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Information and Notices

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(2021/C 182/01)

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These texts are available on:

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GENERAL COURT

Taking of the oath by a new Member of the General Court

(2021/C 182/02)

Following his appointment as Judge at the General Court for the period from 25 February 2021 to 31 August 2025 by decision of the Representatives of the Governments of the Member States of the European Union of 19 February 2021 [1], Mr Petrlík took the oath before the Court on 1 March 2021.

[1] OJ L 64, 24.2.2021, p. 5.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 9 March 2021 (request for a preliminary ruling from the Vrhovno sodišče — Slovenia) — D.J. v Radiotelevizija Slovenija

(Case C-344/19) [1]

(Reference for a preliminary ruling — Protection of the safety and health of workers — Organisation of working time — Directive 2003/88/EC — Article 2 — Concept of 'working time' — Stand-by time according to a stand-by system — Specific work maintaining television transmitters situated far away from residential areas — Directive 89/391/EEC — Articles 5 and 6 — Psychosocial risks — Obligation to prevent)

(2021/C 182/03)

Language of the case: Slovenian

Referring court

Vrhovno sodišče

Parties to the main proceedings

Applicant: D.J.

Defendant: Radiotelevizija Slovenija

Operative part of the judgment

Article 2(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as meaning that a period of stand-by time according to a stand-by system, during which the worker is required only to be contactable by telephone and able to return to his or her workplace, if necessary, within a time limit of one hour, while being able to stay in service accommodation made available to him or her by his or her employer at that workplace, without being required to remain there, does not constitute, in its entirety, working time within the meaning of that provision, unless an overall assessment of all the facts of the case, including the consequences of that time limit and, if appropriate, the average frequency of activity during that period, establishes that the constraints imposed on that worker during that period are such as to affect, objectively and very significantly, the latter's ability freely to manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests. The limited nature of the opportunities to pursue leisure activities within the immediate vicinity of the place concerned is irrelevant for the purposes of that assessment.

[1] OJ C 263, 5.8.2019.

Judgment of the Court (Sixth Chamber) of 10 March 2021 (request for a preliminary ruling from the Verwaltungsgericht Schwerin — Germany) — FD v Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg

(Case C-365/19) ([1])

(Reference for a preliminary ruling — Common agricultural policy — Direct payments — Regulation (EU) No 1307/2013 — Article 24 — Young farmer having received an initial allocation of payment entitlements — Article 30(6) — Delegated Regulation (EU) No 639/2014 — Article 28(2) — Further allocation of payment entitlements from the national reserve)

(2021/C 182/04)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Applicant: FD

Defendant: Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg

Operative part of the judgment

Article 30(6) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, read in conjunction with Article 28(2) of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation No 1307/2013 and amending Annex X to that regulation, must be interpreted as meaning that a young farmer, within the meaning of Article 30(11)(a) of Regulation No 1307/2013, read in conjunction with Article 50(2) of that regulation, who has already received, under Article 24 of that regulation, an initial allocation of payment entitlements in respect of the eligible hectares which he or she has declared at the time of his or her application is entitled to receive, subsequently, a further allocation of payment entitlements from the national reserve equal to the number of additional eligible hectares that he or she now holds and for which he or she has not received any payment entitlement. That right is subject to the existence of sufficient available funds in the national or regional reserves. If that is not the case, the allocation must be made in such a way as to ensure the equal treatment of farmers eligible for entitlements under Article 30(6) of Regulation No 1307/2013 and to avoid distortions of the market and of competition.

([1]) OJ C 288, 26.8.2019.

Judgment of the Court (First Chamber) of 18 March 2021 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — MK v Autoridade Tributária e Aduaneira

(Case C-388/19) ([1])

(Reference for a preliminary ruling — Direct taxation — Tax on capital gains from immovable property — Free movement of capital — Basis for assessment of tax — Discrimination — Option to be taxed according to the same arrangements as residents — Compliance with EU law)

(2021/C 182/05)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: MK

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

Article 63 TFEU, read in conjunction with Article 65 TFEU, must be interpreted as precluding the legislation of a Member State which, in order to permit the capital gains realised from the transfer of immovable property situated in that Member State, by a taxable person resident in another Member State, not to be subject to a tax burden greater than that which would be applied to capital gains realised from the same type of transaction by a person resident in the first Member State, makes the taxation regime applicable dependent upon the choice made by that taxable person.

(1) OJ C 270, 12.8.2019.

Judgment of the Court (Grand Chamber) of 9 March 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — VG Bild-Kunst v Stiftung Preußischer Kulturbesitz

(Case C-392/19) (1)

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights in the information society — Directive 2001/29/EC — Article 3(1) — Concept of 'communication to the public' — Embedding, in a third party's website, of a copyright-protected work by means of the process of framing — Work freely accessible with the authorisation of the copyright holder on the licensee's website — Clause in the exploitation agreement requiring the licensee to introduce effective technological measures against framing — Lawfulness — Fundamental rights — Article 11 and Article 17(2) of the Charter of Fundamental Rights of the European Union)

(2021/C 182/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: VG Bild-Kunst

Respondent: Stiftung Preußischer Kulturbesitz

Operative part of the judgment

Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the embedding, by means of the technique of framing, in a third party website page, of works that are protected by copyright and that are freely accessible to the public with the authorisation of the copyright holder on another website, where that embedding circumvents measures adopted or imposed by that copyright holder to provide protection from framing, constitutes a communication to the public within the meaning of that provision.

(1) OJ C 270, 12.8.2019.

Judgment of the Court (Fourth Chamber) of 11 March 2021 — European Commission v Hungary

(Case C-400/19) ([1])

(Failure of a Member State to fulfil obligations — Common organisation of the markets in agricultural products — Regulation (EU) No 1308/2013 — Article 34 TFEU — Selling prices of agri-food products — Minimal profit margins to be applied in the retail trade of those products)

(2021/C 182/07)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: A. Sipos, X. Lewis and E. Manhaeve, acting as Agents)

Defendant: Hungary (represented initially by M.Z. Fehér, G. Koós and Zs. Wagner, and subsequently by M.Z. Fehér and G. Koós, acting as Agents)

Operative part of the judgment

The Court:

1. Orders that, by adopting Paragraph 3(2)(u) of the mezőgazdasági és élelmiszeripari termékek vonatkozásában a beszállítókkal szemben alkalmazott tisztességtelen forgalmazói magatartás tilalmáról szóló 2009. évi XCV. törvény (Law No XCV of 2009 prohibiting unfair trading practices applied against suppliers of agricultural and food products) and by thus restricting the way in which the selling prices of agricultural and food products are formed, Hungary has failed to fulfil its obligations under Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007;

2. Orders Hungary to bear its own costs and to pay those incurred by the European Commission

([1]) OJ C 255, 29.7.2019.

Judgment of the Court (Fourth Chamber) of 18 March 2021 — Pometon SpA v European Commission

(Case C-440/19 P) ([1])

(Appeal — Agreements, decisions and concerted practices — European steel abrasives market — Participation in bilateral and multilateral contacts with the aim of coordinating prices throughout the European Economic Area (EEA) — 'Hybrid' procedure having led successively to the adoption of a settlement decision and a decision made under the ordinary procedure — Charter of Fundamental Rights of the European Union — Article 41 — Principle of impartiality of the European Commission — Article 48 — Presumption of innocence — Obligation to state reasons — Single and continuous infringement — Duration of the infringement — Equal treatment — Unlimited jurisdiction)

(2021/C 182/08)

Language of the case: Italian

Parties

Appellant: Pometon SpA (represented by: E. Fabrizi, V. Veneziano and A. Molinaro, avvocati)

Other party to the proceedings: European Commission (represented: initially by P. Rossi and T. Vecchi, and subsequently by P. Rossi and C. Sjödin, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside paragraphs 2 and 4 of the operative part of the judgment of the General Court of the European Union of 28 March 2019, Pometon v Commission (T-433/16, EU:T:2019:201);

2. Dismisses the appeal as to the remainder;

3. Sets the amount of the fine imposed on Pometon SpA in Article 2 of Commission Decision C(2016) 3121 final of 25 May 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39792 — Steel Abrasives) at EUR 2 633 895;

4. Orders Pometon SpA and the European Commission to bear their own costs relating to the appeal proceedings and the proceedings at first instance.

(1) OJ C 255, 29.7.2019.

Judgment of the Court (Fifth Chamber) of 17 March 2021 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — The Commissioners for Her Majesty's Revenue & Customs v Wellcome Trust Ltd

(Case C-459/19) (1)

(Reference for a preliminary ruling — Harmonisation of fiscal legislation — Value added tax (VAT) — Directive 2006/112/EC — Articles 43 and 44 — Place of supply of services to a taxable person acting as such — Place of supply of investment management services received by a charitable organisation for a non-economic business activity from suppliers established outside the European Union)

(2021/C 182/09)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Appellants: The Commissioners for Her Majesty's Revenue & Customs

Respondent: Wellcome Trust Ltd

Operative part of the judgment

Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, must be interpreted as meaning that, where a taxable person carrying on a non-economic activity in a business capacity acquires services for the purposes of that non-economic activity, those services must be regarded as being supplied to that taxable person 'acting as such', within the meaning of that article.

(1) OJ C 280, 19.8.2019.

Judgment of the Court (First Chamber) of 17 March 2021 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Execution of the European arrest warrant issued against JR

(Case C-488/19) [1]

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Scope — Article 8(1)(c) — Concept of 'enforceable judgment' — Offence giving rise to a conviction by a court of a third State — Kingdom of Norway — Judgment recognised and enforced by the issuing State by virtue of a bilateral agreement — Article 4(7)(b) — Grounds for optional non-execution of the European arrest warrant — Extra-territorial offence)

(2021/C 182/10)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

JR

Operative part of the judgment

1. Article 1(1) and Article 8(1)(c) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that a European arrest warrant may be issued on the basis of a judicial decision of the issuing Member State ordering the execution, in that Member State, of a sentence imposed by a court of a third State where, pursuant to a bilateral agreement between those States, the judgment in question has been recognised by a decision of a court of the issuing Member State. However, the issuing of the European arrest warrant is subject to the condition, first, that a custodial sentence of at least four months has been imposed on the requested person and, second, that the procedure leading to the adoption in the third State of the judgment recognised subsequently in the issuing Member State has complied with fundamental rights and, in particular, the obligations arising under Articles 47 and 48 of the Charter of Fundamental Rights of the European Union;

2. Article 4(7)(b) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that, in the case of a European arrest warrant issued on the basis of a judicial decision of the issuing Member State allowing execution in that Member State of a sentence imposed by a court of a third State, where the offence concerned was committed in the territory of the latter State, the question whether that offence was committed 'outside the territory of the issuing Member State' must be resolved by taking into consideration the criminal jurisdiction of that third State — in this instance, the Kingdom of Norway — which allowed prosecution of that offence, and not that of the issuing Member State.

[1] OJ C 337, 7.10.2019.

Judgment of the Court (Grand Chamber) of 16 March 2021 — European Commission v Republic of Poland, Hungary

(Case C-562/19 P) ([1])

(Appeal — Article 107(1) TFEU — State aid — Polish tax on the retail sector — Article 108(2) TFEU — