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Information and Notices

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(2021/C 44/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 10 December 2020 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Kaufbeuren mit Außenstelle Füssen v Golfclub Schloss Igling e.V.

(Case C-488/18) [1]

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 132(1)(m) — Exemption of 'certain provisions of services closely linked to sport or physical education' — Direct effect — Concept of 'non-profit-making organisations')

(2021/C 44/02)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Kaufbeuren mit Außenstelle Füssen

Defendant: Golfclub Schloss Igling e.V.

Operative part of the judgment

1. Article 132(1)(m) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not having direct effect, so that, if the legislation of a Member State which transposes that provision exempts from value added tax only a limited number of provisions of services closely linked to sport or physical education, that provision cannot be directly relied on before the national courts by a non-profit-making body to secure the exemption of other provisions closely linked to sport or physical education which that body provides to persons practising those activities and which that legislation does not exempt.

2. Article 132(1)(m) of Directive 2006/112 must be interpreted as meaning that the concept of 'non-profit-making body', within the meaning of that provision, constitutes an autonomous concept of EU law, which requires that, in the event that that organisation is dissolved, it may not distribute to its members any profits made by it which exceed the capital shares paid up by those members and the market value of the contributions in kind made by them.

[1] OJ C 392, 29.10.2018.

Judgment of the Court (Grand Chamber) of 8 December 2020 — Hungary v European Parliament, Council of the European Union

(Case C-620/18) ([1])

(Action for annulment — Directive (EU) 2018/957 — Freedom to provide services — Posting of workers — Terms and conditions of employment — Remuneration — Duration of posting — Determination of the legal basis — Articles 53 and 62 TFEU — Amendment of an existing directive — Article 9 TFEU — Misuse of powers — Principle of non-discrimination — Necessity — Principle of proportionality — Extent of the principle of freedom to provide services — Road transport — Article 58 TFEU — Regulation (EC) No 593/2008 — Scope — Principles of legal certainty and legislative clarity)

(2021/C 44/03)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér, G. Tornyai, and M.M Tátrai, acting as Agents)

Defendants: European Parliament (represented by: M. Martínez Iglesias, L. Visaggio and A. Tamás, acting as Agents), Council of the European Union (represented: initially by A. Norberg, M. Bencze and E. Ambrosini, then by A. Norberg, E. Ambrosini, A. Sikora-Kalėda and Zs. Bodnár, acting as Agents)

Interveners in support of the European Parliament: Federal Republic of Germany (represented by: J. Möller and S. Eisenberg, acting as Agents), French Republic (represented by: E. de Moustier, A. L. Desjonquères, C. Mosser and R. Coesme, acting as Agents), Kingdom of the Netherlands (represented by: M.K. Bulterman, C. Schillemans and J. Langer, acting as Agents), European Commission (represented by: L. Havas, M. Kellerbauer, B. R. Killmann and A. Szmytkowska, acting as Agents)

Interveners in support of the Council of the European Union: Federal Republic of Germany (represented by: J. Möller and S. Eisenberg, acting as Agents), French Republic (represented by: E. de Moustier, A. L. Desjonquères, C. Mosser and R. Coesme, acting as Agents), Kingdom of the Netherlands (represented by: M.K. Bulterman, C. Schillemans and J. Langer, acting as Agents), Kingdom of Sweden (represented by: C. Meyer-Seitz, H. Shev and H. Eklinder, acting as Agents), European Commission (represented by: L. Havas, M. Kellerbauer, B. R. Killmann and A. Szmytkowska, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Hungary to bears its own costs and to pay the costs incurred by the European Parliament and the Council of the European Union;

3. Orders the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the European Commission to bear their own costs.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Grand Chamber) of 8 December 2020 — Republic of Poland v European Parliament, Council of the European Union

(Case C-626/18) ([1])

(Action for annulment — Directive (EU) 2018/957 — Freedom to provide services — Posting of workers — Terms and conditions of employment — Remuneration — Duration of posting — Determination of the legal basis — Articles 53 and 62 TFEU — Amendment of an existing directive — Article 9 TFEU — Principle of non-discrimination — Necessity — Principle of proportionality — Regulation (EC) No 593/2008 — Scope — Road transport — Article 58 TFEU)

(2021/C 44/04)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna and D. Lutostańska, acting as Agents)

Defendants: European Parliament (represented: initially by M. Martínez Iglesias, K. Wójcik, A. Pospíšilová Padowska and L. Visaggio, then by M. Martínez Iglesias, K. Wójcik, L. Visaggio and A. Tamás, acting as Agents), Council of the European Union (represented: initially by E. Ambrosini, K. Adamczyk Delamarre and A. Norberg, then by E. Ambrosini, A. Sikora-Kalėda, Zs. Bodnar and A. Norberg, acting as Agents)

Interveners in support of the European Parliament: Federal Republic of Germany (represented: initially by J. Möller and T. Henze, and subsequently by J. Möller, acting as Agents), French Republic (represented by: E. de Moustier, A.-L. Desjonquères and R. Coesme, acting as Agents), Kingdom of the Netherlands (represented by: M.K. Bulterman, C. Schillemans and J. Langer, acting as Agents), European Commission (represented by: M. Kellerbauer, B. R. Killmann and A. Szmytkowska, acting as Agents)

Interveners in support of the Council of the European Union: Federal Republic of Germany (represented: initially by J. Möller and T. Henze, and subsequently by J. Möller, acting as Agents), French Republic (represented by: E. de Moustier, A.-L Desjonquères and R. Coesme, acting as Agents), Kingdom of the Netherlands (represented by: M.K. Bulterman, C. Schillemans and J. Langer, acting as Agents), Kingdom of Sweden (represented: initially by C. Meyer-Seitz, A. Falk, H. Shev, J. Lundberg and H. Eklinder, then by C. Meyer-Seitz, H. Shev and H. Eklinder, acting as Agents), European Commission (represented by: M. Kellerbauer, B. R. Killmann and A. Szmytkowska, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Republic of Poland to pay, in addition to its own costs, the costs incurred by the European Parliament and the Council of the European Union;

3. Orders the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the European Commission to bear their own costs.

([1]) OJ C 4, 7.1.2019.

Judgment of the Court (Second Chamber) of 9 December 2020 — Groupe Canal + v European Commission, French Republic, Union des producteurs de cinéma (UPC), C More Entertainment AB, European Film Agency Directors — EFAD's, European Consumer Organisation (BEUC)

(Case C-132/19 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Television distribution — Regulation (EC) No 1/2003 — Article 9 and Article 16(1) — Decision making commitments binding — Absolute territorial protection — Misuse of powers — Preliminary assessment — No obligation on the European Commission to take account of considerations relating to the application of Article 101(3) TFEU — Agreements intended to partition national markets — No obligation on the Commission to analyse the relevant national markets one by one — Proportionality — Adverse effect on the contractual rights of third parties)

(2021/C 44/05)

Language of the case: French

Parties

Appellant: Groupe Canal + (represented by: P. Wilhelm, P. Gassenbach and O. de Juvigny, avocats)

Other parties to the proceedings: European Commission (represented by: A. Dawes, C. Urraca Caviedes and L. Wildpanner, acting as Agents), French Republic (represented by: E. de Moustier and M. P. Dodeller, acting as Agents), Union des producteurs de cinéma (UPC) (represented by: E. Lauvaux, avocat), C More Entertainment AB, European Film Agency Directors — EFAD's (represented by: O. Sasserath, avocat), European Consumer Organisation (BEUC) (represented by: A. Fratini, avvocatessa)

Operative part of the judgment

The Court:

1. Annuls the judgment of the General Court of the European Union of 12 December 2018, Groupe Canal + v Commission (T-873/16, EU:T:2018:904);

2. Annuls the decision of the European Commission of 26 July 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40023 — Cross-border access to pay-TV);

3. Orders the European Commission to bear its own costs and to pay those incurred by Groupe Canal + SA, the European Film Agency Directors — EFADs, the Union des producteurs de cinéma (UPC) in the present appeal and the proceedings at first instance and those incurred by C More Entertainment AB in the proceedings at first instance;

4. Orders the French Republic to bear its own costs;

5. Orders the European Consumers' Organisation (BEUC) to bear its own costs.

([1]) OJ C 131, 8.4.2019.

Judgment of the Court (Second Chamber) of 10 December 2020 — Comune di Milano v European Commission

(Case C-160/19 P) ([1])

(Appeal — State aid — Air transport sector — Groundhandling services at Milan-Linate (Italy) and Milan-Malpensa (Italy) airports — Capital injections made by the operator of those airports into its wholly owned subsidiary providing those services — Public shareholding of the operator — Decision declaring those State aid measures unlawful and incompatible with the internal market — Article 107(1) TFEU — Concepts of 'State resources', 'measure imputable to the State' and 'economic advantage' — Private operator principle — Private investor test — Burden of proof — Complex financial assessments — Intensity of judicial review — Distortion of the evidence)

(2021/C 44/06)

Language of the case: Italian

Parties

Appellant: Comune di Milano (represented by: A. Mandarano, E. Barbagiovanni, S. Grassani and L. Picciano, avvocati)

Other party to the proceedings: European Commission (represented by: D. Recchia, G. Conte and D. Grespan, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Comune di Milano to pay the costs.

([1]) OJ C 131, 8.4.2019.

Judgment of the Court (Seventh Chamber) of 10 December 2020 — European Commission v Kingdom of Spain

(Case C-347/19) ([1])

(Failure of a Member State to fulfil obligations — Environment — Energy efficiency — Directive 2012/27/EU — Article 9(3) — Heating, cooling and hot water consumption — Installation of individual consumption meters in buildings)

(2021/C 44/07)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: K. Talabér-Ritz, S. Pardo Quintillán and Y. G. Marinova, acting as Agents)

Defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed time limit, all the necessary national provisions to comply with Article 9(3) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, relating to the installation in buildings of devices for the individual measurement of heating, cooling and hot water consumption, the Kingdom of Spain has failed to fulfil its obligations under that provision;

2. Orders the Kingdom of Spain to pay the costs.

([1]) OJ C 238, 15.7.2019.

Judgment of the Court (Grand Chamber) of 8 December 2020 (request for a preliminary ruling from the Landesgericht für Strafsachen Wien — Austria) — Criminal proceedings against A and Others

(Case C-584/19) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — European investigation order — Directive 2014/41/EU — Article 1(1) — Article 2(c)(i) and (ii) — Concepts of 'judicial authority' and 'issuing authority' — European investigation order issued by the public prosecutor's office of a Member State — Independence from the executive)

(2021/C 44/08)

Language of the case: German

Referring court

Landesgericht für Strafsachen Wien

Party to the main criminal proceedings

A and Others

Other party: Staatsanwaltschaft Wien

Operative part of the judgment

Article 1(1) and Article 2(c) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters must be interpreted as meaning that the concepts of 'judicial authority' and 'issuing authority', within the meaning of those provisions, include the public prosecutor of a Member State or, more generally, the public prosecutor's office of a Member State, regardless of any relationship of legal subordination that might exist between that public prosecutor or public prosecutor's office and the executive of that Member State and of the exposure of that public prosecutor or public prosecutor's office to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting a European investigation order.

([1]) OJ C 383, 11.11.2019.

Judgment of the Court (First Chamber) of 10 December 2020 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — M.S., M.W., G.S. v Minister for Justice and Equality

(Case C-616/19) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum policy — Procedure for granting and withdrawing refugee status — Directive 2005/85/EC — Article 25(2) — Grounds for inadmissibility — Rejection by one Member State of an application for international protection as inadmissible due to the earlier grant to the applicant of subsidiary protection in another Member State — Regulation (EC) No 343/2003 — Regulation (EU) No 604/2013)

(2021/C 44/09)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: M.S., M.W., G.S.

Defendant: Minister for Justice and Equality

Operative part of the judgment

Article 25(2) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status must be interpreted as not precluding legislation of a Member State which is subject to 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, but which is not bound by 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, in accordance with which an application for international protection is considered to be inadmissible where the applicant benefits from subsidiary protection status in another Member State.

([1]) OJ C 357, 21.10.2019.

Judgment of the Court (First Chamber) of 10 December 2020 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Land Nordrhein-Westfalen v D.-H. T. acting as insolvency administrator in relation to the assets of J & S Service UG

(Case C-620/19) ([1])

(Reference for a preliminary ruling — Personal data — Regulation (EU) 2016/679 — Article 23 — Restrictions to the data subject's rights — Significant financial interest — Enforcement of civil law claims — National legislation referring to the provisions of EU law — Tax data concerning a legal entity — Lack of jurisdiction of the Court)

(2021/C 44/10)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Land Nordrhein-Westfalen

Defendant: D.-H. T. acting as insolvency administrator in relation to the assets of J & S Service UG

Interested party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

The Court of Justice does not have jurisdiction to answer the questions raised by the Bundesverwaltungsgericht (Federal Administrative Court, Germany) in its decision of 4 July 2019.

([1]) OJ C 383, 11.11.2019.

Order of the Court (Ninth Chamber) of 12 November 2020 — Jean-François Jalkh v European Parliament

(Joined Cases C-792/18 P and C-793/18 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Law governing the institutions — Protocol on the privileges and immunities of the European Union — Articles 8 and 9 — Scope — Decision to lift parliamentary immunity — Conditions)

(2021/C 44/11)

Language of the case: French

Parties

Appellant: Jean-François Jalkh (represented by: F. Wagner, avocat)

Other party to the proceedings: European Parliament (represented by: S. Alonso de León and C. Burgos, acting as Agents)

Operative part of the order

The Court:

1. Dismisses the appeals as, in part, manifestly inadmissible and, in part, manifestly unfounded;

2. Orders Mr Jean-François Jalkh to pay the costs.

(1) OJ C 65, 18.2.2019.

Order of the Court (Sixth Chamber) of 12 October 2020 (request for a preliminary ruling from the Tribunal du travail francophone de Bruxelles — Belgium) — PN, QO, RP, SQ, TR v Centre public d'action sociale d'Anderlecht (CPAS)

(Case C-394/19) (1)

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Citizenship of the European Union — Right of EU citizens and their family members to move and reside freely within the territory of a Member State — Directive 2004/38/EC — Article 3 — Beneficiaries — Incorrect transposition — Liability of a Member State in the event of infringement of EU law — Grant of social assistance as compensation for the damage suffered — Manifest inadmissibility)

(2021/C 44/12)

Language of the case: French

Referring court

Tribunal du travail francophone de Bruxelles

Parties to the main proceedings

Applicants: PN, QO, RP, SQ, TR

Defendant: Centre public d'action sociale d'Anderlecht (CPAS)

Operative part of the order

The request for a preliminary ruling made by the Tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium) by decision of 14 May 2019 is manifestly inadmissible.

(1) OJ C 246, 22.7.2019.

Order of the Court (Eighth Chamber) of 10 October 2020 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Finančné riaditeľstvo Slovenskej republiky v Weindel Logistik Service SR spol. s r.o.

(Case C-621/19) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 168(e) — Input tax deduction — Use of the goods solely for the purposes of the taxable person's taxable transactions — Existence of a direct link between the imported goods and the output transaction)

(2021/C 44/13)

Language of the case: Slovakian

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Finančné riaditeľstvo Slovenskej republiky

Defendant: Weindel Logistik Service SR spol. s r.o.

Operative part of the order

Article 168(e) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding the grant of a right to deduct value added tax (VAT) to an importer where he does not dispose of the goods as an owner and where the upstream import costs are non-existent or are not incorporated in the price of particular output transactions or in the price of the goods and services supplied by the taxable person in the course of his economic activities.

(1) OJ C 363, 28.10.2019.

Order of the Court (Seventh Chamber) of 28 October 2020 (request for a preliminary ruling from the Juzgado de lo Mercantil No 2 de Madrid — Spain) — ZA, AZ, BX, CV, DU, ET v Repsol Comercial de Productos Petolíferos SA

(Case C-716/19) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court — Competition — Final decision of a national competition authority finding a practice restrictive of competition — Scope of the probative value of the facts examined and established — Lack of sufficient details concerning the factual and regulatory context of the dispute in the main proceedings and the reasons justifying the need to reply to the questions referred for a preliminary ruling — Manifest inadmissibility)

(2021/C 44/14)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 2 de Madrid

Parties to the main proceedings

Applicants: ZA, AZ, BX, CV, DU, ET

Defendant: Repsol Comercial de Productos Petolíferos SA

Operative part of the order

The request for a preliminary ruling made by the Juzgado de lo Mercantil No 2 de Madrid (Commercial Court No 2, Madrid, Spain) by decision of 29 July 2019 is manifestly inadmissible.

(1) OJ C 423, 16.12.2019.

Order of the Court (Sixth Chamber) of 26 November 2020 (request for a preliminary ruling from the Sofiyski rayonen sad — Bulgaria) — proceedings brought by DSK Bank EAD and FrontEx International EAD

(Case C-807/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure — Consumer protection — Directive 93/13/EEC — Articles 3 and 6 to 8 — Directive 2008/48/EC — Article 22 — Unfair terms in contracts concluded with consumers — Examination by the national court of its own motion — National order for payment procedure)

(2021/C 44/15)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

DSK Bank EAD, FrontEx International EAD

Operative part of the order

1. EU law must be interpreted as precluding a national court, hearing an application for an order for payment, from failing to examine the potentially unfair nature of a term of a contract concluded between a seller or supplier and a consumer, on account of practical difficulties, such as its workload.

2. Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a national court, hearing an application for an order for payment, where it suspects that that application is based on an unfair term in the consumer loan contract, within the meaning of Directive 93/13, from being entitled, where the consumer does not object, to request further information from the creditor in order to examine the potentially unfair nature of that term.

3. Articles 3 and 8 of Directive 93/13, read in conjunction with Articles 6 and 7 of that Directive, must be interpreted as meaning that, in the context of an examination of its own motion of the potentially unfair nature of terms in a contract concluded between a seller or supplier and a consumer, carried out by the national court in order to determine whether there is a significant imbalance between the obligations of the parties under that contract, that court may also take into account national provisions ensuring a higher level of protection for consumers than that provided for by that directive.

([1]) OJ C 27, 27.1.2020.

Order of the Court (Ninth Chamber) of 26 November 2020 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Autostrada Torino Ivrea Valle D'Aosta — Ativa S.p.A. v Presidenza del Consiglio dei Ministri, Ministero delle Infrastrutture e dei Trasporti, Ministero dell'Economia e delle Finanze, Autorità di regolazione dei trasporti

(Case C-835/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Award of concession contracts — Directive 2014/23/EU — Article 2(1), first subparagraph — Article 30 — Freedom of awarding authorities to define and organise the procedure leading to the selection of the concession holder — National legislation prohibiting the use of project financing for motorway concession contracts)

(2021/C 44/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autostrada Torino Ivrea Valle D'Aosta — Ativa S.p.A.

Defendants: Presidenza del Consiglio dei Ministri, Ministero delle Infrastrutture e dei Trasporti, Ministero dell'Economia e delle Finanze, Autorità di regolazione dei trasporti

Intervening parties: Autorità di bacino del Po, Regione Piemonte

Operative part of the order

Must the first subparagraph of Article 2(1) of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, read in conjunction with Article 30 and recitals 5 and 68 of that directive, be interpreted as not precluding a national provision prohibiting awarding authorities from granting expired or expiring motorway concessions using the project financing procedure laid down in Article 183 of decreto legislativo n. 50 — Codice dei contratti pubblici (Legislative decree No 50 establishing the public procurement code), of 18 April 2016.

([1]) OJ C 161, 11.5.2020.

Order of the Court (Ninth Chamber) of 28 October 2020 — Archimandritis Sarantis Sarantos, Protopresvyteros Ioannis Fotopoulos, Protopresvyteros Antonios Bousdekis, Protopresvyteros Vasileios Kokolakis, Estia Paterikon Meleton, Christos Papasotiriou, Charalampos Andralis v European Parliament, Council of the European Union

(Case C-84/20 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — EU citizenship — 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 — Regulation (EU) 2019/1157 — Action for annulment — Legal standing — Lack of individual concern — Article 19 of the Statute of the Court of Justice of the European Union — Obligation for a party to be represented by a lawyer — Applicant, also a lawyer, acting in his own name by signing the application himself, without engaging the services of a third-party lawyer to represent him — Appeal manifestly unfounded)

(2021/C 44/17)

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

Operative part of the order

The Court:

1. Dismisses the appeal brought by Mr Christos Papasotirou as inadmissible;

2. Dismisses the appeal brought by Mr Sarantis Sarantos, Mr Ioannis Fotopoulos, Mr Antonios Bousdekis, Mr Vasileios Kokolakis, Mr Estia Paterikon Meleton and Mr Charalampos Andralis as manifestly unfounded;

3. Orders Mr Sarantis Sarantos, Mr Ioannis Fotopoulos, Mr Antonios Bousdekis, Mr Vasileios Kokolakis, Mr Estia Paterikon Meleton, Mr Christos Papasotirou and Mr Charalampos Andralis to pay their own costs.

(1) OJ C 161, 11.5.2020.

Order of the Court (Sixth Chamber) of 12 November 2020 — Lazarus Szolgáltató és Kereskedelmi Kft. v European Commission

(Case C-85/20 P) (1)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — State aid — Aid implemented by Hungary in favour of undertakings employing disabled workers — Alleged decisions of the European Commission declaring the measure compatible with the internal market — Action for annulment — Deadline for lodging an appeal — Starting point — Awareness of the existence of the contested measure — Reasonable time in which to request the full text thereof — Definition of 'actionable measure' within the meaning of Article 263 TFEU — Inadmissibility of the application at first instance — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2021/C 44/18)

Language of the case: Hungarian

Parties

Appellant: Lazarus Szolgáltató és Kereskedelmi Kft. (represented by: L. Szabó, ügyvéd)

Other party: European Commission

Operative part of the order

The Court:

1. Dismisses the appeal as, in part, manifestly inadmissible and, in part, manifestly unfounded;

2. Orders Lazarus Szolgáltató és Kereskedelmi Kft. to pay its own costs.

(1) OJ C 201, 15.6.2020.

Appeal brought on 12 August 2020 by eSky Group IP sp. z o.o. against the judgment of the General Court (Sixth Chamber) delivered on 10 June 2020 in Case T-646/19, eSky Group IP v EUIPO — Gröpel (e)

(Case C-386/20 P)

(2021/C 44/19)

Language of the case: English

Parties

Appellant: eSky Group IP sp. z o.o. (represented by: P. Kurcman, radca prawny)

Other parties to the proceedings: European Union Intellectual Property Office, Gerhard Gröpel

By order of 21 October 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 24 September 2020 — W.Ż. v A.S., Sąd Najwyższy

(Case C-491/20)

(2021/C 44/20)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: W.Ż.

Defendants: A.S., Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73 (1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?

2. Must the second subparagraph of Article 19(1) TEU, in conjunction with Article 2 and Article 4(3) TEU and the right to a fair trial, be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling on all other cases falling within the scope of EU law, on pain of such rulings being invalid, as well as to order other bodies to refrain from assigning cases to such a defendant or from assigning him to adjudicating panels?

3. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of last instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 25 September 2020 — W.Ż. v K.Z., Skarb Państwa — Sąd Najwyższy

(Case C-492/20)

(2021/C 44/21)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: W.Ż.

Defendants: K.Z., Skarb Państwa — Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R *Commission* v *Poland* be interpreted as meaning that a Public Prosecutor may not, until Case C-791/19 R has been resolved, request the transfer to the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court, consolidated text: Dz. U. of 2019, item 825 as amended)?

2. Must the second subparagraph of Article 19(1) TEU in conjunction with Articles 2 and 4(3) TEU and the right to a fair trial be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling in all other cases falling within the scope of EU law, on pain of such rulings being invalid, and to order other bodies to refrain from assigning cases to that defendant or from assigning him to adjudicating panels?

3. Must Articles 2 and 4(2) in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial be interpreted as meaning that:

   a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that stipulated in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court (consolidated text: Dz. U. of 2019, item 825 as, amended), since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Articles 2 and 4(2) in conjunction with Article 19 TEU and the right to a fair trial as well as Article 267 TFEU be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of final instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of final instance of a Member State must reject an application for the transfer of a case file where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances which result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 28 September 2020 — P.J. v A.T., R.W., Sąd Najwyższy

(Case C-493/20)

(2021/C 44/22)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: P.J.

Defendants: A.T., R.W., Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73 (1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?

2. Must the second subparagraph of Article 19(1) TEU, in conjunction with Article 2 and Article 4(3) TEU and the right to a fair trial, be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling on all other cases falling within the scope of EU law, on pain of such rulings being invalid, as well as to order other bodies to refrain from assigning cases to such a defendant or from assigning him to adjudicating panels?

3. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of last instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 2 October 2020 — K.M. v T.P., Skarb Państwa — Sąd Najwyższy

(Case C-494/20)

(2021/C 44/23)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: K.M.

Defendants: T.P., Skarb Państwa — Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?

2. Must the second subparagraph of Article 19(1) TEU, in conjunction with Article 2 and Article 4(3) TEU and the right to a fair trial, be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling on all other cases falling within the scope of EU law, on pain of such rulings being invalid, as well as to order other bodies to refrain from assigning cases to such a defendant or from assigning him to adjudicating panels?

3. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, [Or. 3] and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of last instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 2 October 2020 — T.M. v T.D., M.D., P.K., J.L., M.L., O.N., G.Z., A.S., Skarb Państwa — Sąd Najwyższy

(Case C-495/20)

(2021/C 44/24)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: T.M.

Defendants: T.D., M.D., P.K., J.L., M.L., O.N., G.Z., A.S., Skarb Państwa — Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R *Commission v Poland* be interpreted as meaning that the President of the Disciplinary Chamber of the Supreme Court may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of the service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 a Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court, consolidated text: Dz. U. of 2019, item 825 as amended)?

2. Must the second subparagraph of Article 19(1) TEU in conjunction with Articles 2 and 4(3) TEU and the right to a fair trial be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling in all other cases falling within the scope of EU law, on pain of such rulings being invalid, and to order other bodies to refrain from assigning cases to that defendant or from assigning him to adjudicating panels?

3. Must Articles 2 and 4(2) in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that stipulated in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court (consolidated text: Dz.U. of 2019, item 825 as, amended), since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Articles 2 and 4(2) in conjunction with Article 19 TEU and the right to a fair trial as well as Article 267 TFEU be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of final instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances which result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 6 October 2020 — M.F. v T.P.

(Case C-496/20)

(2021/C 44/25)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: M.F.

Defendant: T.P.

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?

2. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, [Or. 3] and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

3. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of last instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

4. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 9 October 2020 — T.B. v T.D., M.D., P.K., J.L., M.L., O.N., G.Z., A.S., Skarb Państwa — Sąd Najwyższy

(Case C-506/20)

(2021/C 44/26)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: T.B.

Defendants: T.D., M.D., P.K., J.L., M.L., O.N., G.Z., A.S., Skarb Państwa — Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?

2. Must the second subparagraph of Article 19(1) TEU, in conjunction with Article 2 and Article 4(3) TEU and the right to a fair trial, be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling on all other cases falling within the scope of EU law, on pain of such rulings being invalid, as well as to order other bodies to refrain from assigning cases to such a defendant or from assigning him to adjudicating panels?

3. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of last instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 22 September 2020 — M.F. v J.M.

(Case C-509/20)

(2021/C 44/27)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: M.F.

Defendant: J.M.

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of point 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that a request from the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) concerning the transfer of the case file in a case relating to the establishment of the non-existence of a service relationship of a Supreme Court judge must be rejected as submitted by an entity which may not take any action until Case C-791/19 R has been resolved, due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text:'Dz. U. of 2019, item 825, as amended)?

2. Must Article 2 and Article 4(2), in conjunction with Article 19 TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts determining or assessing the lawfulness of a judge's appointment or of his or her resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

3. Must Article 2 and Article 4(2), in conjunction with Article 19 TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of final instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

4. Must Article 19 TEU, in conjunction with Article 267 TFEU and the general principle of the right to a fair trial before a court or tribunal previously established by law, be interpreted as meaning that the court of final instance of a Member State is to reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A. K. and Others*?

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 13 October 2020 — B.S. v T.D., M.D., P.K., J.L., M.Ł., O.N., Skarb Państwa — Sąd Najwyższy

(Case C-511/20)

(2021/C 44/28)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: B.S.

Defendants: T.D., M.D., P.K., J.L., M.Ł., O.N., Skarb Państwa — Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission* v *Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?

2. Must the second subparagraph of Article 19(1) TEU, in conjunction with Article 2 and Article 4(3) TEU and the right to a fair trial, be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling on all other cases falling within the scope of EU law, on pain of such rulings being invalid, as well as to order other bodies to refrain from assigning cases to such a defendant or from assigning him to adjudicating panels?

3. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial, be interpreted as meaning that:

   (a) the national court is required to disapply the prohibition on 'challenging the authority of the courts' and on 'the courts' determining or assessing the lawfulness of a judge's appointment or of his resulting authority to perform judicial tasks', such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union's respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?

   (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?

4. Must Article 2 and Article 4(2), in conjunction with the second subparagraph of Article 19(1) TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of last instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 28 October 2020 — ORLEN KolTrans sp. z o.o v Prezes Urzędu Transportu Kolejowego

(Case C-563/20)

(2021/C 44/29)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Applicant: ORLEN KolTrans sp. z o.o

Defendant: Prezes Urzędu Transportu Kolejowego

Questions referred

1. Must Article 30(2)(e) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ([1]) be interpreted as conferring on a railway undertaking which uses or intends to use railway infrastructure the right to participate in the procedure conducted by a regulatory body for setting the level of charges for access to railway infrastructure by the railway infrastructure manager?

2. If the first question is answered in the negative, must Article 30(5) and (6) of Directive 2001/14/EC be interpreted as conferring on a railway undertaking which uses or intends to use railway infrastructure the right to challenge the decision of the regulatory body approving the level of charges for access to railway infrastructure set by the railway infrastructure manager?

(1) OJ 2001 L 75, p. 29.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 9 November 2020 — Ligebehandlingsnævnet as representative of A v HK/Danmark and HK/Privat

(Case C-587/20)

(2021/C 44/30)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Ligebehandlingsnævnet as representative of A

Defendant: HK/Danmark and HK/Privat

Intervener in support of the form of order sought by the defendant: Fagbevægelsens Hovedorganisation (FH)

Question referred

Must Article 3(1)(a) of the Employment Directive (1) be interpreted as meaning that a politically elected sector convenor of a trade union is covered by the scope of the directive in the circumstances described [in the request for a preliminary ruling]?

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 16 November 2020 — ROI Land Investments Ltd. v FD

(Case C-604/20)

(2021/C 44/31)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Defendant, respondent in first appeal and appellant in the appeal on a point of law: ROI Land Investments Ltd.

Applicant, appellant in first appeal and respondent in the appeal on a point of law: FD

Questions referred

1. Is Article 6(1) read in conjunction with Article 21(2) and Article 21(1)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I Regulation') ([1]) to be interpreted as meaning that an employee can sue a legal person — which is not his employer and which is not domiciled in a Member State within the meaning of Article 63(1) of the Brussels I Regulation but which, by virtue of a letter of comfort, is directly liable to the employee for claims arising from an individual contract of employment with a third party — in the courts for the place where or from where the employee habitually carries out his work in the employment relationship with the third party or in the courts for the last place where he did so, if the contract of employment with the third party would not have come into being in the absence of the letter of comfort?

2. Is Article 6(1) of the Brussels I Regulation to be interpreted as meaning that the reservation in respect of Article 21(2) of the Brussels I Regulation precludes the application of a rule of jurisdiction existing under the national law of the Member State which allows an employee to sue a legal person, which, in circumstances such as those described in the first question, is directly liable to him for claims arising from an individual contract of employment with a third party, as the 'successor in title' of the employer in the courts for the place where the employee habitually carries out his work, if no such jurisdiction exists under Article 21(2) read in conjunction with Article 21(1)(b)(i) of the Brussels I Regulation?

3. If the first question is answered in the negative and the second question in the affirmative:

   (a) Is Article 17(1) of the Brussels I Regulation to be interpreted as meaning that the concept of 'professional activities' includes paid employment in an employment relationship?

   (b) If so, is Article 17(1) of the Brussels I Regulation to be interpreted as meaning that a letter of comfort on the basis of which a legal person is directly liable for claims of an employee arising from an individual contract of employment with a third party constitutes a contract concluded by the employee for a purpose which can be regarded as being within the scope of his professional activities?

4. If, in answer to the above questions, the referring court is deemed to have international jurisdiction to rule on the dispute:

   (a) Is Article 6(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ([2]) to be interpreted as meaning that the concept of 'professional activities' includes paid employment in an employment relationship?

   (b) If so, is Article 6(1) of the Rome I Regulation to be interpreted as meaning that a letter of comfort on the basis of which a legal person is directly liable to an employee for claims arising from an individual contract of employment with a third party constitutes a contract concluded by the employee for a purpose which can be regarded as being within the scope of his professional activities?

([1]) OJ 2012 L 351, p. 1.
([2]) OJ 2008 L 177, p. 6.

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 17 November 2020 — Suzlon Wind Energy Portugal — Energia Eólica Unipessoal, Lda v Autoridade Tributária e Aduaneira

(Case C-605/20)

(2021/C 44/32)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Suzlon Wind Energy Portugal — Energia Eólica Unipessoal, Lda

Respondent: Autoridade Tributária e Aduaneira

Questions referred

1. Is an interpretation to the effect that repairs carried out during the 'warranty period' are regarded as exempt transactions only where they are made free of charge and in so far as they are tacitly included in the sale price of the product covered by the warranty, with the result that supplies of services which are made during the warranty period (whether or not they involve the use of materials) and which form the subject of invoices are to be regarded as subject to VAT, on the ground that they must necessarily be classified as supplies of services for consideration, compliant with EU law?

2. Must the issuing of a debit note to a supplier of wind turbine components with a view to obtaining reimbursement of the costs which the purchaser of those products has incurred during the warranty period in replacing components (new imports of products from the supplier to which VAT was applied and which gave rise to a right to deduct input tax) and repairing them (by purchasing from third parties services on which VAT was charged), in the context of the supply to third parties of services in connection with the installation of a wind farm by that purchaser (a member of the same group [of companies] as the vendor, which is established in a third country), be classified as a mere transaction for passing on costs and, as such, exempt from VAT, or as a supply of services for consideration which must give rise to a charge to tax?

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 18 November 2020 — Criminal proceedings against YP and Others

(Case C-615/20)

(2021/C 44/33)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

YP and Others

Questions referred

1. Must EU law — in particular Article 47 of the Charter of Fundamental Rights ('the Charter') and the right to an effective remedy before a tribunal and the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law expressed therein — be interpreted as precluding the national legislation set out in detail in questions 2 and 3 below, namely, Articles 80 and 129 of the Ustawa z dnia 27 lipca 2001 r. — Prawo o ustroju sądów powszechnych (Law of 27 July 2001 on the system of the ordinary courts, 'the Law on the system of the ordinary courts') as well as Article 110(2a) of the Law on the system of the ordinary courts and Article 27(1)(1a) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court, 'the Law on the Supreme Court'), which provisions allow the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) to lift a judge's immunity and suspend a judge from his or her duties, and thus to effectively prevent a judge from ruling on the cases assigned to him or her, particularly since:

   (a) the Disciplinary Chamber of the Supreme Court is not a 'tribunal' within the meaning of Article 47 of the Charter, Article 6 of the European Convention on Human Rights ('the ECHR') and Article 45(1) of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland) (judgment in Cases C-585/18, C-624/18 and C-625/18, EU:C:2019:982);

   (b) members of the Disciplinary Chamber of the Supreme Court have particularly close links to the legislature and the executive (order of 8 April 2020, *Commission* v *Poland*, C-791/19 R, EU:C:2020:277);

   (c) the Republic of Poland was obliged to suspend the application of certain provisions of the Law on the Supreme Court concerning the chamber known as the Izba Dyscyplinarna (Disciplinary Chamber) and to refrain from referring cases pending before that Chamber to a panel whose composition does not meet the requirements of independence (order of 8 April 2020, *Commission* v *Poland*, C-791/19 R, EU:C:2020:277).

2. Must EU law — in particular Article 2 TEU and the value of the rule of law expressed therein and the requirements for effective legal protection under the second subparagraph of Article 19(1) TEU — be interpreted as meaning that 'the rules governing the disciplinary regime of those who have the task of adjudicating' also cover provisions relating to the criminal prosecution or detention of a judge of a national court, such as Article 181 of the Constitution of the Republic of Poland in conjunction with Articles 80 and 129 of the Law on the system of the ordinary courts, according to which provisions:

   (a) the criminal prosecution or deprivation of liberty (detention) of a judge of a national court, in principle at the request of a public prosecutor, requires authorisation from the disciplinary court having jurisdiction;

   (b) a disciplinary court, having authorised the criminal prosecution or deprivation of liberty (detention) of a judge of a national court, is allowed (and in some cases is obliged to) suspend this judge from his or her duties;

   (c) when suspending a judge of a national court from his or her duties, the disciplinary court is at the same time obliged to reduce his or her remuneration, within the limits set by the relevant provisions, for the duration of the suspension?

3. Must EU law — in particular the provisions referred to in question 2 — be interpreted as precluding legislation of a Member State, such as Article 110(2a) of the Law on the system of the ordinary courts and Article 27(1)(1a) of the Law on the Supreme Court, according to which cases relating to authorisation for the criminal prosecution or deprivation of liberty (detention) of a judge of a national court fall within the exclusive jurisdiction of a body such as the Disciplinary Chamber at both first and second instance, taking in particular into account (individually or jointly) the following facts:

   (a) the establishment of the Disciplinary Chamber coincided with a change in the rules for selecting members of a body such as the Krajowa Rada Sądownictwa (National Council for the Judiciary, 'the NCJ'), which is involved in judicial appointments and upon whose proposal all members of the Disciplinary Chamber were appointed;

   (b) the national legislature has made it impossible to transfer to the Disciplinary Chamber current judges of the national court of last instance (the Supreme Court) within which that Chamber operates, such that only new members appointed upon the proposal of the newly selected NCJ may sit in the Disciplinary Chamber;

   (c) the Disciplinary Chamber enjoys a particularly high degree of autonomy within the Supreme Court;

   (d) the Supreme Court, in its rulings implementing the judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982), confirmed that the newly selected NCJ is not independent of the legislature and of the executive and that the Disciplinary Chamber is not a 'tribunal' within the meaning of Article 47 of the Charter, Article 6 of the ECHR and Article 45(1) of the Constitution of the Republic of Poland;

   (e) a request for authorisation for criminal prosecution or deprivation of liberty (detention) of a judge of a national court is, in principle, submitted by a public prosecutor whose superior is an executive body such as the Minister Sprawiedliwości (Minister for Justice), which executive body may issue binding instructions to public prosecutors concerning procedural acts, and at the same time members of the Disciplinary Chamber and of the newly selected NCJ have, as the Supreme Court found in the rulings referred to in point 2(d), particularly close links to the legislature and to the executive, and thus the Disciplinary Chamber cannot be regarded as a third party in relation to the parties to the proceedings;

   (f) a request for authorisation for criminal prosecution or deprivation of liberty (detention) of a judge of a national court is, in principle, submitted by a public prosecutor whose superior is an executive body such as the Minister Sprawiedliwości (Minister for Justice), which executive body may issue binding instructions to public prosecutors concerning procedural acts, and at the same time members of the Disciplinary Chamber and of the newly selected NCJ have, as the Supreme Court found in the rulings referred to in point 2(d), particularly close links to the legislature and to the executive, and thus the Disciplinary Chamber cannot be regarded as a third party in relation to the parties to the proceedings;

4. Where authorisation is granted for the criminal prosecution or detention of a judge of a national court, which involves suspending that judge from his or her duties and reducing his or her remuneration for the duration of his or her suspension, must EU law — in particular the provisions referred to in question 2 and the principles of primacy, sincere cooperation under Article 4(3) TEU and legal certainty — be interpreted as precluding such authorisation, in particular as regards the suspension of that judge from his or her duties, from having binding effect if it was granted by a body such as the Disciplinary Chamber, and therefore:

   (a) all State bodies (including the referring court whose composition includes the judge covered by that authorisation as well as the bodies which have powers to designate and modify the composition of national courts) must disregard that authorisation and allow the judge of a national court covered by that authorisation to sit on the adjudicating panel of that court;

   (b) the court whose composition includes the judge covered by that authorisation is a tribunal previously established by law or an independent and impartial tribunal, and therefore can, as a 'tribunal', rule on questions concerning the application or interpretation of EU law?

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 25 November 2020 — A v Sosiaali- ja terveysalan lupa- ja valvontavirasto

(Case C-634/20)

(2021/C 44/34)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: A

Other party: Sosiaali- ja terveysalan lupa- ja valvontavirasto

Questions referred

Having regard to the principle of proportionality, is Article 45 or 49 TFEU to be interpreted as precluding the competent authority of a host Member State from granting, on the basis of the national legislation, a person the right to pursue the profession of doctor for a limited period of three years and subject to the restriction that that person may practise only under the direction and supervision of a licensed doctor and must complete three years of special training in general medical practice during that same period in order to obtain authorisation to pursue the profession of doctor independently in the host Member State, taking account of the fact that:

(a) the person has obtained an undergraduate degree in medicine in the home Member State but, when applying for recognition of that professional qualification in the host Member State, he or she was unable to provide a certificate attesting to the completion of a professional traineeship of one year's duration, which is required as a further condition for obtaining the professional qualification in the home Member State;

(b) for the purposes of Article 55a of the Professional Qualifications Directive, ([1]) in the host Member State, the person has been offered, as a preferential alternative, which was declined by him or her, the possibility of carrying out in the host Member State, for a period of three years, a professional traineeship that is in accordance with the guidelines of the home Member State and applying to the competent authority of the home Member State for recognition of that traineeship in order subsequently to be able to reapply in the host Member State for the right to pursue the profession of doctor through the system of automatic recognition referred to in the directive;

(c) the purpose of the national legislation of the host Member State is to promote patient safety and the quality of healthcare services by ensuring that healthcare professionals have the training required for their professional activity, other sufficient professional qualifications and other skills required for the professional activity?

(1) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).

Request for a preliminary ruling from the Tribunal du travail de Liège (Belgium) lodged on 26 November 2020 — VT v Centre public d'action sociale de Liège (CPAS)

(Case C-641/20)

(2021/C 44/35)

Language of the case: French

Referring court

Tribunal du travail de Liège

Parties to the main proceedings

Applicant: VT

Defendant: Centre public d'action sociale de Liège (CPAS)

Question referred

Where a Member State decides to withdraw from a refugee his status as such, pursuant to Article 11 of Directive 2011/95, (1) and then to withdraw his [right of] residence and order him to leave the national territory, are Articles 7 and 13 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[,] (2) read in accordance with Article 47 of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that the person concerned retains a provisional right of residence and his social rights while the judicial remedy brought against the decision to end his residence and to return him is being examined?

(1) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

(2) OJ 2008 L 348, p. 98.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 1 December 2020 — Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v TB

(Case C-646/20)

(2021/C 44/36)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht

Respondent in the appeal on a point of law: TB

Other parties to the proceedings: Standesamt Mitte von Berlin, RD

Questions referred

The following questions concerning the interpretation of Article 1(1)(a), Article 2, point 4, Article 21(1) and Article 46 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ([1]) are referred for a preliminary ruling:

1. Is the dissolution of a marriage on the basis of Article 12 of Decreto Legge (Italian Decree-Law) No 132 of 12 September 2014 ('DL No 132/2014') a divorce within the meaning of the Brussels IIa Regulation?

2. If Question 1 is answered in the negative: Is the dissolution of a marriage on the basis of Article 12 of DL No 132/2014 to be treated in accordance with the rule in Article 46 of the Brussels IIa Regulation on authentic instruments and agreements?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1; the Brussels IIa Regulation).

Appeal brought on 4 December 2020 by Hermann Albers eK against the judgment of the General Court (Fifth Chamber) delivered on 5 October 2020 in Case T-597/18, Hermann Albers v European Commission

(Case C-656/20 P)

(2021/C 44/37)

Language of the case: German

Parties

Appellant: Hermann Albers eK (represented by: S. Roling, Rechtsanwalt)

Other parties to the proceedings: European Commission, Federal Republic of Germany, Land Niedersachsen

Form of order sought

The appellant claims that the Court should:

— set aside in part the judgment of the General Court of 5 October 2020, *Hermann Albers* v *Commission* (T-597/18, EU:T:2020:467), in the form of paragraphs 1 and 2 of the operative part;

— grant in their entirety the forms of order sought at first instance, by which it was sought that the decision of the European Commission of 12 July 2018, C(2018) 4385 final, ([1]) be annulled and that the Commission be ordered to pay the costs of the proceedings.

Grounds of appeal and main arguments

The appellant claims that the General Court misconstrued the meaning of Articles 107 TFEU and 108 TFEU in relation to Paragraph 7a of the Niedersächsisches Nahverkehrsgesetz (Law on local transport of the Land of Lower Saxony; the 'NNVG'). Paragraph 7a of the NNVG constitutes, contrary to the findings of the General Court, new State aid that is subject to the obligation to notify.

As regards Article 107 TFEU, what is at issue is not merely the domestic transfer of financial resources, since the transport authorities, in their dual role as owners of public transport undertakings, benefit directly from the allocation of resources and use them selectively at the expense of the private sector via direct awards. The transport authorities exercised over the public transport undertakings control similar to that which they exercise over their own departments. The allocation of resources to the transport authorities is inextricably linked with a favouring effect, since at that point in time the use of the resources for the economic activities of municipal undertakings is often already established. This distorts competition and affects trade between Member States.

Moreover, on account of the fact that Paragraph 7a of the NNVG amounts to aid, but also independently therefrom, there has been an infringement of Article 108(3) TFEU, since the Federal Republic of Germany failed to notify Paragraph 7a of the NNVG to the European Commission.

(1) European Commission decision not to raise objections to the measure adopted by the Land Niedersachsen under Paragraph 7a of the Niedersächsisches Nahverkehrsgesetz (Law on local transport of the Land of Lower Saxony) (Case SA. 46697 (2017/NN)) (OJ 2018 C 292, p. 1).

Action brought on 5 December 2020 — European Commission v Slovak Republic

(Case C-661/20)

(2021/C 44/38)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: C. Hermes, R. Lindenthal, acting as Agents)

Defendant: Slovak Republic

Form of order sought

The applicant claims that the Court should:

— Declare that the Slovak Republic has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC (1) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in conjunction with Article 7 thereof, inasmuch as it exempted programs for the care of forests and the amendments thereto, casual logging and measures for the prevention of risk to forests and for the elimination of the consequences of damage caused by natural disasters from the requirement that, in the event that they are such as to be likely to have a significant effect on Natural 2000 network areas, they are to be subject to appropriate assessment of their effects on the relevant areas in view of the conservation objectives of those areas,

— Declare that the Slovak Republic has failed to fulfil its obligations stemming from Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in conjunction with Article 7 thereof inasmuch as it has failed to adopt appropriate steps for the prevention of the deterioration of the habitats and of significant disturbance in the special areas of conservation designated for the Capercaillie (OCHÚ Low Tatras SKCHVU018, OCHÚ Tatras SKCHVU030, OCHÚ Greater Fatra SKCHVU033, OCHÚ Muránska planina-Stolica SKCHVU017, OCHÚ Choč mountains SKCHVU050, OCHÚ Horná Orava SKCHVU008, OCHÚ Volovec mountains SKCHVU036, OCHÚ Lesser Fatra SKCHVU013, OCHÚ Poľana SKCHVU022, OCHÚ Slovenský Raj (Slovak paradise) SKCHVU053, OCHÚ Levoča mountains SKCHVU051 and OCHÚ Strážov mountains SKCHVU028),

— Declare that the Slovak Republic has failed to fulfil its obligations stemming from Article 4(1) of Directive 2009/147/EC (2) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds inasmuch as it has failed to adopt specific protective measures concerning the habitat of the Capercaillie in connection with OCHÚ Low Tatras SKCHVU018, OCHÚ Tatras SKCHVU030, OCHÚ Greater Fatra SKCHVU033, OCHÚ Muránska planina-Stolica SKCHVU017, OCHÚ Volovec mountains SKCHVU036, OCHÚ SKCHVU013 Lesser Fatra and OCHÚ Levoča mountains SKCHVU051, designated for its protection, so as to ensure its survival and reproduction in the areas of its distribution, and

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

According to Article 6(3) of the Directive on Habitats any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon is to be subject to appropriate assessment of its effects on the site in view of the site's conservation objectives. The competent national authorities may not, on the basis of the conclusions of the assessment of the effects on the site, agree with the plan or project unless they have ascertained that it will not adversely affect the integrity of the site concerned. In Slovakia, the zákon o ochrane prírody (Law on nature protection) and the zákon o lesoch (Law on Forests) do not ensure that programs for the care of forests and amendments thereto, casual logging and measures for the prevention of risk to forests and for the elimination of the consequences of damage cause by natural disasters were subject to the requirement of an appropriate assessment of the effects on Natura 2000 network sites. The correct transposition of Article 6(3) of the Directive on Habitats in conjunction with Article 7 thereof was not ensured at the point at which the time limit laid down in the reasoned opinion expired and still causes continuing problems.

According to Article 6(2) of the Directive on Habitats, Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive. Under Article 7 of the Directive on Habitats, that provision also covers both sites with European Union significance and also specific protected areas under the Directive on Birds. The Slovak Republic, under Article 4(1) of the Directive on Birds, has progressively designated 12 special areas of conservation for the protection of the Capercaillie, which is a species set out in Annex I to the Directive on Birds. However, Slovakia has not taken appropriate steps to avoid the deterioration of the habitats of the Capercaillie and significant disturbance of the species in those 12 special areas of conservation.

Under Article 4(1) of the Directive on Birds, the Slovak Republic was under the obligation, in the 12 special areas of conservation designated for the Capercaillie, to provide for special measures, which include the obligation to provide for special conservation objectives. At the point at which the time limit in the reasoned opinion had expired, and even at the point at which the present application was lodged, the Slovak Republic still had not, under the Law on Nature Protection, adopted programs for the management of conservation areas for the habitats of the Capercaillie in 7 special areas of conservation.

([1]) OJ 1992 L 206, p. 7.
([2]) OJ 2010 L 20, p. 7.

Appeal brought on 4 December 2020 by the Single Resolution Board against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Case T-414/17, Hypo Vorarlberg Bank AG v Single Resolution Board

(Case C-663/20 P)

(2021/C 44/39)

Language of the case: German

Parties

Appellant: Single Resolution Board (SRB) (represented by: H. Ehlers, P.A. Messina and J. Kerlin, acting as Agents, and H.-G. Kamann, F. Louis and P. Gey, Rechtsanwälte)

Other party to the proceedings: Hypo Vorarlberg Bank AG

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 23 September 2020, *Hypo Vorarlberg Bank* v *Single Resolution Board* (T-414/17, EU:T:2020:437);

— dismiss the application for annulment;

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

Grounds of appeal and main arguments

First ground of appeal: infringement of Article 85(3) of the Rules of Procedure of the General Court, distortion of evidence and breach of the SRB's right to a fair trial

By its first ground of appeal, the SRB submits that the General Court misinterpreted and misapplied Article 85(3) of its Rules of Procedure, in so far as it held that the SRB had not properly authenticated its decision of 11 April 2017 on the calculation of the 2017 ex ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05) (the 'decision at issue'), since the evidence produced by the SRB at the hearing in respect of proper authentication was considered inadmissible. In that regard, the SRB claims, in the first place, that it was justified to produce evidence at the hearing to show that the SRB decision had been properly authenticated, since the issue of lacking authentication had not previously been the subject of the written procedure, nor dealt with in a measure of organisation of procedure or a measure of inquiry ordered by the General Court. In the second place, the SRB claims that the General Court distorted the evidence before it, in so far as it disregarded that evidence and declared that, even if it were admissible, the evidence was unsubstantiated. Furthermore, the appellant submits that the General Court, in declaring that the evidence produced did not, in any event, demonstrate an inextricable link between the routing slip signed by hand by the president of the SRB and the annex to the decision at issue, failed to take into account the reference number on the routing slip, by which that slip is inextricably linked with the electronic file which, for its part, contains the decision at issue and the annex thereto. In the third place, the SRB claims that the General Court breached its right to a fair trial, in so far as it did not raise the issue of lacking authentication before the hearing, in so far as it did not accept the SRB's offer to produce further evidence and in so far as it gave the SRB no indication at any time that it deemed the evidence insufficient.

Second ground of appeal: infringement of Article 296 TFEU

By its second ground of appeal, the SRB submits that the General Court overstated the requirements of Article 296 TFEU and Article 47 of the Charter of Fundamental Rights, in so far as it declared that the decision at issue lacked an adequate statement of reasons, since Hypo Vorarlberg Bank was not able to verify completely the accuracy of the calculation set out therein. According to the appellant, the General Court failed to reconcile those requirements with the obligation of secrecy, as provided for in Article 339 TFEU — which the General Court failed to mention in the judgment under appeal — and as follows from other principles of EU law. Regulation (EU) 2015/63, [1] on which the calculation of the contributions is based and the validity of which has not been contested by Hypo Vorarlberg Bank, strikes a proportionate balance between the principles of transparency, the obligation to observe professional secrecy and the other aims pursued by that regulation, in particular, those of reaching a certain target level of contributions to finance the Single Resolution Fund and of raising contributions from all the relevant institutions in a fair and proportionate way. The SRB submits that it complied with that legal framework in the reasoning of the decision at issue and thereby fulfilled its obligation to state adequate reasons for the decision at issue.

[1] Commission Delegated Regulation of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Appeal brought on 4 December 2020 by the Single Resolution Board against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Case T-420/17, Portigon AG v Single Resolution Board

(Case C-664/20 P)

(2021/C 44/40)

Language of the case: German

Parties

Appellant: Single Resolution Board (SRB) (represented by: P.A. Messina and J. Kerlin, acting as Agents, and H.-G. Kamann, F. Louis and P. Gey, Rechtsanwälte)

Other parties to the proceedings: Portigon AG, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 23 September 2020, *Portigon* v *Single Resolution Board* (T-420/17, EU:T:2020:438);

— dismiss the application for annulment;

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

Grounds of appeal and main arguments

First ground of appeal: infringement of Article 85(3) of the Rules of Procedure of the General Court, distortion of evidence and breach of the SRB's right to a fair trial

By its first ground of appeal, the SRB submits that the General Court misinterpreted and misapplied Article 85(3) of its Rules of Procedure, in so far as it held that the SRB had not properly authenticated its decision of 11 April 2017 on the calculation of the 2017 ex ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05) (the 'decision at issue'), since the evidence produced by the SRB at the hearing to that effect was considered inadmissible. In that regard, the SRB claims, in the first place, that it was justified to produce evidence at the hearing to show that the decision at issue had been properly authenticated, since the issue of lacking authentication had not previously been the subject of the written procedure, nor dealt with in a measure of organisation of procedure or a measure of inquiry ordered by the General Court. In the second place, the SRB claims that the General Court distorted the evidence before it, in so far as it disregarded that evidence and declared that, even if it were admissible, the evidence was unsubstantiated. Furthermore, the appellant submits that the General Court, in declaring that the evidence produced did not, in any event, demonstrate an inextricable link between the routing slip signed by hand by the president of the SRB and the annex to the decision at issue, failed to take into account the reference number on the routing slip, by which that slip is inextricably linked with the electronic file which, for its part, contains the decision at issue and the annex thereto. In the third place, the SRB claims that the General Court breached its right to a fair trial, in so far as it did not raise the issue of lacking authentication before the hearing, in so far as it gave the SRB no opportunity to respond in writing to Portigon's unsubstantiated claims before the hearing, in so far as it did not accept the SRB's offer to produce further evidence and in so far as it gave the SRB no indication at any time that it deemed the evidence insufficient.

Second ground of appeal: infringement of Article 296 TFEU

By its second ground of appeal, the SRB submits that the General Court overstated the requirements of Article 296 TFEU and Article 47 of the Charter of Fundamental Rights, in so far as it declared that the decision at issue lacked an adequate statement of reasons, since Portigon was not able to verify completely the accuracy of the calculation set out therein. According to the appellant, the General Court failed to reconcile those requirements with the obligation of secrecy, as provided for in Article 339 TFEU — which the General Court failed to mention in the judgment under appeal — and as follows from other principles of EU law. Regulation (EU) 2015/63, ([1]) on which the calculation of the contributions is based and the validity of which has not been contested by Portigon, strikes a proportionate balance between the principles of transparency, the obligation to observe professional secrecy and the other aims pursued by that regulation, in particular, those of reaching a certain target level of contributions to finance the Single Resolution Fund and of raising contributions from all the relevant institutions in a fair and proportionate way. The SRB submits that it complied with that legal framework in the reasoning of the decision at issue and thereby fulfilled its obligation to state adequate reasons for the decision at issue.

([1]) Commission Delegated Regulation of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Appeal brought on 7 December 2020 by Gesamtverband Verkehrsgewerbe Niedersachsen eV (GVN) against the judgment of the General Court (Fifth Chamber) delivered on 5 October 2020 in Case T-583/18, GVN v European Commission

(Case C-666/20 P)

(2021/C 44/41)

Language of the case: German

Parties

Appellant: Gesamtverband Verkehrsgewerbe Niedersachsen eV (GVN) (represented by: C. Antweiler, Rechtsanwalt)

Other parties to the proceedings: European Commission, Federal Republic of Germany, Land Niedersachsen

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 5 October 2020, *GVN* v *Commission* (T-583/18, EU:T:2020:467), in the form of paragraphs 1 and 2 of the operative part;

— should the appeal be declared well founded, grant the form of order sought at first instance, by which it was sought that the decision of the European Commission of 12 July 2018, C(2018) 4385 final, ([1]) be annulled.

Grounds of appeal and main arguments

The appellant claims, in the first place, that the General Court infringed Article 47(2) of the Charter of Fundamental Rights and made a procedural error, in so far as it completely disregarded the submission made by the appellant, which was relevant to the decision, regarding the conditions under which the German *Länder* are, in accordance with Paragraph 64a of the Personenbeförderungsgesetz (Law on passenger transport; the 'PBefG'), empowered to substitute Paragraph 45a of that law with laws of the *Länder*.

In the second place, the appellant alleges multiple infringements of EU law.

First of all, EU law was infringed in that the General Court stated, in paragraph 36 of the judgment under appeal, that it was common ground between the parties that the German legislature, through Paragraph 45a of the PBefG and the third sentence of Paragraph 8(4) of the PBefG, had excluded compensation for the public transportation of persons with season tickets for journeys relating to their studies from the scope of Regulation (EC) No 1370/2007. ([2]) In doing so, the General Court disregarded the fact that the Federal Republic of Germany notified neither Paragraph 45a of the PBefG nor the third sentence of Paragraph 8(4) of the PBefG to the European Commission in accordance with the second sentence of Article 3 (3) of Regulation No 1370/2007.

A further infringement of EU law lies in the fact that the General Court, in paragraph 40 et seq. of the judgment under appeal, unlawfully accepted that a legislature could, under Article 3(3) of Regulation No 1370/2007, not only exclude rules on financial compensation for public service obligations for the transportation of pupils and apprentices from the scope of the regulation, but also simply restrict the scope of that exception by revising such a decision in order to put such compensation back within the scope of Regulation No 1370/2007. In fact, the revision considered admissible by the General Court constitutes the *actus contrarius* of the decision under the second sentence of Article 3(3) of Regulation No 1370/2007; it is therefore subject to the same formal conditions for validity, which, in the present case, are not met failing any notification of the revision to the Commission.

Lastly, there has been an infringement of EU law — namely Article 107 TFEU and Article 108(3) TFEU — in that the General Court held, in respect of the second plea in law, that, on the basis of Paragraph 7a of the Niedersächsisches Nahverkehrsgesetz (Law on local transport of the Land of Lower Saxony; the 'NNVG') the *Land* of Lower Saxony had not granted any State aid to undertakings, even though all municipal undertakings received in full from the municipal transport authorities the financial resources which the *Land* of Lower Saxony made available to the latter. Contrary to the General Court's finding, it is not possible to draw a distinction between the transport authorities' activity as public authorities, on the one hand, and their economic activity as holders of shares in the transport undertakings controlled by them, on the other.

(1) European Commission decision not to raise objections to the measure adopted by the Land Niedersachsen under Paragraph 7a of the Niedersächsisches Nahverkehrsgesetz (Law on local transport of the Land of Lower Saxony) (Case SA. 46697 (2017/NN)) (OJ 2018 C 292, p. 1).

(2) Regulation of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Appeal brought on 15 December 2020 by Les Mousquetaires and ITM Entreprises SAS against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 5 October 2020 in Case T-255/17 Les Mousquetaires and ITM Entreprises v Commission

(Case C-682/20 P)

(2021/C 44/42)

Language of the case: French

Parties

Appellants: Les Mousquetaires S.A.S., ITM Entreprises S.A.S (represented by: N. Jalabert-Doury and K. Mebarek, avocats)

Other party to the proceedings: European Commission, Council of the European Union

Form of order sought

— Annul paragraph 2 of the judgment of the General Court in Case T-255/17;

— Grant the forms of order sought by the applicants at first instance and annul European Commission Decision C(2017) 1057 of 9 February 2017 and Decision C(2017) 1361 of 21 February 2017, ordering Intermarché and Les Mousquetaires and all companies directly or indirectly controlled by them to submit to an inspection in accordance with Article 20(1) and (4) of Council Regulation (EC) No 1/2003;

— Order the European Commission to pay all the costs of the entire proceedings, including the proceedings before the General Court.

Grounds of appeal and main arguments

The first ground of appeal alleges errors of law and a failure to state reasons in the context of the analysis of the effectiveness of the legal remedies concerning the conduct of inspections.

The second ground of appeal alleges infringement of Articles 6 and 8 of the ECHR, Article 296 of the Treaty and Article 20 (4) of Regulation No 1/2003 in that the General Court disregarded the obligation to state reasons and to limit inspection decisions.

The third ground of appeal alleges an error of law and infringement of Regulation No 1/2003 in that the General Court classified a procedural phase 'before the adoption of any measure alleging that an infringement has been committed' as not subject to the regulation.

The fourth ground of appeal alleges infringement of Articles 6 and 8 of the ECHR and Article 19 of Regulation No 1/2003 in that the General Court classified as reasonable grounds elements affected by formal and substantial irregularities.

The fifth ground of appeal alleges a failure to state reasons resulting from a failure to check the probative value of those grounds and an error as to the classification as ground.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia No 6 de Reus — Spain) — Jaime Cardus Suarez v Catalunya Caixa SA (Catalunya Banc S.A.)

(Case C-352/18) [1]

(2021/C 44/43)

Language of the case: Spanish

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

[1] OJ C 285, 13.8.2018.

Order of the President of the Court of 14 October 2020 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Healthspan Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-703/18) [1]

(2021/C 44/44)

Language of the case: English

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

[1] OJ C 25, 21.1.2019.

Order of the President of the Ninth of the Court of 13 November 2020 — Wallapop, SL v European Union Intellectual Property Office, Unipreus, S.L.

(Case C-763/18) [1]

(2021/C 44/45)

Language of the case: Spanish

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

[1] OJ C 131, 8.4.2019.

Order of the President of the Court of 14 October 2020 (request for a preliminary ruling from the Conseil d'État — Belgium) — B. O. L. v État belge

(Case C-250/19) [1]

(2021/C 44/46)

Language of the case: French

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

[1] OJ C 182, 27.5.2019.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Tribunal d'instance d'Aulnay-Sous-Bois — France) — JE, KF v XL Airways SA

(Case C-286/19) ([1])

(2021/C 44/47)

Language of the case: French

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

([1]) OJ C 206, 17.6.2019.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia No 6 de Ceuta — Spain) — YV v Banco Bilbao Vizcaya Argentaria SA

(Case C-452/19) ([1])

(2021/C 44/48)

Language of the case: Spanish

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

([1]) OJ C 328, 30.9.2019.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta — Spain) — BX v Banco Bilbao Vizcaya Argentaria SA

(Case C-455/19) ([1])

(2021/C 44/49)

Language of the case: Spanish

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

([1]) OJ C 328, 30.9.2019.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta — Spain) — JF, KG v Bankia SA

(Case C-482/19) ([1])

(2021/C 44/50)

Language of the case: Spanish

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

([1]) OJ C 328, 30.9.2019.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta — Spain) — ED v Banco Bilbao Vizcaya Argentaria, SA

(Case C-523/19) ([1])

(2021/C 44/51)

Language of the case: Spanish

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

([1]) OJ C 413, 9.12.2019.

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta — Spain) — HG, IH v Bankia SA

(Case C-527/19) ([1])

(2021/C 44/52)

Language of the case: Spanish

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

([1]) OJ C 413, 9.12.2019.

Order of the President of the Court of 30 October 2020 (request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha — Spain) — KM v Subdelegación del Gobierno en Albacete

(Case C-731/19) ([1])

(2021/C 44/53)

Language of the case: Spanish

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

([1]) OJ C 432, 23.12.2019

Order of the President of the Court of 29 October 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta — Spain) — LL, MK v Banco Bilbao Vizcaya Argentaria SA

(Case C-732/19) ([1])

(2021/C 44/54)

Language of the case: Spanish

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

([1]) OJ C 10, 13.1.2020.

Order of the President of the Court of 22 October 2020 (request for a preliminary ruling from the Sofiyski rayonen sad — Bulgaria) — PH, OI v 'Eurobank Bulgaria' AD

(Case C-745/19) ([1])

(2021/C 44/55)

Language of the case: Bulgarian

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

([1]) OJ C 413, 9.12.2019.

Order of the President of the Court of 6 October 2020 (request for a preliminary ruling from the High Court of Justice (Queen's Bench Division) — United Kingdom) — Daimler AG v Walleniusrederierna Aktiebolag, Wallenius Wilhelmsen ASA, Wallenius Logistics AB, Wilhelmsen Ships Holding Malta Limited, Wallenius Wilhelmsen Ocean AS, 'K' Line Holding (Europe) Limited, 'K' Line Europe Limited, Compañia Sudamericana de Vapores SA

(Case C-2/20) ([1])

(2021/C 44/56)

Language of the case: English

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

([1]) OJ C 68, 2.3.2020.

Order of the President of the Court of 9 October 2020 (request for a preliminary ruling from the Juzgado de lo Mercantil de Badajoz — Spain) — Asociación de Usuarios de Bancos, Cajas y Seguros de España (Adicae Consumidores Críticos y Responsables) v Caja Almendralejo Sociedad Cooperativa de Credito

(Case C-15/20) ([1])

(2021/C 44/57)

Language of the case: Spanish

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

([1]) OJ C 137, 27.4.2020.

Order of the President of the Court of 9 October 2020 (request for a preliminary ruling from the Juzgado de lo Mercantil de Badajoz — Spain) — Asociación de Usuarios de Bancos, Cajas y Seguros de España (Adicae Consumidores Críticos y Responsables) v Liberbank SA

(Case C-16/20) ([1])

(2021/C 44/58)

Language of the case: Spanish

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

([1]) OJ C 137, 27.4.2020.

Order of the President of the Court of 16 October 2020 (request for a preliminary ruling from the Conseil d'État — Belgium) — E. M. T.v Commissaire général aux réfugiés et aux apatrides

(Case C-20/20) ([1])

(2021/C 44/59)

Language of the case: French

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

([1]) OJ C 95, 23.3.2020.

Order of the President of the Court of 19 November 2020 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Laudamotion GmbH v Verein für Konsumenteninformation

(Case C-189/20) ([1])

(2021/C 44/60)

Language of the case: German

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

([1]) OJ C 279, 24.8.2020.

Order of the President of the Court of 12 November 2020 (request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta — Spain) — XV v Cajamar Caja Rural S.C.C.

(Case C-268/20) ([1])

(2021/C 44/61)

Language of the case: Spanish

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

([1]) OJ C 320, 28.9.2020.

Order of the President of the Court of 14 October 2020 (request for a preliminary ruling from the Landgericht Düsseldorf — Germany) — Eurowings GmbH v GDVI Verbraucherhilfe GmbH

(Case C-365/20) ([1])

(2021/C 44/62)

Language of the case: German

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

([1]) OJ C 390, 16.11.2020.

Order of the President of the Court of 27 October 2020 (request for a preliminary ruling from the Landgericht Frankfurt am Main — Germany) — flightright GmbH v SunExpressGünes Ekspres Havacilik A.S.

(Case C-434/20) ([1])

(2021/C 44/63)

Language of the case: German

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

([1]) OJ C 433, 14.12.2020.

Order of the President of the Court of 9 November 2020 (request for a preliminary ruling from the Landgericht Düsseldorf — Germany) — BT v Eurowings GmbH

(Case C-438/20) ([1])

(2021/C 44/64)

Language of the case: German

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

([1]) OJ C 433, 14.12.2020.

GENERAL COURT

Judgment of the General Court of 16 December 2020 — Industrial Química del Nalón v Commission

(Case T-635/18) ([1])

(Non-contractual liability — Environment — Classification, labelling and packaging of certain substances and mixtures — Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2021/C 44/65)

Language of the case: English

Parties

Applicant: Industrial Química del Nalón, SA (Oviedo, Spain) (represented by: K. Van Maldegem, M. Grunchard, S. Saez Moreno and P. Sellar, lawyers)

Defendant: European Commission (represented by: M. Wilderspin, R. Lindenthal and K. Talabér-Ritz, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent), European Chemicals Agency (represented by: M. Heikkilä and W. Broere, acting as Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as that regulation classified pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Industrial Química del Nalón, SA, to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

([1]) OJ C 16, 14.1.2019.

Judgment of the General Court of 16 December 2020 — Tokai erftcarbon v Commission

(Case T-636/18) ([1])

(Non-contractual liability — Environment — Classification, labelling and packaging of certain substances and mixtures — Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2021/C 44/66)

Language of the case: English

Parties

Applicant: Tokai erftcarbon GmbH (Grevenbroich, Germany) (represented by: K. Van Maldegem, M. Grunchard, S. Saez Moreno and P. Sellar, lawyers)

Defendant: European Commission (represented by: M. Wilderspin, R. Lindenthal and K. Talabér-Ritz, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent), European Chemicals Agency (represented by: M. Heikkilä and W. Broere, acting as Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as that regulation classified pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tokai erftcarbon GmbH to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

([1]) OJ C 16, 14.1.2019.

Judgment of the General Court of 16 December 2020 — Bawtry Carbon International v Commission

(Case T-637/18) ([1])

(Non-contractual liability — Environment — Classification, labelling and packaging of certain substances and mixtures — Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2021/C 44/67)

Language of the case: English

Parties

Applicant: Bawtry Carbon International Ltd (Doncaster, United Kingdom) (represented by: K. Van Maldegem, M. Grunchard, S. Saez Moreno and P. Sellar, lawyers)

Defendant: European Commission (represented by: M. Wilderspin, R. Lindenthal and K. Talabér-Ritz, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent), European Chemicals Agency (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as that regulation classified pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Bawtry Carbon International Ltd to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

([1]) OJ C 16, 14.1.2019.

Judgment of the General Court of 16 December 2020 — Deza v Commission

(Case T-638/18) ([1])

(Non-contractual liability — Environment — Classification, labelling and packaging of certain substances and mixtures — Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2021/C 44/68)

Language of the case: English

Parties

Applicant: Deza, a.s. (Valašské Meziříčí, Czech Republic) (represented by: K. Van Maldegem, M. Grunchard, S. Saez Moreno and P. Sellar, lawyers)

Defendant: European Commission (represented by: M. Wilderspin, R. Lindenthal and K. Talabér-Ritz, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent), European Chemicals Agency (represented by: M. Heikkilä and W. Broere, acting as Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as that regulation classified pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Deza, a.s. to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

(1) OJ C 16, 14.1.2019.

Judgment of the General Court of 16 December 2020 — SGL Carbon v Commission

(Case T-639/18) (1)

(Non-contractual liability — Environment — Classification, labelling and packaging of certain substances and mixtures — Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2021/C 44/69)

Language of the case: English

Parties

Applicant: SGL Carbon SE (Wiesbaden, Germany) (represented by: K. Van Maldegem, M. Grunchard, S. Saez Moreno and P. Sellar, lawyers)

Defendant: European Commission (represented by: M. Wilderspin, R. Lindenthal and K. Talabér-Ritz, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent), European Chemicals Agency (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as that regulation classified pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders SGL Carbon SE to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

(1) OJ C 16, 14.1.2019.

Judgment of the General Court of 16 December 2020 — Bilbaína de Alquitranes v Commission

(Case T-645/18) ([1])

(Non-contractual liability — Environment — Classification, labelling and packaging of certain substances and mixtures — Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

(2021/C 44/70)

Language of the case: English

Parties

Applicant: Bilbaína de Alquitranes, SA (Luchana-Baracaldo, Spain) (represented by: K. Van Maldegem, M. Grunchard, S. Saez Moreno and P. Sellar, lawyers)

Defendant: European Commission (represented by: M. Wilderspin, R. Lindenthal and K. Talabér-Ritz, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz, acting as Agent), European Chemicals Agency (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents)

Re:

Action under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as that regulation classified pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Bilbaína de Alquitranes, SA to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

([1]) OJ C 16, 14.1.2019.

Action brought on 11 September 2020 — Luna Italia v EUIPO — Luna (LUNA SPLENDIDA)

(Case T-571/20)

(2021/C 44/71)

Language of the case: English

Parties

Applicant: Luna Italia Srl (Cantu, Italy) (represented by: N. Papakostas, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Luna AE (Agios Stefanos, Greece)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark LUNA SPLENDIDA in colour gold — European Union trade mark No 16 308 108

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 June 2020 in Case R 1895/2019-5

Form of order sought

The applicant claims that the Court should:

— consider the present application admissible;

— annul the contested decision.

Plea in law

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

Action brought on 12 November 2020 — Solar Electric and Others v Commission

(Case T-678/20)

(2021/C 44/72)

Language of the case: French

Parties

Applicants: Solar Electric Holding (Le Lamentin, France), Solar Electric Guyane (Le Lamentin), Solar Electric Martinique (Le Lamentin), Société de production d'énergies renouvelables (Le Lamentin) (represented by: S. Manna, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the Commission's decision SA.40349 (2020/MI3) B2/AD/MKL/D*2020/101866 of 3 September 2020 rejecting their complaint of 20 June 2020 concerning the State aid granted to photovoltaic producers by the French State pursuant to the pricing orders of 10 July 2006, 12 January 2010 and 31 August 2010, on the ground that:

  — the applicants are entitled, pursuant to Article 24(2) of Regulation (EU) 2015/1589, to file a complaint with the Commission in order to report unlawful aid;

  — the Commission is required to open a preliminary examination without delay for any complaint relating to unlawful aid pursuant to Article 12(1) of Regulation EU 2015/1589;

  — the Commission is required to ensure that the provisions of TFEU on State aid are applied and it cannot fail to act.

Pleas in law and main arguments

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

1. First plea in law based on an error which allegedly vitiates the contested decision in that it finds that the complaint filed by the applicants does not fall with the scope of application of Article 24(2) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (JO 2015 L 248, p. 9). The applicants argue to the contrary.

2. Second plea in law, alleging an error in law by the Commission in its interpretation of the scope of application of Article 12(1) of Regulation 2015/1589. The applicants consider that their status as an interested party is sufficient to trigger the obligation for the Commission to open immediately a preliminary examination in respect of any complaint relating to unlawful aid in accordance with that provision.

3. Third plea in law, alleging that the Commission failed in its obligations under Articles 107, 108 and 109 TFEU and Regulation 2015/1589 referred to above. The applicants claim that the Commission is required to ensure that the provisions of TFEU on State aid are applied and cannot fail to act in the examination of a complaint reporting unlawful aid.

Action brought on 3 December 2020 — OL v Council

(Case T-714/20)

(2021/C 44/73)

Language of the case: Spanish

Parties

Applicant: OL (represented by: J. Viñals Camallonga, J. Iriarte Ángel and E. Delage González, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, in its present wording, in so far as it refers to or may affect the applicant.

— annul Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, in its present wording, in so far as it refers to or may affect the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error in the assessment of the facts on which the contested restrictions are based at the time those restrictions were extended, in so far as those restrictions were extended in respect of the applicant without any genuine factual or evidential basis.

2. Second plea in law, alleging failure to fulfil the obligation to state reasons, in so far as the contested measures lack proper reasoning in respect of the applicant, which prevents the applicant from putting forward a proper defence.

3. Third plea in law, alleging infringement of the right to freedom of expression, in so far as the alleged declarations, calls to action and demonstrations attributed to the applicant are covered by that right.

4. Fourth plea in law, alleging infringement of the right to effective judicial protection as regards the reasoning for the contested measures, the lack of any genuine factual basis for the reasons given by the Council and infringement of the rights to freedom of expression, defence and property, in so far as the requirement to provide genuine evidence and the requirement to state reasons when extending the contested measures were not met, which affects the other rights.

5. Fifth plea in law, alleging infringement of the right to property, in conjunction with the principle of proportionality, in so far as that right was disproportionately restricted.

6. Sixth plea in law, alleging infringement of the principle of equal treatment, in so far as the comparative position of the applicant was adversely affected without there being any justification.

7. Seventh plea in law, alleging misuse of powers, in so far as there is objective, precise and consistent evidence to show that in imposing and extending the sanctions different objectives were intended to those stated by the Council.

Action brought on 9 December 2020 — Perry Street Software v EUIPO — Toolstream (SCRUFFS)

(Case T-720/20)

(2021/C 44/74)

Language of the case: English

Parties

Applicant: Perry Street Software, Inc. (New York, New York, United States) (represented by: M. Hawkins, solicitor and T. Dolde, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Toolstream Ltd (Yeovil, United Kingdom)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the word mark SCRUFFS — International registration designating the European Union No 1 171 590

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 September 2020 in Case R 550/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party before the Board of Appeal (assuming it intervenes in the proceedings) to bear the costs of the proceedings.

Pleas in law

— Failure to carry out a full examination and distortion of facts and evidence pursuant to Article 72(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 59(1)(a) in conjunction with Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 59(1)(a) in conjunction with Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 December 2020 — Prigozhin v Council

(Case T-723/20)

(2021/C 44/75)

Language of the case: English

Parties

Applicant: Yevgeniy Viktorovich Prigozhin (Saint Petersburg, Russia) (represented by: M. Lewis, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2020/1481 of 14 October 2020 implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya ([1]) and Council Implementing Decision (CFSP) 2020/1483 of 14 October 2020 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya ([2]);

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council has manifestly erred in considering that any of the criteria for including the applicant on the list of persons, entities and bodies subject to restrictive measures in view of the situation in Libya were fulfilled in the applicant's case. The applicant alleges that the Council has not identified the entity described as Wagner Group, avers that he has no knowledge of an entity known as Wagner Group, that he has not had any links with any such entity and has not been engaged with nor has he supported it.

2. Second plea in law, alleging that the Council infringed its obligation to state its reasons for taking the Decision. It is alleged that the statement of reasons is not appropriate to restrictive measures, does not state the matters of fact and law and does not make actual and specific reference to the precise information contained in the relevant file indicating that a decision has been made in respect of the applicant.

3. Third plea in law, alleging that the Council failed to give adequate and substantiated reasons and made manifest errors of assessment in deciding to make the Decision.

4. Fourth plea in law, alleging that the Council has abused its powers as a result of manifest errors of assessment in deciding to make the Decision. It is alleged that the decision to impose the restrictive measures on the applicant was taken with the exclusive or main purpose of achieving political objectives and not for the stated reasons.

5. Fifth plea in law, alleging that the Council has infringed the applicant's rights of defence and the right to effective judicial protection. Given that the applicant alleges that the purpose of the Decision was to pursue political objectives as against the stated reasons, the applicant contends that he is entitled to but has not been provided with all documents relating to the taking of the Decision.

6. Sixth plea in law, alleging that the Council has infringed, without justification or proportion, the applicant's fundamental human rights, including the right to protection of property, business and movement.

7. Seventh plea in law, alleging that the Council has infringed the principle of foreseeability of the acts of the Union. It is alleged that the vagueness of the applicant's alleged conduct as set out in the statement of reasons make it impossible for a person to know what acts he or she should refrain from in order to avoid the imposition of restrictive measures.

([1]) OJ 2020, L 341, p. 7.
([2]) OJ 2020, L 341, p. 16.

Action brought on 14 December 2020 — Senseon Tech v EUIPO — Accuride International (SENSEON)

(Case T-724/20)

(2021/C 44/76)

Language of the case: English

Parties

Applicant: Senseon Tech Ltd (London, United Kingdom) (represented by: P. Andreottola and M. Li Trenta, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Accuride International Inc. (Santa Fe Springs, California, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark SENSEON — Application for registration No 17 758 831

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 30 September 2020 in Case R 2736/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the applicant's appeal against the contested decision in its entirety;

— order EUIPO to pay the costs of the applicant.

Pleas in law

— Error in the assessment of the relevant public;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in relation to the determination of similarity of goods and services;

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

Action brought on 14 December 2020 — Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology v Commission

(Case T-725/20)

(2021/C 44/77)

Language of the case: Italian

Parties

Applicants: Guangdong Haomei New Materials Co. Ltd (Qingyuan, China), Guangdong King Metal Light Alloy Technology Co. Ltd (Yuan Tan Town, China) (represented by: M. Maresca, C. Malinconico, D. Guardamagna, M. Guardamagna, D. Maresca, A. Cerruti, A. Malinconico and G. La Malfa Ribolla, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should annul Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020, published in the *Official Journal of the European Union* on 13 October 2020, imposing a provisional anti-dumping duty on aluminium extrusions originating in the People's Republic of China imported by the applicants and, in the alternative, annul the basic regulation (Regulation 1036/2016) and order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the TFEU and the legal rules governing the application of the Treaty, infringement of the articles of the basic regulation relating to the obligation to ascertain specifically that the requirements for dumping have been met, infringement of the principles of due process, *audi alteram partem*, and good administration referred to in Article 41 of the EU Charter of Fundamental Rights, and of the principle that the best information available must be used, infringement of essential procedural requirements, misuse of powers due to the generic nature of the objections and failure genuinely to verify the information provided in the spirit of cooperation.

   — The applicants submit in that regard that the contested regulation is vitiated by unlawfulness in so far as the Commission failed to ascertain specifically the conditions of the markets considered and the applicants were not given the opportunity substantively to exercise their rights of defence. In short, Haomei and King Metal were found liable for dumping, and countervailing duties accordingly imposed on them, not on account of their conduct in respect of exports from China, but rather due to a complex favourable assessment of the Chinese economy, and therefore for entirely generic reasons. Satisfied with this, the Commission failed to carry out any specific assessment of the documents provided by the applicant undertakings.

2. Second plea in law, alleging infringement of the TFEU and the legal rules governing the application of the Treaty, and the absence of dumping with regard to the criteria set out in the basic regulation, infringement of the articles of the basic regulation relating to the determination of dumping margins (Article 2, paragraph 6a in particular), incorrect identification of the 'normal' price of the goods under investigation, application of provisional duties not on account of the (unestablished) liability of the exporters but in reaction to the overall structure of the Chinese economy, misuse of powers, and failure to investigate and to state reasons.

— The applicants allege unlawfulness in that regard stemming from the fact that the Commission conducted an investigation that was incomplete and in any event led to an uncertain outcome; that outcome was also vitiated by the unlawfulness deriving from the regulation on the registration of goods, which is already the subject of an action before the Court, in so far as the Commission included goods codes (7610 90 90) in the investigation which, by its own admission, should not have been included as they relate to goods that are different to those subject to investigation. Such an error (having permitted the inclusion of different goods) eliminates both the dumping conditions (in so far as the very low relative price inevitably and artificially reduces the average price) and injury to the Union industry, as the quantities involved are considerable in respect of the total volume of the goods, such as to render irrelevant the impact of the remaining part of the product imported into the European Union.

— In the second place, the applicants submit that the absence of a specific determination of their situation is incompatible with the Treaty (and the rules cited) in so far as it establishes a regime of strict or vicarious liability, which runs counter to the fundamental principles of legal certainty and legitimate expectations (judgments of the Court of Justice of 3 December 1998, *Belgocodex* (C-381/97) and of 26 April 2005, '*Goed Wonen*' (C-376/02) by reason of market price and cost structure, manifestly of the market, produced by the applicants on several occasions to — and completely ignored by — the Commission (as the positions expressed on the market economy by the Chinese Government were similarly ignored). This led to manifest unlawfulness, both as regards the substance (relating to the concepts of normal value, significant distortion, access to credit, tax regime, insolvency regime, representative countries and choice of those countries) and as regards procedure, set out at length in the present plea, resulting in a clear and detrimental discriminatory effect.

3. Third plea in law, alleging absence of injury, infringement of the basic regulation (Articles 1, 2 and 7(1)(c)), failure to investigate, manifest error and distortion of the facts relating to market shares, absence of a causal link, and failure to take account of the absence of variation in the total flow of imports.

— The applicants submit in that regard that the contested regulation is unlawful because, departing from the objective of anti-dumping, it considers that the Chinese competitors Haomei and King Metal cause injury to the Union industry, in a context of significant growth in consumption and profitability of the aluminium industry. However, there has been no finding of undercutting or underselling, required by the case-law as necessary for a finding of injury. On the contrary, in the applicants' case, the absence of undercutting and underselling has been established (by way of the various documents produced in the body of the plea) from the ex works prices of Haomei and King Metal, which are comparable with European prices (DOC.3, Bauxite report).

— In addition, the applicants submit that the European Union has no interest whatsoever in the duty being imposed, the sole interest being that of the complainants, which the Commission merely 'adopted' as its own reasoning, extending it, without analysis, to the entire European Union. In that connection, the applicants argue that the Commission, again, completely failed to take into account the information produced by the applicants during the procedure, which was also not examined during the adversarial proceedings (oral or written) or in the regulation.

4. Fourth plea in law, alleging absence of a causal link between dumping and injury, infringement of Articles 1, 2 and 7(1)(c) of the basic regulation, failure to take account of the impact of COVID-19 on commercial flows, on the purpose of the anti-dumping procedure and on the adoption of the provisional duties, incomplete and incorrect assessment of the effects of other factors, and failure to assess the applicants' observations.

— The applicants submit in that regard that, despite the seriousness and relevance of the pandemic for international trade, which has already caused unprecedented economic events (for example, the sale of oil at negative prices), the Commission did not consider it appropriate to carry out not just a study, but also not even a minimum of documentary analysis of the effects of COVID-19 on international trade and to include it in the investigation.

— The applicants submit that the Commission then failed to carry out any assessment of other factors that clearly influence the analysis: first, the growth — albeit slight — of imports from other countries such as Russia and, secondly, the rise in European worldwide exports of aluminium (paragraph 284 et seq.). The clear effect of those factors is to break the causal link between dumping and injury.

5. Fifth plea in law, alleging unlawfulness stemming from the registration regulation.

— The applicants submit in that regard that the Commission did not identify clearly the object of the imports subject to investigation and, in order to justify this, referred to an ongoing exchange of information with DG TAXUD and the ongoing examination of certain TARIC data in order to establish whether they are relevant to the analysis.

— However, the need for the measure must be established on the basis of technical matters that are not open to question. The absence or inadequacy of such analysis also leads to a direct infringement of the free movement of goods in so far as the registration is detrimental to the subsequent marketability of the imported goods, even following their entry into EU territory.

6. Sixth plea in law, alleging manifest error of assessment in determining the level of the measures, infringement of Article 14(5) of the basic regulation from another perspective, incorrect and arbitrary identification of the amount of the duties, failure to investigate, manifest error of assessment, and misuse of powers.

— The applicants submit in that regard that there are errors in the determination of the level of the measures (paragraph 330 et seq.). The rate of 30,4 % for Haomei and King Metal has been derived arbitrarily from the confidential version of the anti-dumping complaint of EA. The Commission, despite stating that it has drawn sufficient evidence from the information contained in the notice of initiation and in the complaint, arbitrarily determined a single dumping margin for all the extrusions. The misuse of powers, in respect of the purpose of the protection from harm that the Union industry might suffer, is manifest.

7. Seventh plea in law, alleging infringement of the General Agreement on Tariffs and Trade ('GATT') and, in the alternative, the unlawfulness of the basic regulation if it is not interpreted in accordance with international agreements.

— The applicants submit in that regard that Regulation 2020/1428, adopted by the Commission on the legal basis of Article 207 TFEU, departs from the concepts provided for by the relevant international law. If this should not be the case, that is, in other words, if no unlawfulness vitiates Regulation 2020/1428 directly, then the basic regulation itself is unlawful.

8. Eighth plea in law, alleging infringement of the European Convention of Human Rights in relation to the procedure imposing a penalty equivalent to a penalty under criminal law as concerns the effects produced on the exporting undertakings.

— The applicants submit in that regard that, for the applicant undertakings, the application of those duties constitutes an obstacle to the pursuit of their activities, causing irreparable harm comparable to that of a penalty under criminal law, as the European Court of Human Rights has held on many occasions.

Action brought on 15 December 2020 — Aurubis v Commission

(Case T-729/20)

(2021/C 44/78)

Language of the case: German

Parties

Applicant: Aurubis AG (Hamburg, Germany) (represented by: S. Altenschmidt and J. Hoss, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 8 December 2020 (Ref. Ares (2020)7439507 — 08/12/2020); and

— order the defendant to pay the costs.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of the decision of 8 December 2020, by which the Commission refused, in the context of interlocutory proceedings before the Verwaltungsgericht Berlin and an application to that effect by the Umweltbundesamt, to participate in the transfer of emission allowances to provisionally secure the applicant's entitlement to free allocation of emission allowances for the purposes of guaranteeing the effectiveness of the judgment of the Court of Justice in the preliminary ruling in Case C-271/20.

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

1. First plea in law, alleging that the decision of the Commission of 8 December 2020 affects the applicant directly and individually. It therefore has legal standing to bring proceedings.

2. Second plea in law, alleging that the Commission, in the context of granting interim relief on account of national court proceedings, is obliged by the principle of ensuring effective judicial protection, enshrined in EU law, to participate in securing any entitlement to allocation of emission allowances from being lost.

3. Third plea in law, alleging that Directive 2003/87/EC [1] and Regulation (EU) No 389/2013 [2] form the regulatory framework for such participation and the transfer of emission allowances to national accounts.

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

[2] Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ 2013 L 122, p. 1).

Action brought on 16 December 2020 — ON v Commission

(Case T-730/20)

(2021/C 44/79)

Language of the case: French

Parties

Applicant: ON (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the PMO.1 of 12 March 2020 for the recovery of the sums unduly paid in accordance with Article 85 of the Staff Regulations as from 1 February 2015;

— if necessary, annul the decision rejecting his complaint of 3 September 2020;

— order the defendant to pay compensation for the non-material harm suffered by the applicant, assessed ex aequo et bono at EUR 10 000;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 85 of the Staff Regulations in that the conditions for the application of that article are not satisfied. In that regard, the applicant claims inter alia that the authority has not shown that he knew or ought to have known that he was not entitled to the expatriation allowance since his sole prior appointment, that is 2009.

2. Second plea in law, alleging failure to observe the 'reasonable time' principle. The applicant invokes in that regard the fact that that failure to observe the reasonable time resulted in the loss of the opportunity to demonstrate the existence of a principal habitual residence outside the United Kingdom for the period concerned, it being specified that obligations to keep records do not usually exceed a period of ten years.

3. Third plea in law, alleging maladministration by the authority resulting in its liability to pay compensation. According to the applicant, the fault consists in the authority's error in fixing his pecuniary rights at the time he took up employment.

Action brought on 17 December 2020 — ExxonMobil Production Deutschland v Commission

(Case T-731/20)

(2021/C 44/80)

Language of the case: German

Parties

Applicant: ExxonMobil Production Deutschland GmbH (Hanover, Germany) (represented by: S. Altenschmidt and J. Hoss, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 8 December 2020 (Ref. Ares (2020)7439507 — 08/12/2020); and

— order the defendant to pay the costs.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of the decision of 8 December 2020, by which the Commission refused, in the context of interlocutory proceedings before the Verwaltungsgericht Berlin and an application to that effect by the Umweltbundesamt, to participate in the transfer of emission allowances to provisionally secure the applicant's entitlement to free allocation of emission allowances for the purposes of guaranteeing the effectiveness of the judgment of the Court of Justice in the preliminary ruling in Case C-271/20.

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

1. First plea in law, alleging that the decision of the Commission of 8 December 2020 affects the applicant directly and individually. It therefore has legal standing to bring proceedings.

2. Second plea in law, alleging that the Commission, in the context of granting interim relief on account of national court proceedings, is obliged by the principle of ensuring effective judicial protection, enshrined in EU law, to participate in securing any entitlement to allocation of emission allowances from being lost.

3. Third plea in law, alleging that Directive 2003/87/EC ([1]) and Regulation (EU) No 389/2013 ([2]) form the regulatory framework for such participation and the transfer of emission allowances to national accounts.

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

([2]) Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ 2013 L 122, p. 1).

Action brought on 16 December 2020 — Freundlieb v EUIPO (CRYSTAL)

(Case T-732/20)

(2021/C 44/81)

Language of the case: German

Parties

Applicant: Andreas Freundlieb (Berlin, Germany) (represented by: J. Vogtmeier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark CRYSTAL — EU trade mark No 8 372 591

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 October 2020 in Case R 1056/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and order that his rights in EU trade mark No 8 372 591 be re-established in accordance with his application;

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

Plea in law

— Infringement of Article 104(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 16 December 2020 — Freundlieb v EUIPO (BANDIT)

(Case T-733/20)

(2021/C 44/82)

Language of the case: German

Parties

Applicant: Andreas Freundlieb (Berlin, Germany) (represented by: J. Vogtmeier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark BANDIT — EU trade mark No 1 205 061

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 October 2020 in Case R 730/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and order that his rights in EU trade mark No 1 205 061 be re-established in accordance with his application;

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

Plea in law

— Infringement of Article 104(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 16 December 2020 — Arnautu v Parliament

(Case T-740/20)

(2021/C 44/83)

Language of the case: French

Parties

Applicant: Marie-Christine Arnautu (Paris, France) (represented by: F. Wagner, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— declare the plea of illegality admissible and Article 33(1) and (2) of the Implementing Measures for the Statute for Members of the European Parliament ('the Implementing Measures') unlawful;

— therefore, find that the decision of the Secretary-General of 21 September 2020 lacks legal basis and annul it;

principally,

— find that Marie-Christine Arnautu has provided evidence of work by her parliamentary assistant consistent with Article 33(1) and (2) of the Implementing Measures and the case-law of the Court of Justice of the European Union;

consequently,

— annul the decision of the Secretary-General of the European Parliament of 21 September 2020, notified by electronic means on 23 October 2020, taken pursuant to Article 68 of Decision 2009/C 159/01 of the Bureau of the European Parliament of 19 May and 9 July 2008 'concerning implementing measures for the Statute for Members of the European Parliament' as amended, making a claim for payment against the applicant for an amount of EUR 87 203,46 in respect of sums unduly paid for parliamentary assistance, and stating reasons for the recovery of those sums;

— annul credit note No 7000001577 of 22 October 2020 making a claim for payment against Marie-Christine Arnautu, following a decision of the Secretary-General for the recovery of sums unduly paid, dated 21 September 2020 and adopted on the basis of Article 68 of the Implementing Measures concerning parliamentary assistance expenses;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a plea of illegality in that Article 33 of the Implementing Measures adopted by the decision of 19 May and 9 July 2008 of the Bureau of the European Parliament infringes the principles of legal certainty and legitimate expectations, as a result inter alia of their lack of clarity and precision. The applicant claims that the lack of precision of the contested provisions results in the legal rules laid down in the Implementing Measures being governed by judicial decision. The detail of proof of a parliamentary assistant's work was identified in the *Bilde* and *Montel* cases only in November 2017, since the *Gorostiaga* case of 2005 only concerns proof of payment of salaries by the paying agent. Thus, the contested provisions displayed as early as 2008 elements of uncertainty and lack of clarity. The applicant adds that, despite risks related to legal uncertainty, the European Parliament did not lay down precise and clear rules concerning the procedure for monitoring parliamentary assistance, nor did it formalise the member's obligation to create and preserve, or even the regime of admissible, identifiable and dated evidence.

2. Second plea in law, alleging infringement of an essential procedural requirement and of the rights of the defence. The applicant claims that the Secretary-General did not hear her in infringement of Article 68 of the Implementing measures. She adds that by acting in this way the Secretary-general deprives her of a fundamental right, a direct discussion with the authority which intends to take the decision and a discussion between the parties on the evidence.

Action brought on 22 December 2020 — Veronese v EUIPO — Veronese Design Company (VERONESE)

(Case T-749/20)

(2021/C 44/84)

Language in which the application was lodged: French

Parties

Applicant: Veronese (Paris, France) (represented by: S. Herrburger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Veronese Design Company Ltd (Kowloon, Hong Kong)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark VERONESE — European Union trade mark No 8 831 844

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 26 October 2020 in Case R 1951/2020-4

Form of order sought

The applicant claims that the Court should:

— declare the present action and its annexes admissible;

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 72(6) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 72(6) in conjunction with Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 60(1)(a) in conjunction with Article 8(1) and (2) and Article 1(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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