Official Journal of the European Union

C 4

English edition

Information and Notices

Volume 62

7 January 2019

Contents

EN

For reasons of protection of personal data and/or confidentiality, some information contained in this issue cannot be disclosed anymore and therefore a new authentic version has been published.

General Court

Corrigenda

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*

(2019/C 4/01)

Last publication

OJ C 455, 17.12.2018

Past publications

OJ C 445, 10.12.2018

OJ C 436, 3.12.2018

OJ C 427, 26.11.2018

OJ C 408, 12.11.2018

OJ C 399, 5.11.2018

OJ C 392, 29.10.2018

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 24 October 2018 (request for a preliminary ruling from the Vergabekammer Südbayern — Germany) — Vossloh Laeis GmbH v Stadtwerke München GmbH

(Case C-124/17) ([1])

(Reference for a preliminary ruling — Directive 2014/24/EU — Article 57 — Directive 2014/25/EU — Article 80 — Public procurement — Procedure — Exclusion grounds — Maximum duration of the exclusion period — Obligation for the economic operator to collaborate with the contracting authority in order to demonstrate its reliability)

(2019/C 4/02)

Language of the case: German

Referring court

Vergabekammer Südbayern

Parties to the main proceedings

Applicant: Vossloh Laeis GmbH

Defendant: Stadtwerke München GmbH

Operative part of the judgment

1. *Article 80 of Directive 2014/25/EU 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, read in conjunction with Article 57(6) of 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, must be interpreted as not precluding a provision of national law which requires an economic operator wishing to demonstrate its reliability despite the existence of a relevant ground for exclusion to clarify the facts and circumstances relating to the criminal offence or the misconduct committed in a comprehensive manner by actively cooperating not only with the investigating authority, but also with the contracting authority, in the context of the latter's specific role, in order to provide it with proof of the re-establishment of its reliability, to the extent that that cooperation is limited to the measures strictly necessary for that examination.*

2. *Article 57(7) of Directive 2014/24 must be interpreted as meaning that, where an economic operator has been engaged in conduct falling within the ground for exclusion referred to in Article 57(4)(d) of that directive, which has been penalised by a competent authority, the maximum period of exclusion is calculated from the date of the decision of that authority.*

([1]) OJ C 178, 6.6.2017.

Judgment of the Court (Grand Chamber) of 24 October 2018 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — XC, YB, ZA

(Case C-234/17) ([1])

(Reference for a preliminary ruling — Principles of EU law — Sincere cooperation — Procedural autonomy — Principles of equivalence and effectiveness — National legislation laying down a remedy allowing criminal proceedings to be reheard in the event of infringement of the European Convention for the Protection of Human Rights and Fundamental Freedoms — No obligation to extend that procedure to cases of alleged infringement of the fundamental rights enshrined in EU law)

(2019/C 4/03)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: XC, YB, ZA

Intervener: Generalprokuratur

Operative part of the judgment

EU law, in particular the principles of equivalence and effectiveness, must be interpreted as meaning that a national court is not required to extend to infringements of EU law, in particular to infringements of the fundamental right guaranteed by Article 50 of the Charter of Fundamental Rights of the European Union and Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990 and which entered into force on 26 March 1995, a remedy under national law permitting, only in the event of infringement of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, or one of the protocols thereto, the rehearing of criminal proceedings closed by a national decision having the force of res judicata.

([1]) OJ C 239, 24.7.2017.

Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Symvoulio tis Epikrateias — Greece) — Anodiki Services EPE v GNA, O Evangelismos — Ofthalmiatreio Athinon — Polykliniki, Geniko Ogkologiko Nosokomeio Kifisias — (GONK) 'Oi Agioi Anargyroi'

(Case C-260/17) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 10(g) — Exclusions from its scope — Employment contracts — Definition — Decisions of public hospitals to conclude fixed-term labour contracts for the purposes of catering, the provision of meals and cleaning — Directive 89/665/EEC — Article 1 — Right to an effective remedy)

(2019/C 4/04)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicant: Anodiki Services EPE

Defendants: GNA, O Evangelismos — Ofthalmiatreio Athinon — Polykliniki, Geniko Ogkologiko Nosokomeio Kifisias — (GONK) 'Oi Agioi Anargyroi'

Interveners: Arianthi Ilia EPE, Fasma AE, Mega Sprint Guard AE, ICM — International Cleaning Methods AE, Myservices Security and Facility AE, Kleenway OE, GEN — KA AE, Geniko Nosokomeio Athinon 'Georgios Gennimatas', Ipirotiki Facility Services AE

Operative part of the judgment

1. *Article 10(g) of 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, as amended by Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015, must be interpreted to the effect that the notion of 'employment contracts', referred to in that provision, covers labour contracts such as those at issue in the main proceedings, that is to say, fixed-term, individual labour contracts which are concluded with persons selected on the basis of objective criteria, such as the duration of unemployment, previous experience and the number of minor dependent children they have.*

2. *The provisions of Directive 2014/24, as amended by Delegated Regulation 2015/2170, Articles 49 and 56 TFEU, the principles of equal treatment, transparency and proportionality, and Articles 16 and 52 of the Charter of Fundamental Rights of the European Union do not apply to a decision of a public authority to make use of employment contracts such as those at issue in the main proceedings in order to perform certain tasks falling within its public interest obligations.*

3. *Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, must be interpreted to the effect that a decision of a contracting authority to conclude employment contracts with natural persons for the provision of certain services without using a public procurement procedure in accordance with Directive 2014/24, as amended by Delegated Regulation 2015/2170, on the ground that, in its opinion, those contracts do not fall within the scope of that directive, may be challenged under that provision by an economic operator with an interest in participating in a public procurement procedure with the same purpose as those contracts and which considers that those contracts do fall within the scope of that directive.*

([1]) OJ C 239, 24.7.2017.

Judgment of the Court (Tenth Chamber) of 25 October 2018 (request for a preliminary ruling from the Corte d'appello di Roma — Italy) — Martina Sciotto v Fondazione Teatro dell'Opera di Roma

(Case C-331/17) ([1])

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 5 — Measures to prevent the misuse of successive fixed-term employment contracts or relationships — National legislation excluding the application of those measures in the sector of activity of operatic and orchestral foundations)

(2019/C 4/05)

Language of the case: Italian

Referring court

Corte d'appello di Roma

Parties to the main proceedings

Applicant: Martina Sciotto

Defendant: Fondazione Teatro dell'Opera di Roma

Operative part of the judgment

Clause 5 of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, pursuant to which the common law rules governing employment relationships and intended to penalise the misuse of successive fixed-term contracts by the automatic transformation of the fixed-term contract into a contract of indefinite duration if the employment relationship goes beyond a specific date are not applicable to the sector of activity of operatic and orchestral foundations, where there is no other effective measure in the domestic legal system penalising abuses identified in that sector.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — proceedings brought by 'Roche Lietuva' UAB

(Case C-413/17) ([1])

(Reference for a preliminary ruling — Public supply contract for medical diagnostic equipment and materials — Directive 2014/24/EU — Article 42 — Award — Margin of appreciation of the contracting authority — Detailed formulation of the technical specifications)

(2019/C 4/06)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

'Roche Lietuva' UAB

In the presence of: Kauno Dainavos poliklinika VšĮ

Operative part of the judgment

Articles 18 and 42 of 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 must be interpreted as not imposing on the contracting authority, in establishing technical specifications in a procurement procedure concerning the acquisition of medical supplies, by principle, prioritising either the importance of the individual characteristics of the medical supplies or the importance of the result of their functioning, but requiring that the technical specifications, as a whole, comply with the principles of equality of treatment and proportionality. It is for the national court to assess whether, in the dispute before it, the technical specifications at issue comply with those requirements.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (Sixth Chamber) of 25 October 2018 — Enercon GmbH v European Union Intellectual Property Office (EUIPO), Gamesa Eólica, SL

(Case C-433/17 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 7(1)(b) — Invalidity proceedings — Article 53 — EU colour mark consisting of blended shades of green — Partial declaration of invalidity — Remittal of the case to the Cancellation Division)

(2019/C 4/07)

Language of the case: English

Parties

Appellant: Enercon GmbH (represented by: R. Böhm, Rechtsanwalt, and M. Silverleaf QC)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Botis, V. Ruzek and A. Folliard-Monguiral, acting as Agents), Gamesa Eólica, SL (represented by: A. Sanz Cerralbo, abogada)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Enercon GmbH to pay the costs.*

([1]) OJ C 412, 4.12.2017.

