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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 19 November 2019 (requests for a preliminary ruling from the Työtuomioistuin — Finland) — Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry v Hyvinvointialan liitto ry (C-609/17) and Auto- ja Kuljetusalan Työntekijäliitto AKT ry v Satamaoperaattorit ry (C-610/17)

(Joined Cases C-609/17 and C-610/17) ([1])

(Reference for a preliminary ruling — Social policy — Article 153 TFEU — Minimum safety and health requirements for the organisation of working time — Directive 2003/88/EC — Article 7 — Right to paid annual leave of at least 4 weeks — Article 15 — Provisions of national legislation and collective agreements more favourable to the protection of the safety and health of workers — Workers incapable of working during a period of paid annual leave due to illness — Refusal to carry over that leave where not carrying over that leave does not reduce the actual duration of the paid annual leave below 4 weeks — Article 31(2) of the Charter of Fundamental Rights of the European Union — Inapplicable where there is no implementation of EU law for the purposes of Article 51(1) of the Charter of Fundamental Rights)

(2020/C 27/02)

Language of the case: Finnish

Referring court

Työtuomioistuin

Parties to the main proceedings

(Case C-609/17)

Applicant: Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry

Defendant: Hyvinvointialan liitto ry

Intervener: Fimlab Laboratoriot Oy (C-609/17)

(Case C-610/17)

Applicant: Auto- ja Kuljetusalan Työntekijäliitto AKT ry

Defendant: Satamaoperaattorit ry

Intervener: Kemi Shipping Oy

Operative part of the judgment

1. Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

2. Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.

(1) OJ C 13, 15.1.2018.

Judgment of the Court (Fourth Chamber) of 21 November 2019 (request for a preliminary ruling from the Högsta domstolen — Sweden) — CeDe Group AB v KAN sp. z o.o., in liquidation

(Case C-198/18) (1)

(Reference for a preliminary ruling — Regulation (EC) No 1346/2000 — Articles 4 and 6 — Insolvency proceedings — Applicable law — European order for payment procedure — Failure to pay a contractual claim before bankruptcy — Exception of set-off based on a contractual claim arising prior to bankruptcy)

(2020/C 27/03)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: CeDe Group AB

Defendant: KAN sp. z o.o., in liquidation

Operative part of the judgment

Article 4 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as amended by Council Regulation (EC) No 788/2008 of 24 July 2008, must be interpreted as not applying to an action brought by the liquidator of an insolvent company established in one Member State for the payment of goods delivered under a contract concluded before the insolvency proceedings were opened in respect of that company, against the other contracting company, which is established in another Member State.

(1) OJ C 190, 4.6.2018.

Judgment of the Court (Third Chamber) of 21 November 2019 (requests for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Landgericht Köln — Germany) — Deutsche Post AG, Klaus Leymann v Land Nordrhein-Westfalen (C-203/18) and UPS Deutschland Inc. & Co. OHG, DPD Dynamic Parcel Distribution GmbH & Co. KG, Bundesverband Paket & Expresslogistik e.V. v Deutsche Post AG (C-374/18)

(Joined Cases C-203/18 and C-374/18) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 561/2006 — Road transport — Social legislation — Vehicles used to deliver items as part of the universal postal service — Exceptions — Vehicles partly used for such delivery — Directive 97/67/EC — Article 3(1) — 'Universal service' — Concept)

(2020/C 27/04)

Language of the case: German

Referring courts

Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Landgericht Köln

Parties to the main proceedings

Applicants: Deutsche Post AG, Klaus Leymann (C-203/18), UPS Deutschland Inc. & Co. OHG, DPD Dynamic Parcel Distribution GmbH & Co. KG, Bundesverband Paket & Expresslogistik e.V. (C-374/18)

Defendants: Land Nordrhein-Westfalen (C-203/18), Deutsche Post AG (C-374/18)

Operative part of the judgment

1. A provision of national law, such as that at issue in the main proceedings, which reproduces verbatim the provisions of Article 13(1)(d) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as amended by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014, must — in so far as it applies to vehicles with a maximum permissible mass of more than 2.8 tonnes but not exceeding 3.5 tonnes and which, as a result, do not fall within the scope of Regulation No 561/2006, as amended by Regulation No 165/2014 — be interpreted exclusively on the basis of EU law, as interpreted by the Court of Justice, where those provisions have, directly and unconditionally, been rendered applicable to such vehicles by national law.

2. Article 13(1)(d) of Regulation No 561/2006, as amended by Regulation No 165/2014, must be interpreted as meaning that the exception which it lays down covers only vehicles or combinations of vehicles that are used exclusively, during a particular transport operation, for the purpose of delivering items as part of the universal postal service.

3. Article 3(1) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, must be interpreted as meaning that the fact that add-on services — such as collection with or without a time slot, a minimum age check, cash on delivery, postage payment by recipient up to 31.5 kilograms, redirection service, instructions in the event of non-delivery and a preferred delivery day and time — are provided in connection with an item precludes that item from being regarded as being delivered within the scope of the 'universal service' under that provision and, therefore, as being an item delivered 'as part of the universal service' for the purposes of applying the exception provided for in Article 13(1)(d) of Regulation No 561/2006, as amended by Regulation No 165/2014.

([1]) OJ C 231, 2.7.2018.
OJ C 328, 17.9.2018.

Judgment of the Court (Fourth Chamber) of 21 November 2019 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Deutsche Lufthansa AG v Land Berlin

(Case C-379/18) ([1])

(Reference for a preliminary ruling — Air transport — Directive 2009/12/EC — Articles 3 and 6 — Article 11(1) and (7) — Airport charges — Protection of airport users' rights — Whether it is possible for the airport managing body to agree charges lower than those approved by the independent supervisory authority — Remedies available to an airport user — Collateral challenge before a civil court giving judgment on the basis of equitable criteria)

(2020/C 27/05)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: Land Berlin

Interveners: Berliner Flughafen GmbH, Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

1. Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, in particular Article 3, Article 6(5)(a) and Article 11(1) and (7) thereof, must be interpreted as precluding a national provision that allows an airport managing body to determine, together with an airport user, airport charges different from those set by that body and approved by the independent supervisory authority, within the meaning of that directive.

2. Directive 2009/12 must be interpreted as precluding an interpretation of national law whereby an airport user is prevented from challenging directly the decision of the independent supervisory authority approving the charging system, but can bring an action against the airport managing body before a civil court and can plead in that action only that the charges determined in the charging system that that user must pay are inequitable.

([1]) OJ C 276, 6.8.2018.

Judgment of the Court (Second Chamber) of 20 November 2019 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Infohos v Belgische Staat

(Case C-400/18) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Sixth Directive 77/388/EEC — Article 13A(1)(f) — Exemptions — Supply of services by independent groups of persons — Services supplied to members and non-members)

(2020/C 27/06)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Applicant: Infohos

Defendant: Belgische Staat

Operative part of the judgment

Article 13A(1)(f) of the Sixth Council Directive 77/388/EEC of the of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which makes exemption from value added tax (VAT) subject to the condition that independent groups of persons supply services exclusively to their members, which has the effect that groups which also supply services to non-members are fully subject to VAT, including for services which they supply to their members.

([1]) OJ C 301, 27.8.2018.

Judgment of the Court (Grand Chamber) of 19 November 2019 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — A. K. v Krajowa Rada Sądownictwa (C-585/18) and CP (C-624/18), DO (C-625/18) v Sąd Najwyższy,

(Joined Cases C-585/18, C-624/18 and C-625/18) ([1])

(Reference for a preliminary ruling — Directive 2000/78/EC — Equal treatment in employment and occupation — Non-discrimination on the ground of age — Lowering of the retirement age of judges of the Sąd Najwyższy (Supreme Court, Poland) — Article 9(1) — Right to a remedy — Article 47 of the Charter of Fundamental Rights of the European Union — Effective judicial protection — Principle of judicial independence — Creation of a new chamber of the Sąd Najwyższy (Supreme Court) with jurisdiction inter alia for cases of retiring the judges of that court — Chamber formed by judges newly appointed by the President of the Republic of Poland on a proposal of the National Council of the Judiciary — Independence of that council — Power to disapply national legislation not in conformity with EU law — Primacy of EU law)

(2020/C 27/07)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: A. K. (C-585/18), CP (C-624/18), DO (C-625/18)

Defendant: Krajowa Rada Sądownictwa (C-585/18), Sąd Najwyższy, (C-624/18), (C-625/18)

Third party: Prokurator Generalny, represented by the Prokuratura Krajowa

Operative part of the judgment

1. It is no longer necessary to answer questions referred by the Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber) of the Sąd Najwyższy (Supreme Court, Poland) in Case C-585/18 or the first question referred by the same court in Cases C-624/18 and C-625/18.

2. The answer to the second and third questions referred by the referring court in Cases C-624/18 and C-625/18 is as follows:

   Article 47 of the Charter of Fundamental Rights of the European Union and Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provisions. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

   If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the abovementioned chamber, so that those cases may be examined by a court which meets the abovementioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field

(1) OJ C 44, 4.2.2019.

Judgment of the Court (Fourth Chamber) of 21 November 2019 (Request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Procureur-Generaal bij de Hoge Raad der Nederlanden

(Case C-678/18) (1)

(Reference for a preliminary ruling — Designs — Regulation (EC) No 6/2002 — Article 90(1) — Provisional and protective measures — Jurisdiction of national courts of first instance — Exclusive jurisdiction of the courts designated in that provision)

(2020/C 27/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Procureur-Generaal bij de Hoge Raad der Nederlanden

Operative part of the judgment

Article 90(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted as meaning that the courts and tribunals of the Member States with jurisdiction to order provisional measures, including protective measures, in respect of a national design also have jurisdiction to order such measures in respect of a Community design.

([1]) OJ C 25, 21.1.2019.

Judgment of the Court (Sixth Chamber) of 20 November 2019 (request for a preliminary ruling from the Raad voor Vreemdelingenbetwistingen — Belgium) — X v Belgische Staat

(Case C-706/18) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Immigration policy — Right to family reunification — Directive 2003/86/EC — Article 5(4) — Decision concerning the application for family reunification — Consequences of failure to comply with the time limit for taking a decision — Automatic issue of a residence permit)

(2020/C 27/09)

Language of the case: Dutch

Referring court

Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicant: X

Defendant: Belgische Staat

Operative part of the judgment

Council Directive 2003/86/EC of 22 September 2003 on family reunification must be interpreted as precluding national legislation under which, in the absence of a decision being adopted within six months of the date on which the application for family reunification was lodged, the competent national authorities must automatically issue a residence permit to the applicant, without necessarily having to establish in advance that the latter actually meets the requirements for residence in the host Member State in accordance with EU law.

([1]) OJ C 35, 28.1.2019.

Judgment of the Court (Ninth Chamber) of 20 November 2019 — Portuguese Republic v European Commission

(Case C-737/18 P) ([1])

(Appeal — European Agricultural Guarantee Fund (EAGF) — European Agricultural Fund for Rural Development (EAFRD) — Expenditure excluded from EU financing — Expenditure incurred by the Portuguese Republic)

(2020/C 27/10)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, J. Saraiva de Almeida, P. Barros da Costa and P. Estêvão, acting as Agents)

Other party to the proceedings: European Commission (represented by: A. Sauka and B. Rechena, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Portuguese Republic to pay the costs.

([1]) OJ C 35, 28.1.2019.

Appeal brought on 28 March 2019 by WB against the order of the General Court (Third Chamber) delivered on 23 January 2019 in Case T-579/18 WB v Commission

(Case C-270/19 P)

(2020/C 27/11)

Language of the case: Romanian

Parties

Appellant: WB (represented by: N. Ciocea, avocată)

Other party to the proceedings: European Commission

By order of 3 December 2019, the Court of Justice (Seventh Chamber) dismissed the appeal as manifestly unfounded.

Appeal brought on 28 March 2019 by WB against the order of the General Court (Third Chamber) delivered on 23 January 2019 in Case T-329/18 WB v Commission

(Case C-271/19 P)

(2020/C 27/12)

Language of the case: Romanian

Parties

Appellant: WB (represented by: N. Ciocea, avocată)

Other party to the proceedings: European Commission

By order of 3 December 2019, the Court of Justice (Seventh Chamber) dismissed the appeal as manifestly unfounded.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 13 May 2019 — Finanzamt München III v Dubrovin & Tröger GbR — Aquatics

(Case C-373/19)

(2020/C 27/13)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt München III
Defendant: Dubrovin & Tröger GbR — Aquatics

Questions referred

1. Does the concept of school or university education within the meaning of Article 132(1)(i) and (j) of Council Directive 2006/112/EC [1]of 28 November 2006 on the common system of value added tax also include swimming tuition?

2. Can the recognition of an organisation within the meaning of Article 132(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as an organisation having objects similar to those of bodies governed by public law that have as their aim the provision of children's or young people's education, school or university education, vocational training or retraining result from the fact that the tuition provided by that organisation enables participants to learn a fundamental ability (in this case: swimming)?

3. If the second question is answered in the negative: Does the tax exemption pursuant to Article 132(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax require that the taxable person be an individual trader?

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

Request for a preliminary ruling from the Bundesfinanzgericht (Außenstelle Graz) (Austria) lodged on 5 August 2019 — SK Telecom Co. Ltd.

(Case C-593/19)

(2020/C 27/14)

Language of the case: German

Referring court

Bundesfinanzgericht (Außenstelle Graz)

Parties to the main proceedings

Appellant: SK Telecom Co. Ltd.

Respondent: Finanzamt Graz-Stadt

Questions referred

1. Is Article 59a(b) of Directive 2006/112/EC, ([1]) as amended by Article 2 of Directive 2008/8/EC, ([2]) to be interpreted as meaning that the use of roaming services in a Member State in the form of access to the national mobile telephone network for the purpose of establishing incoming and outgoing connections by a 'non-taxable end customer' temporarily resident in that Member State constitutes 'use and enjoyment' in that Member State which justifies the transfer of the place of supply from the third country to that Member State, even though neither the mobile telephone operator providing the services nor the end customer are established in Community territory and the end customer does not have his permanent address and does not usually reside in the Community?

2. Is Article 59a(b) of Directive 2006/112, as amended by Article 2 of Directive 2008/8, to be interpreted as meaning that the place of supply of telecommunications services as described in Question 1, which are outside the Community according to Article 59 of Directive 2006/112, as amended by Article 2 of Directive 2008/8, may be transferred to the territory of a Member State even though neither the mobile telephone operator providing the services nor the end customer are established in Community territory and the end customer does not have his permanent address and does not usually reside in the Community, simply because the telecommunications services in the third country are not subject to a tax comparable to VAT under EU law?

([1]) Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
([2]) Council Directive of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ 2008 L 44, p. 11).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 12 August 2019 — Husqvarna AB v Lidl E-Commerce International GmbH & Co. KG

(Case C-607/19)

(2020/C 27/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Husqvarna AB

Defendant: Lidl E-Commerce International GmbH & Co. KG

Questions referred

1. In the case of a counterclaim seeking a declaration that an EU trade mark has lapsed, which was filed prior to the expiry of the period of five years of non-use, is the establishment of the date which is decisive for the calculation of the period of non-use in the context of the application of Article 51(1)(a) CTMR ([1]) and Article 58(1)(a) EUTMR ([2]) covered by the provisions of the Community Trade Mark Regulation and the European Union Trade Mark Regulation?

2. If Question 1 is to be answered in the affirmative: In the calculation of the period of five years of non-use pursuant to Article 51(1)(a) CTMR and Article 58(1)(a) EUTMR in the case of a counterclaim, filed prior to expiry of the period of five years of non-use, for a declaration that an EU trade mark has lapsed, is account to be taken of the date of filing of the counterclaim or of the date of the last hearing in the appeal on the merits?

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).
([2]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 30 August 2019 — EU v PE Digital GmbH

(Case C-641/19)

(2020/C 27/16)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: EU

Defendant: PE Digital GmbH

Questions referred

1. Is Article 14(3) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011, ([1]) with regard to recital 50 thereof, to be interpreted as meaning that the 'amount [to be paid by the consumer] which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract' is to be calculated on a purely *pro rata temporis* basis in the case of a contract according to the content of which an overall service made up of several sub-services, rather than a single service, is to be provided, if the consumer pays for the overall service on a *pro rata temporis* basis, but the sub-services are provided within different intervals?

2. Is Article 14(3) of Directive 2011/83 to be interpreted as meaning that the 'amount [to be paid by the consumer] which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract' is to be calculated on a purely *pro rata temporis* basis even if a (sub-)service is continuously provided, but has a higher or lower value for the consumer at the beginning of the contract term?

3. Are Article 2.11 of Directive 2011/83 and Article 2.1 of Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 ([2]) to be interpreted as meaning that files which are supplied as a sub-service within the scope of an overall service principally provided as a 'digital service' within the meaning of Article 2.2 of Directive 2019/770 may also constitute 'digital content' within the meaning of Article 2.11 of Directive 2011/83 and Article 2.1 of Directive 2019/770, with the result that the trader could terminate the right of withdrawal under Article 16(m) of Directive 2011/83 with regard to the sub-service, but the consumer, if the trader fails to do so, could withdraw from the contract as a whole and would not have to pay compensation for that sub-service by reason of Article 14(4)(b)(ii) of Directive 2011/83?

4. Is Article 14(3) of Directive 2011/83, with regard to recital 50 thereof, to be interpreted as meaning that the total price contractually agreed for a service within the meaning of the third sentence of Article 14(3) of Directive 2011/83 is 'excessive' if it is significantly higher than the total price agreed with another consumer for a service that is identical in terms of content provided by the same trader for the same contract term and, furthermore, under the same framework conditions?

([1]) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

([2]) Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ 2019 L 136, p. 1).

Request for a preliminary ruling from the Landgericht Frankenthal (Germany) lodged on 17 September 2019 — OK v Daimler AG

(Case C-685/19)

(2020/C 27/17)

Language of the case: German

Referring court

Landgericht Frankenthal

Parties to the main proceedings

Applicant: OK

Defendant: Daimler AG

Questions referred

1. Is Article 5(2), sentence 2, letter (a) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ([1]) to be interpreted and applied as meaning that a need for the use of defeat devices within the meaning of that provision is only to be found if, even using the state-of-the-art technology available when type approval was obtained for the vehicle model in question, the protection of the engine against damage or accident and the safe operation of the vehicle could not be guaranteed?

2. Question 2, in the event that question 1 is answered in the affirmative:

   Are deviations from the general obligation to use the state-of-the-art technology available at the time of the type approval admissible for other reasons, such as a lack of long-term experience or disproportionately high costs of the state-of-the-art technology in relation to other technologies with considerable effects on the retail price?

Question 2, in the event that question 1 is answered in the negative:

Even with the use of technological components which are in principle admissible, does a prohibited defeat device exist in the form of the so-called 'thermal window', if the parameters set in this regard in the engine control unit are chosen such that the exhaust gas purification is not activated or only activated to a limited extent

(a) because of the chosen temperatures, taking into account the temperatures usually to be expected for a large part of the year

(b) because of other parameters — such as the current altitude of the vehicle above sea level — in relevant regions of Germany or the European internal market.

(1) OJ 2007 L 171, p. 1.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 24 September 2019 — J.K. v Dyrektor Izby Administracji Skarbowej w Katowicach

(Case C-703/19)

(2020/C 27/18)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: J.K.

Respondent: Dyrektor Izby Administracji Skarbowej w Katowicach

Questions referred

1. Does the concept of a 'restaurant service' to which a reduced rate of VAT applies (Article 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (1) read in conjunction with point (12a) of Annex III thereto and with Article 6 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, (2) cover the sale of prepared dishes under conditions such as those in the main proceedings, that is to say, in a situation where:

— the seller makes available to the buyer the infrastructure which enables him or her to consume the purchased meal on the premises (separate dining space, access to toilets);

— there is no specialised waiter service;

— there is no service in the strict sense;

— the ordering process is simplified and partly automated; and

— the customer's ability to customise the order is limited?

2. Is the way in which the dishes are prepared, consisting in, in particular, the heating of certain semi-finished products and the composing of prepared dishes from semi-finished products, relevant to answering the first question?

3. In order to answer the first question, is it sufficient that the customer is potentially able to use the infrastructure offered or is it also necessary to establish that, for the average customer, this element constitutes an essential part of the service provided?

(1) OJ 2006 L 347, p. 1, as amended.
(2) OJ 2011 L 77, p. 1.

Request for a preliminary ruling from the Sąd Rejonowy dla Łodzi (Poland) lodged on 23 September 2019 — K.S. v A.B.

(Case C-707/19)

(2020/C 27/19)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Łodzi

Parties to the main proceedings

Applicant: K.S.

Defendant: A.B.

Questions referred

Must Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (1) be interpreted as meaning that, within the framework of 'all appropriate measures', each Member State should make insurance undertakings fully liable under insurance against civil liability, including for consequences of damage in the form of the need to tow the victim's vehicle to his home country and the cost of necessary parking of vehicles?

If the answer to the above question is affirmative — can this liability be limited in any way by the laws of the Member States?

(1) OJ 2009 L 263, p. 11.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 21 October 2019 — Criminal proceedings against UC and TD

(Case C-769/19)

(2020/C 27/20)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties to the main proceedings

UC and TD

Question referred

Is a national law which, in the case of a deficient bill of indictment (the content of which is unclear, incomplete or inconsistent), in no way allows the possibility of these deficiencies being remedied through corrections by the public prosecutor in the preparatory judicial hearing in which the deficiencies are established, and instead always obliges the court to discontinue the judicial proceedings and remit the matter to the public prosecutor's office for a new bill of indictment to be drawn up, compatible with Article 6 of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (JO 2012, L 142, p. 1), the principle of having a hearing within a reasonable time pursuant to Article 47(2) of the Charter of Fundamental Rights of the European Union, the principle of the precedence of EU law and the principle of the preservation of dignity, if this causes a considerable delay in the criminal proceedings and the deficiencies could be rectified immediately in the judicial hearing?

Request for a preliminary ruling from the Amtsgericht Nürnberg (Germany) lodged on 21 October 2019 — Myflyright GmbH v SunExpressGünes Ekspres Havacilik A

(Case C-770/19)

(2020/C 27/21)

Language of the case: German

Referring court

Amtsgericht Nürnberg

Parties to the main proceedings

Applicant: Myflyright GmbH

Defendant: SunExpressGünes Ekspres Havacilik A

The case was removed from the register of the Court of Justice by order of the President of the Court of 11 November 2019.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 22 October 2019 — Bartosch Airport Supply Services

(Case C-772/19)

(2020/C 27/22)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Bartosch Airport Supply Services GmbH

Defendant: Zollamt Wien

Question referred

Is heading 8705 of the Combined Nomenclature ([1]) to be interpreted as meaning that towbarless motor vehicles with a pulling winch with belt pulling device for pulling aircraft and an electrohydraulic lifting device for pushing aircraft fall under this heading?

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

Request for a preliminary ruling from the Finanzgericht Baden Württemberg (Germany) lodged on 22 October 2019 — 5th AVENUE Products Trading GmbH v Hauptzollamt Singen

(Case C-775/19)

(2020/C 27/23)

Language of the case: German

Referring court

Finanzgericht Baden Württemberg

Parties to the main proceedings

Applicant: 5th AVENUE Products Trading GmbH

Defendant: Hauptzollamt Singen

Questions referred

1. Are payments which the purchaser of a product makes in addition to the purchase price, depending on his sales revenues, once a year for four years, in order to be able to sell the product

   — in a particular territory,

   — for the very first time,

— exclusively and

— permanently,

royalties and licence fees within the meaning of Article 32(1)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (CC) [1] which are to be added to the price actually paid or payable for the imported goods under Article 32(5)(b) CC in conjunction with Article 157(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Customs Code (CCIR) [2]?

2. Are such payments, where appropriate, to be added to the price paid or payable for the imported goods only on a proportional basis and, if so, on the basis of which criterion?

[1] OJ 1992 L 302, p. 1

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

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 22 October 2019 — 'TEAM POWER EUROPE' EOOD v Direktor na Teritorialna direktsia na Natsionalna agentsia za prihodite — Varna

(Case C-784/19)

(2020/C 27/24)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: 'TEAM POWER EUROPE' EOOD

Defendant: Direktor na Teritorialna direktsia na Natsionalna agentsia za prihodite — Varna

Question referred

Is Article 14(2) of Regulation (EC) No 987/2009 [1] 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 to be interpreted as meaning that, in order for it to be possible to assume that an undertaking engaged in providing temporary personnel normally carries out its activities in the Member State in which it is established, it has to perform a substantial part of the employee assignment activity for hirers established in the same Member State?

[1] OJ 2009 L 284, p. 1.

Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 23 October 2019 — Koch Media GmbH v HC

(Case C-785/19)

(2020/C 27/25)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: Koch Media GmbH

Defendant: HC

Questions referred

1. a) Is Article 14 of the Enforcement Directive ([1]) to be interpreted as meaning that the provision covers necessary lawyers' fees as 'legal costs' or as 'other expenses' incurred by a holder of intellectual property rights within the meaning of Article 2 of the Enforcement Directive by virtue of the fact that he asserts, out of court, a right to apply for a prohibitory injunction against an infringer of those rights by way of a warning notice?

   b) In the event that 1a) is answered in the negative: Is Article 13 of the Enforcement Directive to be interpreted as meaning that the provision covers the lawyers' fees referred to in 1a) in the form of damages?

2. a) Is EU law, particularly with regard to

   — Articles 3, 13 and 14 of the Enforcement Directive,

   — Article 8 of the Copyright Directive ([2]), and

   — Article 7 of the Computer Program Directive

   — to be interpreted as meaning that a holder of intellectual property rights within the meaning of Article 2 of the Enforcement Directive ([3]) is in principle entitled to reimbursement of the full amount of the lawyers' fees referred to in 1a), or at least a reasonable and substantial proportion of those fees, even if

   — the alleged infringement has been committed by a natural person outside his trade or profession, and

— a national provision provides, for such a case, that such lawyers' fees are generally recoverable only after the value in dispute has been reduced?

b) In the event that Question 2a) is answered in the affirmative: Is the EU law referred to in Question 2a) to be interpreted as meaning that an exception to the principle referred to in 2a), according to which the rightholder must be reimbursed the full amount of the lawyers' fees referred to in 1a), or at least a reasonable and substantial proportion of those fees,

taking account of other factors (such as, for instance, how current the work is, the period of publication and the infringement by a natural person outside the interests of his trade or profession)

is to be considered

even if the infringement of intellectual property rights within the meaning of Article 2 of the Enforcement Directive consists in file sharing, that is to say making a work available to the public by offering it for free download to all users on a freely accessible exchange platform that has no digital rights management?

([1]) OJ 2004, L 157, p. 45.
([2]) OJ 2001, L 167, p. 10.
([3]) OJ 2009, L 111, p. 16.

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 28 October 2019 — TUIfly GmbH v EUflight.de GmbH

(Case C-792/19)

(2020/C 27/26)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: TUIfly GmbH

Respondent: EUflight.de GmbH

Questions referred

1. In the event of a strike, is the cancellation or long delay in the arrival of a flight caused by extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004 ([1]) even if the flight at issue was not directly affected by the strike and could have proceeded as scheduled, but was cancelled or delayed due to measures taken by the air carrier to reorganise the flight schedule as a result of the strike (in this case, the use of the aircraft intended for the flight in order to remedy the consequences of the strike)?

2. In the event that an air carrier may also be released from liability in the case of a reorganisation measure:

   Is it essential that the reorganisation measure had already been taken before the strike began, when it was not yet foreseeable which flight would ultimately be affected by the strike action, or is exculpation possible also if the flight schedule was reorganised only during or after the strike and it was already established that the flight at issue was not directly affected by the strike?

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

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 24 October 2019 — B-GmbH v D Tax Office

(Case C-797/19)

(2020/C 27/27)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant and appellant in the appeal on a point of law: B-GmbH

Defendant and respondent in the appeal on a point of law: D Tax Office

Question referred

Is Article 107(1) of the Treaty on the Functioning of the European Union to be interpreted as meaning that State aid falling within the scope of that provision exists if, under the legislation of a Member State, losses incurred (on a permanent basis) by an incorporated company as a result of an economic activity carried out without remuneration that is sufficient to covers costs are to be regarded, in principle, as covert distributions of profits and, accordingly, must not reduce the profits of an incorporated company but, nevertheless, those legal consequences are not to be applied for permanently loss-making business activities in the case of incorporated companies in which the majority of voting rights are directly or indirectly held by legal persons governed by public law, if they carry out the activities concerned for reasons of transport, environmental, social, cultural, educational or health policy?

Request for a preliminary ruling from the Sąd Apelacyjny w Warszawie (Poland) lodged on 30 October 2019 — SM v Mittelbayerischer Verlag KG

(Case C-800/19)

(2020/C 27/28)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Warszawie

Parties to the main proceedings

Applicant: SM

Defendant: Mittelbayerischer Verlag KG

Questions referred

1. Should Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) be interpreted as meaning that jurisdiction based on the centre-of-interests connecting factor is applicable to an action brought by a natural person for the protection of his personality rights in a case where the online publication cited as infringing those rights does n contain information relating directly or indirectly to that particular natural person, but contains, rather, information or statements suggesting reprehensible actions by the community to which the applicant belongs (in the circumstances of the case at hand: his nation), which the applicant regards as amounting to an infringement of his personality rights?

2. In a case concerning the protection of material and non-material personality rights against online infringement, is it necessary, when assessing the grounds of jurisdiction set out in Article 7(2) of Regulation [[…] No 1215/2012 […]], that is to say, when assessing whether a national court is the court for the place where the harmful event occurred or may occur, to take account of circumstances such as:

   — the public to whom the website on which the infringement occurred is principally addressed;

   — the language of the website and in which the publication in question is written;

   — the period during which the online information in question remained accessible to the public;

   — the individual circumstances of the applicant, such as the applicant's wartime experiences and his current social activism, which are invoked in the present case as justification for the applicant's special right to oppose, by way of judicial proceedings, the dissemination of allegations made against the community to which the applicant belongs?

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

Request for a preliminary ruling from the Upravni sud u Zagrebu (Croatia) lodged on 31 October 2019 — FRANCK d.d., Zagreb v Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak

(Case C-801/19)

(2020/C 27/29)

Language of the case: Croatian

Referring court

Upravni sud u Zagrebu

Parties to the main proceedings

Applicant: FRANCK d.d., Zagreb

Defendant: Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak, Zagreb

Questions referred

1. Can a service involving funds being made available by the applicant, which is not a financial institution, for payment of a one-off fee of 1 %, be regarded as 'the granting and the negotiation of credit and the management of credit by the person granting it' within the meaning of Article 135(1)(b) of the VAT Directive, ([1]) despite the fact that the applicant is not formally referred to as the lender in the contract?

2. Is a bill of exchange, that is to say a security containing an obligation on the issuer to pay a specific amount of money to the person designated as the creditor in the security in question or to the person who subsequently acquired that the security in an manner prescribed by law, regarded as an 'other negotiable instrument' within the meaning of Article 135(1)(d) of the VAT Directive?

3. Does the applicant's service, by which, for a fee of 1 % of the amount of the bill of exchange charged to the issuer thereof, it transferred the bill of exchange obtained to a factoring company, and transferred the amount obtained from the factoring company to the issuer of the bill of exchange, and guaranteed to the factoring company that the issuer of the bill of exchange will pay the liability arising from the bill of exchange when it becomes due, constitute:

   (a) a service exempt from VAT under Article 135(1)(b) of the VAT Directive; or

   (b) a service exempt from VAT under Article 135(1)(d) of the VAT Directive? a

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

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 4 November 2019 — 'DSK Bank' EAD and 'FrontEx International'

(Case C-807/19)

(2020/C 27/30)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicants in the order for payment procedures:'DSK Bank' EAD and 'FrontEx International' EAD

Questions referred

1. Does the fact that a national court has a significantly heavier workload than the other courts of the same instance and the judges of that court are therefore prevented from examining the documents submitted to them on the basis of which provisional enforceability is to be ordered or may be ordered and at the same time from delivering their decisions within a reasonable period of time constitute, as such, an infringement of the EU law on consumer protection or of other fundamental rights?

2. Must the national court refuse to issue decisions, which may result in enforcement if the consumer does not object to them, if it has a serious suspicion that the application is based on an unfair term in a consumer contract, without the case file containing any compelling evidence of that?

3. If the second question is answered in the negative, is it permissible for the national court, if it has such a suspicion, to request additional evidence from the trading party to the contract, even though, under national law, it does not have such power in the procedure in which a potentially enforceable decision is given, so long as the debtor does not raise an objection?

4. Are the requirements for the establishment of certain circumstances by the national court of its own motion, as introduced by EU law in connection with directives harmonising consumer law, also applicable in cases where the national legislature offers consumers additional protection (more rights) via a national law transposing a provision of a directive which allows such enhanced protection to be granted?

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 12 November 2019 — TC, UB v Komisia za zashtita ot diskriminatsia, VA

(Case C-824/19)

(2020/C 27/31)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellants in the appeal in cassation: TC, UB

Respondents in the appeal in cassation: Komisia za zashtita ot diskriminatsia, VA

Questions referred

1. Does the interpretation of Article 5(2) of the United Nations Convention on the Rights of Persons with Disabilities and of Article [2](1), (2) and (3) and Article 4(1) of Council Directive 2000/78/EC ([1]) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation lead to the conclusion that it is permissible for a person without the ability to see to be able to work as a court assessor and participate in criminal proceedings, or:

2. Is the specific disability of a permanently blind person a characteristic which constitutes a genuine and determining requirement of the activity of a court assessor, the existence of which justifies a difference of treatment and does not constitute discrimination based on the characteristic of 'disability'?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Tribunal de première instance de Namur (Belgium) lodged on 15 November 2019 — C.J. v Région wallonne

(Case C-830/19)

(2020/C 27/32)

Language of the case: French

Referring court

Tribunal de première instance de Namur

Parties to the main proceedings

Applicant: C.J.

Defendant: Région wallonne

Question referred

Do Articles 2, 5 and 19 of Regulation (EU) No 135/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, ([1]) read in conjunction with Article 2 of Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, ([2]) preclude, in the implementation of those provisions, Member States from taking account of the entire holding and not only the share of the young farmer in it and/or of work units in order to determine the upper and lower thresholds where the agricultural holding is operated in the form of an unincorporated association in which the young farmer acquires an undivided share and exercises joint control over the holding?

([1]) OJ 2013 L 347, p. 487.
([2]) OJ 2014 L 227, p. 1.

Appeal brought on 20 November 2019 by the Federal Republic of Germany against the judgment of the General Court (First Chamber, Extended Composition) delivered on 10 September 2019 in Case T-883/16, Republic of Poland v European Commission

(Case C-848/19 P)

(2020/C 27/33)

Language of the case: Polish

Parties

Appellant: Federal Republic of Germany (represented by: J. Möller, D. Klebs, supported by H. Haller, Rechtsanwalt, T. Heitling, Rechtsanwalt, L. Reiser, Rechtsanwältin, and V. Vacha, Rechtsanwältin)

Other parties to the proceedings: Republic of Poland, European Commission, Republic of Latvia and Republic of Lithuania

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 10 September 2019 in Case T-883/16;

— refer Case T-883/16 back to the General Court of the European Union;

— order that costs be reserved.

Grounds of appeal and main arguments

In support of its appeal, the appellant relies on five grounds of appeal:

1. First ground of appeal: The principle of energy solidarity is not a legal criterion, and does not impose on executive bodies an obligation to act

The principle of energy solidarity in Article 194 TFEU is, as a general guiding principal, a purely political notion and not a legal criterion.

The primary law principle of energy solidarity cannot give rise to specific rights and obligations for the European Union and/or for the Member States. In particular, no obligations flow from that abstract guiding principal for executive bodies, such as verification obligations on the European Commission as part of its decision-making.

On account of its abstract and indeterminable nature, the concept of energy solidarity is not justiciable.

2. Second ground of appeal: The principle of energy solidarity was not applicable in the present case

The principle of energy solidarity is purely a contingency mechanism, which applies only in exceptional cases and in restricted circumstances, and does not have to be taken into account in every decision of the European Commission.

The conditions required for application of the contingency mechanism in the context of contested Commission Decision C(2016)6950 are not satisfied.

3. Third ground of appeal: The European Commission observed the principle of energy solidarity

To the extent that the principle of energy solidarity is in fact applicable to contested Commission Decision C(2016)6950 (quod non), the European Commission observed the principle in arriving at its decision:

The European Commission took into account the effects on both the Polish gas market and the European gas market as a whole in arriving at its decision.

When examining the conditions under Article 36(1)(a) of Directive 2009/73/EC, it was necessary only to ensure security of supply as an expression of the principle of energy solidarity.

Security of supply in Poland was, and is, not at risk.

4. Fourth ground of appeal: It was not necessary for the principle of energy solidarity to be referred to expressly in the decision

It was not necessary for all of the reasons for contested Commission Decision C(2016)6950 to be mentioned explicitly. There are no procedural requirements specifying to what extent the European administration must give reasons for its decisions.

The statement of reasons for administrative measures need only indicate the aim which the measure pursues, and does not have to state all relevant legal and factual considerations.

The validity of the European Commission's decisions cannot depend on whether certain terms are contained in the decision.

5. Fifth ground of appeal: Contested Commission Decision C(2016)6950 cannot be annulled simply on account of an alleged procedural error

Even if contested Commission Decision C(2016)6950 had been unlawful on procedural grounds (quod non), that would not have led to it being annulled because substantively correct decisions are, in principle, not to be annulled under the second paragraph of Article 263 TFEU simply on account of a possible procedural error.

Appeal brought on 26 November 2019 by the Czech Republic against the judgment of the General Court (Seventh Chamber) delivered on 12 September 2019 in Case T-629/17 Czech Republic v Commission

(Case C-862/19 P)

(2020/C 27/34)

Language of the case: Czech

Parties

Appellant: Czech Republic (represented by: M. Smolek, O. Serdula, I. Gavrilová, J. Vláčil, Agents)

Other parties to the proceedings: European Commission, Republic of Poland

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court in Case T-629/17;

— annul Commission Implementing Decision C(2017)4682;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellant puts forward one ground in support of the appeal, alleging infringement of Article 16(b) of Directive 2004/18. ([1])

It argues that the judgment under appeal must be set aside on the ground that the General Court erred in law in concluding that the exception contained in Article 16(b) of Directive 2004/18 relates to public contracts for programme material only when the contracting authority is a broadcaster. It claims that it is nevertheless apparent from the wording, purpose, scheme and legislative history of the provision concerned that the exception in question must also be applied in the situation where the broadcaster is a contracting party in the position of a provider of programme material, as was the case with the contract at issue in the Czech Republic.

Having regard to the fact that the financial correction implemented by Commission Decision C(2017) 4682 was founded exclusively on the fact that the contracting authority for the contract at issue was not a broadcaster, that decision must be annulled in addition to the judgment under appeal of the General Court being set aside.

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

GENERAL COURT

Judgment of the General Court of 3 December 2019 — Yieh United Steel v Commission

(Case T-607/15) ([1])

(Dumping — Imports of stainless steel cold-rolled flat products originating in China and Taiwan — Definitive anti-dumping duty — Implementing Regulation (EU) 2015/1429 — Article 2(3) and (5) of Regulation (EC) No 1225/2009 (now Article 2(3) and (5) of Regulation (EU) 2016/1036) — Article 2(1) and (2) of Regulation No 1225/2009 (now Article 2(1) and (2) of Regulation 2016/1036) — Calculation of the normal value — Calculation of the production cost — Sales of the like product intended for consumption on the domestic market of the exporting country)

(2020/C 27/35)

Language of the case: English

Parties

Applicant: Yieh United Steel Corp. (Kaohsiung City, Taiwan) (represented by D. Luff, lawyer)

Defendant: European Commission (represented by J. F. Brakeland and A. Demeneix, acting as Agents)

Intervener in support of the defendant: Eurofer, Association européenne de l'acier, ASBL (Luxembourg, Luxembourg) (represented by J. Killick, G. Forwood and C. Van Haute, lawyers)

Re:

Application pursuant to Article 263 TFEU seeking the annulment in part of Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 224, p. 10).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Yieh United Steel Corp. to bear its own costs and to pay those incurred by the European Commission and by Eurofer, Association européenne de l'acier, ASBL.*

([1]) OJ C 38, 1.2.2016.

Judgment of the General Court of 3 December 2019 — Pethke v EUIPO

(Case T-808/17) ([1])

(Civil service — Officials — Appraisal report — Regularity of appraisal procedures and appraisal appeal procedures — Requirement for the appeal assessor to be impartial)

(2020/C 27/36)

Language of the case: German

Parties

Applicant: Ralph Pethke (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė, acting as Agent, and B. Wägenbaur, lawyer)

Re:

Action based on Article 270 TFEU seeking annulment of the applicant's appraisal report for 2016 and, if necessary, annulment of the decision by the Management Board of EUIPO of 18 October 2017 rejecting the applicant's complaint.

Operative part of the judgment

The Court:

1) *Annuls Ralph Pethke's appraisal report for 2016 and the decision of the European Union Intellectual Property Office (EUIPO) of 18 October 2017 rejecting the complaint made by Mr Pethke;*

2) *Orders EUIPO to bear its own costs and to pay those incurred by Mr Pethke.*

([1]) OJ C 42, 5.2.2018.

Judgment of the General Court of 28 November 2019 — August Wolff v EUIPO — Faes Farma (DermoFaes Atopiderm)

(Case T-644/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark DermoFaes Atopiderm — Earlier EU word mark Dermowas — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2020/C 27/37)

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 (represented by: J. Ivanauskas and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Faes Farma, SA (Lamiaco-Leioa, Spain) (represented by: A. Vela Ballesteros and S. Fernandez Malvar, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 July 2018 (Case R 1305/2017-2) relating to opposition proceedings between Dr. August Wolff and Faes Farma.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dr. August Wolff GmbH & Co. KG Arzneimittel to bear its own costs and to pay the costs incurred by the European Union Intellectual Property Office (EUIPO) and by Faes Farma, SA, including those necessarily incurred by Faes Farma, SA, before the Board of Appeal of EUIPO.*

([1]) OJ C 4, 7.1.2019.

Judgment of the General Court of 3 December 2019 — Hästens Sängar v EUIPO (Representation of a chequered gingham pattern)

(Case T-658/18) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark representing a chequered gingham pattern — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2020/C 27/38)

Language of the case: English

Parties

Applicant: Hästens Sängar AB (Köping, Sweden) (represented by: M. Johansson and R. Wessman, lawyers)
Defendant: European Union Intellectual Property Office (represented by: A. Söder, H. O'Neill and D. Gája, acting as Agents)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 8 August 2018 (Case R 442/2018-2) concerning the international registration designating the European Union of a figurative mark representing a chequered gingham pattern.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hästens Sängar AB to pay the costs.*

([1]) OJ C 25, 21.1.2019.

Judgment of the General Court of 28 November 2019 — Soundio v EUIPO — Telefónica Germany (Vibble)

(Case T-665/18) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark Vibble — Earlier German word mark vybe — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2020/C 27/39)

Language of the case: English

Parties

Applicant: Soundio A/S (Drammen, Norway) (represented by: N. Köster and J. Albers, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Gája and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Telefónica Germany GmbH & Co. OHG (Düsseldorf, Germany) (represented by: P. Neuwald, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 4 September 2018 (Case R 721/2018-5), relating to opposition proceedings between E-Plus Mobilfunk GmbH and Soundio.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Soundio A/S to pay the costs.*

([1]) OJ C 16, 14.1.2019.

Judgment of the General Court of 28 November 2019 — Mélin v Parliament

(Case T-726/18) (([1]))

(Law governing the institutions — Rules governing expenses and allowances payable to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid — Obligation to state reasons — Failure to provide the annex to the decision ordering recovery)

(2020/C 27/40)

Language of the case: French

Parties

Applicant: Joëlle Melin (Aubagne, France) (represented by: F. Wagner, lawyer)

Defendant: European Parliament (represented by: S. Seyr and M. Ecker, acting as Agents)

Re:

Action based on Article 263 TFEU seeking annulment of the Decision of the Secretary General of the Parliament of 4 October 2018 concerning the recovery from the applicant of a sum of EUR 130 339,35 unduly paid as parliamentary assistance and the corresponding debit note of 10 October 2018.

Operative part of the judgment

The Court:

1) *Annuls the decision of the Secretary General of the European Parliament of 4 October 2018 concerning the recovery from Joëlle Mélin of a sum of EUR 130 339,35 unduly paid as parliamentary assistance and of the corresponding debit note of 10 October 2018;*

2) *Orders the Parliament to pay the costs.*

([1]) (1) OJ C 65, 18.2.2019.

Judgment of the General Court of 28 November 2019 — Runnebaum Invest v EUIPO — Berg Toys Beheer (Bergsteiger)

(Case T-736/18) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark Bergsteiger — Earlier Benelux word marks and EU figurative and word marks BERG — Relative ground for refusal — Article 47(1) and (2) of Regulation (EU) 2017/1001 — Admissibility of a request for proof of genuine use — No likelihood of confusion — Article 8(1)(b) of Regulation 2017/1001)

(2020/C 27/41)

Language of the case: English

Parties

Applicant: Runnebaum Invest GmbH (Diepholz, Germany) (represented by: W. Prinz, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Berg Toys Beheer BV (Ede, Netherlands) (represented by: E. van Gelderen, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 22 October 2018 (Case R 572/2018-4) relating to opposition proceedings between Berg Toys Beheer and Runnebaum Invest.

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 22 October 2018 (Case R 572/2018-4);*

2. *Orders EUIPO to bear its own costs and to pay the costs incurred by Runnebaum Invest GmbH;*

3. *Orders Berg Toys Beheer BV to bear its own costs.*

([1]) OJ C 65, 18.2.2019.

Order of the General Court of 22 November 2019 — Pyke v EUIPO — Paglieri (CLIOMAKEUP)

(Case T-672/18) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2020/C 27/42)

Language of the case: Italian

Parties

Applicant: Pyke Srl (Milan, Italy) (represented by: P. Roncaglia, F. Rossi, N. Parrotta and R. Perotti, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO) (represented by: L. Rampini, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Paglieri SpA (Alessandria, Italy) (represented by: A. Perani and G. Ghisletti, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 28 August 2018 (Case 2675/2017-5) relating to opposition proceedings between Paglieri and Pyke.

Operative part

1) *There is no longer any need to adjudicate on the action.*

2) *Pyke Srl and Paglieri SpA shall bear their own costs, and each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 25, 21.1.2019.

Order of the President of the General Court of 11 November 2019 — Intering and Others v Commission

(Case T-525/19 RII)

(Interim measures — Programme entitled 'EU Support to clean air in Kosovo' — Tendering procedure EuropeAid/140043/DH/WKS/XK — Decision rejecting the suspension of operation of the decision to exclude an applicant from the further tendering procedure — New application for interim measures — Article 159 of the Rules of Procedure — Inadmissibility)

(2020/C 27/43)

Language of the case: German

Parties

Applicants: Intering Sh.p.k (Obiliq, Kosovo), Steinmüller Engineering GmbH (Gummersbach, Germany), Deling d.o.o. za proizvodnju, promet i usluge (Tuzla, Bosnia and Herzegovina), ZM-Vikom d.o.o. za proizvodnju, konstruckcije i montažu (Šibenik, Croatia) (represented by: R. Spielhofen, lawyer)

Defendant: European Commission (represented by: B. Bertelmann, J. Estrada de Solà and M. Kellerbauer, Agents)

Re:

Application under Article 159 of the Rules of Procedure of the General Court seeking the suspension of operation of the decision of the European Commission of 29 June 2019 on the exclusion of the applicant from the further tendering procedure and its non-inclusion on the short list in connection with a procedure for the award of a contract under a programme entitled 'EU Support to clean air in Kosovo' to reduce dust and NOx emissions at TPP Kosovo B, Units B1 and B2 (EuropeAid/140043/DH/WKS/XK).

Operative part of the judgment

The Court:

1) *Dismisses the application for interim measures.*

2) *Reserves the costs.*

Action brought on 25 October 2019 – PNB Banka and Others v ECB

(Case T-730/19)

(2020/C 27/44)

Language of the case: English

Parties

Applicants: PNB Banka AS (Riga, Latvia) and 10 other applicants (represented by: O. Behrends, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the ECB's decision of 15 August 2019 that Bank X is failing or likely to fail; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB lacked the competence to adopt the contested decision.

2. Second plea in law, alleging that the contested decision is an impermissible type of decision.

3. Third plea in law, alleging that the ECB distorted the facts and violated its obligation to assess impartially and objectively all the relevant facts.

4. Fourth plea in law, alleging that the contested decision is vitiated procedurally because it is based on an illegal on-site inspection.

5. Fifth plea in law, alleging that the contested decision violates the principle of proportionality.

6. Sixth plea in law, alleging that the contested decision does not include an appropriate statement of reasons.

7. Seventh plea in law, alleging that the contested decision violates the applicants' rights to be heard.

8. Eighth plea in law, alleging that that the contested decision is based on the ECB's illegal opposition to the acquisition of Bank X.

9. Ninth plea in law, alleging that the contested decision violates the principle of equal treatment.

10. Tenth plea in law, alleging that the contested decision violates the principles of legal certainty and legitimate expectations.

11. Eleventh plea in law, alleging that the contested decision violates the *nemo auditur* principle.

12. Twelfth plea in law, alleging that the contested decision is vitiated procedurally because the ECB failed to take appropriate steps to eliminate the influence of officials with a conflict of interest.

13. Thirteenth plea in law, alleging that the ECB committed a *détournement de pouvoir*.

Action brought on 25 October 2019 – PNB Banka and Others v SRB

(Case T-732/19)

(2020/C 27/45)

Language of the case: English

Parties

Applicants: PNB Banka AS (Riga, Latvia) and 10 other applicants (represented by: O. Behrends, lawyer)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicants claim that the Court should:

— annul the SRB's decision of 15 August 2019 with respect to Bank X, publicly announced by means of a press release and a notice summarising the decision of the same date;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the SRB lacked the competence for the contested decision.

2. Second plea in law, alleging that the contested decision is an impermissible type of decision.

3. Third plea in law, alleging that the contested decision is vitiated by a number of errors in connection with the 'failing or likely to fail' (FOLTF) assessment by the ECB.

4. Fourth plea in law, alleging that the contested decision is vitiated by numerous errors in connection with the SRB's further decisions.

5. Fifth plea in law, alleging that the contested decision is vitiated procedurally because it is based on an illegal on-site inspection.

6. Sixth plea in law, alleging that the contested decision violates the principle of proportionality.

7. Seventh plea in law, alleging that that the contested decision does not include an appropriate statement of reasons.

8. Eighth plea in law, alleging that the contested decision violates the applicants' rights to be heard.

9. Ninth plea in law, alleging that the contested decision is based on the ECB's illegal opposition to the acquisition of Bank X.

10. Tenth plea in law, alleging that the contested decision violates the principle of equal treatment.

11. Eleventh plea in law, alleging that that the contested decision violates the principles of legal certainty and legitimate expectations.

12. Twelfth plea in law, alleging that the contested decision fails to take into account that the position of the applicant is largely due to misconduct by the ECB.

13. Thirteenth plea in law, alleging that the contested decision is vitiated procedurally because it is based on the ECB's assessment and the ECB failed to take appropriate steps to eliminate the influence of officials with a conflict of interest.

14. Fourteenth plea in law, alleging that the SRB committed a *détournement de pouvoir*.

Action brought on 31 October 2019 – Laird v Commission

(Case T-740/19)

(2020/C 27/46)

Language of the case: English

Parties

Applicant: Laird Ltd (London, United Kingdom) (represented by: C. Quigley, Barrister, and D. Gillespie, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision C(2019) 2526 final of 2 April 2019 on the State aid SA.44896;

— alternatively, annul Article 2 of the contested decision insofar as it applies to the applicant;

— in the further alternative, annul Article 2 of the contested decision in respect of any aid granted in the period prior to 24 November 2017 in so far as it applies to the applicant;

— order the applicant's costs to be paid by the Commission.

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 the illegality of Article 1 of the contested decision on the following grounds, in so far as it concerns a determination that the Group Financing Exemption (GFE) constitutes an (economic) advantage within the meaning of Article 107(1) TFEU, resulting, in particular, from:

    i. the Commission's failure to take into account: the historical background to the introduction of Controlled Foreign Companies (CFC) rules in the UK's corporate tax system; limitations imposed on the UK through the application of EU law, in particular freedom of establishment; territoriality and other policy reasons for the structure of the CFC rules introduced in the Taxation (International and Other Provisions) Act 2010; and the scope of fiscal sovereignty of Member States, including the United Kingdom, in designing CFC rules.

    ii. the Commission's assertion that the optional character of Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 claim constitutes favourable treatment giving rise to an advantage.

2. Second plea in law, alleging the illegality of Article 1 of the contested decision on the following grounds, in so far as it concerns a determination that the GFE constitutes a selective advantage within the meaning of Article 107(1) TFEU, resulting, in particular, from the following facts:

    i. As regards the relevant reference framework:

        a. the Commission's wrong identification of the reference framework as being composed solely of the CFC rules and/or solely Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act;

        b. the Commission's wrong determination of the objective of the reference system as being solely to tax profits arising from UK activities and assets that have been artificially diverted from the UK without due regard to whether the relevant targeted transactions actually give rise to risk of erosion of the UK tax base.

ii. As regards the determination of a derogation from the reference framework:

a. the Commission's wrong assessment of the relevance and importance of significant people functions;

b. the Commission's wrong assessment of the comparability of qualifying loan relationships with loans (i) to UK-resident related parties and (ii) to third parties;

c. the Commission's unlawful reliance on Council Directive (EU) 2016/1164; ([1])

d. the fact that the Commission's assessment of the comparable risks to infringement of freedom of establishment for exempted and non-exempted categories of CFC was mistaken.

iii. As regards the justification for the alleged derogation:

a. the Commission's wrong decision that the justification relating to the need for the system to be manageable and administrable did not extend to significant people functions;

b. the Commission's wrong decision that the GFE was not justified by reference to compliance with freedom of establishment.

3. Third plea in law, alleging the illegality of Article 2 of the contested decision on the grounds of breach of legitimate expectation and infringement of the principles of legal certainty and proportionality. Alternatively, it is argued that recovery should not be ordered in respect of any aid granted through the GFE prior to 24 November 2017, when the Commission published its opening decision.

([1]) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

Action brought on 31 October 2019 – Sedgwick Overseas v Commission

(Case T-741/19)

(2020/C 27/47)

Language of the case: English

Parties

Applicant: Sedgwick Overseas Ltd (London, United Kingdom) (represented by: M. Anderson, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision C(2019) 2526 final of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption in its entirety insofar as it concerns the applicant;

— alternatively, order that, in determining the amount of aid to be recovered, losses, reliefs or exemptions which were available to the applicant (whether automatically or by way of claim or election) at the time when it claimed the Group Financing Exemption, or which would have been available to the applicant at that time (by way of group relief or otherwise) had it not claimed the Group Financing Exemption, should in either case be taken into account even if those losses, reliefs or exemptions are now no longer available to the applicant because the time limit under UK law for claiming or using them has expired; and

— order that the defendant pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has failed to establish that the Group Financing Exemption constitutes an advantage. The applicant argues that the defendant has failed to show that there is an advantage in each case where the Group Financing Exemption has been claimed. Further, the applicant argues that it chose to claim the Group Financing Exemption without considering whether its liability could have been lower if it had done an analysis under the significant people functions test in Section 371EB of Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010.

2. Second plea in law, alleging that there was no intervention by the State or through State resources. The applicant argues that the defendant has failed to prove that claiming the Group Financing Exemption has certainly led to a reduction in the UK corporate tax liability.

3. Third plea in law, alleging that the Group Financing Exemption does not favour certain undertakings or the production of certain goods. The applicant argues that the defendant has erred by:

   (i) defining the reference system too narrowly as the rules in Part 9A of the Taxation (International and Other Provisions) Act 2010 instead of the wider UK corporate tax system;

   (ii) failing to understand that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is not a derogation from Chapter 5 of the Taxation (International and Other Provisions) Act 2010;

   (iii) and failing to recognise that, even if Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is a derogation from Chapter 5 of the Taxation (International and Other Provisions) Act 2010, it is justified by the nature or general scheme of the said Part 9A.

4. Fourth plea in law, alleging that the Group Financing Exemption does not affect trade between Member States. The applicant argues that the defendant has erred by concluding that the Group Financing Exemption is liable to influence choices made by multinational groups as to the location of their group finance functions and their head office within the EU.

5. Fifth plea in law, alleging that the Group Financing Exemption does not distort or threaten to distort competition. The applicant argues that the defendant has failed to prove that claiming the Group Financing Exemption has certainly led to a reduction in the UK corporate tax liability.

6. Sixth plea in law, alleging that recovery of the alleged aid would be contrary to general principles of EU law. The applicant argues that the significant people functions test lacks legal certainty, the UK had a margin of appreciation to address that uncertainty and that the defendant has breached its duty to carry out a complete analysis of all relevant factors. By ordering the recovery of aid, the defendant has acted contrary to Article 16(1) of Council Regulation (EU) 2015/1589, ([1]) which prohibits the recovery of aid where recovery would be contrary to a general principle of EU law.

7. Seventh plea in law, alleging that the selective advantage would be eliminated, and no recovery would be required, if the UK were retrospectively to extend the Group Financing Exemption to upstream lending and third-party lending. The applicant argues that the defendant has failed to acknowledge that taking such action would eliminate any selective advantage (assuming for the moment that there is one) and in such case there would be no unlawful state aid to be recovered under EU law.

8. Eighth plea in law, alleging that, in determining the amount of the aid to be recovered, losses, reliefs or exemptions which were available to the applicant (whether by way of claim, election, or automatically) at the time when it claimed the Group Financing Exemption, or which would have been available at that time had it not claimed the Group Financing Exemption, should be taken into account even if access to those losses, reliefs or exemptions is now time barred under UK law. The applicant argues that that is the correct interpretation of recital 203 of the contested decision but, insofar as that is not the case, the contested decision is incorrect because failing to take such losses, reliefs or exemptions into account would lead to over-calculation of the amount of the aid which would introduce a distortion into the internal market.

9. Ninth plea in law, alleging that the defendant has failed to substantiate its reasons in relation to the qualifying resources exemption and the matched interest exemption and to carry out a complete analysis of all relevant factors. The applicant argues that the defendant has failed to distinguish between three separate exemptions under Chapter 9 of the Taxation (International and Other Provisions) Act 2010 which function independently and to understand that the qualifying resources exemption and the matched interest exemption are not proxies for the significant people functions test and that the existence of the matched interest exemption in Chapter 9 of the Taxation (International and Other Provisions) Act 2010 demonstrates that the defendant has erred by defining the reference system too narrowly as the rules in Part 9A of the Taxation (International and Other Provisions) Act 2010 instead of the wider UK corporate tax system.

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

Action brought on 31 October 2019 – Chemring Group and CHG Overseas v Commission

(Case T-742/19)

(2020/C 27/48)

Language of the case: English

Parties

Applicants: Chemring Group plc (Romsey, United Kingdom) and CHG Overseas Ltd (Romsey) (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, lawyer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— hold that there has been no unlawful State aid, annul Article 1 of Commission decision C(2019) 2526 Final of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption, insofar as it finds that there has been unlawful State aid and set aside the requirement for the UK to recover alleged unlawful State aid received by the applicants in this context (Articles 2 and 3 of the contested decision);

— in the alternative, annul Articles 2 and 3 of the contested decision insofar as they require the UK to recover the alleged State aid; and

— in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misunderstands the context, aim and operation of the UK Controlled Foreign Company (CFC) rules, with respect to the treatment of non-trading finance profits. The Commission's conclusions in the contested decision are based on cumulative manifest errors. In particular, the Commission has made manifest errors in its understanding of the overall UK tax system, in its understanding of the aims of the CFC system, in the specific scope of the Group Financing Exemption and in the definition of qualifying loan relationships.

2. Second plea in law, alleging that the Commission wrongly construes the Group Financing Exemption as a tax exemption and accordingly an advantage. In relation to non-trading finance profits, the Group Financing Exemption represents a charging provision and a part of the definition of the limits of the CFC rules, not a selective advantage. The Commission has provided no quantitative analysis to show that it is an advantage and, in the absence of cogent evidence that the measure in question results in an advantage, the contested decision cannot stand.

3. Third plea in law, alleging that the Commission misidentified the reference system for the assessment of the effects of the CFC rules and wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system. The Commission has not correctly understood the objective of the CFC rules and has failed to consider the UK's margin for discretion.

4. Fourth plea in law, alleging that the Commission has shown manifest errors in its State aid analysis, and has applied the wrong tests when considering the question of comparability. The Commission failed to recognise the different level of risk to the UK tax base as between lending to a group entity which is taxable in the UK and lending to a group entity which is not taxable in the UK, and irrationally concluded that intra-group lending is comparable to third-party lending.

5. Fifth plea in law, alleging that, even assuming that the CFC measures in question prima facie constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply under the counterfactual of Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 would be the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is never justified in cases where the significant people functions test would cause a CFC charge to apply under Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010. In fact, the significant people functions test is excessively difficult to apply in practice, such that the Commission should have found Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 to be justified in the context of that test as well and hence it should have concluded that there is no State aid.

6. Sixth plea in law, alleging that if the contested decision is upheld then enforcement of it through recovery of the alleged State aid from the applicants will infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicants' case, the CFCs in question are situated in other Member States.

7. Seventh plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.

8. Eighth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision, such as the conclusion that the CFC charge under Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 could be applied using the significant people functions test without difficulty or disproportionate burden.

9. Ninth plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allows transparency and predictability in its administrative procedures and renders its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 31 October 2019 – Hyperion Insurance Group and HIG Finance v Commission

(Case T-743/19)

(2020/C 27/49)

Language of the case: English

Parties

Applicants: Hyperion Insurance Group Ltd (London, United Kingdom) and HIG Finance Ltd (London) (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, lawyer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— hold that there has been no unlawful State aid, annul Article 1 of Commission decision C(2019) 2526 Final of 2 April 2019 on the State aid SA.44896, insofar as it finds that there has been unlawful State aid and set aside the requirement for the UK to recover alleged unlawful State aid received by the applicants in this context (Articles 2 and 3 of the contested decision);

— in the alternative, annul Articles 2 and 3 of the contested decision insofar as they require the UK to recover the alleged State aid; and

— in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misunderstands the context, aim and operation of the UK Controlled Foreign Company (CFC) rules, with respect to the treatment of non-trading finance profits. The Commission's conclusions in the contested decision are based on cumulative manifest errors. In particular, the Commission has made manifest errors in its understanding of the overall UK tax system, in its understanding of the aims of the CFC system, in the specific scope of the Group Financing Exemption and in the definition of qualifying loan relationships.

2. Second plea in law, alleging that the Commission wrongly construes the Group Financing Exemption as a tax exemption and accordingly an advantage. In relation to non-trading finance profits, the Group Financing Exemption represents a charging provision and a part of the definition of the limits of the CFC rules, not a selective advantage. The Commission has provided no quantitative analysis to show that it is an advantage and, in the absence of cogent evidence that the measure in question results in an advantage, the contested decision cannot stand.

3. Third plea in law, alleging that the Commission misidentified the reference system for the assessment of the effects of the CFC rules and wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system. The Commission has not correctly understood the objective of the CFC rules and has failed to consider the UK's margin for discretion.

4. Fourth plea in law, alleging that the Commission has shown manifest errors in its State aid analysis, and has applied the wrong tests when considering the question of comparability. The Commission failed to recognise the different level of risk to the UK tax base as between lending to a group entity which is taxable in the UK and lending to a group entity which is not taxable in the UK, and irrationally concluded that intra-group lending is comparable to third-party lending.

5. Fifth plea in law, alleging that, even assuming that the CFC measures in question prima facie constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply under the counterfactual of Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 would be the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is never justified in cases where the significant people functions test would cause a CFC charge to apply under Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010. In fact, the significant people functions test is excessively difficult to apply in practice, such that the Commission should have found Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 to be justified in the context of that test as well and hence it should have concluded that there is no State aid.

6. Sixth plea in law, alleging that if the contested decision is upheld then enforcement of it through recovery of the alleged State aid from the applicants will infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicants' case, the CFCs in question are situated in other Member States.

7. Seventh plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.

8. Eighth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision, such as the conclusion that the CFC charge under Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 could be applied using the SPF test without difficulty or disproportionate burden.

9. Ninth plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allows transparency and predictability in its administrative procedures and renders its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 31 October 2019 – Spirax-Sarco Engineering and Spirax-Sarco Overseas v Commission

(Case T-745/19)

(2020/C 27/50)

Language of the case: English

Parties

Applicants: Spirax-Sarco Engineering plc (Cheltenham, United Kingdom) and Spirax-Sarco Overseas Ltd (Cheltenham) (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, lawyer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicants request the General Court to:

— hold that there has been no unlawful State aid, annul Article 1 of Commission decision C(2019) 2526 Final of 2 April 2019 on the State aid SA.44896, insofar as it finds that there has been unlawful State aid and set aside the requirement for the UK to recover alleged unlawful State aid received by the applicants in this context (Articles 2 and 3 of the contested decision);

— in the alternative, annul Articles 2 and 3 of the Contested Decision insofar as they require the UK to recover the alleged State Aid; and

— in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misunderstands the context, aim and operation of the UK Controlled Foreign Company (CFC) rules, with respect to the treatment of non-trading finance profits. The Commission's conclusions in the contested decision are based on cumulative manifest errors. In particular, the Commission has made manifest errors in its understanding of the overall UK tax system, in its understanding of the aims of the CFC system, in the specific scope of the Group Financing Exemption and in the definition of qualifying loan relationships.

2. Second plea in law, alleging that the Commission wrongly construes the Group Financing Exemption as a tax exemption and accordingly an advantage. In relation to non-trading finance profits, the Group Financing Exemption represents a charging provision and a part of the definition of the limits of the CFC rules, not a selective advantage. The Commission has provided no quantitative analysis to show that it is an advantage and, in the absence of cogent evidence that the measure in question results in an advantage, the contested decision cannot stand.

3. Third plea in law, alleging that the Commission misidentified the reference system for the assessment of the effects of the CFC rules and wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system. The Commission has not correctly understood the objective of the CFC rules and has failed to consider the UK's margin for discretion.

4. Fourth plea in law, alleging that the Commission has shown manifest errors in its State aid analysis, and has applied the wrong tests when considering the question of comparability. The Commission failed to recognise the different level of risk to the UK tax base as between lending to a group entity which is taxable in the UK and lending to a group entity which is not taxable in the UK, and irrationally concluded that intra-group lending is comparable to third-party lending.

5. Fifth plea in law, alleging that, even assuming that the CFC measures in question prima facie constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply under the counterfactual of Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 would be the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is never justified in cases where the significant people functions test would cause a CFC charge to apply under Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010. In fact, the significant people functions test is excessively difficult to apply in practice, such that the Commission should have found Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 to be justified in the context of that test as well and hence it should have concluded that there is no State aid.

6. Sixth plea in law, alleging that if the contested decision is upheld then enforcement of it through recovery of the alleged State aid from the applicants will infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicants' case, the CFCs in question are situated in other Member States.

7. Seventh plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.

8. Eighth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision, such as the conclusion that the CFC charge under Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 could be applied using the significant people functions test without difficulty or disproportionate burden.

9. Ninth plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allows transparency and predictability in its administrative procedures and renders its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 31 October 2019 – DS Smith and DS Smith International v Commission

(Case T-747/19)

(2020/C 27/51)

Language of the case: English

Parties

Applicants: DS Smith plc (London, United Kingdom) and DS Smith International Ltd (London,) (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, lawyer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— hold that there has been no unlawful State Aid, annul Article 1 of the Commission decision of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption, insofar as it finds that there has been unlawful State Aid, and set aside the requirement for the UK to recover alleged unlawful State Aid received by the applicants in this context (Articles 2 and 3 of the contested decision);

— in the alternative, annul Articles 2 and 3 of the contested decision insofar as they require the UK to recover from the applicants the alleged State Aid; and

— in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misunderstands the context, aim and operation of the UK Controlled Foreign Company (CFC) rules, with respect to the treatment of non-trading finance profits. The Commission's conclusions in the contested decision are based on cumulative manifest errors. In particular, the Commission has made manifest errors in its understanding of the overall UK tax system, in its understanding of the aims of the CFC system, in the specific scope of the Group Financing Exemption and in the definition of qualifying loan relationships.

2. Second plea in law, alleging that the Commission wrongly construes the Group Financing Exemption as a tax exemption and accordingly an advantage. In relation to non-trading finance profits, the Group Financing Exemption represents a charging provision and a part of the definition of the limits of the CFC rules, not a selective advantage. The Commission has provided no quantitative analysis to show that it is an advantage and, in the absence of cogent evidence that the measure in question results in an advantage, the contested decision cannot stand.

3. Third plea in law, alleging that the Commission misidentified the reference system for the assessment of the effects of the CFC rules and wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system. The Commission has not correctly understood the objective of the CFC rules and has failed to consider the UK's margin for discretion.

4. Fourth plea in law, alleging that the Commission has shown manifest errors in its State aid analysis, and has applied the wrong tests when considering the question of comparability. The Commission failed to recognize the different level of risk to the UK tax base as between lending to a group entity which is taxable in the UK and lending to a group entity which is not taxable in the UK, and irrationally concluded that intra-group lending is comparable to third-party lending.

5. Fifth plea in law, alleging that, even assuming that the CFC measures in question prima facie constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply under the counterfactual of Chapter 5 of the said Part 9A would be the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that the said Chapter 9 is never justified in cases where the significant people functions test would cause a CFC charge to apply under the said Chapter 5. In fact, the significant people functions test is excessively difficult to apply in practice, such that the Commission should have found the said Chapter 9 to be justified in the context of that test as well and, hence, it should have concluded that there is no State aid.

6. Sixth plea in law, alleging that, were the contested decision to be upheld, then enforcement of it through recovery of the alleged State aid from the applicants would infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicants' case, the CFCs in question are situated in other Member States.

7. Seventh plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.

8. Eighth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision, such as the conclusion that the CFC charge under the said Chapter 5 could be applied using the significant people functions test without difficulty or disproportionate burden.

9. Ninth plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allows transparency and predictability in its administrative procedures and renders its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 1 November 2019 – The Vitec Group v Commission

(Case T-748/19)

(2020/C 27/52)

Language of the case: English

Parties

Applicant: The Vitec Group plc (Richmond, United Kingdom) (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, lawyer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— hold that there has been no unlawful State Aid, annul Article 1 of the Commission Decision of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption, insofar as it finds that there has been unlawful State aid, and set aside the requirement for the UK to recover alleged unlawful State aid received by the applicant in this context (Articles 2 and 3 of the contested decision);

— in the alternative, annul Articles 2 and 3 of the contested decision insofar as they require the UK to recover from the applicant the alleged State Aid; and

— in any event, order the Commission to bear the costs incurred by the applicant for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misunderstands the context, aim and operation of the UK Controlled Foreign Company (CFC) rules, with respect to the treatment of non-trading finance profits. The Commission's conclusions in the contested decision are based on cumulative manifest errors. In particular, the Commission has made manifest errors in its understanding of the overall UK tax system, in its understanding of the aims of the CFC system, in the specific scope of the Group Financing Exemption and in the definition of qualifying loan relationships.

2. Second plea in law, alleging that the Commission wrongly construes the Group Financing Exemption as a tax exemption and accordingly an advantage. In relation to non-trading finance profits, the Group Financing Exemption represents a charging provision and a part of the definition of the limits of the CFC rules, not a selective advantage. The Commission has provided no quantitative analysis to show that it is an advantage and, in the absence of cogent evidence that the measure in question results in an advantage, the contested decision cannot stand.

3. Third plea in law, alleging that the Commission misidentified the reference system for the assessment of the effects of the CFC rules and wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system. The Commission has not correctly understood the objective of the CFC rules and has failed to consider the UK's margin for discretion.

4. Fourth plea in law, alleging that the Commission has shown manifest errors in its State aid analysis, and has applied the wrong tests when considering the question of comparability. The Commission failed to recognize the different level of risk to the UK tax base as between lending to a group entity which is taxable in the UK and lending to a group entity which is not taxable in the UK, and irrationally concluded that intra-group lending is comparable to third-party lending.

5. Fifth plea in law, alleging that, even assuming that the CFC measures in question prima facie constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply under the counterfactual of the Chapter 5 would be the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that the said Chapter 9 is never justified in cases where the significant people functions test would cause a CFC charge to apply under the said Chapter 5. In fact, the significant people functions test is excessively difficult to apply in practice, such that the Commission should have found the said Chapter 9 to be justified in the context of that test as well and, hence, it should have concluded that there is no State aid.

6. Sixth plea in law, alleging that, were the contested decision to be upheld, then enforcement of it through recovery of the alleged State aid from the applicant will infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicant's case, the CFCs in question are situated in other Member States.

7. Seventh plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.

8. Eighth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision, such as the conclusion that the CFC charge under the said Chapter 5 could be applied using the significant people functions test without difficulty or disproportionate burden.

9. Ninth plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allows transparency and predictability in its administrative procedures and renders its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 4 November 2019 – Reckitt Benckiser Investments and Others v Commission

(Case T-751/19)

(2020/C 27/53)

Language of the case: English

Parties

Applicants: Reckitt Benckiser Investments Ltd (Slough, United Kingdom) and 5 other applicants (represented by: C. Quigley, Barrister, P. Halford and A. Langley, Solicitors)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission decision of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption;

— alternatively, annul Article 2 of the contested decision insofar as it applies to the applicants;

— in the further alternative, annul Article 2 of the contested decision in respect of any aid granted under the Group Financing Exemption in the period prior to 24 November 2017 in so far as it applies to the applicants;

— in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging the illegality of Article 1 of the contested decision on the following grounds:

   a. the Commission erred in law and shows manifest errors of assessment determining that the Group Financing Exemption constitutes an (economic) advantage within the meaning of Article 107(1) TFEU by, in particular:

      i. failing to take into account: the historical background to the introduction of CFC rules in the UK's corporate tax system; limitations imposed on the UK through the application of EU law, in particular freedom of establishment; territoriality and other policy reasons for the structure of the CFC rules introduced in the Taxation (International and Other Provisions) Act 2010 with effect from 1 January 2013; and the scope of fiscal sovereignty of Member States, including the UK, in designing CFC rules;

      ii. asserting that the optional character of a claim under Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 constitutes favourable treatment giving rise to an advantage.

   b. the Commission erred in law and shows manifest errors of assessment determining that the Group Financing Exemption constitutes a selective advantage within the meaning of Article 107(1) TFEU by, in particular:

      i. As regards the relevant reference framework:

         1. Wrongly identifying the reference framework as being composed solely of the CFC rules and/or solely Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010;

         2. Wrongly determining the objective of the reference system as being solely to tax profits arising from UK activities and assets that have been artificially diverted from the UK, without due regard to whether the relevant targeted transactions actually give rise to risk of erosion of the UK tax base.

      ii. As regards the determination of a derogation from the reference framework:

         1. Wrongly assessing the relevance and importance of significant people functions;

         2. Wrongly assessing the comparability of 'qualifying loan relationships' with loans (i) to UK-resident related parties and (ii) to third parties;

         3. Unlawfully relying on Council Directive (EU) 2016/1164; ([1])

         4. Mistakenly assessing the comparable risks to infringement of freedom of establishment for exempted and non-exempted categories of CFC.

      iii. As regards justification for the alleged derogation,

         1. Wrongly deciding that the justification relating to the need for the system to be manageable and administrable did not extend to significant people functions;

         2. Wrongly deciding that the Group Financing Exemption was not justified by reference to compliance with freedom of establishment.

2. Second plea in law, alleging the illegality of Article 2 of the contested decision on the grounds of breach of legitimate expectation and infringement of the principles of legal certainty and proportionality.

3. Third plea in law, alleging that, alternatively, recovery should not be ordered in respect of any aid granted through the Group Financing Exemption prior to 24 November 2017, when the Commission published its opening decision.

([1]) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

Action brought on 5 November 2019 – Inchcape v Commission

(Case T-752/19)

(2020/C 27/54)

Language of the case: English

Parties

Applicant: Inchcape plc (London, United Kingdom) (represented by: M. Anderson, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption (OJ 2019 L 216, p. 1) in its entirety insofar as it concerns the applicant;

— alternatively, order that in determining the amount of aid to be recovered, losses, reliefs or exemptions which were available to the applicant at the time when it claimed the Group Financing Exemption, or which would have been available to the applicant at that time had it not claimed the Group Financing Exemption, should in either case be taken into account even if access to those losses, reliefs or exemptions is now time barred under UK law and irrespective of whether or not they are automatic;

— in any event, order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has failed to establish that the Group Financing Exemption constitutes an advantage. The applicant argues that the defendant has failed to show that there is an advantage in each case where the Group Financing Exemption has been claimed.

2. Second plea in law, alleging that there was no intervention by the State or through State resources. The Commission has failed to prove that claiming the Group Financing Exemption has certainly led to a reduction in the UK corporate tax liability.

3. Third plea in law, alleging that the Group Financing Exemption does not favour certain undertakings or the production of certain goods. The applicant argues that the defendant has erred by (i) defining the reference system too narrowly as the rules in Part 9A of the Taxation (International and Other Provisions) Act 2010 instead of the wider UK corporate tax system; (ii) failing to understand that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is not a derogation from Chapter 5 thereof; and (iii) failing to recognise that, even if the said Chapter 9 is a derogation from that Chapter 5, it is justified by the nature or general scheme of the said Part 9A.

4. Fourth plea in law, alleging that the Group Financing Exemption does not affect trade between Member States. The Commission, it is argued, has erred by concluding that the Group Financing Exemption is liable to influence choices made by multinational groups as to the location of their group finance functions and their head office within the EU.

5. Fifth plea in law, alleging that the Group Financing Exemption does not distort or threaten to distort competition. The Commission, it is asserted, has failed to prove that claiming the Group Financing Exemption has certainly led to a reduction in the UK corporate tax liability.

6. Sixth plea in law, alleging that recovery of the alleged aid would be contrary to general principles of EU law. The applicant argues that the significant people functions test in Section 371EB of Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010 lacks legal certainty, the UK had a margin of appreciation to address that uncertainty and that the defendant has breached its duty to carry out a complete analysis of all relevant factors. By ordering the recovery of aid, the Commission has acted contrary to Article 16(1) of Council Regulation (EU) 2015/1589, [1] which prohibits the recovery of aid where recovery would be contrary to a general principle of EU law.

7. Seventh plea in law, alleging that the selective advantage would be eliminated, and no recovery would be required, if the UK were retrospectively to extend the Group Financing Exemption to upstream lending and third-party lending. The applicant argues that the defendant has failed to acknowledge that taking such action would eliminate any selective advantage (assuming for the moment that there is one) and in such case there would be no unlawful State aid to be recovered under EU law.

8. Eighth plea in law, alleging that, in determining the amount of the aid to be recovered, losses, reliefs or exemptions which were available to the applicant (whether by way of claim, election, or automatically) at the time when it claimed the Group Financing Exemption, or which would have been available at that time had it not claimed the Group Financing Exemption, should be taken into account even if access to those losses, reliefs or exemptions is now time barred under UK law. The applicant argues that that is the correct interpretation of recital 203 of the contested decision but, insofar as that is not the case, the decision is incorrect because failing to take such losses, reliefs or exemptions into account would lead to over-calculation of the amount of the aid, which would introduce a distortion into the internal market.

9. Ninth plea in law, alleging that the Commission has failed to substantiate its reasons in relation to the qualifying resources exemption and the matched interest exemption and to carry out a complete analysis of all relevant factors. The applicant argues that the defendant has failed to distinguish between three separate exemptions under Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010, which function independently, and to understand that the qualifying resources exemption and the matched interest exemption are not proxies for the significant people functions test and that the existence of the matched interest exemption in Chapter 9 demonstrates that the defendant has erred by defining the reference system too narrowly as the rules in the said Part 9A instead of the wider UK corporate tax system.

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

Action brought on 7 November 2019 – Stagecoach Group v Commission

(Case T-754/19)

(2020/C 27/55)

Language of the case: English

Parties

Applicant: Stagecoach Group plc (Perth, United Kingdom) (represented by: J. Lesar, Solicitor, and K. Beal, QC)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption (OJ 2019 L 216, p. 1);

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission wrongly applied Article 107(1) TFEU and/or made a manifest error of appraisal or assessment in its selection of the reference framework for the analysis of the tax regime. The applicant argues that the defendant should have treated the reference framework as the UK's corporation tax regime, not simply the Controlled Foreign Companies (CFC) regime itself.

2. Second plea in law, alleging that the defendant erred in law in its application of Article 107(1) TFEU and/or made a manifest error of appraisal or assessment by adopting a flawed approach to the analysis of the CFC regime. The Commission at recitals (124) to (126) of the contested decision wrongly treated the provisions of Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 as a form of derogation from a general charge to tax found in Chapter 5 thereof.

3. Third plea in law, alleging that the Commission erred in law in its application of Article 107(1) TFEU when finding at recitals (127) to (151) of the contested decision that the selectivity criterion was fulfilled in that undertakings in factually and legally comparable positions were treated differently.

4. Fourth plea in law, alleging that the 75 % exemption under section 371ID of the Taxation (International and Other Provisions) Act 2010 is justified by the nature and overall structure of the tax system.

5. Fifth plea in law, alleging that the imposition of a tax burden on CFCs meeting the exemptions laid down in the said Chapter 9 as a class would breach the applicant's freedom of establishment contrary to Article 49 TFEU.

6. Sixth plea in law, alleging that there was a manifest error of appraisal or assessment in relation to the 75 % exemption and fixed ratio issue.

7. Seventh plea in law, alleging that the Commission's decision fails to comply with the general EU law principle of non-discrimination or equality.

8. Eighth plea in law, alleging that the Commission erred in law in applying by analogy or placing undue reliance upon the terms of Council Directive (EU) 2016/1164, ([1]) which was not applicable *ratione temporis*.

9. Ninth plea in law, alleging that the Commission erred in law in its application of Article 107(1) TFEU by finding at recital (176) of the contested decision that a class of beneficiaries exists (of which the applicant was one) and that it had obtained any aid which needed to be recovered under Article 2(1) of the contested decision.

([1]) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

Action brought on 6 November 2019 – BBA International Investments v Commission

(Case T-755/19)

(2020/C 27/56)

Language of the case: English

Parties

Applicant: BBA International Investments Sàrl (Luxembourg, Luxembourg) (represented by: N. Niejahr, B. Hoorelbeke, lawyers, A. Stratakis and P. O'Gara, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing (OJ 2019 L 216, p. 1), in so far as it holds that the alleged aid measure constitutes aid in the sense of Article 107(1) TFEU and orders its recovery with interest, including from the applicant;

— in the alternative, annul Articles 2, 3 and 4 of the contested decision to the extent that it orders the recovery of incompatible aid with interest, including from the applicant;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has violated Article 107(1) TFEU by holding that the alleged aid measure provides a selective advantage:

   a) to the companies making use of the 75 % exemption for low-risk qualifying loan relationships, because the Commission has:

      — wrongly identified the UK CFC regime as the reference system;

— erred in law by concluding that the 75 % exemption constitutes a derogation from the reference tax system, on the basis that:

(i) the finding of a derogation is based erroneously on the regulatory technique;

(ii) the significant people functions test is not the central test for the UK CFC regime; and

(iii) qualifying and non-qualifying loan relationships are not in the same legal and factual situation and, in any event, erred in law in applying by analogy or placing undue reliance upon the terms of Council Directive (EU) 2016/1164. ([1])

— erred in fact and in law by concluding that the 75 % exemption is not justified by the nature and the overall structure of the tax system in the same way as the Group Financing Exemption that applies to non-trading finance profits falling within Section 371EC of the Taxation (International and Other Provisions) Act 2010.

b) to the companies making use of the matched interest and qualifying resources exemptions, because it has:

— wrongly identified the UK CFC rules as the reference system;

— erred in law by concluding that the matched interest and qualifying resources exemptions constitute a derogation from the reference tax system, on the basis that:

(i) the finding of a derogation is based erroneously on the regulatory technique and the significant people functions test is not the central test for the UK CFC rules;

(ii) taxpayers qualifying for the matched interest and qualifying resources exemptions are not in the same legal and factual situation as taxpayers who do not so qualify.

— erred in fact and in law by concluding that the matched interest and qualifying resources exemptions are not justified by the nature and the overall structure of the tax system.

2. Second plea in law, alleging that the Commission has violated Article 107(1) TFEU by failing to demonstrate that the alleged aid measure was liable to affect trade between Member States and threatened to distort competition.

3. Third plea in law, alleging, alternatively, that the Commission has violated Article 49 TFEU by qualifying the alleged aid measure as incompatible State aid that does not breach the freedom of establishment as guaranteed by Article 49 TFEU.

4. Fourth plea in law, alleging that the Commission has violated the fundamental principle of equal treatment/non-discrimination by:

— treating non-trading finance profits derived from qualifying loans in the same way as non-trading finance profits derived from non-qualifying loans; and

— ~~by~~ treating the Group Financing Exemption differently depending on whether the non-trading finance profits fall within sections 371EB or 371EC of the Taxation (International and Other Provisions) Act 2010.

5. Fifth plea in law, alleging, in the alternative, that, even if the alleged aid measure falls within the ambit of Article 107(1) TFEU, the Commission has violated Article 16(1) of Council Regulation (EU) 2015/1589, ([2]) by ordering the recovery of amounts of alleged incompatible aid from the beneficiaries of the alleged aid measure, because such recovery infringes general principles of EU law, namely the principle of legitimate expectations and legal certainty.

([1]) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

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

Action brought on 7 November 2019 – WPP Jubilee and Others v Commission

(Case T-756/19)

(2020/C 27/57)

Language of the case: English

Parties

Applicants: WPP Jubilee Ltd (London, United Kingdom) and 11 other applicants (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, laywer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— hold that there has been no unlawful State Aid, annul Article 1 of the Commission decision of 2 April 2019 on the state aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption, to the extent that it finds that there has been unlawful State aid, and set aside the requirement for the UK to recover alleged unlawful State aid received by the applicants in this context (Articles 2 and 3 of the contested decision);

— in the alternative, annul Articles 2 and 3 of the contested decision insofar as they require the UK to recover from the applicants the alleged State aid; and

— in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is vitiated by manifest errors in the appreciation of the relevant facts and laws. In particular, it is alleged that the Commission misunderstands the way the UK CFC rules in question work with respect to the treatment of non-trading finance profits. In addition, it is alleged that the contested decision wrongly construed the Group Financing Exemption as a tax exemption. This is particularly self-evident given that some of the loans which are the subject matter of this application were funded out of qualifying resources.

2. Second plea in law, alleging that the Commission was wrong to find that the CFC rules constituted an aid measure within the meaning of Article 107(1) TFEU and, as such, that the rules conferred a selective advantage to certain operators. More precisely, the Commission, it is said, wrongly determined the reference system for the assessment of the effects of the CFC rules, and wrongly identified two different situations as being comparable to the situation where the Group Financing Exemption applies. As a result of either or both of these errors, the Commission was wrong to identify that these rules conferred a selective advantage to certain market operators. Moreover, the applicants argue that the Commission wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system, while ignoring other features of the UK corporation tax system intended to work in conjunction with the CFC rules. As a result, the analysis of the Commission on comparability and selectivity is said to be vitiated by manifest errors of appreciation of the relevant facts and errors in law.

3. Third plea in law, alleging that, even assuming that the CFC measures in question constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply is the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that the said Chapter 9 is never justified in cases where the significant people functions test causes a CFC charge to apply. In fact, although, on the applicants' own facts, the position is clear, the significant people functions test is generally excessively difficult to apply in practice, such that the Commission should have found the said Chapter 9 to be justified in the context of that test as well and, hence, it should have concluded that there is no State aid.

4. Fourth plea in law, alleging that, were the contested decision to be upheld, enforcement of it through recovery of the alleged State aid from the applicants would infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicants' case, the CFCs in question are situated in other Member States.

5. Fifth plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.

6. Sixth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision. The Commission, it is argued, failed to consider the 'qualifying resources' exemption to any material extent, and failed to analyse the reasons or justifications for it. Other examples include the conclusion that the CFC charge under the said Chapter 5 could be applied using the significant people functions test without difficulty or disproportionate burden.

7. Seventh plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allow transparency and predictability in its administrative procedures and render its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 8 November 2019 – W.S. Atkins International v Commission

(Case T-758/19)

(2020/C 27/58)

Language of the case: English

Parties

Applicant: W.S. Atkins International Ltd (Epsom, United Kingdom) (represented by: M. Whitehouse and P. Halford, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption (OJ 2019 L 216, p. 1);

— in the alternative, annul Article 2 of the contested decision to the extent that it infringes the applicant's freedom of establishment under Article 49 TFEU; and

— in any event, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission made an error of law and/or a manifest error of assessment in concluding that the Group Financing Exemption scheme ('the contested measure') gave rise to an economic advantage within the meaning and scope of Article 107(1) TFEU.

2. Second plea in law, alleging that the Commission made an error of law and/or a manifest error of assessment in the identification of the reference system for the purposes of the 'selectivity' analysis.

3. Third plea in law, alleging that the Commission made errors of law and manifest errors of assessment in wrongly or incompletely identifying, and in failing to understand correctly, the relevant objectives of its chosen reference system.

4. Fourth plea in law, alleging that the Commission made errors of law and/or manifest errors of assessment in identifying the contested measure as entailing a derogation from its chosen reference system.

5. Fifth plea in law, alleging that the Commission made errors of law and/or manifest errors of assessment in wrongly classifying the contested measure as prima facie selective, by incorrectly holding that it entailed different treatment of undertakings in a legally and factually comparable situation.

6. Sixth plea in law, alleging that the Commission made an error of law in taking account of Council Directive (EU) 2016/1164 ([1]) in its assessment of the selectivity of the contested measure, whereas that instrument did not come into force until after the end of the period in which the Commission ruled the contested measure to entail State aid.

7. Seventh plea in law, alleging that the contested decision represents a misuse of power by the Commission contrary to the UK's fiscal sovereignty.

8. Eighth plea in law, alleging that the Commission made manifest errors of assessment in holding the alleged derogation to be not justified in relation to the taxation of non-trading finance profit(s) from qualifying loan relationships falling prima facie within section 371EB ('UK activities') of the Taxation (International and Other Provisions) Act 2010. In relation to the 'qualifying resources' and 'matched interest profits'exemptions, the Commission's decision is also vitiated by its failure to state any reasons in relation to their justification or lack thereof.

9. Ninth plea in law, alleging that the Commission acted in breach of Article 108(2) TFEU and Article 6 of Council Regulation (EU) 2015/1589 ([2]) and in breach of the duty of good administration under Article 41 of the Charter of Fundamental Rights. Specifically, it failed to indicate in its opening decision that it had concerns regarding the justification of the "75% exemption" under section 371ID of the Taxation (International and Other Provisions) Act 2010 to avoid the practical difficulty of carrying out a significant people functions analysis in relation to intra-group lending activity, such as to give interested parties adequate opportunity to comment on this; it failed, in the course of its investigation, to invite any comments in this regard from interested parties; and in the contested decision it chose to ignore such comments as had in fact been provided by interested parties in this regard. In consequence, the contested decision is void.

10. Tenth plea in law, alleging that the Commission erred in law in ruling that taxing a UK company on profits of foreign subsidiaries "to the extent attributable to domestic assets and activities" does not pose a restriction to the freedom of establishment and that the contested measure was not needed to ensure compliance with the Treaty freedoms.

    In support of its application (in the alternative) for annulment of Article 2 of the contested decision, the applicant relies on the following plea in law:

11. Eleventh plea in law, alleging that even if (which is denied) the contested measure entailed a State aid scheme, the Commission made an error of law in holding that recovery of the aid would not infringe the fundamental principles of EU law and in ordering recovery irrespective of whether the establishment of the Controlled Foreign Company and its making of loans to non-resident group companies in fact entailed an exercise of the freedom of establishment. Specifically, in the present case, recovery would infringe the applicant's freedom of establishment under Article 49 TFEU. To the extent of such infringement, the recovery order in Article 2 of the contested decision falls to be annulled.

([1]) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

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

Action brought on 8 November 2019 – Yalwen v Commission

(Case T-759/19)

(2020/C 27/59)

Language of the case: English

Parties

Applicant: Yalwen Ltd (Birmingham, United Kingdom) (represented by: M. Whitehouse and P. Halford, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption (OJ 2019 L 216, p. 1);

— in the alternative, annul Article 2 of the contested decision to the extent that it infringes the applicant's freedom of establishment under Article 49 TFEU; and

— in any event, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission made an error of law and/or a manifest error of assessment in concluding that the Group Financing Exemption scheme ('the contested measure') gave rise to an economic advantage within the meaning and scope of Article 107(1) TFEU.

2. Second plea in law, alleging that the Commission made an error of law and/or a manifest error of assessment in the identification of the reference system for the purposes of the 'selectivity' analysis.

3. Third plea in law, alleging that the Commission made errors of law and manifest errors of assessment in wrongly or incompletely identifying, and in failing to understand correctly, the relevant objectives of its chosen reference system.

4. Fourth plea in law, alleging that the Commission made errors of law and/or manifest errors of assessment in identifying the contested measure as entailing a derogation from its chosen reference system.

5. Fifth plea in law, alleging that the Commission made errors of law and/or manifest errors of assessment in wrongly classifying the contested measure as prima facie selective, by incorrectly holding that it entailed different treatment of undertakings in a legally and factually comparable situation.

6. Sixth plea in law, alleging that the Commission made an error of law in taking account of Council Directive (EU) 2016/1164 ([1]) in its assessment of the selectivity of the contested measure, whereas that instrument did not come into force until after the end of the period in which the Commission ruled the contested measure to entail State aid.

7. Seventh plea in law, alleging that the contested decision represents a misuse of power by the Commission contrary to the UK's fiscal sovereignty.

8. Eighth plea in law, alleging that the Commission made manifest errors of assessment in holding the alleged derogation to be not justified in relation to the taxation of non-trading finance profit(s) from qualifying loan relationships falling *prima facie* within section 371EB ('UK activities') of the Taxation (International and Other Provisions) Act 2010. In relation to the 'qualifying resources' and 'matched interest profits' exemptions, the Commission's decision is also vitiated by its failure to state any reasons in relation to their justification or lack thereof.

9. Ninth plea in law, alleging that the Commission acted in breach of Article 108(2) TFEU and Article 6 of Regulation (EU) 2015/1589 ([2]) and in breach of the duty of good administration under Article 41 of the Charter of Fundamental Rights. Specifically, it failed to indicate in its opening decision that it had concerns regarding the justification of the '75% exemption' under section 371ID of the Taxation (International and Other Provisions) Act 2010 to avoid the practical difficulty of carrying out a significant people functions analysis in relation to intra-group lending activity, such as to give interested parties adequate opportunity to comment on this; it failed, in the course of its investigation, to invite any comments in this regard from interested parties; and in the contested decision it chose to ignore such comments as had in fact been provided by interested parties in this regard. In consequence, the contested decision is void.

10. Tenth plea in law, alleging that the Commission erred in law in ruling that taxing a UK company on profits of foreign subsidiaries 'to the extent attributable to domestic assets and activities' does not pose a restriction to the freedom of establishment and that the contested measure was not needed to ensure compliance with the Treaty freedoms.

In support of its application (in the alternative) for annulment of Article 2 of the contested decision, the applicant relies on the following plea in law:

11. Eleventh plea in law, alleging that even if (which is denied) the contested measure entailed a State aid scheme, the Commission made an error of law in holding that recovery of the aid would not infringe the fundamental principles of EU law and in ordering recovery irrespective of whether the establishment of the CFC and its making of loans to non-resident group companies in fact entailed an exercise of the freedom of establishment. Specifically, in the present case, recovery would infringe the applicant's freedom of establishment under Article 49 TFEU. To the extent of such infringement, the recovery order in Article 2 of the contested decision falls to be annulled.

([1]) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

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

Action brought on 12 November 2019 — CAPA and Others v Commission

(Case T-777/19)

(2020/C 27/60)

Language of the case: French

Parties

Applicants: Coopérative des artisans pêcheurs associés (CAPA) (Le Tréport, France) and 10 other applicants (represented by: M. Le Berre, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the application admissible and well founded;

and, consequently:

— annul Commission Decision C(2019)5498 final of 26 July 2019;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the parties' procedural rights under Article 108(2) TFEU, in that the circumstances in which the contested decision was adopted and the content thereof demonstrate that the Commission was objectively faced with doubts that should have resulted in the formal investigation procedure being opened.

2. Second plea in law, based on infringement of the obligation to state reasons.

Action brought on 15 November 2019 — Sped-Pro S.A. v Commission

(Case T-791/19)

(2020/C 27/61)

Language of the case: Polish

Parties

Applicant: Sped-Pro S.A. (Warsaw, Poland) (represented by: Małgorzata Kozak, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision C(2019) 6099 final of 12 August 2019 (Case AT.40459) rejecting the applicant's complaint under Article 7(2) of Regulation No 773/2004 ([1]) and

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

Pleas in law and main arguments

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

1. First plea in law, alleging the infringement of essential procedural requirements

   The applicant submits that the Commission infringed Article 7(1) and (2) of Regulation No 1/2003 ([2]) and Article 7(1) of Regulation No 773/2004, read in conjunction with Article 41(1) and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union by infringing the principle of acting within a reasonable time, given that the decision was adopted almost two years after the notification of 13 September 2017 informing the applicant of the Commission's intention to reject the complaint, which had an impact on the outcome of the proceedings. The applicant also alleges that the Commission infringed the applicant's right to the examination of its case, and also failed to give detailed reasons for the rejection of its complaint, which is reflected in the general content of the notification of 13 September 2017 informing it of the Commission's intention to reject the complaint and in the laconic statement of reasons for the contested decision.

2. Second plea in law, alleging infringement of the Treaties.

   The applicant submits that the Commission infringed the right to effective judicial protection and thus Article 2 TEU, read in conjunction with the second subparagraph of Article 19(1) TEU and with Article 47 of the Charter of Fundamental Rights of the European Union, in finding that the President of the Urząd Ochrony Konkurencji i Konsumentów (Office for the protection of competition and consumers, Poland) 'seems to be a body which is particularly appropriate to examine the issues raised … in the complaint' (point 21 of the contested decision), thus at least failing to have regard to the reasonable doubts as to the upholding of the rule of law in Poland and, in connection with this, the independence of the courts and of the President of the Office for the protection of competition and consumers. The Commission failed to have regard, inter alia, to the issue of the reorganisation of the judicial system in Poland and to the fact that cases in the field of competition and consumer protection are examined by the new Chamber of Extraordinary Control and Public Affairs in the Sąd Najwyższy (Supreme Court, Poland), whose method of appointment is similar to that of the disciplinary chamber.

3. Third plea in law, also alleging infringement of the Treaties

   The applicant submits that the Commission infringed Article 102 TFEU, read in conjunction with the second sentence of Article 17(1) TFEU, with Article 7(2) of Regulation No 773/2004 and with Article 7(1) and (2) of Council Regulation (EC) No 1/2003, in committing a manifest error in the assessment of the interest of the European Union and the delimitation of the relevant market. The Commission held that the market on which the alleged infringement had been committed was 'essentially limited to the national rail market, even if the alleged infringement might also concern undertakings registered abroad'. It also submits that the Commission failed to ensure the full effectiveness ('*effet utile*') of Article 102 TFEU.

([1]) 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 (OJ L 123, 27.4.2004, p. 18).

([2]) 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 (OJ L 1, 4.1.2003, p. 1).

Application lodged on 20 November 2019 — DTE Systems v EUIPO — Speed-Buster (PedalBox +)

(Case T-801/19)

(2020/C 27/62)

Language in which the application was lodged: German

Parties to the proceedings

Applicant: DTE Systems GmbH (Recklinghausen, Germany) (represented by: U. Vietmeyer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Speed-Buster GmbH & Co. KG (Sinzig, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark PedalBox + — EU trade mark No 16 637 266

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 September 2019 in Case R 1934/2018-1

Form of order sought

— Annul the decisions of the defendant's Cancellation Division of 1 August 2018, No 16 223 C (invalidity) and of the defendant's First Board of Appeal of 5 September 2019 in Case R 1934/2018-1;

— Maintain EU trade mark No 16 637 266 on the register in its entirety, as registered and certified by the defendant;

— In the alternative, in the event that the General Court considers that other findings of fact are necessary, order the defendant to adopt a new decision on the need to preserve the availability of the term 'PedalBox +', without taking into account product designations of the companies SPEED-BUSTER GmbH & Co. KG., Mosaikweg 18, 53489 Sinzig, Germany, or CPA Performance GmbH, Jurastrasse 1, 73119 Zell unter Aichelberg, Germany.

Plea in law

— Infringement of Article 59(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 November 2019 — Ultrasun v EUIPO (ultrasun)

(Case T-805/19)

(2020/C 27/63)

Language of the case: German

Parties

Applicant: Ultrasun AG (Zurich, Switzerland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: Registration of EU figurative mark in colour containing the word element 'ultrasun' — Registration No 17 898 795

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 September 2019 in Case R 531/2019-4

Form of order sought

— annul the contested decision;

— order EUIPO to pay the costs, including those incurred by the applicant in the proceedings before the Board of Appeal.

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;

— Infringement of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 November 2019 — Govern d'Andorra v EUIPO

(Andorra)

(Case T-806/19)

(2020/C 27/64)

Language of the case: Spanish

Parties

Applicant: Govern d'Andorra (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark Andorra — Application for registration No 16 797 912

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 August 2019 in Case R 737/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Legal uncertainty arising from different EUIPO decisions relating to very similar marks and the need for reasons to be given in decisions.

Action brought on 25 November 2019 — Silgan International und Silgan Closures v Commission

(Case T-808/19)

(2020/C 27/65)

Language of the case: German

Parties

Applicants: Silgan International Holdings BV (Amsterdam, Netherlands) and Silgan Closures GmbH (Munich, Germany) (represented by: D. Seeliger, H. Wollmann, R. Grafunder, B. Meyring and E. Venot, lawyers)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2019) 8501 final of 20 November 2019 (AT.40522 — Metal Packaging [ex Pandora]) on the obligation to provide information, and

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law: Infringement of the rights of defence

   First plea in law, alleging that the contested decision infringed fundamental rights of defence since the questions asked are based predominantly on documents and information that the applicants had previously forwarded to the Bundeskartellamt (the German competition authority) as leniency applicants in proceedings pending before it. The Commission obtained those documents and information in the context of an impermissible exchange of information with the Bundeskartellamt or an unlawful inspection conducted on the basis thereof.

2. Second plea in law: Lack of competence of the Commission due to an infringement of the principle of subsidiarity

   Second plea in law, alleging that the Commission is not competent to carry out the investigation into the applicants or to adopt the contested decision. Given that the Bundeskartellamt carried out in-depth investigations and the national proceedings permit a final judgment, it is not apparent why it would have been inappropriate for the Bundeskartellamt to bring an end to the investigation in the present case or why the Commission is in a better position to carry out the contested investigative measure.

3. Third plea in law: Failure to state reasons

   Third plea in law, alleging that the contested decision lacks adequate reasoning in that it does not contain any explanation as to why the Commission considered itself competent, in the light of the subsidiarity principle, to carry out investigations into the applicants.

4. Fourth plea in law: Infringement of the right to good administration provided for in Article 41 of the Charter of Fundamental Rights of the European Union

   Fourth plea in law, alleging that the Commission infringed the requirement of good administration and Article 41 of the Charter of Fundamental Rights of the European Union since the contested decision is disproportionate, infringes the legitimate expectations of the applicants and is incompatible with the requirement of impartiality and fairness.

5. Fifth plea in law: Misuse of powers

   Fifth plea in law, alleging that the request for information is based on improper considerations because the investigation and, in particular, the contested decision involved cooperation between the Commission and the Bundeskartellamt in order to enable the Commission to circumvent the provisions provided for under German law on penalties imposed for infringements of Article 101 TFEU.

Action brought on 22 November 2019 — Liga Nacional de Fútbol Profesional v EUIPO (El Clasico)

(Case T-809/19)

(2020/C 27/66)

Language of the case: Spanish

Parties

Applicant: Liga Nacional de Fútbol Profesional (Madrid, Spain) (represented by: C. Casas Feu, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative mark El Clasico — Application for registration No 1 379 292

Contested decision: Decision of the Second Board of Appeal of EUIPO of 1 October 2019 in Case R 1966/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— give judgment allowing the registration in the European Union of the international mark No 1 379 292 El Clásico (mixed) in Class 41 in the name of La Liga Nacional de Fútbol Profesional;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 22 November 2019 – Nutravita v EUIPO – Pegaso (nutravita Healthy Mind, Body & Soul.)

(Case T-814/19)

(2020/C 27/67)

Language of the case: English

Parties

Applicant: Nutravita Ltd (Maidenhead, United Kingdom) (represented by: H. Dhondt and J. Cassiman, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pegaso Srl (Negrar, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark nutravita Healthy Mind, Body & Soul. of colours light green and black – Application for registration No 16 255 804

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 September 2019 in Case R 80/2019-4

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 47(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 10(3) of the Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 71(1)(b) of the Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 71(1) of Regulation of Regulation (EU) 2017/1001 of the European Parliament and of the Council; and

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

Action brought on 27 November 2019 – Olimp Laboratories v EUIPO – OmniVision (Hydrovision)

(Case T-817/19)

(2020/C 27/68)

Language of the case: English

Parties

Applicant: Olimp Laboratories sp. z o.o. (Dębica, Poland) (represented by: M. Kondrat, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: OmniVision GmbH (Puchheim, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark Hydrovision – Application for registration No 16 286 841

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 13 September 2019 in Case R 2371/2018-2

Form of order sought

The applicant claims that the Court should:

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

— alter the contested decision;

— award the costs in the Applicant's favor.

Pleas in law

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

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

Action brought on 27 November 2019 – Dvectis CZ v EUIPO – Yado (Support pillows)

(Case T-818/19)

(2020/C 27/69)

Language of the case: English

Parties

Applicant: Dvectis CZ s.r.o. (Brno, Czech Republic) (represented by: J. Svojanovská, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Yado s.r.o. (Handlová, Slovakia)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: Registered Community design No 3222 504-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 10 September 2019 in Case R 513/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order that the defendant bears the applicant's costs in these proceedings.

If the Court does not agree with the above-stated proposal, the applicant requests to:

— change the contested decision in a way that the appeal of the applicant of 21 March 2018 is fully upheld and the design at issue remains valid;

— order that the defendant bears the applicant's costs in these proceedings.

Plea in law

— Infringement of the essential procedural requirements.

Action brought on 2 December 2019 – Man and Machine v EUIPO – Bim Freelance (bim ready)

(Case T-819/19)

(2020/C 27/70)

Language of the case: English

Parties

Applicant: Man and Machine Ltd (Thame Oxfordshire, United Kingdom) (represented by: R. Peto, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Bim Freelance Corp. (Miami, Florida, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: International registration designating the European Union in respect of the figurative mark bim ready – International registration designating the European Union No 1 359 265

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 17 September 2019 in Case R 317/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 2 December 2019 — Herlyn and Beck v EUIPO — Brillux (B.home)

(Case T-821/19)

(2020/C 27/71)

Language in which the application was lodged: German

Parties

Applicants: Sonja Herlyn (Grünwald, Germany), Christian Beck (Grünwald) (represented by: H. Hofmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Brillux GmbH & Co. KG (Münster, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicants

Trade mark at issue: Application for EU trade mark B.home — Application for registration No 16 961 336

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 24 September 2019 in Case R 373/2019-5

Form of order sought

The applicants claim that the Court should:

— annul or amend the contested decision and uphold the decision of the Opposition Division of the European Union Intellectual Property Office (EUIPO) in proceedings B2976549 of 10 December 2018;

— order EUIPO to pay the costs;

— set a date for an oral hearing.

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 3 December 2019 — Asoliva and Anierac v Commission

(Case T-822/19)

(2020/C 27/72)

Language of the case: Spanish

Parties

Applicants: Asociación Española de la Industria y Comercio Exportador de Aceite de Oliva (Asoliva) (Madrid, Spain) and Asociación Nacional de Industriales Envasadores y Refinadores de Aceites Comestibles (Anierac) (Madrid) (represented by V. Rodríguez Fuentes, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should annul Article 1(1)(b) of Commission Implementing Regulation (EU) 2019/1604 of 27 September 2019 amending Regulation (EEC) No 2568/91 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis, published in OJ 2019 L 250, p. 14.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the Treaties

   — The applicants take the view that, by imposing an irrefutable presumption of non-conformity of the quality of olive oil, which gives rise to penalties, the contested act infringes the principle of the presumption of innocence under Article 48 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging breach of the principle of legal certainty

— The applicants take the view that the irrefutable presumption of non-conformity laid down by the contested act undermines legal certainty, since it is based on a method which, on account of the lack of precision, does not make it possible to ensure compliance with the applicable standard with sufficient certainty.

3. Third plea in law, alleging breach of the principle of proportionality with respect to the freedom to conduct a business

— The applicants take the view that the irrefutable presumption of non-conformity laid down by the contested act disproportionately restricts the freedom to conduct a business by laying down a restriction thereon with an imprecise method from which absolute consequences are derived, without taking account of other existing methods or means of proof.

Order of the General Court of 25 November 2019 – Lipitalia 2000 and Assograssi v Commission

(Case T-189/18) ([1])

(2020/C 27/73)

Language of the case: Italian

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 26 November 2019 — Stada Arzneimittel v EUIPO (Representation of two curved red lines arranged one above the other)

(Case T-290/19) ([1])

(2020/C 27/74)

Language of the case: German

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

([1]) OJ C 213, 24.6.2019.

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