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Information and Notices

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(2018/C 052/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 5 December 2017 — Federal Republic of Germany v Council of the European Union

(Case C-600/14) ([1])

(Action for annulment — External action of the European Union — Article 216(1) TFEU — Article 218 (9) TFEU — Establishment of the position to be adopted on behalf of the European Union in a body set up by an international agreement — Revision Committee of the Intergovernmental Organisation for International Carriage by Rail (OTIF) — Amendment of the Convention concerning International Carriage by Rail (COTIF) and the Appendices thereto — Competence shared between the European Union and its Member States — External competence of the European Union in an area where the Union has not yet adopted common rules — Validity of Decision 2014/699/EU — Obligation to state reasons — Principle of sincere cooperation)

(2018/C 052/02)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents)

Interveners in support of the applicant: French Republic (represented initially by D. Colas, G. de Bergues and M. Hours, acting as Agents, and subsequently by D. Colas and M.-L. Kitamura, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by C. Brodie, M. Holt and D. Robertson, acting as Agents, and by J. Holmes QC)

Defendant: Council of the European Union (represented by: E. Finnegan, Z. Kupčová and J.-P. Hix, acting as Agents)

Intervener in support of the defendant: European Commission (represented by F. Erlbacher, W. Mölls and J. Hottiaux, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Federal Republic of Germany to pay the costs;*

3. *Orders the French Republic, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.*

([1]) OJ C 73, 2.3.2015.

Judgment of the Court (Fifth Chamber) of 7 December 2017 (request for a preliminary ruling from the Juzgado de Primera Instancia de Jerez de la Frontera) — Banco Santander SA v Cristobalina Sánchez López

(Case C-598/15) ([1])

(Reference for a preliminary ruling — Directive 93/13/EEC — Consumer contracts — Unfair terms — Powers of the national court — Effectiveness of the protection afforded to consumers — Mortgage loan agreement — Extrajudicial enforcement procedure — Simplified declaratory court procedure for recognition of the real rights of the successful bidder)

(2018/C 052/03)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Jerez de la Frontera

Parties to the main proceedings

Applicant: Banco Santander SA

Defendant: Cristobalina Sánchez López

Operative part of the judgment

Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer do not apply to proceedings such as those at issue in the main proceedings, brought by the successful bidder in an auction of immovable property, following extrajudicial enforcement of a mortgage granted over that property by a consumer to a creditor acting in the course of trade, such proceedings having been brought for the purpose of protecting real rights lawfully acquired by the successful bidder, provided that, first, the proceedings are independent of the legal relationship between that creditor and the consumer and, second, the mortgage has been enforced, the immovable property sold, the real rights over that property transferred, and the consumer has not availed himself of the legal remedies provided in that context

([1]) OJ C 38, 1.2.2016.

Judgment of the Court (Fourth Chamber) of 14 December 2017 — European Bicycle Manufacturers Association (EBMA) v Giant (China) Co. Ltd, Council of the European Union, European Commission

(Case C-61/16 P) ([1])

(Appeal — Dumping — Regulation (EU) No 502/2013 — Imports of bicycles originating in China — Regulation (EC) No 1225/2009 — Article 18(1) — Cooperation — Definition of 'necessary information' — Article 9(5) — Request for individual treatment — Risk of circumvention)

(2018/C 052/04)

Language of the case: English

Parties

Appellant: European Bicycle Manufacturers Association (EBMA) (represented by: L. Ruessmann, avocat, and J. Beck, Solicitor)

Other parties to the proceedings: Giant (China) Co. Ltd (represented by: P. De Baere, avocat), Council of the European Union, (represented by: H. Marcos Fraile, Agent, B. O'Connor, Solicitor, and S. Gubel, avocat), European Commission, (represented by J.-F. Brakeland, M. França, and A. Demeneix, Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Bicycle Manufacturers Association (EBMA) to bear its own costs and to pay the costs incurred by Giant (China) Co. Ltd;*

3. *Orders the Council of the European Union and the European Commission to bear their own costs.*

([1]) OJ C 106, 21.3.2016.

Judgment of the Court (Fifth Chamber) of 7 December 2017 (request for a preliminary ruling from the Högsta förvaltningsdomstolen – Sweden) — Boguslawa Zaniewicz-Dybeck v Pensionsmyndigheten

(Case C-189/16) ([1])

(Reference for a preliminary ruling — Social security for migrant workers — Regulation (EEC) No 1408/71 — Article 46(2) — Article 47(1)(d) — Article 50 — Guaranteed pension — Minimum benefit — Calculation of pension entitlement)

(2018/C 052/05)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Boguslawa Zaniewicz-Dybeck

Defendant: Pensionsmyndigheten

Operative part of the judgment

1. *Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, is to be interpreted as meaning that, when the competent institution of a Member State calculates a minimum benefit, such as the guaranteed pension at issue in the main proceedings, it is not inappropriate to apply Article 46(2) or Article 47(1)(d) of the regulation. Such a benefit must be calculated in accordance with Article 50 of the regulation, in conjunction with the provisions of national law, without, however, applying national provisions, such as those in the main proceedings, providing for a pro rata calculation;*

2. *Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1606/98, and in particular Article 50 of that regulation, is to be interpreted as not precluding the legislation of a Member State under which, when calculating a minimum benefit such as the guaranteed pension at issue in the main proceedings, the competent institution must take account of all the retirement pensions which the person concerned actually receives from one or more other Member States.*

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (First Chamber) of 6 December 2017 (request for a preliminary ruling from the Oberlandesgericht Frankfurt am Main — Germany) — Coty Germany GmbH v Parfümerie Akzente GmbH

(Case C-230/16) ([1])

(Reference for a preliminary ruling — Competition — Agreements, decisions and concerted practices — Article 101(1) TFEU — Selective distribution of luxury cosmetics products — Clause prohibiting distributors from making use of a non-authorised third party in the context of internet sales — Regulation (EU) No 330/2010 — Article 4(b) and (c))

(2018/C 052/06)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Coty Germany GmbH

Defendant: Parfümerie Akzente GmbH

Operative part of the judgment

1. *Article 101(1) TFEU must be interpreted as meaning that a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods complies with that provision to the extent that resellers are chosen on the basis of objective criteria of a qualitative nature that are laid down uniformly for all potential resellers and applied in a non-discriminatory fashion and that the criteria laid down do not go beyond what is necessary.*

2. *Article 101(1) TFEU must be interpreted as not precluding a contractual clause, such as that at issue in the main proceedings, which prohibits authorised distributors in a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods from using, in a discernible manner, third-party platforms for the internet sale of the contract goods, on condition that that clause has the objective of preserving the luxury image of those goods, that it is laid down uniformly and not applied in a discriminatory fashion, and that it is proportionate in the light of the objective pursued, these being matters to be determined by the referring court.*

3. *Article 4 of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the prohibition imposed on the members of a selective distribution system for luxury goods, which operate as distributors at the retail level of trade, of making use, in a discernible manner, of third-party undertakings for internet sales does not constitute a restriction of customers, within the meaning of Article 4(b) of that regulation, or a restriction of passive sales to end users, within the meaning of Article 4(c) of that regulation.*

([1]) OJ C 260, 18.7.2016.

Judgment of the Court (Fourth Chamber) of 14 December 2017 (request for a preliminary ruling from the Juzgado de lo Social n.º 30 de Barcelona — Spain) — Antonio Miravitlles Ciurana and Others v Contimark SA, Jordi Socías Gispert

(Case C-243/16) ([1])

(Reference for a preliminary ruling — Company law — Directive 2009/101/EC — Articles 2 and 6 to 8 — Directive 2012/30/EU — Articles 19 and 36 — Charter of Fundamental Rights of the European Union — Articles 20, 21 and 51 — Recovery of claims arising under an employment contract — Right to bring, before the same court, an action against the company and its director, as a person having joint and several liability for the company's debts)

(2018/C 052/07)

Language of the case: Spanish

Referring court

Juzgado de lo Social n.º 30 de Barcelona

Parties to the main proceedings

Applicants: Antonio Miravitlles Ciurana, Alberto Marina Lorente, Jorge Benito García, Juan Gregorio Benito García

Defendants: Contimark SA, Jordi Socías Gispert

Operative part of the judgment

Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 [EC], with a view to making such safeguards equivalent, in particular Articles 2 and 6 to 8 thereof, and Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 [TFEU], in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, in particular Articles 19 and 36 thereof, must be interpreted as not conferring on employees, who are creditors of a public limited liability company as a result of the termination of their employment contract, a right to bring, before the same social court as that having jurisdiction over their action for recognition of their wage claims, an action to establish the liability of the director of that company, on the ground that he has failed to convene a general meeting of the company despite the heavy losses sustained by it, with a view to obtaining a declaration that he is jointly and severally liable for those wage claims.

([1]) OJ C 279, 1.8.2016.

Judgment of the Court (Third Chamber) of 14 December 2017 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Avon Cosmetics Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-305/16) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Article 11A(1)(a) — Taxable amount — Article 17 — Right to deduct — Article 27 — Special derogating measures — Decision 89/534/EEC — Marketing structure based on the supply of goods through non-taxable persons — Taxation on the open market value of the goods as determined at the final stage of the marketing chain — Inclusion of the costs incurred by those persons)

(2018/C 052/08)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Avon Cosmetics Ltd

Defendant: Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

1. *Articles 17 and 27 of 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, as amended by Council Directive 2004/7/EC of 20 January 2004, must be interpreted as not precluding a measure, such as that at issue in the main proceedings, authorised by Council Decision 89/534/EEC of 24 May 1989 authorising the United Kingdom to apply, in respect of certain supplies to unregistered resellers, a measure derogating from Article 11A(1)(a) of the Sixth Directive, pursuant to Article 27 of that directive, which derogates from Article 11A(1)(a) of that directive and under which the taxable amount for valued added tax (VAT) purposes of a direct sales company is the open market value of the goods sold at the stage of final consumption, where those goods are marketed through resellers not subject to VAT, even if that derogating measure does not take account, in one way or another, of the input VAT relating to demonstration items purchased by those resellers from that company;*

2. *Examination of the first question has disclosed no factor of such a kind as to affect the validity of Decision 89/534;*

3. *Article 27 of Sixth Directive 77/388, as amended by Directive 2004/7, must be interpreted as not requiring the Member State which seeks authorisation to derogate from Article 11A(1)(a) of that directive to inform the European Commission that non-taxable resellers incur VAT on purchases of demonstration items from a direct sales company that are used for the purposes of their economic activity, in order that account be taken, in one way or another, of that input tax in the detailed rules of the derogating measure.*

([1]) OJ C 270, 25.7.2016.