Judgment of the Court (Sixth Chamber) of 25 October 2018 (request for a preliminary ruling from the Administrativen sad Veliko Tarnovo — Bulgaria) — 'Walltopia' AD v Direktor na Teritorialna direktsia na Natsionalnata agentsia za prihodite — Veliko Tarnovo

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

(Reference for a preliminary ruling — Social security — Regulation (EC) No 883/2004 — Article 12 (1) — Regulation (EC) No 987/2009 — Article 14(1) — Posted workers — Legislation applicable — A1 certificate — Whether the employee is subject to the legislation of the Member State in which his employer is established — Conditions)

(2019/C 4/08)

Language of the case: Bulgarian

Referring court

Administrativen sad Veliko Tarnovo

Parties to the main proceedings

Applicant: 'Walltopia' AD

Defendant: Direktor na Teritorialna direktsia na Natsionalnata agentsia za prihodite — Veliko Tarnovo

Operative part of the judgment

Article 14(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, read together with Article 12 (1) 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, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, must be interpreted as meaning that an employee recruited with a view to being posted to another Member State must be regarded as having been 'just before the start of his employment … already subject to the legislation of the Member State in which his employer is established', within the meaning of Article 14(1) of Regulation No 987/2009, even if that employee was not an insured person under the legislation of that Member State immediately before the start of his employment, if, at that time, that employee had his residence in that Member State, which is for the referring court to ascertain.

(1) OJ C 330, 2.10.2017.

Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Landgericht Hamburg — Germany) — Tänzer & Trasper GmbH v Altenweddinger Geflügelhof Kommanditgesellschaft

(Case C-462/17) (1)

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 110/2008 — Spirit drinks — Definition, description, presentation, labelling and the protection of geographical indications — Category 41 of Annex II — Egg liqueur — Definition — Exhaustive nature of the permissible components)

(2019/C 4/09)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Tänzer & Trasper GmbH

Defendant: Altenweddinger Geflügelhof Kommanditgesellschaft

Operative part of the judgment

Category 41 of Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, as amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008, must be interpreted as meaning that, in order to be able to bear the sales denomination 'egg liqueur', a spirit drink cannot contain ingredients other than those mentioned in that provision.

(1) OJ C 347, 16.10.2017.

Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Bundespatentgericht — Germany) — proceedings brought by Boston Scientific Ltd

(Case C-527/17) ([1])

(Reference for a preliminary ruling — Intellectual and industrial property — Supplementary protection certificate for medicinal products — Regulation (EC) No 469/2009 — Scope — Medical device incorporating as an integral part a substance which, used separately, may be considered to be a medicinal product — Directive 93/42/EEC — Article 1(4) — Concept of 'administrative authorisation procedure')

(2019/C 4/10)

Language of the case: German

Referring court

Bundespatentgericht

Party to the main proceedings

Boston Scientific Ltd

In the presence of: Deutsches Patent- und Markenamt

Operative part of the judgment

Article 2 of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that a prior authorisation procedure, under Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007, for a device incorporating as an integral part a substance, within the meaning of Article 1(4) of that directive as amended, cannot be treated in the same way, for the purposes of applying that regulation, as a marketing authorisation procedure for that substance under Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004, even if that substance was the subject of the assessment provided for in the first and second paragraphs of section 7.4 of Annex I to Directive 93/42, as amended by Directive 2007/47.

([1]) OJ C 402, 17.11.2017.

Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Vrhovno sodišče — Slovenia) — Milan Božičevič Ježovnik v Republika Slovenija

(Case C-528/17) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 143(1)(d) — Exemption from import VAT — Importation followed by an intra-Community supply — Risk of tax evasion — Good faith of the taxable importer and supplier — Assessment — Duty of care of the taxable importer and supplier)

(2019/C 4/11)

Language of the case: Slovene

Referring court

Vrhovno sodišče

Parties to the main proceedings

Applicant: Milan Božičevič Ježovnik

Defendant: Republika Slovenija

Operative part of the judgment

Article 143(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, must be interpreted to the effect that, in circumstances where the taxable importer and supplier benefitted from an exemption from import value added tax on the basis of an authorisation issued after a prior examination by the competent customs authorities in the light of the evidence provided by that taxable person, the latter is not required to pay value added tax after the event where it is revealed, during a subsequent examination, that the substantive conditions for the exemption had not been met, except where it is established, in the light of objective evidence, that that taxable person knew, or should have known, that the supplies subsequent to the imports at issue were involved in fraud committed by the customer and that he did not take all reasonable steps in his power to avoid that fraud, which is a matter for the referring court to determine.

([1]) OJ C 374, 6.11.2017.

Judgment of the Court (Third Chamber) of 24 October 2018 (request for a preliminary ruling from the Cour de cassation — France) — Apple Sales International, Apple Inc., Apple retail France EURL v MJA, acting as liquidator of eBizcuss.com

(Case C-595/17) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 23 — Jurisdiction clause in a distribution contract — Action for damages by the distributor based on the infringement of Article 102 TFEU by the supplier)

(2019/C 4/12)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Apple Sales International, Apple Inc., Apple retail France EURL

Defendants: MJA, acting as liquidator of eBizcuss.com

Operative part of the judgment

1. *Article 23 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the application, in the context of an action for damages brought by a distributor against its supplier on the basis of Article 102 TFEU, of a jurisdiction clause within the contract binding the parties is not excluded on the sole ground that that clause does not expressly refer to disputes relating to liability incurred as a result of an infringement of competition law.*

2. *Article 23 of Regulation No 44/2001 must be interpreted as meaning that it is not a prerequisite for the application of a jurisdiction clause, in the context of an action for damages brought by a distributor against its supplier on the basis of Article 102 TFEU, that there be a finding of an infringement of competition law by a national or European authority.*

(1) OJ C 437,18.12.2017.

Judgment of the Court (Sixth Chamber) of 24 October 2018 (request for a preliminary ruling from the Tribunal de première instance de Liège — Belgium) — Benoît Sauvage, Kristel Lejeune v État belge

(Case C-602/17) (1)

(Reference for a preliminary ruling — Freedom of movement for workers — Income received in a Member State other than the Member State of residence — Bilateral convention for the avoidance of double taxation — Allocation of powers of taxation — Member State of residence's power to tax — Connecting factors)

(2019/C 4/13)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicant: Benoît Sauvage, Kristel Lejeune

Defendant: État belge

Operative part of the judgment

Article 45 TFEU must be interpreted as meaning that it does not preclude a tax scheme of a Member State under a tax convention for the avoidance of double taxation, such as that at issue in the main proceedings, which makes the exemption of the income of a resident which arises in another Member State and relates to employment in that State subject to the condition that the activity in respect of which the income is paid is actually performed in that State.

(1) OJ C 437, 18.12.2017.

Order of the Court (Sixth Chamber) of 18 October 2018 — Alex SCI v European Commission

(Case C-696/17 P) (1)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — State aid — Financing of an urban development project — Rejection of a complaint — Action for annulment — Individual concern — Locus standi)

(2019/C 4/14)

Language of the case: French

Parties

Appellant: Alex SCI (represented by: J. Fouchet, avocat)

Other party to the proceedings: European Commission (represented by: C. Georgieva-Kecsmar, K. Herrmann and T. Maxian Rusche, acting as Agents)

Intervener in support of the Commission: French Republic (represented by: D. Colas, E. de Moustier and P. Dodeller, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Alex SCI shall bear its own costs and pay those incurred by the European Commission.*

3. *The French Republic shall bear its own costs.*

([1]) OJ C 72, 26.2.2018

Request for a preliminary ruling from the Chambre disciplinaire de première instance de l'ordre des chirurgiens-dentistes de Midi-Pyrénées (France) lodged on 24 April 2018 — Conseil départemental de l'ordre des chirurgiens-dentistes de la Haute-Garonne v RG, RG

(Case C-296/18)

(2019/C 4/15)

Language of the case: French

Referring court

Chambre disciplinaire de première instance de l'ordre des chirurgiens-dentistes de Midi-Pyrénées

Parties to the main proceedings

Applicant: Conseil départemental de l'ordre des chirurgiens-dentistes de la Haute-Garonne

Defendants: RG, RG

By order of 23 October 2018, the Court (Eighth Chamber) ruled:

Article 8 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising by members of the dental profession, in that that profession prohibits any recourse to online advertising methods that promotes specific dentists or their company.

Action brought on 3 October 2018 — Republic of Poland v European Parliament and Council of the European Union

(Case C-626/18)

(2019/C 4/16)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by B. Majczyna, acting as Agent)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1(2)(a), Article 1(2)(b) and Article 3(3) of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services; ([1])

— order the European Parliament and the Council of the European Union to pay the costs of the proceedings.

In the alternative, in the event that the Court of Justice considers that the contested provisions of Directive (EU) 2018/957 cannot be separated from the rest of that directive without altering its substance, the Republic of Poland claims that the Court should annul Directive (EU) 2018/957 in its entirety.

Pleas in law and main arguments

The Republic of Poland raises the following pleas in law against the contested provisions of Directive 2018/957:

1. Plea in law alleging that the Directive introduces restrictions on freedom to provide services within the European Union in so far as concerns nationals of Member States who are established in a Member State other than that of the person for whom the services are intended, prohibited on the basis of Article 56 TFEU, by:

   (a) requiring Member States to ensure remuneration of posted workers, including overtime rates, established in accordance with the law or practice of the Member State of the posting (Article 1(2)(a)),

   (b) requiring Member States to guarantee posted workers in principle all the applicable terms and conditions established in accordance with the law or practice of the Member State of the posting, when the effective duration of one worker's posting or the cumulative duration of the posting periods of workers which take place for the performance of the same task exceeds 12 months, and — if the service provider provides a reasoned justification — 18 months (Article 1(2)(b)),

2. Plea in law alleging infringement of Article 53(1) and Article 62 TFEU, by the adoption, on the basis of those provisions, of measures which are not intended to facilitate the exercise of non-salaried activities (facilitation of the provision of cross-border services) but which are contrary to that objective,

3. Plea in law alleging infringement of Article 53(1) and Article 62 TFEU, read in conjunction with Article 58(1) TFEU, on the ground that the contested directive is applicable to the road transport sector (Article 3(3)).

The Republic of Poland claims, in particular, that the principal objective of the contested provisions on the remuneration of posted workers is to restrict the freedom to provide services by increasing the burden on service providers, with a view to eliminating their competitive advantage resulting from lower pay rates applicable in their country of establishment. The amendments introduced lead to discrimination against cross-border service providers. Those amendments are not justified by overriding reasons in the public interest, in particular considerations concerning the social protection of workers and fair competition. They also constitute an infringement of the requirement of proportionality.

([1]) OJ 2018 L 173, p. 16.

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 10 October 2018 — Fonds du logement de la Région de Bruxelles-Capitale SCRL v Institut des Comptes nationaux (ICN)

(Case C-632/18)

(2019/C 4/17)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société coopérative à responsabilité limitée 'Fonds du logement de la Région de Bruxelles-Capitale'

Opposing party: Institut des Comptes nationaux (ICN)

Questions referred

1. Are paragraphs 2.22, 2.23, 2.27, 2.28 and 20.33 of Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts [in the European Union] ([1]) to be interpreted as meaning that a separate institutional entity placed under government control must be regarded as being non-market and thus falling within the general government sector where it has the characteristics of a captive financial institution, there being no need to examine its risk exposure?

2. Can an entity operating under government control be regarded as being a captive financial institution within the meaning of paragraphs 2.21 to 2.23, 2.27 and 2.28 of Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts [in the European Union]:

   (a) on the ground that the regulation of its activity by the government in question removes from it control over its assets, even though it is afforded the capacity to decide to grant the mortgage loans which it provides, their duration, their amount and some of their conditions, whilst at the same time the government determines other factors, and in particular the interest rate applied to the loans;

   (b) on the ground that, inter alia, the guarantee given to it by government in respect of the loans taken out by it removes from it control over its liabilities, without examining the purpose and the effects of such a guarantee in the light of its features in the present case and of the underlying economic reality?

([1]) OJ 2013 L 174, p. 1.

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 12 October 2018 — Wagram Invest SA v État belge (Belgian State)

(Case C-640/18)

(2019/C 4/18)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Appellant: Wagram Invest SA

Respondent: État belge (Belgian State)

Questions referred

1. Does the notion of a true and fair view under Article 2(3) of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, ([1]) where a public limited company purchases a financial fixed asset, authorise a discount relating to a non-interest-bearing debt becoming due after one year to be entered as a charge in the profit and loss account, and the acquisition price of the fixed asset to be entered as an asset in the balance sheet after deduction of that discount, in the light of the valuation principles set out in Article 32 of that directive?

2. Must the expression 'in exceptional cases' that is a proviso for application of Article 2(5) of the Council Directive of 25 July 1978 based on Article 54(3)(g) of the [EEC] Treaty [now Article 50(2)(g) TFEU] on the annual accounts of certain types of companies and that allows application of a (different) provision of that directive to be excluded be interpreted as meaning that the provision in question can apply only on condition that it is found that compliance with the provisions of the directive, together with, where applicable, additional disclosure in the notes on the accounts in accordance with Article 2(4) of that directive, cannot adversely affect compliance with the principle that a true and fair view must be given?

3. Must Article 2(4) of the aforementioned directive be applied as a priority with the effect that the possibility, under Article 2(5) of that directive, of excluding application of a provision of the directive can be utilised only if additional disclosure cannot ensure effective implementation of the principle that a true and fair view must be given enshrined in Article 2(3) of that directive and, even then, only in exceptional cases?

([1]) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 15 October 2018 — British Airways Plc v MF

(Case C-643/18)

(2019/C 4/19)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: British Airways Plc

Defendant: MF

Questions referred

1. Is Article 5(3) of Regulation (EC) No 261/2004 ([1]) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, to be interpreted as meaning that the operating air carrier can rely also on such extraordinary circumstances which did not occur on the flight booked by the passenger but on a — not immediately — preceding flight on the same day using the aircraft that was supposed to be used for the flight booked by the passenger as part of a flight diagram?

2. Is Article 5(3) of 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, to be interpreted as meaning that 'all reasonable measures' which the operating air carrier must have taken in order, in the event of extraordinary circumstances, to avoid an obligation to pay compensation in accordance with Article 7 of that regulation must be aimed merely at avoiding the 'extraordinary circumstances' (in this particular case, the allocation of a new (later) air traffic control slot by the European air surveillance organisation EUROCONTROL), or is the operating air carrier also required to take reasonable measures to avoid cancellations or long delays themselves?

3. If the operating air carrier is required to take reasonable measures to avoid long delays themselves, is Article 5(3) of 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, to be interpreted as meaning that, in the case of the carriage of passengers on a route consisting of two (or more) flights, the air carrier must, in order to avoid an obligation to pay compensation in accordance with Article 7 of that regulation, merely take reasonable measures aimed at avoiding a delay to the flight which it is due to operate and which is subject to possible delay, or that it must also take reasonable measures to avoid a long delay for the individual passenger at the final destination (for example, by examining the possibility of rebooking the passenger onto another flight)?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 15 October 2018 — A v Daniel B, UD, AFP, B, L

(Case C-649/18)

(2019/C 4/20)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Appellant: A

Respondents: Daniel B, UD, AFP, B, L

Questions referred

The Court of Justice must rule on the question of whether EU law, in particular;

— Article 34 TFEU,

— Article 85c of European Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (as amended), ([1])

— the internal-market clause in Article 3 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services for electronic commerce, ([2])

allows a Member State of the European Union to impose, within its territory, specific rules on pharmacists who are nationals of another EU Member State operating in its territory concerning:

— the prohibition of soliciting clients through procedures and methods which are regarded as being contrary to the dignity of the profession, pursuant to the present version of Article R 4235 22 of the French Public Health Code;

— the prohibition of inciting patients to misuse medicinal products, pursuant to the present version of Article R 4235 64 of the French Public Health Code;

— the obligation to observe good practices, as defined by the public authorities of the Member State, in the distribution of medicinal products, which also requires that a health questionnaire be included when medicinal products are ordered online and which prohibits the use of paid referencing pursuant to the present version of the Decree of 28 November 2016 of the (French) Minister for Social Affairs and Health.

([1]) OJ 2001 L 311, p. 67.
([2]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Request for a preliminary ruling from the Administrativen sad Haskovo (Bulgaria) lodged on 18 October 2018 — SZ v Mitnitsa Burgas

(Case C-652/18)

(2019/C 4/21)

Language of the case: Bulgarian

Referring court

Administrativen sad Haskovo

Parties to the main proceedings

Appellant: SZ

Respondent: Mitnitsa Burgas

Question referred

Are Article 9(1) of Regulation (EC) No 1889/2005 ([1]) of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community and Article 49(3) of the Charter of Fundamental Rights of the European Union to be interpreted as precluding a provision of national law such as Article 20(1) of the Valuten Zakon (Law on Currency) which, in the case of a failure to comply with the obligation to declare under Article 3 of the Regulation, in addition to the imposition of a fine pursuant to Article 18(1) of the Law on Currency of BGN 1 000 to BGN 3 000, cumulatively provides for the full confiscation of the undeclared cash regardless of its provenance and intended use?

([1]) OJ 2005 L 309, p. 9.

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 19 October 2018 — Mitnitsa Varna v Schenker EOOD

(Case C-655/18)

(2019/C 4/22)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Appellant in cassation: Mitnitsa Varna

Respondent in cassation: Schenker EOOD

Questions referred

1. Should Article 242(1)(a) and (b) of Regulation (EU) No 952/2013 ([1]) of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code be interpreted as meaning that, under the specific circumstances of the main proceedings, the theft of goods placed under a customs warehousing procedure constitutes a removal from the customs warehousing procedure that gives cause for the imposition of a financial penalty on the authorisation holder for an offence under customs legislation?

2. Is the imposition of a charge equivalent to the value of the goods that were the subject of the customs offence (in this case removal from the customs warehousing procedure) an administrative penalty within the meaning of Article 42(1) and (2) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, and is a national provision regulating such a payment, alongside the imposition of the financial penalty, permissible? Does such a rule meet the criteria of effectiveness, proportionality and dissuasiveness of penalties for failure to comply with the EU customs legislation laid down in the second sentence of Article 42(1) of the regulation?

([1]) OJ 2013 L 269, p. 1.

Request for a preliminary ruling from the Općinski sud u Novom Zagrebu (Croatia) lodged on 19 October 2018 — *Hrvatska radiotelevizija* v *TY*

(Case C-657/18)

(2019/C 4/23)

Language of the case: Croatian

Referring court

Općinski sud u Novom Zagrebu

Parties to the main proceedings

Applicant: Hrvatska radiotelevizija

Defendant: TY

Questions referred

1. Is Article 1 of the Ovršni zakon (Law on enforcement, published in *Narodne novine* No 112/12, 25/13, 93/14, 55/16 and 73/17), a provision of national legislation which empowers notaries to enforce debts on the basis of an authentic document by issuing an enforcement order, such as a writ of execution, without the express consent of the debtor against whom enforcement is sought, in accordance with Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 18 of the Treaty on the Functioning of the European Union, having regard to the judgments of the Court in Cases C-484/15 and C-551/15?

2. Should the interpretation given in the judgments of the Court of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199) and *Pula Parking* (C-551/15, EU:C:2017:193) be applied in the present case, Povrv-2032/17, which the referring court must hear and determine?

Request for a preliminary ruling from the Conseil d'État (France) lodged on 23 October 2018 — AQ v Ministre de l'Action et des Comptes publics

(Case C-662/18)

(2019/C 4/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: AQ

Defendant: Ministre de l'Action et des Comptes publics

Questions referred

— Must the provisions of Article 8 of the Directive of 19 October 2009 ([1]) be interpreted as precluding different bases of assessment and rate rules being used to tax the capital gain arising on a transfer of securities received in exchange and the deferred capital gain?

— Must those provisions be interpreted in particular as precluding a situation in which reductions of the basis of assessment intended to take into account the period for which securities have been held do not apply to the deferred capital gain, having regard to the fact that that basis of assessment rule did not apply on the date on which the capital gain arose, but they do apply to the capital gain on a transfer of the securities received in exchange, taking into account the date of the exchange instead of the date on which the securities given in exchange were acquired?

([1]) Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ 2009 L 310, p. 34).

Request for a preliminary ruling from the Cour d'appel d'Aix-En-Provence (France) lodged on 23 October 2018 — Criminal proceedings against B S and C A

(Case C-663/18)

(2019/C 4/25)

Language of the case: French

Referring court

Cour d'appel d'Aix-En-Provence

Parties to the main proceedings

B S and C A

Interveners: Ministère public, Conseil national de l'ordre des pharmaciens

Question referred

The Court of Justice of the European Union is requested to deliver a preliminary ruling on the interpretation of Articles 28, 29, 30 and 32 TFEU, of Regulations No 1307/2013 ([1]) and No 1308/2013 ([2]) and of the principle of the free movement of goods, referring to it the question whether those provisions must be interpreted as meaning that the derogating provisions introduced by the arrêté (Decree) of 22 August 1990, by limiting the cultivation, industrialisation and marketing of hemp solely to fibre and seeds, impose a restriction that is not in accordance with [EU] law.

([1]) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

([2]) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

Request for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 24 October 2018 — IT Development SAS v Free Mobile SAS

(Case C-666/18)

(2019/C 4/26)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Appellant: IT Development SAS

Respondent: Free Mobile SAS

Question referred

Does a software licensee's non-compliance with the terms of a software licence agreement (by expiry of a trial period, by exceeding the number of authorised users or some other limit, such as the number of processors which may be used to execute the software instructions, or by modifying the source code of the software where the licence reserves that right to the initial rightholder) constitute:

— an infringement (for the purposes of Directive 2004/48 of 29 April 2004 ([1])) of a right of the author of the software which is reserved by Article 4 of Directive 2009/24/EC of 23 April 2009 on the legal protection of computer programs ([2])

— or may it comply with a separate system of legal rules, such as the system of rules on contractual liability under ordinary law?

([1]) Directive 2004/48/EC of the European parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

([2]) Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ 2009 L 111, p. 16).

GENERAL COURT

Judgment of the General Court of 8 November 2018 — Dyson v Commission

(Case T-544/13 RENV) ([1])

(Directive 2010/30/EU — Indication by labelling and standard product information of the consumption of energy and other resources by energy-related products — Commission delegated regulation supplementing the directive — Energy labelling of vacuum cleaners — Essential element of an enabling act)

(2019/C 4/27)

Language of the case: English

Parties

Applicant: Dyson Ltd (Malmesbury, United Kingdom) (represented by: F. Carlin, Barrister, E. Batchelor and M. Healy, Solicitors, and A. Patsa, lawyer)

Defendant: European Commission (represented by: L. Flynn, K. Herrmann and K. Talabér-Ritz, Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ 2013 L 192, p. 1).

Operative part of the judgment

The Court:

1. *Annuls Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners;*

2. *Orders the European Commission to pay the costs, including those relating to the proceedings on appeal before the Court of Justice.*

([1]) OJ C 344, 23.11.2013.

Judgment of the General Court of 25 October 2018 — KF v SatCen

(Case T-286/15) ([1])

(Actions for annulment and for compensation — SatCen staff — Members of the contract staff — Jurisdiction of the EU judicature — Common foreign and security policy — Article 24 TEU — Articles 263, 268, 270 and 275 TFEU — Article 47 of the Charter of Fundamental Rights — Equal treatment — Decisions 2014/401/CFSP and 2009/747/CFSP — SatCen's Appeals Board — Plea of illegality — Request for assistance — Manner in which the administrative investigation was carried out — Suspension — Disciplinary proceedings — Removal — Principle of sound administration — Requirement of impartiality — Right to be heard — Access to the file — Non-contractual liability — Premature claim for damages — Non-material damage)

(2019/C 4/28)

Language of the case: English

Parties

Applicant: KF (represented by: A. Kunst, lawyer, and N. Macaulay, Barrister)

Defendant: The European Union Satellite Centre (represented by: L. Defalque and A. Guillerme, lawyers)

Intervener in support of the defendant: Council of the European Union (represented by: F. Naert and M. Bauer, acting as Agents)

Re:

Action, first, pursuant to Article 263 TFEU for annulment of the decisions of the Director of SatCen of 5 July 2013 to initiate disciplinary proceedings against the applicant, to suspend the applicant and to reject her request for assistance and of 28 February 2014 to remove the applicant, and the decision of SatCen's Appeals Board of 26 January 2015 confirming those decisions and, second, pursuant to Article 268 TFEU seeking compensation for the harm allegedly suffered.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Appeals Board of the European Union Satellite Centre (SatCen) of 26 January 2015;*

2. *Annuls the decision of the Director of SatCen of 5 July 2013 suspending KF;*

3. *Annuls the decision of the Director of SatCen of 28 February 2014 removing KF;*

4. *Orders SatCen to pay KF the sum of EUR 10 000 as compensation for the non-material harm sustained by her;*

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

6. *Orders SatCen to bear its own costs and to pay those incurred by KF;*

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

([1]) OJ C 302, 14.9.2015.

Judgment of the General Court of 8 November 2018 — Lithuania v Commission

(Case T-34/16) ([1])

(EAGF — Expenditure excluded from financing — Specific support for the bovine and ovine meat sectors — On-site inspections — Physical verification of the animals — Quality of the inspections — Inspection report — Flat-rate correction — Obligation to state reasons — Proportionality — One-off correction)

(2019/C 4/29)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: initially, D. Kriaučiūnas, T. Orlickas and R. Krasuckaitė, and subsequently T. Orlickas and R. Krasuckaitė, acting as Agents)

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

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Decision (EU) 2015/2098 of 13 November 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 303, p. 35).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Lithuania to pay the costs.*

(1) OJ C 118, 4.4.2016.

Judgment of the General Court of 25 October 2018 — FN and Others v CEPOL

(Case T-334/16 P) (1)

(Appeal — Civil service — Temporary staff — Transfer of CEPOL's seat in Bramshill (United Kingdom) to Budapest (Hungary) — Reassignment of staff — Act not open to challenge — Inadmissibility of the action before the Civil Service Tribunal)

(2019/C 4/30)

Language of the case: English

Parties

Appellants: FN, FB, FQ (represented by: L. Levi and A. Blot, lawyers)

Other party to the proceedings: European Union Agency for Law Enforcement Training (represented by: initially by F. Bánfi and R. Woldhuis, and subsequently by R. Woldhuis and D. Schroeder, acting as Agents, and by B. Wägenbaur, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 11 April 2016, *FN and Others* v *CEPOL* (F-41/15 DISS II, EU:F:2016:70) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 11 April 2016, FN and Others v CEPOL (F-41/15 DISS II) in so far as it did not declare inadmissible the claims for annulment made by FN, FP and FQ;*

2. *Dismisses the claims for annulment made by FN, FP and FQ before the Civil Service Tribunal in Case F-41/15 DISS II;*

3. *Dismisses the appeal for the remainder;*

4. *Orders FN, FP and FQ, on the one hand, and the European Union Agency for Law Enforcement Training (CEPOL), on the other hand, each to bear their own costs relating to the appeal proceedings and to the proceedings at first instance.*

(1) OJ C 305, 22.8.2016.

Judgment of the General Court of 24 October 2018 — Pirelli Tyre v EUIPO — Yokohama Rubber (Representation of an L-shaped groove)

(Case T-447/16) (1)

(EU trade mark — Invalidity proceedings — EU figurative mark representing an L-shaped groove — Absolute ground for refusal — Sign consisting exclusively of the shape of goods which is necessary to obtain a technical result — Article 7(1)(e)(ii) of Regulation (EC) No 40/94 — Article 7(1)(e)(ii) of Regulation (EC) No 207/2009 (now Article 7(1)(e)(ii) of Regulation (EU) 2017/1001) — Regulation (EU) 2015/2424 — Application of the law ratione temporis — Shape of the goods — Nature of the sign — Account taken of material relevant to identifying the essential characteristics of the sign — General interest underlying Article 7(1)(e)(ii) of Regulation No 40/94)

(2019/C 4/31)

Language of the case: English

Parties

Applicant: Pirelli Tyre SpA (Milan, Italy) (represented by: T.M. Müller and F. Togo, lawyers)

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

The other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: The Yokohama Rubber Co. Ltd (Tokyo, Japan) (represented by: F. Boscariol de Roberto, D. Martucci and I. Gatto, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 28 April 2016 (Case R 2583/2014-5), relating to invalidity proceedings between Yokohama Rubber and Pirelli Tyre.

Operative part of the judgment

The Court:

1. *Annuls paragraphs 2 and 3 of the operative part of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 28 April 2016 (Case R 2583/2014 5);*

2. *Orders EUIPO to bear its own costs and to pay the costs incurred by Pirelli Tyre SpA;*

3. *Orders Yokohama Rubber Co. Ltd to bear its own costs.*

(1) OJ C 350, 26.9.2016.

Judgment of the General Court of 25 October 2018 — PO and Others v EEAS

(Case T-729/16) ([1])

(Civil Service — EEAS — Remuneration — Officials posted to the Beijing delegation — Family allowance — Education allowance for the school year 2015/2016 — Second sentence of Article 15 of Annex X to the Staff Regulations — Exceedance of the statutory ceiling for third countries — Decision to cap the reimbursement of education costs in exceptional circumstances — General Implementing Provisions)

(2019/C 4/32)

Language of the case: French

Parties

Applicants: PO, PP, PQ and PR (represented initially by: N. de Montigny and J.-N. Louis, and subsequently by: N. de Montigny, lawyers)

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

Re:

Application based on Article 270 TFEU seeking the annulment of the decisions of the EEAS not to reimburse the applicants, in respect of the school year 2015/2016, for the education costs exceeding an amount corresponding to the statutory ceiling for third countries (six times the basic ceiling) increased by EUR 10 000 (EUR 27 788,40 in total).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders PO, PP, PQ and PR to bear their own costs and to pay the costs incurred by the European External Action Service (EEAS).*

([1]) OJ C 475, 19.12.2016.

Judgment of the General Court of 8 November 2018 — RA v Court of Auditors

(Case T-874/16) ([1])

(Civil service — Officials — Promotion — 2016 promotion exercise — Decision not to promote the applicant to grade AD 11 — No staff report — Comparison of merits)

(2019/C 4/33)

Language of the case: French

Parties

Applicant: RA (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Court of Auditors (represented by: C. Lesauvage, E. von Bardeleben and A.-M. Cosciug, acting as Agents)

Re:

Application based on Article 270 TFEU seeking annulment of the decision of the Court of Auditors of 4 March 2016 not to promote the applicant to the next grade (AD 11), in the 2016 promotion procedure, by not including his name in the list of officials promoted in the 2016 promotion exercise.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Court of Auditors of 4 March 2016 not to promote RA to grade AD 11 in the 2016 promotion exercise;*

2. *The Court of Auditors is ordered to pay all the costs.*

(1) OJ C 46, 13.2.2017.

Judgment of the General Court of 24 October 2018 — RQ v Commission

(Case T-29/17) (1)

(Civil service — Officials — Director-General of OLAF — Decision waiving the applicant's immunity from legal proceedings — Lis pendens — Act adversely affecting a person — Obligation to state reasons — Duty of assistance and duty to have regard to the welfare of officials — Legitimate expectations — Rights of the defence)

(2019/C 4/34)

Language of the case: French

Parties

Applicant: RQ (represented by: É. Boigelot, lawyer)

Defendant: European Commission (represented by: K. Banks, J.-P. Keppenne and J. Baquero Cruz, acting as Agents)

Re:

Action under Article 270 TFEU for annulment of Commission Decision C(2016) 1449 final of 2 March 2016 concerning a request to waive the applicant's immunity from legal proceedings and, so far as necessary, of Commission Decision Ares (2016) 5814495 of 5 October 2016 rejecting the applicant's complaint against the first decision.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2016) 1449 final of 2 March 2016 concerning a request to waive RQ's immunity from legal proceedings;*

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

(1) OJ C 95, 27.3.2017.

Judgment of the General Court of 25 October 2018 — Devin v EUIPO — Haskovo (DEVIN)

(Case T-122/17) ([1])

(EU trade mark — Cancellation proceeding — European Union word mark DEVIN — Absolute ground for refusal — Descriptive character — Geographical name — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) and (3) of Regulation (EU) 2017/1001))

(2019/C 4/35)

Language of the case: English

Parties

Applicant: Devin AD (Devin, Bulgaria) (represented by: B. Van Asbroeck, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Haskovo Chamber of Commerce and Industry (Haskovo, Bulgaria)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 December 2016 (Case R 579/2016-2) relating to invalidity proceedings between Devin AD and Haskovo Chamber of Commerce and Industry.

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 2 December 2016 (Case R 579/2016-2);*

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

3. *Orders EUIPO to bear its own costs and to pay those incurred by Devin AD;*

4. *Orders Haskovo Chamber of Commerce and Industry to bear its own costs.*

([1]) OJ C 121, 18.4.2017.

Judgment of the General Court of 25 October 2018 — DI v EASO

(Case T-129/17 RENV)

(Civil service — EASO staff — Members of the contract staff — Fixed-term contract — Probationary period — Decision to dismiss at the end of the probationary period — Rule of correspondence between the application and the complaint — Liability)

(2019/C 4/36)

Language of the case: English

Parties

Applicant: DI (represented by: I. Vlaic and G. Iliescu, lawyers)

Defendant: European Asylum Support Office (represented by: W. Stevens, acting as Agent, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application under Article 270 TFEU for, first, annulment of the decision of the Executive Director of EASO of 28 February 2013 to dismiss the applicant at the end of his probationary period and, second, damages for the damage allegedly suffered by him and his family.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs, including those relating to Case F-113/13 and to Case T-730/15 P.*

Judgment of the General Court of 25 October 2018 — Aldo Supermarkets v EUIPO — Aldi Einkauf (ALDI)

(Case T-359/17) ([1])

(EU trade mark — Opposition procedure — Application for EU word mark ALDI — Earlier national figurative mark ALDO — Relative ground for refusal — Conditions governing admissibility of the opposition — Rule 15 of Regulation (EC) No 2868/95 (now Article 2 of Delegated Regulation (EU) 2018/625) — Conditions governing representation of the earlier mark — Rule 19 of Regulation No 2868/95 (now Article 7 of Delegated Regulation 2018/625) — Lack of proof of genuine use of earlier mark — Article 42 of Regulation (EC) No 207/2009 (now Article 47 of Regulation (EU) 2017/1001)

(2019/C 4/37)

Language of the case: English

Parties

Applicant: Aldo Supermarkets (Varna, Bulgaria) (represented initially by: C. Saettel, and subsequently by: T. Chevrier and M. Thewes, lawyers)

Defendant: European Union Intellectual Property Office (represented by: G. Sakalaite-Orlovskiene, A. Folliard-Monguiral and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Aldi Einkauf GmbH & Co. OHG (Essen, Germany) (represented by: N. Lüzenrath, U. Rademacher, N. Bertram and C. Fürsen, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 March 2017 (Case R 976/2016-4), concerning opposition proceedings between Aldo Supermarkets and Aldi Einkauf.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aldo Supermarkets to pay the costs.*

([1]) OJ C 249, 31.7.2017.

Judgment of the General Court of 8 November 2018 — Troszczynski v Parliament

(Case T-550/17) ([1])

(Law governing the institutions — Member of the European Parliament — Privileges and immunities — Decision to lift parliamentary immunity — Activity unconnected to the functions of a Member — Procedure for lifting immunity — Non-contractual liability — Damage — Causal link)

(2019/C 4/38)

Language of the case: French

Parties

Applicant: Mylène Troszczynski (Noyon, France) (represented by: F. Wagner, lawyer)

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

Re:

First, application based on Article 263 TFEU seeking annulment of the decision of 14 June 2017 by which the Parliament lifted the applicant's immunity and, second, application based on Article 268 TFEU seeking compensation for the non-material damage which the applicant claims to have suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mylène Troszczynski to pay the costs.*

([1]) OJ C 357, 23.10.2017.

Judgment of the General Court of 8 November 2018 — Perfect Bar v EUIPO (PERFECT BAR)

(Case T-758/17) ([1])

(EU trade mark — Application for EU word mark PERFECT BAR — 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))

(2019/C 4/39)

Language of the case: English

Parties

Applicant: Perfect Bar LLC (San Diego, California, United States) (represented by: F. Miazzetto, J.L. Gracia Albero and E. Cebollero González, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 5 September 2017 (Case R 2439/2016-4), relating to an application for registration of the word sign PERFECT BAR as an EU trade mark.

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 5 September 2017 (Case R 2439/2016-4) in respect of 'Protein supplements' and 'Dietary and nutritional supplements';*

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

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

([1]) OJ C 22, 22.1.2018.

Judgment of the General Court of 8 November 2018 — Perfect Bar v EUIPO (PERFECT Bar)

(Case T-759/17) ([1])

(EU trade mark — Application for EU word mark PERFECT BAR — 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))

(2019/C 4/40)

Language of the case: English

Parties

Applicant: Perfect Bar LLC (San Diego, California, United States) (represented by: F. Miazzetto, J.L. Gracia Albero and E. Cebollero González, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 5 September 2017 (Case R 2440/2016-4), relating to an application for registration of the figurative sign PERFECT Bar as an EU trade mark.

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 5 September 2017 (Case R 2440/2016-4) in respect of 'Protein supplements' and 'Dietary and nutritional supplements';*

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

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

([1]) OJ C 22, 22.1.2018.

Application lodged on 8 October 2018 — Sammut v Parliament

(Case T-608/18)

(2019/C 4/41)

Language of the case: Maltese

Parties

Applicant: Mark Anthony Sammut (Foetz, Luxembourg) (represented by: P. Borg Olivier, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— annul, pursuant to Article 270 TFEU, the decision of 6 July 2018 of the European Parliament, adopted under Article 90 (2) of the Staff Regulations, by which it rejected the complaint presented by the applicant in order to have removed, from his staff report for the year 2016, a statement concerning the alleged failure to inform the Appointing Authority of his intention to publish a book in 2016 entitled 'L-Aqwa fl-Ewropa. Il-Panama papers u il-Poter' ['The best in Europe. The Panama Papers and Power']; and as a result,

— annul in part the decision of the Director General of the Directorate-General for Translation of 4 January 2018; and as a result,

— order the removal of the said statement from the staff report (point 3 concerning the conduct of the applicant — Compliance with Rules and Procedures);

— assess the damage suffered by the applicant as a consequence of those decisions;

— order the defendant to pay compensation for the damage suffered by the applicant as a result of those decisions;

— order the Appointing Authority to pay the costs.

Pleas in law

In support of his application, the applicant puts forward three pleas.

1. The first plea in law alleges infringement of Article 17a of the Staff Regulations, in as much as it is intended to protect the fundamental right of freedom of expression guaranteed by Article 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms and by Article 11 of the Charter of Fundamental Rights of the European Union. Furthermore, a balance has to be stuck between rights and obligations, as not all rights are absolute.

2. The second plea in law alleges misinterpretation of Article 17a of the Staff Regulations, in that the subject of the book does not concern 'the work of the Union', and therefore the applicant was not under an obligation to inform the Appointing Authority of his intention beforehand. The words 'matter dealing with' mean and refer to the content of the document, the purpose of which is to deal with 'work of the Union'. This means that an official has to inform the Appointing Authority and obtain permission only if he would in any way be dealing with the work of the Union. The duty of the Appointing Authority that follows from this is to interpret strictly, not broadly what constitutes the 'work of the Union'. Furthermore, it is claimed that:

   — no reasons for the decision have been given, as it is based simply on a mere opinion, not on facts or legal considerations;

— the duty imposed by the Appointing Authority is more onerous than that laid down in the Staff Regulations;

— the decision is based on the disproportionate exercise discretion;

— 'matter dealing with the work of the Union' relates to a context which can be inferred, with regard to the workings of the Union, from other Guidelines;

— as there is no reference to his work or to any other work of the Union in the book, the applicant has not failed in his duty of trust, loyalty and impartiality towards the Union;

— from the case-law of the Court of Justice, in particular its judgment of the 6 March 2001 (*Connolly* v *Commission* (C-274/99 P, EU:C:2001:127, paragraphs 43 to 62), a number of relevant points emerge for the evaluation of the application and implementation of Article 17a of the Staff Regulations.

3. The third plea in law is based on the non-material damage suffered by the applicant as a result of the decision, both at his workplace as well as in his personal life, and the impact that this has had on his literary output. It is consequently necessary to quantify the damage and subsequently award compensation in that regard.

Action brought on 15 October 2018 — Polskie Górnictwo Naftowe i Gazownictwo v European Commission

(Case T-616/18)

(2019/C 4/42)

Language of the case: Polish

Parties

Applicant: Polskie Górnictwo Naftowe i Gazownictwo S.A. (Warsaw, Poland) (represented by: E. Buczkowska and M. Trepka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Decision of 24 May 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement in Case AT.39816 — Upstream Gas Supplies in Central and Eastern Europe, ([1]) closing that proceeding in accordance with Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC], ([2]) by making the commitments of the public joint stock company Gazprom and Gazprom Export LLC ('Gazprom') of 15 March 2018 legally binding;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission adopted a decision vitiated by a manifest infringement of Article 9 of Regulation No 1/2003, read in conjunction with Article 102 TFEU, and of the principle of proportionality, in so far as the Commission committed a manifest error of assessment of the evidence gathered and considered that the objections raised during proceeding AT.39816, which concerned the subordination, on the part of Gazprom, of gas deliveries to Poland to the obtaining of control of gas infrastructures in Poland, were not justified and, by reason of that error, accepted commitments of Gazprom which did not address the objections raised in that regard.

2. Second plea in law, alleging that the Commission made a decision vitiated by a manifest infringement of Article 9 of Regulation No 1/2003, read in conjunction with Article 102 TFEU, and of the principle of proportionality, in so far as the Commission accepted Gazprom's commitments concerning the application of unfair and manifestly excessive prices, commitments which do not adequately address the objections of the Commission, including the essence of those complaints, namely the application by a dominant operator of manifestly excessive prices.

3. Third plea in law, alleging that the Commission made a decision vitiated by a manifest infringement of Article 9 of Regulation No 1/2003, read in conjunction with Article 102 TFEU, and of the principle of proportionality, in so far as the Commission accepted Gazprom's commitments concerning the implementation of territorial restrictions, which do not adequately address the Commission's objections, are selective and reproduce commitments already formulated by the dominant operator in other proceedings but which, however, have not led to any change in its conduct.

4. Fourth plea in law, alleging that the Commission made a decision vitiated by a manifest infringement of Article 7 TFEU, read in conjunction with Article 194(1) TFEU, in so far as the Commission adopted a decision that is contrary to the energy-policy objectives of the European Union, without taking into account its negative effect on the European gas supply market, a decision which further reinforces, in particular, the isolation and maintenance of non-competitive conditions on Central and Eastern European gas markets in comparison with Western Europe, even though the objective of that policy is to integrate those markets and to ensure equal conditions of competition on all markets of the European Union.

5. Fifth plea in law, alleging that the Commission made a decision vitiated by a manifest infringement of the first paragraph of Article 18 TFEU and the principle of equality, in so far as the Commission discriminated between the contracting partners of Gazprom active on the markets of Central and Eastern European countries, including the applicant, and the contracting partners of Gazprom active on the markets of Western European countries, even though the two abovementioned groups of contracting partners operate on the same European Union gas-supply market and, in that respect, benefit from the rules of Article 102 TFEU and Article 194(1) TFEU and the secondary legislation adopted on that basis.

6. Sixth plea in law, alleging abuse of powers and infringement of essential procedural requirements, in so far as the Commission adopted a decision which is objectively contrary to the purpose of Article 9 of Regulation No 1/2003 and conducted proceeding AT.39816 in clear breach of the powers conferred on it.

([1]) OJ 2018 C 258, p. 6.
([2]) OJ 2003 L 1, p. 1.

Action brought on 15 October 2018 — EN (*) v Commission

(Case T-622/18)

(2019/C 4/43)

Language of the case: English

Parties

Applicant: EN (*) (represented by: E. Metodieva, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 12 December 2017 of the selection board of Open Competition EPSO/AD/323/16 — Investigators (AD 7) for the following profiles: 1. Investigators: EU expenditure, anti-corruption; 2. Investigators: Customs and trade, tobacco and counterfeit goods, not to include the applicant's name in the reserve list for the first profile of the said competition;

— set aside in its entirety EPSO's decision of 10 July 2018 to reject the applicant's complaint under Article 90(2) of the Staff Regulations regarding the decision of the EPSO selection board not to include him on the reserve list;

— order the defendant to pay damages to the applicant in the form of lost benefits as a result of his non-inclusion in the said reserve list;

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

— order the defendant to pay the applicant the expenses for legal assistance and legal representation before and during the proceedings.

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 inadequate behaviour on the part of one of the members of the selection board, allegedly resulting in a failure to examine the applicant properly.

2. Second plea in law, alleging the lack of impartiality of one of the members of the selection board for the competition in question.

3. Third plea in law, alleging lack of competence of the assessors.

4. Fourth plea in law, alleging that the competition in question violated the language regime.

5. Fifth plea in law, alleging that certain irregularities affected the case study in the competition in question.

6. Sixth plea in law, alleging breach of the principles of equal and fair treatment said to result from the allegedly excessive period of one month over which the competition in question was carried out.

7. Seventh plea in law, alleging an insufficient statement of reasons in respect of the applicant's assessment.

Action brought on 13 October 2018 — EO (*) v Commission

(Case T-623/18)

(2019/C 4/44)

Language of the case: English

Parties

Applicant: EO (*) (represented by: E. Metodieva, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 12 December 2017 of the selection board of Open Competition EPSO/AD/323/16 — Investigators (AD 7) for the following profiles: 1. Investigators: EU expenditure, anti-corruption; 2. Investigators: Customs and trade, tobacco and counterfeit goods, not to include the applicant's name in the reserve list for the first profile of the said competition;

— set aside in its entirety EPSO's decision of 9 July 2018 to reject the applicant's complaint under Article 90(2) of the Staff Regulations regarding the decision of the EPSO selection board not to include her in the said reserve list;

— order the defendant to pay damages to the applicant in the form of lost benefits as a result of her non-inclusion in the said reserve list,

— order the defendant to pay the applicant the expenses for legal assistance and legal representation before and during the proceedings.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law and, in addition, relies on all the arguments listed in the complaint made by her under Article 90(2) of the Staff Regulations.

1. First plea in law, alleging inadequate behaviour on the part of one of the members of the selection board, allegedly resulting in a failure to examine the applicant properly.

2. Second plea in law, alleging the lack of impartiality of one of the members of the selection board for the competition in question.

3. Third plea in law, alleging lack of competence of the assessors.

4. Fourth plea in law, alleging that the competition in question violated the language regime.

5. Fifth plea in law, alleging that certain irregularities affected the case study in the competition in question.

6. Sixth plea in law, alleging breach of the principles of equal and fair treatment said to result from the allegedly excessive period of one month over which the competition in question was carried out.

7. Seventh plea in law, alleging an insufficient statement of reasons in respect of the applicant's assessment.

Action brought on 19 October 2018 — ZK v Commission

(Case T-627/18)

(2019/C 4/45)

Language of the case: French

Parties

Applicant: ZK (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the confirmatory decision of the selection board of competition EPSO/AD/323/16 of 1 February 2018 not to list the applicant as a successful candidate;

— In so far as necessary, annul the confirmed decision of the competition's selection board of 12 December 2017;

— 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, alleging, first, infringement of Article 30 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') and Article 3 of Annex III thereto and, second, infringement of the rules governing the organisation of the competition's tests. In that regard, the applicant claims in particular that only two members of the selection board were present at her interviews, and not the selection board composed of the president and six members. Furthermore, she points out that the president took part in the proceedings of the selection board only as a mere observer, which also infringes the provisions of the Staff Regulations.

2. Second plea in law, alleging infringement of the principles of equal treatment and non-discrimination which vitiate the contested decision in the present case, owing to the lack of stability of the selection board and reliance on back-up assessors who were not given any specific assessor training.

Action brought on 23 October 2018 — Geske v EUIPO (revolutionary air pulse technology)

(Case T-634/18)

(2019/C 4/46)

Language of the case: German

Parties

Applicant: André Geske (Lübbecke, Germany) (represented by: R. Albrecht, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: Application for EU word mark revolutionary air pulse technology — Application for registration No 17 025 231

Contested decision: Decision of the Second Board of Appeal of EUIPO of 5 September 2018 in Case R 2721/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those incurred in the appeal proceedings before EUIPO.

Pleas in law

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

Action brought on 29 October 2018 — Intercontact Budapest v CdT

(Case T-640/18)

(2019/C 4/47)

Language of the case: Hungarian

Parties

Applicant: Intercontact Budapest Fordító és Pénzügyi Tanácsadó Kft (Intercontact Budapest Kft) (Budapest, Hungary) (represented by: É. Subasicz, lawyer)

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

Form of order sought

The applicant claims that the General Court should:

— Primarily, declare whether the evaluation points awarded to the various tenderers are realistic on the basis of a comparison of the tenders submitted, and whether they comply with the principles of equal treatment, non-discrimination, proportionality and transparency;

— In the alternative, declare that the defendant's legal interpretation is erroneous with regard to Article 113(3) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, and that the publication of the prices of the tenders in the public procurement procedure is not contrary to the regulation invoked;

— In the further alternative, annul the decision reached by the defendant in respect of Lot 12 of Procedure FL/FIN17, together with the administrative procedure in so far as it relates to that lot;

— In the even further alternative, identify the procedural act (legal act in force) in the public procurement procedure, which is the subject matter of the appeal, from the notification of which the period for appeal laid down in Article 263 of the Treaty on the Functioning of the European Union begins to run.

— Order the defendant 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 the principles of equal treatment, non-discrimination, proportionality and transparency, inasmuch as the defendant applied different evaluation criteria to the tenderers in the public procurement procedures. ([1])

2. Second plea in law, alleging misuse of power in so far as the defendant failed to send the applicant the information that it sought in the public procurement procedures. ([2])

3. Third plea in law, alleging that the defendant infringed the directive on public procurement by failing to give notice of the time limit for review, thus limiting the possibility of review. ([3])

4. Fourth plea in law, alleging that the defendant impeded the exercise of the applicant's right to bring an appeal against the CdT. ([4])

([1]) Recitals 1 and 90 of 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).
([2]) Article 113 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).
([3]) Annex V, Part D, paragraph 16 of 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).
([4]) Article 263, sixth paragraph, of the Treaty on the Functioning of the European Union.

Action brought on 29 October 2018 — August Wolff v EUIPO — Faes Farma (DermoFaes Atopimed)

(Case T-642/18)

(2019/C 4/48)

Language of the case: English

Parties

Applicant: Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany) (represented by: A. Thünken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Faes Farma, SA (Lamiaco-Leioa, Spain)

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: Application for European Union word mark DermoFaes Atopimed — Application for registration No 15 069 396

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 11 July 2018 in Case R 1365/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the opposition and reject the contested application;

— order EUIPO and, as the case may be, the intervener to bear the costs of the proceedings and the costs incurred by proceedings before EUIPO.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 29 October 2018 — August Wolff v EUIPO — Faes Farma (DermoFaes Atopiderm)

(Case T-644/18)

(2019/C 4/49)

Language of the case: English

Parties

Applicant: Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany) (represented by: A. Thünken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Faes Farma, SA (Lamiaco-Leioa, Spain)

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: Application for European Union word mark DermoFaes Atopiderm — Application for registration No 15 069 438

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 11 July 2018 in Case R 1305/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the opposition and reject the contested application;

— order EUIPO and, as the case may be, the intervener to bear the costs of the proceedings and the costs incurred by proceedings before EUIPO.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 29 October 2018 — ruwido austria v EUIPO (transparent pairing)

(Case T-649/18)

(2019/C 4/50)

Language of the case: German

Parties

Applicant: ruwido austria GmbH (Neumarkt am Wallersee, Austria) (represented by: A. Ginzburg, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: Application for EU word mark transparent pairing — Application for registration No 16 581 118

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 August 2018 in Case R 2487/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Failure to state reasons in the contested decision;

— Incorrect substantive interpretation of the sign applied for.

Action brought on 30 October 2018 — Balani Balani and Others v EUIPO — Play Hawkers (HAWKERS)

(Case T-651/18)

(2019/C 4/51)

Language in which the application was lodged: Spanish

Parties

Applicants: Sonu Gangaram Balani Balani, Anup Suresh Balani Shivdasani and Amrit Suresh Balani Shivdasani (Las Palmas de Gran Canaria, Spain) (represented by: A. Díaz Marrero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Play Hawkers, SL (Elche, Spain)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark HAWKERS — Application for registration No 15 746 209

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 August 2018 in Case R 396/2018-2

Form of order sought

The applicants claim that the Court should:

— annul the contested decision and give judgment declaring that the trade mark applied for, under No 15 746 209, and which was granted in part, is also granted for the rest of the goods applied for: Watches; Chronometers (watches); Sports watches; Jewellery; Imitation jewellery; Jewellery, including imitation jewellery and costume jewellery; Clocks and watches; Horological goods; Cases for clocks and watches;

— Order the defendant to pay the costs.

Plea in law

Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 30 October 2018 — Porus v EUIPO (oral Dialysis)

(Case T-652/18)

(2019/C 4/52)

Language of the case: German

Parties

Applicant: Porus GmbH (Monheim am Rhein, Germany) (represented by: C. Weil, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'oral Dialysis' — Application for registration No 16 774 259

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 September 2018 in Case R 1375/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the application;

— order EUIPO to pay the costs.

Pleas in law

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

Action brought on 2 November 2018 — Jareš Procházková and Jareš v EUIPO — Elton Hodinářská (MANUFACTURE PRIM 1949)

(Case T-656/18)

(2019/C 4/53)

Language in which the application was lodged: Czech

Parties

Applicants: Hana Jareš Procházková a Antonín Jareš (Prague, 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 marks at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: European Union figurative mark 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 7 September 2018 in Case R 1159/2017-4

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 Article 60(2), Article 60(3), Article 64(5) and Article 70(2) of Regulation 2017/1001;

— Infringement of Article 27(4) and Article 55 of Regulation No 2018/625.

Action brought on 30 October 2018 — ZS v BEI

(Case T-659/18)

(2019/C 4/54)

Language of the case: English

Parties

Applicant: ZS (represented by: B. Maréchal, lawyer)

Defendant: European Investment Bank

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the EIB of 27 September 2017 and 28 December 2017;

— order a total compensation of the loss suffered by the applicant.

— in this respect, the applicant requests that EIB be ordered to pay him:

  — EUR 30 000 as unpaid salary for 42 days of annual leave and 40,5 days in the TSA-A, amounting to a total of 82,5 leave entitlements;

  — EUR 30 000 illegally deducted from the sums upon his departure;

  — EUR 50 000 as 3 % contribution of the annual salary into the OSPS (RCVP) until the normal age of retirement;

  — EUR 35 000 as the applicant's bonus entitlement;

  — EUR 15 000 as damages in relation to the moral prejudice suffered by the applicant;

  — his legal fees for the proceedings amounting to a provisional amount of EUR 15 000;

  — the costs of proceedings and all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the applicant's absences were not unjustified and that in any case, the EIB should have reacted earlier given the five years period of absences. Such allegations ignore the oral agreement between the applicant and the defendant as to the filling of time-management sheets. Furthermore, there is no legal ground for the employer to proceed with a set-off or deduction of the alleged unjustified absences, with regard to the applicant's leave entitlements or the sums due to him upon departure.

2. Second plea in law, alleging several faults towards the applicant by the defendant characterised as illegal administrative acts, such as the grievances of unjustified absences, the loss of 82,5 leave entitlements without any legal ground where no set-off or deduction is authorised, the illegal deduction of so-called unjustified absences in the sums due upon departure that do not include the OSPS (RCVP), which directly caused him to suffer loss and an additional moral prejudice.

Action brought on 8 November 2018 — VodafoneZiggo Group v Commission

(Case T-660/18)

(2019/C 4/55)

Language of the case: English

Parties

Applicant: VodafoneZiggo Group BV (Utrecht, Netherlands) (represented by: W. Knibbeler and A. Pliego Selie, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 30 August 2018 concerning Cases NL/2018/2099 and NL/2018/2100: Wholesale fixed access market in the Netherlands, with reference C(2018) 5848 final; and

— order the defendant to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging a misapplication and misreading of Articles 7 and 7a of Directive 2002/21/EC ([1]) on a common regulatory framework for electronic communications networks and services (the Framework Directive)

   In this regard, the applicant submits that the contested decision presents a number of critical findings in relation to the Dutch national regulatory authority's draft decision (the 2018 WFA Decision), which are qualified as comments but which in fact unequivocally fulfil the criteria for a finding of serious doubts. The applicant further claims that each of these observations in fact concern, by any objective standard, serious doubts requiring the Commission to conduct an in-depth investigation pursuant to Articles 7(4) and 7a(1) of the Framework Directive.

2. Second plea in law, alleging evident errors of assessment, a misapplication of Article 7 of the Framework Directive and a lack of diligent investigation

— In this regard, the applicant submits that by accepting, in the contested decision, the joint significant market power (the joint SMP) findings in the 2018 WFA Decision, whereas these manifestly raise serious doubts within the meaning of Article 7(4) of the Framework Directive, the Commission misapplied Articles 7 and 7a of the Framework Directive and committed manifest errors of assessment.

— Alternatively, the applicant claims that the Commission should in any event have diligently investigated the matter, in view of (i) the manifest insufficiency of the joint SMP analysis by the Dutch national regulatory authority if set off against the joint SMP assessment framework as established by the Commission in its guidelines (evident error of assessment) and (ii) the Commission's own decisional precedents, which demonstrate that there is no scope for any finding of joint SMP on the relevant markets (inconsistency).

3. Third plea in law, alleging a failure to state reasons resulting in an infringement of Article 296 TFEU

— In this regard, the applicant submits that the contested decision contains insufficient reasoning in regard of critical elements of the 2018 WFA Decision.

— Moreover, the applicant claims that on other determinative findings, the contested decision is overly brief or contradictory.

([1]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002, p. 33).

Action brought on 9 November 2018 — romwell v EUIPO (twistpac)

(Case T-662/18)

(2019/C 4/56)

Language of the case: German

Parties

Applicant: romwell GmbH & Co. KG (Breitscheidt, Germany) (represented by: C. Spintig, S. Pietzcker and M. Prasse, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: Application for EU word mark twistpac — Application for registration No 17 219 163

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 August 2018 in Case R 336/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including those of the applicant.

Pleas in law

— Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

CORRIGENDA

Corrigendum to the Official Journal notice concerning Case T-531/18

(Official Journal of the European Union C 399 of 5 November 2018)

(2019/C 4/57)

The Official Journal notice concerning Case T-531/18 *LL-Carpenter v Commission* should read as follows:

'Action brought on 1 September 2018 — LL-Carpenter v Commission

(Case T-531/18)

(2018/C 399/60)

Language of the case: Czech

Parties

Applicant: LL-Carpenter s.r.o. (Prague, Czech Republic) (represented by: J. Buřil, lawyer)

Defendant: European Commission

Form of order sought

— annul Decision C(2018) 4138 final of the European Commission of 26 June 2018 in Case AT.40037 — Carpenter/Subaru rejecting, in accordance with Article 13 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ("Regulation (EC) No 1/2003") and Article 7(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty ("Regulation (EC) No 773/2004"), the applicant's complaint pursuant to Article 7 of Regulation (EC) No 1/2003 dated 6 September 2012 alleging infringement of Article 101 of the Treaty on the Functioning of the European Union, and

— order the European 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, alleging that the contested decision is vitiated by an error consisting in incorrect legal assessment and manifestly incorrect assessment of the facts.

   — The European Commission assessed the facts incorrectly in reaching the conclusion that the anti-competitive conduct of which the applicant was accused (as far as the Czech Republic was concerned) had been dealt with by the national economic competition authority in the Czech Republic, and made an incorrect legal assessment of the case to the effect that the conditions for the application of Article 13 of Regulation (EC) No 1/2003 were satisfied (as far as the Czech Republic was concerned).

   — The European Commission did not examine thoroughly all the factual and legal circumstances communicated to it by the applicant, and for that reason assessed the facts incorrectly in reaching the conclusion that the applicant's written observations did not lead to a different evaluation of the complaint and that the probability that the occurrence of an infringement of Article 101 TFEU would be ascertained appeared to be low, and made an incorrect legal assessment of the case to the effect that the conditions for the application of Article 7(2) of Regulation (EC) No 773/2004 were satisfied.

2. Second plea in law, alleging that the contested decision is vitiated by procedural error consisting in the fact that the European Commission does not set out appropriate reasoning in the decision.

   — The European Commission did not state what priorities it proceeded from in deciding that it would not carry out further investigations in the case, merely referring to the anticipated high cost of further investigations.

   — The European Commission did not explain how it assessed the evidence or for what reason it did not take into consideration the factual and legal circumstances communicated to it by the applicant, or why it based its decision to reject the complaint solely on assertions taken from the written observations of the company against which the complaint was directed.'

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN