Official Journal of the European Union

C 318

English edition

Information and Notices

Volume 60

25 September 2017

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 10 March 2017 — Nefiye Yön v Landeshauptstadt Stuttgart

(Case C-123/17)

(2017/C 318/02)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Nefiye Yön

Defendant: Landeshauptstadt Stuttgart

Questions referred

1. Has the standstill clause laid down in Article 7 of Decision No 2/76 of the Association Council been completely superseded by the standstill clause laid down in Article 13 of Decision No 1/80 of the Association Council, or is the lawfulness of new restrictions on the free movement of workers, which were introduced between the entry into force of Decision No 2/76 and the time when Article 13 of Decision No 1/80 became applicable, to continue to be assessed pursuant to Article 7 of Decision No 2/76?

2. If the answer to the first question is that Article 7 of Decision No 2/76 was not completely replaced: is the case-law of the Court of Justice of the European Union concerning Article 13 of Decision No 1/80 to be fully applied also to the application of Article 7 of Decision No 2/76, with the result that Article 7 of Decision No 2/76 also covers on that basis a national provision, introduced with effect from 5 October 1980, under which the ability of the spouse of a Turkish worker to join that worker for the purpose of family reunification is made dependent on a national visa being issued?

3. Is the introduction of such a national provision justified on the basis of an overriding reason in the public interest, in particular the objective of effective immigration control and the management of migration flows, where the particular circumstances of the individual case are taken into account through the operation of a hardship clause?

Request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 3 April 2017 — Abubacarr Jawo v Bundesrepublik Deutschland

(Case C-163/17)

(2017/C 318/03)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: Abubacarr Jawo

Defendant: Bundesrepublik Deutschland

Questions referred

1. Is an asylum seeker absconding within the meaning of the second sentence of Article 29(2) of Regulation (EU) No 604/2013 ([1]) only where he purposefully and deliberately evades apprehension by the national authorities responsible for carrying out the transfer in order to prevent or impede the transfer, or is it sufficient if, for a prolonged period, he ceases to live in the accommodation allocated to him and the authority is not informed of his whereabouts and therefore a planned transfer cannot be carried out?

   Is the person concerned entitled to rely on the correct application of the provision and to plead in proceedings against the transfer decision that the transfer time limit of six months has expired, because he was not absconding?

2. Does an extension of the time limit provided for under the first subparagraph of Article 29(1) of Regulation (EU) No 604/2013 arise solely as a result of the fact that the transferring Member State informs the Member State responsible, before the expiry of the time-limit, that the person concerned has absconded, and at the same time specifies an actual time limit, which may not exceed 18 months, by which the transfer will be carried out, or is an extension possible only in such a way that the Member States involved stipulate by mutual agreement an extended time limit?

3. Is transfer of the asylum seeker to the Member State responsible inadmissible if, in the event of international protection status being granted, he would be exposed there, in view of the living conditions then to be expected, to a serious risk of experiencing treatment as referred to in Article 4 of the Charter of Fundamental Rights?

   Does this question as formulated still fall within the scope of application of EU law?

   According to which criteria under EU law are the living conditions of a person recognised as a beneficiary of international protection to be assessed?

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

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 18 May 2017 — Andreas Niemeyer v Brussels Airlines SA/NV

(Case C-269/17)

(2017/C 318/04)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: Andreas Niemeyer

Defendant: Brussels Airlines SA/NV

Question referred

Is the second sentence of Article 7(1) of Regulation (EC) No 261/2004 ([1]) ('the Regulation') to be interpreted as meaning that the concept of 'distance' relates only to the direct distance calculated between the point of departure and the last destination on the basis of the 'great circle' method, regardless of the distance actually flown?

([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 Hanseatisches Oberlandesgericht in Bremen (Germany) lodged on 29 May 2017 — Stadtwerke Delmenhorst GmbH v Manfred Bleckwehl

(Case C-309/17)

(2017/C 318/05)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht in Bremen

Parties to the main proceedings

Applicant: Stadtwerke Delmenhorst GmbH

Defendant: Manfred Bleckwehl

Questions referred

1. Is Article 3(3) of Directive 2003/55/EC ([1]) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, in conjunction with points (b) and (c) of Annex A thereto, to be interpreted as meaning that failure to give gas customers timely and direct notice of the preconditions and reasons for and the extent of an imminent change in the tariff for gas supplies precludes the effectiveness of such a change in tariff?

2. If that question is answered in the affirmative:

   Has Article 3(3) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, in conjunction with points (b) and (c) of Annex A thereto, been directly applicable since 1 July 2004 to a supply undertaking incorporated under private law (as a German GmbH), because the abovementioned provisions of that directive are unconditional, so far as their subject matter is concerned, and can therefore be applied without any further implementing act, and confer rights on citizens vis-à-vis an organisation which, despite its private-law legal form, is subject to the authority of the State because the State is the sole shareholder in the undertaking?

([1]) OJ 2003 L 176, p. 57.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 1 June 2017 — Gerhard Prenninger and Others

(Case C-329/17)

(2017/C 318/06)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Gerhard Prenninger, Karl Helmberger, Franziska Zimmer, Franz Scharinger, Norbert Pühringer, Agrargemeinschaft Pettenbach, Marktgemeinde Vorchdorf, Marktgemeinde Pettenbach, Gemeinde Steinbach am Ziehberg

Question referred

Must Directive 2011/92/EU ([1]) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) be interpreted as meaning that the 'clearance of a path' for the purpose of the construction of a power supply system and for the duration of its lawful existence constitutes 'deforestation for the purposes of conversion to another type of land use' within the meaning of point 1(d) of Annex II to the EIA Directive?

([1]) OJ 2012 L 26, p. 1.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 14 June 2017 — Jörg Scharnweber and Henning Kuhlmann v Société Air France SA

(Case C-366/17)

(2017/C 318/07)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: Jörg Scharnweber and Henning Kuhlmann

Defendant: Société Air France SA

The case was removed from the Register of the Court of Justice by order of the Court of 19 July 2017.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 19 June 2017 — Uber BV v Richard Leipold

(Case C-371/17)

(2017/C 318/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Uber BV

Respondent in the appeal on a point of law: Richard Leipold

Questions referred

1. In the case where an undertaking which, in cooperation with hire vehicle undertakings licensed for the carriage of persons, makes available a smartphone application through which users can place orders for chauffeur-driven hire vehicles, does that undertaking itself supply a service in the field of transport within the meaning of Article 58(1) TFEU and Article 2(2)(d) of Directive 2006/123 ([1]) if the organisational services provided by that undertaking are closely related to the service of carriage, in particular where that undertaking

   — determines the prices, the processing of payments and the conditions of carriage for the assignment of trips

   and

   — advertises the vehicles procured by the undertaking under its own brand designation and with the same uniform promotional offers?

   If the Court should answer Question 1 in the negative:

2. May an injunction prohibiting a service of the kind at issue in the main proceedings be justified, in the light of current modes of transport, from the perspective of the safeguarding of public policy under Article 16(1) of Directive 2006/123 on the basis of the objective of maintaining the competitiveness and proper functioning of taxi services?

([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 Bundesgerichtshof (Germany) lodged on 26 June 2017 — Società Immobiliare Al Bosco srl

(Case C-379/17)

(2017/C 318/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Società Immobiliare Al Bosco srl

Question referred

Is it compatible with Article 38(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) to apply a time limit which is laid down in the law of the State in which enforcement is sought, and on the basis of which an instrument may no longer be enforced after the expiry of a particular period, also to a functionally comparable instrument issued in another Member State and recognised and declared enforceable in the State in which enforcement is sought?

([1]) OJ 2001 L 12, p. 1.

Request for a preliminary ruling from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 27 June 2017 — Dooel Uvoz-Izvoz Skopje Link Logistic N&N v Budapest Rendőrfőkapitánya

(Case C-384/17)

(2017/C 318/10)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Dooel Uvoz-Izvoz Skopje Link Logistic N&N

Defendant: Budapest Rendőrfőkapitánya

Questions referred

1. Is the requirement of proportionality laid down in Article 9a of Directive 1999/62/EC ([1]) of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, and interpreted by the Court of Justice of the European Union in its judgment of 22 March 2017 in Joined Cases C-497/15 and C-498/15, *Euro-Team*, a directly applicable provision of the directive?

2. If the requirement of proportionality laid down in Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, and interpreted by the Court of Justice of the European Union in its judgment of 22 March 2017 in Joined Cases C-497/15 and C-498/15, *Euro-Team*, is not a directly applicable provision of the directive:

   does the interpretation of national law in conformity with EU law permit and require the national court and administrative authority to supplement — in the absence of legislative action at national level — the relevant Hungarian legislation in the present proceedings with the substantive criteria of the requirement of proportionality, laid down in the judgment of the Court of Justice of the European Union of 22 March 2017 in Joined Cases C-497/15 and C-498/15, *Euro-Team*?

([1]) OJ 1999 L 187, p. 42.

Request for a preliminary ruling from the Arbeitsgericht Verden (Germany) lodged on 26 June 2017 — Torsten Hein v Albert Holzkamm GmbH & Co.

(Case C-385/17)

(2017/C 318/11)

Language of the case: German

Referring court

Arbeitsgericht Verden

Parties to the main proceedings

Applicant: Torsten Hein

Defendant: Albert Holzkamm GmbH & Co.

Questions referred

1. Are Article 31 of the Charter of Fundamental Rights of the European Union and Article 7(1) of Directive 2003/88/EC ([1]) of 4 November 2003 concerning certain aspects of the organisation of working time to be interpreted as precluding national legislation under which it may be provided in collective agreements that reductions in earnings occurring in the period of calculation as a result of short-time work affect the calculation of the payment for annual leave with the result that the worker receives a lower remuneration for annual leave for the duration of the period of annual leave of at least four weeks, or receives a lower allowance in lieu of leave after the employment relationship has ended, than he would receive if the calculation of the remuneration for annual leave were based on the average earnings which the worker would have received in the period of calculation without such reductions in earnings? If so, what is the maximum percentage, with reference to the worker's full average earnings, that a collectively agreed reduction, permitted by national legislation, of the remuneration for annual leave may have as a result of short-time work in the period of calculation in order for the interpretation of that national legislation to be regarded as in conformity with EU law?

2. If Question 1 is answered in the affirmative: Do the general principle of legal certainty laid down by EU law and the principle of non-retroactivity require that the possibility of relying on the interpretation which the Court places, in the preliminary ruling to be given in the present case, on Article 31 of the Charter of Fundamental Rights of the European Union and on Article 7(1) of Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time be limited in time, with effect for all parties, because the highest national courts have previously ruled that the relevant national legislation and collectively agreed rules are not amenable to an interpretation in conformity with EU law? If the Court answers this question in the negative: Is it compatible with EU law if, on the basis of national law, the national courts grant protection of legitimate expectations to employers who have relied on the continued application of the case-law developed by the highest national courts, or is the grant of protection of legitimate expectations reserved for the Court of Justice of the European Union?

([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.

Action brought on 30 June 2017 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-391/17)

(2017/C 318/12)

Language of the case: English

Parties

Applicant: European Commission (represented by: L. Flynn, A. Caeiros, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by not compensating the loss of an amount of own resources which should have been established and made available to the Union's budget under Articles 2, 6, 10, 11 and 17 of Regulation 1552/1989 ([1]) (Articles 2, 6, 10, 12 and 13 of Regulation 609/2014 ([2])) had export certificates not been issued in breach of Article 101(2) of Decision 91/482/EEC ([3]) for the imports of aluminum from Anguilla in 1999-2000, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 5 (subsequently Article 10) of the Treaty establishing the European Community (now Article 4(3) of the Treaty on European Union), and

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

1. Between March 1999 and June 2000 aluminum originating from third countries and first imported into Anguilla was, after re-export from Anguilla, imported into Italy. An export shipping allowance of USD 25 per metric tonne (the 'transport aid') had been granted by the Anguillan authorities for the goods transiting Anguilla. That 'transport aid' granted by Anguilla for transiting goods corresponding to a refund of customs duties would void the customs exemption in case of re-export from Anguilla and import into the EU. Article 101(2) of Decision 91/482/EEC was wrongly applied by Anguillan authorities as they issued export certificates although the conditions to do so were not fulfilled. Following violation of Article 101(2) of Decision 91/482/EEC due to Anguilla wrongfully issuing export certificates, Italy was hindered in collecting customs duties in accordance with Article 24 EC (now 29 TFEU).

2. The United Kingdom is financially responsible for the loss of traditional own resources caused by export certificates issued in breach of Article 101(2) of Decision 91/482/EEC. The United Kingdom authorities have not taken all appropriate measures to protect the Union's financial interests and to ensure that Decision 91/482/EEC is correctly applied by the administration of Anguilla. Each Member State has to ensure that its overseas territories apply correctly any legal act applicable to them, such as Decision 91/482/EEC, in order to efficiently protect the EU's financial interests.

3. Where actions or omissions of any Member State's authorities result in a loss of own resources, the Union must be credited with the equivalent of the amount of own resources lost. Accordingly, the United Kingdom should compensate the Union's budget for the total amount of own resources lost, and pay default interest under Article 11 of Regulation No 1150/2000 ([4]).

([1]) Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ L 155, p. 1)
([2]) Council Regulation (EU, Euratom) No 609/2014 of 26 may 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (Recast) (OJ L 168, p. 39)
([3]) Council Decision of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ L 263, p. 1)
([4]) Council Regulation (EC, Euratom) No 1150 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 130, p. 1)

Request for a preliminary ruling from the Gerechtshof Den Haag (Netherlands) lodged on 13 July 2017 — Staat der Nederlanden v Warner-Lambert Company LLC

(Case C-423/17)

(2017/C 318/13)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag

Parties to the main proceedings

Applicant: Staat der Nederlanden

Defendant: Warner-Lambert Company LLC

Questions referred

1. Must Article 11 of Directive 2001/83 ([1]) or any other provision of European Union law be interpreted as meaning that a communication whereby the marketing authorisation applicant or holder for a generic medicine, within the meaning of Article 10 of Directive 2001/83, notifies the authority that he is not including in the Summary of Product Characteristics and the package leaflet those parts of the Summary of Product Characteristics for the reference medicine which refer to indications or dosage forms covered by the patent right of a third party, should be considered as a request to limit the marketing authorisation which must result in the marketing authorisation not applying, or no longer applying, to the patented indications or dosage forms?

2. If the answer to question 1 is in the negative, do Articles 11 and 21(3) of Directive 2001/83 or any other provisions of EU law preclude the competent authority from making public, by means of an authorisation granted under Article 6 in conjunction with Article 10 of Directive 2001/83, the Summary of Product Characteristics and the package leaflet, including those parts which refer to indications or dosage forms which fall under the patent rights of a third party, in a situation where the marketing authorisation applicant or holder has notified the authority that he is not including in the Summary of Product Characteristics and the package leaflet those parts of the Summary of Product Characteristics for the reference medicine which refer to indications or dosage forms covered by the patent right of a third party?

3. Does it make any difference to the answer to question 2 that the competent authority requires the authorisation holder to include in the package leaflet which the authorisation holder must insert in the packaging of the medicine a reference to the authority's website on which the Summary of Product Characteristics is published, including the parts which refer to indications or dosage forms covered by the patent rights of a third party, whereas those parts, pursuant to Article 11 of Directive 2001/83, are not included in the package leaflet?

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

Reference for a preliminary ruling from Supreme Court of the United Kingdom (United Kingdom) made on 17 July 2017 — Dermod Patrick O'Brien v Ministry of Justice (Formerly the Department for Constitutional Affairs)

(Case C-432/17)

(2017/C 318/14)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Dermod Patrick O'Brien

Defendant: Ministry of Justice (Formerly the Department for Constitutional Affairs)

Questions referred

Does Directive 97/81 ([1]), and in particular clause 4 of the Framework Agreement annexed thereto concerning the principle of nondiscrimination, require that periods of service prior to the deadline for transposing the Directive should be taken into account when calculating the amount of the retirement pension of a part-time worker, if they would be taken into account when calculating the pension of a comparable full-time worker?

([1]) Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC — Annex: Framework agreement on part-time work (OJ 1998, L 14, p. 9)

Request for a preliminary ruling from the Zalaegerszegi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 18 July 2017 — Human Operator Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-434/17)

(2017/C 318/15)

Language of the case: Hungarian

Referring court

Zalaegerszegi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Human Operator Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Question referred

Must Council Implementing Decision (EU) 2015/2349 ([1]) of 10 December 2015 be interpreted as precluding the Hungarian practice of considering that the provision of national law, approval of which derives from the abovementioned Implementing Decision and which establishes a derogation from Article 193 of Council Directive 2006/112/EC, entered into force on 1 January 2015, the date from which it must be applied, when that Implementing Decision contains no provision concerning retroactivity of its effects or of its applicability and, in its request for authorisation to establish the derogation, Hungary indicated that date as the date of application?

([1]) Council Implementing Decision (EU) 2015/2349 of 10 December 2015 authorising Hungary to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax; OJ 2015 L 330, p. 53.

Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 24 July 2017 — Woonhaven Antwerpen v Khalid Berkani, Asmae Hajji

(Case C-446/17)

(2017/C 318/16)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Woonhaven Antwerpen

Defendants: Khalid Berkani, Asmae Hajji

Questions referred

1. Should a social housing association recognised by the Flemish Government which rents out social housing to a consumer at a rental price which depends, on the one hand, on the market value determined by that association itself and, on the other hand, on the income and the family composition of the tenant, be considered an undertaking within the meaning of European law?

2. Is the relationship between a recognised social housing association and a consumer when that consumer rents social housing from that social housing association, and in particular Article 11 of the model contract which forms part of that relationship, a contract within the meaning given to that term in Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts?

3. Does a contract or statutory relationship whereby a recognised social housing association rents out social housing to a consumer fall within the scope of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and should a recognised social housing association which rents out social housing to a consumer at a rental price which depends, on the one hand, on the market value determined by that association itself and, on the other hand, by the income and family composition of the tenant, be considered a seller or supplier within the meaning of that Directive?

([1]) OJ 1993 L 95, p. 29.

GENERAL COURT

Action brought on 30 May 2017 — The GB Foods v EUIPO — Yatecomeré (YATEKOMO)

(Case T-336/17)

(2017/C 318/17)

Language in which the application was lodged: Spanish

Parties

Applicant: The GB foods, SA (L'Hospitalet de Llobregat, Spain) (represented by: M. Buganza González and E. Torner Lasalle, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Yatecomeré, SL (Ribadumia, Spain)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'YATEKOMO' — EU trade mark No 11 703 568

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 13 March 2017 in Case R 1506/2016-5

Form of order sought

The applicant claims that the Court should:

— declare admissible the present application challenging the decision of the Board of Appeal of EUIPO of 13 March 2017 (Case R 1506/2016-5), and grant the application by annulling the Board of Appeal's decision and by restoring and confirming the validity of trade mark No 11 703 568 'YATEKOMO' for all of the goods in Classes 29 and 30 in respect of which the mark was applied for initially;

— declare that the mark 'YATEKOMO' is well known;

— order EUIPO to make available to the Court all the documentation which was provided for that registration and which comprised the file for the annulment proceedings before EUIPO in respect of the mark 'YATEKOMO' in order that all of the documents produced in the proceedings may be analysed;

— order EUIPO to pay the costs pursuant to Article 134 of the Rules of Procedure of the General Court.

Pleas in law

— The trade mark 'YATEKOMO' does not infringe Article 8 of Regulation No 207/2009. The EU word mark does not conflict with the earlier Spanish composite mark 'ya te comeré el vacío que te llena'.

— The reputation acquired by mark No 11 703 568 'YATEKOMO'

Action brought on 6 June 2017 — Eco-Bat Technologies and others v Commission

(Case T-361/17)

(2017/C 318/18)

Language of the case: English

Parties

Applicants: Eco-Bat Technologies Ltd (Matlock, United Kingdom), Berzelius Metall GmbH (Braubach, Germany) and Société Traitements Chimiques des Métaux (STCM) (Bazoches-les-Gallerandes, France) (represented by: M. Brealey, QC, I. Vandenborre and S. Dionnet, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 2(1)(b) of Commission Decision C(2017) 900 final as amended on 6 April 2017 by Decision C(2017) 2223 final of 6 April 2017, in Case AT.40018 — Car battery recycling and reduce the fine imposed on the Applicant to take into account a representative value of purchases during the infringement period and the correct duration of the applicant's participation in the infringement's manifestations in France, and remove the 10 % increment based on the application of Point 37 of the Fining Guidelines ([1]); and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breached the principle of good administration and the applicant's rights of defence by identifying the applicant's value of purchases to be used as a basis for the fine calculation for the first time in the contested decision.

2. Second plea in law, alleging that the Commission breached the principle of proportionality by using the applicant's value of purchases in 2011 as reference in the calculation of the fine.

3. Third plea in law, alleging that the Commission breached the principles of personal responsibility, equal treatment and proportionality and the duty to state reasons by failing to take into account the applicant's more limited involvement in the cartel's manifestations in France.

4. Fourth plea in law, alleging that the Commission breached the duty to state reasons and the principles of legal certainty and protection of legitimate expectations by failing to adequately justify the application of Point 37 of the Guidelines and the exact fine increase applied.

5. Fifth plea in law, alleging that the Commission breached the principles of proportionality and equal treatment by treating purchase cartels different from sales cartels.

6. Sixth plea in law, alleging that the Commission breached the applicant's rights of defence by applying a fine increase pursuant to Point 37 of the Guidelines without referencing it in the Statement of Objections and failing to issue a supplementary Statement of Objections and organise a new hearing.

7. Seventh plea in law, alleging that the Commission breached the principle of good administration by not expressing its intention to apply Point 37 of the Guidelines at an earlier stage of the administrative procedure.

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

Action brought on 10 July 2017 — Fruit of the Loom v EUIPO — Takko (FRUIT)

(Case T-424/17)

(2017/C 318/19)

Language in which the application was lodged: English

Parties

Applicant: Fruit of the Loom, Inc. (Bowling Green, Kentucky, United States) (represented by: S. Malynicz, QC and V. Marsland, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Takko Holding GmbH (Telgte, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FRUIT' — EU trade mark No 5 077 508

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 April 2017 in Case R 2119/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and other party to bear their own costs and pay those of the applicant.

Pleas in law

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

— Infringement of Article 65(6) of Regulation No 207/2009.

Action brought on 12 July 2017 — younique v EUIPO — Jafer Enterprises R&D (younique products)

(Case T-434/17)

(2017/C 318/20)

Language in which the application was lodged: Spanish

Parties

Applicant: younique LLC (Utah, United States) (represented by: M. Edenborough, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Jafer Enterprises R&D, SLU (Granollers, Spain)

Details of the proceedings before EUIPO

Party applying for the trade mark in question: Applicant

Trade mark in question: European Union figurative mark containing the word elements 'younique products' — Application for registration No 1 191 504

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 April 2017 in Case R 1564/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay to the applicant the costs relating to and occasioned by the present application as well as the costs incurred by the applicant before the Board of Appeal; or, in the event that the other party in the contested decision appears as an intervener, order that the defendant and the other party in the contested decision be held jointly and severally liable to pay to the applicant the costs relating to and occasioned by the present application as well as the costs incurred by the applicant before the Board of Appeal.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009, in that the Board of Appeal erred as to the level of attention of the relevant consumer and the similarity of the relevant marks.

