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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 19 October 2017 (request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia — Spain) — Elda Otero Ramos v Servicio Galego de Saúde, Instituto Nacional de la Seguridad Social

(Case C-531/15) ([1])

(Reference for a preliminary ruling — Directive 92/85/EEC — Article 4(1) — Protection of the safety and health of workers — Breastfeeding worker — Risk assessment of her work — Challenged by the worker concerned — Directive 2006/54/EC — Article 19 — Equal treatment — Discrimination on grounds of sex — Burden of proof)

(2017/C 424/02)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Applicant: Elda Otero Ramos

Defendants: Servicio Galego de Saúde, Instituto Nacional de la Seguridad Social

Operative part of the judgment

1. *Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as applying to a situation such as that at issue in the main proceedings, in which a breastfeeding worker challenges, before a court or other competent authority of the Member State concerned, the risk assessment of her work in so far as she claims that the assessment was not conducted in accordance with Article 4(1) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.*

2. *On a proper construction of Article 19(1) of Directive 2006/54, in a situation such as that at issue in the main proceedings, it is for the worker in question to provide evidence capable of suggesting that the risk assessment of her work had not been conducted in accordance with the requirements of Article 4(1) of Directive 92/85 and from which it can therefore be presumed that there was direct discrimination on grounds of sex within the meaning of Directive 2006/54, which it is for the referring court to ascertain. It would then be for the defendant to prove that that risk assessment had been conducted in accordance with the requirements of that provision and that there had, therefore, been no breach of the principle of non-discrimination.*

([1]) OJ C 429, 21.12.2015.

Judgment of the Court (Second Chamber) of 19 October 2017 (request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság — Hungary) — Istanbul Lojistik Ltd v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-65/16) ([1])

(Reference for a preliminary ruling — Agreement establishing an association between the European Economic Community and Turkey — Article 9 — Decision No 1/95 of the EC-Turkey Association Council — Articles 4, 5 and 7 — Customs Union — Road transport — Motor vehicle tax — Taxation of heavy goods vehicles registered in Turkey crossing Hungary in transit)

(2017/C 424/03)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Istanbul Lojistik Ltd

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Operative part of the judgment

Article 4 of Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union must be interpreted as meaning that a tax on motor vehicles such as that at issue in the main proceedings, which must be paid by persons operating heavy goods vehicles registered in Turkey and in transit through Hungarian territory, constitutes a charge having equivalent effect to a customs duty within the meaning of that article.

([1]) OJ C 175, 17.5.2016.

Judgment of the Court (Second Chamber) of 19 October 2017 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — SC Paper Consult SRL v Direcția Regională a Finanțelor Publice Cluj-Napoca, Administrația Județeană a Finanțelor Publice Bistrița-Năsăud

(Case C-101/16) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Right to deduct — Conditions governing the exercise of that right — Article 273 — National measures — Fight against tax evasion and tax avoidance — Invoice issued by a taxpayer declared 'inactive' by the tax authorities — Risk of tax evasion — Refusal of the right to deduct — Proportionality — Refusal to take into account evidence of the absence of tax evasion or tax losses — Limitation of the temporal effects of the judgment to be delivered — No limitation)

(2017/C 424/04)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: SC Paper Consult SRL

Defendants: Direcția Regională a Finanțelor Publice Cluj-Napoca, Administrația Județeană a Finanțelor Publice Bistrița-Năsăud

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national rules, such as those at issue in the main proceedings, under which the right to deduct value added tax is refused to a taxable person on the ground that the trader which supplied a service to that taxable person and issued a corresponding invoice, on which the expenditure and the value added tax are indicated separately, has been declared inactive by the tax authorities of a Member State, that declaration of inactivity being public and accessible on the internet to any taxable person in that State, in the case where that refusal of the right to deduct is systematic and final, making it impossible to adduce evidence that there was no tax evasion or loss of tax revenue.

([1]) OJ C 175, 17.5.2016.

Judgment of the Court (Grand Chamber) of 17 October 2017 (request for a preliminary ruling from the Riigikohus — Estonia) — Bolagsupplysningen OÜ, Ingrid Ilsjan v Svensk Handel AB

(Case C-194/16) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 7(2) — Special jurisdiction in matters relating to tort, delict or quasi-delict — Infringement of the rights of a legal person by the publication on the internet of allegedly incorrect information concerning that person and by the failure to remove comments relating to that person — Place where the damage occurred — Centre of interests of that person)

(2017/C 424/05)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicants: Bolagsupplysningen OÜ, Ingrid Ilsjan

Defendant: Svensk Handel AB

Operative part of the judgment

1. *Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that person can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located.*

   When the relevant legal person carries out the main part of its activities in a different Member State from the one in which its registered office is located, that person may sue the alleged perpetrator of the injury in that other Member State by virtue of it being where the damage occurred.

2. *Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him cannot bring an action for rectification of that information and removal of those comments before the courts of each Member State in which the information published on the internet is or was accessible.*

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (Fifth Chamber) of 19 October 2017 — Agriconsulting Europe SA v European Commission

(Case C-198/16 P) ([1])

(Appeal — Non-contractual liability of the European Union — Public service contract — Operational technical assistance to set up and manage a network facility for the implementation of the European Innovation Partnership 'Agricultural Productivity and Sustainability' — Rejection of a tenderer's bid — Abnormally low bid — Adversarial procedure)

(2017/C 424/06)

Language of the case: Italian

Parties

Appellant: Agriconsulting Europe SA (represented by: R. Sciaudone, avvocato)

Other party to the proceedings: European Commission (represented by: L. Di Paolo and F. Moro, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Agriconsulting Europe SA to pay the costs.*

([1]) OJ C 279, 1.8.2016.

Judgment of the Court (Tenth Chamber) of 19 October 2017 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Securitas — Serviços e Tecnologia de Segurança SA v ICTS Portugal — Consultadoria de Aviação Comercial SA, Arthur George Resendes and Others

(Case C-200/16) ([1])

(Reference for a preliminary ruling — Directive 2001/23/EC — Article 1(1) — Transfers of undertakings or businesses — Safeguarding of employees' rights — Obligation on the transferee to take on workers — Provision of security guard services carried out by an undertaking — Call for tenders — Award of the contract to another undertaking — Employees not taken on — National provision excluding from the 'concept of a transfer of an undertaking or business' the loss of a customer by an operator following the award of a service contract to another operator)

(2017/C 424/07)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: Securitas — Serviços e Tecnologia de Segurança SA

Defendants: ICTS Portugal — Consultadoria de Aviação Comercial SA, Arthur George Resendes and Others

Operative part of the judgment

1. *Article 1(1)(a) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must be interpreted as meaning that, where a contracting entity has terminated the contract concluded with one undertaking for the provision of security guard services at its facilities, then concluded a new contract for the supply of those services with another undertaking, which refuses to take on the employees of the first undertaking, that situation falls within the concept of a 'transfer of an undertaking [or] business' within the meaning of that provision, when the equipment essential to the performance of those services has been taken over by the second undertaking;*

2. *Article 1(1) of Directive 2001/23 must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which provides that the loss of a customer by an operator following the award of a service contract to another operator does not fall within the concept of a 'transfer of an undertaking [or] business' within the meaning of Article 1(1).*

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (Second Chamber) of 19 October 2017 (request for a preliminary ruling from the Landgericht Hamburg — Germany) — Merck KGaA v Merck & Co. Inc., Merck Sharp & Dohme Corp., MSD Sharp & Dohme GmbH

(Case C-231/16) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 207/2009 — EU trade mark — Article 109 (1) — Civil actions on the basis of EU trade marks and national trade marks — Lis pendens — Meaning of 'same cause of action' — Use of the name 'Merck' on the internet in domain names and on social media platforms — One action based on a national trade mark followed by another based on an EU trade mark — Disclaimer of jurisdiction — Scope)

(2017/C 424/08)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Merck KGaA

Defendants: Merck & Co. Inc., Merck Sharp & Dohme Corp., MSD Sharp & Dohme GmbH

Operative part of the judgment

1. *Article 109(1)(a) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that the condition laid down in that provision as to the existence of the 'same cause of action' is satisfied where actions for infringement between the same parties, on the basis of a national trade mark and an EU trade mark respectively, are brought before the courts of different Member States, only in so far as those actions relate to an alleged infringement of a national trade mark and an identical EU trade mark in the territory of the same Member States;*

2. *Article 109(1)(a) of Regulation No 207/2009 must be interpreted as meaning that, where actions for infringement, the first on the basis of a national trade mark concerning an alleged infringement within the territory of a Member State and the second on the basis of an EU trade mark concerning an alleged infringement in the entire territory of the European Union, are brought before the courts of different Member States between the same parties, the court other than the court first seised must decline jurisdiction in respect of the part of the dispute relating to the territory of the Member State referred to in the action for infringement brought before the court first seised;*

3. *Article 109(1)(a) of Regulation No 207/2009 must be interpreted as meaning that the condition laid down in that provision as to the existence of the 'same cause of action' is no longer satisfied where, following a partial withdrawal by an applicant, provided that it was properly declared, of an action for infringement on the basis of an EU trade mark seeking initially to prohibit the use of that trade mark in the territory of the European Union, such a withdrawal concerning the Member State referred to in the action brought before the court first seised, on the basis of a national trade mark seeking to prohibit the use of that trade mark within the territory of that Member State, the actions in question no longer relate to an alleged infringement of a national trade mark and an identical EU trade mark in the territory of the same Member States;*

4. *Article 109(1)(a) of Regulation No 207/2009 must be interpreted as meaning that, where the trade marks are identical, the court other than the court first seised must decline jurisdiction in favour of the court first seised only in so far as those trade marks are valid for identical goods or service.*

([1]) OJ C 279, 1.8.2016.

Judgment of the Court (Fourth Chamber) of 19 October 2017 (request for a preliminary ruling from the Raad van State — Netherlands) — Vereniging Hoekschewaards Landschap v Staatssecretaris van Economische Zaken

(Case C-281/16) ([1])

(Reference for a preliminary ruling — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Implementing Decision (EU) 2015/72 — List of sites of Community importance for the Atlantic biogeographical region — Reduction of the size of a site — Scientific error — Validity)

(2017/C 424/09)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Vereniging Hoekschewaards Landschap

Defendant: Staatssecretaris van Economische Zaken

Operative part of the judgment

Commission Implementing Decision (EU) 2015/72 of 3 December 2014 adopting an eighth update of the list of sites of Community importance for the Atlantic biogeographical region is invalid, in so far as, by that decision, the Haringvliet site (NL 1000015) was placed on that list without the inclusion of the Leenheerenpolder.

([1]) OJ C 279, 1.8.2016.

Judgment of the Court (Fifth Chamber) of 19 October 2017 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo de Murcia — Spain) — Europamur Alimentación SA v Dirección General de Comercio y Protección del Consumidor de la Comunidad Autónoma de la Región de Murcia,

(Case C-295/16) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2005/29/EC — Unfair business-to-consumer commercial practices — Scope of that directive — Sale by a wholesaler to retailers — Jurisdiction of the Court — National legislation laying down a general prohibition on selling at a loss — Exceptions based on criteria not provided for by that directive)

(2017/C 424/10)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo de Murcia

Parties to the main proceedings

Applicant: Europamur Alimentación SA

Defendants: Dirección General de Comercio y Protección del Consumidor de la Comunidad Autónoma de la Región de Murcia

Operative part of the judgment

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which contains a general prohibition on offering for sale or selling goods at a loss and which lays down grounds of derogation from that prohibition that are based on criteria not appearing in that directive.

([1]) OJ C 305, 22.8.2016.

Judgment of the Court (Fifth Chamber) of 19 October 2017 (request for a preliminary ruling from the Conseil d'État — France) — Solar Electric Martinique v Ministre des Finances et des Comptes publics

(Case C-303/16) ([1])

(Reference for a preliminary ruling — Sixth VAT Directive — Directive 2006/112/EC — Works of construction — French overseas departments — Provisions rendered applicable by national law — Transactions consisting in sale and installation on buildings — Classification as a single transaction — Lack of jurisdiction)

(2017/C 424/11)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Solar Electric Martinique

Defendant: Ministre des Finances et des Comptes publics

Operative part of the judgment

The Court of Justice of the European Union does not have jurisdiction to answer the question referred by the Conseil d'État (Council of State, France) by decision of 20 May 2016.

([1]) OJ C 287, 8.8.2016.

Judgment of the Court (Third Chamber) of 19 October 2017 (request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — Vion Livestock BV v Staatssecretaris van Economische Zaken

(Case C-383/16) ([1])

(Reference for a preliminary ruling — Common organisation of the markets — Protection of animals during transport — Export refunds — Regulation (EU) No 817/2010 — Regulation (EC) No 1/2005 — Obligation to keep up to date a copy of the journey log until the arrival of the animals at the place of the first unloading in the third country of final destination — Recovery of amounts over-paid)

(2017/C 424/12)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Vion Livestock BV

Defendant: Staatssecretaris van Economische Zaken

Operative part of the judgment

Article 7 of Commission Regulation (EU) No 817/2010 of 16 September 2010 laying down detailed rules pursuant to Council Regulation (EC) No 1234/2007 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport, read in conjunction with Articles 3(1) and (2) and 2(2) of Regulation No 817/2010, and with points 3, 7 and 8 of Annex II to Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97, must be interpreted as meaning that repayment of export refunds under Regulation No 817/2010 may be required where the transporter of bovine animals has not kept a copy of the journey log provided for in Annex II to Regulation No 1/2005 up to date until the place of the first unloading in the third country of final destination.

([1]) OJ C 371, 10.10.2016.

Judgment of the Court (First Chamber) of 18 October 2017 (request for a preliminary ruling from the Symvoulio tis Epikrateias — Greece) — Ypourgos Esoterikon, Ypourgos Ethnikis Pedias kai Thriskevmaton v Maria-Eleni Kalliri

(Case C-409/16) ([1])

(Reference for a preliminary ruling — Social policy — Directive 76/207/EEC — Equal treatment of men and women in matters of employment and occupation — Discrimination on the ground of sex — Competition for entry to the police school of a Member State — Law of that state imposing a minimum physical height requirement on all candidates for admission to that competition)

(2017/C 424/13)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Appellants: Ypourgos Esoterikon, Ypourgos Ethnikis Pedias kai Thriskevmaton

Defendant: Maria-Eleni Kalliri

Operative part of the judgment

The provisions of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, must be interpreted as precluding a law of a Member State, such as that at issue in the main proceedings, which makes candidates' admission to the competition for entry to the police school of that Member State subject, whatever their sex, to a requirement that they are of a physical height of at least 1,70 m, since that law works to the disadvantage of a far greater number of women compared with men and that law does not appear to be either appropriate or necessary to achieve the legitimate objective that it pursues, which it is for the national court to determine.

([1]) OJ C 392, 24.10.2016.

Judgment of the Court (Ninth Chamber) of 19 October 2017 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Hansruedi Raimund v Michaela Aigner

(Case C-425/16) ([1])

(Reference for a preliminary ruling — Intellectual and industrial property — EU trade mark — Regulation (EC) No 207/2009 — Article 96(a) — Infringement proceedings — Article 99(1) — Presumption of validity — Article 100 — Counterclaim for a declaration of invalidity — Relationship between an action for infringement and a counterclaim for a declaration of invalidity — Procedural autonomy)

(2017/C 424/14)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Hansruedi Raimund

Defendant: Michaela Aigner

Operative part of the judgment

1. *Article 99(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that an action for infringement brought before an EU trade mark court in accordance with Article 96(a) of that regulation may not be dismissed on the basis of an absolute ground for invalidity, such as that provided for in Article 52(1)(b) of that regulation, without that court having upheld the counterclaim for a declaration of invalidity brought by the defendant in that infringement action, pursuant to Article 100(1) of the regulation, and based on the same ground for invalidity.*

2. *The provisions of Regulation No 207/2009 must be interpreted as not precluding an EU trade mark court from being able to dismiss an action for infringement within the meaning of Article 96(a) of that regulation on the basis of an absolute ground for invalidity, such as that provided for in Article 52(1)(b) of that regulation, even though the decision on the counterclaim for a declaration of invalidity, brought pursuant to Article 100(1) of the regulation, and based on the same ground for invalidity, has not become final.*

([1]) OJ C 402, 31.10.2016.

Judgment of the Court (Third Chamber) of 19 October 2017 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — A v Staatssecretaris van Finaciën

(Case C-522/16) ([1])

(Reference for a preliminary ruling — Customs union and Common Customs Tariff — Regulation (EEC) No 2913/92 — Second subparagraph of Article 201(3) and Article 221(3) and (4) — Regulation (EEC) No 2777/75 — Regulation (EC) No 1484/95 — Additional import duties — Artificial arrangement intended to avoid the additional duties due — Customs declaration based on false information — Persons capable of being held liable for the customs debt — Limitation period)

(2017/C 424/15)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: A

Defendant: Staatssecretaris van Finaciën

Operative part of the judgment

1. *In circumstances such as those in the case in the main proceedings, the second subparagraph of Article 201(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 must be interpreted as meaning that documents that are required to be produced by Article 3(2) of Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation (EEC) No 163/67/EEC, as amended by Commission Regulation (EC) No 684/1999 of 29 March 1999, constitute information required to draw up the customs declaration within the meaning of Article 201(3).*

2. *Article 201(3) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that the concept of a 'debtor' of the customs debt, within the meaning of that article, covers the natural person who has been closely and knowingly involved in the design and artificial construction of a structure of commercial transactions, such as that at issue in the case in the main proceedings, which had the effect of reducing the amount of the import duties legally owed, although that natural person has not himself communicated the false information which had served as the basis for drawing up the customs declaration, where it appears from the facts that that person had or ought reasonably to have known that the transactions concerned by that structure had been carried out not in the ordinary course of trade, but solely for the purpose of improperly benefiting from the advantages provided for by Union law. In that regard it is irrelevant that the person concerned designed and artificially constructed that structure only after he had obtained the guarantee of its lawfulness from customs experts.*

3. *Article 221(4) of Regulation No 2913/92, as amended by Regulation 2700/2000, must be interpreted as meaning that the fact that, in circumstances such as those at issue in the case in the main proceedings, the customs debt on importation is incurred, in accordance with Article 201(1) thereof, through the release for free circulation of goods liable to import duties, is not such, in itself, as to exclude the possibility of communicating to the debtor the amount of import duties owed on such goods after the expiry of the period laid down in Article 221(3) of that regulation, as amended.*

([1]) OJ C 86, 20.3.2017.

Judgment of the Court (Ninth Chamber) of 19 October 2017 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Lutz GmbH v Hauptzollamt Hannover

(Case C-556/16) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs Union — Common Customs Tariff — Tariff classification — Combined Nomenclature — Tariff headings — Subheading 6212 20 00 (Panty girdles) — Explanatory Notes to the Combined Nomenclature — Explanatory Notes to the Harmonised System)

(2017/C 424/16)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Lutz GmbH

Defendant: Hauptzollamt Hannover

Operative part of the judgment

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that knickers characterised by reduced horizontal elasticity, but which do not contain inelastic elements incorporated into them, may be classified under subheading 6212 20 00 of the Combined Nomenclature if an examination establishes that they have substantially reduced horizontal elasticity in order to support the human body and create a slimming effect on the silhouette.

([1]) OJ C 38, 6.2.2017.

Judgment of the Court (Seventh Chamber) of 19 October 2017 (request for a preliminary ruling from the High Court of Justice of England and Wales (Chancery Division) — United Kingdom) — Air Berlin plc v Commissioners for Her Majesty's Revenue and Customs

(Case C-573/16) ([1])

(Reference for a preliminary ruling — Indirect taxes — Raising of capital — Imposition of a duty of 1,5 % on the transfer into a clearance service of newly issued shares or shares intended to be listed on a stock exchange of a Member State)

(2017/C 424/17)

Language of the case: English

Referring court

High Court of Justice of England and Wales (Chancery Division)

Parties to the main proceedings

Applicant: Air Berlin plc

Defendant: Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

1. *Articles 10 and 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital must be interpreted as precluding the taxation of a transfer of shares such as that at issue in the main proceedings, whereby the legal title to all the shares of a company has been transferred to a clearance service for the sole purpose of listing those shares on a stock exchange, without there being any change in the beneficial ownership of those shares.*

2. *Article 5(1)(c) of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital must be interpreted as precluding the taxation of a transfer of shares such as that at issue in the main proceedings, whereby the legal title to shares that have been newly issued on an increase in capital has been transferred to a clearance service for the sole purpose of offering those new shares for purchase.*

3. *The answer to the first and second questions does not differ where legislation of a Member State, such as that at issue in the main proceedings, enables an operator of a clearance service, when it receives approval from the taxation authority, to elect that no stamp duty is payable on the initial transfer of shares into the clearance service but that a stamp duty reserve tax is instead charged on each subsequent sale of shares.*

([1]) OJ C 22, 23.1.2017.

Judgment of the Court (Eighth Chamber) of 19 October 2017 — Viktor Fedorovych Yanukovych v Council of the European Union, European Commission, Republic of Poland

(Case C-598/16 P) ([1])

(Appeal — Restrictive measures taken in view of the situation in Ukraine — List of persons, entities and bodies subject to the freezing of funds and economic resources — Inclusion of the appellant's name)

(2017/C 424/18)

Language of the case: English

Parties

Appellant: Viktor Fedorovych Yanukovych (represented by T. Beazley QC)

Other parties to the proceedings: Council of the European Union (represented by P. Mahnič Bruni and J.-P. Hix, Agents), European Commission (represented initially by S. Bartelt and J. Norris-Usher, and subsequently by E. Paasivirta and J. Norris-Usher, acting as Agents), Republic of Poland

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Viktor Fedorovych Yanukovych to bear his own costs and to pay those incurred by the Council of the European Union.*

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

([1]) OJ C 30, 30.1.2017.

Judgment of the Court (Eighth Chamber) of 19 October 2017 — Oleksandr Viktorovych Yanukovych v Council of the European Union, European Commission

(Case C-599/16 P) ([1])

(Appeal — Restrictive measures taken in view of the situation in Ukraine — List of persons, entities and bodies subject to the freezing of funds and economic resources — Inclusion of the appellant's name)

(2017/C 424/19)

Language of the case: English

Parties

Appellant: Oleksandr Viktorovych Yanukovych (represented by T. Beazley QC)

Other parties to the proceedings: Council of the European Union (represented by P. Mahnič Bruni and J.-P. Hix, Agents), European Commission (represented initially by S. Bartelt and J. Norris-Usher, and subsequently by E. Paasivirta and J. Norris-Usher, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Oleksandr Viktorovych Yanukovych to bear his own costs and to pay those incurred by the Council of the European Union;*

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

([1]) OJ C 30, 30.1.2017.

Order of the Court (Second Chamber) of 12 October 2017 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Stephen Fisher, Anne Fisher, Peter Fisher v Commissioners for Her Majesty's Revenue and Customs

(Case C-192/16) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Article 355(3) TFEU — Status of Gibraltar — Article 49 TFEU — Article 63 TFEU — Freedom of establishment — Free movement of capital — Purely internal situation)

(2017/C 424/20)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicants: Stephen Fisher, Anne Fisher, Peter Fisher

Defendants: Commissioners for Her Majesty's Revenue and Customs

Intervening parties: Her Majesty's Government of Gibraltar

Operative part of the order

Article 355(3) TFEU, in conjunction with Article 49 TFEU or Article 63 TFEU, is to be interpreted as meaning that the exercise of the freedom of establishment or of free movement of capital by British nationals between the United Kingdom and Gibraltar constitutes, as a matter of EU law, a situation confined in all respects within a single Member State.

([1]) OJ C 200, 6.6.2016.

Order of the Court (Tenth Chamber) of 12 October 2017 (request for a preliminary ruling from the Commissione tributaria di Secondo Grado di Bolzano — Italy) — Agenzia delle Entrate — Direzione provinciale Ufficio controlli di Bolzano v Palais Kaiserkron Srl

(Case C-549/16) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 401 — Concept of 'turnover tax' — Leasing of immovable property used for the purposes of trade — Liability to pay registration duty and VAT)

(2017/C 424/21)

Language of the case: Italian

Referring court

Commissione tributaria di Secondo Grado di Bolzano

Parties to the main proceedings

Applicant: Agenzia delle Entrate — Direzione provinciale Ufficio controlli di Bolzano

Defendant: Palais Kaiserkron Srl

Operative part of the order

Article 401 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding the charging of a proportional registration duty affecting commercial leases, such as that laid down by the national legislation at issue in the main proceedings, even when those leases are also subject to value added tax.

([1]) OJ C 30, 30.01.2017

Order of the Court (Eighth Chamber) of 10 October 2017 — Greenpeace Energy eG v European Commission

(Case C-640/16 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — State aid — Action for annulment — Article 263 TFEU — Admissibility — Aid planned by the United Kingdom in favour of Hinkley Point C nuclear power station — Decision declaring the aid compatible with the internal market — Locus standi — Appellant not individually concerned)

(2017/C 424/22)

Language of the case: German

Parties

Appellant: Greenpeace Energy eG (represented by: D. Fouquet, J. Nysten and S. Michaels, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: K. Blanck-Putz, P. Němečková and T. Maxian Rusche, acting as Agents)

Interveners in support of the Commission: French Republic (represented by: D. Colas and J. Bousin, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: D. Robertson, acting as Agent)

Operative part of the order

1. *The appeal is dismissed.*

2. *Greenpeace Energy eG shall bear its own costs and pay those incurred by the European Commission.*

([1]) OJ C 38, 6.2.2017.

Order of the Court (Sixth Chamber) of 19 October 2017 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Sportingbet PLC, Internet Opportunity Entertainment Ltd v Santa Casa da Misericórdia de Lisboa

(Case C-166/17) ([1])

(Reference for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Restrictions — Operation of games of chance via websites — National legislation providing for a State monopoly — Article 99 of the Rules of Procedure of the Court of Justice — Question identical to a question on which the Court has already ruled or where the reply to such a question may be clearly deduced from existing case-law — Article 102 TFEU and Article 106(1) TFEU — Abuse of a dominant position — National legislation prohibiting advertising of games of chance except for those organised by a single operator subject to strict public-authority control which has been granted the exclusive right to organise such games — Article 53(2) of the Rules of Procedure of the Court of Justice — Question manifestly inadmissible)

(2017/C 424/23)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicants: Sportingbet PLC, Internet Opportunity Entertainment Ltd

Defendant: Santa Casa da Misericórdia de Lisboa

Operative part of the order

1. *Article 56 TFEU does not preclude legislation of a Member State, such as that at issue in the main proceedings, which prohibits operators established in other Member States from offering games of chance via a website, where it confers the exclusive right to operate such games on a single operator subject to strict public-authority control.*

2. *Article 56 TFEU does not preclude legislation of a Member State, such as that at issue in the main proceedings, which prohibits advertising of games of chance except for games organised by a single operator which has been granted the exclusive right to organise those games.*

3. *The first, fifth, sixth, eighth, ninth and tenth questions referred by the Supremo Tribunal de Justiça (Supreme Court, Portugal) are manifestly inadmissible.*

([1]) OJ C 202, 26.6.2017.

Appeal brought on 30 August 2017 by L'Oréal against the order of the General Court (First Chamber) delivered on 26 June 2017 in Case T-181/16 L'Oréal v European Union Intellectual Property Office (EUIPO)

(Case C-519/17 P)

(2017/C 424/24)

Language of the case: French

Parties

Appellant: L'Oréal (represented by: T. de Haan, P. Péters, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Guinot

Form of order sought

— set aside the order of the General Court of the European Union of 26 June 2017 in Case T-181/16, EU:T:2017:447;

— refer the case back to the General Court of the European Union; and

— reserve the costs; in the alternative, order EUIPO to bear the appellant's costs in relation both to the appeal and to the proceedings at first instance.

Pleas in law and main arguments

According to the appellant, the General Court distorted the facts and arguments which it had made before it and infringed Article 8(1)(b) of Regulation (EC) No 207/2009. ([1])

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

Appeal brought on 30 August 2017 by L'Oréal against the order of the General Court (First Chamber) delivered on 26 June 2017 in Case T-179/16 L'Oréal v European Union Intellectual Property Office (EUIPO)

(Case C-522/17 P)

(2017/C 424/25)

Language of the case: French

Parties

Appellant: L'Oréal (represented by: T. de Haan, P. Péters, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Guinot

Form of order sought

— set aside the order of the General Court of the European Union of 26 June 2017 in Case T-179/16, EU:T:2017:445;

— refer the case back to the General Court of the European Union; and

— reserve the costs; in the alternative, order EUIPO to bear the appellant's costs in relation both to the appeal and to the proceedings at first instance.

Pleas in law and main arguments

According to the appellant, the General Court distorted the facts and arguments which it had made before it and infringed Article 8(1)(b) of Regulation (EC) No 207/2009. ([1])

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

Appeal brought on 30 August 2017 by L'Oréal against the order of the General Court (First Chamber) delivered on 26 June 2017 in Case T-180/16 L'Oréal v European Union Intellectual Property Office (EUIPO)

(Case C-523/17 P)

(2017/C 424/26)

Language of the case: French

Parties

Appellant: L'Oréal (represented by: T. de Haan, P. Péters, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Guinot

Form of order sought

— set aside the order of the General Court of the European Union of 26 June 2017 in Case T-180/16, EU:T:2017:451;

— refer the case back to the General Court of the European Union; and

— reserve the costs; in the alternative, order EUIPO to bear the appellant's costs in relation both to the appeal and to the proceedings at first instance.

Pleas in law and main arguments

According to the appellant, the General Court distorted the facts and arguments which it had made before it and infringed Article 8(1)(b) of Regulation (EC) No 207/2009. ([1])

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

Appeal brought on 30 August 2017 by L'Oréal against the order of the General Court (First Chamber) delivered on 26 June 2017 in Case T-182/16 L'Oréal v European Union Intellectual Property Office (EUIPO)

(Case C-524/17 P)

(2017/C 424/27)

Language of the case: French

Parties

Appellant: L'Oréal (represented by: T. de Haan, P. Péters, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Guinot

Form of order sought

— set aside the order of the General Court of the European Union of 26 June 2017 in Case T-182/16, EU:T:2017:448;

— refer the case back to the General Court of the European Union; and

— reserve the costs; in the alternative, order EUIPO to bear the appellant's costs in relation both to the appeal and to the proceedings at first instance.

Pleas in law and main arguments

According to the appellant, the General Court distorted the facts and arguments which it had made before it and infringed Article 8(1)(b) of Regulation (EC) No 207/2009. ([1])

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

Appeal brought on 30 August 2017 by L'Oréal against the order of the General Court (First Chamber) delivered on 26 June 2017 in Case T-183/16 L'Oréal v European Union Intellectual Property Office (EUIPO)

(Case C-525/17 P)

(2017/C 424/28)

Language of the case: French

Parties

Appellant: L'Oréal (represented by: T. de Haan, P. Péters, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Guinot

Form of order sought

— set aside the order of the General Court of the European Union of 26 June 2017 in Case T-183/16, EU:T:2017:449;

— refer the case back to the General Court of the European Union; and

— reserve the costs; in the alternative, order EUIPO to bear the appellant's costs in relation both to the appeal and to the proceedings at first instance.

Pleas in law and main arguments

According to the appellant, the General Court distorted the facts and arguments which it had made before it and infringed Article 8(1)(b) of Regulation (EC) No 207/2009. ([1])

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 11 September 2017 — Anja Oehlke, Wolfgang Oehlke v TUIfly GmbH

(Case C-533/17)

(2017/C 424/29)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Anja Oehlke, Wolfgang Oehlke

Defendant: TUIfly GmbH

Questions referred

1. Is Article 5(3) of Regulation No 261/2004, ([1]) read in the light of recital 15, to be interpreted as meaning that an operating air carrier can be exempted from its obligation to pay compensation solely on the basis of such extraordinary circumstances that first occurred on the day of the flight, or can extraordinary circumstances that already occurred on the previous day justify the cancellation or long delay of a flight on the following day?

2. If extraordinary circumstances that already occurred on the previous day can also justify the cancellation or long delay of a flight on the following day, is Article 5(3) of Regulation No 261/2004 to be interpreted as meaning that an air carrier is required, as part of the reasonable measures which it must take in order to avoid extraordinary circumstances, to make adequate provision for such contingencies in advance and, in any event, also adequately provide replacement aircraft at its home base?

([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 11 September 2017 — Ursula Kaufmann, Viktor Schay v TUIfly GmbH

(Case C-534/17)

(2017/C 424/30)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Ursula Kaufmann, Viktor Schay

Defendant: TUIfly GmbH

Questions referred

1. Is Article 5(3) of Regulation No 261/2004, ([1]) read in the light of recital 15, to be interpreted as meaning that an operating air carrier can be exempted from its obligation to pay compensation solely on the basis of such extraordinary circumstances that first occurred on the day of the flight, or can extraordinary circumstances that already occurred on the previous day justify the cancellation or long delay of a flight on the following day?

2. If extraordinary circumstances that already occurred on the previous day can also justify the cancellation or long delay of a flight on the following day, is Article 5(3) of Regulation No 261/2004 to be interpreted as meaning that an air carrier is required, as part of the reasonable measures which it must take in order to avoid extraordinary circumstances, to make adequate provision for such contingencies in advance and, in any event, also adequately provide replacement aircraft at its home base?

([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 Landgericht Berlin (Germany) lodged on 12 September 2017 — Claudia Wegener v Royal Air Maroc SA

(Case C-537/17)

(2017/C 424/31)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: Claudia Wegener

Defendant: Royal Air Maroc SA

Question referred

Is there a flight, for the purposes of Article 3(1)(a) of Regulation (EC) No 261/2004 ([1]) 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, in the case where an air carrier's air transport operation includes scheduled interruptions (stopovers) outside the territory of the European [Union] with a change of aircraft?

([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 Supremo Tribunal Administrativo (Portugal) lodged on 25 September 2017 — Associação Peço a Palavra and Others v Conselho de Ministros

(Case C-563/17)

(2017/C 424/32)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicants: Associação Peço a Palavra, João Carlos Constantino Pereira Osório, Maria Clara Marques Pires Sarmento Franco, Sofia da Silva Santos Arauz and Maria João Galhardas Fitas

Defendants: Conselho de Ministros

Others: PARPÚBLICA — Participações Públicas, SGPS, SA, and TAP, SGPS, SA

Questions referred

(1) Does EU law, in particular Articles 49 and 54 TFEU and the principles set out in those articles, in a procedure relating to the process for the indirect reprivatisation of the share capital in a publicly owned company engaged in the activity of air transport, permit the documents establishing that procedure to include the requirement to keep the headquarters and effective management of that company in the Member State where it was incorporated as a criterion for selecting the purchases proposed by the potential investors and for choosing the successful offers?

(2) Does EU law, in particular Articles 56 and 57 TFEU and the principles set out in those articles, and the principles of non-discrimination, proportionality and necessity, in a procedure relating to the process for the indirect reprivatisation of the share capital in that company, permit the documents establishing that procedure to include the requirement to comply with the public service obligations on the part of the purchasing entity as a criterion for selecting the purchases proposed by the potential investors and for choosing the successful offers?

(3) Does EU law, in particular Articles 56 and 57 TFEU and the principles set out in those articles, in a procedure relating to the process for the indirect reprivatisation of the share capital in that company, permit the documents establishing that procedure to include the requirement to maintain and develop the current national hub on the part of the purchasing entity as a criterion for selecting the purchases proposed by the potential investors and for choosing the successful offers?

(4) As regards the activity carried on by that company whose share capital is being disposed of under the reprivatisation procedure, must it be regarded as a service in the internal market subject to the provisions of Directive 2006/123/EC [1] due to the presence of the exception laid down in Article 2(2)(d) of that directive relating to services in the field of transport, and consequently, does that procedure also have to be shown to be subject to that directive?

(5) If the answer to question 4 is in the affirmative, do the provisions of Articles 16 and 17 of that directive, in a procedure relating to the process for the indirect reprivatisation of the share capital in that company, permit the documents establishing that procedure to include the requirement to comply with the public service obligations on the part of the purchasing entity as a criterion for selecting the purchases proposed by the potential investors and for choosing the successful offers?

(6) If the answer to question 4 is in the affirmative, do the provisions of Articles 16 and 17 of that directive, in a procedure relating to the process for the indirect reprivatisation of the share capital in that company, permit the documents establishing that procedure to include the requirement to maintain and develop the current national hub on the part of the purchasing entity as a criterion for selecting the purchases proposed by the potential investors and for choosing the successful offers?

[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 Hoge Raad der Nederlanden (Netherlands) lodged on 27 September 2017 — Staatssecretaris van Financiën, L.W. Geelen

(Case C-568/17)

(2017/C 424/33)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: L.W. Geelen

Questions referred

1 (a) Should the first indent of Article 9(2)(c) of the Sixth Directive, ([1]) or Article 52(a) of the VAT Directive of 2006 ([2]) (version to 1 January 2010), respectively, be interpreted as also covering the provision, in return for payment, of live interactive erotic webcam sessions?

(b) If question 1(a) is answered in the affirmative, should the phrase 'the place where those services are physically carried out' in Article 9(2)(c) of the Sixth Directive or 'the place where the services are physically carried out' in the introductory sentence of Article 52 of the VAT Directive of 2006, respectively, then be interpreted as meaning that the decisive factor is the place where the models perform in front of the webcamera or the place where the visitors view the images, or could even some other place be envisaged?

2. Should the twelfth indent of Article 9(2)(e) of the Sixth Directive or Article 56(1)(k) of the VAT Directive of 2006 (version to 1 January 2010), read in conjunction with Article 11 of the VAT Regulation of 2005, ([3]) be interpreted as meaning that the provision, in return for payment, of live interactive erotic webcam sessions can be deemed to be an 'electronically supplied service'?

3. If both question 1(a) and question 2 are answered in the affirmative, and the designation of the place of the service according to the relevant provisions of the directives concerned results in a different outcome, how should the place of the service then be determined?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).
([2]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
([3]) Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388/EEC on the common system of value added tax (OJ 2005 L 288, p. 1).

Request for a preliminary ruling from the Arbeits- und Sozialgericht Wien (Austria) lodged on 3 October 2017 — BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse v Gradbeništvo Korana d.o.o.

(Case C-579/17)

(2017/C 424/34)

Language of the case: German

Referring court

Arbeits- und Sozialgericht Wien

Parties to the main proceedings

Applicant: BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse

Defendant: Gradbeništvo Korana d.o.o.

Question referred

Is Article 1 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) to be interpreted as meaning that proceedings involving the assertion of claims by the Bauarbeiter-Urlaubs- und Abfertigungskasse (Construction Workers' Leave and Severance Pay Fund, Austria) ('BUAK') for wage supplements against employers as a result of the posting to Austria of workers without a habitual place of work in Austria for the purposes of performing work or in connection with the hiring-out of workers, or against employers established outside Austria as a result of the employment of workers with a habitual place of work in Austria, constitute 'civil and commercial matters' to which the aforementioned regulation applies, even where such claims by BUAK for wage supplements concern employment relationships governed by private law and serve to cover workers' claims to annual leave and payment in respect of annual leave ('annual leave pay'), governed by private law and arising from employment relationships with employers, but nevertheless

— both the amount of the workers' claims against BUAK for annual leave pay and that of BUAK's claims against employers for wage supplements are determined not by contract or collective bargaining agreement but, instead, by decree of a Federal Minister,

— the wage supplements owed by employers to BUAK serve to cover not only the expenses for the payment in respect of annual leave payable to workers but also BUAK's expenses for administrative costs and

— in connection with the pursuit and enforcement of its claims for such wage supplements, BUAK has more extensive powers by law than a private person, in that

  — employers are required to submit reports to BUAK on specific occasions as well as at monthly intervals, using communication channels set up by BUAK, to take part in and allow BUAK's inspection measures, grant BUAK access to wage and business records and other documents, and provide information to BUAK, failing which a fine may be imposed, and

  — in the event that an employer breaches its reporting obligations, BUAK is entitled to calculate the wage supplements owed by the employer on the basis of BUAK's own investigations, whereby, in that case, BUAK has a claim for wage supplements in the amount calculated by BUAK, irrespective of the actual circumstances of the posting or employment?

([1]) OJ 2012 L 351, p. 1.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 4 October 2017 — Staatssecretaris van Veiligheid en Justitie v H.

(Case C-582/17)

(2017/C 424/35)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Veiligheid en Justitie

Defendant: H.

Question referred

Must Regulation (EU) No 604/2013 ([1]) 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 … be interpreted as meaning that only the Member State in which the application for international protection was first lodged can determine the Member State responsible, with the result that a foreign national has a legal remedy only in that Member State, under Article 27 of the Dublin Regulation, against the incorrect application of one of the criteria for determining responsibility set out in Chapter III of that Regulation, including Article 9?

([1]) OJ 2013 L 180, p. 31; 'the Dublin Regulation'.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 4 October 2017 — Staatssecretaris van Veiligheid en Justitie v R.

(Case C-583/17)

(2017/C 424/36)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Veiligheid en Justitie

Defendant: R.

Questions referred

1. Must Regulation (EU) No 604/2013 ([1]) 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 … be interpreted as meaning that only the Member State in which the application for international protection was first lodged can determine the Member State responsible, with the result that a foreign national has a legal remedy only in that Member State, under Article 27 of the Dublin Regulation, against the incorrect application of one of the criteria for determining responsibility set out in Chapter III of that Regulation, including Article 9?

2. In answering Question 1, to what extent is it significant that, in the Member State in which the application for international protection was first lodged, a decision on that application had already been made or, alternatively, that the foreign national had withdrawn that application prematurely?

([1]) OJ 2013 L 180, p. 31; 'the Dublin Regulation'.

Request for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 12 October 2017 — Skatteministeriet v Baby Dan A/S

(Case C-592/17)

(2017/C 424/37)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: Baby Dan A/S

Question referred

1. Must spindles with the specific features as described be deemed to be part of the child safety gate?

   — If the first question is answered in the affirmative, so that the spindles are deemed to be part of the child safety gate, must the spindles then be classified under CN heading 9403 90 10 or CN heading 7326 and 4421?

   — If the first question is answered in the negative, so that the spindles are not deemed to be part of the child safety gate, must the spindles then be classified under CN heading 7318 15 90 or CN heading 7318 19 00?

2. If spindles with the specific features as described must be classified under CN heading 7318 15 90, the EU Court of Justice is requested to provide a preliminary ruling on the following question:

   — Is Council Regulation (EC) No 91/2009 of 26 January 2009 ([1]) imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China invalid as a result of the fact that the Commission and the Council — according to the WTO's Appellate Body — based themselves on a process that linked the definition of EU industry to EU producers' willingness to be part of a sample and be inspected, resulting in a self-selecting process in the industry, which gave rise to a material risk of distortion of the investigation and the result?

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

Action brought on 23 October 2017 — Italian Republic v Council of the European Union

(Case C-611/17)

(2017/C 424/38)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Regulation (EU) 2017/1398 of 25 July 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities, published in Official Journal of the European Union No L 199 of 29 July 2017, particularly Article 1(2) where it amends Annex ID to Regulation (EU) 2017/127, the whole of paragraph [2] of the annex to the contested regulation (containing the amendment to Annex ID to Regulation (EU) 2017/127) and the whole of recitals 9, 10, 11 and 12;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

First plea in law: infringement of Article 1 of Decision 86/238/EEC on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas.

There was no obligation to transpose the ICCAT decision to quotas for swordfish catches.

Second plea in law: failure to state reasons (second paragraph of Article 296 TFEU).

At any rate, that decision is not reasoned.

Third plea in law: infringement of Article 17 TEU and of Article 16 of Regulation No 1380/2013.

The decision is contrary to the principle of relative stability and the interests of the European Union.

Fourth plea in law: infringement of the principles of non-retroactivity, legal certainty and legitimate expectations.

In any event, the decision could not apply to the current fishing season.

Fifth plea in law: failure to state reasons (infringement of the second paragraph of Article 296 TFEU).

The decision is unjustified in so far as it adopts the four-year period 2012-2015 as the reference period for sharing the TAC quota among the Member States.

Sixth plea in law: infringement of the principle of proportionality (Article 5 TEU) and an erroneous assessment of the facts.

The exclusion of the years 2010 and 2011 from the reference period is excessive and wrong in relation to the objective of including only lawful catches in the catch data.

Seventh plea in law: infringement of Articles 258 TFEU and 260 TFEU; lack of jurisdiction.

It was not for the Council to penalise Italy with regards to the use of driftnets.

Eighth plea in law: infringement of the principle of good administration (Article 41 of the Charter of Fundamental Rights of the European Union) and of Article 16 of Regulation No 1380/2013.

The adoption of the reference period 2012-2015 has penalised Italy by reducing its capacity to fish, in breach of the principle of relative stability and without an appropriate inquiry.

Ninth plea in law: infringement of the principle of non-discrimination (Article 18 TFEU).

This reduction unfairly discriminates against Italian fishermen.

Tenth plea in law: infringement of the principles of non-retroactivity, legal certainty and legitimate expectations.

In any event, the reduction could not apply to the current fishing season.

GENERAL COURT

Judgment of the General Court of 26 October 2017 — Marine Harvest v Commission

(Case T-704/14) ([1])

(Competition — Concentrations — Decision imposing a fine for putting into effect a concentration prior to its notification and authorisation — Article 4(1), Article 7(1) and (2) and Article 14 of Regulation (EC) No 139/2004 — Negligence — Principle ne bis in idem — Gravity of the infringement — Amount of the fine)

(2017/C 424/39)

Language of the case: English

Parties

Applicant: Marine Harvest ASA (Bergen, Norway) (represented by: R. Subiotto QC)

Defendant: European Commission (represented by: M. Farley, C. Giolito and F. Jimeno Fernández, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking, principally, annulment of Commission Decision C(2014) 5089 final of 23 July 2014 imposing a fine for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of Regulation (EC) No 139/2004 (Case COMP/M.7184 — Marine Harvest/Morpol), and, in the alternative, annulment or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Marine Harvest ASA to pay the costs.*

([1]) OJ C 409, 17.11.2014.

Judgment of the General Court of 26 October 2017 — KPN v Commission

(Case T-394/15) ([1])

(Competition — Concentrations — Netherlands market for television services and telecommunications services — Decision declaring the concentration compatible with the internal market and the EEA Agreement — Commitments — Duty to state reasons — Relevant market — Vertical effects — Judicial review)

(2017/C 424/40)

Language of the case: English

Parties

Applicant: KPN BV (The Hague, Netherlands) (represented by: J. de Pree, C. van der Hoeven and G. Hakopian, lawyers)

Defendant: European Commission (represented by: L. Malferrari, J. Szczodrowski, H. van Vliet and F. van Schaik, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Decision C(2014) 7241 final of 10 October 2014 declaring the concentration involving the acquisition by Liberty Global plc of sole control over Ziggo NV to be compatible with the internal market and the EEA Agreement (Case COMP/M.7000 — Liberty Global/Ziggo) (OJ 2015, C 145, p. 7)

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2014) 7241 final declaring the concentration involving the acquisition by Liberty Global plc of sole control over Ziggo NV to be compatible with the internal market and the EEA Agreement (Case COMP/M.7000 — Liberty Global/Ziggo);*

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

([1]) OJ C 302, 14.9.2015.

Judgment of the General Court of 26 October 2017 — Sulayr Global Service v EUIPO — Sulayr Calidad (sulayr GLOBAL SERVICE)

(Case T-685/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark sulayr GLOBAL SERVICE — Earlier national word mark SULAYR — Relative ground for refusal — No similarity of the services — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 424/41)

Language of the case: Spanish

Parties

Applicant: Sulayr Global Service, SL (Valle del Zalabi, Spain) (represented by: P. López Ronda, G. Macías Bonilla, G. Marín Raigal and E. Armero Lavie, lawyers)

Defendant: European Union Intellectual Property Office (represented initially by S. Palmero Cabezas, and subsequently by J. Crespo Carrillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Sulayr Calidad, SL (Grenada, Spain) (represented initially by E. Bayo de Gispert and G. Hinarejos Mulliez, and subsequently by G. Hinarejos Mulliez and I. Valdelomar Serrano, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 23 September 2015 (Case R 149/2015-1), relating to opposition proceedings between Sulayr Calidad and Sulayr Global Service.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 23 September 2015 (Case R 149/2015-1) to the extent that it upheld the opposition to registration of the mark applied for in respect of services in Class 40;*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Sulayr Global Service, SL, for the purpose of the proceedings before the Court;*

3. *Orders Sulayr Calidad, SL, to bear its own costs for the purposes of the proceedings before the Court and to pay the expenses necessarily incurred by Sulayr Global Service for the purposes of the proceedings before the Board of Appeal of EUIPO.*

([1]) OJ C 38, 1.2.2016.

Judgment of the General Court of 25 October 2017 — Greece v Commission

(Case T-26/16) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Debt reporting irregularities — Delays in the recovery procedure — Failure to offset funds — Determination of the amount of interest — Proportionality — Flat-rate financial correction — Articles 31 to 33 of Regulation (EC) No 1290/2005 — Individual situations)

(2017/C 424/42)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, O. Tsirkinidou and A. Vasilopoulou, Agents)

Defendant: European Commission (represented by: D. Triantafyllou and A. Sauka, Agents)

Re:

Action pursuant to Article 263 TFEU for annulment in part of Commission Implementing Decision (EU) 2015/2098 of 13 November 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 303, p. 35) to the extent that it concerns the Hellenic Republic.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 111, 29.3.2016.

Judgment of the General Court of 26 October 2017 — Hello Media Group v EUIPO — Hola (#hello digitalmente diferentes)

(Case T-330/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark #hello digitalmente diferentes — Earlier EU word and figurative marks HELLO! — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Replacement of a party to the proceedings)

(2017/C 424/43)

Language of the case: Spanish

Parties

Applicant: Hello Media Group, SL (Madrid, Spain), authorised to replace Hello Media, SL (represented by: A. Alejos Cutuli, 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: Hola, SL (Madrid) (represented by: F. Arroyo Álvarez de Toledo, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 21 April 2016 (Case R 1979/2015-2), relating to opposition proceedings between Hola and Hello Media.

Operative part of the judgment

The Court:

1. *Authorises Hello Media Group, SL, to replace Hello Media, SL, as applicant;*

2. *Dismisses the action;*

3. *Orders Hello Media Group to pay the costs.*

(1) OJ C 296, 16.8.2016.

Judgment of the General Court of 26 October 2017 — Hello Media Group v EUIPO — Hola (#hello media group)

(Case T-331/16) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark #hello media group — Earlier EU figurative and word marks HELLO! — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 424/44)

Language of the case: Spanish

Parties

Applicant: Hello Media Group, SL (Madrid, Spain), authorised to replace Hello Media, SL (represented by: A. Alejos Cutuli, 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: Hola, SL (Madrid) (represented by: F. Arroyo Álvarez de Toledo, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 21 April 2016 (Case R 2012/2015-2), relating to opposition proceedings between Hola and Hello Media.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hello Media Group, SL, to pay the costs.*

(1) OJ C 296, 16.8.2016.

Judgment of the General Court of 26 October 2017 — VIMC v Commission

(Case T-431/16) (1)

(Competition — Abuse of dominant position — Private healthcare market — Article 13(1) of Regulation (EC) No 1/2003 — Decision rejecting a complaint — Handing of the case by a Member State's competition authority)

(2017/C 424/45)

Language of the case: German

Parties

Applicant: VIMC — Vienna International Medical Clinic GmbH (Kulmbach, Germany) (represented by: R. Bramerdorfer and H. Grubmüller, lawyers)

Defendant: European Commission (represented by: A. Dawes and C. Vollrath, acting as Agents)

Re:

Application made on the basis of Article 263 TFEU seeking the annulment of Commission Decision C (2016) 3351 final of 27 May 2016, rejecting the applicant's complaint concerning a breach of Article 102 TFEU allegedly committed by the Wirtschaftskammer Österreich (WKO, Austrian Federal Economic Chamber) or the Fachverband der Gesundheitsbetriebe (professional association of undertakings in the healthcare sector, Austria) (Case AT.40231 — VIMC v WK&FGB).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders VIMC — Vienna International Medical Clinic GmbH to pay the costs.*

([1]) OJ C 371, 10.10.2016.

Judgment of the General Court of 25 October 2017 — Lucaccioni v Commission

(Case T-551/16) ([1])

(Civil Service — Officials — Exposure to asbestos and other substances — Industrial disease — Article 73 of the Staff Regulations — Common rules on the insurance against the risk of accident and of occupational disease — Article 14 — Article 266 TFEU — Misuse of power — Medical Committee — Collegiate principle — Breach of the Medical Committee's mandate — Obligation to state reasons — Action for compensation — Length of the proceedings — Non-pecuniary harm)

(2017/C 424/46)

Language of the case: Italian

Parties

Applicant: Arnaldo Lucaccioni (San Benedetto del Tronto, Italy) (represented initially by: M Velardo, and subsequently by: L. Gialluca, lawyers)

Defendant: European Commission (represented by: T. Bohr and G. Gattinara, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Action brought on the basis of Article 270 TFEU seeking, firstly, the annulment of the Commission's decision of 26 June 2014 to grant the applicant only an increase of 20 % of the allowance referred to in Article 14 of the Common rules on the insurance of officials of the European [Union] against the risk of accident and of occupational disease following the applicant's request of 7 June 2000 and, secondly, compensation for the non-pecuniary harm which the applicant has allegedly suffered.

Operative part of the judgment

The Court:

1. *Annuls the European Commission's decision of 26 June 2014, granting Mr Arnaldo Lucaccioni an increase of 20 % of the allowance under Article 14 of the Common rules on the insurance of officials of the European [Union] against the risk of accident and of occupational disease;*

2. *Orders the Commission to pay Mr Lucaccioni compensation of EUR 5 000 in respect of the non-pecuniary harm caused;*

3. *Dismisses the remainder of the action;*

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

(1) OJ C 279, 24.8.2015 (case initially registered before the European Union Civil Service Tribunal under number F-74/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 26 October 2017 — Paraskevaidis v Cedefop.

(Case T-601/16) (1)

(Civil Service — Officials — Cedefop — Promotion — 2015 Promotion exercise — Decision not to promote the applicant to Grade AD 12 — Articles 44 and 45 of the Staff Regulations — Comparison of the merits — Duty to state reasons — Implied rejection of the complaint — Liability)

(2017/C 424/47)

Language of the case: French

Parties

Applicant: Georges Paraskevaidis (Auderghem, Belgium) (represented by: S. Pappas, lawyer)

Defendant: European Centre for the Development of Vocational Training (Cedefop) (represented by: M. Fuchs, Agent, and A. Duron, lawyer)

Re:

Application brought under Article 270 TFEU for, first, the annulment of the decision of the director of Cedefop of 4 November 2015 not to promote the applicant to Grade AD 12 in the 2015 promotion exercise and, second, compensation for the harm the applicant allegedly suffered as a result of that decision.

Operative part of the judgment

The Court:

1. *Annuls the decision of the director of the European Centre for the Development of Vocational Training (Cedefop) of 4 November 2015 not to promote the applicant to Grade AD 12 in the 2015 promotion exercise;*

2. *Orders Cedefop to pay Mr Paraskevaidis EUR 2 000 as compensation for the damage he suffered*

3. *Dismisses the action for the remainder.*

4. *Orders Cedefop to pay the costs.*

(1) OJ C 296 of 16 August 2016 (case initially registered with the European Union Civil Service Tribunal under number F-31/16 and transferred to the General Court of the European Union on 1 September 2016).

Judgment of the General Court of 26 October 2017 — HB v Commission

(Case T-706/16 P) (1)

(Appeal — Civil service — Officials — Promotion — 2014 promotion exercise — Comparative consideration of the merits — Discrimination based on sex — Error in law)

(2017/C 424/48)

Language of the case: French

Parties

Appellant: HB (represented by: S. Orlandi and T. Martin, lawyers)

Other party to the proceedings: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 21 July 2016, *HB* v *Commission* (F-125/15, EU:F:2016:164), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders HB to bear her own costs and to pay those incurred by the European Commission in the context of the present proceedings;*

3. *The costs relating to the proceedings at first instance remain allocated in accordance with paragraphs 2 and 3 of the operative part of the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 21 July 2016, HB v Commission (F-125/15).*

([1]) OJ C 454, 5.12.2016.

Judgment of the General Court of 26 October 2017 — Alpirsbacher Klosterbräu Glauner v EUIPO (Klosterstoff)

(Case T-844/16) ([1])

(European Union trade mark — Application for EU word mark Klosterstoff — Absolute grounds for refusal — Descriptiveness — Mark of such a nature as to deceive the public — Article 7(1)(b), (c) and (g) of Regulation (EC) No 207/2009 (now Article 7(1)(b), (c) and (g) of Regulation (EU) 2017/1001) — Prior practice of EUIPO)

(2017/C 424/49)

Language of the case: German

Parties

Applicant: Alpirsbacher Klosterbräu Glauner GmbH & Co. KG (Alpirsbach, Germany) (represented by: W. Göpfert and S. Hofmann, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 6 October 2016 (Case R 2064/2015-5) concerning an application for registration of the word sign Klosterstoff as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alpirsbacher Klosterbräu Glauner GmbH & Co. KG to pay the costs.*

([1]) OJ C 38,6.2.2017.

Judgment of the General Court of 26 October 2017 — Erdinger Weißbräu Werner Brombach v EUIPO (Shape of a large glass)

(Case T-857/16) ([1])

(European Union trade mark — International registration designating the European Union — Three-dimensional mark — Shape of a large glass — Absolute ground for refusal — Lack of distinctive nature — Article 7(1)(b) of Regulation (EC) No 2017/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2017/C 424/50)

Language of the case: German

Parties

Applicant: Erdinger Weißbräu Werner Brombach GmbH & Co. KG (Erding, Germany) (represented by: A. Hayn, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 20 September 2016 (Case R 659/2016-2) concerning the international registration designating the European Union of the three-dimensional mark constituted by the shape of a large glass.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Erdinger Weißbräu Werner Brombach GmbH & Co. KG to pay the costs.*

([1]) OJ C 38, 6.2.2017.

Order of the General Court of 13 September 2017 — Luxembourg v Commission

(Case T-109/10) ([1])

(Action for annulment — EDRF — Reduction in financial aid — Programme Interreg II/C 'Rhine-Meuse flood' — Failure to comply with the time limit for adopting a decision — Infringement of essential procedural requirements — Action manifestly well founded)

(2017/C 424/51)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented intially by: C. Schiltz, then by: P. Franzen, subsequently by: L. Delvaux and D. Holderer and finally by: D. Holderer, acting as Agents, and P. Kinsch, lawyer)

Defendant: European Commission (represented by: W. Roels and A. Steiblytė, acting as Agents)

Interveners in support of the applicant: Kingdom of Belgium (represented initially by: M. Jacobs and T. Materne, subsequently by: M. Jacobs, and finally by: M. Jacobs and J.-C. Halleux, acting as Agents); French Republic (represented initially by: G. de Bergues and B. Messmer, subsequently by: G. de Bergues and finally by: J. Bousin and D. Colas, acting as Agents) and the Kingdom of the Netherlands (represented initially by: C. Wissels, M. Noort and Y. de Vries and subsequently by: M. Noort, M. Bulterman and B. Koopman, acting as Agents)

Re:

Application based on Article 263 TFEU seeking the annulment of Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial aid granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97)3742 of 18 December 1997 — (ERDF No 970010008) insofar as it applies to the Grand Duchy of Luxembourg.

Operative part of the order

1. *Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial aid granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97)3742 of 18 December 1997 — (ERDF No 970010008) is annulled insofar as it applies to the Grand Duchy of Luxembourg.*

2. *The European Commission shall pay, in addition to its own costs, the costs incurred by the Grand Duchy of Luxembourg.*

3. *The Kingdom of Belgium, the French Republic and the Kingdom of the Netherlands shall bear their own costs.*

([1]) OJ C 134, 22.5.2010.

Order of the General Court of 27 September 2017 — Netherlands v Commission

(Case T-119/10) ([1])

(Actions for annulment — ERDF — Reduction of financial assistance — Programme Interreg II/C 'Rhine-Meuse flood protection' — Non-compliance with the period prescribed for the adoption of a decision — Infringement of essential procedural requirements — Action manifestly well founded)

(2017/C 424/52)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (initially by Y. de Vries, J. Langer and C. Wissels, and subsequently by J. Langer and M. Bulterman and B. Koopman, Agents)

Defendant: European Commission (represented by: W. Roels and A. Steiblytė, Agents)

Interveners in support of the applicant: Kingdom of Belgium (represented: initially by M. Jacobs and T. Materne, and subsequently by M. Jacobs and J.-C. Halleux, Agents) and by French Republic (represented: initially by G. de Bergues and B. Messmer, and subsequently by J. Bousin and D. Colas, Agents)

Parties

Application pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial assistance granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008).

Operative part of the order

1. *Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial assistance granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008) is annulled in so far as it concerns the Kingdom of the Netherlands.*

2. *The European Commission is ordered to pay its own costs and pay those incurred by the Kingdom of the Netherlands.*

3. *The Kingdom of Belgium and the French Republic are ordered to bear their own costs.*

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 17 October 2017 — Andreassons Åkeri and Others v Commission

(Case T-746/16) ([1])

(Action for annulment — Social security — Commission decision to close an EU Pilot procedure — Decision to take no further action on a complaint — Refusal of the Commission to bring infringement proceedings — Act not open to challenge — Lack of direct concern — Manifest inadmissibility — Application seeking the issue of an injunction — Manifest lack of jurisdiction)

(2017/C 424/53)

Language of the case: Swedish

Parties

Applicants: Andreassons Åkeri i Veddige AB (Veddige, Sweden), Luke Transport AB (Laholm, Sweden), Zimit Transportförmedling AB (Veddige) (represented by: C. von Quitzow, Professor)

Defendant: European Commission (represented by: D. Martin and K. Simonsson, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking annulment of the Commission decision contained in the letter of 10 August 2016 concerning the outcome of EU Pilot Procedure 7504/15/EMPL.

Operative part of the order

1. *The action is dismissed.*

2. *Andreassons Åkeri i Veddige AB, Luke Transport AB and Zimit Transportförmedling AB shall pay the costs.*

([1]) OJ C 38, 6.2.2017.

Action brought on 7 August 2017 — Ballesté Torralba and Others v SRB

(Case T-528/17)

(2017/C 424/54)

Language of the case: Spanish

Parties

Applicants: María Ballesté Torralba (Alcarrás, Spain), David Lozano Jiménez (Alcarrás), María Carmen Estruch Martínez (Alcarrás) and Ramón Ribes Jové (Alcarrás) (represented by: E. Silva Pacheco, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Annul the decision of the Single Resolution Board of 7 June 2017, with effect ex tunc, thereby rendering it invalid and devoid of effects;

— Order the payment of compensation in the sum of EUR 37 877 to applicants 1, in the sum of EUR 11 000 to applicants 2, and in the sum of EUR 1 309,14 to Ms María Ballesté Torralba.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 5 August 2017 — Jess Liberty v SRB

(Case T-538/17)

(2017/C 424/55)

Language of the case: Spanish

Parties

Applicant: Jess Liberty, SL (Madrid, Spain) (represented by: C. Aguirre de Cárcer Moreno, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Acknowledge the lodging of the action against Decision SRB/EES/2017/08 made by the Single Resolution Board in its Expanded Executive Session of 7 June 2017, adopting the resolution scheme concerning the institution Banco Popular Español, S.A., in accordance with the provisions of Article 29 of 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 and, after having allowed access to all the documents in the file and given the possibility of making further claims, annul or revoke the contested decision, reinstating in full the legal effect of the applicant's economic rights, in accordance with the requirements of full compensation.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 7 August 2017 — Afectados Banco Popular v SRB

(Case T-545/17)

(2017/C 424/56)

Language of the case: Spanish

Parties

Applicant: Afectados Banco Popular (Madrid, Spain) (represented by: I. Ferrer-Bonsoms Millet, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision, declare the transactions carried out under it ineffective and order the return of the property of the Banco Popular Español, S.A. to the shareholders and bond-holders concerned, putting them back in the position they were in before the intervention;

— If that is not possible, declare in any event that the conversion of the bonds into shares is ineffective, maintaining bond-holders in the same position as they were in on 6 June 2017 and order the payment of compensation to shareholders by payment corresponding to the actual value of the bank and, accordingly, of the shares on 30 June 2016.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 16 August 2017 — TW and Others v SRB

(Case T-555/17)

(2017/C 424/57)

Language of the case: Spanish

Parties

Applicants: TW, TY, UA and UB (represented by: L. Chen Chen, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Take note of the lodging of the present action for annulment of the Single Resolution Board's decision to write down Banco Popular Español S.A.'s share capital to EUR 0 and to sell it subsequently to Banco de Santander S.A. for EUR 1, and after having examined all the documents officially available and assessed the grounds set out therein, declare that the decision taken by the Board in the *Official Journal of the European Union* on 7 June 2017 is invalid or annulled.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 August 2017 — La Guirigaña and Others v ECB and SRB

(Case T-613/17)

(2017/C 424/58)

Language of the case: Spanish

Parties

Applicants: La Guirigaña, S.L. (Madrid, Spain) and seven other applicants (represented by: J. Díaz-Patón Porras, lawyer)

Defendants: European Central Bank and Single Resolution Board

Form of order sought

The applicants claim that the General Court should take note that an application has been lodged alleging that the European Union has incurred financial liability in respect of acts and omissions attributable to the European Central Bank and take note of the joint lodging of an action against the Decision of the Single Resolution Board of 7 June 2017 and, following the appropriate legal procedure, should:

— Declare that the European Union has incurred financial liability towards the applicants;

— Annul the Single Resolution Board's decision of 7 June 2017, depriving it of effect,

— In the alternative, should the Court not uphold the aforementioned claims, order that the Single Resolution Board compensate the applicants.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 20 September 2017 — Escriba Serra and Others v Commission and SRB

(Case T-640/17)

(2017/C 424/59)

Language of the case: Spanish

Parties

Applicants: Juan Escriba Serra (Girona, Spain) and seven other applicants (represented by: R. Vallina Hoset and C. Iglesias Megías, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— principally, and for reasons of procedural economy:

  — Annul (revoke) in part Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017, concerning the adoption of a resolution scheme in respect of Banco Popular Español, S.A., in so far as it orders the conversion and write down of Banco Popular subordinated bonds;

  — Annul in part Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme of Banco Popular Español, S.A., in so far as it orders the conversion of Banco Popular subordinated bonds;

— In the alternative,

— Annul in full Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017, concerning the adoption of a resolution scheme in respect of Banco Popular Español, S.A.;

— Annul in full Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme of Banco Popular Español, S.A.

— Where appropriate, declare Articles 15, 18, 20, 21, 22 and/or 24 of Regulation No 806/2014 inapplicable, in accordance with Article 277 TFEU; and

— Order the Board and the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 21 September 2017 — Euroways v Commission and SRB

(Case T-643/17)

(2017/C 424/60)

Language of the case: Spanish

Parties

Applicant: Euroways, SL (Hospitalet de Llobregat, Spain) (represented by: R. Vallina Hoset and C. Iglesias Megías, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Annul Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017 concerning the adoption of a resolution scheme in respect of Banco Popular Español, S.A.;

— Annul Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme of Banco Popular Español, S.A.;

— Where appropriate, declare Articles 15, 18, 20, 21, 22 and/or 24 of Regulation No 806/2014 inapplicable, in accordance with Article 277 TFEU;

— Order SRB and the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 28 September 2017 — Vallina Fonseca v SRB

(Case T-659/17)

(2017/C 424/61)

Language of the case: Spanish

Parties

Applicant: José Antonio Vallina Fonseca (Madrid, Spain) (represented by: R. Vallina Hoset y A. Sellés Marco, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by Mr José Antonio Vallina Fonseca as a result of both its actions and its omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities it owned;

— Order the Board to pay the applicant EUR 50 000 as compensation for the harm suffered ('the amount due');

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

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 Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017, concerning a resolution scheme in respect of Banco Popular Español, S.A., infringes the *nemo auditur turpitudinem opropiam allegans* principle and Article 88 of Regulation No 806/2014, in that a crisis that SRB itself triggered has led to the adoption of an act adversely affecting Banco Popular and its shareholders.

2. Second plea in law, alleging that by adopting the resolution decision, the Board infringed the duty of diligence, the principle of good administration in Article 296 TFEU, the principle of prohibition of arbitrary conduct, and the principle of *nemo auditur turpitudinem suam allegans*.

3. Third plea in law, alleging infringement of Articles 17 and 41 of the Charter of Fundamental Rights of the European Union, in that the applicant was obliged to renounce its property without having been given the opportunity to be heard, either before or after.

4. Fourth plea in law, alleging that the Board infringed Article 17 of the Charter of Fundamental Rights of the European Union and Article 54 of the Treaty on European Union, in that the applicant was deprived of its property despite the existence of less restrictive measures.

Action brought on 28 September 2017 — Miralla Inversiones v Commission and SRB

(Case T-660/17)

(2017/C 424/62)

Language of the case: Spanish

Parties

Applicant: Miralla Inversiones, S.L. (Madrid, Spain) (represented by: R. Vallina Hoset and A. Lois Perreau de Pinninck, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Annul Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017 concerning the adoption of a resolution scheme in respect of Banco Popular Español, S.A.;

— Annul Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme of Banco Popular Español, S.A.;

— Where appropriate, declare Articles 15, 18, 20, 21, 22 and/or 24 of Regulation No 806/2014 inapplicable, in accordance with Article 277 TFEU;

— Order SRB and the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 29 September 2017 — Fundación Agustín de Betancourt v SRB

(Case T-661/17)

(2017/C 424/63)

Language of the case: Spanish

Parties

Applicant: Fundación Agustín de Betancourt (Madrid, Spain) (represented by: I. Salama Salama, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicant for the harm suffered, in a precise amount which will be determined once the information required by the applicant's representatives is provided in full and, in particular Deloitte's provisional report and those prepared by independent experts in accordance with Regulation (EU) No 806/2014, access to which is hereby requested;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 28 September 2017 — Link Flexible and Others v SRB

(Case T-662/17)

(2017/C 424/64)

Language of the case: Spanish

Parties

Applicants: Link Flexible Sicav, SA (Madrid, Spain) and 20 other applicants (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicants for the harm suffered, in a precise amount which will be determined once the information required by the applicants' representatives is provided in full and, in particular Deloitte's provisional report and those prepared by independent experts in accordance with Regulation (EU) No 806/2014, access to which is hereby requested;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 27 September 2017 — Sahece and Others v SRB

(Case T-663/17)

(2017/C 424/65)

Language of the case: Spanish

Parties

Applicants: Sahece, SA (Carrión de los Céspedes, Spain) and 20 other applicants (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicants for the harm suffered, in a precise amount which will be determined once the information required by the applicants' representatives is provided in full and, in particular Deloitte's provisional report and those prepared by independent experts in accordance with Regulation (EU) No 806/2014, access to which is hereby requested;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 27 September 2017 — eSlovensko v Commission

(Case T-664/17)

(2017/C 424/66)

Language of the case: English

Parties

Applicant: eSlovensko (Lučenec, Slovakia) (represented by: F. Branislav, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision Ref. ARES(2017)3107844-21/06/2017 of the European Commission excluding the applicant from participating in all procurement and grant award procedures governed by Regulation N° 966/2012 and from the award of funds governed by Regulation 2015/323;

— order the defendant to conduct a new audit, reviewing its findings as to admissible costs;

— 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, alleging misuse of powers, particularly improper legal evaluation of facts and findings.

   — The applicant argues that there was no reasonable basis for the Commission's decision.

2. Second plea in law, alleging inadequate justification of the contested decision.

— The Commission evidently failed to properly and impartially review all circumstances of the case.

Action brought on 29 September 2017 — LG Vaquero Aviación and Others v SRB

(Case T-670/17)

(2017/C 424/67)

Language of the case: Spanish

Parties

Applicants: LG Vaquero Aviación, S.L. (Alcorcón, Spain) and 15 other applicants (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicants for the harm suffered, in a precise amount which will be determined once the information required by the applicants' representatives is provided in full and, in particular Deloitte's provisional report and those prepared by independent experts in accordance with Regulation (EU) No 806/2014, access to which is hereby requested;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 28 September 2017 — Turbo-K International v EUIPO — Turbo-K (TURBO-K)

(Case T-671/17)

(2017/C 424/68)

Language in which the application was lodged: English

Parties

Applicant: Turbo-K International Ltd (Birmingham, United Kingdom) (represented by: A. Norris, A. Muir Wood, Barristers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Turbo-K Ltd (Winchester, United Kingdom)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'TURBO-K' — Application for registration No 13 458 039

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 July 2017 in Case R 2135/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and reject the objections to the registration of the mark in their entirety;

— order the payment of the costs incurred by the applicant in connection with this appeal.

Plea in law

— Infringement of Article 8(4) of Regulation No 207/2009.

Action brought on 29 September 2017 — Aplicacions de Servei Monsan and Others v SRB

(Case T-675/17)

(2017/C 424/69)

Language of the case: Spanish

Parties

Applicants: Aplicacions de Servei Monsan, SLU (Mollet del Vallés, Spain) and 79 other applicants (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with the second subparagraph of Article 340 TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order SRB to pay to the applicants compensation for the harm suffered, in the following amounts:

  i. Shareholders: the net financial value per Banco Popular share, which will be quantified precisely by means of further work on our expert report set out in Annex A.5, once we have been given the provisional and definitive valuations carried out by 'independent experts' as required under Article 20 of Regulation (EU) 806/2014 (findings of the expert report, Annex A.5.1, page 106);

  ii. Holders of Tier 1 capital instruments: the amount corresponding to the nominal value of the bonds, at the date of resolution, and corresponding default interest as of that date up to the date on which the corresponding reimbursement is made (expert report, Annex A.5.2, page 105);

iii. Holders of Tier 2 capital instruments: the amount corresponding to the nominal value of the bonds, at the date of resolution, and corresponding default interest as of that date up to the date on which the corresponding reimbursement is made (expert report, Annex A.5.3, page 12);

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 3 October 2017 — Minera Catalano Aragonesa and Luengo Martínez v Commission and SRB

(Case T-678/17)

(2017/C 424/70)

Language of the case: Spanish

Parties

Applicants: Minera Catalano Aragonesa, SA (Ariñoteruel, Spain) and Ángel Luengo Martínez (Zaragoza, Spain) (represented by: R. Montejo Pérez, F. Ferrara and F. Banti, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Annul the decisions of 7 June 2017 of the Single Resolution Board (No SRB/EES/2017/08) and of the European Commission (No 1246);

— Order the Single Resolution Board and the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 3 October 2017 — Grupo Villar Mir v SRB

(Case T-679/17)

(2017/C 424/71)

Language of the case: Spanish

Parties

Applicant: Grupo Villar Mir, SA (Madrid, Spain) (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicant for the harm suffered, in a precise amount which will be determined once the information required by the applicant's representatives is provided in full and, in particular Deloitte's provisional report and those prepared by independent experts in accordance with Regulation (EU) No 806/2014, access to which is hereby requested;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 October 2017 — Helibética v SRB

(Case T-680/17)

(2017/C 424/72)

Language of the case: Spanish

Parties

Applicant: Helibética, SL (Alicante, Spain) (represented by: R. Vallina Hoset and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicant as a result of both its actions and its omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities it owned;

— Order the Board to pay the applicant EUR 50 000 as compensation for the harm suffered ('the amount due'):

  — Principally, the reimbursement of the investments made, namely EUR 1 010 677,50 in Banco Popular shares;

  — In the alternative to the above claim, EUR 514 957;

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17 *Vallina Fonseca* v *SRB*.

Action brought on 4 October 2017 — Miralla Inversiones v SRB

(Case T-685/17)

(2017/C 424/73)

Language of the case: Spanish

Parties

Applicant: Miralla Inversiones (Madrid, Spain) (represented by: R. Vallina Hoset and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

First — take note of the present application and acknowledge the lodging of annulment proceedings against Decision SRB/EES/2017/08 of 7 June 2017 concerning the resolution of Banco Popular, as well as the valuation on which it is based and, once the relevant verifications have been carried out, declare the action admissible and follow the procedure set out in Article 120 et seq. of the Rules of Procedure of the General Court;

Second — In accordance with the application, order SRB to submit without delay the provisional valuation carried out by DELOITTE in accordance with Article 20 of the Regulation (EU) 806/2014 for the purpose of enabling the proper exercise of the right of the defence and, once that valuation has been submitted, allow the applicant a specific period to analyse and examine it in detail, so that it is in a position to oppose it during the reply stage;

Third — In the event that it does not accept the claims made in the previous paragraph and the proceedings continue, rule that Decision SRB/EES/2017/08 of 7 June 2017 concerning the resolution of Banco Popular and the valuation on which it is based are contrary to EU law.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 October 2017 — Policlínico Centro Médico de Seguros and Medicina Asturiana v SRB

(Case T-686/17)

(2017/C 424/74)

Language of the case: Spanish

Parties

Applicants: Policlínico Centro Médico de Seguros, SA (Oviedo, Spain) and Medicina Asturiana, SA (Oviedo) (represented by: R. Vallina Hoset and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicants as a result of both its actions and its omissions which deprived them of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities they owned;

— Order the Board to pay to the applicants EUR 1 850 000 and the bonds' unpaid interest accrued up to the date of repayment as compensation for the harm suffered ('the amount due');

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17 *Vallina Fonseca* v *SRB*.

Action brought on 9 October 2017 — Italy v Commission

(Case T-695/17)

(2017/C 424/75)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the notice of Open Competitions — EPSO/AD/343/17 — German-language (DE) translators (AD 5) — EPSO/AD/344/17 — French-language (FR) translators (AD 5) — EPSO/AD/345/17 — Italian-language (IT) translators (AD 5) — EPSO/AD/346/17 — Dutch-language (NL) translators (AD 5), published in *Official Journal of the European Union* No C 224 A of 13 July 2017;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 263 TFEU, 264 TFEU and 266 TFEU.

— The Commission has disregarded the authority of the judgment of the Court of Justice in Case C-566/10 P and of the judgment of the General Court of 24 September 2015 in Cases T-124/15 and T-191/13, which find that it is unlawful for notices for open competitions of the European Union to limit to only English, French and German the languages which candidates may indicate as their second language.

2. Second plea in law, alleging infringement of Article 342 TFEU and of Articles 1 and 6 of Regulation No 1/58.

— The applicant argues in this respect that, by limiting to three the languages which may be chosen as a second language by candidates in open competitions of the European Union, the Commission has in practice created new rules on the use of languages by the institutions, thereby encroaching on the exclusive competence of the Council in this area.

3. Third plea in law, alleging infringement of Article 12 EC, now Article 18 TFEU; Article 22 of the Charter of Fundamental Rights of the European Union; Article 6(3) EU; Articles 1(2) and 3 of Annex III to the Staff Regulations; Articles 1 and 6 of Regulation No 1/58; and Articles 1d(1) and (6), 27(2) and 28(f) of the Staff Regulations.

— The applicant claims in this respect that the language restriction introduced by the Commission is discriminatory because the legislative provisions cited above prohibit the imposition on EU citizens or officials of the institutions of linguistic restrictions which are not generally and objectively provided for under the institutions' rules of procedure as referred to in Article 6 of Regulation No 1/58 and which have not yet been adopted; they also prohibit the introduction of such limitations unless they are justified by a specific substantiated interest of the service.

4. Fourth plea in law, alleging infringement of Article 6(3) EU, in so far as it establishes the principle of the protection of legitimate expectations as a fundamental right resulting from the constitutional traditions common to the Member States.

— The applicant claims in this respect that the Commission has frustrated citizens' expectations of being able to choose any language of the European Union as their second language, as was always the case up until 2007 and as has been authoritatively confirmed in the judgment of the Court of Justice in Case C-566/10 P.

5. Fifth plea in law, alleging misuse of powers and infringement of substantive rules concerning the nature and purpose of competition notices, in particular Articles 1d(1) and (6), 28(f), 27(2), 34(3) and 45(1) of the Staff Regulations, as well as an infringement of the principle of proportionality.

— The applicant claims in this respect that, by restricting to three, in a pre-emptive and general manner, the number of languages eligible for use as a second language, the Commission has effectively placed the assessment of the candidates' linguistic abilities — an assessment which ought to be carried out in the course of the competition itself — before the notice and eligibility stages. Thus, a candidate's knowledge of languages, rather than his professional knowledge, becomes the decisive factor.

