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(2018/C 112/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 30 January 2018 (requests for a preliminary ruling from the Hoge Raad der Nederlanden, Raad van State — Netherlands) — College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV (C-360/15), Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam (C-31/16)

(Joined Cases C-360/15 and C-31/16) ([1])

(Reference for a preliminary ruling — Services in the internal market — Directive 2006/123/EC — Scope — Article 2(2)(c) — Exclusion of electronic communications services and networks — Article 4 (1) — Concept of 'service' — Retail trade in goods — Chapter III — Freedom of establishment of service providers — Applicability in purely internal situations — Article 15 — Requirements to be evaluated — Territorial restriction — Zoning plan prohibiting the activity of retail trade in goods other than bulky goods in geographical zones situated outside the city centre — Protection of the urban environment — Authorisation of electronic communications services and networks — Directive 2002/20/EC — Financial payments attached to rights to install facilities for a public electronic communications network)

(2018/C 112/02)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden, Raad van State

Parties to the main proceedings

Applicants: College van Burgemeester en Wethouders van de gemeente Amersfoort (C-360/15), Visser Vastgoed Beleggingen BV (C-31/16)

Defendants: X BV (C-360/15), Raad van de gemeente Appingedam (C-31/16)

Operative part of the judgment

1. *Article 2(2)(c) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as meaning that that directive is not applicable to fees/charges for the payment of which liability is connected with the rights of undertakings authorised to provide electronic communications networks and services to install cables for a public electronic communications network.*

2. *Article 4(1) of Directive 2006/123 must be interpreted as meaning that the activity of retail trade in goods constitutes a 'service' for the purposes of that directive.*

3. *The provisions of Chapter III of Directive 2006/123, on freedom of establishment of providers, must be interpreted as meaning that they also apply to a situation where all the relevant elements are confined to a single Member State.*

4. *Article 15(1) of Directive 2006/123 must be interpreted as not precluding rules contained in a municipal zoning plan from prohibiting retail trade activity in goods other than bulky goods in geographical zones situated outside the city centre of that municipality, provided that all the conditions laid down in Article 15(3) of that directive are satisfied, which it is for the referring court to determine.*

([1]) OJ C 346, 19.10.2015.
OJ C 136, 18.4.2016.

Judgment of the Court (Sixth Chamber) of 1 February 2018 — Kühne + Nagel International AG, Kühne + Nagel Management AG, Kühne + Nagel Ltd, Kühne + Nagel Ltd, Kühne + Nagel Ltd v European Commission

(Case C-261/16 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Price fixing — International air freight forwarding services — Tariff agreement affecting the final price of services)

(2018/C 112/03)

Language of the case: German

Parties

Appellants: Kühne + Nagel International AG, Kühne + Nagel Management AG, Kühne + Nagel Ltd, Kühne + Nagel Ltd, Kühne + Nagel Ltd (represented by: U. Denzel, C. von Köckritz and C. Klöppner, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: A. Dawes, H. Leupold and G. Meessen, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Kühne + Nagel International AG, Kühne + Nagel Management AG, Kühne + Nagel Ltd (Uxbridge (United Kingdom)), Kühne + Nagel Ltd (Shanghai (China)) and Kühne + Nagel Ltd (Hong-Kong (China)) to bear their own costs and to pay those incurred by the European Commission.*

([1]) OJ C 251, 11.7.2016.

Judgment of the Court (Sixth Chamber) of 1 February 2018 — Schenker Ltd v European Commission

(Case C-263/16 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Price fixing — International air freight forwarding services — Pricing agreement affecting the final price of the services)

(2018/C 112/04)

Language of the case: English

Parties

Appellant: Schenker Ltd (represented by: F. Montag and M. Eisenbarth, Rechtsanwälte, and F. Hoseinian, advokat)

Other party to the proceedings: European Commission (represented by: A. Dawes, H. Leupold and G. Meessen, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Schenker Ltd to bear its own costs and to pay those incurred by the European Commission.*

(1) OJ C 243, 4.7.2016.

Judgment of the Court (Sixth Chamber) of 1 February 2018 — Deutsche Bahn AG, Schenker AG, Schenker China Ltd, Schenker International (H.K.) Ltd v European Commission

(Case C-264/16 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Price fixing — International air freight forwarding services — Pricing agreement affecting the final price of the services)

(2018/C 112/05)

Language of the case: English

Parties

Appellants: Deutsche Bahn AG, Schenker AG, Schenker China Ltd, Schenker International (H.K.) Ltd (represented by: F. Montag and M. Eisenbarth, Rechtsanwälte, and F. Hoseinian, advokat)

Other party to the proceedings: European Commission (represented by: A. Dawes, H. Leupold and G. Meessen, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Deutsche Bahn AG, Schenker AG, Schenker China Ltd and Schenker International (H.K.) Ltd to bear their own costs and to pay those incurred by the European Commission.*

(1) OJ C 243, 4.7.2016.

Judgment of the Court (Sixth Chamber) of 1 February 2018 — Panalpina World Transport (Holding) Ltd, Panalpina Management AG, Panalpina China Ltd v European Commission

(Case C-271/16 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Price fixing — International air freight forwarding services — Tariff agreement affecting the final price of services)

(2018/C 112/06)

Language of the case: English

Parties

Appellants: Panalpina World Transport (Holding) Ltd, Panalpina Management AG, Panalpina China Ltd (represented by: S. Mobley, A. Stratakis and A. Gamble, Solicitors)

Other party to the proceedings: European Commission (represented by: V. Bottka, G. Meessen and P.J.O. Van Nuffel, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Panalpina World Transport (Holding) Ltd, Panalpina Management AG and Panalpina China Ltd to bear their own costs and to pay those incurred by the European Commission.*

(1) OJ C 243, 4.7.2016.

Judgment of the Court (Eighth Chamber) of 31 January 2018 (request for a preliminary ruling from the Sąd Okręgowy w Szczecinie — Poland) — Paweł Hofsoe v LVM Landwirtschaftlicher Versicherungsverein Münster AG

(Case C-106/17) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Article 11(1)(b) and Article 13(2) — Jurisdiction in insurance matters — Scope ratione personae — Concept of 'injured party' — Professional in the insurance sector — Not included)

(2018/C 112/07)

Language of the case: Polish

Referring court

Sąd Okręgowy w Szczecinie

Parties to the main proceedings

Applicant: Paweł Hofsoe

Defendant: LVM Landwirtschaftlicher Versicherungsverein Münster AG

Operative part of the judgment

Article 13(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that it may not be relied on by a natural person, whose professional activity consists, inter alia, in recovering claims for damages from insurers and who relies on a contract for the assignment of a claim concluded with the victim of a road accident, to bring a civil liability action against the insurer of the person responsible for that accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled.

(1) OJ C 202, 26.6.2017.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 3 November 2017 — Vorarlberger Landes- und Hypothekenbank AG

(Case C-625/17)

(2018/C 112/08)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Vorarlberger Landes- und Hypothekenbank AG

Defendant: Finanzamt Feldkirch

Question referred

Is legislation which imposes a charge on the basis of the balance sheet total of credit institutions contrary to the freedom to provide services under Article 56 et seq. TFEU and/or to the free movement of capital and payments under Article 63 TFEU if, for the purposes of the charge, banking transactions with clients in other Member States are taken into account for a credit institution with its seat in Austria whereas the same does not apply to a credit institution with its seat in Austria which enters into such transactions as the parent company of a group of credit institutions through a credit institution belonging to the group with its seat in another Member State, the balance sheet of which must, since it belongs to a group of companies, be consolidated with that of the credit institution acting as a parent company, because the charge is levied on the basis of the unconsolidated (that is to say, not included in a group financial statement) balance sheet total?

Request for a preliminary ruling from the Finanzgericht München (Germany) lodged on 17 November 2017 — College Pension Plan of British Columbia v Finanzamt München III

(Case C-641/17)

(2018/C 112/09)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: College Pension Plan of British Columbia

Defendant: Finanzamt München III

Questions referred

1. Does the freedom of movement of capital under Article 63(1) TFEU in conjunction with Article 65 TFEU preclude legislation of a Member State under which a non-resident institution operating an occupational pension scheme whose essential structure is similar to a German pension fund does not receive any relief from tax on income from capital in respect of dividends received, whereas such dividend distributions to domestic pension funds do not result in any increase in their corporation tax liability, or only a comparatively small one, because the latter are able to reduce their taxable profit in a tax assessment procedure by deducting the amounts reserved to meet their pension payment obligations and to neutralise the tax on income from capital through a set-off, and also receive a refund in the event that the amount of corporation tax payable is less than the amount set-off?

2. If the answer to Question 1 is yes: is the restriction of the free movement of capital through Paragraph 32(1) No 2 of the Law on corporation tax permissible with respect to third countries under Article 63 TFEU in conjunction with Article 64 (1) TFEU because it relates to the provision of financial services?

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 20 November 2017 — Emirates Airlines — Direktion für Deutschland v Aylin Wüst, Peter Wüst

(Case C-645/17)

(2018/C 112/10)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Emirates Airlines — Direktion für Deutschland

Defendants: Aylin Wüst, Peter Wüst

Questions referred

1. Should Article 5(3) of Council Regulation (EC) No 261/2004 ([1]) of 11 February 2004 be interpreted as meaning that the temporary closure of an airport due to an accident involving an aircraft on landing constitutes an extraordinary circumstance?

2. If the answer to the first question is in the affirmative:

   Should Article 5(3) of Council Regulation (EC) No 261/2004 of 11 February 2004 be interpreted as meaning that the temporary closure of an airport constitutes an extraordinary circumstance even if the aircraft involved in the accident belonged to the fleet of the air carrier which is relying on the occurrence of an extraordinary circumstance in relation to a flight which was delayed due to the closure of the airport?

3. If the answer to the second question is in the affirmative:

   Should Article 5(3) of Council Regulation (EC) No 261/2004 of 11 February 2004 be interpreted as meaning that even in the case that the aircraft [Or. 3] involved in the accident belonged to the fleet of an air carrier which is relying on the occurrence of an extraordinary circumstance in relation to a flight which was delayed due to the closure of the airport, the delay in arrival of longer than three hours was 'caused' by that extraordinary circumstance?

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 21 November 2017 — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V. v Amazon EU Sàrl

(Case C-649/17)

(2018/C 112/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

Respondent: Amazon EU Sàrl

Questions referred

The following questions regarding the interpretation of Article 6(1)(c) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights ([1]) are referred for a preliminary ruling:

1. May Member States enact a provision that — like the provision in Article 246a(1)(1), first sentence, No 2, of the EGBGB (Introductory Law to the Civil Code) — obliges a trader to make his telephone number available to the consumer (not just where available but) always when entering into distance contracts prior to acceptance of the contract?

2. Does the expression 'gegebenenfalls' ('where available') used in (the German language version of) Article 6(1)(c) of Directive 2011/83/EU mean that a trader must provide information only about the communication methods already actually available in his undertaking, meaning that he is not required to set up a new telephone or fax connection or e-mail account when he decides also to enter into distance contracts in his undertaking?

3. If the answer to Question 2 is yes:

   Does the expression 'gegebenenfalls' ('where available') used in (the German language version of) Article 6(1)(c) of Directive 2011/83/EU mean that only those communication methods are already available in an undertaking that are actually also used by the trader [Or. 3] to contact consumers when entering into distance contracts, or are those communication methods also available in the undertaking that are used by the trader up to that time exclusively for other purposes, such as communication with other traders or authorities?

4. Is the list of communication methods specified in Article 6(1)(c) of Directive 2011/83/EU, namely, telephone, fax and e-mail, exhaustive, or may the trader also use other communication methods that are not mentioned there, such as internet chats or a telephone callback system, provided that this ensures quick contact and efficient communication?

5. Does the application of the transparency requirement of Article 6(1) of Directive 2011/83/EU, according to which the trader must inform the consumer of the communication methods set out in Article 6(1)(c) of Directive 2011/83/EU in a clear and comprehensible manner, depend on the information being supplied quickly and efficiently?

([1]) OJ 2011 L 304, p. 64.

Appeal brought on 27 November 2017 by AlzChem AG against the judgment of the General Court (Sixth Chamber) delivered on 7 September 2017 in Case T-451/15: AlzChem AG v Commission

(Case C-666/17 P)

(2018/C 112/12)

Language of the case: English

Parties

Appellant: AlzChem AG (represented by: A. Borsos, avocat, J. A. Guerrero Pérez, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— declare the application admissible and well founded;

— annul the judgment;

— annul the contested decision; and

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

Pleas in law and main arguments

1) First Plea: Error in law and manifest error of assessment regarding the application of a general presumption in relation to the exception for the protection of the purpose of EU investigations

— The Commission's error in law regarding the application of the general presumptions in relation to the application of exception to requests for access to specific and identified pre-existing documents;

— The Commission's error in law regarding the protection of the purpose of ongoing investigations in relation to requests for access to specific and identified pre-existing documents;

— The Commission's error in law and manifest error of assessment regarding the assessment of the overriding public interest of ensuring an effective judicial review (Article 47 of the Charter of Fundamental Rights); and

— The Commission's error in law regarding the application of the fundamental right of access to documents (Article 42 of the Charter of Fundamental Rights).

2) Second Plea: Failure to state reasons regarding the refusal of access to a non-confidential version of an on-site access to the documents.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 30 November 2017 — Planet49 GmbH v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V.

(Case C-673/17)

(2018/C 112/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Planet49 GmbH

Defendant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V.

Questions referred

1. a) Does it constitute a valid consent within the meaning of Article 5(3) and Article 2(f) of Directive 2002/58/EC ([1]) in conjunction with Article 2(h) of Directive 95/46/EC ([2]) if the storage of information, or access to information already stored in the user's terminal equipment, is permitted by way of a pre-checked checkbox which the user must unselect to refuse his consent?

b) For the purposes of the application of Article 5(3) and of Article 2(f) of Directive 2002/58/EC in conjunction with Article 2(h) of Directive 95/46/EC, does it make a difference whether the information stored or accessed constitutes personal data?

c) In the circumstances referred to in Question 1 a), does a valid consent within the meaning of Article 6(1)(a) of Regulation (EU) 2016/679 ([3]) exist?

2. What information does the service provider have to give within the scope of the provision of clear and comprehensive information to the user that has to be undertaken in accordance with Article 5(3) of Directive 2002/58/EC? Does this include the duration of the operation of the cookies and the question of whether third parties are given access to the cookies?

(1) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).
(2) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
(3) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 6 December 2017 — slewo // schlafen leben wohnen GmbH v Sascha Ledowski

(Case C-681/17)

(2018/C 112/14)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: slewo // schlafen leben wohnen GmbH

Respondent: Sascha Ledowski

Questions referred

For the purposes of the interpretation of Article 16(e) and — if relevant — Article 6(1)(k) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, (1) the following questions shall be referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

1. Should Article 16(e) of the Consumer Rights Directive be interpreted as meaning that the goods referred to there which are not suitable for return due to health protection or hygiene reasons include goods (such as, for example, mattresses) which, although when used as intended may come into direct contact with the human body, can nevertheless be made saleable again by means of suitable (cleaning) measures by the trader?

2. If Question 1 is answered in the affirmative:

   a) What requirements must the packaging of goods satisfy for it to be considered that sealing within the meaning of Article 16(e) of the Consumer Rights Directive exists?

   and

   b) Does the information that the trader has to give pursuant to Article 6(1)(k) of the Consumer Rights Directive before the contract becomes binding have to be provided in such a way that the consumer is informed, with specific reference to the article to be purchased (here a mattress) and the seal that is applied, that he will lose the right of withdrawal if he removes the seal?

(1) OJ 2011 L 304, p. 64.

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 6 December 2017 — ExxonMobil Production Deutschland GmbH v Bundesrepublik Deutschland

(Case C-682/17)

(2018/C 112/15)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: ExxonMobil Production Deutschland GmbH

Defendant: Bundesrepublik Deutschland

Questions referred

1. Is an installation which produces a product the production of which is not one of the activities referred to in Annex I to Directive 2003/87/EC ([1]) (such as, in this case, the production of sulphur) and which, at the same time, carries on the activity of 'combustion of fuels in installations with a total rated thermal input exceeding 20 MW' that is subject to the emission trading scheme pursuant to Annex I to Directive 2003/87/EC, an electricity generator within the meaning of Article 3(u) of Directive 2003/87/EU, in the case where a secondary facility within the same installation also produces electricity for that installation and a (small) proportion of that electricity is released for consideration to the public electricity network?

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

   If an installation as described in Question 1 is an electricity generator within the meaning of Article 3(u) of Directive 2003/87/EC, is that installation eligible for an allocation for heat under Commission Decision 2011/278/EU ([2]) even in the case where the heat satisfies the conditions laid down in Article 3(c) of Decision 2011/278/EU but does not fall within any of the categories referred to in Article 10a(1), third subparagraph, (3) and (4) of Directive 2003/87/EC — heat from the combustion of waste gases for the production of electricity, district heating and high-efficiency cogeneration?

3. If, on the basis of the answers to the first two questions, the heat produced in the installation at issue is eligible for an allocation:

   Does the CO_2 released into the atmosphere as part of the conditioning of natural gas (in the form of sour gas) in the 'Claus process', whereby the CO_2 inherent in natural gas is separated from the gas mixture, constitute an emission which, for the purposes of the first sentence of Article 3(h) of Commission Decision 2011/278/EU, occurs as a result of the process referred to in Article 3(h)(v)?

   a) For the purposes of the first sentence of Article 3(h) of Commission Decision 2011/278/EU, can CO_2 emissions occur 'as a result of' a process in which the CO_2 inherent in the raw material is physically separated from the gas mixture and released into the atmosphere, even though that process as such does not give rise to additional carbon dioxide, or does that provision make it mandatory for the CO_2 released into the atmosphere to occur for the first time as a result of that process?

   b) Is a carbon-containing raw material 'used' within the meaning of Article 3(h)(v) of Commission Decision 2011/278/EU where, in the 'Claus process', the naturally-occurring gas is used to produce sulphur and, in the course of that procedure, the carbon dioxide inherent in the natural gas is released into the atmosphere, even though the carbon dioxide inherent in the natural gas is not part of the chemical reaction taking place in that process, or does the term 'use' make it mandatory for the carbon to be part of, or indeed essential to, the chemical reaction taking place?

4. If Question 3 is answered in the affirmative, on the basis of which benchmark is the allocation of free emissions allowances to be carried out in the case where an installation subject to the emission trading scheme satisfies both the defining conditions of a heat benchmark sub-installation and the defining conditions of a process emissions sub-installation? Does entitlement to an allocation on the basis of the heat benchmark take priority over entitlement to an allocation for process emissions or does entitlement to an allocation for process emissions take precedence over the heat benchmark and the fuel benchmark because the latter allocation is more specific to the case in question?

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

(2) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 8 December 2017 — Bayer Pharma AG v Richter Gedeon Vegyészeti Gyár Nyrt., Exeltis Magyarország Gyógyszerkereskedelmi Kft.

(Case C-688/17)

(2018/C 112/16)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Bayer Pharma AG

Defendants: Richter Gedeon Vegyészeti Gyár Nyrt., Exeltis Magyarország Gyógyszerkereskedelmi Kft.

Questions referred

1. Should the expression 'provide … appropriate compensation' referred to in Article 9(7) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (1), be interpreted to mean that Member States must establish the substantive rules of law on the liability of parties and the amount and method of compensation, by virtue of which the courts of the Member States can order applicants to compensate defendants for losses caused by measures which the court subsequently revoked or which subsequently lapsed due to an act or omission by the applicant, or in cases in which the court has subsequently found that there was no infringement or threat of infringement of an intellectual property right?

2. If the answer to the first question referred for a preliminary ruling is in the affirmative, does Article 9(7) of that Directive preclude opposition to the legislation of a Member State by virtue of which the rules to be applied to the compensation referred to in that provision of the Directive are the general rules of that Member State on civil liability and compensation according to which the court cannot oblige the applicant to provide compensation for losses caused by a provisional measure which was subsequently held to be unfounded due to the invalidity of the patent, and which were incurred as a result of the defendant's failure to act as would generally be expected in the circumstances in question, or losses for which the defendant is responsible for that same reason, provided that, when requesting the provisional measure, the applicant acted as would generally be expected in those circumstances?

(1) OJ L 157, 2004 p. 45.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 8 December 2017 — ÖKO-Test Verlag GmbH v Dr. Rudolf Liebe Nachf. GmbH & Co.KG

(Case C-690/17)

(2018/C 112/17)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: ÖKO-Test Verlag GmbH

Defendant: Dr. Rudolf Liebe Nachf. GmbH & Co.KG

Questions referred

1. Is an individual trade mark used in such a way as to infringe rights for the purposes of point (b) of the second sentence of Article 9(1) of the EC Trade Mark Regulation ([1])/EU Trade Mark Regulation ([2]) or point (a) of the second sentence of Article 5(1) of the Trade Mark Directive ([3]) in the case where

   — the individual trade mark is affixed to a product in respect of which the individual trade mark is not protected;

   — the affixing of the individual trade mark by a third party is perceived by the public as a 'test seal', which is to say that, although the product has been manufactured and placed on the market by a third party not acting under the control of the trade mark proprietor, the trade mark proprietor has tested some of the characteristics of that product and, on that basis, given it a particular rating shown on the test seal; and

   — the individual trade mark is registered for, inter alia, 'consumer information and consultancy with regard to the selection of goods and services, in particular using test and investigation results and by means of quality judgments'?

2. Should the Court of Justice answer Question 1 in the negative:

   Is an individual trade mark used in such a way as to infringe rights for the purposes of point (c) of the second sentence of Article 9(1) of the EC Trade Mark Regulation and Article 5(2) of the Trade Mark Directive in the case where

   — the individual trade mark has a reputation only as a test seal as described in Question 1; and

   — the individual trade mark is used as a test seal by the third party?

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).
([2]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).
([3]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 11 December 2017 — PORR Építési Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-691/17)

(2018/C 112/18)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: PORR Építési Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

(1) Must the provisions of Directive 2006/112/EC, ([1]) in particular the principles of proportionality, fiscal neutrality and effectiveness, be interpreted as precluding a practice whereby, in circumstances not involving tax fraud, the national tax authorities, when calculating the tax, refuse the right to deduct that may be exercised on the basis of a VAT invoice issued in accordance with the ordinary taxation regime, because they consider that the invoice for the transaction ought to have been issued in accordance with the reverse charge procedure, and fail, before refusing the right to deduct, to examine

— whether the issuer of the invoice can reimburse the recipient of the invoice the amount of VAT paid in error, or

— whether the issuer of the invoice may lawfully (within the national legal framework) correct and regularise that invoice, and in this way obtain from the tax authorities reimbursement of the tax paid by him in error?

(2) Must the provisions of Directive 2006/112/EC, in particular the provisions of proportionality, fiscal neutrality and effectiveness, be interpreted as precluding a practice whereby the national tax authorities, when calculating the tax, refuses the right to deduct that may be exercised on the basis of a VAT invoice issued in accordance with the ordinary taxation regime, because they consider that the invoice for the transaction ought to have been issued in accordance with the reverse charge procedure, and whereby those authorities, when charging the tax, do not order the recipient of the invoice to be reimbursed the tax paid in error, even though the issuer of the invoice has paid the amount of the VAT in those invoices to the revenue authorities?

([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 (Italy) lodged on 11 December 2017 — Telecom Italia SpA v Ministero dello Sviluppo Economico and Infrastrutture e telecomunicazioni per l'Italia SpA (Infratel Italia SpA)

(Case C-697/17)

(2018/C 112/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Telecom Italia SpA

Respondents: Ministero dello Sviluppo Economico and Infrastrutture e telecomunicazioni per l'Italia SpA (Infratel Italia SpA)

Question referred

Must the first sentence of Article 28(2) of Directive 2014/24/EU ([1]) be interpreted as requiring pre-qualified operators and those who submit tenders in the context of a restricted procedure to be completely legally and economically identical and, in particular, must that provision be interpreted as precluding the conclusion of an agreement between the holding companies which control two pre-qualified operators at some point between pre-qualification and the submission of tenders, where: (a) that agreement has as its purpose and effect (inter alia) the completion of a merger by the absorption of one of those pre-qualified undertakings into the other (a transaction which, however, is authorised by the European Commission); (b) the effects of that merger were fully realised after the submission of a tender by the absorbing undertaking (for which reason, at the time the tender was submitted, its composition had not changed from that which existed at the time of pre-qualification); (c) the undertaking then absorbed (whose composition had not changed at the time of the deadline for submitting tenders) has however stated that it is not taking part in the restricted procedure, probably in implementation of the contractual schedule established by the agreement drawn up between the holding companies?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 14 December 2017 — Unareti SpA v Ministero dello Sviluppo Economico and Others

(Case C-702/17)

(2018/C 112/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Unareti SpA

Respondents: Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri — Dipartimento per gli Affari Regionali, Autorità Garante per l'Energia Elettrica il Gas e il Sistema Idrico — Sede di Milano, Presidenza del Consiglio dei Ministri — Conferenza Stato Regioni ed Unificata, Ministero per gli affari regionali, Dipartimento per gli affari regionali e le autonomie, Conferenza Unificata Stato Regioni e Enti Locali

Questions referred

In particular, the Court is asked to establish whether those principles and laws preclude national legislation, as described above, that provides for retrospective application of criteria for determining the amount of the reimbursements payable to former concession holders, thus affecting previous contractual relationships, or whether the application of those criteria can be justified, including in view of the proportionality principle, by the requirement of protecting other public interests of European importance, relating to the necessity of improving protection for competition within the market in question and of giving greater protection to service users, who could indirectly bear the cost of an increase in the sums payable to former concession holders.

Appeal brought on 18 December 2017 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2017 in Case T-435/15: Kolachi Raj Industrial (Private) Ltd v European Commission

(Case C-709/17 P)

(2018/C 112/21)

Language of the case: English

Parties

Appellant: European Commission (represented by: J.-F. Brakeland, A. Demeneix, M. França, Agents)

Other parties to the proceedings: Kolachi Raj Industrial (Private) Ltd, European Bicycle Manufacturers Association

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 10 October 2017 in Case T-435/15 Kolachi Raj Industrial (Private) Ltd v Commission, reject the application at first instance, and order the applicant to pay the costs;

or, alternatively,

— refer back the case to the General Court for reconsideration; reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The appeal brought by the Commission concerns the judgment of the General Court of 10 October 2017 in Case T-435/15. In that judgment, the General Court annulled, to the extent that it concerns Kolachi Raj, Commission Implementing Regulation (EU) 2015/776 ([1]) of 18 May 2015 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 502/2013 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Cambodia, Pakistan and the Philippines, whether declared as originating in Cambodia, Pakistan and the Philippines or not.

The Commission relies, in support of its appeal, on one single ground of appeal.

The Commission considers that the General Court misinterpreted Article 1 3(2)(b) of the basic anti-dumping regulation. First, in the contested judgment, the General Court incorrectly imported rules of origin in the application of Article 13 of the Basic Regulation and in the interpretation of the term 'from' used in its Article 13(2)(b). Second, the General Court incorrectly restricted the type of evidence that the Commission may use to demonstrate that parts come 'from' the country subject to anti-dumping measures. The Commission considers that the interpretation adopted by the General Court is not in line with the text, the context and the purpose of Article 13 of the Basic Regulation, nor with the case-law of the Court of Justice on anti-circumvention measures.

([1]) OJ 2015, L 122, p. 4.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 18 December 2017 — CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa v Comune di Tarvisio

(Case C-710/17)

(2018/C 112/22)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa

Defendant: Comune di Tarvisio

Question referred

Is a provision such as that of Article 53(3) of Legislative Decree No 163 of 16 April 2006 that allows the participation of an undertaking with a 'named' design engineer who, since he is not himself a tenderer, may not rely on the capacity of others, compatible with Article 48 of Directive 2004/18/EC of 31 March 2004? ([1])

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

Request for a preliminary ruling from the Commissione Tributaria Regionale per la Lombardia (Italy) lodged on 20 December 2017 — EN.SA. Srl v Agenzia delle Entrate — Direzione Regionale Lombardia Ufficio Contenzioso

(Case C-712/17)

(2018/C 112/23)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale per la Lombardia

Parties to the main proceedings

Appellant: EN.SA. Srl

Respondent: Agenzia delle Entrate — Direzione Regionale Lombardia Ufficio Contenzioso

Question referred

'In the event of transactions found to be non-existent, which did not cause harm to the Treasury and did not confer any tax benefit on the taxpayer, are national rules resulting from the application of Article 19 (Deduction) and 21(7) (Invoicing of transactions) of Decreto de Presidente della Repubblica 633/72 of 16 October 1972 and Article 6(6) of Decreto Legislativo 471 of 18 December 1997 (Breach of obligations relating to documentation, registration and detection of transactions) consistent with the Community principles on VAT laid down by the Court of Justice, when their simultaneous application bring about:

(a) the repeated non-deductibility of tax paid on purchases by the transferee for every transaction at issue which relates to the same person and the same taxable amount;

(b) the application of the tax on, and payment of the tax by, the transferor (and the preclusion of recovery of sums unduly paid) for the corresponding and mirror sale transactions deemed equally non-existent;

(c) the application of a penalty equal to the amount of tax on acquisitions deemed non-deductible?'

Action brought on 21 December 2017 — European Commission v Republic of Poland

(Case C-715/17)

(2018/C 112/24)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: A. Stobiecka-Kuik and G. Wils, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to indicate at regular intervals, and at least every three months, the appropriate number of applicants who can be relocated swiftly to its territory starting from 16 March 2016, the Republic of Poland has failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1523 and under Article 5(2) of Council Decision (EU) 2015/1601, and has consequently failed to fulfil its other relocation obligations as set out in Article 5(4) to (11) of both of the aforementioned Council decisions;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

A provisional emergency relocation scheme was established in two Council decisions adopted in September 2015, namely Council Decision (EU) 2015/1523 ([1]) and Council Decision (EU) 2015/1601, ([2]) pursuant to which the Member States undertook to relocate from Italy and Greece persons requiring international protection.

Those Council decisions place the Member States under an obligation to offer relocation places every three months with a view to ensuring a swift and orderly relocation procedure. Although almost all the other Member States have taken steps to fulfil their obligations in this matter, including relocation, Poland has not carried out any relocation, nor has it proposed any appropriate relocation place since December 2015.

On 16 June 2017 the Commission initiated a Treaty-infringement procedure against Poland.

Having considered the response of that Member State to be unsatisfactory, the Commission decided to proceed to the next stage of the Treaty-infringement procedure by sending the Republic of Poland a reasoned opinion on 26 July 2017.

Having also deemed the response to the reasoned opinion to be unsatisfactory, the European Commission has decided to bring proceedings before the Court of Justice of the European Union against the Republic of Poland in relation to the latter's non-performance of its legal relocation obligations.

([1]) Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ 2015 L 239, p. 146).

([2]) Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80).

Action brought on 22 December 2017 — European Commission v Hungary

(Case C-718/17)

(2018/C 112/25)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: A. Tokár and G. Wils, acting as Agents)

Defendant: Hungary

Form of order sought

— Declare that by failing to indicate, at regular intervals, and at least every three months, the number of applicants who can be relocated swiftly to its territory, Hungary has failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1601 and, consequently, has also failed to fulfil its obligations under Article 5(4) to (11) of that decision.

— Order Hungary to pay the costs.

Pleas in law and main arguments

The two decisions adopted by the Council in September 2015, namely, Council Decision (EU) 2015/1523 ([1]) and Council Decision (EU) 2015/1601, ([2]) established a temporary and emergency relocation scheme, under which the Member States had the obligation to relocate from the territory of Italy and Greece persons in need of international protection.

The Council Decisions obliged the Member States to offer every quarter places for applicants who can be relocated, ensuring thereby the prompt and orderly processing of the relocation procedure. Although nearly all the Member States relocated applicants and met their obligations in this field, Hungary has not adopted any kind of measure since the start of the relocation scheme.

On 16 June 2017, the Commission initiated infringement proceedings against Hungary concerning Council Decision (EU) 2015/1601.

Considering that Hungary's response was unsatisfactory, the Commission moved on to the next step of the infringement proceedings and, on 26 July 2017, sent Hungary a reasoned opinion.

Considering that the reply to the reasoned opinion was unsatisfactory as well, the Commission decided to bring the case before the Court of Justice for a declaration that Hungary had failed to fulfil its relocation obligations.

([1]) Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ 2015 L 239, p. 146).

([2]) Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80).

Action brought on 22 December 2017 — European Commission v Czech Republic

(Case C-719/17)

(2018/C 112/26)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: Z. Malůšková and G. Wils, acting as Agents)

Defendant: Czech Republic

Form of order sought

1. declare that, by failing to indicate at regular intervals, at least every three months, the relevant number of applicants who could be relocated swiftly to its territory, the Czech Republic has failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece ([1]) and Article 5(2) of Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, ([2]) and hence also the further obligations concerning relocation laid down in Articles 5(4) to (11) of those two Council decisions;

2. order the Czech Republic to pay the costs.

Pleas in law and main arguments

In September 2015 the Council adopted a provisional programme of emergency relocation by means of two decisions, namely Decision (EU) 2015/1523 and Decision (EU) 2015/1601, on the basis of which the Member States undertook to relocate from Italy and Greece persons in clear need of international protection.

The Council decisions impose an obligation on the Member States to offer every three months available places for relocation, so as to ensure a speedy and orderly relocation process. While nearly all States carried out relocations and accepted obligations in that field, the Czech Republic has not carried out any relocations since August 2016, and for more than a year now has not offered any new places.

On 15 June 2017 the Commission started a procedure for failure to fulfil obligations against the Czech Republic.

The Czech Republic's answer was not regarded as satisfactory, and the Commission therefore decided to proceed to the next step in the procedure, namely the issuing of a reasoned opinion on 26 July 2017.

The answer to the reasoned opinion was not regarded as satisfactory, and the Commission therefore decided to bring an action against the Czech Republic before the Court of Justice of the European Union for failure to fulfil obligations concerning relocation.

([1]) OJ 2015 L 239, p. 146.
([2]) OJ 2015 L 248, p. 80.

Appeal brought on 24 December 2017 by the European Commission against the judgment of the General Court (Third Chamber) delivered on 13 October 2017 in Case T-572/16, Brouillard v Commission

(Case C-728/17 P)

(2018/C 112/27)

Language of the case: French

Parties

Appellant: European Commission (represented by: P. Mihaylova and G. Gattinara, acting as Agents)

Other party to the proceedings: Alain Laurent Brouillard

Form of order sought

The Commission requests the Court to:

— set aside the judgment of the General Court of 13 October 2017, *Brouillard* v *Commission* (T-572/16);

— dismiss the action brought at first instance;

— order the respondent to pay in full the costs of both sets of proceedings.

Grounds of appeal and main arguments

The first ground of appeal alleges an error of law and distortion. That ground is divided into three parts and concerns paragraphs 36, 39, 43 to 56, 62 and 63 of the judgment under appeal.

By the first part, the Commission claims that the General Court erred in law in the interpretation of the notice of competition. In paragraphs 36, 45 and 47 to 56 of the judgment under appeal, it wrongly took the view, first, that the adjective 'full', used in the expression 'full legal education', appearing in the notice of competition, did not refer to the content of the diploma required and, second, that the word 'corresponding' in the expression 'a diploma corresponding to a Master's degree as a minimum' did not refer to the diploma but to training. Similarly, the Commission considers that a contextual and teleological interpretation does not in any way support the General Court's findings since the interpretation of the conditions for taking part in a competition must be undertaken in the light of the description of the tasks of the positions to be filled, which were, according to Annex I to the notice of competition, translation tasks to be carried out by 'highly qualified lawyers'.

By the second part, the Commission claims that the General Court erred in law in its interpretation of Article 5(3)(c)(i) of the Staff Regulations in paragraphs 46 to 49 and 52 to 53 of the judgment under appeal. The Commission considers that that provision of the Staff Regulations is irrelevant for purposes of recruitment procedures and, in particular, that it does not preclude an administrative authority, when determining the content of a notice of competition, from laying down more stringent participation conditions than the criteria laid down in that provision. Contrary to the General Court's finding, a notice of competition cannot be interpreted in the light of that provision of the Staff Regulations.

By the third part, the Commission alleges distortion of the content of the vocational Master's degree of the University of Poitiers and of the application submitted by the applicant at first instance. The Commission considers that it is manifestly evident from both those items of evidence that the applicant did not have a diploma certifying the completion of a five-year 'Master 2' degree in law, as required by the notice of competition. The findings of the General Court in paragraphs 39, 43, 44, 52, 53 and 54 of the judgment under appeal are therefore erroneous.

The second ground of appeal alleges an error in law in the interpretation of the rules governing the delimitation of the powers of a competition selection board during the verification of the award of a candidate's diploma. This second ground, which concerns paragraphs 37, 52, 54, 55 and 56 of the judgment under appeal, seeks to challenge the General Court's reasoning that a selection board must accept the diploma of the applicant at first instance on the sole basis of the national rules governing the award of the diploma.

The third ground of appeal, which concerns paragraphs 39, 44, 47, 48, 52 and 57 to 61 of the judgment under appeal, alleges infringement of the duty to state reasons in that the General Court failed to make it sufficiently clear on the basis of which documents in the case the applicant at first instance is demonstrated to have been awarded a diploma enabling him to satisfy the condition required by the notice of competition. Moreover, it is submitted, the General Court is inconsistent because, although it stated that a full legal education and the diploma certifying completed university studies were two distinct criteria, it found that a diploma had been awarded, without specifying which document was capable of constituting evidence of the completion of a full legal training. Finally, the General Court did not provide sufficient explanations as to why, in the judgment delivered in Case T-420/13, which now has the force of *res judicata*, the applicant's diploma was refused in a tendering procedure for freelance translation services for the Court, even though that same diploma is now being claimed as a basis on which that applicant can be appointed as a professional lawyer-linguist in the translation services of the Court.

Request for a preliminary ruling from the Okrazhen sad Blagoevgrad (Bulgaria) lodged on 16 January 2018 — Bryan Andrew Ker v Pavlo Postnov, Natalia Postnova

(Case C-25/18)

(2018/C 112/28)

Language of the case: Bulgarian

Referring court

Okrazhen sad Blagoevgrad

Parties to the main proceedings

Appellant: Bryan Andrew Ker

Respondents: Pavlo Postnov, Natalia Postnova

Questions referred

1. Do the decisions of unincorporated associations created by operation of law due to the special ownership of a right, which are taken by a majority of their members but which bind all of them, including those who did not cast a vote, form the basis of a 'contractual obligation' for the purposes of determining international jurisdiction pursuant to Article 7(1)(a) of Regulation (EU) No 1215/2012? ([1])

2. If the first question is answered in the negative: Are the rules on determining the applicable law for contractual relationships under Regulation (EC) No 593/2008 ([2]) of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) applicable to such decisions?

3. If the first and the second questions are answered in the negative: Are the provisions of Regulation (EC) No 864/2007 ([3]) of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) applicable to such decisions, and which of the non-contractual bases of liability referred to in that regulation is relevant here?

4. If the first or second question is answered in the affirmative: Should the decisions of unincorporated associations regarding expenditure for building maintenance be regarded as constituting a 'contract for the provision of services' within the meaning of Article 4(1)(b) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) or as a contract relating to a 'right *in rem*' or a 'tenancy' within the meaning of Article 4(1)(c) of that regulation?

([1]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).
([2]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).
([3]) Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).

Request for a preliminary ruling from the Cour du travail de Liège (Belgium) lodged on 18 January 2018 — V v Institut national d'assurances sociales pour travailleurs indépendants, Securex Integrity ASBL

(Case C-33/18)

(2018/C 112/29)

Language of the case: French

Referring court

Cour du travail de Liège

Parties to the main proceedings

Applicant: V

Defendants: Institut national d'assurances sociales pour travailleurs indépendants, Securex Integrity ASBL

Questions referred

(1) Is Article 87(8) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([1]) to be interpreted as meaning that a person who, before 1 May 2010, began to pursue an activity as an employed person in the Grand Duchy of Luxembourg and an activity as a self-employed person in Belgium must, in order to be subject to the legislation applicable pursuant to Regulation 883/2004, submit an explicit request to that effect, even if he was subject to no obligation to pay contributions in Belgium before 1 May 2010 and was made subject to the Belgian legislation on the social security scheme for self-employed persons only retroactively, following the expiry of the three-month period starting on 1 May 2010?

(2) If the first question is answered in the affirmative: does the request referred to in Article 87(8) of Regulation 883/2004 and submitted in the circumstances described above entail the application of the legislation of the competent State pursuant to Regulation 883/2004 with retroactive effect from 1 May 2010?

([1]) OJ 2004 L 166, p. 1.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 19 January 2018 — Vueling Airlines SA v Jean-Luc Poignant

(Case C-37/18)

(2018/C 112/30)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Vueling Airlines SA

Respondent: Jean-Luc Poignant

Questions referred

1. Is the interpretation by the Court of Justice of the European Union in its judgment of 27 April 2017, *A-Rosa Flussschiff*, C-620/15, of Article 14(2)(a) of Regulation (EEC) No 1408/71, ([1]) as amended and updated by Regulation (EC) No 118/97, ([2]) as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, ([3]) applicable to a dispute relating to the offence of concealed employment in which E 101 certificates were issued under Article 14(1)(a), pursuant to Article 11(1) of Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, ([4]) although the situation was covered by Article 14(2)(a)(i), for workers carrying on their activity in the territory of the Member State of which they are nationals and in which the air transport undertaking established in another Member State has a branch, and a mere reading of the E 101 certificate, which refers to an airport as the place where the worker is employed and an air transport undertaking as employer, suggested that that certificate had been obtained fraudulently?

2. In the affirmative, must the principle of the primacy of EU law be interpreted as precluding a national court, bound under its domestic law by the principle that the force of *res judicata* of a judgment of a criminal court is binding on a civil court, from drawing the appropriate conclusions from a decision of a criminal court which is not compatible with the rules of EU law by ordering, in civil proceedings, an employer to pay damages to a worker solely because of the criminal conviction of that employer for concealed employment?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971(II), p. 416).

([2]) Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1997 L 28, p. 1).

([3]) Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 2005 L 117, p. 1).

([4]) Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1972(I), p. 160).

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 24 January 2018 — Compagnie d'entreprises CFE SA v Région de Bruxelles-Capitale

(Case C-43/18)

(2018/C 112/31)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Compagnie d'entreprises CFE SA

Defendant: Région de Bruxelles-Capitale

Questions referred

Does an order by which a Member State body designates a special area of conservation, under Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ([1]) and which contains conservation objectives and general preventive measures having regulatory force, constitute a plan or programme within the meaning of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment? ([2])

More particularly, does such an order fall within Article 3(4), as a plan or programme which sets the framework for future development consent of projects, with the result that the Member States must determine whether it is likely to have significant effects on the environment, in compliance with Article 3(5)?

Must Article 3(2)(b) of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment be interpreted as meaning that the designation order in question is exempt from the application of Article 3(4) of that directive?

([1]) OJ 1992 L 206, p. 7.

([2]) OJ 2001 L 197, p. 30.

Action brought on 29 January 2018 — European Commission v Republic of Austria

(Case C-51/18)

(2018/C 112/32)

Language of the case: German

Parties

Applicant: European Commission (represented by: N. Gossement and B.-R. Killmann, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

1. declare that, by imposing value added tax on the royalty paid to an author of an original work of art on the basis of the resale right, the Republic of Austria has failed to fulfil its obligations under Article 2 of the VAT Directive;

2. order the Republic of Austria to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following arguments:

Austria levies value added tax on the royalties paid to the author of an original artistic work upon its resale, within the framework of the resale right which was introduced in Austria in the transposition of Directive 2001/84/EC ([1]) of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art. In doing so, Austria has infringed Article 2 of the VAT Directive.

In the context of the resale right, there is no relationship based on an exchange of services between the author and the party which is liable to pay. The share of proceeds to be returned to the author on the basis of the resale right results from the law and is created in such a way that the seller, or whoever else takes part in the resale, is required to pay a royalty to the author, without the author having to perform any sort of service in that respect. The author's service has already been provided in that respect before the resale, in that the author brought his original work onto the market in the first place.

The royalty from the resale right which is to be paid to the author does therefore not represent consideration for any of the services performed by the author, but rather the royalty depends entirely on the price paid in the resale, the amount of which cannot be influenced by the author. The author is entitled to the royalty without having to, or even being able to, undertake any service, either by action or by inaction. Consequently, the royalty from the resale right cannot be regarded as consideration for a supply of goods or services within the meaning of Article 2 of the VAT Directive.

([1]) Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ 2001 L 272, p. 32).

Action brought on 31 January 2018 — European Commission v Republic of Bulgaria

(Case C-61/18)

(2018/C 112/33)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: G. von Rintelen, K. Walkerová, G. Koleva, acting as Agents)

Defendant: Republic of Bulgaria

Form of order sought

The Commission claims that the Court should:

— declare that, by failing to adopt by 18 September 2016 all the laws, regulations and administrative provisions necessary to comply with Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.8.2014, p. 135-145) or in any event by not informing the Commission of such measures, the Republic of Bulgaria has failed to fulfil its obligations in accordance with Article 15 (1) of that directive;

— order the Republic of Bulgaria, in accordance with Article 260(3) TFEU to pay a periodic penalty in the amount of EUR 14 089,60 per day, calculated from the date of delivery of the judgment establishing the existence of the Republic of Bulgaria's failure to fulfil its obligations.

Pleas in law and main arguments

1. In accordance with Article 15(1) of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 18 September 2016. They shall immediately inform the Commission thereof. In view of the Republic of Bulgaria's failure to inform it of the national measures transposing the directive, the Commission has decided to bring an action before the Court.

2. In its application, the Commission proposes that the Republic of Bulgaria be ordered to pay a periodic penalty in the amount of EUR 14 089,60 per day. The amount of the periodic penalty payment is calculated taking into account the severity and duration of the infringement, as well as the deterrent effect and the ability of that Member State to pay.

Action brought on 6 February 2018 — European Commission v Republic of Austria

(Case C-76/18)

(2018/C 112/34)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. von Rintelen, P. Ondrůšek and M. Noll-Ehlers, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Directive 2014/25/EU ([1]) of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC into national law, or by failing to notify the Commission of those provisions, the defendant has failed to fulfil its obligations under that directive;

— impose on the defendant, pursuant to Article 260(3) TFEU, by reason of the infringement of the obligation to notify the transposition measures, a penalty payment in the amount of EUR 42 377 per day;

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

Pleas in law and main arguments

The Member States were required, under Article 106(1) of Directive 2014/25/EU, to adopt the national measures necessary to transpose the obligations under that directive into national law by 18 April 2016 at the latest. Since the Republic of Austria failed to adopt all the required laws, regulations and administrative provisions necessary to transpose that directive, or failed to give notification of those provisions to the Commission, the Commission decided to refer the matter to the Court of Justice.

By its application, the Commission asks the Court to impose a penalty payment in the amount of EUR 42 377 per day on the Republic of Austria. The amount of that penalty payment has been calculated taking into account the gravity and duration of the infringement and the deterrent effect based on that Member State's ability to pay.

([1]) OJ 2014 L 94, p. 243.

Action brought on 6 February 2018 — European Commission v Republic of Austria

(Case C-77/18)

(2018/C 112/35)

Language of the case: German

Parties

Applicant: European Commission (represented by: M. Noll-Ehlers, P. Ondrůšek and G. von Rintelen, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Directive 2014/24/EU ([1]) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, or by failing to notify the Commission of those provisions, the Republic of Austria has failed to fulfil its obligations under that directive;

— impose on the Republic of Austria, pursuant to Article 260(3) TFEU, by reason of the infringement of the obligation to notify the transposition measures, a penalty payment in the amount of EUR 42 377 per day;

— order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

Member States were required, under Article 90(1) of Directive 2014/24/EU, to adopt the national measures necessary to transpose the obligations under that directive into national law by 18 April 2016 at the latest. Since the Republic of Austria failed to adopt all the required laws, regulations and administrative provisions necessary to transpose that directive, or failed to give notification of those provisions to the Commission, the Commission decided to refer the matter to the Court of Justice.

By its application, the Commission requests the Court to impose a penalty payment in the amount of EUR 42 377 per day on the Republic of Austria. The amount of that penalty payment has been calculated taking into account the gravity and duration of the infringement and the deterrent effect based on that Member State's ability to pay.

([1]) OJ 2014 L 94, p. 65.

Action brought on 6 February 2018 — European Commission v Republic of Austria

(Case C-79/18)

(2018/C 112/36)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. von Rintelen, P. Ondrůšek and M. Noll-Ehlers, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Directive 2014/23/EU ([1]) of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, with the exception of Article 46 and Article 47 in the *Länder* of Vienna, Styria and Carinthia, or by failing to notify the Commission of those provisions, the defendant has failed to fulfil its obligations under that directive;

— impose on the defendant, pursuant to Article 260(3) TFEU, by reason of the infringement of the obligation to notify the transposition measures, a penalty payment in the amount of EUR 52 972 per day;

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

Pleas in law and main arguments

Member States were required, under Article 51(1) of Directive 2014/23/EU, to adopt the national measures necessary to transpose the obligations under that directive into national law by 18 April 2016 at the latest. Since the Republic of Austria failed to adopt all the required laws, regulations and administrative provisions necessary to transpose that directive, or failed to give notification of those provisions to the Commission, the Commission decided to refer the matter to the Court of Justice.

By its application, the Commission requests the Court to impose a penalty payment in the amount of EUR 52 972 per day on the Republic of Austria. The amount of that penalty payment has been calculated taking into account the gravity and duration of the infringement and the deterrent effect based on that Member State's ability to pay.

([1]) OJ 2014 L 94, p. 1.

GENERAL COURT

Judgment of the General Court of (Ninth Chamber) of 8 February 2018 — POA v European Commission

(Case T-74/16) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents concerning an application for the registration of a name under Regulation (EU) No 1151/2012 — Documents originating from the Commission — Documents originating from a Member State — Article 4(5) of Regulation No 1049/2001 — Refusal to grant access — Obligation to state reasons — Exception relating to the protection of the decision-making process — Exception relating to the protection of court proceedings — Extent of review by the institution and the EU Courts of the Member State's grounds for objection)

(2018/C 112/37)

Language of the case: English

Parties

Applicant: Pagkyprios organismos ageladotrofon (POA) Dimosia Ltd (Latsia, Cyprus) (represented by: N. Korogiannakis, lawyer)

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

Re:

Action brought under Article 263 TFEU, seeking annulment of the decision Ares(2015) 5632670 of the Secretary-General of the Commission of 7 December 2015 rejecting the confirmatory application made by letter of 15 September 2015, in which the applicant sought, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to documents relating, first, to the application for registration CY/PDO/0005/01243 of 'Halloumi' as a protected designation of origin (PDO), in accordance with Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1), and, second, to the earlier application for registration CY/PDO/0005/00766 of 'Halloumi' as a PDO.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pagkyprios organismos ageladotrofon (POA) Dimosia Ltd to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 145, 25.4.2016.

Judgment of the General Court of 8 February 2018 — Sony Interactive Entertainment Europe v EUIPO — Marpefa (Vieta)

(Case T-879/16) ([1])

(EU trade mark — Revocation proceedings — EU figurative mark Vieta — Genuine use of the trade mark — Decision taken following the annulment by the General Court of an earlier decision — Article 65 (6) of Regulation (EC) No 207/2009 (now Article 72(6) of Regulation (EU) 2017/1001) — Res judicata)

(2018/C 112/38)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz, QC)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and D. Walicka, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 4 October 2016 (Case R 1010/2016-4), relating to revocation proceedings between Sony Computer Entertainment Europe Ltd and Marpefa.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 October 2016 (Case R 1010/2016-4), relating to revocation proceedings between Sony Computer Entertainment Europe Ltd and Marpefa, SL;*

2. *Orders EUIPO to pay the costs.*

([1]) OJ C 53, 20.2.2017.

Judgment of the General Court of 8 February 2018 — Institute for Direct Democracy in Europe v Parliament

(Case T-118/17) ([1])

(Law governing the institutions — European Parliament — Decision awarding a grant to a political foundation for the financial year 2017 and providing for pre-financing at a rate of 33 % of the maximum grant amount and the obligation to provide a pre-financing bank guarantee — Action for annulment — Challengeable act — Admissibility — Obligation of impartiality — Rights of the defence — Financial regulation — Rules of application of the Financial Regulation — Regulation (EC) No 2004/2003 — Proportionality)

(2018/C 112/39)

Language of the case: English

Parties

Applicant: Institute for Direct Democracy in Europe ASBL (IDDE) (Brussels, Belgium) (represented by: E. Plasschaert and É. Montens, lawyers)

Defendant: European Parliament (represented by: C. Burgos and S. Alves, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of European Parliament Decision FINS-2017-28 of 12 December 2016 concerning the award of a grant to the applicant in so far as that decision suspends the payment of that grant for the financial year 2017 and limits the pre-financing to 33 % of the maximum grant amount subject to the provision of a bank guarantee.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Institute for Direct Democracy in Europe ASBL (IDDE) to bear its own costs and to pay those incurred by the European Parliament, including those relating to the application for interim measures.*

([1]) OJ C 121, 18.4.2017.

Order of the General Court of 23 January 2018 — Campailla v European Union

(Case T-759/16) ([1])

(Action for damages — Law governing the institutions — Liability of the European Union — Decisions delivered by the General Court and by the Court of Justice — Action dismissed by the General Court as inadmissible — Appeal dismissed as inadmissible on the ground of lack of representation — Action manifestly inadmissible)

(2018/C 112/40)

Language of the case: French

Parties

Applicant: Massimo Campailla (Holtz, Luxembourg) (represented by: F. Rollinger, lawyer)

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

Re:

Application under Article 268 TFEU seeking compensation for the harm allegedly suffered by the applicant as a result of the order of 6 October 2011, *Campailla* v *Commission* (C-265/11 P, not published, EU:C:2011:644).

Operative part of the order

1. *The action is dismissed.*

2. *Mr Massimo Campailla shall bear his own costs and pay those incurred by the European Union, represented by the Court of Justice of the European Union.*

([1]) OJ C 78, 13.3.17.

Order of the General Court of 1 February 2018 — ExpressVPN v EUIPO (EXPRESSVPN)

(Case T-265/17) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark EXPRESSVPN — Absolute ground for refusal — Application for alteration — Single head of claim — Inadmissibility)

(2018/C 112/41)

Language of the case: English

Parties

Applicant: ExpressVPN Ltd (Glen Vine, Isle of Man) (represented by: A. Muir Wood, Barrister)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 February 2017 (Case R 1352/2016-5), concerning the international registration designating the European Union No 1 265 562 of the figurative mark EXPRESSVPN.

Operative part of the order

1. *The action is dismissed.*

2. *ExpressVPN Ltd is ordered to pay the costs.*

([1]) OJ C 202, 26.6.2017.

Action brought on 16 January 2018 — Hellenic Republic v Commission

(Case T-14/18)

(2018/C 112/42)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, E. Leftheriotou and E. Chroni, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul the contested decision in so far as it excludes from European Union financing expenditure incurred by the Hellenic Republic with respect to area aid for the year 2014 which corresponds to 5 % of the total costs incurred with respect to pasture-related aid, gross amount EUR 15 583 893,42 (net amount EUR 12 482 555,68)·

— Order the defendant to pay the legal costs of the Hellenic Republic.

Pleas in law and main arguments

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

1. The first plea in law is based on the claim that as regards the imposition of the 5 % financial correction at issue with respect to pasture-related area aid, no reasons were stated, there was an error of fact, and the principle of proportionality was infringed.

2. The second plea in law is based on a claimed infringement of Article 31(2) and (3) of Council Regulation (EC) No 1290/2005 of 21 June 2005, and of Article 52(2) and (3) of Regulation (EU) No 1306/2013 of 17 December 2013, read together with Articles 12(1) to (6) and 8 of Commission Delegated Regulation (EU) No 907/2014 of 6 August 2014, and also an infringement of the Commission Guidelines in documents VI/5330797 and C(2015)3675 final/8-6-2015. It is further claimed that it is not permissible to accumulate two corrections for the same reason and that the principle of proportionality was infringed.

Action brought on 19 January 2018 — Republic of Lithuania v European Commission

(Case T-19/18)

(2018/C 112/43)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, R. Krasuckaitė, R. Dzikovič, G. Taluntytė, V. Vasiliauskienė, M. Palionis and A. Dapkuvienė)

Defendant: European Commission

Form of order sought

1. annul Commission Implementing Decision (EU) 2017/2014 of 8 November 2017 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), in so far as it provides for the imposition on Lithuania of a financial correction of EUR 9 745 705,88 regarding expenditure connected with funding from the European Agricultural Fund for Rural Development;

2. annul Commission Implementing Decision (EU) 2017/2014 of 8 November 2017 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), in so far as it provides for the imposition on Lithuania of a financial correction of EUR 546 351,91 regarding expenditure connected with funding from the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development;

3. order the European Commission to pay the costs.

Pleas in law and main arguments

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

I. By imposing a correction of EUR 9 745 705,88 for a deficiency in key controls, the European Commission ('the Commission') **infringed Article 52(2) of Regulation (EU) No 1306/2013** in so far as, in deciding on the gravity of the non-conformity, on the nature of the infringements and on the financial damage caused to the European Union and:

1. relying on an incorrect interpretation of **Article 24(1) and (2)(a) of Regulation (EU) No 65/2011**, it wrongly found that the assessments of applicants' eligibility carried out in Lithuania are insufficient because:

1.1 the checks carried out by Lithuanian authorities concerning the relatedness of an undertaking and a connected undertaking or a partner undertaking abroad were not thorough for the purpose of confirming the applicants' status as small or medium-sized undertakings;

1.2 in Lithuania the monitoring of projects recognised as risky on account of suspected artificial conditions is ineffective;

2. relying on an incorrect interpretation of **Article 24(2)(d) of Regulation (EU) No 65/2011**, it wrongly found that the quality of the checks carried out in Lithuania of the reasonableness of the costs was insufficient;

3. relying on an incorrect interpretation of **Article 26(1)(d) and (2) of Regulation (EU) No 65/2011**, it wrongly found that the system of on-the-spot checks applied in Lithuania is insufficient;

4. relying on an incorrect interpretation of **Article 24(2)(a) of Regulation (EU) No 65/2011**, it wrongly found that goods acquired in one of the projects checked were essentially used for purposes other than those of the project.

II. By imposing a correction of EUR 546 351,91 for a deficiency in key and ancillary controls, the Commission infringed **Article 52(2) of Regulation (EU) No 1306/2013** in so far as, in deciding on the gravity of the non-conformity, on the nature of the infringements and on the financial damage caused to the European Union:

1. it failed to take account of the calculations carried out by the competent authorities of the Republic of Lithuania concerning the financial damage caused to the European Union that is connected with divergences of the penalty system which relate to infringements as to animal identification and registration and are not provided for in the relevant measures of EU law, in respect of the 2014 claim year;

2. it failed to take account of the calculations carried out by the competent authorities of the Republic of Lithuania concerning the financial damage caused to the European Union that is connected with an overly lenient assessment of failure to observe the requirements for the identification and registration of animals, in respect of the 2014 claim year;

3. also relying on an incorrect interpretation of **Article 51(1) of Regulation (EC) No 1122/2009**, it wrongly found that in Lithuania risk analysis did not comply with that regulation because risk factors connected with the animals were not included in it;

4. also relying on an incorrect interpretation of **Article 84 of Regulation (EC) No 1122/2009**, it wrongly found that the monitoring carried out in Lithuania of the results of controls did not comply with that regulation, because statistics were supplied without full observance of the Commission's templates.

Action brought on 17 January 2018 — CV v Commission

(Case T-20/18)

(2018/C 112/44)

Language of the case: French

Parties

Applicant: CV (represented by: F. Moyse, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decisions of 15 and 20 March 2017 and of 18 October 2017;

— award the applicant the amount of EUR 1 475 by way of compensation for material damage plus statutory interest at the rate of 2,25 %, to be calculated as from the payment of that amount, or, in the alternative, as from the date on which the complaint was lodged, or, in the further alternative, as from the date on which the application was lodged, and the amount of EUR 1 by way of compensation for non-material damage;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging irregularity of the administrative procedure preceding the adoption of the contested decisions, including before the Medical Committee, by which the application for recognition of the occupational origin of the applicant's disease was rejected and certain costs and fees of the members of the Medical Committee were imposed on the applicant.

2. Second plea in law, alleging a manifest error of assessment made by a doctor in that doctor's reports.

3. Third plea in law, alleging that the reasons stated in the contested decisions were insufficient.

Action brought on 19 January 2018 — France v Commission

(Case T-26/18)

(2018/C 112/45)

Language of the case: French

Parties

Applicant: French Republic (represented by: F. Alabrune, D. Colas, A.-L. Desjonquères and S. Horrenberger, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul in part Commission Implementing Decision C(2017) 7263 final of 8 November 2017 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), notified to the French Government on 9 November 2017, in so far as it:

  — includes a correction of EUR 2 246 700 as a result of taking into account landscape features in the context of alleged non-compliance with good agricultural and environmental conditions (GAEC), as regards 'Deficiencies in the LPIS' for claim years 2013 and 2014;

  — includes a flat-rate correction covering all the areas which include at least one area described as 'landes et parcours' and not only areas described as 'ineligible areas ("landes et parcours")' for claim years 2013 and 2014;

  — concerns 'Most Likely Error — FEADER SIGC — 2014-2020' in the context of audit CEB/2016/047; and

  — applies a flat-rate correction of 100 % to the *Département* of Haute-Corse, for claim years 2013 and 2014, in regard to 'Control system gravely deficient Corse';

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 6(1) of, and Annex III to, 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.

   According to the applicant, that infringement resulted from the fact that the Commission considered that, first, elements such as rock outcrops, ponds and small woods covered by French legislation do not come within the GAEC and, second, that those provisions require the individual protection of each landscape element and, consequently, that those elements could not be incorporated in the total area of agricultural land.

2. Second plea in law, alleging infringement of the principle of proportionality. In this regard, the applicant considers that, although the dispute concerns only the areas described as 'landes et parcours', the Commission adopted a correction based on all the areas in cases which include such areas, and thus includes the share of those areas which are not areas of that kind, and in any event ignored the calculations sent by the French authorities.

3. Third plea in law, alleging that the Commission relied on data which it accepted contrary to Article 6(1) of Regulation No 73/2009 and Annex III thereto, in order to carry out a financial correction of EUR 13 127 243,30 as regards the EAFRD programming period 2014-2020 ('RDR 3').

4. Fourth plea in law, alleging infringement of the principle of proportionality and breach of the duty to state reasons as regards 'Control system gravely deficient Corse' for claim years 2013 and 2014 in the contested decision, in that the Commission applies a flat-rate correction of 100 % to the *Département* of Haute-Corse.

Action brought on 19 January 2018 — Planet v Commission

(Case T-29/18)

(2018/C 112/46)

Language of the case: Greek

Parties

Applicant: Planet AE Anonimi Etairia Parokhis Simvouleftikon Ipiresion (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the refusal decision of the Commission, whereby the Commission implicitly rejected the applicant's request for access to the documents relating to the tendering procedure for the EuropeAid/137681/IH/SER/ROC/4 project; and

— order the Commission to pay all the applicant's costs.

Pleas in law and main arguments

By means of this action, Planet seeks the annulment of the Commission's implicit decision whereby it denied Planet access to documents, under Regulation No 1049/2001, in connection with the EuropeAid/137681/IH/SER/ROC/4 tendering procedure.

Planet maintains that the Commission's implicit refusal should be annulled, since no reasons have been stated, which is mandatory under Article 296 TFEU in terms of EU law and which constitutes an essential procedural requirement for EU acts.

Action brought on 20 January 2018 — Izuzquiza and Semsrott v Frontex

(Case T-31/18)

(2018/C 112/47)

Language of the case: English

Parties

Applicants: Luisa Izuzquiza (Madrid, Spain) and Arne Semsrott (Berlin, Germany) (represented by: S. Hilbrans and R. Callsen, lawyers)

Defendant: European Border and Coast Guard Agency

Form of order sought

The applicants claim that the Court should:

— annul the decision by Frontex of 10 November 2017 (ref: CGO/LAU/18911 c/2017), refusing the applicants access to the name, flag and type of each vessel deployed by Frontex in the Central Mediterranean under Joint Operation Triton in the period from 1 June 2017 until 30 August 2017, both inclusive;

— order the defendant to pay the costs incurred by the applicants, including the costs of any intervening party, even if the action is dismissed.

Pleas in law and main arguments

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

1. First plea in law, alleging that Frontex infringed Regulation (EC) No 1049/2001, ([1]) by failing to carry out an individual examination of each requested document in order to assess whether the exception relied on was applicable.

2. Second plea in law, alleging that Frontex infringed the first indent of Article 4(1)(a) of that regulation, which relates to public security, because the reasons given to justify the application of the exception are in a decisive part incorrect in fact: vessels deployed to the operation cannot be tracked by publicly accessible means.

3. Third plea in law, alleging that Frontex infringed the first indent of Article 4(1)(a) of that regulation, which relates to public security, because the reasons given to justify the application of the exception leave out of consideration the circumstance that the applicants only requested information on vessels deployed in the past.

4. Fourth plea in law, alleging that Frontex infringed the first indent of Article 4(1)(a) of that regulation, which relates to public a security, because the defendant did not consider — and did not answer this argument put forward by the applicants — that part of the requested information was already published on Twitter for some of the vessels deployed under Joint Operation Triton in 2017 and comparable information for vessels deployed under Joint Operation Triton in 2016 was already published.

5. Fifth plea in law, alleging that Frontex infringed Article 4(6) of that regulation because even if the — in fact not existing — risk that criminal networks circumvent border surveillance would be presumed true, this could possibly only justify refusing information on the name of the vessels deployed but not on the type and flag.

6. Sixth plea in law, alleging that Frontex infringed Article 4(6) of that regulation by not considering to give partial access to the requested information, even though the information on some of the vessels was already published.

([1]) Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 23 January 2018 — Pracsis and Conceptexpo Project v Commission and EACEA

(Case T-33/18)

(2018/C 112/48)

Language of the case: French

Parties

Applicants: Pracsis SPRL (Brussels, Belgium) and Conceptexpo Project (Wavre, Belgium) (represented by: J.-N. Louis, lawyer)

Defendants: European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)

Form of order sought

The applicants claim that the General Court should:

— declare the action admissible and well founded;

— annul the contested decisions, in that they designate Cecoforma as the successful tenderer for the framework contract of the call for tenders EACEA/2017/01, and annul the contract signed between EACEA and Cecoforma;

— order the European Commission and EACEA, jointly and severally, to pay to the applicants the sum of EUR 1 million;

— order the defendants to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of equal treatment and of the duty of transparency.

2. Second plea in law, alleging infringement of the right to be heard.

3. Third plea in law, alleging breach of the obligation to state reasons and a manifest error of assessment.

Action brought on 25 January 2018 — VF v ECB

(Case T-39/18)

(2018/C 112/49)

Language of the case: English

Parties

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

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— declare the present appeal admissible and founded;

— annul the applicant's reviewed 2016 appraisal and annual salary and bonus review ('ASBR') dated 24 May 2017 notified on the same day;

— annul the ECB decision dated 13 September 2017 rejecting his request for an administrative review of his reviewed 2016 appraisal and ASBR;

— annul the ECB decision dated 20 December 2017 and notified to the applicant on 21 December 2017 rejecting his grievance procedure against his reviewed 2016 appraisal and ASBR;

— annul the decision of non-conversion of the applicant's contract, dated 6 March 2017;

— annul the ECB decision dated 4 July 2017 rejecting his request for an administrative review of the decision of non-conversion of his contract;

— annul the ECB decision dated 15 November 2017 and notified to him on 21 November 2017 rejecting the applicant's grievance procedure against the non-conversion of his contract;

— order the defendant to compensate the material and moral prejudices suffered by the applicant; and

— order the defendant to pay all the costs incurred by the applicant for the present appeal.

Pleas in law and main arguments

In support of the action, the applicant relies on the following arguments.

1. As to the non-conversion decision:

   — Plea of illegality of the Conversion Policy: violation of article 10(c) of the Conditions of Employment for Staff of the European Central Bank ('CoE') and of article 2.0 of the Staff Regulations ('SR') and violation of the hierarchy of norms.

   — Plea of illegality: article 10(c) CoE and article 2.0 SR are in breach of Directive 1999/70/EC of 28 June 1999 ([1]) concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP and Recital 6 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

   — The non-conversion decision was taken on the basis of illegal appraisal and ASBR decisions.

2. As to the appraisal:

   — Procedural irregularity and absence of dialogue.

   — Violation of the duty to state reason, violation of the principle of good administration and of due care and lack of information.

   — Manifest errors of appreciation.

3. As to the ASBR decision:

   — Plea of illegality of the ASBR Guidelines, violation of the duty to state reasons and violation of the principle of legal certainty.

   — Lack of due explanation regarding the background of the applicant's salary award, lack of transparency and violation of the duty to state reason.

   — Manifest error of appreciation.

([1]) 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).

Action brought on 30 January 2018 — Teollisuuden Voima/Commission

(Case T-52/18)

(2018/C 112/50)

Language of the case: English

Parties

Applicant: Teollisuuden Voima Oyj (Eurajoki, Finland) (represented by: M. Powell, solicitor, Y. Utzschneider and K. Struckmann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Decision C(2017) 3777 final of 29 May 2017 declaring the concentration involving the acquisition by EDF of New NP to be compatible with the internal market and the EEA Agreement (Case COMP/M.7764 — EDF/Areva reactor business) (OJ 2017 C 377, p. 5); and

— order the Commission to pay the applicant's costs in these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is vitiated by manifest errors in its assessment of the product market definition for nuclear fuel assemblies

   — As a result of these errors, the contested decision would reach the allegedly erroneous conclusion that, within the market for pressurised water reactor type fuel assemblies, no separate market exists for European pressurised water reactor type fuel assemblies. Due to the alleged errors in market definition, the contested decision would fail to consider the effects of the acquisition by EDF of the Areva Group's nuclear reactors business (the 'Transaction') on the narrower product market in question.

   — Moreover, the substantive assessment of the broader pressurised water reactor fuel assemblies market would be vitiated by additional errors of assessment.

2. Second plea in law, alleging that the contested decision is vitiated by manifest errors in its assessment of the product market definition for nuclear services

   — As a result of these errors, the contested decision would reach the allegedly erroneous conclusion that, within the nuclear services market for existing nuclear steam supply systems, no separate product market exists for nuclear services for European pressurised water reactor type nuclear steam supply systems. Due to the alleged errors in market definition, the contested decision would fail to consider the effects of the Transaction on the narrower product market in question.

   — Moreover, the substantive assessment of the broader nuclear services market for existing nuclear steam supply systems would be vitiated by additional errors of assessment.

3. Third plea in law, alleging that the contested decision is vitiated by manifest errors in its assessment of the geographic market definition of the downstream market for the generation and wholesale of electricity

This erroneous geographic market definition allegedly leads to additional errors of assessment of the effects of the Transaction.

Action brought on 31 January 2018 — Germany v Commission

(Case T-53/18)

(2018/C 112/51)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents, and by M. Winkelmüller, F. van Schewick and M. Kottmann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2017/1995 of 6 November 2017 to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 13341:2005 + A1:2011 on static thermoplastic tanks for above-ground storage of domestic heating oils, kerosene and diesel fuels in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council (OJ 2017 L 288, p. 36);

— annul Commission Decision (EU) 2017/1996 of 6 November 2017 to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 12285-2:2005 on Workshop fabricated steel tanks in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council (OJ 2017 L 288, p. 39); and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of the obligation to state reasons

   By the first plea in law, the applicant claims that the contested decisions infringe the obligation to state reasons under the second paragraph of Article 296 TFEU. The contested decisions adopt no position on the central question under Article 18(1) of Regulation (EU) No 305/2011 ([1]) as to whether the harmonised standards at issue conform to the relevant mandate and whether the fulfilment of the basic requirements for construction works can be ensured on the basis of those standards. As a result, neither the applicant nor the General Court can assess which essential considerations of fact and of law the defendant took as its basis.

2. Second plea in law: infringement of substantive-law rules of Regulation (EU) No 305/2011

   — First, the contested decisions infringe the first and second sentence of Article 17(5) of Regulation (EU) No 305/2011. Contrary to those provisions, the defendant does not appear to have assessed the extent to which the harmonised standards at issue conform to the relevant mandates. Consequently, it failed to recognise that there is in fact no such conformity.

   — Second, the contested decisions infringe Article 18(2), in conjunction with Article 3(1) and (2) and the first sentence of Article 17(3), of Regulation (EU) No 305/2011. The defendant disregarded the fact that the contested harmonised standards include no methods or criteria for assessing performance in relation to the essential characteristics for the mechanical resistance, stability, breaking resistance and load-bearing capacity of tanks for use coming within the scope of the standards in earthquake and flood areas, and that they are therefore insufficient in respect of three essential characteristics of construction products and consequently jeopardise compliance with the basic requirements for construction works.

   — Third, the defendant committed an error of assessment by rejecting as inadmissible the applicant's request that it add, in each case, a restriction when publishing the references for the contested harmonised standards, thereby infringing Article 18(2) of Regulation (EU) No 305/2011.

   — Lastly, the defendant committed a further error of assessment when adopting the contested acts by reason of the fact that it rejected the applicant's alternative request that it withdraw the references for the contested standards from the *Official Journal of the European Union* on the basis of the possibility, which in the Commission's view was extant, of a restriction or prohibition on the part of the Member States.

([1]) Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ 2011 L 88, p. 5).

Action brought on 2 February 2018 — Mahr v EUIPO — Especialidades Vira (Xocolat)

(Case T-58/18)

(2018/C 112/52)

Language in which the application was lodged: English

Parties

Applicant: Ramona Mahr (Vienna, Austria) (represented by: T. Rohracher, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Especialidades Vira, SL (Martorell, Spain)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'Xocolat' — Application for registration No 14 335 574

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 November 2017 in Case R 541/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) Regulation No 1001/2017.

Action brought on 5 February 2018 — Endoceutics v EUIPO — Merck (FEMIVIA)

(Case T-59/18)

(2018/C 112/53)

Language in which the application was lodged: English

Parties

Applicant: Endoceutics, Inc. (Quebec, Quebec, Canada) (represented by: M. Wahlin, 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

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FEMIVIA' — Application for registration No 13 148 986

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 November 2017 in Case R 280/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the Applicant's costs both at EUIPO and at the General Court.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 5 February 2018 — Probelte v Commission

(Case T-67/18)

(2018/C 112/54)

Language of the case: English

Parties

Applicant: Probelte, SA (Murcia, Spain) (represented by: C. Mereu and S. Saez Moreno, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— annul Commission's Implementing Regulation (EU) 2017/2065 of 13 November 2017 confirming the conditions of approval of the active substance 8-hydroxyquinoline, as set out in Implementing Regulation (EU) No 540/2011 and modifying Implementing Regulation (EU) 2015/408 as regards the inclusion of the active substance 8-hydroxyquinoline in the list of candidates for substitution ([1]) (the 'contested decision'); and

— order the defendant to pay all the costs and expenses of these proceedings.

Pleas in law and main arguments

The applicant contends that the defendant committed a manifest error of assessment and infringed the applicant's rights of defence and legitimate expectations when it adopted the contested decision rejecting the applicant's request to amend the conditions for the approval of 8-hydroxyquinoline and included that substance in the list of candidates for substitution.

Specifically, the applicant seeks the annulment of the contested decision on the following grounds:

1. The rejection of the applicant's request to amend the conditions for the approval of 8-hydroxyquinoline under Implementing Regulation (EU) No 540/2011 ([2]).

   — Rights of defence: the defendant failed to peer review the new data which the applicant was explicitly allowed to submit in the context of the procedure for the amendment of 8-hydroxyquinoline under Regulation 1107/2009 ([3]). In doing so, the defendant deprived the applicant of its right to have its views presented properly and effectively. Likewise, the defendant included 8-hydroxyquinoline in the list of substances candidates for substitution without due consideration of the applicant's new test data.

   — Legitimate Expectation: the defendant failed to peer review the new data which the applicant was explicitly allowed to submit in the context of the procedure for the amendment of 8-hydroxyquinoline under Regulation 1107/2009, although it explicitly informed the applicant that this would be the case. In doing so, the defendant infringed the applicant's legitimate expectation that its new data would be peer reviewed by all Member States.

   — Manifest error of assessment: It was clear from the scientific point of view that there was a deficiency of data, and hence that new data as submitted by the applicant would assist in plugging the classification gap. The defendant committed a manifest error of assessment inasmuch as it failed to consider all current scientific and technical knowledge on the substance 8-hydroxyqunioline.

2. The modification of Implementing Regulation (EU) 2015/408 ([4]) as regards the inclusion of the substance in the list of candidates for substitution.

   — Right of defence/ legitimate expectations/manifest error: Failure to follow and apply the requirements of candidate listing as per point 4 of the Annex II of Regulation 1107/2009: the defendant failed to conduct an exposure assessment in order to establish whether the exception of Point 4 of Annex II could apply to the Substance. In doing so, it infringed the applicable provisions of Regulation 1107/2009 as well as the applicant's right of defence/ legitimate expectation. In turn, the defendant also committed a manifest error of assessment.

([1]) OJ 2017, L 295, p. 40

([2]) Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ 2011, L 153, p. 1)

([3]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009, L 309, p. 1)

([4]) Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution (OJ 2015, L 67, p. 18)

Action brought on 7 February 2018 — Fränkischer Weinbauverband v EUIPO (Shape of a bottle)

(Case T-68/18)

(2018/C 112/55)

Language of the case: German

Parties

Applicant: Fränkischer Weinbauverband eV. (Würzburg, Germany) (represented by: L. Petri and M. Gilch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Tridimensional mark (Shape of a bottle) — Application for registration No 15 431 281

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 4 December 2017 in Case R 413/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) of Regulation No 2017/1001.

Action brought on 5 February 2018 — Verband Deutscher Alten- und Behindertenhilfe and CarePool Hannover v Commission

(Case T-69/18)

(2018/C 112/56)

Language of the case: German

Parties

Applicants: Verband Deutscher Alten- und Behindertenhilfe, Landesverband Niedersachsen/Bremen und Hamburg/Schleswig-Holstein eV (Hanover, Germany) and CarePool Hannover GmbH (Hanover) (represented by: T. Unger, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2017) 7686 final of 23 November 2017, with regard to State aid SA.42268 (2017/E) — Deutschland Staatliche Beihilfe zur Förderung wohlfahrtspflegerischer Aufgaben (Germany State aid for the promotion of social welfare projects) and SA.42877 (2017/E) — Deutschland CarePool Hannover GmbH, and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of procedural rights

   The infringement of procedural requirements within the meaning of the second paragraph of Article 263 TFEU follows from the fact that the defendant decided, despite serious difficulties with the assessment of the factual and legal situation, not to initiate the formal investigation procedure. In particular, the length, the quality of the defendant's reasoning and its conduct during the contested State aid procedure support the need to initiate the formal investigation procedure in order to address the serious difficulties of assessing the issue.

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

   A further infringement of the procedural requirements results from the fact that the contested decision is insufficiently reasoned and therefore is not compatible with the requirements of the second paragraph of Article 296 TFEU.

3. Third plea in law, alleging an infringement of Article 107f TFEU

   Further, there is an infringement of Article 107f TFEU, since the defendant mistakenly assumes that there is an existing measure. The contested subsidies are new measures, which satisfy the conditions for State aid.

Action brought on 7 February 2018 — Sonova Holding v EUIPO (HEAR THE WORLD)

(Case T-70/18)

(2018/C 112/57)

Language of the case: German

Parties

Applicant: Sonova Holding AG (Stäfa, Switzerland) (represented by: R. Pansch and A. Sabellek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark 'HEAR THE WORLD' — Application for registration No 15 274 426

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 November 2017 in Case R 1645/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 8 February 2018 — Italy v Commission

(Case T-71/18)

(2018/C 112/58)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Notice of Open Competition EPSO/AD/339/17 — Administrators (AD 7) in the following fields: 1. Financial economics, 2. Macroeconomics, published in OJ C 386 A of 16 November 2017;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 263 TFEU, 264 TFEU and 266 TFEU, in that the Commission failed to comply with the judgment of the Court in Case C-566/10 P, or with the judgment of the General Court in Joined Cases T-124/13 and T-191/13, in which it was held that open competition notices which restrict the candidates' choice of second language to only English, French and German are unlawful.

2. Second plea in law, alleging infringement of Article 342 TFEU and of Articles 1 and 6 of Regulation (EEC) No 1 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59).

3. Third plea in law, alleging infringement of Article 12 EC, now Article 18 TFEU, of Article 22 of the Charter of Fundamental Rights of the European Union, of Article 6(3) TEU and Article 1(2) and (3) of Annex III to the Staff Regulations, of Articles 1 and 6 of Regulation No 1 and of Articles 1d(1) and (6), 27(2) and 28(f) of the Staff Regulations, inasmuch as those provisions prohibit the imposition on European citizens and officials of the European institutions of language restrictions which are not provided for in a general and objective manner by the internal rules of the institutions contemplated in Article 6 of Regulation No 1 and not yet adopted, and prohibit the introduction of such limitations unless they are justified by a specific substantiated service-related interest.

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

5. Fifth plea in law, alleging misuse of powers and infringement of the substantive rules concerning the nature and purpose of competition notices, in that, by restricting to three, in a pre-emptive and general manner, the number of languages eligible for use as a second language, the Commission has effectively advanced the assessment of candidates' linguistic abilities — an assessment which ought to be carried out in the course of the competition itself — to the notice and eligibility stages. Thus, a candidate's knowledge of languages is given priority vis-à-vis her or his professional knowledge.

6. Sixth plea in law, alleging infringement of Article 18 TFEU and the fourth paragraph of Article 24 TFEU, of Article 22 of the Charter of Fundamental Rights of the European Union, of Article 2 of Regulation No 1 and of Article 1d(1) and (6) of the Staff Regulations in that, by providing that applications must be sent in English, French or German, and that EPSO will send communications concerning the organisation of the competition to the candidates in the same language, the right of European citizens to communicate with the institutions in their own language has been infringed and individuals who do not have an in-depth knowledge of one of those languages suffer additional discrimination.

7. Seventh plea in law, alleging infringement of Articles 1 and 6 of Regulation No 1, of Articles 1d(1) and (6) and Article 28 (f) of the Staff Regulations, of Article 1(1)(f) of Annex III to the Staff Regulations, and of the second paragraph of Article 296 TFEU (failure to state reasons), as well as infringement of the principle of proportionality and distortion of the facts.

The applicant claims in this regard that the statement of reasons put forward by the Commission distorts the facts because it does not follow that the three languages in question are the most frequently used for the translation of documents within the institutions, and that that statement of reasons is disproportionate with regard to the restriction of a fundamental right such as the right not to suffer discrimination on linguistic grounds. In any event, there are less restrictive mechanisms for ensuring rapid translation within the institutions.

Action brought on 6 February 2018 — Visi/one v EUIPO — EasyFix (Information displays for vehicles)

(Case T-74/18)

(2018/C 112/59)

Language in which the application was lodged: German

Parties

Applicant: Visi/one GmbH (Remscheid, Germany) (represented by: H. Bourree and M. Bartz, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: EasyFix GmbH (Vienna, Austria)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design No 1391114-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 4 December 2017 in Case R 1424/2016-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the intervener to pay the costs, including those incurred in the course of the appeals procedure.

Pleas in law

— Infringement of the second sentence of Article 62 of Regulation No 6/2002;

— Infringement of the first sentence of Article 62 of Regulation No 6/2002;

— Infringement of Article 25(1)(b) of Regulation No 6/2002.

Action brought on 6 February 2018 — MPM-Quality v EUIPO — Elton Hodinářská (MANUFACTURE PRIM 1949)

(Case T-75/18)

(2018/C 112/60)

Language in which the application was lodged: Czech

Parties

Applicant: MPM-Quality v.o.s (Frýdek-Místek, Czech Republic) (represented by: M. Kyjovský, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Elton Hodinářská a.s. (Nové Město nad Metují, Czech Republic)

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: European Union figurative mark containing the word elements 'MANUFACTURE PRIM 1949' — European Union trade mark No 3 531 662

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 December 2017 in Case R 556/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Articles 18 and 58 of Regulation No 1001/2017;

— Infringement of Article 10(3) et seq. and of Article 19(1) of Regulation No 1430/2017.

Action brought on 9 February 2018 — AB Mauri Italy v EUIPO — Lesaffre et Compagnie (FERMIN)

(Case T-78/18)

(2018/C 112/61)

Language in which the application was lodged: English

Parties

Applicant: AB Mauri Italy SpA (Casteggio, Italy) (represented by: B. Brandreth, Barrister and G. Hussey, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Lesaffre et Compagnie (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark FERMIN — Application for registration No 10 999 613

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 4 December 2017 in Joined Cases R 2027/2016-4 and R 2254/2016-4

Form of order sought

The applicant claims that the Court should:

— partly annul the contested decision;

— order EUIPO to bear the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

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