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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 11 January 2017 by Polo Club against the order of the General Court (Ninth Chamber) delivered on 10 November 2016 in Case T-67/15: Polo Club v European Union Intellectual Property Office

(Case C-10/17 P)

(2017/C 231/02)

Language of the case: English

Parties

Appellant: Polo Club (represented by: D. Masson, avocat)

Other parties to the proceedings: European Union Intellectual Property Office, Lifestyle Equities CV

By order of 1 June 2017 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 31 January 2017 by Universidad Internacional de la Rioja, S.A. against the judgment of the General Court (Eighth Chamber) delivered on 1 December 2016 in Case T-561/15, *Universidad Internacional de la Rioja* v *EUIPO — Universidad de la Rioja (Universidad Internacional de la Rioja UNIR)*

(Case C-50/17 P)

(2017/C 231/03)

Language of the case: Spanish

Parties

Appellant: Universidad Internacional de la Rioja (represented by: C. Lema Devesa and A. Porras Fernandez-Toledano, abogados)

Other party to the proceedings: European Union Intellectual Property Office

By order of 1 June 2017, the Court of Justice (Ninth Chamber) dismissed the appeal and ordered the Universidad Internacional de La Rioja, S.A. to bear its own costs.

Request for a preliminary ruling from the Curtea de Apel Constanța (Romania) lodged on 23 March 2017 — Sindicatul Familia Constanța and Others v Direcția Generală de Asistență Socială și Protecția Copilului Constanța

(Case C-147/17)

(2017/C 231/04)

Language of the case: Romanian

Referring court

Curtea de Apel Constanța

Parties to the main proceedings

Applicant: Sindicatul Familia Constanța and Others

Defendant: Direcția Generală de Asistență Socială și Protecția Copilului Constanța

Questions referred

(1) Must Article 1(3) of Directive 2003/88/EC ([1]) in conjunction with Article 2 of Directive 89/391/EEC ([2]) be interpreted as excluding from the ambit of the directive activity such as that of parental assistants, performed by the applicants?

(2) If the answer to the first question is in the negative, must Article 17 of Directive 2003/88/EC be interpreted to the effect that an activity such as that of parental assistants, performed by the applicants, may be the object of a derogation from the provisions of Article 5 of the directive in accordance with paragraphs 1, 3(b) and (c) or 4(b) [of Article 17]?

(3) If the answer to the preceding question is in the affirmative, is Article 17(1) or, if applicable, Article 17(3) or (4) of Directive 2003/88/EC to be interpreted to the effect that such a derogation must be explicit, or may it also be implicit as a result of the adoption of special legislation laying down other rules for organising working hours for a particular professional activity? If such a derogation need not be explicit, what are the minimum conditions for it to be considered that national legislation introduces a derogation and may such a derogation be expressed in the terms deriving from Law No 272/2004?

(4) If the answer to questions 1, 2 or 3 is in the negative, must Article 2(1) of Directive 2003/88/EC be interpreted to the effect meaning that the period spent by a parental assistant with the assisted minor, in his own home or in another place of his choice, constitutes working time even if none of the activities described in the individual employment contract is performed?

(5) If the answer to questions 1, 2 or 3 is in the negative, is Article 5 of Directive 2003/88/EC to be interpreted as precluding national provisions such as those in Article 122 of Law No 272/2004? And if the answer should confirm that paragraph (3)(b) and (c) or paragraph 4(b) of Article 17 of the directive is applicable, must that article be interpreted as precluding that national legislation?

(6) If the answer to question 1 is in the negative and the answer to question 4 is in the affirmative, may Article 7(2) of Directive 2003/88/EC be interpreted to the effect that it does not, however, preclude the award of compensation equal to the allowance that the worker would have received during annual leave, because the nature of the activity performed by parental assistants prevents them taking such leave or, even though leave is formally granted, the worker continues in practice to perform that activity if, in the period in question, he is not permitted to leave the assisted minor? If the answer is in the affirmative, must the worker, in order to be entitled to compensation, have requested permission to leave the minor and the employer have withheld permission?

(7) If the answer to question 1 is in the negative, the answer to question 4 is in the affirmative and the answer to question 6 is in the negative, does Article 7(1) of Directive 2003/88 preclude a provision such as that contained in Article 122(3)(d) of Law No 272/2004 in a situation in which that law gives the employer discretion to decide whether to authorise separation from the minor during leave and, if so, is the inability de facto to take leave as a result of the application of that provision of the law an infringement of EU law that meets the conditions for the worker to be entitled to compensation? If so, must such compensation be paid by the State for infringement of Article 7 of that directive or by the public body, as employer, which has not provided for separation from the assisted minor during the period of leave? In that situation, must the worker, in order to be entitled to compensation, have requested permission to leave the minor and the employer have withheld permission?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

([2]) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 24 March 2017 — Peek & Cloppenburg KG v Peek & Cloppenburg KG

(Case C-148/17)

(2017/C 231/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Peek & Cloppenburg KG, Hamburg

Defendant: Peek & Cloppenburg KG, Düsseldorf

Questions referred

1. Is the fact that the invalidity or revocation of a national trade mark which forms the basis of a claim for the seniority of an EU trade mark and which has been surrendered or allowed to lapse may be established a posteriori only where the conditions of invalidity or revocation are present not only at the time when the trade mark was surrendered or allowed to lapse but also at the time of the judicial decision establishing its invalidity or revocation, compatible with Article 14 of Directive 2008/95/EC? ([1])

2. If the first question is answered in the affirmative:

   Does claiming seniority under Article 34(2) of Regulation (EC) No 207/2009 ([2]) have the effect that the right under the national trade mark lapses and can no longer be used in such a way as to maintain rights attached to it, or is the national trade mark preserved by virtue of EU law, even though it no longer exists in the register of the Member State concerned, with the result that it can and must continue to be used in such a way as to maintain the rights attached to it?

([1]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks, OJ 2008 L 299, p. 25.

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 31 March 2017 — Land Nordrhein-Westfalen v Dirk Renckhoff

(Case C-161/17)

(2017/C 231/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Land Nordrhein-Westfalen

Defendant: Dirk Renckhoff

Question referred

Does the inclusion of a work — which is freely accessible to all internet users on a third-party website with the consent of the copyright holder — on a person's own publicly accessible website constitute a making available of that work to the public within the meaning of Article 3(1) of Directive 2001/29/EC ([1]) if the work is first copied onto a server and is uploaded from there to that person's own website?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ 2001 L 167, p. 10.

Action brought on 5 April 2017 — Commission v Hungary

(Case C-171/17)

(2017/C 231/07)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: V. Bottka and H. Tserepa-Lacombe, acting as Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

— declare that the national mobile payment system established and maintained by Hungary, governed by Law CC of 2011 and Governmental Implementing Decree No 356/2012 of 13 December 2012, which creates a monopoly by granting exclusive rights to Nemzeti Mobilfizetési Zrt. and impedes entry into the wholesale mobile payments market, which was previously open to competition, and the establishment of which, moreover, was not necessary or proportional, is contrary:

  — first, to Article 15(2)(d) and Article 16(1) of Directive 2006/123/EC, ([1]) and

  — secondly, to Articles 49 TFEU and 56 TFEU.

— order Hungary to pay the costs.

Pleas in law and main arguments

The a nemzeti mobilfizetési rendszerről szóló, 2011. április 1-jei CC. törvény (Law CC of 1 April 2011 concerning the national mobile payment system; 'the Law') changed the legal framework for mobile payment services with effect from 1 April 2013, although it only became binding as from 2 July 2014. The Law defines centralised mobile commerce services in the following sectors: (a) public car park services; (b) granting access to use public roads; (c) transport of persons carried out by a State undertaking; (d) other services provided by State bodies. Of the services mentioned, in practice it has only been possible, up to the present, to make mobile payments in Hungary in the sector of public car park services and in the sector of granting access to use public roads (the 'e-matrica' electronic toll sticker and the 'HU-GO' system). Nevertheless, the present proceedings concern the four sectors governed by the Law.

According to the Commission, as regards public car park services, the Company Nemzeti Mobilfizetési Zrt. carries out essentially the same activity as that carried out by mobile payment service providers under the previous system, except that it enjoys an exclusive right to enter into contracts with car park operators and its fees are regulated. The same is true as regards the sector of granting access to use public roads, since Nemzeti Mobilfizetési Zrt. is the sole services provider which maintains a contractual relationship with the public services provider and may directly sell the authorisation to use the road. Accordingly, in those two sectors, the other providers of mobile services and mobile telephone services may only operate as resellers.

Consequently, the establishment of the national mobile payment system and the exclusive rights granted to Nemzeti Mobilfizetési Zrt. impede, both as regards Hungarian and foreign undertakings, entry into the wholesale mobile payment market — and, therefore, into the market of services offered, pursuant to contractual relationships with the provider of the public car park services or other public services, to other providers which resell mobile payment services — which was previously open to competition. Thus, according to the Commission, the rules in relation to the national mobile payment system, taken as a whole, give rise to discrimination and are contrary to the freedom of establishment (infringement of Article 15 of Directive 2006/123 and of Article 49 TFEU). In addition, those rules are also contrary to the freedom to provide services (infringement of Article 16 of Directive 2006/123 and of Article 56 TFEU), since the exclusive rights granted to Nemzeti Mobilfizetési Zrt. restrict the provision of cross border services. In relation to the other centralised mobile commerce services, in respect of which it is not yet possible to make mobile payments in Hungary, the Law establishes the same exclusive right in favour of Nemzeti Mobilfizetési Zrt. and the legal analysis above is therefore equally valid.

In accordance with the relevant provisions of the TFEU and Directive 2006/123, restrictions on the freedom of establishment and the freedom to provide services may be imposed only where they are not discriminatory and serve the public interest and moreover, where they fulfil the conditions of necessity and proportionality. In the Commission's view, the arguments put forward by Hungary are not capable of justifying the restrictions imposed by the Law, since they do not meet the requirements of necessity and proportionality.

([1]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006, L 376, p. 36).

Request for a preliminary ruling from the Juzgado de Primera Instancia No 1 de Barcelona (Spain) lodged on 7 April 2017 — Bankia, S.A. v Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez Ramírez

(Case C-179/17)

(2017/C 231/08)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 1 de Barcelona

Parties to the main proceedings

Applicant: Bankia, S.A.

Defendants: Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez Ramírez

Questions referred

1) Is case-law incompatible with Articles 6 and 7 of Directive 93/13/EEC ([1]) on unfair terms in consumer contracts when it (STS (Sentencia del Tribunal Supremo: judgment of the Supreme Court) of 18 February 2016) holds that, despite the unfairness of the early repayment term and even though the application for enforcement is based on that term, mortgage enforcement proceedings are not to be closed because their continuation is more favourable to the consumer, given that, in the event of any enforcement of a judgment given in declaratory proceedings brought under Article 1124 CC (Código Civil: Civil Code), a consumer would not enjoy the procedural privileges applicable in mortgage enforcement proceedings, and when that case-law does not take into account the settled case-law of the TS (Tribunal Supremo: Supreme Court) to the effect that Article 1124 CC (laid down for contracts creating reciprocal obligations) is not applicable to loan agreements, because such an agreement is a real, unilateral contract which does not become valid until the money is handed over and which, therefore, creates obligations for the borrower alone and not for the lender (creditor), so that, if that case-law of the TS were to be applied in declaratory proceedings, a consumer could obtain a ruling dismissing the claim for termination and compensation and it could no longer be argued that continuation of the mortgage enforcement proceedings was more favourable to him?

