Official Journal of the European Union

C 221

English edition

Information and Notices

Volume 61

25 June 2018

Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2018/C 221/01)

Last publication

OJ C 211, 18.6.2018.

Past publications

OJ C 200, 11.6.2018.

OJ C 190, 4.6.2018.

OJ C 182, 28.5.2018.

OJ C 166, 14.5.2018.

OJ C 161, 7.5.2018.

OJ C 152, 30.4.2018.

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Budapesti II. és III. Kerületi Bíróság (Hungary) lodged on 8 January 2018 — István Bán v KP 2000 Kft., Edit Kovács

(Case C-24/18)

(2018/C 221/02)

Language of the case: Hungarian

Referring court

Budapesti II. és III. Kerületi Bíróság

Parties to the main proceedings

Applicant: István Bán

Defendants: KP 2000 Kft., Edit Kovács

Question referred

Must national legislation such as that at issue in the main proceedings, under which rights of use created over land used for agricultural or forestry activities are extinguished *ex lege*, without any financial compensation, where a new owner acquires, in the context of enforcement proceedings, the immovable property subject to the right of use and where the land user has not obtained, in relation to that land, aid for agricultural or rural development that is funded by the European Union or the national budget and that is subject to the obligation of using the land for a certain period of time as established by law, be regarded as a restriction contrary to Articles 49 and 63 TFEU?

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 6 February 2018 — Vodafone Magyarország Mobil Távközlési Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-75/18)

(2018/C 221/03)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Vodafone Magyarország Mobil Távközlési Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must the provisions of Articles 49, 54, 107 and 108 TFEU be interpreted as precluding a national measure pursuant to which a Member State's legislation (Law establishing liability to a special tax on telecommunications) has the effect that the actual tax burden falls on foreign-owned taxable persons? Is that effect indirectly discriminatory?

2. Do Articles 107 and 108 TFEU preclude a Member State's legislation imposing a tax liability on turnover calculated on the basis of a progressive tax rate? If the effect of that legislation is that the actual tax burden, for the highest tax band, falls mainly on foreign-owned taxable persons, is that legislation indirectly discriminatory? Does that effect amount to prohibited State aid?

3. Must Article 401 of the VAT Directive ([1]) be interpreted as precluding legislation of a Member State that gives rise to a distinction between foreign-owned taxable persons and national taxable persons? Must the special tax be considered a tax on turnover? In other words, is this tax compatible or not with the VAT Directive?

([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 Szekszárdi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 16 February 2018 — Dalmandi Mezőgazdasági Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-126/18)

(2018/C 221/04)

Language of the case: Hungarian

Referring court

Szekszárdi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Dalmandi Mezőgazdasági Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Is a judicial practice of a Member State pursuant to which, when the relevant default-interest provisions are examined, it is proceeded on the basis that the national tax authority has not committed an infringement (failure to act) — that is, it has not delayed payment as regards the non-recoverable part of the value added tax ('VAT') … on the taxable persons' unpaid purchases — because when that tax authority adopted its decision, the national legislation infringing Community law was in force and it was not until later that the Court of Justice declared that the requirement laid down in that legislation did not comply with Community law, consistent with the provisions of Community law, with the provisions of Council Directive 2006/112/EC ([1]) ('the VAT Directive') (having regard in particular to Article 183 thereof), and with the principles of effectiveness, direct effect and equivalence? Accordingly, the national practice accepted that the application of that requirement laid down in the national legislation infringing EU law was quasi-compliant with the law until the point at which the national legislature formally repealed the requirement.

2. Are the legislation and practice of a Member State which, when the relevant default-interest provisions are examined, distinguish between whether the tax authority failed to refund the tax in compliance with the national provisions then in force — which, moreover, infringed Community law — or whether it failed to do so in breach of such provisions and which, as regards the amount of the interest accrued on the VAT whose refund could not be claimed within a reasonable period due to a national-law requirement declared contrary to EU law by the Court of Justice, set out two definable periods, with the result that,

   — in the first period, taxable persons only have the right to receive default interest at the central bank base rate, in view of the fact that since the Hungarian legislation contrary to Community law was still then in force, the Hungarian tax authorities did not act unlawfully by not authorising the payment within a reasonable period of the VAT included in the invoices, whereas

   — in the second period interest double the central bank base rate — applicable moreover in the event of delay in the legal system of the Member State in question — must be paid only for the late payment of the default interest corresponding to the first period consistent with Community law, in particular with the provisions of the VAT Directive (having regard in particular to Article 183 thereof), and with the principles of equivalence, effectiveness and proportionality?

3. Is a practice of a Member State which sets as the initial date for the calculation of default interest (compound interest, or interest on interest) accrued in accordance with a Member State's provisions on the delay in payment of the default interest on the tax retained contrary to EU law (interest on the VAT; in this case, the principal) not the original date of accrual of the interest on the VAT (principal), but a later point in time, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness, taking into account in particular the fact that a claim for interest on taxes retained, or not refunded, contrary to EU law is a substantive right which flows directly from EU law itself?

4. Is a practice of a Member State pursuant to which the taxable person must submit a separate claim if it claims interest accrued because of a tax authority's default, while in other cases where default interest is claimed such a separate claim is not required because interest is granted automatically, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness?

5. If the previous question is answered in the affirmative, is a practice of a Member State pursuant to which compound interest (interest on interest) for the delay in the payment of interest on the tax retained contrary to EU law as declared by the Court of Justice (interest on the VAT; in this case, the principal) may only be granted if the taxable person submits a special claim whereby interest is not specifically claimed, but rather the amount of the tax indebted on the unpaid purchases precisely at the time when the Member State's rule contrary to EU law which required the VAT due on account of that failure to pay to be retained was repealed under national law, although the interest on the VAT which serves as the basis for claiming the compound interest as regards the tax return periods prior to the special claim has already accrued and has still not been paid, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness?

6. If the previous question is answered in the affirmative, is a practice of a Member State which entails the loss of the right to receive compound interest (interest on interest) for the delay in the payment of interest on the tax retained contrary to EU law as declared by the Court of Justice (interest on the VAT; in this case, the principal) in relation to claims for interest on VAT which was not the subject of the VAT return period affected by the limitation period laid down for the submission of the special claim, since such interest had accrued beforehand, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness?

7. Is a practice of a Member State which definitively deprives the taxable person of the possibility of claiming interest on the tax retained in accordance with national legislation subsequently declared contrary to Community law and which prohibited claiming the VAT in respect of certain unpaid purchases, with the result that

— [pursuant to that practice] the claim for interest was not considered well-founded at the point in time when [the refund of] the tax was demandable, on the basis that the provision subsequently declared contrary to Community law was in force (on the ground that there had been no delay and that the tax authority had simply applied the law in force),

— and subsequently, when the provision declared contrary to Community law and which limited the right to refund had been repealed in the national legal system, on the basis of being time-barred, consistent with Community law and with Article 183 of the VAT Directive (taking into account in particular the principle of effectiveness and the character of a substantive right of the claim for interest for the taxes wrongfully not returned)?

8. Is a practice of a Member State pursuant to which the possibility of claiming the default interest which must be paid on the interest on the VAT (principal) to which the taxable person is entitled in respect of the tax not refunded when it was originally demandable, due to a national-law rule subsequently declared contrary to Community law, is made dependent, for the entirety of the period between 2005 and 2011, upon whether the taxable person is currently in a position to request the refund of the VAT for the tax return period during which the provision contrary to Community law in question was repealed in the national legal system (September 2011), although the payment of the interest on the VAT (principal) had not occurred before that point in time nor has occurred subsequently, before the claim is brought before the national court, consistent with Community law and with Article 183 of the VAT Directive and with the principle of effectiveness?

([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 Szombathelyi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 6 March 2018 — FS v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-173/18)

(2018/C 221/05)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: FS

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Must EU law be interpreted to the effect that the tax authority may not, when carrying out an ex post inspection, exclude the possibility for a taxable person to opt for the VAT exemption for small businesses?

Request for a preliminary ruling from the Sąd Rejonowy Gdańsk-Południe w Gdańsku (Poland) lodged on 9 March 2018 — Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) v Bank BGŻ BNP Paribas S.A. in Gdańsk

(Case C-183/18)

(2018/C 221/06)

Language of the case: Polish

Referring court

Sąd Rejonowy Gdańsk-Południe w Gdańsku

Parties to the main proceedings

Applicant: Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB)

Defendant: Bank BGŻ BNP Paribas S.A. in Gdańsk

Questions referred

1. Should the provisions of Article 1(a), Article 9(3) and Article 20(1) and (2)(b) of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties ([1]) be interpreted as meaning that a decision transmitted for execution which imposes a financial penalty on a legal person should be executed in the executing State despite the fact that the national provisions implementing that framework decision do not provide for the possibility of executing a decision which imposes such a penalty on a legal person?

2. In the event of an affirmative answer to the first question, must the term 'legal person' as used in Article 1(a) and Article 9(3) of Council Framework Decision 2005/214/JHA be interpreted:

   a. in accordance with the law of the issuing State (Article 1(c));

   b. in accordance with the law of the executing State (Article 1(d));

   c. as an autonomous concept of EU law,

   and, as a consequence, does it also cover a branch of a legal person notwithstanding the fact that that branch does not have legal personality in the executing State?

([1]) OJ 2005 L 76, pp 16-30.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 13 March 2018 — Glencore Agriculture Hungary v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-189/18)

(2018/C 221/07)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Glencore Agriculture Hungary Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must the provisions of the VAT Directive ([1]) and, insofar as they are concerned, the fundamental principle of respect for the rights of the defence and Article 47 of the Charter of Fundamental Rights, be interpreted as precluding the legislation of a Member State and national practice based on that legislation, under which the findings, in the context of an inspection carried out of the parties to a legal relationship (contract, transaction) to which the tax liability relates, made by the tax authorities at the conclusion of a procedure instigated in respect of one of the parties to the legal relationship (the issuer of the invoices in the main proceedings) and entailing a reclassification of that legal relationship, must be taken into account as a matter of course by the tax authorities when carrying out an inspection of another party to the legal relationship (the recipient of the invoices in the main proceedings), it being understood that the other party to the legal relationship has no rights, in particular rights attaching to the status of a party, in the original inspection procedure?

2. If the Court of Justice answers the first question in the negative, do the provisions of the VAT Directive and, insofar as they are concerned, the fundamental principle of respect for the rights of the defence and Article 47 of the Charter of Fundamental Rights, preclude national practice that allow a procedure such as that referred to in the first question whereby the other party to the legal relationship (the recipient of the invoices) does not have, in the original inspection procedure, rights attaching to the status of a party, and cannot therefore exercise any right of appeal with respect to an inspection procedure the findings of which must be taken into account as a matter of course by the tax authorities in the inspection procedure concerning the other party's tax liability and may be adopted as evidence against that other party, it being understood that the tax authorities do not make available to the other party the relevant files concerning the inspection carried out in respect of the first party to the legal relationship (the issuer of the invoices), in particular documents underpinning the findings, the reports and administrative decisions, but discloses only part of them to that other party in the form of a summary, the tax authorities thus apprising the other party of the contents of the files only indirectly, making a selection according to their own criteria, over which the other party may not exercise any control?

3. Must the provisions of the VAT directive and, insofar as they are concerned, the fundamental principle of respect for the rights of the defence and Article 47 of the Charter of Fundamental Rights, be interpreted as precluding national practice under which the findings, in the context of the inspection of the parties to a legal relationship to which the tax liability relates, made by the tax authorities at the conclusion of a procedure instigated in respect of the issuer of the invoices and including the finding that that issuer actively participated in tax evasion, must be taken into account as a matter of course by the tax authorities when carrying out an inspection in respect of the recipient of the invoices, it being understood that that recipient has no rights attaching to the status of a party in the inspection procedure carried out at the premises of the issuer of the invoices, and cannot therefore exercise any right of appeal in an inspection procedure the findings of which must be taken into account as a matter of course by the tax authorities in the inspection procedure concerning the tax liability of the recipient and may be adopted as evidence against that recipient, and that [the tax authorities] do not make available to the recipient the relevant files relating to the inspection carried out in respect of the issuer, in particular the documents underpinning the findings, the reports and administrative decisions, but disclose only part of them to the recipient in the form of a summary, the tax authorities thus apprising the recipient of the contents of the files only indirectly, making a selection according to their own criteria and over which the recipient may exercise no control?

([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 Sąd Okręgowy w Piotrkowie Trybunalskim (Poland) lodged on 19 March 2018 — Criminal proceedings against B.S.

(Case C-195/18)

(2018/C 221/08)

Language of the case: Polish

Referring court

Sąd Okręgowy w Piotrkowie Trybunalskim

Parties to the main proceedings

B.S.

Prokuratura Okręgowa w Piotrkowie Trybunalskim

Łódzki Urząd Celno-Skarbowy w Łodzi

Urząd Celno-Skarbowy w Piotrkowie Trybunalskim

Question referred

Must Article 2 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages, ([1]) in conjunction with Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ([2]) be interpreted as meaning that beer made from malt, within the meaning of CN code 2203, includes a product in the case of which malt extract, glucose syrup, citric acid and water were used to produce hopped wort, and in which the proportion of non-malt ingredients in the wort is predominant in relation to the malt ingredients and glucose syrup was added to pitched wort before the wort fermentation process, and what criteria should be taken into account when determining the proportions of malt and non-malt ingredients in hopped wort in order for the product obtained to be classified as beer under CN code 2203?

([1]) OJ 1992 L 316, p. 21.
([2]) OJ 1987 L 256, p. 1.

Request for a preliminary ruling from the Hanseatisches Oberlandesgericht in Bremen (Germany) lodged on 27 March 2018 — ML

(Case C-220/18 PPU)

(2018/C 221/09)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht in Bremen

Party to the main proceedings

Person whose surrender is sought: **ML**

Questions referred

1. What significance does it have, for the purpose of the interpretation of the above provisions, ([1]) if legal remedies exist for detainees in the issuing Member State in respect of the conditions of their detention?

   (a) If, taking account of the aforementioned provisions, the executing judicial authority is in possession of evidence of systemic or general shortcomings affecting certain groups of persons or certain prisons in the issuing Member State, is a genuine risk of inhuman or degrading treatment of the person whose surrender is sought in the event of his surrender, that would render the surrender inadmissible, to be ruled out merely by reason of the fact that such legal remedies have been introduced, without the need for further assessment of the conditions of detention?

   (b) Is it of significance in this regard that the European Court of Human Rights has held in respect of such legal remedies that there is no evidence that they do not offer detainees realistic perspectives of improving unsuitable conditions of detention?

2. If Question 1 is answered to the effect that the existence of such legal remedies for detainees, without further assessment of the specific conditions of detention in the issuing Member State by the executing judicial authority, does not of itself exclude a genuine risk of inhuman or degrading treatment of the person whose surrender is sought:

   (a) Are the aforementioned provisions to be interpreted as meaning that the assessment by the executing judicial authority of the conditions of detention in the issuing Member State extends to all prisons or other correctional facilities in which the person whose surrender is sought may be incarcerated? Does this also apply to simply temporary or transitional detention in certain prisons? Or can the assessment be limited to the prison in which, according to information from the authorities of the issuing Member State, the person whose surrender is sought is likely to be incarcerated for most of the time?

(b) For this purpose, is it necessary to conduct a comprehensive assessment of the conditions of detention concerned that determines both the personal space available to each prisoner and other conditions of detention? Are the conditions of detention thus determined to be assessed on the basis of the case-law of the European Court of Human Rights established in its judgment in *Muršić v Croatia* (judgment of 30 October 2016, application no 7334/13)?

3. If Question 2 is also answered to the effect that the assessment required by the executing judicial authority must extend to all prisons under consideration:

(a) Can the assessment by the executing judicial authority of the conditions of detention in each individual prison envisaged be rendered superfluous by a general assurance given by the issuing Member State that the person whose surrender is sought will not be exposed to any risk of inhuman or degrading treatment?

(b) Or, in lieu of an assessment of the conditions of detention of each individual prison envisaged, can the decision by the executing judicial authority on the admissibility of the surrender be made contingent upon the person whose surrender is sought not being exposed to any such treatment?

4. If Question 3 is also answered to the effect that the provision of assurances and the imposition of conditions cannot render the assessment by the executing judicial authority of the conditions of detention in each individual prison envisaged in the issuing Member State superfluous:

(a) Must the duty of assessment by the executing judicial authority extend to the conditions of detention in all prisons envisaged, even in the case where the judicial authority of the issuing Member State advises that the period of detention in them of the person whose surrender is sought will not exceed three weeks, circumstances permitting?

(b) Does this also apply if the executing judicial authority is unable to ascertain whether that information was provided by the issuing judicial authority or whether it originates from a central authority in the issuing Member State acting in response to a request by the issuing judicial authority for support?

([1]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision; OJ 2002 L 190, p. 1. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial; OJ 2009 L 81, p. 24.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 28 March 2018 — VIPA Kereskedelmi és Szolgáltató Kft. v Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet

(Case C-222/18)

(2018/C 221/10)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: VIPA Kereskedelmi és Szolgáltató Kft.

Defendant: Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet

Question referred

Must Articles 3(k) and 11(1) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare ([1]) be interpreted as meaning that national legislation, which distinguishes between two categories of prescriptions and, only in the case of one of those categories, allows medicinal products to be dispensed to a doctor who exercises his healthcare activity in a State other than the Member State concerned, contrary to the mutual recognition of prescriptions and to the freedom to provide services, and therefore incompatible therewith?

([1]) OJ L 88, 4.4.2011, p. 45.

Request for a preliminary ruling from the Oberlandesgericht Oldenburg (Germany) lodged on 3 April 2018 — Case involving an administrative fine imposed on NK

(Case C-231/18)

(2018/C 221/11)

Language of the case: German

Referring court

Oberlandesgericht Oldenburg

Parties to the main proceedings

NK

Other parties: Staatsanwaltschaft Oldenburg (Public Prosecutor's Office, Oldenburg); Staatliches Gewerbeaufsichtsamt Oldenburg (Commercial Regulatory Authority, Oldenburg)

Questions referred

1. Can a livestock wholesaler who purchases live animals from a farmer and transports them within a distance of up to 100 km to a slaughterhouse, to which he sells the animals, rely on the exception provided for in Article 13(1)(p) of Regulation (EC) No 561/2006 ([1]) of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport — 'vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 100 km' — because the purchase from the farmer involves a 'market' within the meaning of this provision or the cattle trade enterprise is itself regarded as a 'market'?

   If it does not involve a 'market' within the meaning of this provision:

2. Can the livestock wholesaler who purchases live animals from a farmer and transports them within a radius of up to 100 km to a slaughterhouse, to which he sells the animals, rely on this exception by analogy to the aforesaid rule?

([1]) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

Request for a preliminary ruling from the Juzgado de lo Mercantil de Madrid (Spain) lodged on 11 April 2018 — Sociedad Estatal Correos y Telégrafos, S.A. v Asendia Spain, S.L.U.

(Case C-259/18)

(2018/C 221/12)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de Madrid

Parties to the main proceedings

Applicant: Sociedad Estatal Correos y Telégrafos, S.A.

Defendant: Asendia Spain, S.L.U.

Questions referred

1. Is national legislation under which the guarantee given to the postal operator designated for the provision of a universal postal service entails it being the only entity authorised to distribute means of postage other than stamps contrary to Article 7(1) and Article 8 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ([1]) (the Postal Directive), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008? ([2])

2. If the answer to the previous question is in the affirmative, is it compatible with the EU postal rules that private postal operators are required to have bricks-and-mortar premises open to the public in order to be able to distribute and market means of postage other than stamps?

([1]) OJ 1998 L 15, p. 14.
([2]) Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ 2008 L 52, p. 3).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 20 April 2018 — Verein für Konsumenteninformation v TVP Treuhand- und Verwaltungsgesellschaft für Publikumsfonds mbH & Co KG

(Case C-272/18)

(2018/C 221/13)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: TVP Treuhand- und Verwaltungsgesellschaft für Publikumsfonds mbH & Co KG

Questions referred

1. Does the exclusion from the scope of the legislation provided for in Article 1(2)(e) of the Convention on the law applicable to contractual relations of 19 June 1980 ('the Rome Convention') and in Article 1(2)(f) 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 ('the Rome I Regulation') ([1]) also apply to agreements between a beneficiary and a fiduciary who holds an interest in a limited partnership on behalf of the beneficiary, particularly where the partnership agreements and the fiduciary agreements are interwoven?

2. If Question 1 is answered in the negative:

   Is Article 3(1) of Council Directive No 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ('the Unfair Contract Terms Directive') ([2]) to be interpreted as meaning that a clause in a fiduciary agreement concluded between a professional and a consumer concerning the management of an interest in a limited partnership, which was not individually negotiated and which provides that the law of the State in which the limited partnership has its seat is to apply, is unfair if the sole purpose of the fiduciary agreement is the management of the limited partnership interest and the beneficiary is granted the rights and obligations of a direct partner?

3. If Question 1 or 2 is answered in the affirmative:

   Does this answer still hold if, in addition, the consumer's subscription application was signed in his State of residence, the professional also provides information on the internet about the limited partnership interest and a payment agency has been established in the consumer's State, to which the consumer must pay his subscription monies, even though the professional has no right to give directions as to that bank account? Does it make a difference whether the Rome I Regulation or the Rome Convention is applicable?

4. If Question 3 is answered in the affirmative:

   Does this answer still hold if, in addition, the consumer's subscription application was signed in his State of residence, the professional also provides information on the internet about the limited partnership interest and a payment agency has been established in the consumer's State, to which the consumer must pay his subscription monies, even though the professional has no right to give directions as to that bank account? Does it make a difference whether the Rome I Regulation or the Rome Convention is applicable?

([1]) OJ 2008 L 177, p. 6.
([2]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 23 April 2018 — Milan Vinš v Odvolací finanční ředitelství

(Case C-275/18)

(2018/C 221/14)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Milan Vinš

Respondent: Odvolací finanční ředitelství

Questions referred

1. Is it permissible to render the right to a tax exemption from value added tax on the exportation of goods (Article 146 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax) ('the Directive') conditional on the fact that the goods must first be placed under a particular customs procedure (§ 66 Zákona č. 235/2004 Sb., o dani z přidané hodnoty) (Paragraph 66 of Law No 235/2004 on Value Added Tax)?

2. Is such national legislation sufficiently justifiable under Article 131 of the Directive as a condition for the purposes of preventing tax evasion, avoidance or abuse?

([1]) OJ 2006 L 347, p. 1.

Action brought on 4 May 2018 — European Commission v Italian Republic

(Case C-304/18)

(2018/C 221/15)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: Z. Malůšková, M. Owsiany-Hornung, F. Tomat, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— Declare that, by refusing to make available traditional own resources in the amount of EUR 2 120 309,50 concerning communication on ineligibility IT (07)08-917, the Italian Republic has failed to fulfil its obligations under Article 8 of Council Decision 94/728/EC, Euratom, ([1]) Article 8 of Council Decision 2000/597/EC, Euratom, ([2]) Article 8 of Council Decision 2007/436/EC, Euratom ([3]) and Article 8 of Council Decision 2014/335/EU, ([4]) as well as Articles 6, 10, 11 and 17 of Council Regulation (EEC, Euratom) No 1552/1989, ([5]) Articles 6, 10, 11 and 17 of Council Regulation (EC, Euratom) No 1150/2000 ([6]) and Articles 6, 10, 12 and 13 of Council Regulation (EC, Euratom) No 609/2014; ([7])

— Order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

The information available to the Commission, which are based on communications and information provided by the Italian Republic in the course of the pre-litigation procedure, show that, in an anti-fraud operation aimed at tackling the trafficking in foreign manufactured tobacco, in 1997 the Italian authorities established the customs debt at issue, included it in separate accounts and then notified the debtor of the amount of the duties owed. Since the debt at issue was included in separate accounts (accounts B) and was not contested, the Italian authorities should have proceeded to its immediate recovery, which they have failed to do. The Italian authorities waited for the outcome of the relevant criminal proceedings brought against the debtors before initiating a recovery procedure, which ended approximatively six years after the debt arose and was established.

Customs duties constitute EU own resources, which must be collected by the Member States and made available to the Commission. The obligation on Member States to establish the Union's own resources arises as soon as the conditions provided for by customs legislation are met (establishment of the amount of the duties that stem from the customs debt and identification of the liable person).

The regulation on making such resources available also provides that the Member States must take all requisite measures to ensure that the amounts corresponding to the duties established are made available to the Commission. Member States are released from the obligation to place at the disposal of the Commission the amounts corresponding to the duties established only if it has not been possible to recover them for reasons of *force majeure* or if it appears that recovery is impossible in the long term for reasons which cannot be attributed to them. If a Member State fails to make available to the Commission the amount of own resources established, without one of the conditions laid down by the regulation in question being fulfilled, that Member State fails to fulfil its obligations under EU rules. Any delay in making available own resources gives rise moreover to an obligation on the part of that Member State to pay default interest for the whole of the period of the delay.

Since the Italian authorities waited, in essence, six years before initiating the debt collection procedure in question, and that delay is attributable solely to the Italian authorities, the Italian Republic cannot maintain that it took all the requisite measures to ensure that the amounts corresponding to the duties established were made available to the Commission. The Italian authorities have always refused to make the amount established available to the Commission.

The Commission considers, therefore, that, in the present case, the Italian Republic has failed to fulfil its obligations under Article 8 of the Decision on the system of own resources and Articles 6, 10, 11 and 17 (now Articles 6, 10, 12 and 13) of the Regulation on making own resources available.

([1]) 94/728/EC, Euratom: Council Decision of 31 October 1994 on the system of the European Communities' own resources (OJ 1994 L 293, p. 9).

([2]) 2000/597/EC, Euratom: Council Decision of 29 September 2000 on the system of the European Communities' own resources (OJ 2000 L 253, p. 42).

([3]) 2007/436/EC, Euratom: Council Decision of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17).

([4]) 2014/335/EU, Euratom: Council Decision of 26 May 2014 on the system of own resources of the European Union (OJ 2014 L 1684, p. 105).

([5]) Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities own resources (OJ 1989 L 155, p. 1).

([6]) Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1).

([7]) Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (recast) (OJ 2014 L 168, p. 39).

GENERAL COURT

Judgment of the General Court of 3 May 2018 — Distillerie Bonollo and Others v Council

(Case T-431/12) ([1])

(Dumping — Imports of tartaric acid originating in China — Modification of the definitive anti-dumping duty — Partial interim review — Action for annulment — Direct and individual concern — Admissibility — Determination of the normal value — Constructed normal value — Change in methodology — Individual treatment — Article 2(7)(a) and Article 11(9) of Regulation (EC) No 1225/2009 (now Article 2(7)(a) and Article 11(9) of Regulation (EU) 2016/1036) — Temporal adjustment of effects of annulment)

(2018/C 221/16)

Language of the case: English

Parties

Applicants: Distillerie Bonollo SpA (Formigine, Italy), Industria Chimica Valenzana (ICV) SpA (Borgoricco, Italy), Distillerie Mazzari SpA (Sant'Agata sul Santerno, Italy), Caviro Distillerie Srl (Faenza, Italy), and Comercial Química Sarasa, SL (Madrid, Spain) (represented by: R. MacLean, Solicitor, and A. Bochon, lawyer)

Defendant: Council of the European Union (represented by: S. Boelaert and B. Driessen, acting as Agents, and initially by G. Berrisch, lawyer, and N. Chesaites, Barrister, subsequently by G. Berrisch, and finally by N. Tuominen, lawyer)

Interveners in support of the defendant: European Commission (represented initially by: M. França and A. Stobiecka-Kuik, and subsequently by M. França and J.-F. Brakeland, acting as Agents), and Changmao Biochemical Engineering Co. Ltd (Changzhou, China) (represented by: E. Vermulst, S. Van Cutsem, F. Graafsma and J. Cornelis, lawyers)

Re:

Application under Article 263 TFEU seeking annulment of Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Council Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (OJ 2012 L 182, p. 1).

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Council Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China;*

2. *Maintains the anti-dumping duty imposed by Implementing Regulation No 626/2012 as regards Ninghai Organic Chemical Factory's goods until the European Commission and the Council of the European Union have adopted the measures necessary to comply with this judgment;*

3. *Orders the Council to bear its own costs and to pay those incurred by Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA, Distillerie Mazzari SpA, Caviro Distillerie Srl and Comercial Química Sarasa, SL;*

4. *Orders the Commission to bear its own costs;*

5. *Orders Changmao Biochemical Engineering Co. Ltd to bear its own costs.*

(1) OJ C 366, 24.11.2012.

Judgment of the General Court of 4 May 2018 — El Corte Inglés v EUIPO — WE Brand (EW)

(Case T-241/16) (1)

(EU trade mark — Opposition proceedings — Application for the EU figurative mark EW — Earlier EU word mark WE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 221/17)

Language of the case: English

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J. L. Rivas Zurdo, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Botis and J. Ivanauskas, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: WE Brand Sàrl (Luxembourg, Luxembourg) (represented by: R. van Oerle and L. Bekke, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 February 2016 (Case R 426/2015-2), relating to opposition proceedings between WE Brand and El Corte Inglés.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 11 February 2016 (Case R 426/2015-2);*

2. *Orders EUIPO and WE Brand Sàrl to bear their own respective costs and to pay those incurred by El Corte Inglés, SA .*

(1) OJ C 251, 11.7.2016.

Judgment of the General Court of HK v Commission

(Case T-574/16) (1)

(Civil service — Officials — Pensions — Pension for surviving spouse — Conditions for granting — Condition in respect of duration of marriage — Non-marital partnership — First paragraph of Article 17 of Annex VIII to the Staff Regulations)

(2018/C 221/18)

Language of the case: French

Parties

Applicant: HK (represented by: S. Rodrigues and A. Tymen, lawyers)

Defendant: European Commission (represented by: G. Gattinara and F. Simonetti, agents)

Intervener in support of the applicant: Council of the European Union (represented by: initially M. Bauer and M. Veiga, and subsequently by M. Bauer and R. Meyer, acting as Agents)

Re:

ACTION under Article 270 TFEU seeking, first, annulment of the Commission decision refusing to grant the applicant entitlement to the survivor's pension and, in so far as is necessary, of the Commission decision rejecting the applicant's complaint and, secondly, seeking compensation for the material and non-material allegedly suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders HK to pay the costs;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 59, 15.2.2016 (case initially registered before the Civil Service Tribunal of the European Union under number F-151/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 3 May 2018 — Malta v Commission

(Case T-653/16) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents held by the Commission — Documents originating from a Member State — Documents exchanged pursuant to the control system for ensuring compliance with the rules of the common fisheries policy — Article 113 of Regulation (EC) No 1224/2009 — Public access following a request made by a non-governmental organisation — Action for annulment — Admissibility — Obligation to state reasons — Sincere cooperation — Choice of legal basis)

(2018/C 221/19)

Language of the case: English

Parties

Applicant: Republic of Malta (represented by: A. Buhagiar, acting as Agent)

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

Re:

Action under Article 263 TFEU for annulment of the decision of the Secretary-General of the Commission of 13 July 2016 on a confirmatory application by Greenpeace for access to documents relating to an allegedly irregular shipment of live bluefin tuna from Tunisia to a fish farm located in Malta, in so far as it grants Greenpeace access to documents originating from the Maltese authorities.

Operative part of the judgment

The Court:

1. *Annuls Decision of the Secretary-General of the European Commission of 13 July 2016 on a confirmatory application by Greenpeace for access to documents relating to an allegedly irregular shipment of live bluefin tuna from Tunisia to Malta in so far as it grants Greenpeace access to the documents listed in Annex B to that decision under Nos 112 to 230;*

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

3. *Orders each party to bear its own costs, including those relating to the interim measures.*

(1) OJ C 428, 21.11.2016.

Judgment of the General Court of 3 May 2018 — Gall Pharma v EUIPO — Pfizer (Styriagra)

(Case T-662/16) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark Styriagra — Earlier EU word mark VIAGRA — Taking unfair advantage of the distinctive character or repute of the earlier mark — Article 8(5) of Regulation (EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001))

(2018/C 221/20)

Language of the case: English

Parties

Applicant: Gall Pharma GmbH (Judenburg, Austria) (represented initially by: D. Reichelt and L. Figura, and subsequently by T. Schafft, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Pfizer Inc. (New York, New York, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 13 June 2016 (Case R 724/2015-5), relating to opposition proceedings between Pfizer and Gall Pharma.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Gall Pharma GmbH to pay the costs.*

(1) OJ C 441, 28.11.2016.

Judgment of the General Court of 8 May 2018 — Luxottica Group v EUIPO — Chen (BeyBeni)

(Case T-721/16) (1)

(European Union trade mark — Opposition proceedings — Application for the EU figurative mark BeyBeni — Earlier national figurative mark Ray-Ban — Relative ground for refusal — Detriment to reputation — Article 8(5) of Regulation (EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001))

(2018/C 221/21)

Language of the case: Spanish

Parties

Applicant: Luxottica Group SpA (Milan, Italy) (represented by: E. Ochoa Santamaría and I. Aparicio Martínez, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Xian Chen (Wenzhou, China)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 8 June 2016 (Case R 675/2015-5), relating to opposition proceedings between Luxottica Group and Mr Chen.

Operative part of the judgment

The Court:

1. *The decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 June 2016 (Case R 675/2015-5), relating to opposition proceedings between Luxottica Group SpA and Xian Chen, is annulled;*

2. *EUIPO is ordered to pay the costs.*

([1]) OJ C 454, 5.12.2016.

Judgment of the General Court of 3 May 2018 — J-M.-E.V. e hijos v EUIPO — Masi (MASSI)

(Case T-2/17) ([1])

(EU trade mark — Invalidity proceedings — Application for registration of the EU word mark MASSI — Earlier national word mark MASI — Article 56(3) of Regulation (EC) No 207/2009 (now Article 63(3) of Regulation (EU) 2017/1001) — Res judicata — Article 53(1)(a) and Article 8(2)(c) of Regulation No 207/2009 (now Article 60(1)(a) and Article 8(2)(c) of Regulation 2017/1001) — Well-known mark within the meaning of Article 6bis of the Paris Convention)

(2018/C 221/22)

Language of the case: English

Parties

Applicant: J-M.-E.V. e hijos, SRL (Granollers, Spain) (represented by: M. Ceballos Rodríguez and J. Güell Serra, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Alberto Masi (Milan, Italy) (represented by: C. Ceriani, S. Giudici and A. Ferreri, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 4 October 2016 (R 793/2015-1), relating to invalidity proceedings between Mr Masi and J-M.-E.V. e hijos.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 October 2016 (R 793/2015-1);*

2. *Orders EUIPO to pay, in addition to its own costs, those incurred by J-M.-E.V. e hijos, SRL;*

3. *Orders Mr Alberto Masi to bear his own costs.*

(1) OJ C 63, 27.2.2017.

Judgment of the General Court of 4 May 2018 — Skyleader v EUIPO — Sky International (SKYLEADER)

(Case T-34/17) (1)

(EU trade mark — Revocation proceedings — EU figurative mark SKYLEADER — Failure to take into account evidence adduced before the Board of Appeal — Article 76(2) of Regulation (EC) No 207/2009 [now Article 95(2) of Regulation (EU) No 2017/1001] — Article 51(1)(a) of Regulation No 207/2009 [now Article 58(1)(a) of Regulation 2017/1001] — Rule 40(5) of Regulation (EC) No 2868/95 [now Article 19(1) of Delegated Regulation (EU 2017/1430])

(2018/C 221/23)

Language of the case: English

Parties

Applicant: Skyleader a.s. (Ústí nad Labem, Czech Republic) (represented by: K. Malmstedt, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Sky International AG (Zug, Switzerland) (represented by: J. Barry, Solicitor)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 21 November 2016 (Case R 805/2016-4), relating to revocation proceedings between Sky International and Skyleader.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Skyleader a.s. to pay the costs, including those necessarily incurred by Sky International AG for the purposes of the proceedings before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 78, 13.3.2017.

Judgment of the General Court of 4 May 2018 — Bernard Krone Holding v EUIPO (Mega Liner)

(Case T-187/17) ([1])

(EU trade mark — Application for EU word mark Mega Liner — Absolute grounds for refusal — Descriptive character — No distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — Obligation to state reasons — Article 75, first sentence, of Regulation No 207/2009 (now Article 94(1) of Regulation 2017/1001))

(2018/C 221/24)

Language of the case: German

Parties

Applicant: Bernard Krone Holding SE & Co. KG (Spelle, Germany) (represented by: T. Weeg and K. Lüken, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer and W. Schramek, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 January 2017 (Case R 442/2016-1) concerning an application for registration of the word mark Mega Liner as an EU trade mark.

Operative part of the order

The Court:

1. *Annuls paragraph 2 of the operative part of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 9 January 2017 (Case R 442/2016–1);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Bernard Krone Holding SE & Co. KG in the proceedings before the General Court.*

([1]) OJ C 161, 22.5.2017.

Judgment of the General Court of 4 May 2018 — Bernard Krone Holding v EUIPO (Coil Liner)

(Case T-188/17) ([1])

(EU trade mark — Application for EU word mark Coil Liner — Absolute grounds for refusal — Descriptive character — No distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — Obligation to state reasons — Article 75, first sentence, of Regulation No 207/2009 (now Article 94(1) of Regulation 2017/1001))

(2018/C 221/25)

Language of the case: German

Parties

Applicant: Bernard Krone Holding SE & Co. KG (Spelle, Germany) (represented by: T. Weeg and K. Lüken, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer and W. Schramek, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 January 2017 (Case R 443/2016 –1) concerning an application for registration of the word mark Coil Liner as an EU trade mark.

Operative part of the judgment

The Court:

1. *Annuls paragraph 2 of the operative part of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 9 January 2017 (Case R 443/2016–1);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Bernard Krone Holding SE & Co. KG in the proceedings before the General Court.*

([1]) OJ C 161, 22.5.2017.

Judgment of the General Court of 3 May 2018 — CeramTec v EUIPO — C5 Medical Werks (Shape of a part of a prosthetic hip and others)

(Joined Cases T-193/17, T-194/17 and T-195/17) ([1])

(EU trade mark — Invalidity proceedings — Three-dimensional EU trade mark — Shape of a part of a prosthetic hip — Figurative EU trade mark representing a part of a prosthetic hip — EU trade mark consisting in a shade of pink — Withdrawal of applications for declarations of invalidity and closure of the invalidity proceedings — Action of the proprietor of the mark seeking the annulment of decisions closing proceedings — Inadmissibility of action before the Board of Appeal — Article 59 of Regulation (EC) No 207/2009 (now Article 67 of Regulation (EU) 2017/1001))

(2018/C 221/26)

Language of the case: English

Parties

Applicant: CeramTec GmbH (Plochingen, Germany) (represented by: initially A. Renck and E. Nicolás Gómez, and subsequently A. Renck, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: C5 Medical Werks (Grand Junction, Colorado, United States) (represented by: S. Naumann, lawyer)

Re:

Actions brought against the decisions of the Fourth Board of Appeal of EUIPO of 15 February 2017 (Cases R 929/2016-4, R 928/2016-4 and R 930/2016-4), relating to invalidity proceedings between C5 Medical Werks and CeramTec.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders CeramTec GmbH to bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO) and C5 Medical Werks.*

(1) OJ C 161, 22.5.2017.

Judgment of the General Court of 3 May 2018 — SB v EUIPO

(Case T-200/17) (1)

(Civil service — Temporary staff — Fixed-term contract — Decision not to renew — Plea of illegality — Duty to state reasons — Duty to have regard for the welfare of staff — Discrimination on grounds of age)

(2018/C 221/27)

Language of the case: English

Parties

Applicant: SB (represented by: S. Pappas, lawyer)

Defendant: European Union Intellectual Property Office (represented by: K. Tóth and A. Lukošiūtė, acting as Agents)

Re:

Application under Article 270 TFEU for annulment of the decision of the Executive Director of EUIPO dated 2 June 2016 refusing a second renewal of the applicant's contract and that director's decision dated 19 December 2016 rejecting the complaint brought by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders SB to pay the costs.*

(1) OJ C 178, 6.6.2017.

Judgment of the General Court of 3 May 2018 — Raise Conseil v EUIPO — Raizers (RAISE)

(Case T-463/17) (1)

(European Union trade mark — Invalidity proceedings — EU word mark RAISE — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Distinctive character acquired through use — Article 7(3) of Regulation No 207/2009 (now Article 7(3) of Regulation 2017/1001) — Article 52(1) and (2) of Regulation No 207/2009 (now Article 59(1) and(2) of Regulation 2017/1001))

(2018/C 221/28)

Language of the case: French

Parties

Applicant: Raise Conseil (Paris, France) (represented by: F. Fajgenbaum and T. Lachacinski, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court: Raizers (Paris) (represented by: E. Fortunet, lawyer)

Re

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 24 May 2017 (Case R 1606/2016-5), relating to invalidity proceedings between Raizers and Raise Conseil.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Raise Conseil to pay the costs.*

(1) OJ C 330, 2.10.2017.

Order of the General Court of 19 April 2018 — Allergopharma v Commission

(Case T-354/15) (1)

(Action for annulment — State aid — Aid scheme providing for the grant of an exemption from the mandatory rebate on certain pharmaceutical products — Decision declaring the aid scheme compatible with the internal market — No individual concern — Act entailing implementing measures — Inadmissibility)

(2018/C 221/29)

Language of the case: German

Parties

Applicant: Allergopharma GmbH & Co. KG (Reinbek, Germany) (represented by: T. Müller-Ibold, and F.-C. Laprévote, lawyers)

Defendant: European Commission (represented by: K. Herrmann and T. Maxian Rusche, acting as Agents)

Intervener in support of the defendant: Bencard Allergie GmbH (Munich, Germany) (represented by: J. Fiegler, lawyer)

Re:

Application based on Article 263 TFEU and seeking annulment of Commission Decision (EU) 2015/1300 of 27 March 2015 on the aid scheme — aid to German pharmaceutical companies in financial difficulties through the exemptions from mandatory rebates SA.34881 (2013/C) (ex 2013/NN) (ex 2012/CP) (OJ 2015 L 199, p. 27).

Operative part of the order

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

2. *Allergopharma GmbH & Co. KG shall bear its own costs and pay those incurred by the European Commission.*

3. *Bencard Allergie GmbH shall bear its own costs.*

(1) OJ C 328, 5.10.2015.

Order of the General Court of 23 April 2018 — Winkler v Commission

(Case T-916/16) (1)

(Civil service — Officials — Transfer of national pension rights — Proposal concerning additional pensionable years — Measure not open to challenge — Act not having an adverse effect — Manifest inadmissibility)

(2018/C 221/30)

Language of the case: German

Parties

Applicant: Bernd Winkler (Grange, Ireland) (represented by: A. Kässens, lawyer)

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

Re:

ACTION based on Article 270 TFEU and seeking, first, annulment of the Commission note of 20 April 2016 on a proposal concerning the additional pensionable years to be taken into consideration in the European Union pension scheme, following a request for transfer of pension rights acquired by the applicant before entering the service of the Union and, secondly, to obtain compensation for the damage allegedly suffered by the applicant as a result of the unlawful acts allegedly committed by the Commission when processing that request for transfer.

Operative part of the order

1. *The action is dismissed.*

2. *Bernd Winkler is ordered to pay the costs.*

(1) OJ C 46, 13.2.2017.

Order of the General Court of 3 May 2018 — Siberian Vodka v EUIPO — Schwarze und Schlichte (DIAMOND ICE)

(Case T-234/17) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark DIAMOND ICE — Earlier EU word mark DIAMOND CUT — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2018/C 221/31)

Language of the case: German

Parties

Applicant: Siberian Vodka AG (Herisau, Switzerland) (represented by: O. Bischof, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Schwarze und Schlichte Markenvertrieb GmbH & Co. KG (Oelde, Germany) (represented by: A. Zafar, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 February 2017 (Case R 1171/2016-4), relating to opposition proceedings between Schwarze und Schlichte Markenvertrieb and Siberian Vodka.

Operative part of the order

1. *The action is dismissed.*

2. *Siberian Vodka AG shall pay the costs.*

([1]) OJ C 195, 19.6.2017.

Order of the General Court of 18 April 2018 — Iordăchescu and Others v Parliament and Others

(Case T-298/17) ([1])

(Action for annulment — Directive 2014/40/EU — Approximation of laws — Manufacture, presentation and sale of tobacco products and related products — Period allowed for commencing proceedings — Delay — Claim for damages — Application initiating proceedings — Disregard of the procedural requirements — Inadmissibility — Lack of jurisdiction)

(2018/C 221/32)

Language of the case: Romanian

Parties

Applicants: Adrian Iordăchescu (Bucharest, Romania), Florina Iordăchescu (Bucharest), Mihaela Iordăchescu (Bucharest) and Cristinel Iordăchescu (Bucharest) (represented by: A. Cuculis, lawyer)

Defendants: European Parliament (represented by: L. Visaggio and C. Ionescu Dima, acting as Agents), Council of the European Union (represented by: E. Karlsson and O. Segnana, acting as Agents) and European Commission (represented by: H. Stancu and J. Tomkin, acting as Agents)

Re:

First, application pursuant to Article 263 TFEU seeking the partial annulment of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1) and, second, application pursuant to Article 268 TFEU for compensation for the harm which the applicants claim to have suffered.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Adrian Iordăchescu, Ms Florina Iordăchescu, Ms Mihaela Iordăchescu and Mr Cristinel Iordăchescu shall pay the costs.*

([1]) OJ C 256, 7.8.2017.

Order of the President of the General Court of 3 May 2018 — VQ v ECB

(Case T-203/18 R)

(Application for interim measures — Economic and monetary policy — Prudential supervision of credit institutions — Tasks conferred on the ECB by Regulation (EU) No 1024/2013 — Powers of the ECB — Specific supervision powers — Administrative penalties — Publication — Application for suspension of operation — No urgency)

(2018/C 221/33)

Language of the case: English

Parties

Applicant: VQ (represented by: G. Cahill, lawyer)

Defendant: European Central Bank (ECB) (represented by: E. Koupepidou, E. Yoo and M. Puidokas, acting as Agents)

Re:

Application based on Articles 278 TFEU and 279 TFEU seeking a suspension of operation of Decision ECB-SSM-2018-ESSAB-4, SNC 2016-0026 of the Governing Council of the ECB of 14 March 2018 relating to a pecuniary penalty and the publication thereof on the ECB's website.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 4 May 2018 — Czarnecki v Parliament

(Case T-230/18 R)

(Interim measures — Law governing the institutions — Vice-President of the European Parliament — Decision of the Parliament to end a Vice-President's term of office — Application for interim measures — Injunction — Inadmissibility)

(2018/C 221/34)

Language of the case: French

Parties

Applicant: Ryszard Czarnecki (Warsaw, Poland) (represented by: M. Casado García-Hirschfeld, lawyer)

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

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking, first, a suspension of operation of the decision of the European Parliament of 7 February 2018 approving the early cessation of the applicant's role as Vice-President of the Parliament and, secondly, an order requiring the Parliament to allow the applicant to remain in office as Vice-President of the Parliament.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 14 March 2018 — Abaco Energy and Others v Commission

(Case T-186/18)

(2018/C 221/35)

Language of the case: English

Parties

Applicants: Abaco Energy, SA (Madrid, Spain), and 1 660 others (represented by: P. Holtrop, P. Kuypers and M. de Wit, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul European Commission decision C(2017) 7384 final of 10 November 2017 in case SA.40348 (2015/NN) concerning the support for electricity generation from renewable energy sources, cogeneration and waste; ([1])

— order the Commission to issue separate assessments of the previous scheme and the current scheme, in accordance with EU law;

— order the Commission to pay the costs.

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 breach of the Commission's duty of care.

   — The Commission is under a duty to competently discharge its duties under the Treaties. The Commission had the opportunity, the information and the resources necessary to assess the previous scheme as part of its assessment in issuing the decision and as required under law. The Commission, in breach of the standards expected of it under the Treaties, failed to discharge this duty by failing to conduct an independent assessment of the previous scheme.

2. Second plea in law, alleging a manifest error of fact.

   — The Commission has committed a manifest error of fact in finding that the previous scheme was absorbed by the current scheme. It is manifestly apparent that no absorption took place and that instead at all material times there were two entirely separate schemes, each of which required its own assessment to determine compliance with State aid rules.

3. Third plea in law, alleging manifest error of law.

   — The Commission failed to correctly apply the appropriate binding Commission Guidelines, thereby acting in breach of EU law. Additionally, the Commission held that because in its view there was absorption of the previous scheme by the current scheme, there was no need to assess the previous scheme. The applicants argue that the Commission, by holding this, acted in breach of EU law.

4. Fourth plea in law, alleging insufficient reasoning.

— The Commission has not provided sufficient reasons such as to enable the applicants to understand the basis on which the Commission issued the decision. It is not clear from the decision (i) the grounds on which the Commission has held that the previous scheme was absorbed by the current scheme, and (ii) the basis on which the absorption of one scheme by another precludes the need for an assessment of the first scheme for compliance with State aid rules. Both were key findings that led to the Commission's adoption of the decision. Accordingly, the applicants have been deprived of their fundamental right to receive a decision that allows them to understand how and why the Commission has come to the conclusions expressed in the decision.

5. Fifth plea in law, alleging abuse of power and breach of the EU Charter of Fundamental Rights.

— The Commission is under an obligation pursuant to article 41(1) of the Charter of Fundamental Rights of the European Union to handle the applicants' interests pursuant to the decision in an impartial and fair manner. The Commission breached this obligation by improperly placing the interests of the Commission and of Spain above those of the applicants.

6. Sixth plea in law, alleging breach of the principle of proportionality

— The Commission disregarded the interests of the applicants by not providing an independent assessment of the previous scheme, thereby breaching the principle of proportionality.

(1) OJ 2017 C 442, p. 1

Action brought on 11 April 2018 — PV v Commission

(Case T-224/18)

(2018/C 221/36)

Language of the case: French

Parties

Applicant: PV (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Commission

Form of order sought

— Declare this application admissible and well-founded;

in consequence, order:

— the joinder of the present application to the pending case T-786/16 in accordance with the principle of connexity and with Article 68 of the consolidated Rules of Procedure of the General Court of the EU of 4 March 2015;

— a finding that the psychological harassment is established and a confirmation of the use of 'false certifications', which mean that such irregularities cannot be tolerated in the EU legal order;

— the annulment of the CMS 17/025 procedure in all those aspects and of the decision which forms the basis of claim R/8/18;

— the annulment of the decision setting the applicant's salary at 'zero' with effect from 1 October 2017;

— the annulment of the decision requiring the applicant to participate in appraisal exercise FP 2016 (calendar year 2016) and the rejection of claim R/502/17 of 16 March 2018 as a result of psychological harassment and incapacity to work;

— the annulment of the decision requiring the applicant to participate in appraisal exercise FP 2017 (calendar year 2017) as a result of psychological harassment and incapacity to work and annulment of the decision against which claim R/121/18 was brought;

— the annulment of the decision and the rejection of claim R/413/17 of 15 January 2018 by which the applicant was reassigned to the DG SCIC, in breach of the principle of the most basic care;

— the annulment of the decision of the PMO (Ms [X]) of 12 September 2017, which decided on the set off of debit note No ABAC 324170991 of 20 July 2017 for the amount of EUR 42 704,74 against the unpaid salary of the applicant for the period from 1 August 2016 to 30 September 2017, and the rejection of claim R/482/17 of 9 March 2018;

and grant the following compensation on the basis of Article 340 TFEU:

— order compensation in respect of the non-material harm of EUR 98 000 flowing from those contested decisions;

— in respect of the material harm, grant:

  — either an amount of EUR 23 190,44 for salary arrears for the period between 1 October 2017 to 30 April 2018 if the General Court considers that the applicant is entitled to his full salary;

  — or an amount of EUR 7 612,87 for salary arrears for the period between 1 October 2017 to 30 April 2018 if the General Court considers that the applicant is entitled only to the difference in salary between his salary at the Commission and that received in the private sector;

— to grant, finally, overall damages of either EUR 121 990,44 or EUR 105 612,87 together with late-payment interest until the date of payment in full;

and in any event:

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Articles 1, 3, 4 and 31(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Articles 1e, point 2, and 12a of the Staff Regulations of Officials of the European Union ('the Staff Regulations') prohibiting psychological harassment.

2. Second plea in law, alleging infringement of Articles 21a, 22b and 23 of the Staff Regulations, the provisions of which prohibit the commission of unlawful acts, in particular in that the applicant was required to participate in the 2016 appraisal exercise when he had not worked due to incapacity for work and dismissal from 1 August 2016.

3. Third plea in law, alleging infringement of Article 41 of the Charter and Article 11a of the Staff Regulations concerning direct conflicts of interest.

4. Fourth plea in law, alleging infringement of the principle of the duty of care and of assistance caused by the decision to reassign the applicant to DG SCIC.

5. Fifth plea in law, based on the legal principle of failure to fulfil obligations and the principle of legality.

6. Sixth plea in law, alleging infringement of Article 9, point 3, of Annex IX to the Staff Regulations and of the legal principle of 'ne bis in idem', vitiating disciplinary procedure CMS 17/025 brought against the applicant.

7. Seventh plea in law, alleging a breach of Article 41(1) of the Charter and, more particularly, of a reasonable time for the abovementioned disciplinary procedure.

Action brought on 1 April 2018 — Manéa v CdT

(Case T-225/18)

(2018/C 221/37)

Language of the case: French

Parties

Applicant: Camelia Manéa (Echternach, Luxembourg) (represented by: M.-A. Lucas, lawyer)

Defendant: Translation Centre for the Bodies of the European Union (CdT)

Form of order sought

— Annul the decision of 29 May 2017 of the Director of the Translation Centre for the Bodies of the European Union ('CdT') not to renew, with effect from 12 November 2015, the applicant's fixed-term contract of employment as a temporary member of staff, which would actually have ended on 31 January 2016;

— Order the re-employment of the applicant as a temporary member of staff of the CdT with effect from 1 January 2019 or, should that prove impossible, order the defendant to pay her compensation for the material and non-material harm which she has suffered as a result of losing an employment not limited in time, a sum corresponding to the remuneration which she would have earned had she remained in the service of the CdT for four years, net, if necessary, of remuneration or compensation which she may otherwise receive, and to pay the corresponding contributions to the Community pension scheme;

— Order the CdT to pay her compensation for the non-material and material harm which she suffered as a result of the decision of 12 November 2015 in the sum of EUR 11 136 in respect of non-material harm, the sum of EUR 12 000 in respect of her loss of remuneration and the sum of EUR 9 674 in respect of her representation costs;

— 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 infringement of the obligation to replace the applicant in the legal position in existence before the withdrawn act, factual errors, manifest errors of assessment or an insufficient statement of reasons, and disregard for the interest of the service, in that the new decision not to re-employ the applicant on 31 January 2016 was based on factors which, contrary to the view taken by the defendant, would not have existed when the question of her re-employment arose in November 2015.

2. Second plea in law, alleging, firstly, a failure to have regard to the staff policy defined by the Management Board, in that the view was taken in the decision not to re-employ her that it was in the interests of the service to implement a policy of replacing the temporary members of staff by members of the contractual staff. Secondly, this plea alleges an error of assessment in that the view was taken that the replacement of the applicant by a member of the contractual staff was justified by the reorganisation of the Translation Support Department and, thirdly, a factual error in that the view was taken that that was the case.

3. Third plea in law, alleging an error of law, a manifest error of assessment and/or an insufficient statement of reasons, in that it was decided, retroactively and on the sole ground of the interest of the service, not to re-employ the applicant rather than to compensate her, while, in her view, reinstatement of the withdrawn decision was impossible or particularly difficult. Moreover, that decision was not necessary to achieve the objectives of the measure, did not constitute a full re-examination of the facts of the case, ran counter to legitimate expectations and allowed an obligation to persist to remedy the harm resulting from the other irregularities by which the original decision was vitiated.

