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COURT OF JUSTICE

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per le Marche (Italy) lodged on 6 March 2017 — Comune di Castelbellino v Regione Marche and Others

(Case C-117/17)

(2017/C 221/02)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per le Marche

Parties to the main proceedings

Applicant: Comune di Castelbellino

Defendants: Regione Marche, Ministero per i beni e le attività culturali, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Regione Marche Servizio Infrastrutture Trasporti Energia — P.F. Rete Elettrica Regionale, Provincia di Ancona

Questions referred

1. Does EU law (and in particular Directive 2011/92/EU, [1] in the version in force on the date of adoption of the contested measures) preclude, as a rule, a national rule or administrative practice which allows EIA screening or EIAs in respect of plants already in existence at the time when the procedure takes place, or does it, on the other hand, allow exceptional circumstances justifying a derogation from the general rule that an EIA is, by nature, a preventative assessment to be taken in into account?

2. More particularly, is such a derogation justified in the case in which a new law exempts from an EIA a specific project which would have been subject to screening on the basis of a decision of the national court that declared unconstitutional or disapplied an earlier rule providing for exemption?

[1] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1).

Request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Hungary) lodged on 7 March 2017 — Zsuzsanna Dunai v ERSTE Bank Hungary Zrt

(Case C-118/17)

(2017/C 221/03)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Parties to the main proceedings

Applicant: Zsuzsanna Dunai

Defendant: ERSTE Bank Hungary Zrt

Questions referred

1. Should point 3 [of the operative part] of the judgment delivered by the Court of Justice in Case C-26/13 be interpreted as meaning that a national court may remedy the fact that a term of a contract concluded between a seller or supplier and a consumer is invalid where the continuation of the contract is contrary to the economic interests of the consumer?

2. Is it consistent with the powers conferred on the European Union in order to ensure a high level of consumer protection and with the fundamental EU principles of equality before the law, non-discrimination, the right to an effective judicial remedy and the right to fair legal process, for the parliament of a Member State to alter, by the adoption of an act, private law contracts in similar categories concluded between a seller or supplier and a consumer?

   2/a. If the answer to the previous question is in the affirmative, is it consistent with the powers conferred on the European Union in order to ensure a high level of consumer protection and with the fundamental EU principles of equality before the law, non-discrimination, the right to an effective judicial remedy and the right to fair legal process, for the parliament of a Member State to alter, by the adoption of an act, various parts of loan contracts denominated in a foreign currency, supposedly for consumer protection purposes but triggering an effect which is in fact contrary to the fair interests of consumer protection, in that the loan contract remains valid following those alterations and the consumer is required to continue to bear the costs resulting from the foreign exchange risk?

3. With regard to the content of contracts concluded between a seller or supplier and a consumer, is it consistent with the powers conferred on the European Union in order to ensure a high level of consumer protection and with the fundamental EU principles of the right to an effective judicial remedy and the right to fair legal process in respect of any civil law matter for the standardisation panel of the highest court of a Member State to direct the rulings of courts hearing such proceedings by means of 'decisions adopted with a view to ensuring uniform interpretation of the law'?

   3/a. If the answer to the previous question is in the affirmative, is it consistent with the powers conferred on the European Union in order to ensure a high level of consumer protection and with the fundamental EU principles of the right to an effective judicial remedy and the right to fair legal process in respect of any civil law matter for the standardisation panel of the highest court of a Member State to direct the rulings of courts hearing such proceedings by means of 'decisions adopted with a view to ensuring uniform interpretation of the law' where the appointment of judges as members of the standardisation panel is not carried out transparently, in accordance with predetermined rules, where the procedure before that panel is not public, and where it is not possible to know a posteriori the procedure followed, namely the expert evidence and academic works relied on and the way in which the various members have voted (for or against)?

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 10 March 2017 — Orsolya Czakó v ERSTE Bank Hungary Zrt.

(Case C-126/17)

(2017/C 221/04)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Orsolya Czakó

Defendant: ERSTE Bank Hungary Zrt.

Questions referred

1. For the purpose of determining the amount of a loan agreement, does wording, such as that of Clauses I/1 and II/1 of the agreement at issue, which gives CHF 64 731 as an indicative amount, whilst mentioning a maximum amount of HUF 8 280 000 as the financing request, and which links determination of the amount of the loan agreement to a declaration having legal effect made by the party contracting with the consumer and to the data recorded in its books, meet the criteria of plain, intelligible language required by Article 4(2) and Article 5 of Directive 93/13/EEC? ([1])

2. If the determination made in Clauses I/1 and II/1 of the agreement does not correspond to the notion of plain, intelligible language and it is possible to examine whether the terms of those clauses are unfair, in the event that they are considered to be unfair, may the entire agreement be declared invalid, given that, in cases in which the subject matter of the agreement is not definite, the legal consequence under national law is the invalidity of the agreement in its entirety?

3. In the event that the agreement may be declared valid, can the amount be determined in the manner most favourable to the consumer?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 15 March 2017 — X-GmbH v Finanzamt Stuttgart — Körperschaften

(Case C-135/17)

(2017/C 221/05)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: X-GmbH

Defendant: Finanzamt Stuttgart — Körperschaften

Questions referred

1. Is Article 57(1) EC (now Article 64(1) TFEU) to be interpreted as meaning that a restriction in a Member State which existed on 31 December 1993 in respect of the movement of capital to and from third countries involving direct investments is not affected by Article 56 EC (now Article 63 TFEU) even if the national law in force at the relevant date restricting the movement of capital to and from third countries essentially applied only to direct investments but was extended after that date to cover also investment holdings in foreign companies below the shareholding threshold of 10 %?

2. If the first question is to be answered in the affirmative: Is Article 57(1) EC to be interpreted as meaning that a national-law restriction in respect of the movement of capital to or from third countries involving direct investments is to be regarded as applicable on the relevant date of 31 December 1993, if later national law substantially corresponding to the restriction in force at the relevant date enters into force, the restriction existing at the relevant date being nevertheless substantially amended for a short time by legislation which formally entered into force but was in practice never applied due to the fact that it was replaced by the legislation at present in force before it could be applied to a specific case for the first time?

3. If either of the first two questions is to be answered in the negative: Does Article 56 EC preclude legislation of a Member State under which the basis of assessment to tax of a taxable person resident in that Member State, which holds at least 1 % of the shares in a company established in another State (in the present case, Switzerland), includes positive income earned by that company derived from capital investments pro rata, in the amount of the shareholding, where such income is taxed at a lower rate than in the Member State?

Request for a preliminary ruling from the Curtea de Apel Constanța (Romania) lodged on 29 March 2017 — Întreprinderea Individuală Dobre M. Marius v Ministerul Finanțelor Publice — Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Galați — Serviciul Soluționare Contestații, Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Galați — Administrația Județeană a Finanțelor Publice Constanța — Serviciul Inspecție Fiscală Persoane Fizice

(Case C-159/17)

(2017/C 221/06)

Language of the case: Romanian

Referring court

Curtea de Apel Constanța

Parties to the main proceedings

Appellant: Întreprinderea Individuală Dobre M. Marius

Respondents: Ministerul Finanțelor Publice — Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Galați — Serviciul Soluționare Contestații, Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Galați — Administrația Județeană a Finanțelor Publice Constanța — Serviciul Inspecție Fiscală Persoane Fizice

Question referred

Must Articles 167, 168, 169, 179, 213(1), 214(1)(a) and 273 of Directive 2006/112/EC ([1]) be interpreted as precluding national legislation which, in circumstances such as those of the main proceedings, requires a taxpayer, whose registration for VAT purposes has been revoked, to pay to the State the VAT collected during the period in which the VAT identification code was revoked, without, however, recognising his right to deduct the VAT relating to purchases made during that period?

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

Request for a preliminary ruling from the Kúria (Hungary) lodged on 3 April 2017 — SH v TG

(Case C-168/17)

(2017/C 221/07)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: SH

Defendant: TG

Intervener: UF

Questions referred

1. Do the following obligations to pay the costs arising under a guarantee, derived from a number of counter-guarantee agreements concluded, as part of a chain of agreements, for the purpose of issuing a bank guarantee in favour of the Libyan Housing and Infrastructure Board ('HIB'), fall within the scope of Regulation No 204/2011 ([1]) or, as the case may be, Regulation No 2016/44: ([2])

   1.1. where, under a counter-guarantee agreement, a bank established in the European Union has an obligation to pay the costs to a Libyan bank which is included on the prohibition list in Annex III to Regulation No 204/2011;

1.2. where, under a counter-guarantee agreement, a bank established in the European Union has an obligation to pay the costs to a Libyan bank which is not included on the prohibition list in Annex III to Regulation No 204/2011 but the bank guarantee is issued in favour of HIB, which is included on that list;

1.3. where, during the period following the amendment of Regulation No 204/2011 by Regulation No 45/2014, Regulation No 204/2011 prohibits direct or indirect payments to any Libyan entity;

1.4. where the obligation to pay the costs arising under the guarantee derives from a counter-guarantee agreement concluded, in the context of the relationship between two banks established in the European Union, within a chain of agreements, for the purpose of issuing a bank guarantee in favour of HIB;

1.5. where calculation of the costs arising under the guarantee takes place after expiry of the guarantee period, in legal proceedings, after the entry into force of Regulation No 2016/44?

2. If the obligation referred to in points 1.1 and 1.2 above to pay the costs arising under a guarantee falls within the scope of the regulation, should the costs so arising that are paid to a Libyan bank — which was also included for a time on the prohibition list in Annex III to Regulation No 204/2011 — for the purpose of issuing a guarantee of repayment of the advance and a guarantee of proper performance in favour of HIB be considered to constitute funds used directly or indirectly for the benefit of the legal persons, entities or bodies listed in Annex III to Regulation No 204/2011?

3. Is Article 12(1)(b) of Regulation No 204/2011 to be interpreted, during the period following the amendment of that regulation by Regulation No 45/2014 (point 1.3), as meaning that the costs and expenses claimed by a Libyan bank and paid, under a counter-guarantee agreement, by a bank established in the European Union should be considered to constitute, directly or indirectly, claims under a guarantee?

4. Must a bank established in the European Union which, under a counter-guarantee agreement concluded, within a chain of agreements, for the purpose of issuing a bank guarantee in favour of HIB, is obliged to pay the costs arising under the guarantee to a Libyan entity (point 1.4) be considered to be a person or entity within the meaning of Article 12(1)(c) of Regulation No 204/2011, as amended by Regulation No 45/2014 — that is, a person or entity acting through or on behalf of or for the benefit of one of the persons, entities or bodies referred to in point (a) or (b) of Article 12(1)? Should the costs arising under the guarantee claimed by that bank from another bank established in the European Union be considered to constitute, directly or indirectly, claims under a guarantee?

5. Does the exclusion rule in Article 9 of Regulation No 204/2011 refer to any payment?

6. Where calculation of the costs arising under a guarantee takes place after the entry into force of Council Regulation No 2016/44, which repealed Regulation No 204/2011 but which contains provisions that are in essence identical (point 1.5), will Regulation No 2016/44 be applicable for the purpose of resolving the dispute between the parties and must Article 17(1)(b) of that regulation be interpreted as meaning that the costs and expenses claimed by a Libyan bank and paid, under a counter-guarantee agreement, by a bank established in the European Union, should be considered to constitute, directly or indirectly, claims under a guarantee? Must a bank established in the European Union which, under a counter-guarantee agreement concluded, within a chain of agreements, for the purpose of issuing a bank guarantee in favour of HIB, is obliged to pay the costs arising under the guarantee to a Libyan entity be considered to be a person or entity within the meaning of Article 17(1)(c) of that regulation — that is, a person or entity acting through or on behalf of or for the benefit of one of the persons, entities or bodies referred to in point (a) or (b) of Article 17(1)? Should the costs arising under the guarantee claimed by that bank from another bank established in the European Union be considered to constitute, directly or indirectly, claims under a guarantee?

([1]) Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1).

([2]) Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 (OJ 2016 L 12, p. 1).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 11 April 2017 — Ntp. Nagyszénás Településszolgáltatási Nonprofit Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-182/17)

(2017/C 221/08)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Appellant: Ntp. Nagyszénás Településszolgáltatási Nonprofit Kft.

Respondent: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Questions referred

1. Does the concept of 'bod[y] governed by public law' in the first subparagraph of Article 13(1) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax include a commercial company which is 100 % owned by a municipality?

2. If the answer to question 1 is in the affirmative, may it be considered that the commercial company acts as a public authority when performing tasks that are the responsibility of the municipality but that the latter delegates to that company?

3. If the answer to either of the previous questions is in the negative, may it be considered that the amount paid by the municipality to the commercial company for performing the tasks constitutes consideration?

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

Appeal brought on 11 April 2017 by International Management Group against the judgment of the General Court (Fifth Chamber) delivered on 2 February 2017 in Case T-29/15: International Management Group v European Commission

(Case C-183/17 P)

(2017/C 221/09)

Language of the case: English

Parties

Appellant: International Management Group (represented by: L. Levi, Avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— consequently,

  — annul the amended annex to the Commission Implementing Decision of 7.11.2013 on the Annual Action Programme 2013 in favour of Myanmar/Burma to be financed from the general budget of the European Union ([1]) adopted on 16 December 2014; and

  — order the European Commission to pay for the costs.

— order the European Commission to pay all the costs of both the appeal and of the first instance.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law:

1) Violation of the duty to state reasons — Violation of the duty to state reasons of the judge — Distortion of the file

2) Violation of Financial Regulation of 2002 ([2]) and of Financial Regulation of 2012 ([3]) — Violation of the Commission Regulation ([4]) and of the Commission Delegated Regulation ([5]) — Violation of the duty of the judge state reasons — Distortion of the file

3) Infringement of the principle of sound financial management — Infringement of the duty to state reasons — Infringement of the duty of the judge to state reasons — Infringement of the Financial Regulation of 2012 (articles 61(1) and 60(2))

4) Infringement of the principle of good administration — Infringement of the right to be heard

The appellant also challenges the decision to reject the appellant's request for production of the OLAF report.

(1) C(2013) 7682 final.
(2) Council Regulation No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended (OJ 2002, L 248, p. 1).
(3) Regulation 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 No 1605/2002 (OJ 2012, L 298, p. 1).
(4) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended (OJ 2002, L 357, p. 1).
(5) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012, L 362, p. 1).

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 12 April 2017 — flightright GmbH v Iberia Express SA

(Case C-186/17)

(2017/C 221/10)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: flightright GmbH

Defendant: Iberia Express SA

Question referred

Can a right to compensation under Article 7 of Regulation (EC) No 261/2004 (1) also exist in the case where a passenger does not catch a directly connecting flight as a result of a relatively minor delay in arrival, with the result that there is a delay in arrival at the final destination of three hours or more, but the two flights were operated by different air carriers and the booking was made through a tour operator who carried out the booking of the entire flight journey via another air carrier?

(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain) lodged on 12 April 2017 — Lu Zheng v Ministerio de Economía y Competitividad

(Case C-190/17)

(2017/C 221/11)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Applicant: Lu Zheng

Defendant: Ministerio de Economía y Competitividad

Questions referred

1. Must Article 9(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the European Union ([1]) be interpreted as precluding national legislation, such as that at issue in the main proceedings, which in order to penalise failure to comply with the obligation to declare under Article 3 of that regulation permits a fine to be imposed of up to double the value of the means of payment used?

2. Must Article 9(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the European Union be interpreted as precluding national legislation, such as that at issue in the main proceedings, which lays down as aggravating circumstances in the case of failure to comply with the obligation to declare, lack of proof of the lawful origin of the means of payment and inconsistency between the activity carried on by the person concerned [and the amount of the movement]?

3. In the event that the two preceding questions are answered in the affirmative, must Article 9(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the European Union be interpreted as meaning that the imposition of a financial penalty which, independently of the amount of the movement, can be up to 25 % of the undeclared cash satisfies the requirement of proportionality?

([1]) OJ 2005 L 309, p. 9.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 13 April 2017 — Helga Krüsemann and Others v TUIfly GmbH

(Case C-195/17)

(2017/C 221/12)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Helga Krüsemann, Gabriele Heidenreich, Doris Manneck, Rita Juretschke

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 13 April 2017 — Rita Hoffmeyer and Rudolf Meyer v TUIfly GmbH

(Case C-199/17)

(2017/C 221/13)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Rita Hoffmeyer, Rudolf Meyer

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 13 April 2017 — Eberhard Schmeer v TUIfly GmbH

(Case C-203/17)

(2017/C 221/14)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Eberhard Schmeer

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46, p. 1.

Appeal brought on 26 April 2017 by Lubrizol France SAS against the judgment of the General Court (Fifth Chamber) delivered on 16 February 2017 in Case T-191/14: Lubrizol France SAS v Council of the European Union

(Case C-223/17 P)

(2017/C 221/15)

Language of the case: English

Parties

Appellant: Lubrizol France SAS (represented by: R. MacLean, Solicitor, A. Bochon, avocat)

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

Form of order sought

The appellant claims that the Court should:

— set aside the General Court's judgment in Case T-191/14, Lubrizol France v Council of the European Union as it relates to the two pleas in the appellant's application before the General Court;

— uphold both of those pleas as well-founded;

— exercise its powers to adjudicate itself on the two pleas in question and render final judgment;

— in the alternative, refer the case back to the General Court so that it can decide upon the applicant's two pleas on infringements in law and procedure; and

— order the Council and any interveners to pay the appellant's legal costs and expenses of this procedure as well as the legal costs and expenses of the proceedings at first instance.

Pleas in law and main arguments

In support of the appeal, the appellant relies on three pleas in law.

1. First plea in law, alleging that the General Court failed to assess the Council's application of the relevant test against the correct legal standard

   The appellant avers that in failing to apply the relevant criteria contained in the Commission's communication concerning autonomous tariff suspensions and quotas (Notice 2011/C 363/02 ([1])) when assessing whether the autonomous duty suspension for BPA should be terminated, the General Court failed to properly assess the Council's and the Commission's submissions against the relevant legal test and in accordance with the correct legal standards to be applied in that situation.

2. Second plea in law, alleging that the General Court impermissibly substituted its own reasoning for that of the Council and manifestly distorted the evidence

   The appellant avers, in the first instance, that the General Court impermissibly sought to substitute its own reasoning for that of the Council and the Commission and, in so doing, provided an impermissible reason of its own for supporting the notion that the merchandise offered by the objector could be considered identical, equivalent or substitutable materials for BPA.

   In the second instance, it avers that the General Court assessed the evidence relevant to the objector's ability to supply sufficiently available volumes of the allegedly comparable merchandise to BPA in a manner that was manifestly incorrect, thereby distorting the clear sense of the evidence and its application to the evaluation of the case at first instance.

3. Third plea in law, alleging that the General Court made manifest errors in the application of the relevant procedures and the adoption of contradictory reasoning

   The appellant avers that the General Court erred in law by ruling that the Commission's power to reject an objection because of a period of delay in replying significantly longer than the 15 working days prescribed in the Commission's communication related only first contact between the objector and the requesting companies and not to subsequent communications which allowed the General Court to consider that delay irrelevant. In so doing, the General Court adopted contradictory reasoning relating to the nature, functioning and roles of the different parties to the procedure laid down by the Commission's communication.

([1]) OJ 2011, C 363, p. 6.

Appeal brought on 4 May 2017 by GX against the order of the General Court (Third Chamber) delivered on 3 March 2017 in Case T-556/16: GX v European Commission

(Case C-233/17 P)

(2017/C 221/16)

Language of the case: English

Parties

Appellant: GX (represented by: G.-M. Enache, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal and, consequently, annul the contested decision of the appointing authority;

— pay compensation in respect of the material and non-material harm suffered on account of that decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By his appeal, the appellant requests the Court to set aside the order of the General Court of 3 March 2017 in Case T-556/16, GX v Commission, by which his action for annulment of the decision of the selection board of open competition EPSO/AD/248/13 not to include his name on the reserve list of successful candidates in that competition, was dismissed.

In support of the appeal, the applicant relies on two pleas in law:

1. The illegality of the notice of competition, of the corrigendum, and of the Assessment Centre fundamental principles

   The appellant considers that the competition notice is unlawful insofar as it does not provide an objective justification either as regards the limitation of the choice of second language (German, English or French) in the light of the interest of the service or as regards the proportionality of that limitation with regard to the real needs of the service.

   Secondly, the appellant claims the illegality, lack of validity and of scientific foundation of the Assessment Centre fundamental principles governing EPSO open competitions as there is no support, evidence, or verification of the fundamental practices used at EPSO based on the following principles: (i) 'past behavior is the best predictor of future performance', (ii) 'assessment centers, simulating real-life working situations, are the best predictor of real-life performance'.

   Thirdly, the appellant claims the illegality of a corrigendum published in competition EPSO/AD/248/13.

2. Procedural irregularities at the Assessment Centre.

   The appellant raises a certain number of alleged procedural irregularities at the assessment center in competition EPSO/AD/248/13.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 10 May 2017 — Gert Teglgaard, Fløjstrupgård I/S v Fødevareministeriets Klagecenter

(Case C-239/17)

(2017/C 221/17)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Gert Teglgaard, Fløjstrupgård I/S

Defendant: Fødevareministeriets Klagecenter

Questions referred

1. In a situation where a farmer does not comply with the statutory management requirements and the good agricultural and environmental conditions in a calendar year, and a reduction is therefore to be applied to the farmer's direct payments: see Article 6(1) of Council Regulation No 1782/2003, ([1]) read in conjunction with Article 66(1) of Commission Regulation No 796/2004, ([2]) is the aid reduction then to be calculated on the basis of the farmer's direct payments:

   (a) in the calendar year in which the non-compliance occurs, or

   (b) in the (subsequent) calendar year of the determination/finding of the non-compliance?

2. Is the result the same under the subsequent rules set out in Article 23(1) of Council Regulation No 73/2009, ([3]) read in conjunction with Article 70(4) and 8(a) of Commission Regulation No 1122/2009? ([4])

3. In a situation where a farmer does not comply with the statutory management requirements and the good agricultural and environmental conditions in 2007 and 2008, but the non-compliance is first determined/found in 2011, is it then Council Regulation No 1782/2003, read in conjunction with Commission Regulation No 796/2004, that applies in the calculation of the aid reduction, or is it Council Regulation No 73/2009, read in conjunction with Commission Regulation No 1122/2009, that applies?

([1]) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ L 270, 2003, p. 1).

([2]) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ L 141, 2004, p. 18).

([3]) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30,2009, p. 16).

([4]) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ L 316,2009, p. 65).

Appeal brought on 2 May 2017 by Holistic Innovation Institute, S.L.U. against the judgment of the General Court (Fifth Chamber) delivered on 16 February 2017 in Case T-706/14, Holistic Innovation Institute v REA

(Case C-241/17 P)

(2017/C 221/18)

Language of the case: Spanish

Parties

Appellant: Holistic Innovation Institute, S.L.U. (represented by: J.J. Marín López, lawyer)

Other party to the proceedings: Research Executive Agency (REA)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Fifth Chamber) of 16 February 2017, *Holistic Innovation Institute* v *REA*, T-706/14, EU:T:2017:89;

— annul the decision of the Director of the Research Executive Agency of 24 July 2014 [ARES(2014) 2461172], terminating the negotiation with Holistic Innovation Institute, S.L.U. and rejecting its participation in the European projects Inachus and ZONeSEC;

— grant Holistic Innovation Institute, S.L.U. compensation under the terms set out in paragraph 177 of the appeal.

Pleas in law and main arguments

1. Error of law in that the General Court held, in the judgment under appeal, that the REA acted within its powers, and did not exceed the limits of the tasks assigned to it in relation to the management of the Seventh Framework Programme, in assessing Holistic Innovation Institute's capacity and excluding it from the negotiations in the context of the projects Inachus and ZONeSEC (paragraph 39 of the judgment under appeal).

2. Error of law in that the General Court interpreted the first paragraph of Section 2.2.2, of the annex to Decision 2012/838 as meaning that it allows the REA to exclude Holistic Innovation Institute from the negotiation in the context of the projects Inachus and ZONeSEC (paragraph 126 of the judgment under appeal).

3. Error of law in that General Court, in the judgment under appeal, held that the decision at issue was well founded (paragraph 67 of the judgment under appeal) even though the decision at issue refers, as an integral part of its statement of reasons, first, to the Commission Decision [ARES (2014) 710158] of 13 March 2014 rejecting the appellant's participation in the eDIGIREGION project (paragraphs 57 and 60 to 62 of the judgment under appeal), and, secondly, to the final audit reports 11-INFS-025 and 11-BA119-016 (paragraphs 63 and 64 of the judgment under appeal), whereas both the Commission Decision of 13 March 2014 [ARES (2014) 710158] and the final audit reports 11-INFS-025 and 11-BA119-016 were the subject of actions for annulment.

4. Error of law in that the General Court, in the judgment under appeal, distorted the assessment of the evidence adduced by asserting that the REA had requested certain information from the appellant 'on numerous occasions' (paragraph 75 of the judgment under appeal), that it had 'repeated its request' by letter of 14 May 2014 (paragraph 78 of the judgment under appeal) and that there had been 'several written exchanges between the REA and the [appellant]' (paragraph 118 of the judgment under appeal).

5. Error of law in that the General Court distorted, in the judgment under appeal, the assessment of the evidence adduced by referring, in paragraphs 8, 77 and 78, to a non-existent document which was not in the file.

6. Error of law in that the General Court, in the judgment under appeal, found that the decision at issue was well founded (paragraphs 80, 84, 94, 108 and 127 of the judgment under appeal) even though it infringes Section 2.2.2 of the Annex to Decision 2012/838 since it disregards the positive evaluation of the appellant's operational capacity carried out by independent external evaluators, without a 'solid and well-supported line of argument'.

7. Error of law in that the General Court failed to state reasons, in the judgment under appeal, for its assertion that 'the [appellant] did not provide any evidence capable of invalidating the reasoning [of the REA]' (paragraph 58 of the judgment under appeal) and that its letter of 2 June 2014, attached to the appeal as Annex A.26, 'reproduced a part of the information set out in the explanatory document referred to in paragraph 8 above, without however providing the specific information that the REA had sought, as indicated in paragraphs 7, 9 and 10 above' (paragraph 78 of the judgment under appeal).

8. Error of law in that the General Court considered, in the judgment under appeal, that the schedule set out in the negotiating mandates envisaged the end of the negotiation 'on an indicative basis' (paragraph 130 of the judgment under appeal).

9. Error of law in that the General Court incorrectly held, in the judgment under appeal, that it was not necessary to repair the material and immaterial damage suffered as a result of the adoption of the decision at issue (paragraphs 147, 148 and 150 of the judgment under appeal).

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 12 May 2017 — Ryanair Ltd v The Revenue Commissioners

(Case C-249/17)

(2017/C 221/19)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Ryanair Ltd

Defendant: The Revenue Commissioners

Questions referred

1. Can a future intention to provide management services to a takeover target, in the event that the takeover is successful, be sufficient to establish that the potential acquirer is engaged in economic activity for the purposes of Art. 4 of the Sixth VAT Directive ([1]) so that VAT charged to the potential acquirer on goods or services provided for the purposes of seeking to progress the relevant acquisition can potentially be considered as VAT on an input to the intended economic activity of providing such management services; and

2. Can there be a sufficient 'direct and immediate link', as identified as a requirement by the CJEU in Cibo ([2]), between professional services rendered in the context of such a potential takeover and output, being the potential provision of management to the acquisition target in the event that the takeover is successful, so as to permit a deduction to be made in respect of the VAT payable on those professional services?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977, L 145, p. 1).

([2]) Judgment of 27 September 2001, *Cibo Participations SA v Directeur régional des impôts du Nord-Pas-de-Calais*, C-16/00, EU:C:2001:495.

Action brought on 12 May 2017 — European Commission v Italian Republic

(Case C-251/17)

(2017/C 221/20)

Language of the case: Italian

Parties

Applicant: European Commission (represented by E. Manhaeve and L. Cimaglia, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that, by failing to adopt all the measures necessary to implement the judgment of the Court of 19 July 2012 in Case C-565/10 *Commission* v *Italy*, the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU;

— order the Italian Republic to make a penalty payment in the amount of EUR 346 922,40 for each day of delay in implementing the judgment in Case C-565/10 from the date of judgment in the present case to the date of implementation of the judgment in Case C-565/10, less a possible reduction calculated by the proposed reduction formula;

— order the Italian Republic to pay a lump sum of EUR 39 113,80 per day from the date of the judgment in Case C-565/10 until the date of judgment in the present case or until implementation of the judgment in Case C-565/10, with a minimum total amount of EUR 62 699 421,40;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By its application, the Commission takes issue with the failure to give effect to the judgment delivered by the Court on 19 July 2012 in relation to 80 of the Italian agglomerations which were the subject of that judgment.

In this respect, the Italian Republic acknowledges its failure to fulfil its obligations under Article 3 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment ([1]) in relation to 35 agglomerations. It also acknowledges its failure to fulfil its obligations under Articles 4 and 10 of that directive in relation to 70 agglomerations.

From this the Commission concludes that the Italian Republic has not taken all of the measures necessary to implement in full the judgment of 19 July 2012.

([1]) OJ 1991 L 135, p. 40.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 15 May 2017 — Regina Lorenz and Prisca Sprecher v TUIfly GmbH

(Case C-254/17)

(2017/C 221/21)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Regina Lorenz, Prisca Sprecher

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46, p. 1.

GENERAL COURT

Judgment of the General Court of 16 May 2017 — AW v EUIPO — Pharma Mar (YLOELIS)

(Case T-85/15) ([1])

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

(2017/C 221/22)

Language of the case: English

Parties

Applicant: Alfa Wassermann SpA (AW) (Alanno, Italy), authorised to replace Alfa Wassermann Hungary Kft. (represented by: M. Best, U. Pfleghar and S. Schäffner, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Pharma Mar, SA (Colmenar Viejo, Spain) (represented by: N. González-Alberto Rodríguez, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 18 December 2014 (Case R 1100/2014-1), relating to opposition proceedings between Pharma Mar and Alfa Wassermann Hungary.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alfa Wassermann SpA (AW) to pay the costs.*

([1]) OJ C 118, 13.4.2015.

Judgment of the General Court of 15 May 2017 — Morton's of Chicago v EUIPO — Mortons the Restaurant (MORTON'S)

(Case T-223/15) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark MORTON'S — Earlier non-registered national trade marks MORTON'S, MORTONS, MORTON'S CLUB, MORTONS CLUB, MORTON'S THE RESTAURANT, MORTONS RESTAURANT and M MORTON'S — Relative ground for refusal — Declaration of invalidity — Article 8(4) and Article 53(1)(c) of Regulation (EC) No 207/2009)

(2017/C 221/23)

Language of the case: English

Parties

Applicant: Morton's of Chicago, Inc. (Chicago, Illinois, United States) (represented by: J. Moss, Barrister)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Mortons the Restaurant Ltd (London, United Kingdom) (represented by: J. Barry, Solicitor, and P. Nagpal, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 12 February 2015 (Case R 46/2014-1), relating to invalidity proceedings between Mortons The Restaurant and Morton's of Chicago.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Morton's of Chicago, Inc. to pay the costs.*

([1]) OJ C 228, 13.7.2015.

Judgment of the General Court of 16 May 2017 — Agria Polska and Others v Commission

(Case T-480/15) ([1])

(Competition — Agreements, decisions and concerted practices — Abuse of dominant position — Distribution of plant protection products market — Decision to reject a complaint — Alleged anticompetitive behaviour of producers and distributors — Concerted or coordinated action of lodging complaints, by producers and distributors, before administrative and criminal authorities — Reporting alleged infringements of the applicable rules by parallel importers — Administrative inspections subsequently carried out by the administrative authorities — Imposition of administrative and criminal penalties by national authorities on parallel importers — Assimilation of complaints by producers and distributors to vexatious actions or abuses of administrative procedures — Lack of European Union interest — Right to effective judicial protection)

(2017/C 221/24)

Language of the case: Polish

Parties

Applicants: Agria Polska sp. z o.o., (Sosnowiec, Poland), Agria Chemicals Poland sp. z o.o., (Sosnowiec), Star Agro Analyse und Handels GmbH (Allerheiligen bei Wildon, Austria) and Agria Beteiligungsgesellschaft mbH (Allerheiligen bei Wildon) (represented initially by S. Dudzik and J. Budzik, and subsequently by P. Graczyk and W. Rocławski, lawyers,)

Defendant: European Commission (represented by: J. Szczodrowski, A. Dawes and J. Norris Usher, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Decision C(2015) 4284 final of 19 June 2015 (Case AT.39864 — BASF (formerly AGRIA and Others v BASF and Others)), rejecting the applicants' complaint concerning infringements of Article 101 and/or Article 102 TFEU allegedly committed, essentially, by 13 producers and distributors of plant protection products, with the assistance or through four professional organisations and a law firm.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Agria Polska sp. z o.o., Agria Chemicals Poland sp. z o.o., Star Agro Analyse und Handels GmbH and Agria Beteiligungsgesellschaft mbH to pay the costs.*

([1]) OJ C 337, 12.10.2015.

Judgment of the General Court of 16 May 2017 — Airhole Facemasks v EUIPO — sindustrysurf (AIR HOLE FACE MASKS YOU IDIOT)

(Case T-107/16) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark AIR HOLE FACE MASKS YOU IDIOT — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 — Power to alter decisions)

(2017/C 221/25)

Language of the case: English

Parties

Applicant: Airhole Facemasks, Inc. (Vancouver, Canada) (represented by: S. Barker, Solicitor, and A. Michaels, Barrister)

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

Other party to the proceedings before the Board of Appeal of EUIPO: sindustrysurf, SL (Trapagaran, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 18 January 2016 (Case R 2547/2014-4), relating to invalidity proceedings between Airhole Facemasks and sindustrysurf.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 18 January 2016 (Case R 2547/2014-4), relating to invalidity proceedings between Airhole Facemasks, Inc. and sindustrysurf, SL, and alters it to the effect that the appeal brought before EUIPO by sindustrysurf against the Cancellation Division's decision of 30 July 2014 is dismissed;*

2. *Orders Airhole Facemasks and EUIPO to bear their own respective costs incurred before the General Court;*

3. *Orders sindustrysurf to pay the costs incurred by Airhole Facemasks before the Board of Appeal of EUIPO;*

4. *Dismisses the action as to the remainder.*

([1]) OJ C 175, 17.5.2016.

Judgment of the General Court of 18 May 2017 — Reisswolf v EUIPO (secret.service.)

(Case T-163/16) ([1])

(EU trade mark — Application for EU word mark secret.service. — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Examination of the facts by EUIPO of its own motion — Article 76 of Regulation No 207/2009 — Duty to state reasons — Article 75 of Regulation No 207/2009)

(2017/C 221/26)

Language of the case: German

Parties

Applicant: Reisswolf Akten- und Datenvernichtung GmbH & Co. KG (Hamburg, Germany) (represented by: A. Ebert-Weidenfeller, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 February 2016 (Case R 1820/2015-4) concerning an application for registration of the word sign secret.service. as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Reisswolf Akten- und Datenvernichtung GmbH & Co. KG to pay the costs.*

([1]) OJ C 200, 6.6.2016.

Judgment of the General Court of 18 May 2017 — Panzeri v Parliament

(Case T-166/16) ([1])

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid)

(2017/C 221/27)

Language of the case: Italian

Parties

Applicant: Pier Antonio Panzeri (Calusco d'Adda, Italy) (represented by: C. Cerami, lawyer)

Defendant: European Parliament (represented by: N. Lorenz, A. Caiola, G. Corstens and S. Seyr, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of the decision of the General Secretariat of the Parliament of 11 February 2016 concerning the recovery from the applicant of the sum of EUR 83 764,34 and of the debit note relating thereto of the same date.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Pier Antonio Panzeri to pay the costs.*

([1]) OJ C 200, 6.6.2016.

Judgment of the General Court of 16 May 2017 — Mühlbauer Technology v EUIPO (Magicrown)

(Case T-218/16) ([1])

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

(2017/C 221/28)

Language of the case: German

Parties

Applicant: Mühlbauer Technology GmbH (Hamburg, Germany) (represented by: M. Zintler and A. Stolz, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 7 March 2016 (Case R 1213/2015-4) concerning and application for registration of word sign Magicrown as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mühlbauer Technology GmbH to pay the costs.*

(1) OJ C 232, 27.6.2016.

Judgment of the General Court of 17 May 2017 — adp Gauselmann v EUIPO (MULTI FRUITS)

(Case T-355/16) (1)

(EU trade mark — Application for EU word mark MULTI FRUITS — Absolute grounds for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2017/C 221/29)

Language of the case: German

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: P. Koch Moreno, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 29 April 2016 (Case R 1043/2015-5) concerning an application for registration of the word sign MULTI FRUITS as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders adp Gauselmann GmbH to pay the costs.*

(1) OJ C 296, 16.8.2016.

Judgment of the General Court of 11 May 2017 — Bammer v EUIPO — mydays (MÄNNERSPIELPLATZ)

(Case T-372/16) (1)

(EU trade mark — Invalidity proceedings — EU word mark MÄNNERSPIELPLATZ — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 221/30)

Language of the case: German

Parties

Applicant: Alexander Bammer (Sindelfingen, Germany) (represented by: W. Riegger, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: mydays GmbH (Munich, Germany) (represented by: F. Pfefferkorn, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 28 April 2016 (Case R 1796/2015-1) concerning invalidity proceedings between mydays and Mr Bammer.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Alexander Bammer to pay the costs.*

([1]) OJ C 314, 29.8.2016.

Judgment of the General Court of 18 May 2017 — Sabre GLBL v EUIPO (INSTASITE)

(Case T-375/16) ([1])

(EU trade mark — Application for the EU word mark INSTASITE — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 221/31)

Language of the case: English

Parties

Applicant: Sabre GLBL, Inc. (Southlake, Texas, United States) (represented by: J. Zecher, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 27 April 2016 (Case R 1742/2015-2), relating to an application for registration of the word sign INSTASITE as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sabre GLBL, Inc. to pay the costs.*

([1]) OJ C 326, 5.9.2016.

Judgment of the General Court of 18 May 2017 — Makhlouf v Council

(Case T-410/16) ([1])

(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Rights of the defence — Right to effective judicial protection — Obligation to state reasons — Manifest error of assessment — Right to protection of reputation — Right to property — Presumption of innocence — Restrictions on entry into and transit through the territory of the European Union — Proportionality)

(2017/C 221/32)

Language of the case: French

Parties

Applicant: Rami Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendants: Council of the European Union (represented by: initially, S. Kyriakopoulou, G. Étienne and A. Vitro, then by S. Kyriakopoulou and A. Vitro, and subsequently by S. Kyriakopoulou and J. Bauerschmidt, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: F. Castillo de la Torre, L. Havas and R. Tricot, acting as Agents)

Re:

APPLICATION pursuant to Article 263 TFEU seeking the annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125) and of the subsequent measures giving effect to that decision, in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Rami Makhlouf to bear his own costs and to pay those of the Council of the European Union;*

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

(1) OJ C 371, 10.10.2016.

Judgment of the General Court of 16 May 2017 — Marsh v EUIPO (LegalPro)

(Case T-472/16) (1)

(EU trade mark — Application for the EU word mark LegalPro — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 221/33)

Language of the case: German

Parties

Applicant: Marsh GmbH (Frankfurt am Main, Germany) (represented by: W. Riegger, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 17 June 2016 (Case R 146/2016-4) concerning the application for registration of the word sign 'LegalPro' as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 383, 17.10.2016.

Judgment of the General Court of 17 May 2017 — PG v Frontex

(Case T-583/16)

(Civil service — Temporary staff — Non-renewal of a fixed-term contract — Renewal procedure — Article 266 TFEU — Duty of care — Non-contractual liability)

(2017/C 221/34)

Language of the case: French

Parties

Applicant: PG (represented by: S. Pappas, lawyer)

Defendant: European Border and Coast Guard Agency (Frontex) (represented by: H. Caniard and S. Drew, acting as Agents, assisted by B. Wägenbaur, lawyer)

Re:

ACTION based on Article 270 TFEU and seeking, first, annulment of the decision of 9 June 2015, taken by the authority in Frontex empowered to conclude contracts of employment, not to renew the applicant's contract and, second, compensation for the harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

Judgment of the General Court of 16 May 2017 — CW v Parliament

(Case T-742/16) ([1])

(Civil service — Officials — Psychological harassment — Article 12a of the Staff Regulations — Obligation to provide assistance — Internal Rules for the Advisory Committee on Harassment and its Prevention in the Workplace — Article 24 of the Staff Regulations — Request for assistance — Rejection — Decision rejecting the complaint — Independent content — Premature nature of the complaint — None — Role and powers of the Advisory Committee on Harassment and its Prevention in the Workplace — Option for an official to approach the Committee — Non-contractual liability)

(2017/C 221/35)

Language of the case: English

Parties

Applicant: CW (represented by: C. Bernard-Glanz, lawyer)

Defendant: European Parliament (represented by: E. Taneva and M. Dean, acting as Agents)

Re:

Action pursuant to Article 270 TFEU seeking, first, annulment of the European Parliament's decision of 8 April 2013 refusing to grant the request for assistance, submitted by the applicant because of the psychological harassment to which she felt she had been subjected by her superiors, and annulment of the decision of the Secretary-General of the Parliament of 23 October 2013 rejecting her complaint of 9 July 2013 and, second, damages to make good the loss the applicant is alleged to have suffered.

Operative part of the judgment

The Court:

1. *Annuls the decision of 23 October 2013 of the Secretary General of the European Parliament, acting as the appointing authority, rejecting CW's complaint of 9 July 2013;*

2. *Rejects as inadmissible the application for annulment of the decision of the Parliament of 8 April 2013 rejecting the request for assistance made by CW;*

3. *Orders the Parliament to pay CW, in respect of non-material damage suffered, a sum of EUR 2 000 with default interest from the date of delivery of the present judgment at the rate fixed by the European Central Bank (ECB) for its main refinancing operations;*

4. *Dismisses the claim for damages as to the remainder;*

5. *Declares that the Parliament is to bear its own costs and orders it to pay those incurred by CW in the original proceedings before the Civil Service Tribunal in the action in Case F-124/13, in the proceedings on appeal in Case T-309/15 P and in the present proceedings after referral back in Case T-742/16 RENV.*

([1]) OJ C 52, 22.2.2014 (case initially registered before the European Union Civil Service Tribunal under Case No F-124/13).

Order of the General Court of 3 May 2017 — De Nicola v EIB

(Case T-55/16 P) ([1])

(Appeal — Civil Service — EIB staff — Appraisal — Career evaluation report — Appraisal year 2009 — Errors of law — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2017/C 221/36)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: G. Nuvoli and G. Faedo, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Single Judge) of 18 December 2015, *De Nicola* v *EIB* (F-45/11, EU:F:2015:167) seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Carlo De Nicola shall bear his own costs and pay those incurred by the European Investment Bank (EIB) in the present appeal.*

([1]) OJ C 106, 21.3.2016.

Order of the General Court of 3 May 2017 — De Nicola v EIB

(Case T-59/16 P) ([1])

(Appeal — Civil Service — EIB staff — Appraisal — Career evaluation report — Appraisal year 2012 — Errors of law — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2017/C 221/37)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: initially by: G. Nuvoli and F. Martin, and subsequently by: G. Nuvoli and G. Faedo, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Single Judge) of 18 December 2015, De Nicola v EIB (F-9/14, EU:F:2015:163) seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Carlo De Nicola shall bear his own costs and pay those incurred by the European Investment Bank (EIB) in the present appeal.*

([1]) OJ C 111, 29.3.2016.

Order of the General Court of 3 May 2017 — De Nicola v EIB

(Case T-60/16 P) ([1])

(Appeal — Civil Service — EIB staff — Appraisal — Career evaluation report — Appraisal year 2011 — Errors of law — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2017/C 221/38)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: initially by: G. Nuvoli and F. Martin, and subsequently by: G. Nuvoli and G. Faedo, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Single Judge) of 18 December 2015, *De Nicola* v *EIB* (F-55/13, EU:F:2015:165) seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Carlo De Nicola shall bear his own costs and pay those incurred by the European Investment Bank (EIB) in the present appeal.*

([1]) OJ C 111, 29.3.2016.

Order of the General Court of 3 May 2017 — De Nicola v EIB

(Case T-70/16 P) ([1])

(Appeal — Civil Service — EIB staff — Psychological harassment — Non-contractual liability — Errors of law — Appeal manifestly unfounded)

(2017/C 221/39)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: G. Nuvoli and G. Faedo, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Single Judge) of 18 December 2015, De Nicola v EIB (F-104/13, EU:F:2015:164) seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Carlo De Nicola shall bear his own costs and pay those incurred by the European Investment Bank (EIB) in the present appeal.*

([1]) OJ C 111, 29.3.2016.

Order of the General Court of 4 May 2017 — De Masi v Commission

(Case T-341/16) ([1])

(Action for annulment — Access to documents — Request for access on the basis of the inter-institutional cooperation by virtue of Article 230 TFEU — Documents concerning the work of the 'Code of conduct (Business Taxation)' group instituted by the Council — Act not open to challenge — Inadmissibility)

(2017/C 221/40)

Language of the case: German

Parties

Applicant: Fabio De Masi (Brussels, Belgium) (represented by: A. Fischer-Lescano, professor)

Defendant: European Commission (represented by: F. Erlbacher and J. Baquero Cruz, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of the decision contained in the Commission's letter of 8 June 2016, responding to the request of the President of the European Parliament's Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE2) for full access to the documents of the 'Code of conduct (Business Taxation)' group.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Fabio De Masi shall bear his own costs and pay those incurred by the European Commission.*

([1]) OJ C 287, 8.8.2016.

Action brought on 14 April 2017 — L v Parliament

(Case T-59/17)

(2017/C 221/41)

Language of the case: English

Parties

Applicant: L (represented by: I. Coutant Peyre, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the Parliament to dismiss the applicant dated 24/06/2016 and received on 25/07/2016;

— order the Parliament to pay non-pecuniary damages of 100 000 euros; and

— order the Parliament to pay legal costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the principles of protection of whistle-blowers as defined by Articles 22 (a), Article 22 (b) of the Staff Regulations, Article 6(1) of the Internal Rules.

2. Second plea in law, alleging absence of motivation.

3. Third plea in law, alleging obvious error of assessment.

4. Fourth plea in law, alleging breach of the principal of proportionality.

5. Fifth plea in law, alleging breach of the duty of care.

6. Sixth plea in law, alleging absence of response by the Parliament to the applicant's request of assistance, breach of the right to the defence, breach of the right to conciliation.

7. Seventh plea in law, alleging breach of the right of access to the documents.

8. Eighth plea in law, alleging misuse of powers.

Action brought on 19 April 2017 — Falmouth University v Commission

(Case T-227/17)

(2017/C 221/42)

Language of the case: English

Parties

Applicant: Falmouth University (Falmouth, United Kingdom) (represented by: V. Sloane, Barrister, F. Harmel, lawyer and T. Kotsonis, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission finding in relation to ERDF Programming Period 2007-2013, that irregularities had occurred in the operation 'Enhancing the Creative Knowledge Base of Cornwall' and that a flat-rate financial correction of 25 % was required;

— order the European Commission to bear its own costs and to pay those incurred by the applicant.

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 Commission erroneously found that the selection criteria were in breach of Article 44 (2) of Directive 2004/18/EC ([1]).

2. Second plea in law, alleging that the Commission was not entitled to rely on the three additional alleged irregularities.

3. Third plea in law, alleging that in any event, the Commission erroneously found there were three additional alleged irregularities.

4. Fourth plea in law, alleging that the Commission has acted manifestly irrationally and disproportionately in deciding that the amount of the financial correction is 25 %.

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

Action brought on 17 April 2017 — Balti Gaas v Commission and INEA

(Case T-236/17)

(2017/C 221/43)

Language of the case: English

Parties

Applicant: Balti Gaas OÜ (Tallinn, Estonia) (represented by: E. Tamm and L. Naaber-Kivisoo, lawyers)

Defendants: European Commission and Innovation and Networks Executive Agency (INEA)

Form of order sought

The applicant claims that the Court should:

— annul the defendants decision of 17 February 2017 Ref Ares(2017)890302 ([1]);

— order the defendants to bear their costs and pay those incurred by the applicant.

Pleas in law and main arguments

In support of the action, the applicant submits that the defendants have not ensured that the procedures followed in awarding grants would have complied with the principles of legality, transparency and sound administration and relies on four pleas in law.

1. First plea in law, alleging lack of competence.

2. Second plea in law, alleging an infringement of an essential procedural requirement on the ground of failure to give a statement of reasons.

3. Third plea in law, alleging a lack of statement of reasons.

4. Fourth plea in law, alleging lack of material accuracy of the statement of reasons.

([1]) Decision taken in relation to Commission's Implementing Decision C(2016)1587 final of 17/03/2016 on amending Commission Implementing Decision C(2014)2080 establishing the multiannual work programme for granting financial aid in the field of trans-European energy infrastructure under the Connecting Europe Facility for the period 2014-2020

Action brought on 24 April 2017 — Ecolab Deutschland and Lysoform Dr. Hans Rosemann v ECHA

(Case T-243/17)

(2017/C 221/44)

Language of the case: English

Parties

Applicants: Ecolab Deutschland GmbH (Monheim, Germany) and Lysoform Dr. Hans Rosemann GmbH (Berlin, Germany) (represented by: K. Van Maldegem, M. Grunchard and P. Sellar, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicants claim that the Court should:

— declare the application admissibble and well-founded;

— annul the decision of the European Chemicals Agency ('ECHA') concerning the inclusion of the company Sasol Chemie GmbH & Co. KG, as active supplier for the substance 1-Propanol on the list provided by Article 95(1) of Regulation (EU) No 528/2012 ([1]) (the 'Article 95 List') for product types 1, 2 and 4;

— order ECHA to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 95(1), second paragraph, of Regulation (EU) No 528/2012

   — The applicants put forward that ECHA has failed to follow the legal conditions for the inclusion of a company such as Sasol in the Article 95 List as provided for in Article 95(1) of Regulation (EU) No 528/2012, as it was not possible for Sasol to have submitted a complete dossier to ECHA. According to the applicants, its dossier cannot have included either a copy of the Comet Assay test or a letter of access granting reference rights to that test.

2. Second plea in law, alleging an infringement of the principle of non-discrimination

   — The applicants put forward that by accepting the dossier submitted by Sasol for the purpose of Article 95 List inclusion as complete, ECHA has treated companies in a similar situation differently without objective justification in breach of the principle of non-discrimination.

3. Third plea in law, alleging an infringement of the level playing field established by Regulation (EU) No 528/2012 as well as the creation of unfair competition

   — The applicants claim that by including Sasol on the Article 95 List, ECHA has failed to apply the rules under Articles 62 and 63 of Regulation (EU) No 528/2012 which are designed to ensure a level playing field between those companies such as the applicants which have taken part in the 1-Propanol review and those, such as Sasol, which have not.

([1]) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, p. 1).

Action brought on 28 April 2017 — Casino, Guichard-Perrachon and EMC Distribution v Commission

(Case T-249/17)

(2017/C 221/45)

Language of the case: French

Parties

Applicants: Casino, Guichard-Perrachon (Saint-Étienne, France) and EMC Distribution (Vitry-sur-Seine, France) (represented by: D. Théophile, I. Simic, O. de Juvigny and T. Reymond, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— prior to delivering judgment, order the Commission, pursuant to Article 89 and Article 90 of the Court's Rules of Procedure, to produce all of the documents and other information on the basis of which, on the date of Decision C (2017) 1054, it considered that it had sufficiently strong evidence to justify carrying out an inspection at the applicants' premises;

— declare inapplicable in the present case, pursuant to Article 277 TFEU, Article 20 of Regulation No 1/2003 and, consequently, annul Commission Decision C(2017) 1054 of 9 February 2017;

— annul, pursuant to Article 263 TFEU, European Commission Decision C(2017) 1054 of 9 February 2017;

— order the Commission to pay all of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the illegality of the European Commission Decision of 9 February 2017 ordering the applicants to undergo an inspection pursuant to Article 20(1) and (4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1), a decision which is contested in the present case ('the contested decision'). The applicants claim in this regard that:

   — the contested decision is based on a provision which is itself illegal and therefore inapplicable in the present case, in accordance with Article 277 of the Treaty on the Functioning of the European Union ('TFEU');

   — Article 20 of Regulation No 1/2003 infringes the fundamental right to an effective remedy laid down in Article 47 of the European Union Charter of Fundamental Rights of the European Union ('the Charter') and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), in that it does not allow undertakings to which a Commission inspection decision is addressed to bring effective proceedings to challenge the manner in which the inspection is carried out;

   — that provision also infringes the principle of equality of arms and the rights of defence laid down in Article 47 and 48 of the Charter and Article 6 of the ECHR, in that it does not allow the parties to obtain access to the documents underlying the Commission's decision to carry out an inspection.

2. Second plea in law, alleging an infringement of the fundamental right to the inviolability of the home, laid down in Article 7 of the Charter and Article 8 of the ECHR, in that the contested decision is valid for an indefinite period and is both imprecise and disproportionate in its scope of application, since:

   — the contested decision specifies only the date on which the inspection may start but provides neither an end date nor a maximum duration for the inspection;

   — it applies to all companies of the Casino group, irrespective of their activity and geographical location, without identifying any one individually, except for its parent company;

   — it allows the inspection to be carried out at any of the group's premises.

3. Third plea in law, alleging infringement of the Commission's obligation to state reasons, in that the contested decision does not state the type, nature, origin or content of the information with respect to which the Commission has decided to order an inspection.

4. Fourth plea in law, alleging that the contested decision infringes the fundamental right to inviolability of the home, laid down in Article 7 of the Charter and in Article 8 of the ECHR, in that it was adopted without the Commission having sufficiently strong evidence to justify the carrying out of an inspection at the applicants' premises.

5. Fifth plea in law, alleging infringement of the principle of proportionality by reason of the adoption of the contested decision inasmuch as that decision provided for the start of the inspection on a date which is extremely disadvantageous for the applicants' activity, even though another date, significantly less restrictive for them, could have been set, without any inconvenience for the Commission. In that regard, the applicants submit that, although it concerns specifically the premises of the entity within the Casino group responsible for negotiations with suppliers, the contested decision provides for the inspection to start on 20 February 2017 or shortly thereafter, that is to say the final week of negotiations concerning the annual agreements with suppliers, which Article L. 441-7 of the French code de commerce (Commercial Code) requires should be concluded before 1 March of the current year, this being a fact of which, it is submitted, the Commission was perfectly aware.

Action brought on 3 May 2017 — RE v Commission

(Case T-257/17)

(2017/C 221/46)

Language of the case: English

Parties

Applicant: RE (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order the annulment of the Security Directorate's implied decision tacitly rejecting the applicant's confirmatory application for access to documents of 20 January 2017;

— order the defendant to pay to the applicant a fair and equitable compensation for non-material damages from the unlawful refusal to treat his access to documents application in violation of the provision of Regulation No 1049/2001 ([1]); and,

— order the defendant to bear its own costs as well as the costs of the applicant in the current proceedings.

Pleas in law and main arguments

With the present application, the applicant asks for the annulment of the aforementioned contested implied decision for two reasons: firstly the failure of the contested decision to state reasons as regards the non-disclosure of the 15 documents requested by the applicant, which were not mentioned in the decision of 22 December 2016 that rejected the applicant's initial request for access to documents; and secondly, the lack of, or, in any case, the erroneous justification for the non-disclosure of the other documents, if it were to be considered that the reasoning of the decision of 22 December 2016 rejecting the applicant's initial request for access is incorporated in the contested implied decision.

Finally, the applicant requests the award of appropriate compensation for the moral damage he incurred, which stemmed from the administration's persistent delays and the unlawful refusal to grant him access to the documents in question, in violation of the provisions of Regulation 1049/2001.

([1]) 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 (OJ L 145, 2001, p. 43)

Action brought on 3 May 2017 — Bank of New York Mellon v EUIPO — Nixen Partners (NEXEN PULSE)

(Case T-260/17)

(2017/C 221/47)

Language in which the application was lodged: English

Parties

Applicant: The Bank of New York Mellon Corp. (New York, New York, United States) (represented by: A. Klett and K. Schlüter, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Nixen Partners (Paris, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'NEXEN PULSE' — Application for registration No 13 374 194

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 23 February 2017 in Case R 1571/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and reject the opposition;

— order EUIPO to bear the costs of the proceedings as well as of the proceeding in front of the Board of Appeal and at the Opposition Division, including all necessary expenses of the Applicant in these proceedings.

Plea in law

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

Action brought on 5 May 2017 — Bayer v EUIPO — UNI — Pharma (SALOSPIR)

(Case T-261/17)

(2017/C 221/48)

Language in which the application was lodged: English

Parties

Applicant: Bayer AG (Leverkusen, Germany) (represented by: V. von Bomhard, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: UNI — Pharma Kleon Tsetis Pharmaceutical Laboratories Industrial and Commercial SA (Kifisia, Greece)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'SALOSPIR' — Application for registration No 12 351 458

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 17 February 2017 in Case R 2444/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Uni-Pharma, if the latter makes use of its right to join the proceedings as an intervener, to pay the costs.

Plea in law

— Infringement of Articles 8(1)(b), 8(4) and 8(5) of Regulation No 207/2009.

Action brought on 4 May 2017 — Uponor Innovation v EUIPO — Swep International (SMATRIX)

(Case T-264/17)

(2017/C 221/49)

Language in which the application was lodged: English

Parties

Applicant: Uponor Innovation AB (Borås, Sweden) (represented by: A. Kylhammar, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Swep International AB (Landskrona, Sweden)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU word mark 'SMATRIX' — Application for registration No 12 540 431

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 1 March 2017 in Case R 236/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— order SWEP International to compensate the Applicant for the costs before the Opposition Division and the Board of Appeal.

Plea in law

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

Action brought on 8 May 2017 — Quadri di Cardano v Commission

(Case T-273/17)

(2017/C 221/50)

Language of the case: French

Parties

Applicant: Alessandro Quadri di Cardano (Schaerbeek, Belgium) (represented by: N. De Montigny and J.-N. Louis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the PMO's decision of 19 July 2016 setting his individual rights at the time of taking up employment at the Innovation and Networks Executive Agency (INEA), in that it refuses to award him an expatriation allowance of 16 % pursuant to Article 4 of Annex VII to the Staff Regulations and, consequently, implies that related rights, in particular annual travel expenses, are not to be granted;

— order the defendant to bear 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 failure to have regard for the discussions and negotiations relating to the period preceding the reform of the Staff Regulations of Officials and, in particular, failure to respect legitimate expectations, infringement of the principles of legitimate expectations and legal certainty of the applicant, as well as disregard for his acquired rights, by reason of a suddenly different analysis of the documentation used to determine his individual rights.

2. Second plea in law, relating to the temporary employment contract governed by Belgian law invoked by the Commission as justification for the view that the applicant established his residence in Belgium during a period of employment for a private employer. This plea in law is divided into three parts:

   — first part, alleging that the Commission misused and abused its powers by attempting to exclude any hierarchical relationship between itself and the applicant during his period of employment as an agency staff member in order to be able to deny the existence of employment with an international organisation, which would in principle have to result in the postponement of any determination as to whether the conditions required by Article 4 of Annex VII to the Staff Regulations had been satisfied;

   — second part, alleging an error in law, infringement of the Belgian statutory provisions relating to temporary employment contracts and misuse of powers by the Commission;

   — third part, alleging a manifest error of assessment, infringement of the principle of proportionality and infringement of the principle of sound administration.

Action brought on 10 May 2017 — Monster Energy v EUIPO — Bösel (MONSTER DIP)

(Case T-274/17)

(2017/C 221/51)

Language in which the application was lodged: English

Parties

Applicant: Monster Energy Company (Corona, California, United States) (represented by: P. Brownlow, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Marco Bösel (Bad Fallingbostel, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word element 'MONSTER DIP' — Application for registration No 13 118 211

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 10 February 2017 in Case R 1062/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 19 April 2016 in opposition B 2433681;

— reject the opposed mark for all goods and services;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Articles 8(1)(b), 8(4) and 8(5) of Regulation No 207/2009.

Order of the General Court of 5 May 2017 — King.com v EUIPO — TeamLava (Animated icons)

(Case T-96/17) ([1])

(2017/C 221/52)

Language of the case: English

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

([1]) OJ C 112, 10.4.2017.

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