Action brought on 20 July 2017 — Verband der Deutschen Biokraftstoffindustrie v Commission

(Case T-451/17)

(2017/C 318/21)

Language of the case: German

Parties

Applicant: Verband der Deutschen Biokraftstoffindustrie e.V. (Berlin, Germany) (represented by: R. Stein, P. Friton and H.-J. Prieß, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Communication under register number BK/abd/ener.c.1(2017)2122195, insofar as it prescribes on page 5 the use of an emissions factor of 99,57 g CO_2eq per MJ of methanol for the calculation of the greenhouse gas emissions of biodiesel; and

— order the defendant to pay 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: infringement of Directive 2009/28/EC ([1]) by reason of deviation from the specified calculation methodology

   — The applicant claims that, under Article 19(1)(b), the methodology laid down in Annex V, Part C, to Directive 2009/28/EC is to be used where actual values are referred to in order to calculate an emissions factor. In accordance with Annex V, Part C, point 13, to Directive 2009/28/EC, emissions from the fuel in use (eu) are taken to be zero for biofuels and bioliquids. The contested communication requires the voluntary certification systems to use a calculation deviating from Annex V, Part C, point 13, to Directive 2009/28/EC, which also includes emissions from fuel use, within a set deadline.

   — The deviation from Annex V, Part C, point 13, to Directive 2009/28/EC infringes the procedural requirements of that directive. An adjustment of the methodology in Annex V to the directive at all times requires, in accordance with the second sentence of Article 19(7) of the directive, compliance with the procedure set out in Article 25(4) of the directive. That provision in turn refers to Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC, ([2]) having regard to the provisions of Article 8 thereof, according to which a Regulatory Procedure with Scrutiny Committee is to be convened and review by the European Parliament and Council must take place. The form of an informal communication at short notice should not have been chosen.

2. Second plea in law: infringement of the EU-law principles of proportionality, legal certainty and protection of legitimate expectations by the setting of an unreasonably short transitional period, expiring on 1 September 2017, for the certification systems to implement the calculation methodology which is contrary to the directive

   — The protection of legitimate expectations is not guaranteed, since the procedural deadlines and deadlines for transposition are unreasonably short.

   — There is an infringement of the principle of legal certainty due to the unreasonable difficulties in implementation.

(1) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).
(2) Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).

Action brought on 27 July 2017 — Printeos and Others v Commission

(Case T-466/17)

(2017/C 318/22)

Language of the case: Spanish

Parties

Applicants: Printeos, SA (Alcalá de Henares, Spain), Printeos Cartera Industrial, SL (Alcalá de Henares), Tompla Scandinavia AB (Stockholm, Sweden), Tompla France (Fleury Mérogis, France) and Tompla Druckerzeugnisse Vertriebs GmbH (Leonberg, Germany) (represented by: H. Brokelmann and P. Martínez-Lage Sobredo, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul Commission Decision C(2017) 4112 final of 16 June 2017 amending Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (AT.39780 — Envelopes);

— in the alternative, in the exercise of its unlimited jurisdiction, reduce the amount of the fine imposed in Article 1 of the contested decision, and as a consequence (i) reduce the basic amount of the fine by 95,3671 % pursuant to point 37 of the Guidelines on setting fines and (ii) reduce, additionally, the amount of the fine, after deductions for leniency and settlement, by at least 33 %;

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

Pleas in law and main arguments

By judgment of 13 December 2016 (Case T-95/15, *Printeos* v *Commission*), the General Court annulled Article 2(1)(e) of Commission Decision C(2014) 9295 final of 10 December 2014, in Case AT.39780, which imposed on the applicants a fine of EUR 4 729 000.

The contested decision contains additional information on the methodology which was applied and the facts taken into account by the Commission when setting and adjusting the basic amount of the fines in the 2014 Decision and when imposing a fine of the same amount as that imposed under the 2014 Decision.

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

1. First plea in law, alleging infringement of the principles of legal certainty, protection of legitimate expectations and *non bis in idem*.

   — The applicants claim in this regard that the contested decision amends the 2014 Decision, despite its being final, with the sole exception of Article 2(1)(e), which was annulled by the General Court, and that it imposes again the same fine as that already imposed by the 2014 Decision and annulled by the General Court.

2. Second plea in law, alleging infringement of the principle of equality of treatment in the setting of the amount of the fine.

   — The applicants claim in this respect that the contested decision makes exceptional adjustments to the basic amounts of the fines pursuant to point 37 of the Guidelines on setting fines, which result in discrimination detrimental to the applicants.

3. Third plea in law, alleging infringement of the principles of proportionality and of non-discrimination in the setting of the amount of the fine.

   — The applicants claim in this respect that the contested decision does not take into account the fine already imposed by the Autoridad Española de la Competencia (Spanish Competition Authority) on 25 March 2013 for anti-competitive practices in the paper envelopes sector, or take account of the fact that the applicants are the only companies amongst those fined by the Commission which were also fined by a national competition authority.

Action brought on 2 August 2017 — Rogesa v Commission

(Case T-475/17)

(2017/C 318/23)

Language of the case: German

Parties

Applicant: Rogesa Roheisengesellschaft Saar mbH (Dillingen, Germany) (represented by: S. Altenschmidt and A. Sitzer, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 20 June 2017 or, in the alternative, the Commission's decision of 11 July 2017 refusing the applicant's confirmatory application of 29 May 2017 (Reference GestDem No 2017/1788); and

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

Pleas in law and main arguments

In support of the action, the applicant invokes three pleas in law:

1. First plea in law: the conditions governing entitlement to access to the documents were satisfied

   — The applicant submits that the contested decision infringes the first paragraph of Article 3 of Regulation No 1367/2006, ([1]) in conjunction with Article 2(1) of Regulation No 1049/2001, ([2]) since it is entitled to have access to the documents which it requested.

2. Second plea in law: there are no grounds for refusal under Article 4 of Regulation (EC) No 1049/2001

   — The applicant submits that the requested documents do not contain commercially sensitive data within the meaning of the first indent of Article 4(2) of Regulation (EC) No 1049/2001 and that there is, in any event, an overriding public interest justifying disclosure of the documents.

   — The applicant further submits that the ground for refusal pursuant to the second indent of Article 4(2) of Regulation (EC) No 1049/2001, under which access to a document may be refused where its disclosure would undermine the protection of court proceedings and of legal advice, also does not obtain since Case C-80/16 (*ArcelorMittal Atlantique and Lorraine*) pending before the Court of Justice was practically concluded by the judgment of 26 July 2017.

   — The applicant also claims that the Commission was, in any event, obliged to grant partial access, if necessary by redacting confidential data. The Commission's decision therefore also infringes Article 4(6) of Regulation (EC) No 1049/2001 and the principle of proportionality under Article 5(4) TEU.

3. Third plea in law: the Commission committed a procedural error

— Lastly, the applicant submits that Article 8 of Regulation (EC) No 1049/2001 has been infringed. Despite two extensions of the time limit, most recently for an indefinite period, no decision had been taken, by the date on which the action was lodged, on the confirmatory application made by the applicant on 29 May 2017. Article 8 of Regulation (EC) No 1049/2001 provides only for the possibility of a single extension of the time limit by 15 working days and not an extension for an indefinite period.

(1) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

(2) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 2 August 2017 — Mutualidad General de la Abogacía, Mutualidad de Previsión Social a prima fija and Hermandad Nacional de Arquitectos Superiores y Químicos, Mutualidad de Previsión Social a prima fija v SRB

(Case T-478/17)

(2017/C 318/24)

Language of the case: Spanish

Parties

Applicants: Mutualidad General de la Abogacía, Mutualidad de Previsión Social a prima fija (Madrid, Spain) and Hermandad Nacional de Arquitectos Superiores y Químicos, Mutualidad de Previsión Social a prima fija (Madrid) (represented by: R. Pelayo Jiménez and A. Muñoz Aranguren, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— annul the Single Resolution Board Decision of 7 June 2017 (SRB/EES/2017/08);

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

Pleas in law and main arguments

The decision contested in the present action established a resolution procedure applicable to the Banco Popular Español.

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

1. First plea in law, alleging a failure to state reasons for the contested decision and the consequent infringement of the rights to good administration and to an effective remedy (Articles 41(2)(b) and (c) and 17 of the Charter of Fundamental Rights of the European Union).

2. Second plea in law, alleging an infringement of the rights of defence (Article 41(2)(a) of the Charter of Fundamental Rights).

— It is claimed in this respect that the resolution procedure set out in Articles 18, 24(2)(a) and 27 of Regulation (EU) No 806/2014 (1) infringes the rights of defence, in that it does not allow those concerned by that resolution to have even the slightest involvement in the procedure. Articles 32, 38 and 43 of Directive 2014/59/EU, (2) according to the applicants, are tainted by the same illegality as they make no provision whatever for the parties concerned to be heard.

3. Third plea in law, alleging infringement of the right to property (Article 17(1) of the Charter of Fundamental Rights) and of the principle of freedom to conduct a business (Article 16 of the Charter of Fundamental Rights).

— It is claimed in this respect that Articles 21, 22, 24 and 27 of Regulation (EU) No 806/2014, as well as Articles 38 and 63 of Directive 2014/59/EU, infringe the right to property and the principle of the right to conduct a business, in that they allow the sale of shares in a financial entity without allowing arguments from shareholders or requiring their consent, and confer on the resolution authorities powers to reduce the capital to zero by cancelling the shares, without a hearing or agreement of the shareholders or of the competent organs of the company.

4. Fourth plea in law, alleging infringement of the right to an effective legal remedy, enshrined in Article 47 of the Charter of Fundamental Rights and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, by infringing the principle of equality of arms and consequently, the right to a fair trial.

5. Fifth plea in law, alleging infringement of Article 18(1) of Regulation (EU) No 806/2014 and of Article 32 of Directive 2014/59/EU by reason of the fact that the Single Resolution Board committed a manifest error in its assessment of the facts by not complying with the conditions for the adoption of a resolution action laid down in the provisions mentioned.

6. Sixth plea in law, alleging infringement of the principle of prudential banking (precautionary principle) because of the existence of alternative means to those envisaged in the contested decision, including those of early intervention, which precluded the adoption of the resolution action.

7. Seventh plea in law, alleging infringement of the principle of the protection of legitimate expectations.

8. Eighth plea in law, alleging infringement of the principle of proportionality in relation to the right to property.

9. Ninth plea in law, alleging infringement of Article 20(1) of Regulation (EU) No 806/2014, in that the independent expert's valuation cannot be regarded as 'fair, prudent and realistic'.

10. Tenth plea in law, alleging infringement of Article 24 of Regulation (EU) No 806/2014 and of Article 39(2)(a), (b), (d) and (f) of Directive 2014/59/EU by the defendant in that the rules governing the procedure for the sale of the entity set during the extended executive session of 3 June 2017 were not transparent, a potential purchaser (El Banco de Santander) was favoured and the sale price was not as high as it could have been.

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

([2]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ 2014 L 173, p. 190).

Action brought on 2 August 2017 — Fundación Tatiana Pérez de Guzmán el Bueno and SFL v SRB

(Case T-481/17)

(2017/C 318/25)

Language of the case: Spanish

Parties

Applicants: Fundación Tatiana Pérez de Guzmán el Bueno (Madrid, Spain) and SFL — Stiftung für Forschung und Lehre (Zurich, Switzerland) (represented by: R. Pelayo Jiménez and A. Muñoz Aranguren, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— annul the decision of the Single Resolution Board of 7 June 2017 (SRB/EES/2017/08);

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

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Case T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *SRB*.

Action brought on 2 August 2017 — Foodterapia v EUIPO — Cloetta Italia (DIETOX)

(Case T-486/17)

(2017/C 318/26)

Language in which the application was lodged: English

Parties

Applicant: Foodterapia, SL (Barcelona, Spain) (represented by: J. Erdozain López and J. Galán López, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cloetta Italia Srl (Cremona, Italy)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'DIETOX' — Application for registration No 13 072 798

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 May 2017 in Case R 1611/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 31 July 2017 — Fleig v EEAS

(Case T-492/17)

(2017/C 318/27)

Language of the case: German

Parties

Applicant: Stephan Fleig (Berlin, Germany) (represented by: H. Tettenborn, lawyer)

Defendant: European External Action Service (EEAS)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 19 September 2016 by which the Director of the 'Human Resources' Directorate of the European External Action Service (EEAS), acting in his capacity as the authority authorised to conclude contracts of employment, decided to terminate the applicant's employment contract of indefinite duration with effect from 19 June 2017 (in the version of that decision to terminate most recently received through the rejection of the applicant's complaint on 19 April 2017);

— order the EEAS to pay to the applicant a reasonable sum, of an amount to be decided by the Court, as compensation for the non-material damage suffered by him; and

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

Pleas in law and main arguments

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

1. First plea in law: manifest errors of assessment on the part of the European External Action Service (EEAS).

2. Second plea in law: infringement by the EEAS of the duty of care, of the principle of good administration (Article 41 of the Charter of Fundamental Rights of the European Union), of the principle of proportionality and of the right to protection against unjustified dismissal (Article 30 of the Charter of Fundamental Rights of the European Union).

3. Third plea in law: infringement of the right to be heard under Article 41(1) and 41(2)(a) of the Charter of Fundamental Rights of the European Union.

Action brought on 3 August 2017 — Stancu v ERCEA

(Case T-493/17)

(2017/C 318/28)

Language of the case: Italian

Parties

Applicant: Magdalena Catalina Stancu (Bucarest, Romania) (represented by: F. Elia, lawyer)

Defendant: European Research Council Executive Agency (ERCEA) (Brussels, Belgium)

Form of order sought

The applicant claims that the Court should:

— (A) On the merits: declare void/unlawful the act adversely affecting the applicant, consisting of the dismissal communicated orally to the employee on 10 January 2017, with immediate restoration of the employment relationship, and order the defendant to pay all remuneration that has accrued in the interim;

— (B) On the merits: annul the act adversely affecting the applicant, consisting of the decision, dated 28 October 2016, to extend the probationary period, and rule that there was no agreement on a probationary period as from 1 November 2016;

— (C) On the merits: declare void/unlawful the measures comprising the final administrative inquiry report CMS 16/035 dated 7 November 2016 and notified on 16 November 2016, on all of the grounds set out, and order the administrative inquiry report to be deleted from the Sysper system and from any other databases in the EU institutions;

— (D) On the merits: declare void/unlawful the act adversely affecting the applicant consisting of the dismissal dated 22 December 2016 headed 'note to the attention of Ms catalina stancu' which reached the applicant on 24 January 2017, on all of the grounds set out, with immediate restoration of the employment relationship and an order requiring the defendant to pay compensation consisting of remuneration that has accrued between the date of dismissal and the date of delivery of the judgment. In the alternative, in the event that the applicant cannot be reintegrated into her work post, order ERCEA to pay compensation for lost earnings up to the expiry of the contract (January 2018) in the amount of EUR 39 000;

— (E) On the merits: in any event, order ERCEA to pay to the employee the sum of EUR 300 000, or any different amount, higher or lower, as the Court may deem appropriate, as compensation for the serious damage to the applicant's image and to her personal and professional reputation.

Pleas in law and main arguments

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

1. The dismissal, delivered orally and without reasons being given, infringes Article 25 of the Staff Regulations, which provides that *'any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which is based …'*; written notification to the employee ensures that the latter is made aware of decisions relating to her employment relationship.

2. The extension of the probationary period infringes Article 84 of the Conditions of Employment of other Servants (CEOS), paragraph 3 of which provides that the probationary period may be extended in exceptional circumstances *'… referred to in the first paragraph …'*, this being a specific reference that does not justify an extension of indeterminate and uncertain duration. Furthermore, that extension infringes Article 84(2) of those Conditions, which provides that the probationary period may be terminated at any time before its normal end, allowing eight days for submissions on the proposal of dismissal and — in any event — *'… giving … one month's notice …'*;

3. The administrative inquiry report is unlawful, given that it is based on an email sent by the employee, the contents of which — as the other party acknowledges — were altered, and because it expresses merely subjective doubts as to the authenticity of documents submitted by the employee, without ordering any technical checks to be conducted;

4. The employer's decision of 22 December 2016 is manifestly void since it seeks to terminate an employment relationship that no longer existed, that relationship having come to an end following the oral dismissal. Furthermore: (A) the dismissal of the employee for failing successfully to complete the probationary period is unlawful given that, as of 1 November 2016, there was no longer any probationary period; and (B) the unlawful nature of the assertions in the administrative inquiry report made on the basis of the assessment of the failure successfully to complete the probationary period renders the act of dismissal at issue totally and absolutely arbitrary and unlawful.

Action brought on 28 July 2017 — Iccrea Banca v Commission and SRB

(Case T-494/17)

(2017/C 318/29)

Language of the case: Italian

Parties

Applicant: Iccrea Banca SpA Istituto Centrale del Credito Cooperativo (Rome, Italy) (represented by: P. Messina, F. Isgrò and A. Dentoni Litta, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul Single Resolution Board Decision No SRB/ES/SRF/2016/06 of 15 April 2016, as well as all subsequent decisions of that Board on the basis of which the Banca d'Italia adopted the following measures: No 1547337/16 of 29 December 2016; No 0333162/17 of 14 March 2017; No 0334520/17 of 14 March 2017; No 1249264/15 of 24 November 2015; No 1262091/15 of 26 November 2015;

— order the payment of compensation to ICCREA Banca for the damage caused to it by the Single Resolution Board when determining the contributions owed by the applicant in the form of higher rates paid by ICCREA Banca;

— in the alternative, and in the event that the above claims are rejected, declare Article 5(1)(a) and (f) (or, as the case may be, the Regulation in its entirety) invalid, as being contrary to the basic principles of equality, non-discrimination and proportionality;

— in any event, order the Single Resolution Board to pay the costs occasioned by the present proceedings.

Pleas in law and main arguments

The present action is brought against Single Resolution Board Decision No SRB/ES/SRF/2016/06 of 15 April 2016 and against all subsequent decisions of that Board which constituted the basis for the measures of the Banca d'Italia seeking contributions to the Single Resolution Fund.

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

1. First plea in law, alleging (i) failure to communicate the measures, (ii) infringement of the principle of transparency, (iii) infringement and misapplication of Article 15 TFEU, and (iv) infringement of the principle of the protection of legitimate expectations.