Judgment of the Court (Fourth Chamber) of 7 December 2017 (request for a preliminary ruling from the Conseil d'État — France) — Syndicat national de l'industrie des technologies médicales (Snitem), Philips France v Premier ministre, Ministre des Affaires sociales et de la Santé

(Case C-329/16) ([1])

(Reference for a preliminary ruling — Medical devices — Directive 93/42/EEC — Scope — 'Medical device' — CE marking — National legislation making drug prescription assistance software subject to a certification procedure laid down by a national authority)

(2018/C 052/09)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Syndicat national de l'industrie des technologies médicales (Snitem), Philips France

Defendants: Premier ministre, Ministre des Affaires sociales et de la Santé

Operative part of the judgment

Article 1(1) and Article 1(2)(a) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007, must be interpreted as meaning that software, of which at least one of the functions makes it possible to use patient-specific data for the purposes, inter alia, of detecting contraindications, drug interactions and excessive doses, is, in respect of that function, a medical device within the meaning of those provisions, even if that software does not act directly in or on the human body.

([1]) OJ C 296, 16.8.2016.

Judgment of the Court (First Chamber) of 13 December 2017 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Soufiane El Hassani v Minister Spraw Zagranicznych

(Case C-403/16) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 810/2009 — Article 32(3) — Community Visa Code — Decision to refuse a visa — Right of the applicant to bring an appeal against that decision — Obligation of a Member State to guarantee the right to a judicial appeal)

(2018/C 052/10)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Soufiane El Hassani

Defendant: Minister Spraw Zagranicznych

Operative part of the judgment

Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.

([1]) OJ C 383,17.10.2016.

Judgment of the Court (Eighth Chamber) of 6 December 2017 (request for a preliminary ruling from the Curtea de Apel Bucureşti — Romania) — Compania Națională de Administrare a Infrastructurii Rutiere SA, formerly Compania Națională de Autostrăzi şi Drumuri Naționale din România SA v Ministerul Fondurilor Europene — Direcția Generală Managementul Fondurilor Externe

(Case C-408/16) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Scope — Regulation (EC) No 1083/2006 — European Regional Development Fund, European Social Fund and Cohesion Fund — Finance agreement for the construction of a motorway concluded with the European Investment Bank before the accession of the Member State to the European Union — Concept of 'irregularity' within the meaning of Regulation No 1083/2006)

(2018/C 052/11)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Applicant: Compania Națională de Administrare a Infrastructurii Rutiere SA, formerly Compania Națională de Autostrăzi şi Drumuri Naționale din România SA

Defendant: Ministerul Fondurilor Europene — Direcția Generală Managementul Fondurilor Externe

Operative part of the judgment

1. *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, and in particular Article 15(c) thereof, must be interpreted as meaning that it precludes a Member State's legislation that provides, for the purposes of a public procurement procedure initiated after the date of its accession to the European Union in order to complete a project started on the basis of a finance agreement concluded with the European Investment Bank prior to that accession, the application of the specific criteria laid down by the provisions of the European Investment Bank's public procurement guide which do not comply with the provisions of that directive;*

2. *Articles 9(5) and 60(a) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 must be interpreted as meaning that a public procurement procedure such as that at issue in the case in the main proceedings, in which criteria more restrictive than those laid down in Directive 2004/18 have been applied, cannot be considered as having been conducted in complete conformity with EU law and is not eligible for non-reimbursable European funding, granted retrospectively.*

   Article 2(7) of Regulation No 1083/2006 must be interpreted as meaning that the use of pre-selection criteria for tenderers that are more restrictive than those provided for by Directive 2004/18 constitutes an 'irregularity', within the meaning of that article, justifying the application of a financial correction pursuant to Article 98 of that regulation, provided that it cannot be ruled out that such use had an impact on the budget of the Funds at issue, which it is for the national court to determine.

([1]) OJ C 383, 17.10.2016.

Judgment of the Court (Sixth Chamber) of 13 December 2017 — Telefónica SA v European Commission

(Case C-487/16 P) ([1])

(Appeal — Agreements, decisions and concerted practices — Portuguese and Spanish telecommunications markets — Non-competition clause contained in an agreement entered into between two companies — Restriction by object — Rights of defence — Refusal to hear witnesses — Fines — Gravity of the infringement — Mitigating circumstances)

(2018/C 052/12)

Language of the case: Spanish

Parties

Appellant: Telefónica SA (represented by: J. Folguera Crespo and P. Vidal Martínez, abogados)

Other party to the proceedings: European Commission (represented by: C. Giolito and C. Urraca Caviedes, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Telefónica SA to pay the costs.*

([1]) OJ C 427, 21.11.2016.

Judgment of the Court (Seventh Chamber) of 7 December 2017 (request for a preliminary ruling from the High Court of Justice (Chancery Division) – United Kingdom) — Merck Sharp & Dohme Corporation v Comptroller General of Patents, Designs and Trade Marks

(Case C-567/16) ([1])

(Reference for a preliminary ruling — Industrial and commercial property — Patent law — Medicinal products for human use — Regulation (EC) No 469/2009 — Article (3)(b) — Supplementary protection certificate — Conditions for obtaining — Article 10(3) — Granting of the certificate or rejection of the application for a certificate — Directive 2001/83/EC — Article 28(4) — Decentralised procedure)

(2018/C 052/13)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Merck Sharp & Dohme Corporation

Defendant: Comptroller General of Patents, Designs and Trade Marks

Operative part of the judgment

1. *Article 3(b) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products is to be interpreted as meaning that an end of procedure notice issued by the reference Member State in accordance with Article 28(4) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended, as regards pharmacovigilance, by Directive 2010/84/EU of the European Parliament and the Council of 15 December 2010, before the expiry of the basic patent, as defined in Article 1(c) of Regulation No 469/2009, may not be treated as equivalent to a marketing authorisation within the meaning of Article 3(b) of that regulation, with the result that a supplementary protection certificate may not be obtained on the basis of such a notice.*

2. *Article 10(3) of Regulation No 469/2009 is to be interpreted as meaning that the fact that no marketing authorisation has been granted by the Member State concerned at the time the supplementary protection certificate application is lodged in that Member State does not constitute an irregularity that can be cured under that provision.*

(1) OJ C 22, 23.1.2017.

Judgment of the Court (Eighth Chamber) of 14 December 2017 (request for a preliminary ruling from the Helsingin hallinto-oikeus — Finland) — Proceedings brought by Anstar Oy

(Case C-630/16) (1)

(Reference for a preliminary ruling — Harmonised conditions for the marketing of construction products — Harmonised standard EN 1090-1:2009+A1:2011 — Criteria for determining the scope of a standard adopted by the European Committee for Standardisation (CEN) in accordance with a mandate of the European Commission — Anchors to be fixed into concrete before it sets and used for fastening facade elements and masonry supports to the building frame)

(2018/C 052/14)

Language of the case: Finnish

Referring court

Helsingin hallinto-oikeus

Parties to the main proceedings

Anstar Oy

Other party: Turvallisuus- ja kemikaalivirasto (Tukes)

Operative part of the judgment

Harmonised standard EN 1090-1:2009+A1:2011, 'Execution of steel structures and aluminium structures — Part 1: Requirements for conformity assessment of structural components', must be interpreted as meaning that products, such as those at issue in the main proceedings, intended to be fixed into concrete before it sets fall within its scope if they have a structural function, in the sense that their removal from a structure would immediately reduce its resistance.

(1) OJ C 63, 27.2.2017.

Judgment of the Court (Eight Chamber) of 7 December 2017 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 1 de Pamplona — Spain) — Wilber López Pastuzano v Delegación del Gobierno en Navarra

(Case C-636/16) (1)

(Reference for a preliminary ruling — Status of third-country nationals who are long-term residents — Directive 2003/109/EC — Article 12 — Adoption of a decision to expel a long-term resident — Matters to be taken into consideration — National legislation — Failure to take those matters into consideration — Whether compatible)

(2018/C 052/15)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 1 de Pamplona

Parties to the main proceedings

Applicant: Wilber López Pastuzano

Defendant: Delegación del Gobierno en Navarra

Operative part of the judgment

Article 12 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding legislation of a Member State which, as interpreted by some of the courts of that Member State, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.

([1]) OJ C 46,13.2.2017.

Judgment of the Court (Grand Chamber) of 5 December 2017 (request for a preliminary ruling from the Corte costituzionale — Italy) — Criminal proceedings against M.A.S., M.B.

(Case C-42/17) ([1])

(Reference for a preliminary ruling — Article 325 TFEU — Judgment of 8 September 2015, Taricco and Others (C-105/14, EU:C:2015:555) — Criminal proceedings for infringements relating to value added tax (VAT) — National legislation laying down limitation periods liable to prevent the prosecution of infringements — Activities affecting the financial interests of the EU — Obligation to disapply any provisions of national law liable to have an adverse effect on the fulfilment of the Member States' obligations under EU law — Principle that offences and penalties must be defined by law)

(2018/C 052/16)

Language of the case: Italian

Referring court

Corte costituzionale

Parties to the main proceedings

M.A.S., M.B.

Intervener: Presidente del Consiglio dei Ministri

Operative part of the judgment

Article 325(1) and (2) TFEU must be interpreted as requiring the national court, in criminal proceedings for infringements relating to value added tax, to disapply national provisions on limitation, forming part of national substantive law, which prevent the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or which lay down shorter limitation periods for cases of serious fraud affecting those interests than for those affecting the financial interests of the Member State concerned, unless that disapplication entails a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of legislation imposing conditions of criminal liability stricter than those in force at the time the infringement was committed.

([1]) OJ C 195, 19.6.2017.

Judgment of the Court (Seventh Chamber) of 14 December 2017 (request for a preliminary ruling from the Sąd Rejonowy Poznań-Grunwald i Jeżyce w Poznaniu — Poland) — Grzegorz Chudaś, Irena Chudaś v DA Deutsche Allgemeine Versicherung Aktiengesellschaft AG

(Case C-66/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 805/2004 — Scope — European Enforcement Order for uncontested claims — Enforcement orders capable of being certified as European Enforcement Orders — Decision on the amount of costs related to the court proceedings in a judgment not concerning an uncontested claim — Excluded)

(2018/C 052/17)

Language of the case: Polish

Referring court

Sąd Rejonowy Poznań-Grunwald i Jeżyce w Poznaniu

Parties to the main proceedings

Applicants: Grzegorz Chudaś, Irena Chudaś

Defendant: DA Deutsche Allgemeine Versicherung Aktiengesellschaft

Operative part of the judgment

Article 4(1) and Article 7 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which does not relate to an uncontested claim, cannot be certified as a European Enforcement Order.

([1]) OJ C 161, 22.5.2017.

Order of the Court (Tenth Chamber) of 30 November 2017 (request for a preliminary ruling from the Tribunale di Torino — Italy) — IJDF Italy Srl v Violeta Fernando Dionisio, Alex Del Rosario Fernando

(Case C-344/17) ([1])

(Reference for a preliminary ruling — Consumer contracts — Directive 93/13/EEC — National legislation making it possible to sue the principal debtor and the guarantor before the same court — Derogation from the rules establishing jurisdiction over consumer contracts — Article 99 of the Rules of Procedure of the Court of Justice)

(2018/C 052/18)

Language of the case: Italian

Referring court

Tribunale di Torino

Parties to the main proceedings

Applicant: IJDF Italy Srl

Defendants: Violeta Fernando Dionisio, Alex Del Rosario Fernando

Operative part of the order

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that they are not applicable in the context of a dispute relating to the establishment of jurisdiction concerning related cases, since that dispute does not come within the scope of Directive 93/13.

([1]) OJ C 330, 2.10.2017.

Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas (Lithuania) lodged on 3 November 2017 — Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija

(Case C-622/17)

(2018/C 052/19)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: Baltic Media Alliance Ltd

Defendant: Lietuvos radijo ir televizijos komisija

Questions referred

1. Does Article 3(1) and (2) of Directive 2010/13/EU ([1]) of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services cover only cases in which a receiving Member State seeks to suspend television broadcasting and/or re-broadcasting, or does it also cover other measures taken by a receiving Member State with a view to restricting in some other way the freedom of reception of programmes and their transmission?

2. Must recital 8 and Article 3(1) and (2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services be interpreted as prohibiting receiving Member States, after they have established that material referred to in Article 6 of that directive was published, transmitted for distribution and distributed in a television programme re-broadcast and/or distributed via the Internet from a Member State of the European Union, from taking, without the conditions set out in Article 3(2) of that directive having been fulfilled, a decision such as that provided for in Article 33(11) and 33(12)(1) of the Lithuanian Law on the provision of information to the public, that is to say, a decision imposing an obligation on re-broadcasters operating in the territory of the receiving Member State and other persons providing services relating to distribution of television programmes via the Internet to determine, on a provisional basis, that the television programme may be re-broadcast and/or distributed via the Internet only in television programme packages that are available for an additional fee?

([1]) OJ 2010 L 95, p. 1.

Request for a preliminary ruling from the Giudice di Pace di Roma (Italy) lodged on 3 November 2017 — Alberto Rossi and Others v Ministero della Giustizia

(Case C-626/17)

(2018/C 052/20)

Language of the case: Italian

Referring court

Giudice di Pace di Roma

Parties to the main proceedings

Applicants: Alberto Rossi and Others

Defendant: Ministero della Giustizia

Questions referred

1. Does the applicant, as a *Giudice di Pace* (magistrate), by reason of his occupation, come within the definition of a 'fixed-term worker' for the purposes of Articles 1(3) and 7 of Directive 2003/88, ([1]) read in conjunction with Clause 2 of the Framework Agreement on fixed-term work implemented by Directive 1999/70 ([2]) and Article 31(2) of the Charter of Fundamental Rights of the European Union?

2. If Question 1 above is answered in the affirmative, may an ordinary or *'togato'* judge [a career judge engaged on a permanent basis and salaried] be regarded as a comparable permanent worker in respect of a *'Giudice di Pace'* fixed-term worker for the purposes of the application of Clause 4 of the framework agreement on fixed-term work implemented by Directive 1999/70?

3. If Question 2 above is answered in the affirmative, do the differences between the procedure for the permanent recruitment of ordinary judges and the selection procedures, laid down by statute, for the fixed-term recruitment of *Giudici di Pace* constitute an objective ground, within the meaning of Clause 4(1) and/or (4) of the Framework Agreement on fixed-term work implemented by Directive 1999/70, justifying a refusal to apply: (1) — as in the recent interpretation of 'vital law' by the Combined Chambers of the Corte di cassazione (Court of Cassation) in judgment No 13721/2017 and by the Consiglio di Stato (Council of State) in Opinion No 464/2017 of 8 April 2017 — to *Giudici di Pace*, such as the applicant fixed-term worker, the same employment conditions as those applied to comparable permanent ordinary judges; and (2) preventive measures and measures imposing penalties in respect of abusive use of fixed-term contracts, as referred to in Clause 5 of the framework agreement implemented by Directive 1999/70 and the national implementing provision in Article 5(4bis) of Legislative Decree No 368/2001, in the absence of any fundamental principle under domestic law or any constitutional rule that could justify either discrimination as regards employment conditions or an absolute prohibition on engaging *Giudici di Pace* on permanent contracts, also taking into account the previous domestic provision (Article 1 of Law No 217/1974), which had already provided that the employment conditions of *giudici onorari* should be equivalent to those of ordinary judges and that there should no longer be recourse to successive fixed-term employment contracts for such judges?

4. In any event, in a situation such as that in the main proceedings, is it contrary to the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and to the EU-law concept of an independent and impartial tribunal for a *Giudice di Pace*, who has an interest in the case before him being resolved in favour of the applicant who, as his sole form of employment performs identical judicial functions, to stand in the place of the tribunal established by statute as having jurisdiction because of the refusal by the highest domestic judicial body — the Combined Chambers of the Court of Cassation — to grant effective protection for the rights claimed, thus obliging the tribunal established as competent by statute to decline jurisdiction, when requested, for the purpose of recognising the right claimed, notwithstanding the fact that the right in question — like the right to paid leave at issue in the main proceedings — is enshrined in primary and secondary EU law in a situation in which 'Community' law is directly and vertically applicable to the Member State in question? In the event that the Court of Justice should find that there is an infringement of Article 47 of the Charter, what domestic remedies are available in order to avoid a situation in which infringement of a provision of primary EU law also involves an absolute refusal under domestic law to protect fundamental rights guaranteed by EU law in the particular circumstances of the present case?

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

([2]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Verwaltungsgericht Oldenburg (Germany) lodged on 13 November 2017 — ReFood GmbH & Co. KG v Landwirtschaftskammer Niedersachsen

(Case C-634/17)

(2018/C 052/21)

Language of the case: German

Referring court

Verwaltungsgericht Oldenburg

Parties to the main proceedings

Applicant: ReFood GmbH & Co. KG

Defendant: Landwirtschaftskammer Niedersachsen

Questions referred

The following questions on the interpretation of Article 1(3)(d) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ([1]) are referred for a preliminary ruling:

1. Is the provision to be interpreted as an exemption which applies to all shipments which, pursuant to Article 2 of Regulation (EC) No 1069/2009, ([2]) come within the scope of that latter regulation?

2. If the first question should be answered in the negative:

   Is the provision to be interpreted as an exemption which applies to shipments which are subject to rules regarding collection, transport, identification and traceability pursuant to Regulation (EC) No 1069/2009, read also in conjunction with Implementing Regulation (EU) No 142/2011? ([3])

3. If the second question should be answered in the negative:

   Is the provision to be interpreted as an exemption which applies only to those shipments which are consignments requiring consent pursuant to Article 48(1) of Regulation (EC) No 1069/2009?

([1]) OJ 2006 L 190, p. 1.

([2]) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ 2009 L 300, p. 1).

([3]) Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ 2011 L 54, p. 1).

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 15 November 2017 — Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos v 'Skonis ir kvapas' UAB

(Case C-638/17)

(2018/C 052/22)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Other party: 'Skonis ir kvapas' UAB

Questions referred

Must Article 4(1) of Council Directive 2011/64/EU ([1]) of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (codification) be interpreted as meaning that the term 'cigars or cigarillos' covers (or does not cover) cases where part of the wrapper of natural or reconstituted tobacco is additionally covered by another outer (paper) layer, as in the case at issue? Is it relevant to the answer to that question that the use of paper as an additional layer in the outer wrapper of the tobacco product (where the filter is) means that it is visually similar to a cigarette?

([1]) OJ 2011 L 176, p. 24.

Request for a preliminary ruling from the Augstākā tiesa (Latvia) lodged on 15 November 2017 — SIA 'KPMG Baltics', likvidējamās AS 'Latvijas Krājbanka' administratore v kip

(Case C-639/17)

(2018/C 052/23)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Appellant: SIA 'KPMG Baltics', likvidējamās AS 'Latvijas Krājbanka' administratore

Other party to the appeal in cassation: SIA 'Ķipars AI'

Questions referred

(1) Does the term 'transfer order', for the purposes of Directive 98/26/EC ([1]) of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended by Directive 2009/44/EC, ([2]) include a payment order given by a depositor to a credit institution for the transfer of funds to another credit institution?

(2) If the answer to the first question referred is in the affirmative, must Article 3(1) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended by Directive 2009/44/EC, which provides that 'transfer orders and netting shall be legally enforceable and binding on third parties even in the event of insolvency proceedings against a participant, provided that transfer orders were entered into the system before the moment of opening of such insolvency proceedings as defined in Article 6(1). This shall apply even in the event of insolvency proceedings against a participant (in the system concerned or in an interoperable system) or against the system operator of an interoperable system which is not a participant', be interpreted as meaning that an order such as that in the present case could be regarded as 'entered into the system' and had to be executed?

([1]) OJ 1998, L 166, p. 45.
([2]) OJ 2009, L 146, p. 37.

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 17 November 2017 — GE Power Controls Portugal — Unipessoal Lda v Fazenda Pública

(Case C-643/17)

(2018/C 052/24)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: GE Power Controls Portugal — Unipessoal Lda

Defendant: Fazenda Pública

Question referred

In the light of Article 313(1) of the Implementing Regulation ([1]), are the goods referred to in the present case to be deemed to have Community status where it has not been established that they do not have such status, or […] must they be deemed to be goods brought into the customs territory, for the purposes of Article 3 of the [Community customs] code ([2]), and covered by the exception provided for in the first part of Article 313(2)(a) of the Implementing Regulation, with the result that only goods in respect of which it has been proven that a procedure for releasing them for free circulation in the EC customs territory has been carried out are to be recognised as having Community status[?]

([1]) Commission Regulation (EEC) No° 2454/93 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993, L 253, p. 1)

([2]) Commission Regulation (EEC) No° 2913/92, 12 October 1992 establishing the Community Customs (Code OJ 1992, L 302, p. 1)

Request for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 17 November 2017 — Eurobolt BV

(Case C-644/17)

(2018/C 052/25)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Eurobolt BV

Defendant: Staatssecretaris van Financiën

Questions referred

1 (a) Must Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 4(3) TEU, be interpreted as meaning that an applicant may challenge the legality of a decision of an institution of the Union which must be implemented by national authorities, by pleading infringement of essential procedural requirements, infringement of the Treaties or misuse of powers?

(b) Must Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 4(3) TEU, be interpreted as meaning that the institutions of the Union which are involved in the adoption of a decision whose validity is challenged in proceedings before a national court are bound to provide that court, if requested to do so, with all the information at their disposal and which was taken into account, or should have been taken into account, by them in the adoption of that decision?

(c) Must Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that the right to an effective remedy requires the court to conduct a robust review of whether the conditions for the application of Article 13 of Regulation (EC) No 1225/2009 ([1]) have been satisfied? In particular, does that Article 47 mean that that court is competent to fully assess whether the facts have been fully and adequately established so as to justify the legal effect relied upon? In particular, does that Article 47 also mean that that court is competent to fully assess whether facts which were allegedly not taken into account in the adoption of the decision, but which could be detrimental to the legal effect associated with the facts which were established, should have been taken into account?

2 (a) Must the term 'relevant information' in Article 15(2) of Regulation (EC) No 1225/2009 be interpreted as including the response of an independent importer of the goods forming the subject of the investigation referred to in that provision, established in the European Union, to the findings of the Commission, if that importer was notified of that investigation by the Commission, provided requested information to the Commission and, having been given the opportunity to do so, responded in a timely fashion to the Commission's findings?

(b) If question 2(a) is answered in the affirmative, can that importer then plead infringement of Article 15(2) of Regulation (EC) No 1225/2009 if the response submitted by him was not made available at least ten working days prior to the meeting of the Advisory Committee provided for in that provision?

(c) If question 2(b) is answered in the affirmative, does that infringement of Article 15(2) of Regulation (EC) No 1225/2009 mean that that decision is unlawful and that it should not be implemented?

(1) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51).

Request for a preliminary ruling from the Tribunale di Brindisi (Italy) lodged on 17 November 2017 — Criminal proceedings against Gianluca Moro

(Case C-646/17)

(2018/C 052/26)

Language of the case: Italian

Referring court

Tribunale di Brindisi

Defendant in the main proceedings

Gianluca Moro

Question referred

Must Article 2(1), Article 3(1)(c) and Article 6(1), (2) and (3) of Directive 2012/12/EU, (1) and Article 48 of the Charter of Fundamental Rights of the European Union as well, be interpreted as precluding procedural rules under the criminal law of a Member State on the basis of which the safeguards for the rights of the defence following a change to the charge are guaranteed in terms that differ, both in quality and in quantity, depending on whether that change relates to the factual elements of the charge or to its legal classification, in particular allowing the accused person only in the first case to request the alternative and beneficial procedure of the imposition of a negotiated penalty (the 'patteggiamento' procedure)?

(1) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 20 November 2017 — Skatteverket v Srf konsulterna AB

(Case C-647/17)

(2018/C 052/27)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Srf konsulterna AB

Question referred

Must the expression 'admission to events' in Article 53 of the VAT Directive ([1]) be interpreted as meaning that it covers a service in the form of a five-day course on accountancy which is supplied solely to taxable persons and requires advance registration and payment?

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

Request for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 21 November 2017 — QH

(Case C-650/17)

(2018/C 052/28)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: QH

Questions referred

1. Is a product protected by a basic patent in force pursuant to Article 3(a) of Regulation (EC) No 469/2009 ([1]) only if it forms part of the subject matter of protection defined by the claims and is thus provided to the expert as a specific embodiment?

2. Is it not therefore sufficient for the requirements of Article 3(a) of Regulation (EC) No 469/2009 if the product in question satisfies the general functional definition of a class of active ingredients in the claims, but is not otherwise indicated in individualised form as a specific embodiment of the method protected by the basic patent?

3. Is a product not protected by a basic patent in force under Article 3(a) of Regulation (EC) No 469/2009 if it is covered by the functional definition in the claims, but was developed only after the filing date of the basic patent as a result of an independent inventive step?

([1]) Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (Codified version) (Text with EEA relevance) (OJ 2009 L 152, p. 1).

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 24 November 2017 — Hussein Mohamad Hussein

(Case C-657/17)

(2018/C 052/29)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Hussein Mohamad Hussein

Respondent authority: Bundesamt für Fremdenwesen und Asyl

Questions referred

1. Does a failure to respect the time limit specified in Article 5(2) of Regulation No 1560/2003 ([1]) ('the Implementing Regulation') for submitting a request for re-examination in the case where the requested Member State has refused a take charge request in a timely manner pursuant to Article 21(1) of Regulation No 604/2013 ('the Dublin III Regulation') ([2]) result in responsibility being transferred to the requesting Member State in the case where the requesting Member State initially submitted a take charge request in a timely manner within the meaning of the first subparagraph of Article 21(1) of the Dublin III Regulation and the requested Member State was determined, on the basis of (subsequent) investigations, to be the responsible Member State in accordance with the criteria set out in Chapter III of the Dublin III Regulation?

2. Can the requested Member State — and which is the Member State responsible in accordance with the criteria set out in Chapter III of the Dublin III Regulation — effectively accede to the take charge request under Article 21(1) of the Dublin III Regulation even though the time limit for replying specified in Article 22(7) of that regulation has already passed and the requested Member State had previously refused the take charge request in a timely manner?

([1]) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3).

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

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 24 November 2017 — Istituto nazionale della previdenza sociale (INPS) v Azienda Napoletana Mobilità SpA

(Case C-659/17)

(2018/C 052/30)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Istituto nazionale della previdenza sociale (INPS)

Respondent: Azienda Napoletana Mobilità SpA

Question referred

Is European Commission Decision 2000/128/EC of 11 May 1999 ([1]) applicable also to employers operating local public transport services — on a substantially non-competitive basis, given the exclusive nature of the service carried out — which have benefited from reductions in contributions after entering into training and work experience contracts since Law No 407 of 1990 came into force, with reference, in the present case, to the period from [May] 1997 to May 2001?

([1]) Commission Decision of 11 May 1999 concerning aid granted by Italy to promote employment (Notified under document number C(1999) 1364) (OJ L 42, p. 1).

Request for a preliminary ruling from the Commissione Tributaria Provinciale di Cagliari (Italy) lodged on 24 November 2017 — Francesca Cadeddu v Agenzia delle Entrate — Direzione provinciale di Cagliari and Others

(Case C-667/17)

(2018/C 052/31)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Cagliari

Parties to the main proceedings

Applicant: Francesca Cadeddu

Defendants: Agenzia delle Entrate — Direzione provinciale di Cagliari, Regione autonoma della Sardegna, Regione autonoma della Sardegna — Agenzia regionale per il lavoro

Question referred

Must Article 80 of Council Regulation (EC) No 1083 ([1]) of 11 July 2006, and also Article 2(4) thereof, be interpreted as precluding a provision such as Article 50(1)(c) of Presidential Decree No 917 of 22 December 1986, according to which '(c) sums paid by anyone as a study grant or an allowance, an award or a stipend for the purposes of studying or vocational training, provided that the beneficiary is not in an employment relationship with the person making the payment' are to be treated as income from employment and, consequently, are subject to personal income tax (IRPEF) even if the study grant is paid with European structural funds?

([1]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 28 November 2017 — Tratave — Tratamento de Águas Residuais do Ave SA v Autoridade Tributária e Aduaneira

(Case C-672/17)

(2018/C 052/32)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Tratave — Tratamento de Águas Residuais do Ave SA

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Do the principle of neutrality and Article 90 of Council Directive 2006/112/EC ([1]) of 28 November 2006 preclude national legislation such as Article 78(11) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code), which is interpreted to the effect that the tax may not be adjusted, in the event of non-payment, before the purchaser of the goods or service, being a taxable person, has been notified of the cancellation of the tax for the purposes of rectifying the deduction initially made?

2. If so, do the principle of neutrality and Article 90 of Directive 2006/112/EC preclude national legislation such as Article 78(11) of the Código do Imposto sobre o Valor Acrescentado, which is interpreted to the effect that the tax may not be adjusted, in the event of non-payment, where the purchaser of the goods or service, being a taxable person, was not notified of the cancellation of the tax within the time-limit for deducting the tax laid down in Article 98(2) of the Value Added Tax Code?

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

Request for a preliminary ruling from the Consiglio di Stato lodged on 30 November 2017 — Ministero della Salute v Hannes Preindl

(Case C-675/17)

(2018/C 052/33)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Ministero della Salute

Respondent: Hannes Preindl

Questions referred

1. Do Articles 21, 22 and 24 of the Directive (1) require a Member State, in which the full-time training requirement is in force, and the corresponding ban on enrolling in two degree courses at the same time, automatically to recognise qualifications obtained in the home Member State simultaneously or during periods that in part overlap.

2. If so, can Article 22(a) and Article 21 of the Directive be interpreted to the effect that the authorities in the Member State from which recognition is sought may nevertheless ascertain whether the condition that *the overall duration, level and quality of such training should not be lower than those of continuous full-time training* is satisfied.

(1) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, p. 22).

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 6 December 2017 — Cofemel — Sociedade de Vestuário SA v G-Star Raw CV

(Case C-683/17)

(2018/C 052/34)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Appellant: Cofemel — Sociedade de Vestuário SA

Respondent: G-Star Raw CV

Questions referred

1) Does the interpretation by the Court of Justice of the European Union of Article 2(a) of Directive 2001/29/EC ([1]) preclude national legislation — in the present case, the provision in Article 2(1)(i) of the Código de Direitos de Autor e Direitos Conexos (CDADC) — which confers copyright protection on works of applied art, industrial designs and works of design which, in addition to the utilitarian purpose they serve, create their own visual and distinctive effect from an aesthetic point of view, their originality being the fundamental criterion which governs the grant of protection in the area of copyright?

2) Does the interpretation by the Court of Justice of the European Union of Article 2(a) of Directive 2001/29/EC preclude national legislation — in the present case, the provision in Article 2(1)(i) of the CDADC — which confers copyright protection on works of applied art, industrial designs and works of design if, in the light of a particularly rigorous assessment of their artistic character, and taking account the dominant views in cultural and institutional circles, they qualify as an 'artistic creation' or 'work of art'?

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

GENERAL COURT

Judgment of the General Court of 14 December 2017 — Hungary v Commission

(Case T-505/15) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Regulations (EC) Nos 1782/2003, 1290/2005, 73/2009 and 1122/2009 — Expenditure incurred by Hungary — Conditionality — Control of Statutory Management Requirements — Control of good agricultural and environmental conditions — Lump-sum and specific corrections — Risk for the Funds)

(2018/C 052/35)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M. Fehér, G. Koós, Z. Bíró-Tóth and E. Tóth, acting as Agents)

Defendant: European Commission (represented by: V. Bottka and A. Sauka, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment in part of Commission Implementing Decision (EU) 2015/1119 of 22 June 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 182, p. 39), insofar as that decision makes certain lump-sum and specific corrections in respect of Hungary.

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision (EU) 2015/1119 of 22 June 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 182, p. 39) insofar as it made a financial correction based on non-compliance with the requirements of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 and of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector as regards the controls carried out by Hungary to ensure compliance by farms with the obligations flowing from Articles 4 and 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;*

2. *Dismisses the remainder of the action;*

3. *Orders Hungary and the European Commission each to bear their own costs.*

([1]) OJ C 381, 16.11.2015.

Judgment of the General Court of 14 December 2017 — bet365 Group Ltd v EUIPO — Hansen (BET 365)

(Case T-304/16) ([1])

(EU trade mark — Invalidity proceedings — EU word mark BET 365 — Absolute ground for refusal — Distinctive character acquired through use — Proof — Use of the mark for a number of purposes — Article 7(3) and Article 52(2) of Regulation No 207/2009 (now Article 7(3) and Article 59(2) of Regulation (EU) 2017/1001))

(2018/C 052/36)

Language of the case: English

Parties

Applicant: bet365 Group Ltd (Stoke-on-Trent, United Kingdom) (represented by S. Malynicz QC, and by R. Black and J. Bickle, Solicitors)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Robert Hansen (Munich, Germany) (represented by M. Pütz-Poulalion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 21 March 2016 (Case R 3243/2014-5) relating to invalidity proceedings between Mr Hansen and bet365 Group.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 21 March 2016 (Case R 3243/2014-5) in so far as it concerns the services in Class 41 listed in the registration of the EU trade mark BET 365;*

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

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

([1]) OJ C 296, 16.8.2016.

Judgment of the General Court of 14 December 2017 — PB v Commission

(Case T-609/16) ([1])

(Civil service — Officials — Recruitment — Competition notice EPSO/AD/309/15 (AD 11) — Doctors for the Luxembourg site — Refusal of admission to the tests at the assessment centre — Limitation of the choice of second language to a restricted number of official languages of the European Union — Objection of illegality — Manifest error of assessment — Liability — Non-pecuniary harm)

(2018/C 052/37)

Language of the case: French

Parties

Applicant: PB (represented by: M. Velardo, lawyer)

Defendant: European Commission (represented by: G. Gattinara and L. Radu Bouyon, acting as Agents)

Re:

Application based on Article 270 TFEU and seeking, first, annulment of the decision of the selection board in Competition EPSO/AD/309/15 (AD 11) — Doctors for the sites of Luxembourg and Ispra (Field: Doctors Luxembourg) of 28 September 2015 not to admit the applicant to the selection tests held at the European Personnel Selection Office (EPSO) assessment centre and, second, compensation for the harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Annuls the decision of 28 September 2015 by which the selection board for Open Competition EPSO/AD/309/15 (AD 11) — Doctors for the sites of Luxembourg and Ispra (Field: Doctors Luxembourg) refused to admit PB to the selection tests held at the European Personnel Selection Office (EPSO) assessment centre;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 371, 10.10.2016 (case initially registered before the European Union Civil Service Tribunal under number F-39/16 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 14 December 2017 — N & C Franchise v EUIPO — Eschenbach Optik (OJO sunglasses)

(Case T-792/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark OJO sunglasses — Earlier international word mark oio — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 052/38)

Language of the case: English

Parties

Applicant: N & C Franchise Ltd (Nicosia, Cyprus) (represented by: C. Chrysanthis, P.-V. Chardalia, and A. Vasilogamvrou, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Eschenbach Optik GmbH (Nuremberg, Germany)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 9 September 2016 (Case R 32/2016-5), relating to opposition proceedings between Eschenbach Optik and N & C Franchise.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders N & C Franchise Ltd to pay the costs.*

(1) OJ C 22, 23.1.2017.

Judgment of the General Court of 14 December 2017 — RL v Court of Justice of the European Union

(Case T-21/17) (1)

(Civil Service — Officials — Promotion — 2015 promotion year — Decision not to promote the applicant to grade AD 10, with effect from 1 July 2015 — Interinstitutional transfer — Prorata temporis system — Comparative examination of the merits — Article 45 of the Staff Regulations — Liability)

(2018/C 052/39)

Language of the case: French

Parties

Applicant: RL (represented by: C. Bernard-Glanz and A. Tymen, lawyers)

Defendant: Court of Justice of the European Union (represented by: J. Inghelram and V. Hanley-Emilsson, acting as Agents)

Re:

Application on the basis of 270 TFEU and seeking, firstly, the annulment of the decision of the Court of Justice of the European Union of 11 May 2016 refusing to promote the application on 1 July 2015 and, secondly, compensation for the loss which the applicant allegedly suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders RL to pay the costs.*

(1) OJ C 95, 27.3.2017.

Order of the General Court of 7 December 2017 — Durazzo v EEAS

(Case T-559/16) (1)

(Civil service — Officials — Promotion — 2014 promotion exercise — Acts not adversely affecting an official — Manifest inadmissibility — Decision not to promote the applicant — Article 43 and Article 45 (1) of the Staff Regulations — Consideration of comparative merits — Taking into account staff reports for the purpose of promotion — Purely literal assessments — No method enabling staff reports to be compared for the purpose of promotion — Manifestly well-founded action)

(2018/C 052/40)

Language of the case: French

Parties

Applicant: Giacomo Durazzo (Brussels, Belgium) (represented by: N. de Montigny and J.-N. Louis, lawyers)

Defendant: European External Action Service (EEAS) (represented by: initially by S. Marquardt and M. Silva, and subsequently by S. Marquardt, acting as Agents, and by M. Troncoso Ferrer, F.-M. Hislaire and S. Moya Izquierdo, lawyers)

Re:

Application under Article 270 TFEU seeking annulment of three acts of the EEAS, namely (i) the proposal for promotion of 11 July 2014 in so far as it concerns Grade AD 13, (ii) the decision of 29 October 2014 not to promote the applicant to Grade AD 13 under the 2014 promotion exercise, and (iii) the decision of 28 May 2015 rejecting the complaint submitted by the applicant against that refusal to promote him.

Operative part of the order

1. *The decision of the European External Action Service (EEAS) of 29 October 2014 not to promote Mr Giacomo Durazzo to Grade AD 13 under the 2014 promotion exercise is annulled.*

2. *The action is dismissed as to the remainder.*

3. *The EEAS is ordered to pay the costs.*

([1]) OJ C 302, 14.9.2015 (case initially registered before the European Union Civil Service Tribunal as Case F-101/15 and transferred to the General Court of the European Union on 1 September 2016).

Order of the General Court of 14 December 2017 — PGNiG Supply & Trading v Commission

(Case T-849/16) ([1])

(Action for annulment — Internal market in natural gas — Directive 2009/73/EC — Commission decision amending the conditions for exemption from the EU requirements of the rules governing operation of the OPAL pipeline in regard to third-party access and tariff regulation — Lack of direct concern — Inadmissibility)

(2018/C 052/41)

Language of the case: Polish

Parties

Applicant: PGNiG Supply & Trading GmbH (Munich, Germany) (represented by: M. Jeżewski, lawyer)

Defendant: European Commission (represented by: O. Beynet and K. Herrmann, acting as Agents)

Re:

Action based on Article 263 TFEU and seeking annulment of Commission Decision C(2016) 6950 final of 28 October 2016 on the review of the conditions for exemption of the OPAL pipeline, granted under Directive 2003/55/EC, from the rules on third-party access and tariff regulation.

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *There is no longer any need to adjudicate on the applications to intervene.*

3. *PGNiG Supply & Trading GmbH shall bear its own costs and pay those of the European Commission, including the costs relating to the interlocutory proceedings.*

4. *The Federal Republic of Germany shall bear its own costs relating to the interlocutory proceedings.*

5. *PGNiG Supply & Trading, the Commission, the Federal Republic of Germany, the European Parliament, the Council of the European Union, Naftogaz Ukrainy SA, OPAL Gastransport GmbH & Co. KG and Gazprom Eksport LLC shall each bear their own respective costs relating to the applications to intervene.*

(1) OJ C 38, 6.2.2017.

Order of the General Court of 7 December 2017 — Techniplan v Commission

(Case T-853/16) (1)

(Action for failure to act — Defined position of the Commission — Action for damages — Failure to comply with procedural requirements — Application for an injunction — Manifest inadmissibility — Manifest lack of jurisdiction)

(2018/C 052/42)

Language of the case: Italian

Parties

Applicant: Techniplan Srl (Rome, Italy) (represented by: R. Giuffrida and A. Bonavita, lawyers)

Defendant: European Commission (represented by: A. Aresu, acting as Agent)

Re:

First, application based on Article 265 TFEU and seeking a declaration that the Commission unlawfully failed to act vis-à-vis the applicant and, secondly, application seeking imposition of the obligation to act provided for in Article 266 TFEU and the payment of a sum by way of compensation for the damage suffered 'for each day of delay in compliance'.

Operative part of the order

1. *The action is dismissed.*

2. *Techniplan Srl shall pay the costs.*

(1) OJ C 22, 23.1.2017.

Order of the General Court of 15 December 2017 — Le Pen v Parliament

(Case T-284/17) (1)

(Action for annulment and compensation — Institutional law — Member of the European Parliament — Privileges and immunities — Decision to withdraw parliamentary immunity — No longer any locus standi — No need, in part, to adjudicate — Action in part manifestly inadmissible and in part manifestly devoid of any basis in law)

(2018/C 052/43)

Language of the case: French

Parties

Applicant: Marion Anne Perrine Le Pen (Saint-Cloud, France) (represented initially by: M. Ceccaldi, and subsequently by: R. Bosselut, lawyers)

Defendant: European Parliament (represented by: M. Dean and S. Alonso de León, acting as Agents)

Re:

Firstly, application on the basis of Article 263 TFEU seeking the annulment of Decision P8_TA(2017)0056 of the Parliament of 2 March 2017 to withdraw the applicant's parliamentary immunity and, secondly, application on the basis of Article 268 TFEU seeking compensation for the loss allegedly suffered by the applicant.

Operative part of the order

1. *There is no longer any need to adjudicate on the application for annulment of Decision P8_TA(2017)0056 of the Parliament of 2 March 2017 to withdraw the parliamentary immunity of Ms Marion Anne Perrine Le Pen.*

2. *The remainder of the action is dismissed.*

3. *Ms Le Pen shall bear her own costs and pay those incurred by the Parliament.*

([1]) OJ C 231, 17.7.2017.

Order of the General Court of 14 December 2017 — Rogesa v Commission

(Case T-475/17) ([1])

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Regulation (EC) No 1367/2006 — Documents concerning an installation producing a mixture of pellets and sintered ore — Implied refusal of access — Express decision adopted before the action was brought — Application for an order that there is no need to adjudicate — Interest in bringing proceedings — Manifest inadmissibility)

(2018/C 052/44)

Language of the case: German

Parties

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

Defendant: European Commission (represented by: H. Krämer, acting as Agent)

Re:

Application based on Article 263 TFEU and seeking, primarily, annulment of the Commission's implied decision of 20 June 2017 and, in the alternative, of the decision of 11 July 2017 refusing to grant access to the document Ares (2017) 1684109 of 2 November 2009 and the document Ares (2017) 1685639 of 29 November 2009.

Operative part of the order

1. *The action is dismissed as being manifestly inadmissible.*

2. *Rogesa Roheisengesellschaft Saar mbH and the European Commission shall bear their own respective costs.*

([1]) OJ C 318, 25.9.2017.

Action brought on 22 November 2017 — Comprojecto-Projectos e Construções and Others v ECB

(Case T-768/17)

(2018/C 052/45)

Language of the case: Portuguese

Parties

Applicants: Comprojecto-Projetos e Construções, Lda. (Lisbon, Portugal), Paulo Eduardo Matos Gomes de Azevedo (Lisbon), Julião Maria Gomes de Azevedo (Lisbon), Isabel Maria Matos Gomes de Azevedo (Lisbon) (represented by: M. A. Ribeiro, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the General Court should:

— Annul the contested acts, in particular:

(i) The defendant's decision to refuse to act;

(ii) The defendant's decision not to initiate infringement proceedings;

(iii) The decision of the Governor of the Banco de Portugal and of the other 'officials' who took a position on the complaints and claims presented between 26 June 2013 and 22 April 2015.

— On those grounds, they request the General Court to make a ruling:

(i) That allows the applicants to annul the decision of the judges concerning the claim for compensation brought against the BCP [Banco Comercial Português];

(ii) That allows the applicants to bring an action for recovery against the Portuguese State;

(iii) That allows an assessment to be made as to whether the Member State /Prosecution Service/OPG [Office of the Prosecutor General] had reasons to refuse to intervene in the civil action;

(iv) That allows an assessment to be made as to whether the Member State /Prosecution Service/OPG had valid grounds not to report this case to OLAF.

— If the Court considers that the applicants' claims are well founded, order the ECB, under the provisions of the articles 268 TFEU and 340 TFEU, to pay the amount of EUR 4 582 825,80, plus interest for late payment, calculated at the legal rate, which accrues until actual payment, together with such other expenses and compensation for damages arising after the interventions made;

— However, taking into account the provisions of Article 280 TFEU and that the acts 'of the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable', as provided for in Article 299 TFEU, the General Court must require the defendant to request that such amounts be settled by the BCP;

— Taking into account that the national central bank is the 'administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings', in accordance with the provisions of Article 11(1)(b) of Directive 2005/29/EC, and of Articles 81(1) and 83(1) of Directive 2007/64/EC, and of Article 96(1)(b) — 'Additional penalties' — of DL [decree-law] 317/2009, the defendant's agent must request the BCP to 'immediately' credit the abovementioned amounts to the accounts of the applicants.

— The defendant:

(i) Shall require its agent, the national central bank, to request the BCP to submit the abovementioned elements. If under the provisions of Article 13(2) of the BCP Organic Law, the credit institution does not present those elements, the Bank of Portugal must require the credit institution to pay the amounts in question 'immediately' into the applicants' accounts;

(ii) Given that the credit institution may have to 'immediately' compensate the applicants, the provisions of Articles 41 (2)(a), the second paragraph of Article 47 and Article 49(1) of the Charter of Fundamental Rights of the European Union ('the CFREU') must be complied with, that is, as occurs in relation to the Banco de Portugal and the Prosecution Service/OPG, taking into account the provisions of Article 3 of Regulation No. 2532/98 concerning the powers of the European Central Bank to impose sanctions, the ECB must decide on whether to 'initiate an infringement procedure', calling on the BCP to take action, so that that credit institution must take a decision and cannot abstain;

— Notwithstanding that, under Article 256(1) TFEU, the General Court does not have jurisdiction if the national central bank does not acknowledge that it 'failed to fulfil an obligation under the Treaties, that bank shall be required to take the necessary measures to comply with the judgment of the Court, in accordance with the provisions of Article 271(d) TFUE the question must be referred to the Supreme Court;

— Even though it is also not a matter for the General Court, if the ECJ considers that the applicants' action is well founded, in accordance with the provisions of Article 264 TFEU, the General Court must propose to the Supreme Court to annul the decision of the national central bank, which decision was adopted by the defendant and, having regard to the provisions of Article 41(1)(c) of the CFREU, of the second paragraph of Article 296 TFEU and Article 11(3)(c) of Directive 2005/29/EC, a substantiated decision must be adopted;

— The applicants request that the defendant and the Court serve notice and request the Portuguese State/Prosecution Service/OPG to take action and to rule on the acts committed by BCP;

— The applicants call on the defendant to report the present case to OLAF;

— In accordance with Article 134(1) of the Rules of Procedure of the General Court, the applicants seek reimbursement of the costs of the proceedings, which must be duly assessed.

Pleas in law and main arguments

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

1. Infringement of the obligation to state reasons laid down in Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, in the second paragraph of Article 296 TFEU and in the Article 11(3) of Directive 2005/29/EC. ([1])

2. Independently of the 'burglary' theft of the 'safe', BCP knew, or ought to have known, that the financial system was being used for the purpose of money laundering and, consequently, the credit institution was aware that there was fraud or tax evasion contributing to the loss of EU budget revenue. Those acts are 'unlawful, undermine the Union's financial interests' and fall within 'overriding reasons of public interest' which 'constitute a legitimate objective capable of justifying an impediment to the freedom to provide services'.

3. Irrespective of the way in which an amount of more than EUR 1 000 000 has been stolen from the 'safe', detriment is caused to the 'financial interests of the Union' and, in particular, to the revenue which supports the 'EU budget, as well as [revenue] covered by the budget of the institutions, bodies, offices and agencies, and by the budgets managed and controlled by them'; therefore, these are also acts which constitute an 'irregularity' due to 'infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities or by an unjustified item of expenditure'.

4. Where a credit institution, a Member State/national central bank, the European Central Bank or the Member State/Prosecution Service/OPG are aware of such breaches or practices, allow them and do not condemn them, they encourage non-compliance with the provisions of Article 310(5) and (6) TFEU and Article 325(1), (2) and (3) TFEU and allow the credit institution in question to perform acts constituting an 'irregularity' due to infringement of the provisions of Article 1(2) of Regulation No 2988/95. ([2])

5. By adopting the act by which it rejected the application calling on it to take action, the defendant found a way, inter alia:

   (i) not to report the case to OLAF;

   (ii) not to initiate 'infringement' proceedings against the credit institution BCP;

   (iii) to postpone the decision of the civil courts, before which a claim for compensation against BCP and others has been pending since 1 February 2010;

   (iv) not to irreversibly condemn its agent, Banco de Portugal, in the context of the administrative action brought on 27 October 2015 and currently pending before the Tribunal Administrativo e Fiscal de Sintra, which has not yet ruled on the matter.

6. Breach of the duty of impartiality, misuse of powers and breach of essential procedural requirements by the defendant's agent, Banco de Portugal.

(1) 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, 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') (OJ 2005 L 149, p. 22).

(2) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Action brought on 29 November 2017 — US v ECB

(Case T-780/17)

(2018/C 052/46)

Language of the case: French

Parties

Applicant: US (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Central Bank

Form of order sought

— Declare this action admissible and well-founded;

In consequence:

— Annul the 2016 staff report (covering the period from 1 September 2015 to 1 September 2016) and the decision dated 15 December 2016 on the Annual salary and bonus review ('ASBR') for 2016, served on the applicant on 30 November 2016 and 9 January 2017 respectively;

— Annul the decision of the ECB of 3 May 2017 rejecting the applicant's requests of 15 February 2017 and 9 March 2017 for administrative review;

— Annul the decision of the EBC of 12 September 2017, served on the applicant on 19 September 2017, rejecting his claim brought on 7 July 2017;

— Award damages for the losses suffered;

— Order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law as regards the application for annulment of the 2016 staff report.

1. First plea in law, alleging infringement of the obligation to state reasons, in that the applicant's staff report merely sets out general, repetitive and circular criticisms.

2. Second plea in law, alleging manifest errors of assessment vitiating the contested report.

3. Third plea in law, alleging misuse of power, harassment suffered by the applicant and infringement of the duty of care and the principle of sound administration.

4. Fourth plea in law, alleging a procedural irregularity committed by the defendant when drawing up the contested report.

The applicant also raises a plea in law alleging the unlawfulness of the guidelines for the ASBR and infringement of the principle of legal certainty as regards the decision concerning the 2016 ASBR.

Action brought on 5 December 2017 — Bruel v Commission and EEAS

(Case T-793/17)

(2018/C 052/47)

Language of the case: French

Parties

Applicant: Damien Bruel (Paris, France) (represented by: H. Hansen, lawyer)

Defendants: European Commission and European External Action Service

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

and accordingly:

— annul the undated decision signed electronically on 25 September 2017 headed 'Application for replacement of main expert No 2 in "Financial and Contractual Project Administration"';

— declare that the applicant must be compensated for all of the material and non-material damage suffered by him as a result of the serious infringement of the right to good administration in the form of the adoption of the undated decision signed electronically on 25 September 2017 headed 'Application for replacement of main expert No 2 in "Financial and Contractual Project Administration"';

— find that the defendants are either jointly and severally or each entirely liable to pay the applicant the amount of EUR 152 250 in respect of material damage and the amount of EUR 25 000 in respect of non-material damage;

and, in any event:

— order the defendants to pay all costs;

— reserve to the applicant all other rights, entitlements, pleas and actions.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law alleging infringement of essential procedural requirements. That plea in law is divided into three parts.

1. First part, alleging infringement of the right to be heard, in that the applicant was not able to present his point of view on the allegations made against him before the contested decision was adopted.

2. Second part, alleging infringement of the right of access to the file, in that the applicant has not had access to the file relating to him despite requests to that effect.

3. Third part, alleging infringement of the obligation to state reasons, in that the reasons contained in the contested decision do not make it possible for the applicant to understand what he is alleged to have done.

Action brought on 11 December 2017 — BASF v ECHA

(Case T-805/17)

(2018/C 052/48)

Language of the case: English

Parties

Applicant: BASF SE (Ludwigshafen am Rhein, Germany) (represented by: R. Cana, E. Mullier and H. Widemann, lawyers, and D. Abrahams, Barrister)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— declare the Application admissible and well-founded;

— annul decision DSH-30-3-D-0122-2017 of the European Chemicals Agency dated 2 October 2017 granting access to the joint submission of substance disodium 4,4'-bis[(4-anilino-6-morpholino-1,3,5- triazin-2-yl)amino]stilbene-2,2'-disulphonate (EC No. 240-245-2);

— order the Defendant to pay the costs of these proceedings;

— take such other or further measure as justice may require.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Chemicals Agency (the 'Agency') committed a vitiating error of fact, by excluding relevant facts from the basis of the contested decision

   — The Applicant submits that the Agency, by entirely overlooking the efforts of the parties made prior to 2017, relies on a wrong determination of facts which are contrary to the principle of good administration and vitiate the contested decision to the extent that it must be annulled.

2. Second plea in law, alleging that the Agency committed manifest errors of assessment, by failing to evaluate all the relevant facts and circumstances, by concluding that the claimant made more efforts than the applicant and by failing to take into account Article 25 of the REACH Regulation ([1])

   — The applicant submits that the Agency committed a manifest error of assessment by failing to take into consideration all the relevant facts and circumstances of the situation the contested decision is intended to govern, by concluding that the claimant made more efforts than the applicant and by failing to take into account the applicant's concerns regarding the duplication of vertebrate animal tests by the claimant, contrary to Article 25 of the REACH Regulation.

3. Third plea in law, alleging that the Agency infringed the principle of legal certainty by placing the applicant in an unacceptable position of legal certainty as regards the claimant's ability to rely on the applicant's data and the quality and compliance of the claimant's data

   — The applicant considers that the Agency, in adopting the contested decision, infringed the principle of legal certainty, as it does not limit the access granted to the applicant's joint submission even though the claimant is registering by way of a full opt-out and since the Agency did not address the issues with the full opt-out dossier (quality and possible duplication of vertebrate studies). The applicant is therefore in a situation of legal uncertainty as to how to protect its rights, since the scope and extent of the rights granted to the claimant remain opaque.

4. Fourth plea in law, alleging that the Agency breached its duty to state reasons, by failing to explain why it did not consider any of the correspondence before 2017 relevant

   — The Agency adopted its contested decision by relying on a mere fraction of the negotiations that occurred between the parties and arbitrarily limited its review to the few exchanges between the parties that occurred from January 2017 onwards. The applicant had submitted all correspondence on the substance between the claimant and the applicant, highlighting why such correspondence is relevant. Despite the applicant's explanation as to the relevance of the correspondence, the Agency did not provide any reasons as to why it did not consider, and in fact it completely ignored, the communications between the applicant and SSS before January 2017.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2006 L 396, p. 1).

Action brought on 11 December 2017 — BASF and REACH & colours v ECHA

(Case T-806/17)

(2018/C 052/49)

Language of the case: English

Parties

Applicants: BASF SE (Ludwigshafen am Rhein, Germany) and REACH & colours Kereskedelmi és Szolgáltató Kft. (REACH & colours Kft.) (Budapest, Hungary) (represented by: R. Cana, E. Mullier and H. Widemann, lawyers, and D. Abrahams, Barrister)

Defendant: European Chemicals Agency

Form of order sought

The applicants claim that the Court should:

— declare the Application admissible and well-founded;

— annul decision DSH-30-3-D-0122-2017 of the European Chemicals Agency dated 2 October 2017 granting access to the joint submission of substance hexasodium 2,2'-[vinylenebis [(3-sulphonato-4,1-phenylene)imino [6-(diethylamino)-1,3,5-triazine-4,2-diyl]imino]] bis(benzene-1,4-disulphonate) (EC No. 255-217-5);

— order the Defendant to pay the costs of these proceedings;

— take such other or further measure as justice may require.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Chemicals Agency (the 'Agency') committed a vitiating error of fact, by excluding relevant facts from the basis of the contested decision

   — The applicants submit that the Agency, by entirely overlooking the efforts of the parties made prior to 2017 and by making factually erroneous findings regarding the identity of the first applicant and the date of submission of the reply to the Agency's request for information; relies on a wrong determination of facts which are contrary to the principle of good administration and vitiate the contested decision to the extent that it must be annulled.

2. Second plea in law, alleging that the Agency committed manifest errors of assessment, by failing to evaluate all the relevant facts and circumstances, by concluding that the claimant made more efforts than the applicants and by failing to take into account Article 25 of the REACH Regulation ([1])

   — The applicants submit that the Agency committed a manifest error of assessment by failing to take into consideration all the relevant facts and circumstances of the situation the contested decision is intended to govern, by concluding that the claimant made more efforts than the applicants, by failing to consider the specific facts of the dispute before it and by failing to take into account the applicants' concerns regarding the duplication of vertebrate animal tests by the claimant, contrary to Article 25 of the REACH Regulation.

3. Third plea in law, alleging that the Agency infringed the principle of legal certainty by placing the applicants in an unacceptable position of legal certainty as regards the claimant's ability to rely on the applicants' data and the quality and compliance of the claimant's data

   — The applicants consider that the Agency, in adopting the contested decision, infringed the principle of legal certainty, as it does not limit the access granted to the applicants' joint submission even though the claimant is registering by way of a full opt-out and since the Agency did not address the issues with the full opt-out dossier (quality and possible duplication of vertebrate studies). The applicants are therefore in a situation of legal uncertainty as to how to protect their rights, since the scope and extent of the rights granted to the claimant remain opaque.

4. Fourth plea in law, alleging that the Agency breached its duty to state reasons, by failing to explain why it did not consider any of the correspondence before 2017 relevant

   — The Agency adopted its contested decision by relying on a mere fraction of the negotiations that occurred between the parties and arbitrarily limited its review to the few exchanges between the parties that occurred from January 2017 onwards. The applicants had submitted all correspondence on the substance between the claimant and the applicants, highlighting why such correspondence is relevant. Despite the applicants' explanation as to the relevance of the correspondence, the Agency did not provide any reasons as to why it did not consider, and in fact it completely ignored, the communications between the applicants and SSS before January 2017.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2006 L 396, p. 1).

Action brought on 12 December 2017 — Classic Media v EUIPO — Pirelli Tyre (CLASSIC DRIVER)

(Case T-811/17)

(2018/C 052/50)

Language in which the application was lodged: German

Parties

Applicant: Classic Media AG (Zug, Switzerland) (represented by: A. Masberg, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pirelli Tyre SpA (Milan, Italy)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the word mark 'CLASSIC DRIVER' — International Registration No 1 108 587

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 October 2017 in Case R 59/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition with costs.

Plea in law

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

Action brought on 15 December 2017 — Seco Belgium and Vinçotte v Parliament

(Case T-812/17)

(2018/C 052/51)

Language of the case: French

Parties

Applicants: Seco Belgium (Brussels, Belgium) and Vinçotte (Vilvoorde, Belgium) (represented by: A. Delvaux and R. Simar, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the action for annulment admissible;

— annul the decision, the date of which is unknown, whereby the European Parliament decided to award Contract [06D20/2017/M005 — Assignments to perform inspections and provide technical opinions in the context of construction works, projects and purchases at the European Parliament in Brussels (OJ 2017/S 118-236114)] to [another tenderer];

— order the Parliament to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, alleging infringement of Articles 1.1, 1.2 and 1.3 of the 'Technical specifications' annex to the Tender Specification relating to Contract Notice 06D20/2017/M005 — Assignments to perform inspections and provide technical opinions in the context of construction works, projects and purchases at the European Parliament in Brussels (OJ 2017/S 118-236114), a manifest error of assessment, infringement of general principles of EU law, breach of the duties of care and scrutiny, infringement of the principles of equal treatment and transparency, failure to fulfil the duty to state reasons deriving from, inter alia, Article 113 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1) and Article 161 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1), infringement of the right to an effective remedy, and infringement of some of the provisions governing the award of the contract in question.

Action brought on 14 December 2017 — Nerantzaki v Commission

(Case T-813/17)

(2018/C 052/52)

Language of the case: English

Parties

Applicant: Eleni Nerantzaki (Brussels, Belgium) (represented by: N. Korogiannakis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the EPSO selection board of 7 March 2017 not to admit the applicant to the next stage of open competition EPSO/AD/331/16;

— annul the decision of the appointing authority Ares(2017)s. 4916702 of 14 September 2017, rejecting the applicant's complaint against the decision not to admit the applicant to open competition EPSO/AD/331/16;

— order the defendant to pay the applicant's legal and other costs and expenses incurred in connection with the present application.

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 a manifest error of assessment by the defendant in the assessment of the applicant's professional qualifications.

2. Second plea in law, alleging infringement of the notice of competition EPSO/AD/331/16.

3. Third plea in law, alleging inadequate and contradictory reasoning such as to constitute a breach both of Article 25 and of Article 90(2) of the Staff Regulations.

Action brought on 14 December 2017 — Lietuvos geležinkeliai v Commission

(Case T-814/17)

(2018/C 052/53)

Language of the case: English

Parties

Applicant: Lietuvos geležinkeliai AB (Vilnius, Lithuania) (represented by: W. Deselaers, K. Apel, P. Kirst, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in whole or in part, Articles 1, 2, 3 and 4 of Commission Decision C(2017) 6544 final of 2 October 2017 relating to proceedings under Article 102 TFEU in Case AT.39813 — Baltic Rail; and/or

— reduce the fines imposed on the applicant by Article 2 of Commission Decision C(2017) 6544 final dated 2 October 2017; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 102 TFEU, a manifest error of law by using the wrong legal test to evaluate the alleged abuse. According to the applicant, there could be an abuse only if access to the Track were essential or indispensable for competitors to compete on the downstream market (which is not the case).

2. Second plea in law, alleging a violation of Article 102 TFEU and manifest errors of law and assessment. The applicant puts forward that even under the (wrong) legal test applied by the Commission, the removal of the rail track connecting Mažeikiai in north-western Lithuania with the Latvian border (the 'Track') as non-essential facility did not constitute an abuse of a dominant position in the legal and factual circumstances of the present case.

3. Third plea in law, alleging a breach of Article 296 TFEU and Article 2 of Regulation 1/2003 to the extent that, according to the applicant, there is insufficient evidence and failure to state reasons.

4. Fourth plea in law, alleging a violation of Article 23.3 of Regulation 1/2003, and manifest errors of law and of assessment in setting the amount of the fine.

5. Fifth plea in law, alleging a violation of Article 7 of Regulation 1/2003, manifest errors of law and assessment in ordering, in fact, a disproportionate remedy (i.e. the reconstruction of the Track).

Action brought on 12 December 2017 — Vitromed v EUIPO — Vitromed Healthcare (VITROMED Germany)

(Case T-821/17)

(2018/C 052/54)

Language in which the application was lodged: German

Parties

Applicant: Vitromed GmbH (Jena, Germany) (represented by: M. Linß, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vitromed Healthcare (Jaipur, India)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark including the word elements 'VITROMED Germany' — Application No 14 459 903

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 September 2017 in Case R 2402/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition in its entirety;

— order the opposing party to pay the costs.

Plea in law

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

Action brought on 22 December 2017 — Carbon System Verwaltungs v EUIPO (LIGHTBOUNCE)

(Case T-825/17)

(2018/C 052/55)

Language of the case: German

Parties

Applicant: Carbon System Verwaltungs GmbH (Marktheidenfeld, Germany) (represented by: M. Gilch and L. Petri, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'LIGHTBOUNCE' — Application No 15 152 028

Contested decision: Decision of the First Board of Appeal of EUIPO of 11 October 2017 in Case R 2301/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of EUIPO of 11 October 2017 (R 2301/2016-1);

— order the defendant to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation 2017/1001;

— Infringement of Article 7(1)(c) of Regulation 2017/1001.

Action brought on 22 December 2017 — TeamBank v EUIPO — Fio Systems (FYYO)

(Case T-826/17)

(2018/C 052/56)

Language in which the application was lodged: German

Parties

Applicant: TeamBank AG Nürnberg (Nuremberg, Germany) (represented by: D. Terheggen and H. Lindner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fio Systems AG (Leipzig, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FYYO' — Application No 14 589 261

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 November 2017 in Case R 2337/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of EUIPO of 6 November 2017 in appeal proceedings R 2337/2016-4 in so far as it rejected the trade mark application in respect of the goods in Class 9;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation 2017/1001.

Action brought on 29 December 2017 — DRH Licensing & Managing v EUIPO — Merck (Flexagil)

(Case T-831/17)

(2018/C 052/57)

Language in which the application was lodged: German

Parties

Applicant: DRH Licensing & Managing AG (Zürich, Switzerland) (represented by: S. Salomonowitz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Merck KGaA (Darmstadt, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark including the word element 'Flexagil' — EU trade mark No 7 301 237

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 17 October 2017 in Case R 2043/2016-4

Form of order sought

The applicant claims that the Court should:

— annul decision R 2043/2016-4 of the Board of Appeal of 17 October 2017 in its entirety;

— order EUIPO to pay the costs incurred by the applicant in these proceedings and in the appeal proceedings relating to Case R 2043/2016.

Pleas in law

— Infringement of Article 58(1)(a) of Regulation 2017/1001;

— Infringement of Article 18 of Regulation 2017/1001.

Order of the General Court of 14 December 2017 — Airdata v Commission

(Case T-305/15) ([1])

(2018/C 052/58)

Language of the case: English

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

([1]) OJ C 270, 17.8.2015.

Order of the General Court of 14 December 2017 — Meissen Keramik v EUIPO — Staatliche Porzellan-Manufaktur Meissen (Meissen)

(Case T-234/16) ([1])

(2018/C 052/59)

Language of the case: German

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

([1]) OJ C 243, 4.7.2016.

Order of the General Court of 18 December 2017 — Verband der Deutschen Biokraftstoffindustrie v Commission

(Case T-451/17) ([1])

(2018/C 052/60)

Language of the case: German

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

([1]) OJ C 318, 25.9.2017.

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