6. Sixth plea in law, alleging infringement of Article 18 TFEU and the fourth paragraph of Article 24 TFEU; Article 22 of the Charter of Fundamental Rights of the European Union; Article 2 of Regulation No 1/58; and Article 1d(1) and (6) of the Staff Regulations.

— The applicant claims in this respect that, by providing that applications must be submitted in English, French or German and that any communications sent to candidates by EPSO relating to the progress of the competition would be written in the same language, the right of European citizens to interact with the European institutions in their own language has been adversely affected and further discrimination has been introduced against those who do not have a thorough knowledge of those three languages.

7. Seventh plea in law, alleging infringement of Articles 1 and 6 of Regulation No 1/58; Article 1d(1) and (6) of the Staff Regulations and Article 1(1)(f) of Annex III to the Staff Regulations; and of the second paragraph of Article 296 TFEU (failure to state reasons), as well as infringement of the principle of proportionality and distortion of the facts.

— The applicant claims in this respect that the Commission has used the requirement that new recruits be capable immediately of communicating within the institutions as a means of justifying the 'three languages' restriction. That justification distorts the facts because it is not the case that the three languages in question are the ones most used for communication between different language groups within the institutions, and it is disproportionate in regard to the restriction of a fundamental right such as the right not to suffer discrimination on grounds of language when less restrictive arrangements exist for ensuring effective communication within the institutions.

Action brought on 12 October 2017 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — Papouis Dairies (Papouis Halloumi)

(Case T-702/17)

(2017/C 424/76)

Language in which the application was lodged: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: V. Marsland, Solicitor and S. Malynicz, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Papouis Dairies LTD (Nicosia, Cyprus)

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 in colours containing the word elements 'Papouis Halloumi' — Application for registration No 11 176 344

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 August 2017 in Case R 2782/2014-4

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.

Plea in law

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

Action brought on 9 October 2017 — Spain v Commission

(Case T-704/17)

(2017/C 424/77)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. García-Valdecasas Dorrego, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the competition notice;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea: infringement of Articles 1 and 2 of Regulation No 1/58, of Article 22 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 1d of the Staff Regulations through the imposition of the restriction, which extends to the application form, that communication between EPSO and the candidate is to be solely in English, French and German.

2. Second plea: infringement of Articles 1 and 6 of Regulation No 1/58, of Article 22 of the Charter and of Article 1d(1) and (6) of the Staff Regulations in that the choice of second language is improperly restricted to solely three languages, namely English, French and German, to the exclusion of the other official languages of the European Union, and because in Option 1 the third language is restricted to English, French and German, to the exclusion of the other official languages of the European Union.

3. Third plea: the choice of English, French and German constitutes an arbitrary choice that gives rise to discrimination on the ground of language prohibited by Article 1 of Regulation No 1/58, Article 22 of the Charter and Article 1d(1) and (6) of the Staff Regulations.

Action brought on 5 October 2017 — Temes Rial and Others v SRB

(Case T-705/17)

(2017/C 424/78)

Language of the case: Spanish

Parties

Applicants: Enrique Manuel Temes Rial (Vilagarcía de Arousa, Spain), Jon Nuñes Baracaldo (Erandio Astraburua, Spain), Maria Luisa Muniente Pallas (Madrid, Spain), Alfonso Velasco Nieto (Madrid) and Gloria María Zarco Martínez (Guarnizo el Astillero, Spain) (represented by: P. Rúa Sobrino, lawyer).

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— Annul the decision of the Single Resolution Board (SRB/EES/2017/08) and the independent expert's valuation on which that decision is based in accordance with Article 20(15) of Regulation No 806/2014;

— Declare Articles 18 and 29 of Regulation (EU) No 806/2014 illegal and inapplicable;

— Order the Single Resolution Board to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 11 October 2017 — Euroways v SRB

(Case T-707/17)

(2017/C 424/79)

Language of the case: Spanish

Parties

Applicant: Euroways, SL (Hospitalet de Llobregat, Spain) (represented by: R. Vallina Hoset and C. Iglesias Megías, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicant as a result of both its actions and its omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities it owned;

— Order the Board to pay the applicant compensation for the harm suffered ('the amount due'):

  — Principally, the reimbursement of the investments made, namely EUR 543 242,11 in Banco Popular shares;

  — In the alternative to the above claim, EUR 44 055,19;

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17 *Vallina Fonseca* v *SRB*.

Action brought on 19 October 2017 — Italy v Commission

(Case T-718/17)

(2017/C 424/80)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Notice of Open Competitions — Administrators and assistants in the buildings sector — EPSO/AD/342/17 (AD 6) — Building management engineers (including environmental and services engineers) — EPSO/AST/141/17 (AST 3) — Profile 1. Building construction coordinators/technicians — Profile 2. Building coordinators/technicians in air conditioning and electromechanical and electrical engineering — Profile 3. Occupational safety/building safety assistants, published in *Official Journal of the European Union* No C 242 A of 27 July 2017;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those set out in Case T-695/17, *Italian Republic* v *Commission*.

Action brought on 17 October 2017 — Topor-Gilka v Council

(Case T-721/17)

(2017/C 424/81)

Language of the case: German

Parties

Applicant: Sergey Topor-Gilka (Moscow, Russia) (represented by: N. Meyer, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the contested Council Decision (CFSP) 2017/1418 ([1]) of 4 August 2017;

— in the alternative, and in any event, partially annul the contested Council Decision (CFSP) 2017/1418 in so far as, by that decision, the applicant was included in No 160 in the list of persons and entities under Article 1 of the decision; and

— join the proceedings in this case with the parallel proceedings concerning OOO WO Technopromexport pursuant to Article 68(1) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging several manifest errors of assessment

   — Reliance on Council Regulation (EU) No 1351/2014 ([2])

   That regulation concerns a category of persons other than that to which the applicant belongs and is therefore not a reason why the applicant should be included in the list at issue.

   — Allegation of a breach of contract

   The Council justifies the decision to add the applicant to the list at issue on the basis that, among other things, Mr Topor-Gilka led the contract negotiations with Siemens Gas Turbine Technology OOO concerning the original supply contract, in which connection the provisions of that original supply contract were, it is contended, subsequently breached. The appraisal of whether there was in fact a breach of contract is a matter for determination under Russian law. The parties to the supply contract have instituted proceedings before the Moscow Court of Arbitration. Until such time as that Court of Arbitration has decided the case, the allegation of a breach of contract constitutes an insufficiently solid factual basis and is unsuitable as a justification for Decision 2017/1418 (CFSP).

— Transport of gas turbines to Crimea

The allegation made against the applicant is that he was responsible for the onward transport of gas turbines to Crimea. The published press articles are not clear and are based on anonymous sources. It is the task of the competent EU authority to establish that the reasons relied on are sound; it is not the task of the undertaking concerned to adduce evidence to the contrary, namely that those reasons are not sound.

— Infringement of the principles of international humanitarian law

Russia is required under international law to restore and maintain public order in Crimea, which at the present time also includes ensuring a safe and constant energy supply. The humanitarian need for such an energy supply is not taken into account in the statement of reasons relating to Decision 2017/1418 (CFSP), and nor are the rules of international humanitarian law.

2. Second plea in law, alleging infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU

Decision 2017/1418 infringes the obligation to state reasons under the second paragraph of Article 296 TFEU. The reasons stated in No 160 in the annex to the decision are, overall, vague and insufficiently detailed. They do not indicate the specific reasons as to why the Council, in the exercise of its discretion, decided to apply restrictive measures to the applicant and are thus not at all adequate to satisfy the requirements of the obligation to state reasons under the second paragraph of Article 296 TFEU.

3. Third plea in law, alleging infringement of the right of defence and the right to effective legal protection

By failing to comply with the obligation to state reasons under the second paragraph of Article 296 TFEU, the Council infringed the applicant's right of defence and right to effective legal protection, since it is not possible for the applicant to formulate the best possible defence in the absence of knowledge as to the main reasons why he was added to the list at issue.

([1]) Council Decision (CFSP) 2017/1418 of 4 August 2017 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2017 L 203 I, p. 5).

([2]) Council Regulation (EU) No 1351/2014 of 18 December 2014 amending Regulation (EU) No 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (OJ 2014 L 365, p. 46).

Action brought on 17 October 2017 — WO Technopromexport v Council

(Case T-722/17)

(2017/C 424/82)

Language of the case: German

Parties

Applicant: OOO WO Technopromexport (Moscow, Russia) (represented by: N. Meyer, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the contested Council Decision (CFSP) 2017/1418 ([1]) of 4 August 2017;

— in the alternative, and in any event, annul the contested Council Decision (CFSP) 2017/1418 in so far as, by that decision, the applicant was included in No 39 in the list of persons and entities under Article 1 of the decision; and

— join the proceedings in this case with the parallel proceedings concerning Mr Topor-Gilka pursuant to Article 68(1) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging several manifest errors of assessment

   — Reliance on Council Regulation (EU) No 1351/2014 ([2])

   That regulation concerns a category of persons other than that to which the applicant belongs and is therefore not a reason why the applicant should be included in the list at issue.

   — Allegation of a breach of contract

   The Council justifies the decision to add the applicant to the list at issue on the basis that, inter alia, gas turbines were supplied to Crimea, and that the provisions of an original supply contract with Siemens Gas Turbine Technology OOO were breached. The appraisal of whether there was in fact a breach of contract is a matter to be determined under Russian law. The parties to the supply contract have instituted proceedings before the Moscow Court of Arbitration. Until such time as that Court of Arbitration has decided the case, the allegation of a breach of contract constitutes an insufficiently solid factual basis and is unsuitable as a justification for Decision 2017/1418 (CFSP).

   — Transport of gas turbines to Crimea

   The allegation against the applicant is that it supplied gas turbines to Crimea. The published press articles are not clear and are based on anonymous sources. It is the task of the competent EU authority to establish that the reasons relied on are sound; it is not the task of the undertaking concerned to adduce evidence to the contrary, namely that those reasons are not sound.

   — Infringement of the principles of international humanitarian law

   Russia is required under international law to restore and maintain public order in Crimea, which at the present time also includes ensuring a safe and constant energy supply. The humanitarian need for such an energy supply is not taken into account in the statement of reasons relating to Decision 2017/1418 (CFSP), and nor are the rules of international humanitarian law.

2. Second plea in law, alleging infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU

   Decision 2017/1418 infringes the obligation to state reasons under the second paragraph of Article 296 TFEU. The reasons stated in No 39 in the annex to the decision are, overall, vague and insufficiently detailed. They do not provide specific reasons as to why the Council, in the exercise of its discretion, decided to apply restrictive measures to the applicant and are thus not at all adequate to satisfy the requirements of the obligation to state reasons under the second paragraph of Article 296 TFEU.

3. Third plea in law, alleging infringement of the right of defence and the right to effective legal protection

   By failing to comply with the obligation to state reasons under the second paragraph of Article 296 TFEU, the Council infringed the applicant's right of defence and right to effective legal protection, since it is not possible for the applicant to formulate the best possible defence in the absence of knowledge as to the main reasons why it was added to the list at issue.

([1]) Council Decision (CFSP) 2017/1418 of 4 August 2017 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2017 L 203 I, p. 5).

([2]) Council Regulation (EU) No 1351/2014 of 18 December 2014 amending Regulation (EU) No 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (OJ 2014 L 365, p. 46).

Order of the General Court of 18 October 2017 — Ecolab Deutschland and Lysoform Dr. Hans Rosemann v ECHA

(Case T-243/17) ([1])

(2017/C 424/83)

Language of the case: English

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

([1]) OJ C 221, 10.7.2017.

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