, alleging breach of the principle of equal opportunity with regard to the examination procedure for EPSO's competition.

5. Fifth plea in law, alleging breach of Article 296(2) TFEU and Article 25 of the Staff Regulations with regard to EPSO's failure to state reasons for their decisions to endorse and promote a particular language regime and also alleging that the notice of competition and Article 41 of the Charter of Fundamental rights of the European Union were breached when EPSO pursued functions which are attributed to the Selection Board.

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## Action brought on 3 April 2017 — GY v Commission

**(Case T-203/17)**

(2017/C 195/45)

*Language of the case: French*

**Parties**

*Applicant:* GY (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 for competition EPSO/AD/293/14 of 23 December 2016 not to admit the applicant to the assessment centre is annulled;

— The European Commission is ordered to pay a sum assessed *ex aequo et bono* at EUR 5 000 in respect of the non-pecuniary harm suffered;

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

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement by the selection board of the obligation to state reasons insofar as it did not disclose to the applicant the marking criteria which it adopted in execution of the judgment of 20 July 2016, *GY* v *Commission*, F-123/15, EU:F:2016:160.

2. Second plea in law, alleging infringement by the selection board of the competition notice insofar as it arbitrarily restricted its assessment of the applicant's professional experience by, in connection with three questions, looking only at the duration of that experience.

3. Third plea in law, alleging numerous manifest errors of assessment committed by the selection board of the competition, which render its decision to grant the applicant only 17 points out of 56 (the threshold being 22 points) unlawful.

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**Action brought on 3 April 2017 — Argus Security Projects v Commission and EUBAM**

**(Case T-206/17)**

(2017/C 195/46)

*Language of the case: French*

**Parties**

*Applicant:* Argus Security Projects Ltd (Limassol, Cyprus) (represented by: T. Bontinck and A. Guillerme, lawyers)

*Defendants:* European Commission, European Union Integrated Border Management Assistance Mission in Libya (EUBAM)

**Form of order sought**

The applicant claims that the General Court should:

— annul the decision of EUBAM of 24 January 2017, replacing the initial decision of 16 February 2014, not to accept the tender submitted by the Argus company in a call for tenders concerning the supply of security services as part of the European Union Integrated Border Management Assistance Mission in Libya (contract EUBAM-13-020), and to award the contract to Garda;

— order the defendants to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Article 110 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), of the rules laid down in the specifications for the award of the contract, in particular points 4.1 and 12.1 of the instructions to tenderers, and of the principles of equal treatment of tenderers and of non-discrimination. This plea is divided into three parts:

   — first part, alleging a failure to mobilise technical and operational resources in accordance with the terms of the contract;

   — second part, alleging a failure to mobilise human resources in accordance with the terms of the contract;

   — third part, alleging that the mobilisation plan was artificial and criticising the taking into account of the prior experience of tenderers in hostile environments.

2. Second plea in law, alleging a substantive amendment to the initial conditions of the contract and infringement of the principle of equal treatment. This plea is divided into two parts:

   — first part, relating to the assessment of human resources;

   — second part, relating to the assessment of technical resources and the mobilisation plan.

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## Action brought on 7 April 2017 — Mabrouk v Council

**(Case T-216/17)**

(2017/C 195/47)

*Language of the case: English*

### Parties

*Applicant:* Mohamed Marouen Ben Ali Ben Mohamed Mabrouk (Tunis, Tunisia) (represented by: J-R. Farthouat, N. Boulay, lawyers, and S. Crosby, Solicitor)

*Defendant:* Council of the European Union

### Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2017/153 of 27 January 2017 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2017 L 23, p. 19) insofar as it applies to the applicant; and

— order the defendant to pay the costs.

### Pleas in law and main arguments

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

1. First plea in law, alleging that the freeze of the applicant's assets infringes the reasonable time rule of Articles 6 and 47 of the ECHR and the EU fundamental Rights charter respectively.

2. Second plea in law, alleging that there is an insufficient basis for the freeze:

   — Contrary to the evidence presented by the applicant, the Council considers the applicant's assets to be illegitimate, but fails to state reasons.

   — In holding the applicant's assets to be illegitimate the Council makes an error of factual assessment, in so far as it has made any assessment;

   — The freeze is devoid of purpose, because it is designed to assist Tunisia to recover misappropriated assets. However, none of the applicant's assets were misappropriated.

3. Third plea in law, alleging that, by freezing his assets after the fall of President Ben Ali, the freeze infringes the applicant's right to work.

4. Fourth plea in law, alleging that the freeze is in any event disproportionate and infringes the applicant's property rights.

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## Action brought on 18 April 2017 — Recylex a.o. v Commission

**(Case T-222/17)**

(2017/C 195/48)

*Language of the case: English*

### Parties

*Applicants:* Recylex SA (Paris, France), Fonderie et Manufacture de Métaux (Anderlecht, Belgium), Harz-Metall GmbH (Goslar, Germany) (represented by: M. Wellinger, S. Reinart and K. Bongs, lawyers)

*Defendants:* European Commission

**Form of order sought**

The applicants claim that the Court should:

— reduce the amount of the fine imposed upon them in the decision of the European Commission of 8 February 2017 (C(2017) 900 final) relating to a proceeding under Article 101 TFUE;

— grant the applicants payment terms, and

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

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission erred in not applying to the applicants point 26 (final paragraph) of the Leniency Notice ([1]) as regards the duration of the infringement.

2. Second plea in law, alleging that the Commission erred in not applying to the applicants point 26 (final paragraph) of the Leniency Notice as regards the infringement concerning France.

3. Third plea in law, alleging that the Commission erred in applying a specific increase of 10 % in the calculation of the fine based on point 37 of the Fining Guidelines ([2]).

4. Fourth plea in law, alleging that the Commission erred in not granting the applicants a reduction of 50 % in the fine pursuant to the first hyphen of point 26 of the Leniency Notice.

5. Fifth plea in law, alleging that the contested decision violates the principles of proportionality and non-discrimination as well as the principle that the fine must be specific to the offender.

6. Sixth plea in law, alleging that the Court is requested to use its unlimited jurisdiction to grant the applicant payment terms for any part of the fine still due.

([1]) Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006, C 298, p. 17), as last amended by the Communication from the Commission on Amendments to the Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2015, C 256, p. 1).

([2]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006, C 210, p. 2).

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**Action brought on 19 April 2017 — Zhejiang Jndia Pipeline Industry v Commission**

**(Case T-228/17)**

(2017/C 195/49)

*Language of the case: English*

**Parties**

*Applicant:* Zhejiang Jndia Pipeline Industry Co. Ltd (Wenzhou, China) (represented by: S. Hirsbrunner, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2017, L 22, p. 14) insofar as it concerns the applicant;

— order the Commission, and any intervener who may be allowed to support the Commission in the course of the proceeding, to pay the legal costs of the applicant.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission committed various manifest errors of assessment when considering that stainless steel tube and pipe butt-welding fittings (SSBWF) of US and EU technical standards are interchangeable

   — The Commission failed in its duty to assess pertinent evidence in an impartial manner insofar as various factual statements concerning interchangeability in the contested regulation are either inaccurate, contradictory, or misleading. In particular the allegation according to which the only cooperating importer supposedly failed to submit relevant evidence is inaccurate.

   — The Commission wrongly assumed that SSBWF were double certified according to European and US standards. It exclusively based itself on unfounded last minute assertions by the complaints only appearing for the very first time in the contested regulation itself.

2. Second plea in law, alleging that the Commission committed a manifest error of assessment, and failed to provide an adequate reasoning with regard to the adjustment of the normal value and argued in a contradictory manner.

   — The Commission wrongly relied on EU industry cost and manufacturing data to determine the appropriate level of adjustment. It rejected a proposal for adjustment that was based on Chinese market data for reasons that were not justified.

   — In this respect the contested regulation violated Article 20 of the Basic Regulation and Article 296 of the TFEU and furthermore lacks sufficient statement of reasons.

3. Third plea in law, alleging that the determination of the period to be considered is vitiated by a manifest error of assessment.

   — The Commission proceeded in an arbitrary manner by not considering an alternative period although it would have been in possession of the relevant data because of a previous investigation.

4. Fourth plea in law, alleging that the procedure leading up to the contested regulation was not in compliance with general principles of EU law, such as the principles of sound administration, transparency and the applicant's rights of defence.

   — The Commission failed to provide the applicant with 'available information' in a timely fashion following the provisional disclosure. When the Commission finally released that information along with all other data and information for the first time at the final disclosure, it did not provide the applicant sufficient time to carry out a meaningful assessment.

   — It infringed the rights of defence of the applicant by not providing it with an opportunity to comment on key findings based on last minute and unverified assertions of the complainant appearing for the first time in the contested regulation.

5. Fifth plea in law, alleging that the contested regulation, adopted on 26 January 2017, wrongly establishes the applicant's anti-dumping duty in accordance with the provisions of the Basic Regulation which set out exceptional, analogue country methodology for calculating the normal value of imports from the People's Republic of China, notwithstanding that the EU's right to apply such exceptional treatment expired on 11 December 2016.

   — The European Union has committed itself to the specific terms of China's WTO Accession Protocol via the Council decision approving the accession. As an EU institution, the Commission must respect international commitments entered into by the Union in the exercise of its powers.

   — The contested regulation is further incompatible with the EU's obligation to construe its antidumping rules in conformity with international law, especially where its provisions intend specifically to give effect to an international agreement concluded by the Union.

**Action brought on 19 April 2017 — Germany v Commission**

**(Case T-229/17)**

(2017/C 195/50)

*Language of the case: German*

**Parties**

*Applicant:* Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents, and by M. Winkelmüller, F. van Schewick and M. Kottmann, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— annul Commission Decision (EU) 2017/133 of 25 January 2017 on the maintenance with a restriction in the Official Journal of the European Union of the reference of harmonised standard EN 14342:2013 'Wood flooring and parquet: Characteristics, evaluation of conformity and marking' in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council (OJ 2017 L 21, p. 113),

— annul Commission Decision (EU) 2017/145 of 25 January 2017 on the maintenance with a restriction in the Official Journal of the European Union of the reference of harmonised standard EN 14904:2006 'Surfaces for sports areas — Indoor surfaces for multi-sports use: Specification' in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council (OJ 2017 L 22, p. 62),

— annul the Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ 2017 C 76, p. 32), in so far as it relates to harmonised standard EN 14342:2013 'Wood flooring and parquet: Characteristics, evaluation of conformity and marking',

— annul the Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ 2017 C 76, p. 32), in so far as it relates to harmonised standard EN 14904:2006 'Surfaces for sports areas — Indoor surfaces for multi-sports use: Specification'; and

— order the Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging failure to comply with essential procedural requirements

   The Federal Republic of Germany submits that the Commission infringed essential procedural rules laid down in Article 18 of Regulation (EU) No 305/2011 ([1]) when it adopted the contested decisions. The Commission failed to refer the matter to the Committee established under Article 5 of Directive 98/34/EC, ([2]) the envisaged consultation of the relevant European standardisation body is flawed and the decisions were not taken 'in the light of the opinion' of the Committee established under Article 5 of that directive.

2. Second plea in law, alleging failure to comply with the obligation to state reasons

   By its second plea, the applicant claims that the contested decisions fail to comply with the obligation to state reasons laid down in the second paragraph of Article 296 TFEU, since they do not take a position on the question which is central to Article 18(1) of Regulation (EU) No 305/2011, namely whether the relevant harmonised standards are consistent with the corresponding mandate and ensure compliance with the basic requirements for buildings. It follows that neither the Federal Republic of Germany nor the General Court is able to assess the essential legal and factual grounds on which the Commission relied.

3. Third plea in law, alleging infringement of Regulation (EU) No 305/2011

Furthermore, the applicant claims that the contested decisions and communications infringe the substantive provisions of Regulation (EU) No 305/2011.

— Firstly, the contested decisions and communication infringe the first and second subparagraphs of Article 17(5) of Regulation (EU) No 305/2011, since, contrary to the abovementioned provisions, the Commission did not examine the extent to which the harmonised standards in question were consistent with the corresponding mandate and thus failed to recognise that they were not so consistent.

— Secondly, the contested decisions and communication infringe Article 18(2), in conjunction with Article 3(1) and (2) and the first subparagraph of Article 17(3), of Regulation (EU) No 305/2011. The Commission overlooked the fact that the standards in question do not set out any procedures or criteria for the assessment of the supply of other allegedly hazardous substances, are thus incomplete with regard to an essential characteristic of construction products and accordingly jeopardise compliance with the basic requirements for buildings.

— Finally, the Commission made a further error of assessment when adopting the contested measures in that it failed to recognise the possibility afforded by Article 18(2) of Regulation (EU) No 305/2011 to publish the reference to a harmonised standard in the Official Journal together with the restriction proposed by the applicant.

(1) Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ 2011 L 88, p. 5).

(2) Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 217, p. 18).

## Action brought on 19 April 2017 — Siberian Vodka v EUIPO — Friedr. Schwarze (DIAMOND ICE)

**(Case T-234/17)**

(2017/C 195/51)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Siberian Vodka AG (Herisau, Switzerland) (represented by: O. Bischof, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Friedr. Schwarze GmbH & Co. KG (Oelde, Germany)

### Details of the proceedings before EUIPO

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* International registration designating the European Union in respect of the word mark 'DIAMOND ICE' — International registration No 1 211 695

*Procedure before EUIPO*: Opposition proceedings

*Contested decision*: Decision of the Fourth Board of Appeal of EUIPO of 8 February 2017 in Case R 1171/2016-4

### Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 February 2017 in the appeal proceedings R 1171/2016-4;

— order the defendant to pay the costs.

**Plea in law**

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

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**Action brought on 20 April 2017 — Dometic Sweden v EUIPO (MOBILE LIVING MADE EASY)**

**(Case T-235/17)**

(2017/C 195/52)

*Language of the case: English*

**Parties**

*Applicant:* Dometic Sweden AB (Solna, Sweden) (represented by: R. Furneaux and E. Humphreys, Solicitors)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the proceedings before EUIPO**

*Trade mark at issue:* EU word mark 'MOBILE LIVING MADE EASY' — Application for registration No 14 952 592

*Contested decision*: Decision of the Second Board of Appeal of EUIPO of 13 February 2017 in Case R 1832/2016-2

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision with respect to the goods and services applied for, for which the decision was upheld;

— annul the EUIPO's examination dated 10 August 2016 concerning the registrability of the application;

— refer the case back to the EUIPO in order to amend its decision;

— decide on the costs for the proceedings before the Board of Appeal and the General Court.

**Plea in law**

— Infringement of Articles 75 and 7(1)(b) of Regulation No 207/2009.

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**Action brought on 25 April 2017 — Gugler v EUIPO — Gugler France (GUGLER)**

**(Case T-238/17)**

(2017/C 195/53)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Alexander Gugler (Maxdorf, Germany) (represented by: M.-C. Simon, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Gugler France (Besançon, France)

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* EU figurative mark containing the word element 'GUGLER' — EU trade mark No 3 324 902

*Procedure before EUIPO*: Proceedings for a declaration of invalidity

*Contested decision*: Decision of the First Board of Appeal of EUIPO of 31 January 2017 in Case R 1008/2016-1

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision in so far as it regards the cancellation of the EU trade mark registration No 3 324 902 and the obligation to bear the cancellation applicant's costs of EUR 550;

— order EUIPO to bear the applicant's costs in relation to the present proceedings.

**Plea(s) in law**

— Violation of the principle of sound administration;

— Infringement of Articles 8(4) and 54(2) Regulation No 207/2009.

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**Action brought on 25 April 2017 — Germany v Commission**

**(Case T-239/17)**

(2017/C 195/54)

*Language of the case: German*

**Parties**

*Applicant:* Federal Republic of Germany (represented by: D. Klebs and T. Henze)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— Annul Article 1 of and the annex to Commission Implementing Decision (EU) 2017/264 of 14 February 2017 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as payments amounting to EUR 1 964 861,71 chargeable to the EAGF made by the Hauptzollamt Hamburg-Jonas paying agency of the Federal Republic of Germany are excluded from Union funding, and

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law: no wrongful calculation and presentation of interest, alleging

an infringement of Article 31(1) in conjunction with Article 32(5) of Regulation (EC) No 1290/2005 ([1]) in conjunction with Article 6(h) of Regulation (EC) No 885/2006 ([2]) (alternatively, Article 52(1) in conjunction with Article 54(2) of Regulation (EU) No 1306/2013 ([3]) in conjunction with Article 29(f) of Implementing Regulation (EU) No 908/2014 ([4])), in so far as the payments from the funding were excluded, although the German authorities had complied with all of the relevant rules in a timely manner, in particular they had calculated and presented interest in compliance with the applicable rules in Table III in accordance with Regulation (EC) No 885/2006 (in the version of Regulation (EC) No 1233/2007 ([5])).

2. Second plea in law: failure to state reasons for the decision, alleging

an infringement of Article 296(2) TFEU, since the Commission failed to sufficiently and coherently state the reasons why, in accordance with Article 31(1) in conjunction with Article 32(5) of Regulation (EC) No 1290/2005 in conjunction with Article 6(h) of Regulation (EC) No 885/2006 in the version of Regulation (EC) No 1233/2007, an obligation is imposed on the Member States to set out recoveries and corresponding interest in a single column and also prior to the determination of interest already relating to the period from 2006 to 2008 in the context of irregularities relating to export refunds in Table III in accordance with Regulation (EC) No 885/2006 in the version of Regulation (EC) No 1233/2007 (although the existence of a claim for interest per se is not disputed). In addition, the Commission failed to sufficiently and coherently state the reasons why there is an infringement of the obligation to carry out key controls.

3. Third plea in law: deadline under Article 31(4)(a) of Regulation (EC) No 1290/2005, alleging

an infringement of Article 31(4)(a) of Regulation (EC) No 1290/2005 and Article 52(4)(a) of Regulation (EU) No 1306/2013 in so far as the Commission failed effectively to communicate the complaints (calculation and presentation of interest as well as absence of key controls), on which it based the exclusion of the expenditure, in writing, within 24 months following the date when the expenditure was incurred.

4. Fourth plea in law: excessive duration of proceedings, alleging

an infringement of Article 31 of Regulation (EC) No 1290/2005, Article 11 of Regulation (EC) No 885/2006, Article 52 of Regulation (EC) No 1306/2013 and Article 34 of Implementing Regulation (EU) No 908/2014 in conjunction with the general legal principle that administrative proceedings should be conducted within a reasonable time, and infringement of the rights of the defence, since the proceedings before the Commission lasted too long.

5. Fifth plea in law: infringement of the principle of proportionality, alleging

an infringement of Article 31(2) of Regulation (EC) No 1290/2005 and Article 52(2) of Regulation (EU) No 1306/2013 as well as of the principle of proportionality, since the Commission, by imposing a flat-rate correction of 5 %, the Commission failed to take appropriate account of the nature and the scope of the supposed infringement and ignored the fact that not only was no financial damage actually caused to the Union, but that there was never even a real danger that such damage would occur and the applicant committed only a minor fault (if any). In addition, the Commission infringed the principle of proportionality, in so far as it made a correction to the annual balance for 2010 without any apparent relation to the fiscal years 2006 to 2008 at issue.

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([1]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 201, p. 1).

([2]) Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90).

([3]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([4]) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ 2014 L 255, p. 59).

([5]) Commission Regulation (EC) No 1233/2007 of 22 October 2007 amending Regulation (EC) No 885/2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2007 L 279, p. 10).

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## Action brought on 25 April 2017 — Republic of Poland v Commission

**(Case T-241/17)**

(2017/C 195/55)

*Language of the case: Polish*

### Parties

*Applicant:* Republic of Poland (represented by: B. Majczyna, acting as Agent)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2017/264 of 14 February 2017 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes from European Union financing expenditure in the amount of EUR 25 708 035,13 incurred by the payment agency accredited by the Republic of Poland;

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

**Pleas in law and main arguments**

— In support of the action, the applicant alleges infringement of Article 52(1) of Regulation No 1306/2013 ([1]) through the application of a financial correction in relation to expenditure incurred by the Polish authorities as compensation for non-harvesting operations in 2011 in the context of exceptional support measures for the fruit and vegetable sector laid down by Regulation No 585/2011, ([2]) on the basis of a misinterpretation of the law, notwithstanding the fact that that expenditure was carried out by the Polish authorities in accordance with EU legislation, and in particular did not infringe Article 85 of Regulation No 543/2011. ([3])

([1]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([2]) Commission Implementing Regulation (EU) No 585/2011 of 17 June 2011 laying down temporary exceptional support measures for the fruit and vegetable sector (OJ 2011 L 160, p. 71).

([3]) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1).

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## Action brought on 24 April 2017 — Lackmann Fleisch- und Feinkostfabrik v EUIPO (Национальный Продукт)

**(Case T-246/17)**

(2017/C 195/56)

*Language of the case: German*

**Parties**

*Applicant:* Lackmann Fleisch- und Feinkostfabrik GmbH (Bühl, Germany) (represented by: A. Lingenfelser, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the procedure before EUIPO**

*Mark at issue:* EU figurative mark featuring the word element 'Национальный Продукт' — registration application No 14 747 513

*Contested decision*: Decision of the First Board of Appeal of EUIPO of 16 February 2017 in Case R 1017/2016-1

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision.

**Plea in law**

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

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**Action brought on 27 April 2017 — Azarov v Council**

**(Case T-247/17)**

(2017/C 195/57)

*Language of the case: German*

**Parties**

*Applicant:* Mykola Yanovych Azarov (Kiev, Ukraine) (represented by: G. Lansky and A. Egger, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

— annul, pursuant to Article 263 TFEU, Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 34) and Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 1), in so far as they relate to the applicant;

— adopt, pursuant to Article 64 of the Rules of Procedure of the General Court, certain measures of organisation of procedure, in particular:

  — questions to the Council;

  — call on the Council to state its position, in writing or orally, on certain aspects of the dispute;

  — send requests for information to the Council and third parties, inter alia, the Commission, EADS and Ukraine;

  — request documents or evidence relating to the case to be produced;

— order the Council, in accordance with Article 87 (2) of the Rules of Procedure, to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of fundamental rights

   In the context of that plea, the applicant alleges infringement of the right to property and infringement of the freedom to conduct a business. It also criticizes the disproportionality of the restrictive measures imposed.

2. Second plea in law, alleging manifest errors of assessment

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**Action brought on 24 April 2017 — avanti v EUIPO (avanti)**

**(Case T-250/17)**

(2017/C 195/58)

*Language of the case: German*

**Parties**

*Applicant:* avanti GmbH (Hamburg, Germany) (represented by: M. Bahmann, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the procedure before EUIPO**

*Mark at issue:* EU figurative mark featuring the word element 'avanti' — registration No 14 646 038

*Contested decision*: Decision of the Fifth Board of Appeal of EUIPO of 14 February 2017 in Case R 801/2016-5

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision;

— allow registration of the mark applied for on 6 October 2015 at the European Union Intellectual Property Office (EUIPO) under No 01464038 and publish the mark in order to progress the application procedure.

**Plea in law**

— infringement of Article 7 of Regulation No 207/2009.

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**Action brought on 28 April 2017 — Robert Bosch v EUIPO (Simply. Connected.)**

**(Case T-251/17)**

(2017/C 195/59)

*Language of the case: German*

**Parties**

*Applicant:* Robert Bosch GmbH (Stuttgart, Germany) (represented by: S. Völker and M. Pemsel, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the proceedings before EUIPO**

*Trade mark at issue:* EU figurative mark containing the word elements 'Simply. Connected.' — Application for registration No 14 814 057

*Contested decision*: Decision of the Fifth Board of Appeal of EUIPO of 9 March 2017 in Case R 948/2016-5

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision;

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

**Pleas in law**

— Infringement of Article 64 of Regulation No 207/2009, in conjunction with Article 263 of the Treaty on the Functioning of the European Union;

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

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**Action brought on 28 April 2017 — Robert Bosch v EUIPO (Simply. Connected.)**

**(Case T-252/17)**

(2017/C 195/60)

*Language of the case: German*

**Parties**

*Applicant:* Robert Bosch GmbH (Stuttgart, Germany) (represented by: S. Völker and M. Pemsel, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the proceedings before EUIPO**

*Trade mark at issue:* EU figurative mark containing the word elements 'Simply. Connected.' — Application for registration No 14 814 032

*Contested decision*: Decision of the Fifth Board of Appeal of EUIPO of 10 March 2017 in Case R 947/2016-5

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision;

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

**Pleas in law**

— Infringement of Article 64 of Regulation No 207/2009, in conjunction with Article 263 of the Treaty on the Functioning of the European Union;

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

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**Action brought on 28 April 2017 — Der Grüne Punkt v EUIPO — Halston Properties (Representation of a circle with two arrows)**

**(Case T-253/17)**

(2017/C 195/61)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Der Grüne Punkt — Duales System Deutschland GmbH (Cologne, Gemany) (represented by: P. Goldenbaum, I. Rohr and N. Ebbecke, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Halston Properties, s. r. o. GmbH (Bratislava, Slovakia)

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* EU figurative mark (Representation of a circle with two arrows) — EU trade mark No 298 273

*Procedure before EUIPO*: Revocation proceedings

*Contested decision*: Decision of the Fifth Board of Appeal of EUIPO of 20 February 2017 in Case R 1357/2015-5

**Form of order sought**

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the other party decides to intervene in the proceedings, order that intervener to bear its own costs.

**Plea in law**

— Infringement of Article 15(1) of Regulation No 207/2009.

# CORRIGENDA

## Corrigendum to the notice in the Official Journal concerning Case T-232/16 P

*(Official Journal of the European Union C 63 of 27 February 2017)*

(2017/C 195/62)

The notice in Case T-232/16 P, *Commission* v *Frieberger and Vallin*, should read as follows:

**Judgment of the General Court of 19 January 2017 — Commission v Frieberger and Vallin**

**(Case T-232/16 P)** [1]

***(Appeal — Civil service — Officials — Pensions — Reform of the Staff Regulations — Raising of the retirement age — Decision refusing to recalculate the bonus relating to pension rights — Principle of ne ultra petita — Error in law — Obligation to state reasons)***

(2017/C 063/39)

*Language of the case: French*

**Parties**

*Appellant:* European Commission (represented by: G. Berscheid and G. Gattinara, acting as Agents)

*Other parties to the proceedings:* Jürgen Frieberger (Woluwe-Saint-Lambert, Belgium) and Benjamin Vallin (Saint-Gilles, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

**Re:**

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 2 March 2016, *Frieberger and Vallin* v *Commission* (F-3/15, EU:F:2016:26), seeking to have that judgment set aside.

**Operative part of the judgment**

*The General Court:*

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 2 March 2016, Frieberger and Vallin v Commission (F-3/15);*
2. *Dismisses the action brought by Mr Jürgen Frieberger and Mr Benjamin Vallin before the Civil Service Tribunal in Case F-3/15;*
3. *Orders each party to bear its own costs relating to the appeal proceedings;*
4. *Orders Mr Frieberger and Mr Vallin to pay the costs of the proceedings before the Civil Service Tribunal, including the costs incurred by the European Commission;*
5. *Orders the European Parliament and the Council of the European Union to bear their own costs in relation both to the proceedings before the Civil Service Tribunal and to the present proceedings.*

[1] OJ C 243, 4.7.2016.

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