2) If the application of Article 1124 CC to loan agreements or in the case of all credit agreements should be accepted, is case-law like that referred to incompatible with Articles 6 and 7 of Directive 93/13/EEC on unfair terms in consumer contracts when that case-law does not take into account, for the purpose of assessing whether it is more favourable to the consumer for the mortgage enforcement proceedings to continue or more detrimental to hold declaratory proceedings under Article 1124 CC, the fact that, in declaratory proceedings, the claim for termination of the agreement and the claim for compensation may be dismissed if the court applies the stipulation in Article 1124 CC that 'the court shall order the termination requested, unless there are justified grounds allowing it to fix a period', bearing in mind that, precisely in the context of long-term (20 or 30 years) loans and mortgages for the purchase of dwellings, it is relatively likely that the courts will apply that ground for dismissal, particularly where the non-performance of the payment obligation has not been very serious?

3) If it were to be accepted that it is more favourable to the consumer to continue enforcement of the mortgage with the effects of early repayment, is case-law like that referred to incompatible with Articles 6 and 7 of Directive 93/13/EEC on unfair terms in consumer contracts when that case-law applies on a supplementary basis a statutory provision (Article 693(2) LEC (Ley de Enjuiciamiento Civil: Law on Civil Procedure), even though the contract is capable of continuing to exist without the early repayment term, and when that case-law gives effects to Article 693(2) LEC, even though the essential condition stipulated therein has not been met: that there should be in the contract a valid and effective agreement regarding early repayment, and the early repayment term has in fact been declared unfair, void and ineffective?

([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 Consiglio di Stato (Italy) lodged on 13 April 2017 — Cobra SpA v Ministero dello Sviluppo Economico

(Case C-192/17)

(2017/C 231/09)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Cobra SpA

Respondent: Ministero dello Sviluppo Economico

Questions referred

1. Should Directive 1999/5/EC ([1]) be interpreted as meaning that a manufacturer who makes use of the procedure provided for in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, must consult a notified body and thus ensure that the CE marking (certifying compliance with the essential requirements set out in that directive) is accompanied by the identification number of that notified body?

2. If the answer to Question 1 is in the affirmative, in the event that a manufacturer, having made use of the procedure referred to in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, has nonetheless voluntarily consulted a notified body, asking it to confirm the list of tests mentioned above, must that manufacturer ensure that the CE marking certifying compliance with the essential requirements set out in Directive 1999/5/EC is accompanied by the identification number of that notified body?

3. If the answer to Question 2 is in the affirmative, in the event that a manufacturer, having made use of the procedure referred to in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, has nonetheless subsequently voluntarily consulted a notified body, asking it to confirm the list of tests mentioned above, and has voluntarily ensured that the product is accompanied by the identification number of the body consulted, must that manufacturer also quote that body's identification number on both the product and its packaging?

([1]) Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10).

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

(Case C-196/17)

(2017/C 231/10)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Kathrin 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 — Thomas Neufeldt and Others v TUIfly GmbH

(Case C-197/17)

(2017/C 231/11)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Thomas Neufeldt, Julia Neufeldt and Gabriel Neufeldt, both represented by their parents, Sandra Neufeldt and Thomas Neufeldt

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 — Ivan Wallmann v TUIfly GmbH

(Case C-198/17)

(2017/C 231/12)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Ivan Wallmann

Defendant: TUIfly GmbH

Question 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 — Susanne de Winder v TUIfly GmbH

(Case C-200/17)

(2017/C 231/13)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Susanne de Winder

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 295/9, OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 13 April 2017 — Holger Schlosser and Nicole Schlosser v TUIfly GmbH

(Case C-201/17)

(2017/C 231/14)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Holger Schlosser and Nicole Schlosser

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 — Peter Rebbe, Hans-Peter Rebbe, Harmine Rebbe v TUIfly GmbH

(Case C-202/17)

(2017/C 231/15)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Peter Rebbe, Hans-Peter Rebbe, Harmine Rebbe

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 21 April 2017 by NF against the order of the General Court (First Chamber, Extended Composition) delivered on 28 February 2017 in Case T-192/16: NF v European Council

(Case C-208/17 P)

(2017/C 231/16)

Language of the case: English

Parties

Appellant: NF (represented by: P. O'Shea, BL, I. Whelan, BL, B. Burns, Solicitor)

Other party to the proceedings: European Council

Form of order sought

The applicant claims that the Court should:

— Set aside the whole of the order of the General Court of 28 February 2017 by which the General Court held that the action be dismissed on the ground of the General Court's lack of jurisdiction to hear and determine it;

— Give a final judgment in the matter that is the subject of this appeal and hold that the General Court was wrong in law to decline jurisdiction and order the respondent in case T-192/16 to pay the costs of the appellant in respect of the order of the General Court and of the Court of Justice of the European Union in this appeal;

— Remit the issues raised in these proceedings for adjudication back to the General Court with a direction that it should accept jurisdiction.

Pleas in law and main arguments

1. Failure to give reasons;

2. Failure to properly consider whether the challenged agreement was in reality a decision of the respondent;

3. Ignoring relevant factual issues;

4. Failure to consider evidence that was before it;

5. Failure to fully investigate and assess material issues;

6. Failure to make further relevant enquiries;

7. Making a decision without the benefit of sufficient information;

8. Disregarding the principles established by the Court in case C-294/83.

Appeal brought on 21 April 2017 by NG against the order of the General Court (First Chamber, Extended Composition) delivered on 28 February 2017 in Case T-193/16: NG v European Council

(Case C-209/17 P)

(2017/C 231/17)

Language of the case: English

Parties

Appellant: NG (represented by: P. O'Shea, BL, I. Whelan, BL, B. Burns, Solicitor)

Other party to the proceedings: European Council

Form of order sought

The applicant claims that the Court should:

— Set aside the whole of the order of the General Court of 28 February 2017 by which the General Court held that the action be dismissed on the ground of the General Court's lack of jurisdiction to hear and determine it;

— Give a final judgment in the matter that is the subject of this appeal and hold that the General Court was wrong in law to decline jurisdiction and order the respondent in case T-193/16 to pay the costs of the appellant in respect of the order of the General Court and of the Court of Justice of the European Union in this appeal;

— Remit the issues raised in these proceedings for adjudication back to the General Court with a direction that it should accept jurisdiction.

Pleas in law and main arguments

1. Failure to give reasons;

2. Failure to properly consider whether the challenged agreement was in reality a decision of the respondent;

3. Ignoring relevant factual issues;

4. Failure to consider evidence that was before it;

5. Failure to fully investigate and assess material issues;

6. Failure to make further relevant enquiries;

7. Making a decision without the benefit of sufficient information;

8. Disregarding the principles established by the Court in case C-294/83.

Appeal brought on 21 April 2017 by NM against the order of the General Court (First Chamber, Extended Composition) delivered on 28 February 2017 in Case T-257/16: NM v European Council

(Case C-210/17 P)

(2017/C 231/18)

Language of the case: English

Parties

Appellant: NM (represented by: P. O'Shea, BL, I. Whelan, BL, B. Burns, Solicitor)

Other party to the proceedings: European Council

Form of order sought

The applicant claims that the Court should:

— Set aside the whole of the order of the General Court of 28 February 2017 by which the General Court held that the action be dismissed on the ground of the General Court's lack of jurisdiction to hear and determine it;

— Give a final judgment in the matter that is the subject of this appeal and hold that the General Court was wrong in law to decline jurisdiction and order the respondent in case T-257/16 to pay the costs of the appellant in respect of the order of the General Court and of the Court of Justice of the European Union in this appeal;

— Remit the issues raised in these proceedings for adjudication back to the General Court with a direction that it should accept jurisdiction.

Pleas in law and main arguments

1. Failure to give reasons;

2. Failure to properly consider whether the challenged agreement was in reality a decision of the respondent;

3. Ignoring relevant factual issues;

4. Failure to consider evidence that was before it;

5. Failure to fully investigate and assess material issues;

6. Failure to make further relevant enquiries;

7. Making a decision without the benefit of sufficient information;

8. Disregarding the principles established by the Court in case C-294/83.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 24 April 2017 — Simón Rodríguez Otero v Televisión de Galicia S.A.

(Case C-212/17)

(2017/C 231/19)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Simón Rodríguez Otero

Respondent: Televisión de Galicia S.A.

Other party: Ministerio Fiscal

Questions referred

1.a) For the purposes of the principle of equivalence between workers with fixed-term contracts and those with contracts of indefinite duration, must ending of the employment contract due to 'objective circumstances' under Article 49(1)(c) ET [Estatuto de los Trabajadores: Workers' Statute] and its ending on 'objective grounds' under Article 52 ET be regarded as 'comparable situations' and does, therefore, the difference between the compensation payable in either case constitute unequal treatment between workers with fixed-term contracts and those with contracts of indefinite duration, prohibited by **Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP**? ([1])

2.a) If so, must the social-policy objectives legitimising the creation of the 'contrato de relevo' model of contract also be deemed to justify, under clause 4.1 of the abovementioned framework agreement, the difference in treatment relating to the lower amount of compensation for termination of the employment relationship when the employer freely decides that such a 'contrato de relevo' should be for a fixed term?

([1]) OJ 1999 L 175, p. 43.

Appeal brought on 27 April 2017 by Islamic Republic of Iran Shipping Lines, Hafize Darya Shipping Lines (HDSL), Khazar Sea Shipping Lines Co., IRISL Europe GmbH, IRISL Marine Services and Engineering Co., Irano Misr Shipping Co., Safiran Payam Darya Shipping Lines, Shipping Computer Services Co., Soroush Sarzamin Asatir Ship Management, South Way Shipping Agency Co. Ltd, Valfajr 8th Shipping Line Co. against the judgment of the General Court (First Chamber) delivered on 17 February 2017 in joined Cases T-14/14 and T-87/14: Islamic Republic of Iran Shipping Lines and Others v Council of the European Union

(Case C-225/17 P)

(2017/C 231/20)

Language of the case: English

Parties

Appellants: Islamic Republic of Iran Shipping Lines, Hafize Darya Shipping Lines (HDSL), Khazar Sea Shipping Lines Co., IRISL Europe GmbH, IRISL Marine Services and Engineering Co., Irano Misr Shipping Co., Safiran Payam Darya Shipping Lines, Shipping Computer Services Co., Soroush Sarzamin Asatir Ship Management, South Way Shipping Agency Co. Ltd, Valfajr 8th Shipping Line Co. (represented by: M. Taher, Solicitor, M. Lester QC, Barrister)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of 17 February 2017 in Joined Cases T-14/14 and T-87/14

— determine the case before the General Court and in particular:

  — annul the 'October 2013 measures' (Council Decision 2013/497 ([1]) amending Decision 2010/413 ([2]) and Council Regulation 971/2013 ([3]) amending Regulation 267/2012 ([4])) and the 'November 2013 measures' (Council Decision 2013/685 ([5]) amending Decision 2010/413 and Council Implementing Regulation 1203/2013 ([6]) implementing Regulation 267/2012) insofar as those restrictive measures against Iran concerned the appellants;

  — alternatively, declare the October 2013 measures inapplicable insofar as they apply to the appellants by reason of illegality; and

— order that the respondent pay the costs of the appeal and of the proceedings before the General Court.

Pleas in law and main arguments

In support of the appeal in relation to the declaration of inapplicability, the appellants rely on the following pleas in law:

1. **First plea in law**, alleging that the General Court erred in finding that the October 2013 measures had a valid legal basis.

2. **Second plea in law**, alleging that the General Court erred in finding that the October 2013 measures did not infringe the principles of res judicata, legal certainty, legitimate expectations and ne bis in idem, or the right to an effective remedy.

3. **Third plea in law**, alleging that the General Court erred in finding that the respondent had not misused its powers in enacting the October 2013 measures.

4. **Fourth plea in law**, alleging that the General Court erred in finding that the respondent had not infringed the appellants' rights of defence.

5. **Fifth plea in law**, alleging that the General Court erred finding that the October 2013 measures were not an unjustified and disproportionate interference with the appellants' fundamental rights.

In support of the appeal in relation to the application for annulment, the appellant relies on the following pleas in law:

1. **First plea in law**, alleging that the General Court erred in failing to find that the respondent made a number of manifest errors of assessment in finding that the listing criteria in the November 2013 measures were fulfilled as regards each of the appellants.

2. **Second plea in law**, alleging that the General Court erred in finding that the respondent had not infringed the appellants' rights of defence in re-listing them in the November 2013 measures.

3. **Third plea in law**, alleging that the General Court erred in finding that re-listing the appellants in the November 2013 measures did not infringe the principles of res judicata, legal certainty, legitimate expectations and ne bis in idem, or the right to an effective remedy.

4. **Fourth plea in law**, alleging that the General Court erred finding that the November 2013 measures were not an unjustified and disproportionate interference with the appellants' fundamental rights.

(1) Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013, L 272, p. 46).
(2) Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010, L 195, p. 39).
(3) Council Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013, L 272, p. 1).
(4) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012, L 88, p. 1).
(5) Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013, L 316, p. 46).
(6) Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013, L 316, p. 1).

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 28 April 2017 — Brigitte Wittmann v TUIfly GmbH

(Case C-226/17)

(2017/C 231/21)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Brigitte Wittmann

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 28 April 2017 — Reinhard Wittmann v TUIfly GmbH

(Case C-228/17)

(2017/C 231/22)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Reinhard Wittmann

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: 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?

([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 Vilniaus miesto apylinkės teismas (Lithuania) lodged on 9 May 2017 — 'Renerga' UAB v 'Energijos skirstymo operatorius' AB, 'Lietuvos energijos gamyba' AB

(Case C-238/17)

(2017/C 231/23)

Language of the case: Lithuanian

Referring court

Vilniaus miesto apylinkės teismas

Parties to the main proceedings

Applicant: 'Renerga' UAB

Defendants: 'Energijos skirstymo operatorius' AB, 'Lietuvos energijos gamyba' AB

Questions referred

1. Is the objective of '*ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies in system performance and foster market integration*', laid down in Article 36(f) of Directive 2009/72/EC ([1]) for the regulatory authority carrying out the regulatory tasks specified in Directive 2009/72, to be understood and interpreted as prohibiting a failure to grant incentives (a failure to pay PIS [public interest service] compensation) or their restriction?

2. Having regard to the fact that Article 3(2) of Directive 2009/72 provides that *PIS obligations are to be clearly defined, transparent, non-discriminatory and verifiable, and Article 3(6) of Directive 2009/72 provides that financial compensation to PIS persons is to be determined in a non-discriminatory and transparent way*, it is necessary to clarify the following:

   2.1. are the provisions of Article 3(2) and (6) of Directive 2009/72 to be interpreted as prohibiting the incentivisation of PIS providers from being restricted if they properly fulfil the obligations assumed by them that are related to PIS provision?

   2.2. is an obligation laid down in national law to suspend the payment of financial compensation received by PIS providers irrespective of the activities for PIS provision carried out by the PIS provider and of the fulfilment of the obligations assumed by it, but linking the ground for restricting (suspending) the payment of PIS compensation to, and making it dependent on, the performance by a person connected with the PIS provider (a controlling interest in which is held by the same undertaking as that which has a controlling interest in the PIS provider) of actions and obligations when accounting for the PIS consumption monies calculated for that undertaking, to be regarded as discriminatory, unclear and restrictive of fair competition for the purposes of the provisions of Article 3(2) and (6) of Directive 2009/72?

   2.3. is an obligation laid down in national law to suspend the payment of financial compensation received by PIS providers, while the PIS providers remain obliged to continue to fulfil in full their PIS provision obligations and related contractual obligations to undertakings purchasing electricity, to be regarded as discriminatory, unclear and restrictive of fair competition for the purpose of the provisions of Article 3(2) and (6) of Directive 2009/72?

3. Under Article 3(15) of Directive 2009/72 which requires Member States to inform the European Commission every two years of changes to all measures adopted to fulfil universal service and public service obligations, is a Member State which has established in national legal measures legislation laying down grounds, rules and a mechanism for restricting compensation payable to PIS providers obliged to inform the European Commission of such new legislation?

4. Does the laying down by a Member State in national law of grounds, rules and a mechanism for restricting compensation payable to PIS providers offend against the objectives of implementation of Directive 2009/72 and against general principles of EU law (legal certainty, legitimate expectations, proportionality, transparency and non-discrimination)?

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 10 May 2017 — Ibrahima Diallo v État belge

(Case C-246/17)

(2017/C 231/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ibrahima Diallo

Defendant: État belge

Questions referred

(1) Is Article 10(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ([1]) to be interpreted as requiring that the decision as to whether to recognise a right of residence must be taken and notified within a period of six months, or as permitting the decision to be taken within that period but notified subsequently? If such a decision may be notified subsequently, within what period must this be done?

(2) Is Article 10(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, read in conjunction with Article 5 of that directive, with Article 5(4) of [Council] Directive 2003/86/EC of 22 September 2003 on the right to family reunification, ([2]) and with Articles 7, 20, 21 and 41 of the Charter of Fundamental Rights of the European Union, to be interpreted and applied as meaning that the decision adopted on that basis need only be taken within the period of six months which it prescribes, without there being any period applicable to notification or any impact whatsoever on the right of residence where notification occurs after expiry of that period?

(3) For the purposes of guaranteeing the effectiveness of the right to residence of a member of the family of a Union citizen, would it be contrary to the principle of effectiveness for the national authority, following the annulment of a decision relating to such a right, once again to be allowed the full period of six months which had been available to it under Article 10(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States? If so, what further period is allowed to the national authority, following the annulment of a decision by which it refused to recognise the right at issue?

(4) Are Articles 5, 10 and 31 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, read in conjunction with Articles 8 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, with Articles 7, 24, 41 and 47 of the Charter of Fundamental Rights of the European Union, and with Article 21 of the Treaty on the Functioning of the European Union, compatible with national case-law and provisions, such as Articles 39/2(2), 40, 40a, 42 and 43 of the Law of 15 December 1980 on entry into the territory, residence, establishment and removal of foreign nationals, and Article 52(4) of the Royal Decree of 8 October 1981 on entry into the territory, residence, establishment and removal of foreign nationals, under which a judgment delivered by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) annulling a decision refusing residence on the basis of those provisions interrupts, and does not suspend, the mandatory period of six months prescribed by Article 10 of Directive 2004/38/EC, by Article 42 of the Law of 15 December 1980 and by Article 52 of the Royal Decree of 8 October 1981?

(5) Does Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States require that, where the period of six months laid down by Article 10(1) of that directive is exceeded, some consequence must follow, and if so, what consequence? Does that directive require or permit the consequence of exceeding the period to be the automatic grant of the residence card sought, without any finding having been made that the applicant does in fact satisfy the conditions for the enjoyment of the right which he claims?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

([2]) OJ 2003 L 251, p. 12.

Appeal brought on 16 May 2017 by the European Commission against the judgment of the General Court (Fourth Chamber) delivered on 7 March 2017 in Case T-194/13: United Parcel Service v European Commission

(Case C-265/17 P)

(2017/C 231/25)

Language of the case: English

Parties

Appellant: European Commission (represented by: T. Christoforou, N. Khan, H. Leupold, A. Biolan, Agents)

Other parties to the proceedings: United Parcel Service, Inc., FedEx Corp.

Form of order sought

The appellant claims that the Court should:

— set aside the judgment;

— refer the proceedings back to the General Court, and

— reserve the costs.

Pleas in law and main arguments

1) The Judgment errs in finding that the Commission was required to disclose to UPS the final version of its price concentration model before adopting the Decision.

2) Even if the Commission's failure to disclose the final version of the price concentration model to UPS before the adoption of the Decision could breach UPS's rights of defence, the Judgment erred in its characterisation of the evidential character of the price concentration model and, consequently, in the legal test applied in determining that the Decision was to be annulled.

3) Even if a breach of UPS's rights of defence could arise in the circumstances, the Judgment erred in failing to address the Commission's submissions that UPS's plea was ineffective and that UPS could understand the price concentration model.

4) In any event, the findings made in the Judgment could not justify the annulment of the Decision.

GENERAL COURT

Judgment of the General Court of 31 May 2017 — Alma-The Soul of Italian Wine v EUIPO — Miguel Torres (SOTTO IL SOLE ITALIANO SOTTO il SOLE)

(Case T-637/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark SOTTO IL SOLE ITALIANO SOTTO il SOLE — Earlier EU word mark VIÑA SOL — Relative ground for refusal — Detriment to distinctive character — No similarity between the signs — Article 8(5) of Regulation (EC) No 207/2009)

(2017/C 231/26)

Language of the case: English

Parties

Applicant: Alma-The Soul of Italian Wine LLLP (Coral Gables, Florida, United States) (represented by: F. Terrano, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Miguel Torres, SA (Vilafranca del Penedès, Spain) (represented by: J. Güell Serra, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 3 September 2015 (Case R 356/2015-2), relating to opposition proceedings between Miguel Torres and Alma-The Soul of Italian Wine.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 3 September 2015 (Case R 356/2015-2);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Alma-The Soul of Italian Wine LLLP;*

3. *Orders Miguel Torres, SA to bear its own costs.*

([1]) OJ C 27, 25.1.2016.

Judgment of the General Court of 17 May 2017 — Piessevaux v Council

(Case T-519/16) ([1])

(Civil service — Officials — Pensions — Transfer of pension rights to the European Union pension scheme — Proposal concerning the crediting of additional pensionable years — Article 11(2) of Annex VIII to the Staff Regulations — New general implementing provisions — Equal treatment — Acquired rights — Legitimate expectations)

(2017/C 231/27)

Language of the case: French

Parties

Applicant: Vincent Piessevaux (Brussels, Belgium) (represented by: initially by D. de Abreu Caldas and J.-N. Louis, then by J.-N. Louis, and finally by L. Ponteville, lawyers)

Defendant: Council of the European Union (represented by: M. Bauer and E. Rebasti, acting as Agents)

Re:

Application based on Article 270 TFEU and seeking annulment of the Council's decision of 7 October 2013 definitively fixing, for the purposes of the European Union pension scheme, the pension rights acquired by the applicant following the transfer of the rights which he had acquired, prior to entering the service of the EU, from national pension bodies.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Vincent Piessevaux to pay the costs.*

([1]) OJ C 421, 24.11.2014 (case initially registered with the European Union Civil Service Tribunal as Case F-91/14 and transferred to the General Court of the European Union on 1 September 2016).

Order of the General Court of 17 May 2017 — Piper Verlag v EUIPO (THE TRAVEL EPISODES)

(Case T-164/16) ([1])

(EU trade mark — Application for figurative EU trade mark THE TRAVEL EPISODES — Absolute ground for refusal — Application for alteration — Act not amenable to adoption by the Board of Appeal — Disregard of the procedural requirements — Inadmissibility)

(2017/C 231/28)

Language of the case: German

Parties

Applicant: Piper Verlag GmbH (Munich, Germany) (represented by: F. Oster, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 15 February 2016 (Case R 1099/2015-4) concerning an application for registration of the figurative sign THE TRAVEL EPISODES as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Piper Verlag GmbH shall pay the costs.*

([1]) OJ C 200, 6.6.2016.

Order of the President of the General Court of 8 May 2017 — Aristoteleio Panepistimio Thessalonikis v Commission

(Case T-207/16 R)

(Interim measures — Public contracts — Disclaimer notice — Screening opinion — Application for a stay of execution — Lack of urgency)

(2017/C 231/29)

Language of the case: Greek

Parties

Applicant: Aristoteleio Panepistimio Thessalonikis (Thessaloniki, Greece) (represented by: V. Christianos, lawyer)

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

Re:

Application on the basis of Articles 278 TFEU and 279 TEFU seeking a stay of execution of the general exclusion decision concerning the applicant in the Early Warning System or in the Early Detection and Exclusion System.

Operative part of the order

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

2. *The costs are reserved.*

Order of the General Court of 15 May 2017 — Dominator International v EUIPO (DREAMLINE)

(Case T-285/16) ([1])

(EU trade mark — International registration designating the European Union — Word mark DREAMLINE — Absolute grounds for refusal — Not distinctive — Article 7(1)(b) of Regulation (EC) No 207/2009 — Descriptive character — Article 7(1)(c) of Regulation No 207/2009 — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law — Article 126 of the Rules of Procedure)

(2017/C 231/30)

Language of the case: German

Parties

Applicant: Dominator International GmbH (Vienna, Austria) (represented by: N. Gugerbauer, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 March 2016 (Case R 1669/2015-2) concerning the international registration designating the European Union of word mark DREAMLINE.

Operative part of the order

1. *The action is dismissed.*

2. *Dominator International GmbH shall pay the costs.*

([1]) OJ C 260, 18.7.2016.

Order of the General Court of 17 May 2017 — Cuallado Martorell v Commission

(Case T-481/16 RENV) ([1])

(Civil service — Recruitment — Open competition — Non-admission to the oral tests — Assessment of the written test — Decision not to include the applicant's name on the reserve list — Possibility for a selection board to entrust the marking of the written tests to one of its members — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2017/C 231/31)

Language of the case: Spanish

Parties

Applicant: Eva Cuallado Martorell (Valencia, Spain) (represented by: C.M. Pinto Cañón, lawyer)

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

Re:

Application based on Article 270 TFEU and seeking annulment of the decision of the selection board in Competition EPSO/AD/130/08, organised by the European Personnel Selection Office (EPSO), not to admit the applicant to take part in the oral tests and not to include her on the reserve list.

Operative part of the order

1. *The action is dismissed as being manifestly inadmissible in so far as it is directed against the decision of EPSO made on 14 September 2009 regarding the issue of the applicant's admission to the oral tests in question.*

2. *The action is dismissed as manifestly lacking any foundation in law in so far as it is directed against the decision of EPSO made on 23 July 2009 maintaining the eliminatory mark of 18/40 in final written test (c) and refusing to admit Ms Cuallado Martorell to the oral stage of the competition.*

3. *Ms Cuallado Martorell and the European Commission shall bear their own respective costs in relation to the appeal proceedings before the General Court.*

4. *Ms Cuallado Martorell shall pay the costs relating to the proceedings referred back to the Civil Service Tribunal and before the General Court.*

([1]) OJ C 148, 5.6.2010 (case initially registered with the European Union Civil Service Tribunal as Case F-96/09, subsequently referred back to the Civil Service Tribunal, following an appeal, as Case F-96/09 RENV, and transferred to the General Court of the European Union on 1 September 2016).

Order of the General Court of 16 May 2017 — BSH Electrodomesticos España v EUIPO — DKSH International (Ufesa)

(Case T-785/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Ufesa — Amicable settlement — Acquisition by the applicant of the mark applied for — No need to adjudicate)

(2017/C 231/32)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: DKSH International Ltd. (Zurich, Switzerland) (represented by: C. Johansson and J. Stock, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 13 July 2016 (Case R 1691/2015-1) concerning opposition proceedings between BSH Electrodomesticos España and DKSH International.

Operative part of the order

1. *There is no need to adjudicate in the action.*

2. *BSH Electrodomesticos España, SA shall bear its own costs and pay the costs incurred by the European Union Intellectual Property Office.*

3. *DKSH International Ltd. shall bear its own costs.*

([1]) OJ C 6, 9.1.2017.

Order of the President of the General Court of 18 May 2017 — RW v Commission

(Case T-170/17 R)

(Interim measures — Civil Service — Officials — Requirement to take leave and compulsory retirement — Retirement age — Article 42c of the Staff Regulations — Application for a stay of execution — Fumus boni juris — Urgency — Balance of interests)

(2017/C 231/33)

Language of the case: French

Parties

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

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

Re:

Application on the basis of Articles 278 TFEU and 279 TFEU seeking a stay of execution of the Commission's decision of 2 March 2017 placing the applicant on leave in the interests of the service and compulsorily retiring him with effect from 1 June 2017.

Operative part of the order

1. *The execution of the Commission's decision of 2 March 2017 placing the applicant on leave in the interests of the service and compulsorily retiring him with effect from 1 June 2017 is stayed.*

2. *The costs are reserved.*

Action brought on 20 Feburary 2017 — Crédit Agricole and Crédit Agricole Corporate and Investment Bank v Commission

(Case T-113/17)

(2017/C 231/34)

Language of the case: French

Parties

Applicants: Crédit Agricole SA (Montrouge, France) and Crédit Agricole Corporate and Investment Bank (Montrouge) (represented by: J.-P. Tran Thiet, lawyer, M. Powell, Solicitor, J. Jourdan and J.-J. Lemonnier, lawyers)

Defendant: European Commission

Form of order sought

Principally:

— annul Article 1(a) and, in consequence, Article 2(a) of the decision;

— in any event, annul Article 2(a) of the decision.

In the alternative:

— significantly reduce the fine imposed on the applicants in the exercise of its unlimited jurisdiction in application of Article 261 TFEU and Article 31 of Regulation No 1/2003.

Additionally:

— annul the decisions of the Hearing Officer of 2 October 2014, 4 March 2015, 27 March 2015, 29 July 2015 and 19 September 2016 and, in consequence, annul Articles 1(a) and 2(a) of the decision;

— order the Commission to pay all the costs.

Pleas in law and main arguments

This action concerns the annulment in part of European Commission Decision C(2016) 8530 final of 7 December 2016 concerning a procedure in application of Article 101 TFEU in the case of Euro interest rate derivatives (AT.39914 — EIRD), imposing a fine of EUR 114 654 000 on the applicants and, in the alternative, a very significant reduction in that penalty.

In support of the action, the applicants rely on 10 pleas in law.

1. First plea in law, alleging infringement of the right of access to the courts and the adversarial principle.

2. Second plea in law, alleging infringement of the duty of impartiality and the presumption of innocence.

3. Third plea in law, alleging that the contested decision does not establish the participation of the applicants in the manipulative practices alleged.

4. Fourth plea in law, alleging that the contested decision incorrectly classifies the practices referred to as restrictions by object.

5. Fifth plea in law, alleging an error of law committed by the Commission in that it regarded all the practices as constituting a single infringement.

6. Sixth plea in law, alleging that the contested decision failed to establish to the requisite legal standard that the applicants were aware of the overall plan or that they intended to participate therein.

7. Seventh plea in law, alleging that the contested decision is vitiated by an error of law, in that it classified the applicants' alleged infringement as continuous, when, at most, it was repeated.

8. Eighth plea in law, alleging that the contested decision is vitiated by an error of law, in that it attributed the practices of traders to the applicants.

9. Ninth plea in law, alleging that the Commission imposed a fine in breach of the principle of equal treatment, the principle of sound administration, its obligation to state reasons, the rights of the defence and the principle of proportionality.

10. Tenth plea in law, claiming that the General Court should reduce the amount of the fine, which is disproportionate having regard to the seriousness and duration of the practices.

Action brought on 25 April 2017 — SC v Eulex Kosovo

(Case T-242/17)

(2017/C 231/35)

Language of the case: English

Parties

Applicant: SC (represented by: L. Moro, lawyer and A. Kunst, lawyer)

Defendant: Eulex Kosovo

Form of order sought

The applicant claims that the Court should:

— Declare that the defendant infringed its contractual and non-contractual obligations towards the applicant;

— Declare that the 2016 internal competition was unlawful and therefore the applicant's contract has been unlawfully not renewed;

— Order that the applicant be compensated for the losses suffered due to the unlawful non-renewal of her contract in the amount of 19 months' gross salary plus daily allowances' adjustments and salary increment as per 'Remuneration of International Staff Contracted' and 'Indicative Level of Allowances';

— Order that the applicant be compensated for moral damages suffered as a consequence of the defendant's unlawful acts and decisions;

— Order the defendant to bear all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of paragraphs 4 and 6 of the SOP on Reconfiguration, outlining, respectively, the principles and the role and responsibilities of the Head, HRO, and of paragraphs 5 (Principles) and 7 (Selections), in particular of paragraphs 7.1 (a) and (b), 7.2 (c),(f) and (k) and 7.3 (c) of SOP on Staff Selection (infringements of a contractual nature).

2. Second plea in law, alleging infringement of paragraphs 7.2 (f) and 7.3 (c) of SOP on Staff Selection and of Article. 3.2 of the defendant' Code of Conduct, of the contractual principles of fairness and good faith (infringements of a contractual nature) and of the applicant's right to sound administration pursuant to Article 41 of the EU Charter (infringement of a non-contractual nature).

3. Third plea in law, alleging infringement of principle of impartiality and the applicant's right of sound administration.

4. Fourth plea in law, alleging infringement of the Applicant's right to fair and just working conditions (Article 31 EU Charter), of the Decision Memorandum dated 26 January 2011 (Proposal for introduction of assessment driving skills) and the requirements set out in the 2014 calls for contributions, as well as of the right to sound administration.

5. Fifth plea in law, alleging infringement of the right to fair and just working conditions (Art. 31 of the Charter).

Action brought on 26 April 2017 — António Conde & Companhia v Commission

(Case T-244/17)

(2017/C 231/36)

Language of the case: English

Parties

Applicant: António Conde & Companhia, SA (Gafanha de Nazaré, Portugal) (represented by: J. García-Gallardo Gil-Fournier, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare that the European Commission has failed to act in application of Article 14(1) of Council Regulation (EC) No 1386/2007 of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (OJ 2007 L 318, p. 1) by requesting Portugal to submit to it a list of Portuguese-flagged vessels authorised to fish in the NAFO Regulatory Area for the season 2017 which excludes the fishing vessel CALVÃO, with the consequence that it has failed to forward a list including that vessel to the NAFO Secretariat;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the Commission breached Article 14(1) of Council Regulation (EC) No 1386/2007 by unlawfully failing to forward a list of vessels including the applicant's fishing vessel CALVÃO for the purposes of authorisation to fish in the NAFO Regulatory Area for the season 2017.

The applicant maintains that the Commission lacks powers to participate in the drafting of the lists of authorised vessels which remains an exclusive competence of the Member States. The applicant has requested the Commission to desist from interfering in the drafting of the list concerned and has called upon it to fulfil its obligations regarding the forwarding of the list including its fishing vessel CALVÃO to the NAFO Secretariat.

Action brought on 28 April 2017 — Intermarché Casino Achats v Commission

(Case T-254/17)

(2017/C 231/37)

Language of the case: French

Parties

Applicant: Intermarché Casino Achats (Paris, France) (represented by: Y. Utzschneider and J. Jourdan, lawyers)

Defendant: European Commission

Form of order sought

— Declare, on the basis of Article 277 TFEU, Article 20 of Regulation No 1/2003 inapplicable to the present case;

— Annul, on the basis of Articles 263 TFEU and 277 TFEU, European Commission Decision C(2017) 1056 of 9 February 2017;

— Order the European Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the decision of the European Commission of 9 February 2017 ordering the applicant to submit to an inspection under 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; 'the contested decision'). According to the applicant, the contested decision is unlawful in that it is based on provisions which run counter to the Charter of Fundamental Freedoms of the European Union ('the Charter') and the European Convention on Human Rights ('the ECHR'). In that regard, it argues that:

   — Article 20 of Regulation No 1/2003 infringes the right to an effective remedy guaranteed under Article 47 of the Charter and Article 6 of the ECHR in that it does not provide for any effective means of redress against the Commission's inspection operations;

   — Article 20 of Regulation No 1/2003 also infringes the principle of equality of arms guaranteed under Article 47 of the Charter and Article 6 of the ECHR in that it does not provide for access to the documents underlying the Commission's inspection decision or their communication.

2. Second plea in law, alleging a failure to state reasons vitiating the contested decision since it is insufficiently reasoned contrary to the requirements of Article 20(4) of Regulation No 1/2003. The applicant is of the opinion that the contested decision fails entirely to explain how the applicant may be involved in any offence and nor does it state precisely the period during which offences against competition law are suspected to have occurred. That infringement of the obligation to state reasons is all the more injurious since the contested decision does not include the documents on which it is based.

3. Third plea in law, alleging that the contested decision is unlawful since it was adopted by the Commission without the Commission having sufficiently serious indications giving rise to suspicion that an offence against competition law had been committed and so to justify an inspection in the applicant's premises.

4. Fourth plea in law, alleging that the contested decision is unlawful in that it does not comply with the fundamental right of the inviolability of the dwelling provided for in Article 7 of the Charter and Article 8 of the ECHR as a result of the disproportionate nature of the inspection which it orders and the lack of sufficient guarantee against abuses.

Action brought on 28 April 2017 — Les Mousquetaires and ITM Entreprises v Commission

(Case T-255/17)

(2017/C 231/38)

Language of the case: French

Parties

Applicants: Les Mousquetaires (Paris, France), ITM Entreprises (Paris) (represented by: N. Jalabert-Doury, B. Chemama and K. Mebarek, lawyers)

Defendant: European Commission

Form of order sought

— Adopt a measure of organisation of the procedure to require the Commission to state the presumptions and produce the indications which it had to justify the object and aim of Decisions AT.40466 — Tute 1 and AT.40467- Tute 2;

— Uphold the plea of illegality of Article 20(4) of Regulation No 1/2003 in that it does not provide for an effective remedy with regard to the conditions for execution of the inspection decisions in accordance with Articles 6(1), 8 and 13 of the ECHR and Articles 7 and 47 of the Charter;

— Annul Decisions AT.40466 — Tute 1 and AT.40467- Tute 2 of 21 February 2017 ordering Les Mousquetaires S.A. S. and all its subsidiaries to submit to an inspection under Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002;

— In the entire alternative, annul Decisions AT.40466 — Tute 1 and AT.40467- Tute 2 adopted in the same terms with regard to ITM Entreprises S.A.S. on 9 February 2017, which were not served on their addressees;

— Annul the decision taken by the Commission to seize and copy the data on communication and storage tools containing data concerning the private life of the users and to reject the applicants' request for return of the data concerned;

— Order the European Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of the fundamental rights, of the right to inviolability of the dwelling and the right to effective judicial protection as a result of the lack of effective judicial remedy as regards the conditions of execution of the inspection decisions.

2. Second plea in law, alleging infringement of Article 20(4) of Regulation No 1/2003 and the fundamental rights on the ground that insufficient reasons are stated for the inspection decisions and, as a result, the applicants are deprived of the fundamental guarantee required in that context. In particular, the decisions fail adequately to circumscribe the object and aim of the inspections and fail to state the presumptions and indications gathered by the Commission.

3. Third plea in law, alleging infringement of Articles 20(3) and (4) and 21 of Regulation No 1/2003 and the fundamental rights on the ground that the applicants were deprived of other fundamental guarantees. In particular, the inspection decisions are not limited in time, could be implemented without effective notice and without respecting the right to legal assistance, the right to silence and the applicants' right to privacy and did not permit the applicants to mount an effective opposition, having regard to the constant reminders of penalties in the case of obstruction.

4. Fourth plea in law, alleging a manifest error of assessment and infringement of the principle of proportionality in the manner in which the Commission decided on the appropriateness, duration and extent of the inspections.

5. Fifth plea in law, alleging an infringement of the fundamental rights committed by the adoption of the decision refusing to ensure suitable protection for certain documents containing personal data in respect of which the applicants had requested the protection of EU law.

6. Sixth plea in law, seeking, in the alternative, the annulment of the inspection decisions dated 9 February 2017 on the basis of the same pleas.

Action brought on 8 May 2017 — Clean Sky 2 Joint Undertaking v Revoind Industriale

(Case T-268/17)

(2017/C 231/39)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (CSJU) (represented by: B. Mastantuono, Agent and M. Velardo, lawyer)

Defendant: Revoind Industriale Srl (Oricola, Italy)

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay the CSJU the amount of EUR 101 370,94 in relation to the Grant Agreement for partners No 632462 'EASIER-Experimental Acoustic Subsonic wind tunnel Investigation of the advanced geared turbofan Regional aircraft integrating HLD innovative low-noise design', plus the amount of EUR 524,91 as late payment interest calculated at a rate of 3,5 % for the period between 7 February 2017 and 1 April 2017;

— order the defendant to pay EUR 9,72 per day by way of interest from 2 April 2017 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea in law.

The applicant contends that the defendant has breached its contractual obligations, by failing to implement project EASIER and by failing to provide CSJU with the relevant reports and deliverables, in accordance with Article II.2 Annex II of the Grant Agreement.

Moreover, the defendant has failed to carry out the work to be performed as identified in Annex I therefore violating its obligations under Article II.3 lett. a) e) and h) of Annex II of the Grant Agreement.

Accordingly, the applicant terminated the Grant Agreement on the basis of Article II.38 Annex II of the Grant Agreement and issued debit note for the pre-financing of EUR 101 370,94 that had already been paid by the coordinator to the defendant in compliance with the provisions of the Grant Agreement. Indeed the pre-financing remains the property of the applicant until final payment.

The facts giving rise to Revoind Industriale S.r.l.'s obligations, as beneficiary of the Grant Agreement, are widely undisputed in the present case and the defendant's objections are generic, incomplete and lack of any supporting element, thus appear to be completely unfounded.

Accordingly, the applicant is entitled to ask for the recovery and the reimbursement of the amount paid to the defendant as pre-financing, increased by default interest.

Action brought on 8 May 2017 — Clean Sky 2 Joint Undertaking v Revoind Industriale

(Case T-269/17)

(2017/C 231/40)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (CSJU) (represented by: B. Mastantuono, Agent and M. Velardo, lawyer)

Defendant: Revoind Industriale Srl (Oricola, Italy)

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay the CSJU the amount of EUR 433 485,93 in relation to the Grant Agreement for partners No 325954 'ESICAPIA-Experimental Subsonic Investigation of a Complete Aircraft Propulsion system Installation and Architecture power plant optimization', plus the amount of EUR 2 244,63 as late payment interest calculated at a rate of 3,5 % for the period between 7 February 2017 and 1 April 2017;

— order the defendant to pay EUR 41,57 per day by way of interest from 2 April 2017 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on on the following plea in law.

The applicant contends that the defendant has breached its contractual obligations, by failing to implement project ESICAPIA and by failing to provide CSJU with the relevant reports and deliverables, in accordance with Article II.2 Annex II of the Grant Agreement.

Moreover, the defendant has failed to carry out the work to be performed as identified in Annex I therefore violating its obligations under Article II.3 lett. a) e) and h) of Annex II of the Grant Agreement.

Accordingly, the applicant terminated the Grant Agreement on the basis of Article II.38 Annex II of the Grant Agreement and issued debit note for the pre-financing of EUR 433 485,93 that had already been paid by the coordinator to the defendant in compliance with the provisions of the Grant Agreement. Indeed the pre-financing remains the property of the applicant until final payment.

The facts giving rise to Revoind Industriale S.r.l.'s obligations, as beneficiary of the Grant Agreement, are widely undisputed in the present case and the defendant's objections are generic, incomplete and lack of any supporting element, thus appear to be completely unfounded.

Accordingly, the applicant is entitled to ask for the recovery and the reimbursement of the amount paid to the defendant as pre-financing, increased by default interest.

Action brought on 8 May 2017 — Clean Sky 2 Joint Undertaking v Revoind Industriale

(Case T-270/17)

(2017/C 231/41)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (CSJU) (represented by: B. Mastantuono, Agent and by M. Velardo, lawyer)

Defendant: Revoind Industriale Srl (Oricola, Italy)

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay the CSJU the amount of EUR 625 793,42 in relation to the Grant Agreement for partners No 620108 'LOSITA-LOw Subsonic Investigation of a large complete Turboprop Aircraft', plus the amount of EUR 3 240,41 as late payment interest calculated at a rate of 3,5 % for the period between 7 February 2017 and 1 April 2017;

— order the defendant to pay EUR 60,01 per day by way of interest from 2 April 2017 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on on the following plea in law.

The applicant contends that the defendant has breached its contractual obligations, by failing to implement project LOSITA and by failing to provide CSJU with the relevant reports and deliverables, in accordance with Article II.2 Annex II of the Grant Agreement.

Moreover, the defendant has failed to carry out the work to be performed as identified in Annex I therefore violating its obligations under Article II.3 lett. a) e) and h) of Annex II of the Grant Agreement.

Accordingly, the applicant terminated the Grant Agreement on the basis of Article II.38 Annex II of the Grant Agreement and issued debit note for the pre-financing of EUR 625 793,42 that had already been paid by the coordinator to the defendant in compliance with the provisions of the Grant Agreement. Indeed the pre-financing remains the property of the applicant until final payment.

The facts giving rise to Revoind Industriale S.r.l.'s obligations, as beneficiary of the Grant Agreement, are widely undisputed in the present case and the defendant's objections are generic, incomplete and lack of any supporting element, thus appear to be completely unfounded.

Accordingly, the applicant is entitled to ask for the recovery and the reimbursement of the amount paid to the defendant as pre-financing, increased by default interest.

Action brought on 8 May 2017 — Clean Sky 2 Joint Undertaking v Revoind Industriale

(Case T-271/17)

(2017/C 231/42)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (CSJU) (represented by: B. Mastantuono, Agent and M. Velardo, lawyer)

Defendant: Revoind Industriale Srl (Oricola, Italy)

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay the CSJU the amount of EUR 189 128,26 in relation to the Grant Agreement for partners No 632456 'WITTINESS-WindTunnel Tests on an Innovative regional A/C for Noise assessment', plus the amount of EUR 979,32 as late payment interest calculated at a rate of 3,5 % for the period between 7 February 2017 and 1 April 2017;

— order the defendant to pay EUR 18,14 per day by way of interest from 2 April 2017 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on on the following plea in law.

The applicant contends that the defendant has breached its contractual obligations, by failing to implement project WITTINESS and by failing to provide CSJU with the relevant reports and deliverables, in accordance with Article II.2 Annex II of the Grant Agreement.

Moreover, the defendant has failed to carry out the work to be performed as identified in Annex I therefore violating its obligations under Article II.3 lett. a) e) and h) of Annex II of the Grant Agreement.

Accordingly, the applicant terminated the Grant Agreement on the basis of Article II.38 Annex II of the Grant Agreement and issued debit note for the pre-financing of EUR 189 128,26 that had already been paid by the coordinator to the defendant in compliance with the provisions of the Grant Agreement. Indeed the pre-financing remains the property of the applicant until final payment.

The facts giving rise to Revoind Industriale S.r.l.'s obligations, as beneficiary of the Grant Agreement, are widely undisputed in the present case and the defendant's objections are generic, incomplete and lack of any supporting element, thus appear to be completely unfounded.

Accordingly, the applicant is entitled to ask for the recovery and the reimbursement of the amount paid to the defendant as pre-financing, increased by default interest.

Action brought on 5 May 2017 — Webgarden v EUIPO (Dating Bracelet)

(Case T-272/17)

(2017/C 231/43)

Language of the case: Hungarian

Parties

Applicant: Webgarden Szolgáltató és Kereskedelmi Kft. (Budapest, Hungary) (represented by: G. Jambrik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Design at issue: European Union design 'Dating Bracelet' — Application for registration No 14450019

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 March 2017 in Case R 658/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 4 of Regulation No 207/2009.

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

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

— Infringement of Article 20 of the Charter of Fundamental Rights of the European Union.

— Infringement of Article 21(1) of the Charter of Fundamental Rights of the European Union.

Action brought on 15 May 2017 — SH v Commission

(Case T-283/17)

(2017/C 231/44)

Language of the case: French

Parties

Applicant: SH (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

Declare the application admissible and well-founded,

In consequence:

— Hold that the third subparagraph of Article 2(2) of Annex VII to the Staff Regulations is unlawful;

— Annul the decision of 13 July 2016 of the Office for the Administration and Payment of Individual Entitlements ('the PMO') and insofar as necessary, the decision expressly rejecting the claim of 3 February 2017;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, a plea of illegality raised against the decision of 13 July 2016, since it is based on the application of the third subparagraph of Article 2(2) of Annex VII to the Staff Regulations which infringes the prohibition on discrimination on grounds of nationality and/or birth, the principle of equal treatment, the right to education, the protection of children's interests, the principle of proportionality and of legitimacy of any derogation from the rights enshrined in the Charter.

2. Second plea in law, alleging an error of law and infringement of the principle of sound administration, in that the decision of 13 July 2016 is based on an unlawful provision of the Staff Regulations.

Action brought on 12 May 2017 — Le Pen v Parliament

(Case T-284/17)

(2017/C 231/45)

Language of the case: French

Parties

Applicant: Marion Le Pen (Saint-Cloud, France) (represented by: M. Ceccaldi, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the European Parliament resolution of 2 March 2017 on the request for waiver of the immunity of Marine Le Pen, 2016/2295(IMM);

— order the European Parliament to pay Mrs Marine Le Pen the sum of EUR 35 000 as compensation for the non-material damage suffered;

— order the European Parliament to pay Mrs Marine Le Pen the sum of EUR 5 000 by way of reimbursement of recoverable costs;

— order the European Parliament to pay all the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 8 of Protocol No. 7 on the Privileges and Immunities of the European Union ('the protocol'). This plea is divided into four parts.

   — First part, relating to the scope of the immunity provided for by Article 8 of the protocol.

   — Second part, relating to the purpose of the immunity provided for by Article 8 of the protocol.

   — Third part, relating to the traditional protection by the Parliament of the immunity provided for by Article 8 of the protocol.

   — Fourth part, alleging infringement of Mrs Le Pen's immunity under Article 8 of the protocol.

2. Second plea in law, alleging infringement of Article 9 of the protocol. This plea is divided into three parts.

   — First part, relating to the purpose of Article 9 of the protocol.

   — Second part, alleging that the European Parliament erred in law regarding the waiver of the immunity of Mrs Le Pen.

   — Third part, alleging that the resolution to waive immunity infringes Mrs Le Pen's independence and that of the institution.

3. Third plea in law, alleging infringement of the principle of equal treatment and the principle of sound administration. This plea is divided into two parts.

   — First part, alleging that Mrs Le Pen was treated differently in relation to comparable situations and infringement of the principle of equal treatment.

   — Second part, alleging that the contested decision is a clear case of fumus persecutionis and infringes the principle of sound administration.

4. Fourth plea in law, alleging infringement of the rights of the defence.

Action brought on 12 May 2017 — Yanukovych v Council

(Case T-285/17)

(2017/C 231/46)

Language of the case: English

Parties

Applicant: Viktor Fedorovych Yanukovych (Kyiv, Ukraine) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017, L 58, p. 34) insofar as it applies to the applicant;

— annul Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017, L 58, p. 1) insofar as it applies to the applicant;

— order the Council to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council lacked a proper legal basis for the contested acts.

   — The conditions for the Council relying on Article 29 TEU were not fulfilled by the contested decision.

   — The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V TEU.

   — There was no sufficient link for Article 215 TFEU to be relied on against the applicant.

2. Second plea in law, alleging that the Council misused its powers.

   — The Council's actual purpose in implementing the contested acts was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the EU), and not the purposes/rationales stated on the face of the contested acts.

3. Third plea in law, alleging that the Council failed to state reasons.

   — The 'statement of reasons' adopted in the contested acts for including the applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.

4. Fourth plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time.

5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. In re-designating the applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error.

6. Sixth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed adequately to consult with the applicant prior to the re-designation, and the applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances.

7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights.

Action brought on 12 May 2017 — Yanukovych v Council

(Case T-286/17)

(2017/C 231/47)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Donetsk, Ukraine) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant(s)/appellant(s) claims/claim that the Court should:

— annul Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017, L 58, p. 34) insofar as it applies to the applicant;

— annul Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017, L 58, p. 1) insofar as it applies to the applicant;

— order the Council to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council lacked a proper legal basis for the contested acts.

   — The conditions for the Council relying on Article 29 TEU were not fulfilled by the contested decision.

— The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V TEU.

— There was no sufficient link for Article 215 TFEU to be relied on against the applicant.

2. Second plea in law, alleging that the Council misused its powers.

— The Council's actual purpose in implementing the contested acts was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the EU), and not the purposes/rationales stated on the face of the contested acts.

3. Third plea in law, alleging that the Council failed to state reasons.

— The 'statement of reasons' adopted in the contested acts for including the applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.

4. Fourth plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time.

5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. In re-designating the applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error.

6. Sixth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed adequately to consult with the applicant prior to the re-designation, and the applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances.

7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights.

Action brought on 15 May 2017 — Sky v EUIPO — Parrot Drones (Parrot SKYCONTROLLER)

(Case T-288/17)

(2017/C 231/48)

Language in which the application was lodged: English

Parties

Applicant: Sky plc (Isleworth, United Kingdom) (represented by: J. Barry, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Parrot Drones (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word elements 'Parrot SKYCONTROLLER' — Application for registration No 13 107 842

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 March 2017 in Case R 457/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the applicant's costs of this application and the proceedings before the Office.

Plea(s) in law

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

Action brought on 16 May 2017 — Stavytskyi v Conseil

(Case T-290/17)

(2017/C 231/49)

Language of the case: English

Parties

Applicant: Edward Stavytskyi (Belgium) (represented by: M. J. Grayston, Solicitor, M[es] P. Gjørtler, G. Pandey and D. Rovetta, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

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

— order the Council to bear the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the listing legislation violates the principle of proportionality, as it allows for listing on the basis merely of being subject to criminal proceedings, and that consequently the contested acts have been acted on an illegal basis.

2. Second plea in law, alleging that the Council committed a manifest error of assessment, as it did not have sufficiently solid factual basis for listing the applicant on the ground that he was subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds and assets.

3. Third plea in law, alleging an insufficient statement of reasons, as, in the contested acts, the Council gave an insufficient and stereotypical statement of reasons, as it merely copied the text found in the listing legislation.

4. Fourth plea in law, alleging an incorrect legal basis, as the measures taken by the Council do not, in relation to the applicant, constitute foreign policy measures, but instead constitute international cooperation in criminal proceedings, which accordingly have been adopted on an incorrect legal basis.

Action brought on 16 May 2017 — Transdev and Others v Commission

(Case T-291/17)

(2017/C 231/50)

Language of the case: French

Parties

Applicants: Transdev (Issy-les-Moulineaux, France), Transdev Ile de France (Issy-les-Moulineaux), Transports rapides automobiles (TRA) (Villepinte, France) (represented by: F. Salat-Baroux, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— principally, partially annul the decision of the European Commission of 2 February 2017 relating to the aid scheme SA.26763 2014/C (ex 2012/NN) implemented by France in favour of bus undertakings in the Île-de-France region, in so far as it states, in Article 1, that the regional aid scheme was 'unlawfully' implemented, although it concerned an existing aid scheme;

— in the alternative, partially annul the decision of the European Commission of 2 February 2017 relating to the aid scheme SA.26763 2014/C (ex 2012/NN) implemented by France in favour of bus undertakings in the Île-de-France region, in so far as it states, in Article 1, that the regional aid scheme was unlawfully implemented, with respect to the period prior to 25 November 1998;

— order the European Commission to pay all 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, raised as the principal claim, alleging that the regional aid scheme at issue was not unlawfully implemented, since it was not subject to the prior notification obligation. The regional aid scheme is an existing aid scheme, within the meaning of Article 108(1) TFEU and the provisions of Article 1(b) and Chapter VI of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9) ('Regulation No 2015/1589'). According to the rules applicable to existing aid schemes, their implementation is not unlawful, since the Commission may only prescribe, where appropriate, appropriate measures to promote them or remove them with respect to the future.

2. Second plea in law, raised in the alternative, alleging that the regional aid scheme did not constitute an existing aid scheme. According to the applicants, the Commission caused the contested decision to be unlawful by holding that the 10-year limitation period had been interrupted by an action brought in 2004 by the Syndicat autonome des transporteurs de voyageurs (Independent trade union for road passenger operators) ('the SATV') before the national court. Article 17 of Regulation No 2015/1589 provides that the 10-year limitation period is interrupted only by a measure taken by the Commission or by a Member State, acting at the request of the Commission. The applicants claim that the initiation of an action before the national court by the SATV does not constitute a measure interrupting the limitation period for the purposes of that provision.

Action brought on 16 May 2017 — Région Île-de-France v Commission

(Case T-292/17)

(2017/C 231/51)

Language of the case: French

Parties

Applicant: Région Île-de-France (Paris, France) (represented by: J.-P. Hordies, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 2 February 2017 (SA.26763 — (2014/C) –), concerning the aid scheme implemented by France in favour of bus undertakings in the Île-de-France region, in so far as it classified that scheme as State aid;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission refused to classify the support scheme for the region as existing aid.

2. Second plea in law, alleging a failure to state reasons for the contested decision. This plea is divided into two parts:

   — First part, alleging a failure to state reasons relating to the criterion of selectivity.

   — Second part, alleging a failure to state reasons relating to the criterion of undue economic advantage.

Action brought on 12 May 2017 — Lion's Head Global Partners v EUIPO — Lion Capital (Lion's Head)

(Case T-294/17)

(2017/C 231/52)

Language in which the application was lodged: German

Parties

Applicant: Lion's Head Global Partners LLP (London, United Kingdom) (represented by: R. Nöske, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Lion Capital LLP (London, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration No 997 073 designating the European Union in respect of the word mark 'Lion's Head'

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 February 2017 in Case R 1478/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and reject the opposition;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 15 May 2017 — VSM v EUIPO (WE KNOW ABRASIVES)

(Case T-297/17)

(2017/C 231/53)

Language of the case: German

Parties

Applicant: VSM . Vereinigte Schmirgel- und Maschinen-Fabriken AG (Hanover, Germany) (represented by: M. Horak, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'WE KNOW ABRASIVES' — Application for registration No 15 063 522

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 March 2017 in Case R 1595/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Breach of Article 7(1)(b), in conjunction with Article 7(2), of Regulation No 207/2009;

— Breach of Article 63(1), in conjunction with Articles 58 and 59, of Regulation No 207/2009, breach of Article 63(2) of Regulation No 207/2009, and thus infringement of the principle of *audi alteram partem*.

Action brought on 16 May 2017 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (1000)

(Case T-299/17)

(2017/C 231/54)

Language in which the application was lodged: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: The sign '1000' — EU trade mark No 12 333 531

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 March 2017 in Case R 650/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the respondent before the Board of Appeal decides to intervene in the proceedings, order that intervener to pay the costs.

Pleas in law

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

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

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

— Infringement of the principle of equal treatment and the principle of sound administration.

Action brought on 17 May 2017 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (3000)

(Case T-300/17)

(2017/C 231/55)

Language in which the application was lodged: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: The sign '3000' — EU trade mark No 12 511 119

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 in Case R 653/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the respondent before the Board of Appeal decides to intervene in the proceedings, order that intervener to pay the costs.

Pleas in law

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

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

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

— Infringement of the principle of equal treatment and the principle of sound administration.

Action brought on 17 May 2017 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (2000)

(Case T-301/17)

(2017/C 231/56)

Language in which the application was lodged: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: The sign '2000' — EU trade mark No 12 511 069

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 in Case R 651/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the respondent before the Board of Appeal decides to intervene in the proceedings, order that intervener to pay the costs.

Pleas in law

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

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

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

— Infringement of the principle of equal treatment and the principle of sound administration.

Action brought on 18 May 2017 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (6000)

(Case T-302/17)

(2017/C 231/57)

Language in which the application was lodged: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: The sign '6000' — EU trade mark No 13 112 545

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 in Case R 656/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the respondent before the Board of Appeal decides to intervene in the proceedings, order that intervener to pay the costs.

Pleas in law

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

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

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

— Infringement of the principle of equal treatment and the principle of sound administration.

Action brought on 18 May 2017 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (4000)

(Case T-303/17)

(2017/C 231/58)

Language in which the application was lodged: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: The sign '4000' — EU trade mark No 12 333 548

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 in Case R 654/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the respondent before the Board of Appeal decides to intervene in the proceedings, order that intervener to pay the costs.

Pleas in law

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

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

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

— Infringement of the principle of equal treatment and the principle of sound administration.

Action brought on 18 May 2017 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (5000)

(Case T-304/17)

(2017/C 231/59)

Language in which the application was lodged: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: The sign '5000' — EU trade mark No 12 333 555

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 in Case R 655/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— in the event that the respondent before the Board of Appeal decides to intervene in the proceedings, order that intervener to pay the costs.

Pleas in law

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

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

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

— Infringement of the principle of equal treatment and the principle of sound administration.

Action brought on 17 May 2017 — Red Bull v EUIPO (Representation of a parallelogram composed of two fields in different colours)

(Case T-305/17)

(2017/C 231/60)

Language of the case: English

Parties

Applicant: Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck and S. Petivlasova, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark (Representation of a parallelogram composed of 2 fields in different colours) — Application for registration No 14 326 508

Contested decision: Decision of the First Board of Appeal of EUIPO of 26 January 2017 in Case R 2582/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of Article 7(3) of Regulation No 207/2009.

Action brought on 18 May 2017 — adidas v EUIPO — Shoe Branding Europe (Representation of three parallel stripes)

(Case T-307/17)

(2017/C 231/61)

Language in which the application was lodged: English

Parties

Applicant: adidas AG (Herzogenaurach, Germany) (represented by: I. Fowler and I. Junkar, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Shoe Branding Europe BVBA (Oudenaarde, Belgium)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark (Representation of three parallel stripes) — EU trade mark No 12 442 166

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 March 2017 in Case R 1515/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the Board of Appeal, if it joins as intervener, to pay the costs.

Plea in law

— Infringement of Article 52(2) read in conjunction with Article 7(3) of Regulation No 207/2009.

Action brought on 15 May 2017 — Lion's Head Global Partners v EUIPO — Lion Capital (LION'S HEAD global partners)

(Case T-310/17)

(2017/C 231/62)

Language in which the application was lodged: German

Parties

Applicant: Lion's Head Global Partners LLP (London, United Kingdom) (represented by: R. Nöske, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Lion Capital LLP (London, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark including the word elements 'LION'S HEAD global partners' — International registration No 996 979

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 February 2017 in Case R 1477/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 28 February 2017 (Case R 1477/2016-4) relating to opposition proceedings between Lion's Head Global Partners LLP and Lion Capital LLP and reject the opposition;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 19 May 2017 — Stips v Commission

(Case T-311/17)

(2017/C 231/63)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

Declare and rule,

— principally, that the decision of the AECE of 19 August 2016 not to reclassify the applicant in grade AD 13 in the 2013 reclassification procedure is annulled;

— in the alternative, that the Commission is ordered to make good in full the harm, both pecuniary and non-pecuniary, suffered by the applicant;

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

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging an infringement of Article 266 TFEU, in that the Commission ignored the grounds for the judgment of 19 July 2016, *Stips* v *Commission* (F-131/15, EU:F:2016:154) and executed that judgment in bad faith, thus undermining the force of res judicata given absolute effect by the Civil Service Tribunal.

Action brought on 22 May 2017 — Wajos v EUIPO (Shape of a bottle)

(Case T-313/17)

(2017/C 231/64)

Language of the case: German

Parties

Applicant: Wajos GmbH (Dohr, Germany) (represented by: J. Schneiders, R. Krillke and B. Schneiders, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Three-dimensional EU trade mark (Shape of a bottle) — Application for registration No 14 886 097

Contested decision: Decision of the First Board of Appeal of EUIPO of 15 February 2017 in Case R 1526/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Plea in law

— Breach of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 23 May 2017 — Nosio v EUIPO (MEZZA)

(Case T-314/17)

(2017/C 231/65)

Language of the case: Italian

Parties

Applicant: Nosio SpA (Mezzocorona, Italy) (represented by: A. Perani and J. Graffer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'MEZZA' — Application for registration No 14 822 506

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 March 2017 in Case R 1518/2016-5

Form of order sought

The applicant claims that the Court should:

— establish that there has been an infringement and incorrect application of Article 43(1) of Regulation No 207/2009;

— declare valid the limitation proposed in Class 33, namely 'alcoholic beverages, in particular wine and sparkling wine, in bottles and/or containers with a capacity greater than or less than 0,375 litres';

— determine that there has been an infringement of Article 75 of Regulation No 207/2009;

— annul the decision of the Fifth Board of Appeal of EUIPO in Case R 1518/2016-5, delivered on 1 March 2017 and notified on 23 March 2017;

— order EUIPO to pay the costs and fees incurred in the present proceedings.

Pleas in law

— Infringement and incorrect application of Article 43(1) of Regulation No 207/2009;

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

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

Action brought on 19 May 2017 — Clean Sky 2 Joint Undertaking v Revoind Industriale

(Case T-318/17)

(2017/C 231/66)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (CSJU) (represented by: B. Mastantuono, Agent and M. Velardo, lawyer)

Defendant: Revoind Industriale Srl (Oricola, Italy)

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay the CSJU the amount of EUR 359 913,75 in relation to the Grant Agreement for partners No 325940 'EULOSAM — Design and Manufacturing of Baseline Low-Speed, Low-Sweep Wind Tunnel Model', plus the amount of EUR 2 105,25 as late payment interest calculated at a rate of 3,5 % for the period between 31 January and 1 April 2017;

— order the defendant to pay EUR 34,51 per day by way of interest from 2 April 2017 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea in law.

The applicant contends that the defendant has breached its contractual obligations, by failing to implement project EULOSAM and by failing to provide CSJU with the relevant reports and deliverables, in accordance with Article II.2 Annex II of the Grant Agreement.

Moreover, the defendant has failed to carry out the work to be performed as identified in Annex I therefore violating its obligations under Article II.3 lett. a) e) and h) of Annex II of the Grant Agreement.

Accordingly, the consortium terminated the Grant Agreement and issued debit note for the pre-financing of EUR 359 913,75 that had already been paid by the coordinator to the defendant in compliance with the provisions of the Grant Agreement. Indeed the pre-financing remains the property of the applicant until final payment.

The facts giving rise to Revoind Industriale S.r.l.'s obligations, as beneficiary of the Grant Agreement, are widely undisputed in the present case and the defendant's objections are generic, incomplete and lack of any supporting element, thus appear to be completely unfounded.

Accordingly, the applicant is entitled to ask for the recovery and the reimbursement of the amount paid to the defendant as pre-financing, increased by default interest.

Action brought on 16 May 2017 — Ceobus and Others v Commission

(Case T-330/17)

(2017/C 231/67)

Language of the case: French

Parties

Applicants: Ceobus (Génicourt, France), Compagnie des transports voyageurs du Mantois interurbains — CTVMI (Mantes-la-Jolie, France), SA des Transports de St Quentin en Yvelines (Trappes, France), Les cars Perrier (Trappes), Tim Bus (Magny-en-Vexin, France), Transports Voyageurs du Mantois (TVM) (Mantes-la-Jolie) (represented by: D. de Combles de Nayves, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— principally, annul Commission Decision SA.26763 of 2 February 2017 relating to presumed aid granted to public transport undertakings by the Île-de-France region in so far as it considers that the Île-de-France aid scheme established from 1984 and until 2008 constitutes a new aid scheme which was 'unlawfully implemented';

— in the alternative, annul Commission Decision SA.26763 of 2 February 2017 relating to presumed aid granted to public transport undertakings by the Île-de-France region in so far as it considers that the individual aid derived from the Île-de-France aid scheme between May 1994 and 25 November 2008 constitutes new aid which was 'unlawfully implemented'.

Pleas in law and main arguments

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

1. First plea in law, raised in the context of the first head of claim, alleging infringement of Article 108 TFEU, of Article 1(b) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ('Regulation No 2015/1589') (OJ 2015 L 248, p. 9), and infringement of the principle of res judicata inherent to judgments rendered following a response to a reference for a preliminary ruling by the Court of Justice of the European Union.

2. Second plea in law, raised in the context of the second head of claim, alleging infringement of Article 17 of Regulation No 2015/1589, in so far as the Commission classified as a measure interrupting the limitation period a measure which did not respect the qualification criteria for that category of measure provided for by that article.

3. Third plea in law, raised in the context of the second head of claim, alleging infringement of the procedural rights of interested third parties, in so far as the Commission considered in its opening decision that the limitation period had been interrupted not by the initiation of an action before the administrative courts, but by the Commission's first request for information dated 25 November 2008.

Action brought on 23 May 2017 — Steifer v EESC

(Case T-331/17)

(2017/C 231/68)

Language of the case: French

Parties

Applicant: Guy Steifer (Brussels, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: European Economic and Social Committee

Form of order sought

— Annul the decision of 21 October 2002 of the Director of Human and Financial Resources of the EESC rejecting the applicant's request of 2 October 2002 for reimbursement, together with applicable interest, of the part of his Belgian pension rights not credited on transfer to the Community pension scheme;

— Annul the notice of assessment of the applicant's entitlement to a retirement pension, determined by Decision No 360/03 A of 15 December 2003, insofar as it ruled out or failed to provide for reimbursement of periodic annuity payments corresponding to his retirement pension which are paid by the Office national des pensions (National Pensions Office; 'ONP') of the Kingdom of Belgium to the bank account of the EESC as from 1 January 2004 as a result of the transfer of his pension rights;

— Order the EESC to reimburse the applicant the amount of the periodic annuity payments paid by the ONP to the EESC since 1 January 2004 as a result of the transfer of his pension rights, together with late-payment interest at the rate set by the ECB for its main refinancing operations, increased by two points, from the date on which those reimbursements ought to have been made until payment in full;

— Order the EESC to reimburse the applicant each month the amount of the periodic annuity payments to be paid in the future by the ONP to the bank account of the EESC;

— Order the EESC to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of the principle of unjust enrichment of the European Union, the right to property and Article 11(2) of Annex VIII to the Staff Regulations of Officials interpreted in the light of its objectives, insofar as the contested decisions rule out or fail to provide for the applicant to be entitled to reimbursement of the amount of his national pension which has not contributed to the establishment of his pension from the European Union.

Order of the General Court of 3 May 2017 — Facebook v EUIPO — Brand IP Licensing (lovebook)

(Case T-757/15) ([1])

(2017/C 231/69)

Language of the case: English

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

([1]) OJ C 68, 22.2.2016.

Order of the General Court of 18 May 2017 — Consorzio IB Innovation v Commission

(Case T-84/17) ([1])

(2017/C 231/70)

Language of the case: Italian

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

([1]) OJ C 95, 27.3.2017.

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

(Case T-95/17) ([1])

(2017/C 231/71)

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.

Order of the General Court of 18 May 2017 — Consorzio IB Innovation v Commission

(Case T-126/17) ([1])

(2017/C 231/72)

Language of the case: Italian

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

([1]) OJ C 121, 18.4.2017.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-86/17

(Official Journal of the European Union C 104 of 3 April 2017)

(2017/C 231/73)

The notice concerning Case T-86/17, *Le Pen* v *Parliament* should read as follows:

Action brought on 10 February 2017 — Le Pen v Parliament

(Case T-86/17)

(2017/C 104/85)

Language of the case: French

Parties

Applicant: Marion Le Pen (Saint-Cloud, France) (represented by: M. Ceccaldi and J.-P. Le Moigne, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Secretary General of the European Parliament of 5 December 2016 taken in accordance with Decision 2009/C 159/01 of the Bureau of the European Parliament of 19 May and 9 July 2008 issuing a demand for payment to the applicant in respect of EUR 298 497,87 for sums unduly paid for parliamentary assistance, stating reasons for the recovery of those sums and authorising the officer responsible, in collaboration with the institution's accountant, to recover those sums in accordance with Article 68 of the Implementing Measures for the Statute of Members of the European Parliament and Articles 66, 78, 79 and 80 of the Financial Regulation ('the FR');

— annul the debit note No 2016-1560 of 6 December 2016, demanding that applicant pay the sum of EUR 298 497,87 pursuant to the decision of the Secretary General of 5 December 2016, recovery of sums unduly paid for parliamentary assistance, application of Article 86 of the Implementing Measure for the Statute for Members of the European Parliament and Articles 66, 78, 79 and 80 of the FR;

— order the European Parliament to pay all the costs of the proceedings;

— order the European Parliament to pay Ms Le Pen EUR 50 000 as payment for recoverable costs.

Pleas in law and main arguments

In support of the action the applicant puts forward twelve pleas:

1. First plea, based on the lack of competence of the author of the act. The applicant takes the view that the decision of the Secretary General of the European Parliament of 5 December 2016 ('the contested decision') falls within the competence of the Bureau of the European Parliament and the signatory of the decision did not indicate any delegation of powers.

2. Second plea, based on the lack of reasoning in the contested decision, even though that requirement is laid down by Article 41 of the Charter of Fundamental Rights of the European Union.

3. Third plea claiming infringement of an essential procedural requirement, in that the contested decision referred to the investigation report prepared by the European Anti- Fraud Office ('OLAF'), closed on 26 July 2016, which was not communicated to the applicant. Therefore, applicant was not heard and was not able to properly avail herself of her right to defend herself, since the Secretary General refused to communicate to her the evidence on which the contested decision is based.

4. Fourth plea, based on the failure by the Secretary General of the European Parliament to personally examine file. According to the applicant, the latter merely relied on the report by OLAF and never personally examined the applicant's situation.

5. Fifth plea, based on the lack of any facts supporting the contested decision and the debit note ('the contested acts'), in that the facts on which they are based are inaccurate.

6. Sixth plea, based on the reversal of the burden of proof. In that regard, the applicant considers that it is not for her to adduce evidence of her parliamentary assistant's work, but that it is for the competent authorities to prove the contrary.

7. Seventh plea, alleging infringement of the principle of proportionality, in so far as there are no grounds with regard to the details or the method of calculation of the sum claimed from the applicant, and it is assumed that the parliamentary assistant never worked for the applicant.

8. Eighth plea, based on an abuse of powers, in that the contested acts were adopted with the aim of depriving the applicant, a Member of the European Parliament, of the means to carry out her mandate.

9. Ninth plea, based on an abuse of process. The applicant considers that, to avoid being ordered to send her the OLAF report which was in his possession, the Secretary General unlawfully sent the request for communication of that report to OLAF which has not sent her the report.

10. Tenth plea, based on discrimination and the existence of *fumus persecutionis*, in that the circumstances surrounding the present dispute exclusively concern the applicant and her party.

11. Eleventh plea, based on the undermining of the independence of a member of parliament and the consequences of the lack of any binding mandate. The contested acts were undoubtedly intended to impede the freedom to exercise the applicant's parliamentary mandate, by depriving her of the financial means necessary to carry out her mission. Furthermore, the applicant was unable to receive instructions from the Secretary General as to how she was to carry out her mandate, subject to the threat of financial sanctions.

12. Twelfth plea, based on OLAF's lack of independence, in that that body did not offer any guarantee of impartiality and probity and is under the control of the European Commission.

Corrigendum to notice in the Official Journal in Case T-161/17

(Official Journal of the European Union C 151 of 15 May 2017)

(2017/C 231/74)

The notice in the Official Journal in Case T-161/17, *Le Pen* v *Parliament*, should be read as follows:

'Action brought on 11 March 2017 — Le Pen v Parliament

(Case T-161/17)

(2017/C 151/49)

Language of the case: French

Parties

Applicant: Marion Le Pen (Saint-Cloud, France) (represented by: M. Ceccaldi and J.-P. Le Moigne, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Secretary-General of the European Parliament of 6 January 2017, adopted pursuant to Articles 33, 43, 62, 67 and 68 of Decision 2009/C 159/01 of the Bureau of the European Parliament of 19 May and 9 July 2008 "concerning implementing measures for the Statute for Members of the European Parliament", as amended, making a claim against the applicant for an amount of EUR 41 554 by way of sums unduly paid for parliamentary assistance and giving reasons for its recovery, and ordering the competent authorising officer, in cooperation with the accounting officer of that institution, to recover that amount in accordance with Article 68 of the implementing measures and Articles 66, 78, 79 and 80 of the Financial Regulation;

— annul Debit Note No 2017-22 of 11 January 2017 informing the applicant that a claim for EUR 41 554 has been made against her following the Secretary-General's decision of 6 January 2017 ordering the recovery of sums unduly paid for parliamentary assistance in accordance with Article 68 of the implementing measures and Articles 78, 79 and 80 of the Financial Regulation;

— order the European Parliament to pay the costs in their entirety;

— order the European Parliament to pay Ms Le Pen the sum of EUR 50 000 by way of compensation for the recoverable 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 defects affecting the procedural legality of the contested measures. This plea is divided into five parts.

   — First part, alleging that the power to make financial decisions concerning Members rests with the Bureau of the European Parliament and not with the Secretary-General.

   — Second part, alleging that the Bureau of the European Parliament cannot alter the nature and scope of its powers. The Secretary-General has not provided evidence of any lawful delegation of power by the President of the Bureau of the Parliament of the power to adopt and notify the contested measures in order to settle financial issues concerning a Member.

   — Third part, alleging that the contested measures do not contain a sufficient statement of reasons, and that they are of an arbitrary nature.

   — Fourth part, alleging infringement of essential procedural requirements.

— Fifth part, alleging that the Secretary-General of the European Parliament did not personally examine the case-file.

2. Second plea in law, alleging defects affecting the substantive legality of the contested measures. This plea is divided into six parts.

— First part, alleging infringement of the principles of legitimate expectations and legal certainty.

— Second part, alleging that there are no facts to support the contested measures.

— Third part, alleging that the contested measures are vitiated by a misuse of powers.

— Fourth part, alleging that the contested measures are vitiated by an abuse of process.

— Fifth part, alleging that the contested measures are discriminatory and that there is *fumus persecutionis*.

— Sixth part, alleging a lack of independence on the part of OLAF.'

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