   — The applicant claims in this regard that it was at no time placed in a position to be aware of the decisions of the Single Resolution Board, or to understand the merely material role of the Banca d'Italia in the enforcement of those decisions.

2. Second plea in law, alleging (i) failure to carry out a proper enquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](a) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](a) of Regulation 2015/63 ([1]) when determining the amount of the contributions owed by the applicant by not having taken intragroup liabilities into consideration.

3. Third plea in law, alleging (i) failure to carry out a proper enquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](a) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](f) of Regulation 2015/63, thereby resulting in double counting.

4. Fourth plea in law, alleging unlawful conduct of an EU body and claiming non-contractual liability under Article 268 TFEU.

   — The applicant claims in this regard that the conduct of the Single Resolution Board meets all the relevant conditions for non-contractual liability under EU case-law, namely unlawfulness of the alleged conduct of the institutions, the actual existence of damage, and the presence of a causal link between the adopted conduct and the alleged damage.

5. Fifth plea in law, in the alternative and incidentally, alleging that Regulation 2015/63 is in breach of the principles of effectiveness, equivalence and equal treatment and is consequently inapplicable.

   — The applicant claims in this regard that a possible contradiction between Regulation 2015/63 and the situation of the applicant would be in breach of the aforementioned principles to the extent that persons in the same factual situation as ICCREA would be subject to reductions of contributions, with a resulting unlawful deterioration of the applicant's situation, with the consequence that similar situations would be treated differently.

6. Sixth plea in law, alleging infringement of Article 15 TFEU, impossibility for the applicant to have knowledge of the decisions of the Single Resolution Board, and requesting an order for the production of those documents.

   — The applicant claims in this regard that it has still not been placed in a position to have knowledge of the decisions for 2015, 2016 and 2017 relating to its position, conduct which is patently at variance with Article 15 TFEU and with the right to access documents of EU institutions, bodies, offices and agencies, whatever their medium.

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Action brought on 26 July 2017 — Sedes Holding v EUIPO (gratis)

(Case T-495/17)

(2017/C 318/30)

Language of the case: Dutch

Parties

Applicant: Sedes Holding AŞ (Istanbul, Turkey) (represented by: K. Ongena and C. Du Jardin, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark containing the word element 'gratis' — Application for EU trade mark No 15 950 637

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 May 2017 in Case R 507/2017-2

Form of order sought

The applicant claims that the Court should:

— pursuant to Article 68 of the Rules of Procedure of the General Court, join the case dealt with in the present application with the action against the decision of EUIPO in Case R 506/2017-2 for the purposes of the oral procedure in view of the connection between them;

— declare the action set out in the application to be admissible and well founded, and accordingly:

  — primarily, annul the contested decision and order EUIPO to register EU trade mark application No 15 950 637 for the figurative mark GRATIS in the trade mark register for all goods claimed under that registration;

  — in the alternative, annul the contested decision and order EUIPO to register EU trade mark application No 15 950 637 for the figurative mark GRATIS in the trade mark register for '*perfumery, cosmetic products, fragrances and deodorants for personal use*';

— order EUIPO to pay the costs.

Pleas in law

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

— infringement of the general principles of EU law.

Action brought on 28 July 2017 — Sedes Holding v EUIPO (gratis)

(Case T-496/17)

(2017/C 318/31)

Language of the case: Dutch

Parties

Applicant: Sedes Holding AŞ (Istanbul, Turkey) (represented by: K. Ongena and C. Du Jardin, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark containing the word element 'gratis' — Application for EU trade mark No 15 950 603

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 May 2017 in Case R 506/2017-2

Form of order sought

The applicant claims that the Court should:

— pursuant to Article 68 of the Rules of Procedure of the General Court, join the case dealt with in the present application with the action brought against the decision of EUIPO in Case R 507/2017-2 for the purposes of the oral procedure in view of the connection between them;

— declare the action set out in the application to be admissible and well founded, and accordingly:

  — primarily, annul the contested decision and order EUIPO to register EU trade mark application No 15 950 603 for the figurative mark GRATIS in the trade mark register for all goods claimed under that registration;

  — in the alternative, annul the contested decision and order EUIPO to register EU trade mark application No 15 950 603 for the figurative mark GRATIS in the trade mark register for '*perfumery, cosmetic products, fragrances and deodorants for personal use*';

— order EUIPO to pay the costs.

Pleas in law

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

— infringement of the general principles of EU law.

Action brought on 7 August 2017 — Hubei Xinyegang Special Tube v Commission

(Case T-500/17)

(2017/C 318/32)

Language of the case: English

Parties

Applicant: Hubei Xinyegang Special Tube Co. Ltd (Huangshi, China) (represented by: E. Vermulst and J. Cornelis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2017/804 of 11 May 2017 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China (OJ 2017 L 121, p. 3) at least as far as the applicant is concerned; and

— order the European Commission to pay the applicant's 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 Commission violated Articles 3(2) and (3) Basic Regulation ([1]) as well as Articles 3.1 and 3.2 WTO Anti-Dumping Agreement in determining price undercutting. According to the applicant, the Commission merely conducted a mathematical comparison between prices for the year 2015 only without undertaking a dynamic assessment of price developments and trends in the relationship between imported prices and domestic prices. The applicant further puts forward that the Commission also did not establish price undercutting for the product as a whole.

2. Second plea in law, alleging that the Commission violated Article 3(6) Basic Regulation (and Article 3.5 WTO Anti-Dumping Agreement) in basing the causation analysis on an illegal undercutting determination.

3. Third plea in law, alleging that in establishing a causal link between the dumped imports and the injury to the Union industry, the Commission committed a manifest error in finding that (1) there was a correlation between the dumped imports and the injury to the Union industry; and (2) that other factors (decrease in export performance and demand and an increase of imports from other countries) did not individually or collectively break this causal link.

4. Fourth plea in law, alleging that the Commission breached its obligation of due diligence and proper administration by refusing to engage in an injury and causation analysis by segment, thereby failing to ensure that its injury and causation findings were not distorted.

([1]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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