Action brought on 9 April 2018 — Martini-Sportswear v EUIPO — Olympique de Marseille (M)

(Case T-237/18)

(2018/C 221/38)

Language in which the application was lodged: English

Parties

Applicant: Martini-Sportswear GmbH (Annaberg, Austria) (represented by: W. Lang, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Olympique de Marseille SASP (Marseille, France).

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark M — International registration designating the European Union No 1 238 066

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Forth Board of Appeal of EUIPO of 29 January 2018 in Case R 1755/2017-4.

Form of order sought

The applicant claims that the Court should:

— declare the Decision of the Opposition Division of 25 May 2017 invalid;

— revise the contested decision, so that the Opposition is to be dismissed;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 23 April 2018 — IFSUA v Council

(Case T-251/18)

(2018/C 221/39)

Language of the case: Spanish

Parties

Applicant: International Forum for Sustainable Underwater Activities (IFSUA) (Barcelona, Spain) (represented by: T. Gui Mori, lawyer)

Defendant: Council of the European Union

Form of order sought

On the basis of Article 263(4) *in fine* TFEU, the applicant, IFSUA, which is directly concerned, claims that the Court should annul, on account of those provisions being clearly severable, Articles 2(2) and 9(4) and (5) of Council Regulation (EU) of 23 January 2018 (OJ 2018 L 27, p. 1), which must be regarded as a 'regulatory act' implementing restrictive measures and a total allowable catch (TAC) in relation to recreational fishing.

Pleas in law and main arguments

The present application seeks the partial annulment of Council Regulation (EU) 2018/120 ([1]).

In that regard, the applicant seeks annulment of the abovementioned provisions on the basis that, given that they apply to the various forms of recreational fishing, which are activities falling outside the scope of the common fisheries policy, those provisions entail a total ban on fishing European sea bass (*Dicentrarchus labrax*) that is directed only at underwater fishermen and is accordingly threatening the continuation of that activity, the sport itself and its related industry.

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

1. First plea in law, alleging infringement of Articles 2(5), 3(1)(d), 4(2)(d) and 6(d) and (e) TFEU in so far as the contested provisions constitute prohibitive measures directed at the underwater recreational and sport fishing of European sea bass, even though the Council has no competence, not even shared competence, in that regard.

2. Second plea in law, alleging that Articles 2(2) and 9(4) and (5) of Regulation (EU) 2018/120 infringe the principles of legal certainty and legitimate expectations since they clearly go beyond the scope of competence of the Council and the historical development of that competence.

3. Third plea in law, alleging that Articles 2(2) and 9(4) and (5) of Regulation (EU) 2018/120 infringe the principles of equal treatment and non-discrimination enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union since that single implementing act regulating fishing opportunities in relation to European sea bass, albeit with different criteria, lays down provisions covering both commercial and recreational fishing. However, the applicant claims that those two categories are not strictly comparable and therefore should not be targeted by the same restrictive measures.

4. Fourth plea in law, alleging that Articles 2(2) and 9(4) and (5) of Regulation (EU) 2018/120 infringe the principle of proportionality in relation to the implementation of Article 43(3) TFEU. In that regard, the applicant submits that the fixing, in the contested regulation, of fishing opportunities in relation to European sea bass, for both commercial and recreational fishing, is intended to significantly reduce the mortality of the northern population in order to bring about a small increase in biomass. However, the applicant maintains that that objective could be attained by means of less restrictive measures than an outright ban on the underwater fishing of European sea bass. As part of this plea in law, the applicant also alleges infringement of Articles 12, 16, 37 and 52 of the Charter of Fundamental Rights of the European Union.

([1]) Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2017/127 (OJ 2018 L 27, p. 1).

Action brought on 24 Avril 2018 — Iberpotash v Commission

(Case T-257/18)

(2018/C 221/40)

Language of the case: English

Parties

Applicant: Iberpotash, SA (Suria, Spain) (represented by: N. Niejahr and B. Hoorelbeke. lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2018/118 of 31 August 2017 on State aid SA.35818 (2016/C) (ex 2015/NN) (ex 2012/CP) implemented by Spain for Iberpotash (notified under document C(2017) 5877); ([1])

— in the alternative:

  — annul the contested decision to the extent that it finds Measure 1 to contain State aid and orders its recovery with interest from the applicant; and/or

  — annul the contested decision insofar as it determines the amount of unlawful but compatible aid received by the applicant contained in Measure 4 to amount to EUR 3 902 461,30, and the illegal aid to be recovered with interest from the applicant to amount to EUR 3 958 109,70;

— order the Commission to bear its own costs and the applicant's costs in connection with the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission violated Article 107(1) TFEU by finding that Measure 1 involves a transfer of State resources.

2. Second plea in law, alleging that the Commission violated Article 107(1) TFEU by finding that Measure 1 confers a selective economic advantage on the applicant. In the alternative, it is alleged that the Commission failed to correctly determine the amount of unlawful and incompatible State aid, if any, arising from Measure 1, in violation of Article 16 (1) of the Procedural Regulation. ([2])

3. Third plea in law, alleging, in the alternative, that the Commission violated Article 16(1) of the Procedural Regulation regarding Measure 1 by ordering recovery because such recovery violates the applicant's legitimate expectations and/or the principle of legal certainty.

4. Fourth plea in law, alleging that the Commission violated Article 107(1) TFEU by finding that Measure 4 confers a selective economic advantage on the applicant.

5. Fifth plea in law alleging, in the alternative, that the Commission violated Article 16(1) of the Procedural Regulation by failing to correctly determine the amount of unlawful and incompatible aid, if any, arising from Measure 4.

(1) OJ 2018 L 28, p. 25.
(2) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Action brought on 23 April 2018 — Zakłady Chemiczne 'Siarkopol' Tarnobrzeg v EUIPO — EuroChem Agro (Unifoska)

(Case T-259/18)

(2018/C 221/41)

Language in which the application was lodged: English

Parties

Applicant: Zakłady Chemiczne 'Siarkopol' Tarnobrzeg sp. z o.o. (Tarnobrzeg, Poland) (represented by: M. Kondrat, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: EuroChem Agro GmbH (Mannheim, Germany).

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark Unifoska — Application for registration No 015017841

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 February 2018 in Case R 1503/2017-5.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and refer the case back to the EUIPO for reconsideration;

or

— alter the contested decision by stating that there are no relative grounds for refusal of registration of the EUTMA 01501784 'Unifoska' for all goods in class 1 and the trademark shall be registered;

— award the costs in the Applicant's favor.

Pleas in law

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

— Infringement of principle of the protection of legitimate expectations and principle of legal certainty.

Action brought on 27 April 2018 — Gruppo Armonie v EUIPO (mo.da)

(Case T-264/18)

(2018/C 221/42)

Language of the case: Italian

Parties

Applicant: Gruppo Armonie SpA (Casalgrande, Italy) (represented by: G. Medri, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark containing the word element mo.da — Application for registration No 16 430 035

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 20 February 2018 in Case R 2065/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Plea in law

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

Action brought on 27 April 2018 — EBM Technologies v EUIPO (MobiPACS)

(Case T-272/18)

(2018/C 221/43)

Language of the case: German

Parties

Applicant: EBM Technologies Inc. (Taipei City, Taiwan) (represented by: J. Liesegang, M. Jost and N. Lang, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'MobiPACS' — Application for registration No 16 400 061

Contested decision: Decision of the Second Board of Appeal of EUIPO of 19 February 2018 in Case R 2145/2017-2

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 42(1), read in conjunction with Article 7(1)(b), of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 May 2018 — Nemius Group v EUIPO (DENTALDISK)

(Case T-278/18)

(2018/C 221/44)

Language of the case: German

Parties

Applicant: Nemius Group GmbH (Obertshausen, Germany) (represented by: C. Bildhäuser, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'DENTALDISK' — Application for registration No 15 804 024

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 30 January 2018 in Case R 741/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision to the extent that EUIPO refused the application for registration in Class 10 and Class 35, in which the application for registration is, in any event, to be published;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and (c), in conjunction with Article 7(2), of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN