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Information and Notices

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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2020/C 161/01)

Last publication

OJ C 137, 27.4.2020

Past publications

OJ C 129, 20.4.2020

OJ C 114, 6.4.2020

OJ C 103, 30.3.2020

OJ C 95, 23.3.2020

OJ C 87, 16.3.2020

OJ C 77, 9.3.2020

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 4 March 2020 — Mowi ASA, formerly Marine Harvest ASA v European Commission

(Case C-10/18 P) [1]

(Appeal — Competition — Control of concentrations between undertakings — Regulation (EC) No 139/2004 — Article 4(1) — Prior notification obligation for concentrations — Article 7(1) — Standstill obligation — Article 7(2) — Exemption — Concept of a 'single concentration' — Article 14 (2) — Decision imposing fines for the implementation of a concentration before it has been notified and authorised — Principle ne bis in idem — Set off principle — Concurrent offences)

(2020/C 161/02)

Language of the case: English

Parties

Appellant: Mowi ASA, formerly Marine Harvest ASA (represented by: R. Subiotto QC)

Other party to the proceedings: European Commission (represented by: M. Farley and F. Jimeno Fernández, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mowi ASA to pay the costs.

[1] OJ C 142, 23.4.2018.

Judgment of the Court (Grand Chamber) of 3 March 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia No 38 de Barcelona — Spain) — Marc Gómez del Moral Guasch v Bankia SA

(Case C-125/18) [1]

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Mortgage loan agreement — Variable interest rate — Reference index based on mortgage loans granted by savings banks — Index arising from a regulatory or administrative provision — Unilateral introduction of the term by the seller or supplier — Review of the transparency requirement by the national court — Consequences of a finding that the term is unfair)

(2020/C 161/03)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 38 de Barcelona

Parties to the main proceedings

Applicant: Marc Gómez del Moral Guasch

Defendant: Bankia SA

Operative part of the judgment

1. Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a contractual term in a mortgage loan agreement concluded between a consumer and a seller or supplier, which provides that the interest rate applicable to the loan is based on one of the official reference indices provided for by the national legislation that may be applied by credit institutions to mortgage loans, falls within the scope of that directive, where that national legislation does not provide either for the mandatory application of that index independently of the choice of the parties to the agreement or for the supplementary application thereof in the absence of other arrangements established by those parties.

2. Directive 93/13, in particular Article 4(2) and Article 8 thereof, must be interpreted as meaning that the court of a Member State is required to verify that a contractual term relating to the main subject matter of the agreement is plain and intelligible, irrespective of whether or not Article 4(2) of that directive was transposed into the legal order of that Member State.

3. Directive 93/13, in particular Article 4(2) and Article 5 thereof, must be interpreted as meaning that, with a view to complying with the transparency requirement of a contractual term setting a variable interest rate under a mortgage loan agreement, that term not only must be formally and grammatically intelligible but also enable an average consumer, who is reasonably well-informed and reasonably observant and circumspect, to be in a position to understand the specific functioning of the method used for calculating that rate and thus evaluate, on the basis of clear, intelligible criteria, the potentially significant economic consequences of such a term on his or her financial obligations. Information that is particularly relevant for the purposes of the assessment to be carried out by the national court in that regard includes (i) the fact that essential information relating to the calculation of that rate is easily accessible to anyone intending to take out a mortgage loan, on account of the publication of the method used for calculating that rate, and (ii) the provision of data relating to past fluctuations of the index on the basis of which that rate is calculated.

4. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as not precluding the national court, where an unfair contractual term setting a reference index for calculating the variable interest of a loan is null and void, from replacing that index with a statutory index applicable in the absence of an agreement to the contrary between the parties to the contract, in so far as the mortgage loan agreement in question is not capable of continuing in existence if the unfair term is removed and annulment of that agreement in its entirety would expose the consumer to particularly unfavourable consequences.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Fourth Chamber) of 4 March 2020 — Tulliallan Burlington Ltd v European Union Intellectual Property Office (EUIPO), Burlington Fashion GmbH

(Joined Cases C-155/18 P to C-158/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Word and figurative marks 'BURLINGTON' — Opposition of the proprietor of the earlier word and figurative marks 'BURLINGTON' and 'BURLINGTON ARCADE' — Article 8(1)(b) — Likelihood of confusion — Nice Agreement — Class 35 — Concept of 'retail services' — Article 8(4) — Passing-off — Article 8(5) — Reputation — Criteria for assessment — Similarity between the goods and services — Opposition rejected)

(2020/C 161/04)

Language of the case: English

Parties

Appellant: Tulliallan Burlington Ltd (represented by: A. Norris, Barrister)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: M. Fischer and D. Botis, acting as Agents), Burlington Fashion GmbH (represented by: A. Parr, Rechtsanwältin)

Operative part of the judgment

The Court:

1. Sets aside the judgments of the General Court of the European Union of 6 December 2017, Tulliallan Burlington v EUIPO — Burlington Fashion (Burlington) (T-120/16, EU:T:2017:873), of 6 December 2017, Tulliallan Burlington v EUIPO — Burlington Fashion (BURLINGTON THE ORIGINAL) (T-121/16, not published, EU:T:2017:872), of 6 December 2017, Tulliallan Burlington v EUIPO — Burlington Fashion (Burlington) (T-122/16, not published, EU:T:2017:871), and of 6 December 2017, Tulliallan Burlington v EUIPO — Burlington Fashion (BURLINGTON) (T-123/16, not published, EU:T:2017:870);

2. Annuls the decisions of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 11 January 2016 (Cases R 94/2014-4, R 2501/2013-4, R 2409/2013-4 and R 1635/2013-4) relating to four sets of opposition proceedings between Tulliallan Burlington Ltd and Burlington Fashion GmbH;

3. Orders Burlington Fashion GmbH and the European Union Intellectual Property Office (EUIPO) to bear their own costs and to pay those incurred by Tulliallan Burlington Ltd in relation both to the first-instance proceedings in Cases T-120/16 to T-123/16 and the procedures on appeal, in equal shares.

(1) OJ C 240, 9.7.2018.

Judgment of the Court (First Chamber) of 4 March 2020 (request for a preliminary ruling from the Sąd Rejonowy Gdańsk–Południe w Gdańsku — Poland) — Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) v Bank BGŻ BNP Paribas S.A.

(Case C-183/18) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in criminal matters — Framework Decision 2005/214/JHA — Recognition and enforcement of financial penalties imposed on legal persons — Incomplete transposition of a framework decision — Duty to interpret national law in accordance with EU law — Scope)

(2020/C 161/05)

Language of the case: Polish

Referring court

Sąd Rejonowy Gdańsk–Południe w Gdańsku

Parties to the main proceedings

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

Defendant: Bank BGŻ BNP Paribas S.A. w Gdańsku

Intervener: Prokuratura Rejonowa Gdańsk-Śródmieście w Gdańsku

Operative part of the judgment

1. The concept of 'legal person' set out, inter alia, in Article 1(a) and Article 9(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted in the light of the law of the issuing State of the decision imposing a financial penalty.

2. Framework Decision 2005/214, as amended by Framework Decision 2009/299, must be interpreted as meaning that that it does not require a national court not to apply a provision of national law that is incompatible with Article 9(3) of Framework Decision 2005/214, as amended by Framework Decision, since that provision is devoid of direct effect. Nevertheless, the referring court is required to give, as far as is possible, an interpretation of national law in accordance with EU law in order to ensure a result that is compatible with the aim pursued by Framework Decision 2005/214, as amended by Framework Decision 2009/299.

(1) OJ C 221, 25.6.2018.

Judgment of the Court (Sixth Chamber) of 5 March 2020 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — IDEALMED III — Serviços de Saúde, SA v Autoridade Tributária e Aduaneira

(Case C-211/18) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 132(1)(b) — Exemptions — Hospital and medical care — Hospital establishments — Services provided under social conditions comparable to those applicable to bodies governed by public law — Articles 377 and 391 — Derogations — Right to opt for a taxation regime — Maintenance of the taxation — Variation in the conditions for the exercise of the activity)

(2020/C 161/06)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: IDEALMED III — Serviços de Saúde, SA

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

1. Article 132(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the competent authorities in a Member State may — for the purpose of determining whether the care services provided by a private hospital, which are in the public interest, are provided under social conditions comparable to those applicable to bodies governed by public law, within the meaning of that provision — take into account the fact that those services are provided under contracts concluded with public authorities of that Member State, at prices fixed by those contracts and whose costs are partially borne by the social security institutions of that Member State;

2. Article 391 of Directive 2006/112, read in conjunction with Article 377 thereof, and the principles of legitimate expectation, legal certainty and fiscal neutrality, must be interpreted as precluding the exemption from VAT of supplies of care services provided by private hospitals which fall within Article 132(1)(b) of that directive owing to a change in the conditions under which it carried on its activities that occurred after it opted for the taxation regime laid down in the national law of the Member State concerned which laid down the requirement, for all taxable persons making such a choice, to remain subject to that regime for a certain period, where such a period has not yet expired.

(1) OJ C 240 9.7.2018.

Judgment of the Court (Fifth Chamber) of 27 February 2020 — Constantin Film Produktion GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-240/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 7(1)(f) — Absolute ground for refusal — Mark contrary to accepted principles of morality — Word sign 'Fack Ju Göhte' — Rejection of the application for registration)

(2020/C 161/07)

Language of the case: German

Parties

Appellant: Constantin Film Produktion GmbH (represented by: E. Saarmann and P. Baronikians, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Hanf, Agent)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of 24 January 2018, *Constantin Film Produktion* v *EUIPO (Fack Ju Göhte)* (T-69/17, not published, EU:T:2018:27);

2. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 1 December 2016 (Case R-2205/2015-5) relating to an application for registration of the word sign 'Fack Ju Göhte' as an EU trade mark;

3. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs and pay those incurred by Constantin Film Produktion GmbH in relation both to the proceedings at first instance in Case T-69/17 and on appeal.

([1]) OJ C 249, 16.7.2018.

Judgment of the Court (Fourth Chamber) of 4 March 2020 — European Union Intellectual Property Office v Equivalenza Manufactory, SL

(Case C-328/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) — Likelihood of confusion — Assessment of the similarity of the signs at issue — Global assessment of the likelihood of confusion — Consideration of marketing circumstances — Counteraction of a phonetic similarity through visual and conceptual differences — Conditions for counteraction)

(2020/C 161/08)

Language of the case: Spanish

Parties

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

Other party to the proceedings: Equivalenza Manufactory, SL (represented by: G. Macías Bonilla, G. Marín Raigal and E. Armero Lavie, abogados)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 7 March 2018, Equivalenza Manufactory v EUIPO — ITM Entreprises (BLACK LABEL BY EQUIVALENZA) (T-6/17, not published, EU:T:2018:119);

2. Dismisses the action for annulment brought by Equivalenza Manufactory SL before the General Court of the European Union in Case T–6/17;

3. Orders Equivalenza Manufactory SL to bear its own costs relating both to the proceedings at first instance in Case T-6/17 and to the appeal proceedings and to pay the costs incurred by the European Union Intellectual Property Office (EUIPO) in both of those proceedings.

(1) OJ C 341, 24.9.2018.

Judgment of the Court (Ninth Chamber) of 4 March 2020 — Buonotourist Srl v European Commission, Associazione Nazionale Autotrasporto Viaggiatori (ANAV)

(Case C-586/18 P) (1)

(Appeal — Competition — State aid — Undertaking operating bus route networks in the Regione Campania (Campania Region, Italy) — Compensation for public service obligations paid by the Italian authorities following a judgment of the Consiglio di Stato (Council of State, Italy) — European Commission decision declaring the aid measure unlawful and incompatible with the internal market)

(2020/C 161/09)

Language of the case: Italian

Parties

Appellant: Buonotourist Srl (represented by: M. D'Alberti and L. Visone, avvocati)

Other parties to the proceedings: European Commission (represented by: G. Conte, P.-J. Loewenthal and L. Armati, acting as Agents), Associazione Nazionale Autotrasporto Viaggiatori (ANAV) (represented by: M. Malena, avvocato)

Operative part

The Court

1. Dismisses the appeal;

2. Orders Buonotourist Srl to pay the costs.

(1) OJ C 399, 5.11.2018.

Judgment of the Court (Ninth Chamber) of 4 March 2020 — *CSTP Azienda della Mobilità SpA* v *European Commission, Asstra Associazione Trasporti*

(Case C-587/18 P) (1)

(Appeal — Competition — State aid — Undertaking operating bus route networks in the Regione Campania (Campania Region, Italy) — Compensation for public service obligations paid by the Italian authorities following a judgment of the Consiglio di Stato (Council of State, Italy) — European Commission decision declaring the aid measure unlawful and incompatible with the internal market)

(2020/C 161/10)

Language of the case: Italian

Parties

Appellant: CSTP Azienda della Mobilità SpA (represented by: G. Capo and L. Visone, avvocati)

Other parties to the proceedings: European Commission (represented by: G. Conte, P. J. Loewenthal and L. Armati, acting as Agents), Asstra Associazione Trasporti (represented by: M. Malena, avvocato)

Operative part

The Court

1. Dismisses the appeal;

2. Orders CSTP Azienda della Mobilità SpA to pay the costs.

(1) OJ C 399, 5.11.2018.

Judgment of the Court (Eighth Chamber) of 4 March 2020 (request for a preliminary ruling from the Administrativen sad — Varna — Bulgaria) — Teritorialna direktsiya 'Severna morska' kam Agentsiya Mitnitsi, successor in law to Mitnitsa Varna v Schenker EOOD

(Case C-655/18) (1)

(Reference for a preliminary ruling — Customs union — Regulation (EU) No 952/2013 — Removal from customs supervision — Theft of goods placed under a customs warehousing procedure — Article 242 — Person responsible for the removal — Holder of the authorisation for customs warehousing — Penalty for failure to comply with the customs legislation — Article 42 — Obligation to pay a sum corresponding to the value of the missing goods — Combination with a pecuniary penalty — Proportionality)

(2020/C 161/11)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Appellant in the appeal on a point of law: Teritorialna direktsiya 'Severna morska' kam Agentsiya Mitnitsi, successor in law to Mitnitsa Varna

Respondent in the appeal on a point of law: Schenker EOOD

Intervener: Okrazhna prokuratura — Varna

Operative part of the judgment

1. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as not precluding national legislation under which, in the event of theft of goods placed under a customs warehousing procedure, a pecuniary penalty is imposed on the holder of the customs warehousing authorisation for failure to comply with the customs legislation.

2. Article 42(1) of Regulation No 952/2013 must be interpreted as precluding national legislation under which, in the event of removal from customs supervision of goods placed under a customs warehousing procedure, the holder of the customs warehousing authorisation is required to pay, in addition to a pecuniary penalty, a sum corresponding to the value of those goods.

(1) OJ C 4, 7.1.2019.

Judgment of the Court (Fifth Chamber) of 5 March 2020 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v European Union Intellectual Property Office (EUIPO), M.J. Dairies EOOD

(Case C-766/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Opposition — Article 8(1)(b) — Likelihood of confusion — Criteria for assessment — Applicability in the case of an earlier collective mark — Interdependence between the similarity of the trade marks at issue and that of the goods or services covered by those marks)

(2020/C 161/12)

Language of the case: English

Parties

Appellant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (represented by: S. Malynicz QC, S. Baran, Barrister, V. Marsland, Solicitor, and K.K. Kleanthous)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Gája, acting as Agent). M.J. Dairies EOOD (represented by: D. Dimitrova and I. Pakidanska, advokati)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 25 September 2018, Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — M. J. Dairies (BBQLOUMI) (T-328/17, not published, EU:T:2018:594);

2. Refers the case back to the General Court of the European Union;

3. Reserves the costs.

([1]) OJ C 82, 4.3.2019.

Judgment of the Court (First Chamber) of 4 March 2020 (request for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio — Italy) — Telecom Italia SpA v Ministero dello Sviluppo Economico and Ministero dell'Economia e delle Finanze

(Case C-34/19) ([1])

(Reference for a preliminary ruling — Approximation of laws — Telecommunication services — Implementation of provision of an open telecommunications network — Directive 97/13/EC — Fees and charges for individual licences — Transitional arrangements establishing a charge beyond those authorised by Directive 97/13/EC — Force of res judicata attaching to a higher court judgment considered contrary to EU law)

(2020/C 161/13)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per il Lazio

Parties to the main proceedings

Applicant: Telecom Italia SpA

Defendants: Ministero dello Sviluppo Economico and Ministero dell'Economia e delle Finanze

Operative part of the judgment

1. Article 22(3) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services must be interpreted as precluding national legislation extending the obligation, in respect of 1998, imposed on a telecommunications undertaking holding an existing authorisation on the date of entry into force of that directive to pay a charge calculated on the basis of turnover and not merely the administrative costs incurred in the issue, management, control and enforcement of the applicable general authorisation scheme and individual licences;

2. EU law must be interpreted as not requiring a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy an infringement of a provision of EU law, without prejudice to the possibility for the parties concerned of rendering the State liable in order to obtain legal protection of their rights under EU law.

([1]) OJ C 182, 27.5.2019.

Judgment of the Court (Sixth Chamber) of 5 March 2020 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — X-GmbH v Finanzamt Z

(Case C-48/19) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Article 132(1)(c) — Exemptions — Provision of medical care in the exercise of the medical and paramedical professions — Telephone services — Services provided by nurses and medical assistants)

(2020/C 161/14)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: X-GmbH

Defendant: Finanzamt Z

Operative part of the judgment

1. Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that services provided by telephone, consisting of advice relating to health and illness, can fall within the exemption provided for in that provision, provided that they pursue a therapeutic aim, which it is for the referring court to determine.

2. Article 132(1)(c) of Directive 2006/112 must be interpreted as not requiring that, due to the fact that medical services are provided by telephone, nurses and medical assistants who provide those services are subject to additional professional qualification requirements in order for those services to benefit from the exemption provided for in that provision, provided that they can be regarded as being of a level of quality equivalent to that of services provided by other service providers using the same means of communication, which is a matter for the referring court to determine.

(1) OJ C 148, 29.4.2019.

Judgment of the Court (Eighth Chamber) of 5 March 2020 — Credito Fondiario SpA v Single Resolution Board, Italian Republic, European Commission

(Case C-69/19 P) (1)

(Appeal — Economic and monetary union — Banking union — Recovery and resolution of credit institutions and investment firms — Single resolution mechanism for credit institutions and certain investment firms (SRM) — Single Resolution Board (SRB) — Single Resolution Fund (SRF) — Determination of the 2016 ex ante contribution — Action for annulment — Period within which proceedings must be commenced — Late submission — Plea of illegality — Manifest inadmissibility)

(2020/C 161/15)

Language of the case: Italian

Parties

Appellant: Credito Fondiario SpA (represented by: initially by F. Sciaudone, S. Frazzani, A. Neri and F. Iacovone, avvocati, and subsequently by F. Sciaudone, A. Neri and F. Iacovone, avvocati)

Other parties to the proceedings: Single Resolution Board (SRB) (represented by: H. Ehlers, acting as Agent, and by S. Ianc, B. Meyring, T. Klupsch and S. Schelo, Rechtsanwälte, and by M. Caccialanza and A. Villani, avvocati), Italian Republic (represented by: G. Palmieri, Agent, assisted by P. Gentili, avvocato dello Stato), European Commission (represented by: V. Di Bucci and K. P. Wojcik and A. Steiblytė, Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Credito Fondiario SpA to bear its own costs and to pay those incurred by the Single Resolution Board;

3. Orders the Italian Republic and the European Commission to bear their own costs.

(1) OJ C 103, 18.3.2019.

Judgment of the Court (Eighth Chamber) of 5 March 2020 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Pensionsversicherungsanstalt v CW

(Case C-135/19) ([1])

(Reference for a preliminary ruling — Social security for migrant workers — Coordination of social security systems — Regulation (EC) No 883/2004 — Articles 3 and 11 — Matters covered — Benefits falling within the scope of the regulation — Classification — Sickness benefit — Invalidity benefit — Unemployment benefit — Person who has ceased to be insured under the social security system of a Member State after ceasing to be employed there and moving his or her place of residence to another Member State — Application for a rehabilitation allowance in the former Member State of residence and employment — Refusal — Determination of the legislation applicable)

(2020/C 161/16)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Pensionsversicherungsanstalt

Defendant: CW

Operative part of the judgment

1. A benefit such as the rehabilitation allowance at issue in the main proceedings is a sickness benefit, within the meaning of Article 3(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012.

2. Regulation No 883/2004, as amended by Regulation No 465/2012, must be interpreted as not precluding a situation in which a person who has ceased to be insured under the social security system of his or her Member State of origin after ceasing to be employed there and moving his or her place of residence to another Member State, where he or she worked and completed the majority of his or her periods of insurance, is refused a benefit such as the rehabilitation allowance at issue in the main proceedings by the competent institution of his or her Member State of origin, since that person is subject not to the legislation of the State of origin but to that of the Member State in which his or her place of residence is situated.

([1]) OJ C 172, 20.5.2019.

Judgment of the Court (Ninth Chamber) of 27 February 2020 — European Commission v Hellenic Republic

(Case C-298/19) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Article 260(2), TFEU — Pecuniary penalties — Lump sum)

(2020/C 161/17)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Konstantinidis and E. Manhaeve, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalo, acting as Agent)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt the measures necessary to comply with the judgment of 23 April 2015 in Commission v Greece (C-149/14, not published, EU:C:2015:264), by the expiry of the period prescribed in the letter of formal notice sent by the European Commission, namely 5 December 2017, the Hellenic Republic has failed to fulfil its obligations under Article 260(1) TFEU.

2. Orders the Hellenic Republic to pay the European Commission a lump sum of EUR 3 500 000, to an account to be indicated by it.

3. Orders the Hellenic Republic to pay the costs.

(1) OJ C 213, 24.6.2019.

Order of the Court of 6 November 2019 (request for a preliminary ruling from the Tribunalul Specializat Mureş — Romania) — MF v BNP Paribas Personal Finance SA Paris Sucursala Bucureşti, Secapital Sàrl

(Case C-75/19) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Directive 93/13/EEC — Consumer contracts — Consumer credit — Enforcement proceedings — Time limit of 15 days from service of enforcement proceedings to raise the unfairness of a term)

(2020/C 161/18)

Language of the case: Romanian

Referring court

Tribunalul Specializat Mureş

Parties to the main proceedings

Applicant: MF

Defendant: BNP Paribas Personal Finance SA Paris Sucursala Bucureşti, Secapital Sàrl

Operative part of the order

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding a rule of national law by which a consumer who concluded a loan agreement with a credit institution and against whom that supplier initiated enforcement proceedings is time-barred, beyond a period of 15 days from service of the first documents in those proceedings, from relying on the existence unfair terms to defend those proceedings, even if under national law the consumer may bring an action for a finding of unfair terms which is not subject to any time limit, but the outcome of which has no bearing on the outcome of the enforcement proceedings, which may be binding on the consumer before the conclusion of the action for a finding of unfair terms.

(1) OJ C 164, 13.5.2019.

Request for a preliminary ruling from the Rayonen sad — Blagoevgrad (Bulgaria) lodged on 13 May 2019 — MAK TURS AD v Direktor na Direktsiya 'Inspektsiya po truda' — Blagoevgrad

(Case C-376/19)

(2020/C 161/19)

Language of the case: Bulgarian

Referring court

Rayonen sad — Blagoevgrad

Parties to the main proceedings

Applicant: MAK TURS AD

Defendant: Direktor na Direktsiya 'Inspektsiya po truda' — Blagoevgrad

By order of 13 February 2020, the Court (Sixth Chamber) declared that the Court of Justice of the European Union lacks jurisdiction to hear the case.

Appeal brought on 24 July 2019 by EMB Consulting SE against the judgment of the General Court (Third Chamber) delivered on 23 May 2019 in Case T-107/17, *Frank Steinhoff and Others* v *European Central Bank*

(Case C-571/19 P)

(2020/C 161/20)

Language of the case: German

Parties

Appellant: EMB Consulting SE (represented by: O. Hoepner and D. Unrau, Rechtsanwälte)

Other parties to the proceedings: Frank Steinhoff, Ewald Filbry, Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg eG, Werner Bäcker, European Central Bank

By order of 12 March 2020, the Court of Justice of the European Union (Seventh Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 10 September 2019 — Gardinia Home Decor GmbH v Hauptzollamt Ulm

(Case C-670/19)

(2020/C 161/21)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Gardinia Home Decor GmbH

Defendant: Hauptzollamt Ulm

By order of 27 February 2020, the Court (Sixth Chamber) ruled as follows:

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ([1]) as amended by Commission Regulation (EU) No 861/2010 of 5 October 2010, ([2]) is to be interpreted as meaning that base metal curtain rods fall within tariff subheading 8302 41 90, unless those rods consist of rods, tubes or bars which have been merely cut to the required length, which is for the referring court to ascertain in order to carry out its own tariff classification of the goods at issue in the main proceedings, having regard to the information provided by the Court in response to the first question referred.

([1]) OJ 1987 L 256, p. 1.
([2]) Regulation amending Annex I of Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2010 L 284, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 18 November 2019 — Autostrada Torino Ivrea Valle d'Aosta — Ativa SpA v Presidenza del Consiglio dei Ministri, Ministero delle Infrastrutture e dei Trasporti, Ministero dell'Economia and delle Finanze, Autorità di bacino del Po

(Case C-835/19)

(2020/C 161/22)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autostrada Torino Ivrea Valle d'Aosta — Ativa SpA

Defendants: Presidenza del Consiglio dei Ministri, Ministero delle Infrastrutture e dei Trasporti, Ministero dell'Economia and delle Finanze, Autorità di bacino del Po

Question referred

With regard to the award of concessions, does [EU] law, in particular the principles laid down in Directive [2014/23], ([1]) specifically freedom of choice as regards award procedures in accordance with the principles of transparency and [equal] treatment, as referred to in recital 68 and Article 30 of the directive, preclude the application of the provisions laid down in Article 178(8-bis) of Legislative Decree No 50 of 18 April 2016, which unconditionally prohibit the award by administrative authorities of motorway concessions in respect of concessions that have expired or are due to expire, using the procedures laid down in Article 183 [of the decree], which governs project financing?

([1]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1).

Appeal brought on 3 December 2019 by Pink Lady America LLC against the judgment of the General Court (Third Chamber) delivered on 24 September 2019 in Case T-112/18, Pink Lady America v CPVO

(Case C-886/19 P)

(2020/C 161/23)

Language of the case: English

Parties

Appellant: Pink Lady America LLC (represented by: R. Manno, S. Sernia, avvocati)

Other parties to the proceedings: Community Plant Variety Office, Western Australian Agriculture Authority (WAAA)

By order of 3 March 2020 the Court of JusticeJustice (Chamber determining whether appeals may proceed) held that the appeal is not allowed to proceed and that Pink Lady America LLC shall bear its own costs.

Appeal brought on 29 November 2019 by Camelia Manéa against the judgment of the General Court (Seventh Chamber) delivered on 12 September 2019 in Case T-225/18 Manéa v CdT

(Case C-892/19 P)

(2020/C 161/24)

Language of the case: French

Parties

Appellant: Camelia Manéa (represented by: M.-A. Lucas, avocat)

Other party to the proceedings: Centre de traduction des organes de l'Union européenne (CdT)

Form of order sought

— Set aside the judgment of 12 September 2019 (T-225/18);

— Rule again on the action and grant the appellant the relief sought at first instance;

— Order the CdT to pay the costs of both sets of proceedings.

Pleas in law and main arguments

In support of her appeal the appellant relies on seven grounds of appeal:

The first ground of appeal, relating to paragraphs 36 to 38 of the judgment under appeal, alleges distortion of the factual and legal basis of the first plea in law of the application.

The second ground of appeal, relating to paragraph 43 of the judgment under appeal, alleges a breach of the rules of evidence, a substantially incorrect assessment based on an incomplete examination of the file, a distortion of the evidence, and a distortion of a document in the case file.

The third ground of appeal, relating to paragraph 44 of the judgment under appeal, alleges contradictory reasoning, a distortion or substantially inaccurate assessment of the decision of 10 June 2016 arising from an incomplete examination of the case file, and breach of the duty to restore the previous situation taking account of legality.

The fourth ground of appeal, relating to paragraph 55 of the judgment under appeal, alleges distortion of the grounds of the decision of 29 May 2017.

The fifth ground of appeal, relating to paragraph 56 of the judgment under appeal, alleges distortion of the plea in law contained in the application concerning the failure to comply with the duty to state reasons.

The sixth ground of appeal alleges a contraction in the reasoning in paragraphs 81 and 83 of the judgment under appeal.

The seventh ground of appeal, relating to paragraph 84 of the judgment under appeal, alleges a distortion of the arguments, a substantially inaccurate assessment arising from an incomplete examination of the case file and the inadequacy of the General Court's response to the appellant's arguments.

Appeal brought on 10 December 2019 by Esim Chemicals GmbH against the order of the General Court (Fourth Chamber) delivered on 9 October 2019 in Case T-713/18, Esim Chemicals v EUIPO

(Case C-902/19 P)

(2020/C 161/25)

Language of the case: English

Parties

Appellant: Esim Chemicals GmbH (represented by: I. Rungg, Rechtsanwalt, I. Innerhofer, Rechtsanwältin)

Other party to the proceedings: European Union Intellectual Property Office

By order of 3 March 2020 the Court of JusticeJustice (Chamber determining whether appeals may proceed) held that the appeal is not allowed to proceed and that Esim Chemicals GmbH shall bear its own costs.

Request for a preliminary ruling from the Landesverwaltungsgericht Steiermark (Austria) lodged on 16 December 2019 — Fluctus s.r.o. and Others

(Case C-920/19)

(2020/C 161/26)

Language of the case: German

Referring court

Landesverwaltungsgericht Steiermark

Parties to the main proceedings

Appellants: Fluctus s.r.o., Fluentum s.r.o., KI

Respondent authority: Landespolizeidirektion Steiermark

Other party: Finanzpolizei Team 96 für das Finanzamt Deutschlandsberg Leibnitz Voitsberg

Questions referred

1. Is Article 56 TFEU to be interpreted as meaning that, in the assessment of the impermissible advertising practices of the licence holder formulated by the Court of Justice of the European Union in its established case-law in the case of a State gambling monopoly, the relevant issue is whether there has in fact been growth in the gambling market considered overall in the relevant period, or is it sufficient that the advertising is aimed at stimulating active participation in gambling, such as by trivialising gambling, conferring on it a positive image because revenues derived from it are used for activities in the public interest, or by increasing its attractiveness by means of enticing advertising messages holding out the tantalising prospect of major winnings?

2. Is Article 56 TFEU also to be interpreted as meaning that advertising practices of a monopolist, should they exist, in any event rule out the coherence of the monopoly system, or is it possible for active participation in gambling also to be stimulated by the monopolist in the event of corresponding advertising activities of private providers, such as by trivialising gambling, giving it a positive image because revenues derived from it are used for activities in the public interest, or by increasing its attractiveness by means of enticing advertising messages holding out the tantalising prospect of major winnings?

3. Is a national court which is called upon, within the scope of its jurisdiction, to apply Article 56 TFEU under a duty, of its own motion, to give full effect to those provisions by refusing to apply any, in its opinion, conflicting provision of national law, even if the compliance of such a provision with EU law has been confirmed in constitutional-law proceedings?

Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 18 December 2019 — FMS and FNZ v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság

(Case C-924/19 PPU)

(2020/C 161/27)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicants: FMS and FNZ

Defendants: Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság

Questions referred

1. [*New ground of inadmissibility*]

Must the provisions on inadmissible applications in Article 33 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ('the Procedures Directive') ([1]) be interpreted as precluding a Member State's legislation under which an application made in the context of the asylum procedure is inadmissible when the applicant reached Hungary via a country where he was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed?

2. [*Conduct of an asylum procedure*]

(a) Must Article 6 and Article 38(4) of the Procedures Directive, and recital 34 thereto, which imposes an obligation to examine applications for international protection, read in the light of Article 18 of the Charter of Fundamental Rights ('the Charter'), be interpreted as meaning that the competent asylum authority of a Member State must ensure that the applicant has the opportunity to initiate the asylum procedure if it has not examined the substance of the application for asylum by relying on the ground of inadmissibility mentioned in Question 1 above and has subsequently ordered the return of the applicant to a third country which has however refused to readmit him?

(b) If the answer to question 2(a) is in the affirmative, what is the exact extent of that obligation? Does it imply an obligation guaranteeing the possibility to submit a new application for asylum, thereby excluding the negative consequences of subsequent applications referred to in Articles 33(2)(d) and 40 of the Procedures Directive, or does it imply the automatic start or conduct of the asylum procedure?

(c) If the answer to Question 2(a) is in the affirmative, taking account also of Article 38(4) of the Procedures Directive, can the Member State — the factual situation remaining unchanged — re-examine the inadmissibility of the application in the context of that new procedure (thereby giving it the possibility of applying any type of procedure provided for in Chapter III, for example reliance once again on a ground of inadmissibility) or must it examine the substance of the application for asylum in the light of the country of origin?

(d) Does it follow from Article 33(1) and (2)(b) and (c) and Articles 35 and 38 of the Procedures Directive, read in the light of Article 18 of the Charter, that readmission by a third country is one of the cumulative conditions for the application of a ground of inadmissibility, that is to say, for the adoption of a decision based on such a ground, or is it sufficient to verify that that condition is satisfied at the time of the enforcement of such a decision?

3. [*Transit zone as a place of detention in the context of an asylum procedure*]

The following questions are relevant if, in accordance with the answer to Question 2, an asylum procedure must be conducted.

(a) Must Article 43 of the Procedures Directive be interpreted as precluding legislation of a Member State under which the applicant may be detained in a transit zone for more than four weeks?

(b) Must Article 2(h) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ('the Reception Directive'), [2] applicable pursuant to Article 26 of the Procedures Directive, read in the light of Article 6 and Article 52(3) of the Charter, be interpreted as meaning that accommodation in a transit zone in circumstances such as those in the main proceedings (a zone which an applicant cannot lawfully leave on a voluntary basis regardless of his destination) for a period exceeding the four-week period referred to in Article 43 of the Procedures Directive constitutes detention?

(c) Is the fact that the detention of the applicant for a period exceeding the four-week period referred to in Article 43 of the Procedures Directive takes place only because he cannot meet his needs (accommodation and food) due to a lack of material resources to cover those needs compatible with Article 8 of the Reception Directive, applicable pursuant to Article 26 of the Procedures Directive?

(d) Is the fact that (i) accommodation which constitutes de facto detention for a period exceeding the four-week period referred to in Article 43 of the Procedures Directive has not been ordered by a detention order, (ii) no guarantee that the lawfulness of the detention and its continuation may be challenged before the courts has been provided, (iii) the de facto detention takes place without any examination of the necessity or proportionality of that measure, or whether there are any alternatives measures and (iv) the exact duration of the de facto detention is not fixed, including the date on which it ends, compatible with Articles 8 and 9 of the Reception Directive, applicable pursuant to Article 26 of the Procedures Directive?

(e) Can Article 47 of the Charter be interpreted as meaning that, when a manifestly unlawful detention is brought for consideration before a court of a Member State, that court may, as an interim measure, until the administrative proceedings come to an end, require the authority to designate for the benefit of the third-country national a place of stay outside the transit zone which is not a place of detention?

4. [*Transit zone as a place of detention in the context of an asylum procedure*]

The following questions are relevant if, in accordance with the answer to Question 2, there is a need to conduct not an asylum procedure but a procedure within the field of competence of the Aliens Police:

(a) Must recitals 17 and 24 and Article 16 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ('the Return Directive'), [3] read in the light of Article 6 and Article 52(3) of the Charter, be interpreted as meaning that accommodation in a transit zone in circumstances such as those in the main proceedings (a zone which an applicant cannot lawfully leave on a voluntary basis regardless of his destination) constitutes deprivation of liberty for the purposes of those provisions?

(b) Is the fact that the detention of an applicant, national of a third country, takes place solely because he is subject to a return order and cannot meet his needs (accommodation and food) due to a lack of material resources to cover those needs compatible with Recital 16 and Article 15(1) of the Return Directive, read in the light of Articles 6 and 52(3) of the Charter?

(c) Is the fact that (i) accommodation which constitutes de facto detention has not been ordered by a detention order, (ii) no guarantee that the lawfulness of the detention and its continuation may be challenged before the courts has been provided and (iii) the de facto detention takes place without any examination of the necessity or proportionality of that measure, or whether there are any alternatives measures, compatible with Recital 16 and Article 15(2) of the Return Directive, read in the light of Articles 6, 47 and 52(3) of the Charter?

(d) Can Article 15(1) and (4) to (6) and recital 16 of the Return Directive, read in the light of Articles 1, 4, 6 and 47 of the Charter be interpreted as precluding detention from taking place without its exact duration being fixed, including the date on which it ends?

(e) Can EU law be interpreted as meaning that, when a manifestly unlawful detention is brought for consideration before a court of a Member State, that court may, as an interim measure, until the administrative proceedings come to an end, require the authority to designate for the benefit of the third-country national a place of stay outside the transit zone which is not a place of detention?

5. [*effective judicial protection with regard to the decision amending the country of return*]

Must Article 13 of the Return Directive, under which a third-country national is to be afforded an effective remedy to appeal against or seek review of 'decisions related to return', read in the light of Article 47 of the Charter, be interpreted as meaning that, where the remedy provided for under domestic law is not effective, a court must review the application lodged against the decision amending the country of return at least once?

(1) OJ 2013 L 180, p. 60.
(2) OJ 2013 L 180, p. 96.
(3) OJ 2008 L 348, p. 98.

Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 18 December 2019 — SA and SA junior v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság

(Case C-925/19)

(2020/C 161/28)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicants: SA and SA junior

Defendants: Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság

Questions referred

1. [*New ground of inadmissibility*]

Must the provisions on inadmissible applications in Article 33 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ('the Procedures Directive') (1) be interpreted as precluding a Member State's legislation under which an application made in the context of the asylum procedure is inadmissible when the applicant reached Hungary via a country where he was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed?

2. [*Conduct of an asylum procedure*]

(a) Must Article 6 and Article 38(4) of the Procedures Directive, and recital 34 thereto, which imposes an obligation to examine applications for international protection, read in the light of Article 18 of the Charter of Fundamental Rights ('the Charter'), be interpreted as meaning that the competent asylum authority of a Member State must ensure that the applicant has the opportunity to initiate the asylum procedure if it has not examined the substance of the application for asylum by relying on the ground of inadmissibility mentioned in Question 1 above and has subsequently ordered the return of the applicant to a third country which has however refused to readmit him?

(b) If the answer to question 2(a) is in the affirmative, what is the exact extent of that obligation? Does it imply an obligation guaranteeing the possibility to submit a new application for asylum, thereby excluding the negative consequences of subsequent applications referred to in Articles 33(2)(d) and 40 of the Procedures Directive, or does it imply the automatic start or conduct of the asylum procedure?

(c) If the answer to Question 2(a) is in the affirmative, taking account also of Article 38(4) of the Procedures Directive, can the Member State — the factual situation remaining unchanged — re-examine the inadmissibility of the application in the context of that new procedure (thereby giving it the possibility of applying any type of procedure provided for in Chapter III, for example reliance once again on a ground of inadmissibility) or must it examine the substance of the application for asylum in the light of the country of origin?

(d) Does it follow from Article 33(1) and (2)(b) and (c) and Articles 35 and 38 of the Procedures Directive, read in the light of Article 18 of the Charter, that readmission by a third country is one of the cumulative conditions for the application of a ground of inadmissibility, that is to say, for the adoption of a decision based on such a ground, or is it sufficient to verify that that condition is satisfied at the time of the enforcement of such a decision?

3. [*Transit zone as a place of detention in the context of an asylum procedure*]

The following questions are relevant if, in accordance with the answer to Question 2, an asylum procedure must be conducted.

(a) Must Article 43 of the Procedures Directive be interpreted as precluding legislation of a Member State under which the applicant may be detained in a transit zone for more than four weeks?

(b) Must Article 2(h) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ('the Reception Directive'), [2] applicable pursuant to Article 26 of the Procedures Directive, read in the light of Article 6 and Article 52(3) of the Charter, be interpreted as meaning that accommodation in a transit zone in circumstances such as those in the main proceedings (a zone which an applicant cannot lawfully leave on a voluntary basis regardless of his destination) for a period exceeding the four-week period referred to in Article 43 of the Procedures Directive constitutes detention?

(c) Is the fact that the detention of the applicant for a period exceeding the four-week period referred to in Article 43 of the Procedures Directive takes place only because he cannot meet his needs (accommodation and food) due to a lack of material resources to cover those needs compatible with Article 8 of the Reception Directive, applicable pursuant to Article 26 of the Procedures Directive?

(d) Is the fact that (i) accommodation which constitutes de facto detention for a period exceeding the four-week period referred to in Article 43 of the Procedures Directive has not been ordered by a detention order, (ii) no guarantee that the lawfulness of the detention and its continuation may be challenged before the courts has been provided, (iii) the de facto detention takes place without any examination of the necessity or proportionality of that measure, or whether there are any alternatives measures and (iv) the exact duration of the de facto detention is not fixed, including the date on which it ends, compatible with Articles 8 and 9 of the Reception Directive, applicable pursuant to Article 26 of the Procedures Directive?

(e) Can Article 47 of the Charter be interpreted as meaning that, when a manifestly unlawful detention is brought for consideration before a court of a Member State, that court may, as an interim measure, until the administrative proceedings come to an end, require the authority to designate for the benefit of the third-country national a place of stay outside the transit zone which is not a place of detention?

4. [*Transit zone as a place of detention in the context of an asylum procedure*]

The following questions are relevant if, in accordance with the answer to Question 2, there is a need to conduct not an asylum procedure but a procedure within the field of competence of the Aliens Police:

(a) Must recitals 17 and 24 and Article 16 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ('the Return Directive'), ([3]) read in the light of Article 6 and Article 52(3) of the Charter, be interpreted as meaning that accommodation in a transit zone in circumstances such as those in the main proceedings (a zone which an applicant cannot lawfully leave on a voluntary basis regardless of his destination) constitutes deprivation of liberty for the purposes of those provisions?

(b) Is the fact that the detention of an applicant, national of a third country, takes place solely because he is subject to a return order and cannot meet his needs (accommodation and food) due to a lack of material resources to cover those needs compatible with Recital 16 and Article 15(1) of the Return Directive, read in the light of Articles 6 and 52(3) of the Charter?

(c) Is the fact that (i) accommodation which constitutes de facto detention has not been ordered by a detention order, (ii) no guarantee that the lawfulness of the detention and its continuation may be challenged before the courts has been provided and (iii) the de facto detention takes place without any examination of the necessity or proportionality of that measure, or whether there are any alternatives measures, compatible with Recital 16 and Article 15(2) of the Return Directive, read in the light of Articles 6, 47 and 52(3) of the Charter?

(d) Can Article 15(1) and (4) to (6) and recital 16 of the Return Directive, read in the light of Articles 1, 4, 6 and 47 of the Charter be interpreted as precluding detention from taking place without its exact duration being fixed, including the date on which it ends?

(e) Can EU law be interpreted as meaning that, when a manifestly unlawful detention is brought for consideration before a court of a Member State, that court may, as an interim measure, until the administrative proceedings come to an end, require the authority to designate for the benefit of the third-country national a place of stay outside the transit zone which is not a place of detention?

5. [*effective judicial protection with regard to the decision amending the country of return*]

Must Article 13 of the Return Directive, under which a third-country national is to be afforded an effective remedy to appeal against or seek review of 'decisions related to return', read in the light of Article 47 of the Charter, be interpreted as meaning that, where the remedy provided for under domestic law is not effective, a court must review the application lodged against the decision amending the country of return at least once?

([1]) OJ 2013 L 180, p. 60.
([2]) OJ 2013 L 180, p. 96.
([3]) OJ 2008 L 348, p. 98.

Request for a preliminary ruling from the Győri Ítélőtábla (Hungary) lodged on 20 December 2019 — J.Z. v OTP Jelzálogbank Zrt. and Others

(Case C-932/19)

(2020/C 161/29)

Language of the case: Hungarian

Referring court

Győri Ítélőtábla

Parties to the main proceedings

Applicant: J.Z.

Defendants: OTP Jelzálogbank Zrt., OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt.

Question referred

Does Article 6(1) of Council Directive 93/13/EEC ([1]) on unfair terms in consumer contracts preclude a rule of national law which, in loan agreements concluded with consumers, states that terms — with the exception of contractual terms which have been individually negotiated — pursuant to which the financial institution stipulates that, for the purpose of paying out the amount of finance granted for the purchase of the subject of the loan or financial leasing, the buying rate is to apply, and that, for the purpose of repayment of the debt, the selling rate, or a different exchange rate from that set when the loan was paid out, is to apply, are to be void, and replaces the void terms with a provision which, in the case of both disbursement and repayment, applies the official exchange rate set by the National Bank of Hungary for the currency in question, without considering whether — in the light of all of the terms in the contract — that provision actually protects the consumer against particularly unfavourable consequences, and also without giving the consumer the opportunity to express a view as to whether he wishes to avail himself of the protection afforded by that legislative provision?

([1]) OJ 1993 L 95, p. 29, Special edition in Hungarian Chapter 15 Volume 002 P. 288 — 293.

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 10 January 2020 — Flightright GmbH v Eurowings GmbH

(Case C-10/20)

(2020/C 161/30)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: Flightright GmbH

Defendant: Eurowings GmbH

Questions referred

1. Is the scheme on compensation in the event of a cancellation under Article 5 in conjunction with Article 7 of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that passengers who are re-routed to the final destination more than one hour before the scheduled departure time, and who then by virtue of the alternative flight arrive earlier at the final destination than would otherwise have been the case with the scheduled (cancelled) flight, also receive compensation by way of an application by analogy of Article 7 of that regulation?

2. (a) If Question 1 is answered in the affirmative, can that compensation, which, in principle, is to be granted under Article 7(1) of Regulation No 261/2004, then be reduced under Article 7(2) of that regulation according to the flight distance if the arrival time of the alternative flight is before the scheduled arrival of the flight that was originally booked?

   (b) If Question 2(a) is answered in the affirmative, are there grounds for excluding the possibility of a reduction if the arrival time of the alternative flight is too far ahead of the scheduled arrival time of the flight that was originally booked, for example more than three hours?

([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 Tribunale Amministrativo Regionale per la Puglia (Italy) lodged on 14 January 2020 — MC v U.T.G. — Prefettura di Foggia

(Case C-17/20)

(2020/C 161/31)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicant: MC

Defendant: U.T.G. — Prefettura di Foggia

Question referred

Are Articles 91, 92 and 93 of Decreto Legislativo 6 settembre 2011, n. 159 (Legislative Decree No 159 of 6 September 2011), in so far as they do not provide for the person in respect of whom the Administration intends to issue a prohibitory antimafia disclosure to make an internal appeal, compatible with the principle of an adversarial process, as reconstructed and recognised as a principle of EU law.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 16 January 2020 — XY

(Case C-18/20)

(2020/C 161/32)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: XY

Defendant: Bundesamt für Fremdenwesen und Asyl

Questions referred

1. Do the phrases 'new elements or findings' that 'have arisen or have been presented by the applicant' in Article 40(2) and 40(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ([1]) ('the Procedures Directive') also cover circumstances that already existed before the previous asylum procedure was definitively concluded?

   If the answer to Question 1 is in the affirmative:

2. In a case in which new facts or evidence come to light which could not have been relied on in the earlier procedure through no fault of the foreign national, is it sufficient that an asylum applicant is able to request the re-opening of a previous procedure which has been definitively concluded?

3. If the applicant is at fault for not having relied in the previous asylum procedure upon the newly invoked grounds, is the authority allowed to deny substantive examination of a subsequent application on the basis of a national standard laying down a principle which is generally applicable in the administrative procedure, even though, in the absence of the adoption of special standards, the Member State has not correctly transposed Article 40(2) and 40(3) of the Procedures Directive and, as a consequence, has also not made express use of the possibility granted by Article 40(4) of the Procedures Directive to provide for an exception from substantive examination of the subsequent application?

(1) OJ 2013 L 180, p. 60.

Request for a preliminary ruling from the Juzgado de lo Mercantil n.º 2 de Madrid (Spain) lodged on 22 January 2020 — RH v AB Volvo and Others

(Case C-30/20)

(2020/C 161/33)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil n.º 2 de Madrid

Parties to the main proceedings

Applicant: RH

Defendants: AB Volvo, Volvo Group Trucks Central Europe GmbH, Volvo Lastvagnar AB, Volvo Group España, S. A.

Question referred

Should Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council (1) of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which establishes that a person domiciled in a Member State may be sued in another Member State: '*… in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur*', be interpreted as establishing only the international jurisdiction of the courts of the Member State for the aforesaid place, meaning that the national court with territorial jurisdiction within that State is to be determined by reference to domestic rules of procedure, or should it be interpreted as a combined rule which, therefore, directly determines both international jurisdiction and national territorial jurisdiction, without any need to refer to domestic regulation?

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

Request for a preliminary ruling from the Audiencia Provincial de Alicante (Spain) lodged on 22 January 2020 — Bankia, S.A. v SI

(Case C-31/20)

(2020/C 161/34)

Language of the case: Spanish

Referring court

Audiencia Provincial de Alicante

Parties to the main proceedings

Applicant: Bankia, S.A.

Defendant: SI

Questions referred

1. Is a judicial interpretation (according to which the repayment of sums unduly paid under a costs clause included in a mortgage loan agreement concluded with a consumer is the effect not of a declaration of invalidity but of an independent action subject to a limitation period) which allows a consumer to be permanently bound by the costs clause, inasmuch as he will not be able to recover those costs if that action has become time-barred, compatible with the principle that unfair terms are not binding, recognised in Article 6(1) of Directive ([1]) [93/13]?

2. Is the act of time-barring a claim for the restitution of sums unduly paid pursuant to the application of a clause which has been declared unfair compatible with that principle, inasmuch as it may cause the right to restitution to be lost, notwithstanding the declaration as to the invalidity of that clause?

3. If the answer is in the affirmative, is the concept of a 'reasonable limitation period' to which the Court of Justice refers to be interpreted within an exclusively national context or, conversely, must reasonableness be subject to some form of requirement aimed at providing a minimum level of protection for borrowers throughout the European Union and ensuring that the substantive content of the right not to be bound by a clause which has been declared unfair is not adversely affected?

4. If the view is taken that the reasonableness of the limitation period must be subject to certain minimum preconditions, may reasonableness depend on the point in time at which a national law stipulates that the action may be brought?; is it reasonable for the limitation period to start to run on the date on which the agreement was concluded, or, conversely, does the principle that unfair terms are not binding require a prior or simultaneous declaration as to the invalidity of the costs clause so as to ensure that the borrower has a reasonable period within which to seek the reimbursement of the sums which have been unduly paid?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Corte di appello di Napoli (Italy) lodged on 22 January 2020 — TJ v Balga Srl

(Case C-32/20)

(2020/C 161/35)

Language of the case: Italian

Referring court

Corte di appello di Napoli

Parties to the main proceedings

Appellant: TJ

Respondent: Balga Srl

Questions referred

1. In the event of unlawful collective redundancies, must Article 30 of the [Charter of Fundamental Rights of the European Union] be interpreted as recognising a right to protection qualified by parameters of effectiveness, efficacy, adequacy and deterrence, inasmuch as those requirements are a feature of the penalties laid down by 'Union law' to safeguard respect for fundamental values and must be complied with by the piece of national legislation — or national practice — that guarantees concrete penalties for any unjustified dismissal? Consequently, do the abovementioned parameters constitute an external limitation that is relevant and applicable for the decision concluding proceedings in actions falling within the jurisdiction of the national courts for the purposes of ascertaining whether that piece of national legislation or national practice implementing Directive 98/59/EC ([1]) is in line with EU law?

2. For the purposes of determining the level of protection required by the EU legal order in the event of unlawful collective redundancy, must Article 30 of the [Charter of Fundamental Rights of the European Union] be interpreted by giving 'due regard' to, and therefore considering relevant, the material meaning of Article 24 of the revised European Social Charter, referred to in the Explanations [relating to the Charter of Fundamental Rights], as resulting from the decisions of the European Committee of Social Rights? Consequently, does EU law preclude a piece of national legislation or a national practice that, by excluding job reinstatement, limits the protection provided to a purely compensatory remedy characterised by a *ceiling* value set primarily on the basis of length of service and not making good the damage sustained by a worker as a result of the loss of his or her source of income?

3. When assessing the degree of compatibility of domestic legislation implementing or establishing the extent of protection in the event of unlawful collective redundancies (for breach of selection criteria), must the national court therefore consider the content developed by the European Social Charter resulting from the decisions made by its component bodies and, in any event, deem it necessary to provide compensation in full, or at least essentially so, for the financial consequences arising from the loss of the employment contract?

4. Do Articles 20, 21, 34 and 47 of the [Charter of Fundamental Rights of the European Union] preclude the introduction of a piece of legislation or a practice by a Member State implementing Directive 98/59/EC that imposes a sanctioning system, solely for workers hired after 7 March 2015 and involved in a single procedure, that excludes job reinstatement and, in any event, relief from the consequences arising from the loss of income and the loss of social security cover, unlike the protection afforded to other workers subject to the same procedure but hired before that date? Can such a system recognise only compensation in the form of an amount determined primarily on the basis of length of service and therefore apply a different penalty based on the date of hiring, so as to create different levels of protection based on the abovementioned criterion and not on the consequences actually sustained as a result of the unjustified loss of a worker's source of income?

([1]) Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

Request for a preliminary ruling from the Landgericht Ravensburg (Germany) lodged on 23 January 2020 — UK v Volkswagen Bank GmbH

(Case C-33/20)

(2020/C 161/36)

Language of the case: German

Referring court

Landgericht Ravensburg

Parties to the main proceedings

Applicant: UK

Defendant: Volkswagen Bank GmbH

Questions referred

1. Is Article 10(2)(l) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([1]) to be interpreted as meaning that the credit agreement

   (a) must specify the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement as an absolute number or, at the very least, the current reference interest rate (in this case the base rate in accordance with Paragraph 247 of the Bürgerliches Gesetzbuch (Civil Code)), from which the interest rate applicable in the case of late payments is obtained by adding a premium (in this case of five percentage points in accordance with Paragraph 288(1), second sentence, of the BGB), as an absolute number; and

(b) must explain the specific arrangements for adjustment of the interest rate applicable in the case of late payments or, at the very least, must reference the national standards from which such arrangements follow (Paragraph 247 and Paragraph 288(1), second sentence, of the BGB)?

2. Is Article 10(2)(r) of Directive 2008/48/EC to be interpreted as meaning that the credit agreement must specify a particular method that the consumer can understand for calculating the compensation payable in the event of early repayment of the loan, so that the consumer can calculate at least approximately the compensation payable in the event of early termination?

3. Is Article 10(2)(s) of Directive 2008/48/EC to be interpreted as meaning that the credit agreement

(a) must also specify the parties' rights of termination of the credit agreement regulated under national law, including in particular the borrower's right of termination with good cause under Paragraph 314 of the BGB, in the case of fixed-term loan agreements; and

(b) must indicate the time limit for and form of the declaration of termination prescribed for the purpose of exercising the right of termination for all rights of termination of the parties to the credit agreement?

([1]) OJ 2008 L 133, p. 66.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 27 January 2020 — AQ, BO, CP v Presidenza del Consiglio dei Ministri, Ministero dell'Istruzione, dell'Università e della Ricerca — MIUR, Università degli studi di Perugia

(Case C-40/20)

(2020/C 161/37)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: AQ, BO, CP

Defendants: Presidenza del Consiglio dei Ministri, Ministero dell'Istruzione, dell'Università e della Ricerca — MIUR, Università degli studi di Perugia

Questions referred

(1) Does clause 5 of the Framework Agreement annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP ('the Directive'), ([1]) entitled 'Measures to prevent abuse', read in conjunction with recitals 6 and 7 and clause 4 of that agreement ('Principle of non-discrimination'), and in the light of the principles of equivalence, effectiveness and practical effect of [European Union] law, preclude national legislation, specifically Article 24(3)(a) and Article 22(9) of Law No 240/2010, which allows universities to make unlimited use of fixed-term three-year contracts for researchers which may be extended for a further two years, without making the conclusion and extension of such contracts contingent on there being an objective reason connected with the temporary or exceptional requirements of the university offering such contracts, and which only stipulates, as the sole limit on the use of multiple fixed-term contracts with the same person, a maximum duration of 12 years, continuous or otherwise?

(2) Does clause 5 of the Framework Agreement, read in conjunction with recitals 6 and 7 of the Directive and clause 4 of the Framework Agreement, and in the light of the practical effect of [European Union] law, preclude national legislation (specifically Articles 24 and 29(1) of Law No 240/2010), in so far as it allows universities to recruit researchers on a fixed-term basis only — without making the decision to employ such researchers contingent on the existence of temporary or exceptional requirements and without imposing any limit on this practice — through the potentially indefinite succession of fixed-term contracts, to cover the ordinary teaching and research requirements of those universities?

(3) Does clause 4 of that Framework Agreement preclude national legislation, such as Article 20(1) of Legislative Decree No 75/2017 (as interpreted by the above-mentioned Ministerial Circular No 3/2017), which — while recognising that researchers on fixed-term contracts with public research bodies may be made permanent members of staff, provided that they have been employed for at least three years prior to 31 December 2017 — does not permit this for university researchers on fixed-term contracts solely because Article 22(16) of Legislative Decree No 75/2017 applies the 'public law regime' to the employment relationship — even though, as a matter of law, that relationship is based on a contract of employment — and despite the fact that Article 22(9) of Law No 240/2010 imposes the same rule on researchers at research bodies and at universities regarding the maximum duration of fixed-term employment relationships with universities and research bodies, whether in the form of the contracts referred to in Article 24 of that law or the research projects referred to in Article 22?

(4) Do the principles of equivalence, effectiveness and practical effect of EU law, with regard to the Framework Agreement, and the principle of non-discrimination enshrined in clause 4 thereof, preclude national legislation (Article 24(3)(a) of Law No 240/2010 and Article 29(2)(d) and (4) of Legislative Decree No 81/2015) which — notwithstanding the existence of rules applicable to all public-sector and private-sector workers recently set out in Legislative Decree No 81 which establish (from 2018) that the maximum duration of a fixed-term relationship is 24 months (including extensions and renewals) and make the use of such relationships by the public authorities contingent on the existence of 'temporary and exceptional requirements' — allows universities to hire researchers on a three-year fixed-term contract, which may be extended for two years in the event of a favourable assessment of the research and teaching activities carried out during those three years, without making either the conclusion of the initial contract or its extension conditional on the university having such temporary or exceptional requirements, and even allowing it, at the end of the five-year period, to enter into another fixed-term contract of the same type with the same individuals or with other individuals, in order to cover the same teaching and research requirements as those of the earlier contract?

(5) Does clause 5 of the Framework Agreement, in the light of the principles of effectiveness and equivalence and clause 4 of that agreement, preclude national legislation (Article 29(2)(d) and (4) of Legislative Decree No 81/2015 and Article 36(2) and (5) of Legislative Decree No 165/2001) which prevents university researchers hired on a three-year fixed-term contract, which may be extended for a further two years (pursuant to Article 24(3)(a) of Law No 240/2010), from subsequently establishing a relationship of indefinite duration, there being no other measures within the Italian legal system which can prevent and penalise the misuse of successive fixed-term contracts by universities?

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

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 27 January 2020 — Autorità di Regolazione per Energia Reti e Ambiente (ARERA) v PC, RE

(Case C-44/20)

(2020/C 161/38)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità di Regolazione per Energia Reti e Ambiente (ARERA)

Defendants: PC, RE

Questions referred

(a) Must clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999 and annexed to Council Directive 1999/70/EC of 28 June 1999, ([1]) be construed as requiring that the periods of service carried out by a fixed-term worker employed by the Authority, in duties which coincide with those of a permanent employee in the corresponding category of that authority, be taken into account to determine his or her length of service, even where his or her subsequent permanent recruitment takes place further to an open competition, and notwithstanding the specific features of the open competition procedure, which, for the reasons already stated, leads to a complete novation of the relationship and, with an interruption acknowledged by the participant in the open competition procedure, to a new relationship characterised by official recruitment, special obligations and the special features of greater permanency?

(b) If the answer to question (a) above is in the affirmative, must the past length of service be recognised in full, or are there objective grounds to differentiate the recognition criteria as regards full recognition on the basis of the abovementioned special features?

(c) If the answer to question (b) above is in the negative, on the basis of which criteria must the length of service that is capable of being recognised be calculated in order for that length of service not to be discriminatory?

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

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 28 January 2020 — F. v Stadt Karlsruhe

(Case C-47/20)

(2020/C 161/39)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: F.

Defendant: Stadt Karlsruhe

Question referred

Do Article 2(1) and Article 11(4), second subparagraph, of Directive 2006/126/EC ([1]) preclude a Member State, within the sovereign territory of which the holder of an EU driving licence for vehicles in categories A and B issued by another Member State had his right to drive vehicles in the first Member State under that driving licence withdrawn because of drink-driving, from refusing to recognise a driving licence for those categories which was issued to the person concerned in the second Member State, after that right had been withdrawn, through renewal of the licence pursuant to Article 7(3), second subparagraph, of Directive 2006/126/EC?

([1]) Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 3 February 2020 — Hengstenberg GmbH & Co. KG v Spreewaldverein e.V.

(Case C-53/20)

(2020/C 161/40)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Hengstenberg GmbH & Co. KG

Defendant: Spreewaldverein e.V.

Questions referred

1. In the procedure for a non-minor amendment of the specification, can any actual or potential — provided that it is not entirely implausible — economic effect on a natural or legal person be sufficient to establish the existence of the legitimate interest, within the meaning of the first subparagraph of Article 53(2), in conjunction with the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4), of Regulation (EU) No 1151/2012, [1] that is necessary for the purposes of an opposition to the application or an appeal against the favourable decision on the application?

2. If Question 1 is answered in the negative:

   In the procedure for a non-minor amendment of the specification, does a legitimate interest within the meaning of the first subparagraph of Article 53(2), in conjunction with the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4), of Regulation (EU) No 1151/2012 lie (only) with operators that produce products or foodstuffs comparable to those of operators for which a protected geographical indication is registered?

3. If Question 2 is answered in the negative:

   a) As regards the requirements governing a legitimate interest within the meaning of the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation (EU) No 1151/2012, must a distinction be drawn between the registration procedure under Articles 49 to 52 of that regulation, on the one hand, and the procedure for amending the specification under Article 53 of Regulation (EU) No 1151/2012, on the other, and,

   b) in the procedure for a non-minor amendment of the specification, does a legitimate interest within the meaning of the first subparagraph of Article 53(2), in conjunction with the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4), of Regulation (EU) No 1151/2012 therefore lie only with producers that produce or specifically intend to produce products in the geographical area which comply with the product specification, so that 'non-local' operators are automatically excluded from the outset from claiming a legitimate interest?

[1] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1).

Request for a preliminary ruling from the Administratīvā apgabaltiesa lodged on 5 February 2020 — VAS 'Latvijas dzelzceļš' v Valsts dzelzceļa administrācija

(Case C-60/20)

(2020/C 161/41)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: VAS 'Latvijas dzelzceļš'

Defendant: Valsts dzelzceļa administrācija

Questions referred

1. Can Article 13(2) and (6) of Directive 2012/34 ([1]) (Article 15(5) and (6) of Regulation 2017/2177) ([2]) apply in such a manner that the regulatory body can impose on the owner of an infrastructure, who is not the owner of the service facility, the obligation to ensure access to the services?

2. Must Article 13(6) of Directive 2012/34 (Article 15(5) and (6) of Regulation 2017/2177) be interpreted as meaning that it permits the owner of a building to end a lease agreement and reconvert a service facility?

3. Must Article 13(6) of Directive 2012/34 (Article 15(5) and (6) of Regulation 2017/2177) be interpreted as requiring the regulatory body to ascertain only whether the operator of the service facility (in the present case, the owner of the service facility) has in fact decided to reconvert that facility?

([1]) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ 2012 L 343, p. 32).

([2]) Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (OJ 2017 L 307, p. 1).

Request for a preliminary ruling from the Cour du travail de Liège (Belgium) lodged on 10 February 2020 — Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil) v Mr M.

(Case C-67/20)

(2020/C 161/42)

Language of the case: French

Referring court

Cour du travail de Liège

Parties to the main proceedings

Applicant: Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil)

Defendant: Mr M.

Questions referred

1. Is a remedy, provided by domestic law to asylum seekers who have been requested to have their applications for international protection examined in another Member State, which does not have suspensory effect and may acquire such effect only if the asylum seeker is deprived of liberty with a view to his imminent transfer an effective remedy within the meaning of Article 27 of the Dublin III Regulation? ([1])

2. Must the effective remedy prescribed in Article 27 of the Dublin III Regulation be interpreted as precluding only the implementation of a measure of enforced transfer while an action brought against that transfer decision is being examined or as prohibiting any measure preparatory to removal, such as relocation to a centre which establishes return paths for asylum seekers who have been requested to have their asylum applications examined in another European country?

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

Request for a preliminary ruling from the Cour du travail de Liège (Belgium) lodged on 10 February 2020 — Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil) v Ms C.

(Case C-68/20)

(2020/C 161/43)

Language of the case: French

Referring court

Cour du travail de Liège

Parties to the main proceedings

Applicant: Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil)

Defendant: Ms C.

Questions referred

1. Is a remedy, provided by domestic law to asylum seekers who have been requested to have their applications for international protection examined in another Member State, which does not have suspensory effect and may acquire such effect only if the asylum seeker is deprived of liberty with a view to his imminent transfer an effective remedy within the meaning of Article 27 of the Dublin III Regulation? ([1])

2. Must the effective remedy prescribed in Article 27 of the Dublin III Regulation be interpreted as precluding only the implementation of a measure of enforced transfer while an action brought against that transfer decision is being examined or as prohibiting any measure preparatory to removal, such as relocation to a centre which establishes return paths for asylum seekers who have been requested to have their asylum applications examined in another European country?

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

Request for a preliminary ruling from the Cour du travail de Liège (Belgium) lodged on 10 February 2020 — Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil) v Ms C.

(Case C-69/20)

(2020/C 161/44)

Language of the case: French

Referring court

Cour du travail de Liège

Parties to the main proceedings

Applicant: Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil)

Defendant: Ms C.

Questions referred

1. Is a remedy, provided by domestic law to asylum seekers who have been requested to have their applications for international protection examined in another Member State, which does not have suspensory effect and may acquire such effect only if the asylum seeker is deprived of liberty with a view to his imminent transfer an effective remedy within the meaning of Article 27 of the Dublin III Regulation? ([1])

2. Must the effective remedy prescribed in Article 27 of the Dublin III Regulation be interpreted as precluding only the implementation of a measure of enforced transfer while an action brought against that transfer decision is being examined or as prohibiting any measure preparatory to removal, such as relocation to a centre which establishes return paths for asylum seekers who have been requested to have their asylum applications examined in another European country?

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

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 12 February 2020 — Balev Bio EOOD v Agentsia 'Mitnitsi', Teritorialna Direktsia Severna Morska

(Case C-76/20)

(2020/C 161/45)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Appellant: Balev Bio EOOD

Respondent: Agentsia 'Mitnitsi', Teritorialna Direktsia Severna Morska

Questions referred

1. Is Rule 3(a) of the General Rules for the interpretation of the Combined Nomenclature in Commission Implementing Regulation (EU) 2015/1754 (1) of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff to be interpreted as meaning that, for the purposes of the classification of products such as those at issue in the main proceedings, which are made up of different materials, the heading covering the material that outweighs the other materials by quantity (bulk) is the 'heading which provides the most specific description' or is that interpretation only possible if the heading itself provides for quantity (bulk) as a criterion that provides the most specific, precise and complete description?

2. Depending on the answer to the first question and in light of the [Harmonised System, ('HS')] Explanatory Notes on headings 4410 and 4419: Is Commission Implementing Regulation (EU) 2015/1754 to be interpreted as meaning that heading 4419 does not include products of particle board (fibre) in which the weight of the binding substance (thermosetting resin) exceeds 15 % of the weight of the board?

3. Is Commission Implementing Regulation (EU) 2015/1754 to be interpreted as meaning that goods such as those at issue in the main proceedings, that is beakers manufactured from a composite material made up of plant lignocellulosic fibres in a proportion of 72,33 % and a melamine resin binding substance in a proportion of 25,2 %, are to be categorised under subheading 3924 10 00 of Annex I?

(1) Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. OJ 2015 L 285, p. 1.

Appeal brought on 14 February 2020 by Archimandritis Sarantis Sarantos, Protopresvyteros Ioannis Fotopoulos, Protopresvyteros Antonios Bousdekis, Protopresvyteros Vasileios Kokolakis, Estia Paterikon Meleton, Christos Papasotiriou, Charalampos Andralis, against the order of the General Court (Ninth Chamber) delivered on 11 December 2019 in Case T-547/19, Sarantis Sarantos v European Parliament, Council of the European Union and European Commission

(Case C-84/20 P)

(2020/C 161/46)

Language of the case: Greek

Parties

Appellants: Archimandritis Sarantis Sarantos, Protopresvyteros Ioannis Fotopoulos, Protopresvyteros Antonios Bousdekis, Protopresvyteros Vasileios Kokolakis, Estia Paterikon Meleton, Christos Papasotiriou, Charalampos Andralis, (represented by: C. Papasotiriou, dikigoros)

Other parties to the proceedings: European Parliament, Council of the European Union

Form of order sought

The appellants claim that the Court should:

— rule on their action of 31 July 2019, without referring the order under appeal back to the General Court;

— set aside the order registered under case number 923557, of 11 December 2019, of the Ninth Chamber of the General Court of the European Union relating to the abovementioned action and uphold that action in its entirety;

— annul Regulation (EU) 2019/1157 ([1]) of 20 June 2019;

— order the other parties to the proceedings to pay the costs.

Pleas in law and main arguments

In support of the appeal, the appellants rely on two grounds of appeal:

1. **First ground of appeal**, by which it is submitted that the order under appeal, in dismissing their action as inadmissible and ruling, first, that, *'…the contested regulation does not affect the applicants who are natural persons by reason of certain characteristics peculiar to them or a factual situation distinguishing them from all other persons, but by reason of their beliefs, which are professed, potentially or in practice, by an indefinite number of persons. Consequently, those applicants are not individually concerned by the contested regulation within the meaning of the fourth paragraph of Article 263 TFEU'*, infringed the fourth paragraph of Article 263 TFEU, Article 19 of the Statute of the Court of Justice of the European Union, the principle of proportionality, the preamble and Articles 47 and 52(1) of the Charter of Fundamental Rights of the European Union (2000/C 364/01), Article 5(1) and (4) of the Treaty on European Union (individually and in conjunction with Protocol No 2 on the application of the principle of proportionality), as well as the relevant case-law. This is because, by their action, the appellants submit that the contested regulation infringes their human rights, including the fundamental rights laid down in the Charter of Fundamental Rights of the European Union (human dignity, religious belief, right to object on the grounds of freedom of religion, personal life and liberty, personal data, the right to express consent for all processing of that data), so that the regulation is of direct and individual concern to them and, **by reason of the very nature of the rights affected as fundamental human rights**, they are entitled to bring an action for annulment before the General Court under the fourth paragraph of Article 263 TFEU, and the General Court is obliged to review the validity of the regulations in the event of a breach of fundamental human rights.

2. **Second ground of appeal**, based on the fact that the General Court, when making the order under appeal, ruled that the representation of the sixth applicant before that court by the lawyer Christos Papasotiriou was inadmissible, because *'the … sixth applicant did not avail of the services of a lawyer, a third party, to be represented, but acted in his own name, signing the application himself and availing of his status as a lawyer on the basis of the identity document referred to in Article 51(2) of the Rules of Procedure …'*, and thereby misinterpreted, *contra legem*, the provision of Article 19 of the Statute of the Court of Justice of the European Union and infringed Article 47 of the Charter of Fundamental Rights of the European Union and the principle of proportionality, as well as the relevant provisions of EU legislation guaranteeing that principle.

([1]) Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (OJ 2019 L 188, p. 67).

Request for a preliminary ruling from the tribunal correctionnel de Bordeaux (France) lodged on 20 February 2020 — Procureur de la République v ENR Grenelle Habitat SARL, EP, FQ

(Case C-88/20)

(2020/C 161/47)

Language of the case: French

Referring court

Tribunal correctionnel de Bordeaux

Parties to the main proceedings

Applicant: Procureur de la République

Defendants: ENR Grenelle Habitat SARL, EP, FQ

Questions referred

1. Does Article 50 of the Charter of Fundamental Rights of the European Union, interpreted in the light of Article 4 of Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and of the case-law of the European Court of Human Rights relating thereto, preclude a duplication of criminal proceedings and administrative proceedings of a criminal nature whose subject matter is a single act (cold calling) prosecuted under two different classifications?

2. If it does — which means a single set of proceedings for the same act — does not Article 49 of the Charter of Fundamental Rights of the European Union, which enshrines the principles of legality and proportionality of criminal offences and penalties, interpreted in the light of the rights and freedoms in the European Convention for the Protection of Human Rights and Fundamental Freedoms and of the case-law of the European Court of Human Rights relating thereto, require that the conditions and criteria for a single set of proceedings be defined in advance, having regard in particular to the gravity of the infringement?

3. If it does not — which means a duplication of proceedings — does not Article 49 of the Charter of Fundamental Rights of the European Union, which enshrines the principles of legality and proportionality of criminal offences and penalties, interpreted in the light of the rights and freedoms in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights relating thereto, require that that duplication of criminal proceedings and administrative proceedings of a criminal nature for a single act (cold calling) be limited to the most serious cases and, in that case, that the criteria for determining gravity be defined in advance?

Request for a preliminary ruling from the Højesteret (Denmark) lodged on 24 February 2020 — Apcoa Parking Danmark A/S v Skatteministeriet

(Case C-90/20)

(2020/C 161/48)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Apcoa Parking Danmark A/S

Defendant: Skatteministeriet

Question referred

Must Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) be interpreted as meaning that control fees for infringement of regulations on parking on private property constitute consideration for a service supplied and that there is therefore a transaction subject to VAT?

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

Request for a preliminary ruling from the Tribunal du travail de Nivelles (Belgium) lodged on 27 February 2020 — SD v Habitations sociales du Roman Païs SCRL, TE, acting as liquidator in the insolvency of Régie des Quartiers de Tubize ASBL

(Case C-104/20)

(2020/C 161/49)

Language of the case: French

Referring court

Tribunal du travail de Nivelles

Parties to the main proceedings

Applicant: SD

Defendants: Habitations sociales du Roman Païs SCRL, TE, acting as liquidator in the insolvency of Régie des Quartiers de Tubize ASBL

Questions referred

Must Articles 3, 5 and 6 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, ([1]) read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, and Articles 4(1), 11(3) and 16(3) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, ([2]) to the extent that they preclude the legislation of a Member State that does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402), be interpreted as precluding national legislation, in the present case Article 1315 of the Belgian Civil Code, which requires a party claiming performance of an obligation to prove that the obligation exists, where that legislation fails to establish that the burden of proof is reversed where workers claim to have exceeded their normal working time and where:

— that national legislation, in the present case the Belgian legislation, does not require employers to set up a reliable system enabling the duration of time worked each day by each worker to be measured; and

— the employer has not spontaneously set up such a system,

— so that it is impossible in practice for a worker to demonstrate that he has exceeded normal working time?'

(1) OJ 2003, L 299, p. 9.
(2) OJ 1989, L 183, p. 1.

Appeal brought on 25 February by the Hellenic Republic against the judgment of the General Court (Fourth Chamber) delivered on 19 December 2019 in Case T-14/18, Hellenic Republic v European Commission.

(Case C-106/20 P)

(2020/C 161/50)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: E. Tsaousi, E. Leftheriotou and A. Vasilopoulou)

Other party: European Commission

Form of order sought

The appellant claims that the appeal should be upheld and that the judgment under appeal of 19 December 2019, in Case T-14/18, by which the General Court of the European Union dismissed the action brought by the Hellenic Republic on 16 January 2018 for annulment of Commission Implementing Decision (EU) 2017/2014 of 8 November 2017, should be set aside in so far as that Commission Implementing Decision excludes from European Union financing certain expenditure incurred by the Hellenic Republic in relation to area-based payments for the 2014 claim yea, corresponding to 5 % of the total expenditure incurred in respect of permanent pasture, that is a net amount of EUR 12 482 555,68. The Hellenic Republic further claims that the Court should order the Commission to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellant raises three grounds of appeal.

In particular, the first ground of appeal concerns that part of the judgment under appeal by which the General Court rejects the argument put forward by the Hellenic Republic at the hearing on the basis of the ad hoc communication, on 15 May 2019, of the judgment of the Court in Case C-341/17 P. The first part of the first ground of appeal alleges that the judgment under appeal infringed the rules of procedure and of the right to effective judicial protection, in so far as the General Court rejected the abovementioned argument of the Hellenic Republic as inadmissible, relying for that purpose on inadequate and contradictory reasoning. The second part of the first ground of appeal alleges erroneous interpretation and application of Article 2 of Commission Regulation 796/2004 as well as inadequate and contradictory reasoning in the judgment under appeal, in so far as the General Court held that the Hellenic Republic's argument was ineffective.

The second and third grounds of appeal relate to that part of the judgment under appeal in which the General Court rejected the other pleas for annulment. In particular, the second ground of appeal alleges that the judgment under appeal distorted the evidence adduced in the course of the proceedings, in particular the full calculation table, with the estimates of the data of the 79 664 farmers who received aid for their pastures, the amounts unduly paid and the amounts of the penalties recovered by the Hellenic Republic, so that it is unlawful and vitiated by contradictory and inadequate reasoning.

The third ground of appeal alleges erroneous interpretation and application of Article 31(1) and (2) of Regulation 1290/2005, Article 52(2) and (3) of Regulation 1306/2013 and Article 12(1) to (6) of Delegated Regulation No 907/2014, infringement of the guidelines contained in Commission documents VI533097 and C(2015) 3675 final of 8 June 2015, infringement of the rules on the duty to state reasons (Article 296 TFEU), incorrect application of the rules of evidence (allocation of the burden of proof in such a way that the Hellenic Republic is required to adduce evidence a probatio diabolica) and incorrect application of the principles of non venire contra factum proprium (estoppel), ne bis in idem and the general principle of proportionality. Furthermore, the judgment under appeal is also vitiated by contradictory and inadequate reasoning.

Appeal brought on 26 February 2020 by the Hellenic Republic against the judgment of the General Court (Second Chamber) delivered on 19 December 2019 in Case T-295/18, Hellenic Republic v European Commission

(Case C-107/20 P)

(2020/C 161/51)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: E. Tsaousi, A. Vasilopoulou and E. Krompa)

Other party: European Commission

Form of order sought

The appellant claims that the appeal should be upheld and that the judgment under appeal of 19 December 2019, in Case T-295/18, by which the General Court dismissed the action brought by the Hellenic Republic on 7 May 2018 for the annulment of Commission Implementing Decision (EU) 2018/304 of 27 February 2018, should be set aside in so far as that Commission Implementing Decision excludes from European Union financing certain expenditure incurred by the Hellenic Republic in a total (gross) amount of EUR 17 869 131,75 (budgetary impact EUR 14 857 076,98) incurred and declared within the framework of the EAFRD concerning measures 125A, 321 and 322 (gross amount of EUR 15 631 043,52 and budgetary impact of EUR 12 618 988,75) and measure 123A (amount of EUR 2 238 088,23) as well as the amount of EUR 588 103,59 (expenditure) which was incurred under the EAGF following the control of transactions measure for the budgetary years 2011 — 2014.

Pleas in law and main arguments

In support of its appeal, the appellant raises six grounds of appeal. The first five grounds of appeal concern the rejection of the pleas put forward for the annulment of the corrections imposed in respect of the expenses incurred within the framework of the EAFRD.

The first ground of appeal alleges an incorrect interpretation and application of Article 52(4) of Regulation (EC) No 1306/2013, distortion of the scope of application and of Annex A23 thereto, and poor and inadequate reasoning of the judgment under appeal.

In the second ground of appeal, it is submitted that the judgment under appeal should be set aside for failure to state reasons, an erroneous interpretation and application of the principle of ne bis in idem and failure by the General Court to rule on the complaints raised by the Hellenic Republic concerning infringement by the Commission of the principles of legal certainty, sound administration, the protection of legitimate expectations and proportionality, in breach of Article 76 of the Rules of Procedure.

The third ground of appeal alleges that the judgment under appeal is vitiated by erroneous interpretation and application of Articles 71(2) and (3) and 75 of Regulation (EC) No 1698/2005, Article 43 of Regulation (EC) No 1974/2006 and Article 24(2)(b) of Regulation (EU) No 65/2011, and by poor and inadequate reasoning in relation to the rejection of the third ground of appeal.

The fourth ground of appeal alleges erroneous interpretation and application of the combined provisions of Article 296 TFEU and Articles 36 and 40 of Implementing Regulation No 908/2014, as well as poor, inadequate and contradictory reasoning in the judgment under appeal with regard to the rejection of the complaint that the Commission infringed the principles of proportionality and sound administration.

The fifth ground of appeal alleges that the General Court failed, in breach of Article 76 of the Rules of Procedure, to rule on the complaints by which the Hellenic Republic alleges breach of the principle of proportionality in relation to the financial correction imposed on it by the Commission in respect of measures 321, 322 and 123A.

The sixth ground of appeal, relating to the rejection of the pleas in law put forward for the annulment of the correction imposed in respect of expenditure incurred under the EAGF, alleges erroneous application of the obligation to state reasons under Article 296 TFEU, distortion of the content of the summary report and inadequate reasoning.

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 27 February 2020 — Republic of Poland v PL Holdings Sàrl

(Case C-109/20)

(2020/C 161/52)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Appellant and cross-respondent: Republic of Poland

Appellant and cross-respondent: PL Holdings Sàrl

Question referred

Do Articles 267 and 344 TFEU, as interpreted in *Achmea*, [1] mean that an arbitration agreement is invalid if it has been concluded between a Member State and an investor — where an investment agreement contains an arbitration clause that is invalid as a result of the fact that the contract was concluded between two Member States — [despite the fact that] the Member State, after arbitration proceedings were commenced by the investor, refrains, by the free will of the State, from raising objections as to jurisdiction?

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[1] Judgment of the Court of Justice of 6 March 2018 (Case C-284/16, *Achmea*, EU:C:2018:158).

Request for a preliminary ruling from the Conseil d'État (Belgique) lodged on 28 February 2020 — M. A. v État belge

(Case C-112/20)

(2020/C 161/53)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: M.A.

Defendant: État belge

Question referred

Should Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, ([1]) which requires Member States, when implementing the directive, to take account of the best interests of the child, together with Article 13 of that directive and Articles 24 and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as requiring the best interests of the child, an EU citizen, to be taken into account even if the return decision is taken with regard to the child's parent alone?

([1]) OJ 2008 L 348, p. 98.

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 3 March 2020 — bpost SA v Autorité belge de la concurrence

(Case C-117/20)

(2020/C 161/54)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: bpost SA

Defendant: Autorité belge de la concurrence

Intervening parties: Publimail SA, European Commission

Questions referred

1. Must the principle *non bis in idem*, as guaranteed by Article 50 of the Charter, be interpreted as not precluding the competent administrative authority of a Member State from imposing a fine for infringing EU competition law, in a situation such as that of the present case, where the same legal person has already been finally acquitted of an offence for which an administrative fine had been imposed on it by the national postal regulator for an alleged infringement of postal legislation, on the basis of the same or similar facts, in so far as the criterion that the legal interest protected must be the same is not satisfied because the case at issue relates to two different infringements of different legislation applicable in two separate fields of law?

2. Must the principle *non bis in idem*, as guaranteed by Article 50 of the Charter, be interpreted as not precluding the competent administrative authority of a Member State from imposing a fine for infringing EU competition law, in a situation such as that of the present case, where the same legal person has already been finally acquitted of an offence for which an administrative fine had been imposed on it by the national postal regulator for an alleged infringement of postal legislation, on the basis of the same or similar facts, on the grounds that a limitation of the principle *non bis in idem* is justified by the fact that competition legislation pursues a complementary general interest objective, that is to say, protecting and maintaining a system of undistorted competition within the internal market, and does not go beyond what is appropriate and necessary in order to achieve the objective that such legislation legitimately pursues, and/or in order to protect the right and freedom to conduct business of those other operators under Article 16 of the Charter?

GENERAL COURT

Action brought on 14 February 2020 — Fryč v Commission

(Case T-92/20)

(2020/C 161/55)

Language of the case: Czech

Parties

Applicant: Petr Fryč (Pardubice, Czech Republic) (represented by: Š. Oharková, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— rule that the institutions of the European Union gravely breached their obligations and caused the applicant harm on the grounds that:

  — the European Commission adopted Regulation (EC) No 800/2008 of 6 August 2008 (General block exemption Regulation) in a form in which, inter alia, it exceeds the limits of the Commission's legal authority under the Treaties, in which it does not ensure observance of the constitutional principles that interference in competition affecting the common market must take place only exceptionally and be justified and in which it unlawfully allowed State aid to be implemented in the context of a subsidy programme (Operační program Podnikání a inovace (Operational Programme Enterprise and Innovation; 'OPEI')), which damaged the business of the applicant's firm;

  — by its decision of 3 December 2007, the European Commission adopted the Operational Programme infringing the Treaties and the Charter and did not publish that decision;

  — the European Commission did not proceed properly in dealing with the applicant's complaint as to the unlawfulness of the OPEI inasmuch as it, first, failed to check the circumstances of the creation and implementation of the OPEI and, secondly, failed to properly justify its rejection of the applicant's complaint;

  — the Court of Justice of the European Union refused to address the merits of the case in the application for annulment of the General block exemption Regulation and dismissed the application as manifestly unfounded, thereby breaching its constitutional obligation to apply the principle of proportionality, and by its excessively formalistic, unilateral approach infringed the applicant's constitutional right to effective legal protection and a fair trial;

— determine, that the defendant is required to pay the applicant the sum of EUR 4 800 000 by way of compensation for the harm caused by the above, within three days of the date on which the judgment becomes final;

— award the applicant the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that harm was caused to the applicant on the grounds of the EU's non-contractual liability under the second paragraph of Article 340 of the Treaty on the Functioning of the European Union (TFEU).

As a result of the public aid provided to the applicant's competitors in breach of the TFEU, the applicant's company was damaged in competitive terms in such a way as first led to a reduction in its annual turnover and to a reduction in its annual profit of CZK several million. Having regard to the fact that the duration of the public aid, and thus of the related unsatisfactory economic situation of the company, was several years, a decision to declare insolvency was made by the competent court in the Czech Republic.

In the event that Commission Regulation (EC) No 800/2008 (General block exemption Regulation) was lawful, then the aid which was granted selectively and on a discriminatory basis in the context of the OPEI subsidy programme caused the applicant particular and exceptional harm, which entirely exceeded the limits of the economic risk connected with the economic activity of the applicant's company.

2. Second plea in law, alleging that the Commission adopted Regulation (EC) No 800/2008 of 6 August 2008 (General block exemption Regulation) in a form which does not ensure observance of Article 107 TFEU.

Under Article 109 TFEU, the Council is authorised to specify by regulation areas in which the standard procedure, in which the Commission assesses the proposal for State aid and tests it in accordance with Article 107 TFEU, does not apply. The Council adopted Regulation No 659/1999 and in that regulation (in accordance with Article 108(4) TFEU) authorised the Commission to issue regulations governing the conditions for the provision of State aid outside the standard 'ad hoc' approval regime. The Commission adopted Regulation No 70/2001, subsequently Regulation No 800/2008 and subsequently Regulation No 651/2014 (General block exemption Regulations).

However, in their regulations neither the Council nor the Commission could go beyond the framework of Article 107 TFEU; their role must consist in laying down the conditions for State aid so that Member States who implement State aid in 'exempted' areas could not implement State aid which would conflict with the principle of non-interference in competition, even if the aid is exempted from the standard procedure before the Commission. This is another reason why the Commission's monitoring (set out and guaranteed under the TFEU) of aid regimes even in exempted areas is ongoing, why (at least in theory) proceedings for the recovery of unlawful aid are available, and why the EU still declares itself to be a market economy, that is an economy which produces goods and services which consumers voluntarily procure in an attempt to optimise the income/expense ratio, and not goods and services which are determined by politicians and officials.

3. Third plea in law, alleging that the Commission adopted its decision of 3 December 2007 on the Operational Programme (OPEI) in breach of the Treaties and the Charter and did not publish that decision.

The Commission is the only EU institution competent to check that State aid is implemented in accordance with Article 107 TFEU.

The Commission did not examine, with regard to the approved operational programme, whether and why there was a market failure, which is a condition for the implementation of State aid. The Commission further did not ask the Czech Republic for a cost-benefit analysis (CBA), objectively set indicators, an analysis of the impact on competition and further matters upon which, in the applicant's opinion, the implementation of State aid is conditional. The Commission's decision was therefore unlawful and in breach of the Commission's mission.

4. Fourth plea in law, alleging that the Commission received from the applicant a series of complaints, including detailed analyses, which demonstrate the unlawfulness of the aid implemented on the basis of the OPEI, that it did not act in accordance with Council Regulation (EC) No 659/1999 and that it did not comply with the principle of sound administration guaranteed to the applicant under the Charter of Fundamental Rights of the EU. Without taking any steps to check them or requesting any additional documents, the Commission refused to deal with the applicant's complaints on the ground that 'prima facie' it did not see any irregularity in the implementation of the OPEI subsidy programme.

5. Fifth plea in law, alleging a denial of justice by the Court of Justice of the EU (CJEU) due to excessive formalism.

The applicant contacted the CJEU with an application for annulment of the 3 block exemption Regulations on the grounds that they infringed the Treaties and the Charter. The CJEU in both instances dismissed the applicant's application for annulment of the block exemption Regulations as manifestly inadmissible. The reason for the dismissal was the failure to comply with the objective two-month time limit set by Article 263 TFEU. The CJEU did not in any way address the merits of the case and in a purely formalistic manner applied the time limit for the submission of the application. The applicant meanwhile argued that the fact that the Commission's control mechanism did not function properly was revealed only on the basis of the Commission's answer to the applicant's complaint. In the application, the applicant stated that he took the view that the limitation period started to run from the Commission's reply refusing to address in detail his complaint.

Action brought on 20 February 2020 — Sciessent v Commission

(Case T-123/20)

(2020/C 161/56)

Language of the case: English

Parties

Applicant: Sciessent LLC (Beverly, Massachusetts, United States) (represented by: K. Van Maldegem and P. Sellar, lawyers, and V. McElwee, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2019/1973 of 27 November 2019 not approving silver copper zeolite as an existing active substance for use in biocidal products product-types 2 and 7; ([1])

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of a rule of law relating to the application of the Treaties and of Articles 4 and 19 of Regulation (EU) No 528/2012. ([2])

   — The defendant, relying upon the Biocidal Products Committee (BPC) opinions on the approval of the active substance silver copper zeolite for product-types 2 and 7, reached the conclusions that the substance could not be approved on the grounds that sufficient efficacy had not been demonstrated. However, in the applicant's view, the efficacy assessment was unlawfully conducted by reference to a treated article. It is alleged that the defendant, in its evaluation of, and conclusion on, the efficacy of the substance, has misinterpreted and misapplied the relevant law, when considering the efficacy of silver copper zeolite.

2. Second plea in law, alleging lack of competence — infringement of Article 290 TFEU and Articles 4 and 19 of Regulation (EU) No 528/2012.

   — The reason for the non-approval of silver copper zeolite under the contested act is the alleged insufficient efficacy of the treated article in which it is used. However, the applicant maintains that the only criteria that the defendant could lawfully take into account are limited to those listed in Articles 4 and 19 of Regulation (EU) No 528/2012. Those criteria do not include the efficacy of the treated article whose assessment is otherwise left to the secondary, subsequent stage of biocidal product authorisation at the Member State level. In light of the fact that precisely that assessment has been undertaken by the defendant to justify the non-approval of silver copper zeolite, meaning that the defendant has gone far beyond what it is delegated to do under Regulation (EU) No 528/2012, the defendant breached Article 290 of the Treaties and Articles 4 and 19 of that Regulation.

3. Third plea in law, alleging infringement of a rule of law relating to the application of the Treaties — principle of non-discrimination.

   — The applicant's substance has been treated differently from other substances used for the same product-types 2 and 7, without the defendant justifying objectively why silver copper zeolite should be treated any differently from those substances, which were all subject to the same rules of assessment under Regulation (EU) No 528/2012 (and Directive 98/8/EC ([3])) for the same product-types.

4. Fourth plea in law, alleging infringement of a rule of law relating to the application of the Treaties — principle of legal certainty.

   — The defendant issued an open letter to the Chair of the BPC, which was designed to set straight how the law on efficacy assessment and treated articles under Regulation (EU) No 528/2012 was to be interpreted and applied. The applicant relied upon the content of this letter, which confirmed the clarity of the law, and had legitimate expectations regarding the approval of the substance. As a result, the contested act infringed the principles of legitimate expectation and legal certainty.

([1]) OJ 2019 L 307, p. 58.
([2]) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).
([3]) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

Action brought on 27 February 2020 — IR v Commission

(Case T-131/20)

(2020/C 161/57)

Language of the case: English

Parties

Applicant: IR (represented by: S. Pappas and A. Pappas, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Director General for Employment, Social Affairs and Inclusion contained in the e-mail of 2 July 2019 of the competent HR business correspondent by which the request of the European Centre for the Development of Vocational Training (Cedefop) for the third renewal of the secondment of the applicant was rejected;

— annul the decision of 23 January 2020 of the Appointing Authority rejecting the complaint submitted by the applicant under Article 90(2) of the Staff Regulations;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the irregularity of the pre-litigation procedure, which did not lead to a proper review by the Appointing Authority of the contested decision of 2 July 2019.

2. Second plea in law, alleging an essential and procedural violation of Article 38 of the Staff Regulations.

3. Third plea in law, alleging infringement of the general principle of the duty of care, as part of the right to sound administration with regard to the non-consideration of all the factual elements of the case and the lack of statement of reasons.

4. Fourth plea in law, alleging violation of the right of protection of the family enshrined in Article 33 of the Charter of Fundamental Rights of the European Union.

Action brought on 28 February 2020 — NEC Oncoimmunity v EASME

(Case T-132/20)

(2020/C 161/58)

Language of the case: English

Parties

Applicant: NEC Oncoimmunity A/S (Oslo, Norway) (represented by: T. Nordby, R. Bråthen and O. Brouwer, lawyers)

Defendant: Executive Agency for Small and Medium-sized Enterprises (EASME)

Form of order sought

The applicant claims that the Court should:

— in primary order, pursuant to Article 263 TFEU:

  — annul the contested decision (decision of 16 December 2019 terminating the participation of the applicant in the procedure H2020/EIC/SMEInst-2018-2020-2 in relation to the MEDIVAC(850078) project);

  — order the defendant to pay the applicant's costs and the costs of any intervening parties.

— in subsidiary order, pursuant to Article 272 TFEU:

  — declare that the contested decision is in breach of the defendant's contractual obligations;

  — order the defendant to pay the applicant's costs and the costs of any intervening parties.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law in relation to its heads of claim under Article 263 TFEU and one plea in law in relation to its heads of claim under Article 272 TFEU.

1. First plea in law under Article 263 TFEU, alleging that the defendant has committed an error in law and misapplied the eligibility criteria for the SME Instrument grant laid down in Regulation No 1290/2013. ([1])

2. Second plea in law under Article 263 TFEU, alleging that the defendant has committed an error in law as the contested decision is in breach of the principle of equal treatment.

3. Third plea in law under Article 263 TFEU, alleging that the contested decision breaches the principles of legal certainty and legitimate expectations.

4. Single plea in law under Article 272 TFEU, alleging that the contested decision results, notably because of the identified error in the interpretation of the applicable law and discriminatory practice, also in a misinterpretation and breach of the contractual obligations vis-à-vis the applicant.

([1]) Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)' and repealing Regulation (EC) No 1906/2006 (OJ 2013 L 347, p. 81)

Action brought on 27 February 2020 — Huhtamaki v Commission

(Case T-134/20)

(2020/C 161/59)

Language of the case: English

Parties

Applicant: Huhtamaki Sàrl (Senningerberg, Luxembourg) (represented by: M. Struys and F. Pili, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2019, pursuant to Article 4 of the Implementing rules to Regulation (EC) No 1049/2001, ([1]) which rejected the applicant's confirmatory application of 13 November 2019 for access to documents under that regulation;

— order the European Commission to grant access to the applicant to the non-confidential versions of the document listing the beneficiaries of tax rulings submitted by Luxembourg on 22 December 2014 in response to the Commission's letter of 19 June 2013, which is referred to in paragraph 4 of the Commission decision of 7 March 2019 opening a formal State aid investigation in case State Aid SA.50400 (2019/NN-2) — Luxembourg — Possible State aid, and the tax rulings issued by the tax administration of Luxembourg referred to by the European Commission at paragraphs 4 and 7 of the said Commission decision of 7 March 2019;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in law in considering that the general presumption of non-disclosure established by the case law is applicable with respect to the applicant's request for access to the requested documents.

2. Second plea in law, alleging that, assuming that the presumption of non-disclosure would be applicable in the present case (*quod non*), the absence of any possible harm for the interests protected by Article 4(2), first and third indent, of Regulation 1049/2001, would rebut the application of that presumption (first limb of the second plea). In addition, the applicant claims that the application of this presumption would, in any event, be reversed, since there are overriding reasons of public interest justifying disclosure of the requested documents (second limb of the second plea).

3. Third plea in law, alleging that the Commission violated the requirements to state reasons laid down in Article 296 TFEU and the applicant's right to good administration provided for in Article 41 of the Charter of Fundamental Rights of the European Union.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 28 February 2020 — Vulkano Research and Development v EUIPO — Ega (EGA Master)

(Case T-135/20)

(2020/C 161/60)

Language of the case: English

Parties

Applicant: Vulkano Research and Development, SL (Vitoria-Gasteiz, Spain) (represented by: V. Wellens and C. Schellekens, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ega sp. z o.o. sp.k. (Starogard Gdański, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark EGA Master — European Union trade mark No 5 835 558

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 13 December 2019 in Case R 1038/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision with the exception to the finding that the Contested EUTM must be upheld for the products 'Common metals and their alloys' in Class 6;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 8(4) in conjunction with Article 60(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Manifest lack of motivation in the contested decision.

Action brought on 2 March 2020 — Ardex v EUIPO — Chen (ArtiX PAINTS)

(Case T-136/20)

(2020/C 161/61)

Language in which the application was lodged: German

Parties

Applicant: Ardex GmbH (Witten, Germany) (represented by: C. Becker, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Lian Chen (Seseña Nuevo, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU figurative mark ArtiX PAINTS — Application for registration No 16 825 614

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 18 November 2019 in Case R 2503/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to pay the costs.

Pleas in law

— Infringement of the procedural rules derived from Article 24 of Commission Implementing Regulation (EU) 2018/626;

— Infringement of the procedural rules derived from Article 7(1) of Commission Delegated Regulation (EU) 2018/625;

— Breach of the principle of the right to a fair hearing;

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

Action brought on 26 February 2020 — Applia v Commission

(Case T-139/20)

(2020/C 161/62)

Language of the case: English

Parties

Applicant: Applia — Home Appliance Europe (Woluwe-Saint-Lambert, Belgium) (represented by: Y. Desmedt, L. Salernitano and K. Olsthoorn, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the following parts of the contested act: (i) Articles 1(b) and 2(b) of Annex VI in the part where they provide that 'these values are considered as the declared values for the purpose of the verification procedure in Annex IX'; (ii) paragraph 2(a) of Annex IX in the part where it states that 'declared values' correspond to those 'values given in the technical documentation'; and (iii) paragraph 2(b) of Annex IX;

— annul Table 9 on 'Verification tolerances' of Annex IX in the part where it contains parameters that are included in Annex VI and are not listed in Annex V, namely: 'EW, full, EW,½, EW,¼, EWD, full, EWD,½' and 'WW, full, WW,½ WW, ¼, WWD, full, WWD,½'; and

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

In its application, the applicant seeks the annulment of Commission Delegated Regulation (EU) 2019/2014 ([1]).

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

1. First plea in law, alleging the contested act violates Articles 3, 12 and 16 of the Framework Regulation ([2]) and the Commission acted ultra vires by introducing inconsistent requirements as regards the technical documentation suppliers have to upload in the database and the verification procedure market surveillance authorities are entitled to carry out.

2. Second plea in law, alleging the contested act infringes the principle of legal certainty and of equality of treatment because it fails to establish a clear and univocal regulatory framework putting the suppliers in the impossibility to determine their duties, as regards the data to be provided in the technical documentation; and the applicable verification procedure to assess the accuracy of the data.

([1]) Commission Delegated Regulation (EU) 2019/2014 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of household washing machines and household washer-dryers and repealing Commission Delegated Regulation (EU) No 1061/2010 and Commission Directive 96/60/EC (OJ 2019 L 315, p. 29).

([2]) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ 2017 L 198, p. 1).

Action brought on 26 February 2020 — Applia v Commission

(Case T-140/20)

(2020/C 161/63)

Language of the case: English

Parties

Applicant: Applia — Home Appliance Europe (Woluwe-Saint-Lambert, Belgium) (represented by: Y. Desmedt, L. Salernitano and K. Olsthoorn, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the following parts of the contested act: (i) Article 1(42) of Annex I providing for the definition of 'declared value'; (ii) paragraph 2(2)(a) of Annex IX in the part where it states that 'declared values' correspond to those 'values given in the technical documentation'; and (iii) paragraph 2(2)(b) of Annex IX;

— annul Table 9 on 'Verification tolerances' of Annex IX in the part where it contains parameters that are included in Annex VI and are not listed in Annex V, namely: 'Total mains efficacy ηTM', 'Lumen maintenance factor (for FL and HID)', 'Survival factor (for FL and HID)' and 'Excitation purity';

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

In its application, the applicant seeks the annulment of Commission Delegated Regulation (EU) 2019/2015 ([1]).

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

1. First plea in law, alleging the contested act violates Articles 3, 12 and 16 of the Framework Regulation ([2]) and the Commission acted ultra vires by introducing inconsistent requirements as regards the technical documentation suppliers have to upload in the database and the verification procedure market surveillance authorities are entitled to carry out.

2. Second plea in law, alleging the contested act infringes the principle of legal certainty and of equality of treatment because it fails to establish a clear and univocal regulatory framework putting the suppliers in the impossibility to determine their duties, as regards the data to be provided in the technical documentation; and the applicable verification procedure to assess the accuracy of the data.

([1]) Commission Delegated Regulation (EU) 2019/2015 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of light sources and repealing Commission Delegated Regulation (EU) No 874/2012 (OJ 2019 L 315, p. 68).

([2]) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ 2017 L 198, p. 1).

Action brought on 26 February 2020 — Applia v Commission

(Case T-141/20)

(2020/C 161/64)

Language of the case: English

Parties

Applicant: Applia — Home Appliance Europe (Woluwe-Saint-Lambert, Belgium) (represented by: Y. Desmedt, L. Salernitano and K. Olsthoorn, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the following parts of the contested act: (i) paragraph 3(2)(a) of Annex IX in the part where it states that 'declared values' correspond to those 'values given in the technical documentation'; and (iii) paragraph 3(2)(b) of Annex IX;

— annul Table 8 on 'Verification tolerances for measured parameters' of Annex IX in the part where it contains parameters that are included in Annex VI and are not listed in Annex V, namely: 'E16, E32' and 'Eaux';

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

In its application, the applicant seeks the annulment of Commission Delegated Regulation (EU) 2019/2016 ([1]).

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

1. First plea in law, alleging the contested act violates Articles 3, 12 and 16 of the Framework Regulation ([2]) and the Commission acted ultra vires by introducing inconsistent requirements as regards the technical documentation suppliers have to upload in the database and the verification procedure market surveillance authorities are entitled to carry out.

2. Second plea in law, alleging the contested act infringes the principle of legal certainty and of equality of treatment because it fails to establish a clear and univocal regulatory framework putting the suppliers in the impossibility to determine their duties, as regards the data to be provided in the technical documentation; and the applicable verification procedure to assess the accuracy of the data.

([1]) Commission Delegated Regulation (EU) 2019/2016 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of refrigerating appliances and repealing Commission Delegated Regulation (EU) No 1060/2010 (OJ 2019 L 315, p. 102).

([2]) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ 2017 L 198, p. 1).

Action brought on 26 February 2020 — Applia v Commission

(Case T-142/20)

(2020/C 161/65)

Language of the case: English

Parties

Applicant: Applia — Home Appliance Europe (Woluwe-Saint-Lambert, Belgium) (represented by: Y. Desmedt, L. Salernitano and K. Olsthoorn, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the following parts of the contested act: (i) Article 1(b), of Annex VI in the part where it provides that 'these values are considered as the declared values for the purpose of the verification procedure in Annex IX'; (ii) paragraph 3 (2)(a) of Annex IX in the part where it states that 'declared values' correspond to those 'values given in the technical documentation'; and (iii) paragraph 3(2)(b) of Annex IX;

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

In its application, the applicant seeks the annulment of Commission Delegated Regulation (EU) 2019/2017 ([1]).

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

1. First plea in law, alleging the contested act violates Articles 3, 12 and 16 of the Framework Regulation ([2]) and the Commission acted ultra vires by introducing inconsistent requirements as regards the technical documentation suppliers have to upload in the database and the verification procedure market surveillance authorities are entitled to carry out.

2. Second plea in law, alleging the contested act infringes the principle of legal certainty and of equality of treatment because it fails to establish a clear and univocal regulatory framework putting the suppliers in the impossibility to determine their duties, as regards the data to be provided in the technical documentation; and the applicable verification procedure to assess the accuracy of the data.

(1) Commission Delegated Regulation (EU) 2019/2017 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of household dishwashers and repealing Commission Delegated Regulation (EU) No 1059/2010 (OJ 2019 L 315, p. 134).

(2) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ 2017 L 198, p. 1).

Action brought on 5 March 2020 — Guangxi Xin Fu Yuan v Commission

(Case T-144/20)

(2020/C 161/66)

Language of the case: English

Parties

Applicant: Guangxi Xin Fu Yuan Co. Ltd (Bobai, Chine) (represented by: J. Cornelis and T. Zuber, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2019/2131 of 28 November 2019 amending Implementing Regulation (EU) 2019/1198 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11 (2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission violated Article 13 (3) in conjunction with Articles 5 (10) and 5 (11) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('basic Regulation'), along with Articles 6.1, 6.2 and 12.1 of the WTO Anti-Dumping Agreement, the principle of non-discrimination and the principle of the protection of legitimate expectations by not including the Applicant in the exhaustive list of subject exporters in the regulation initiating the anti-circumvention investigation and then subsequently expanding the scope of the investigation to also cover the Applicant.

2. Second plea in law, alleging that the Commission did not have a legal basis for including the applicant in the Contested Regulation, as Article 13 (3) basic Regulation does not cover the imposition of anti-circumvention measures based on a mere risk of circumvention and moreover, requires the prior registration of all subject imports. In addition, the reasoning that the Commission did provide is logically flawed, unsubstantiated and disregards essential evidence and therefore represents a manifest error of assessment.

3. Third plea in law, alleging that the Commission infringed the rights of defence of the applicant and violated the principle of non-discrimination by basing its final decision on two new factual elements on which the applicant had no opportunity to comment during the review investigation.

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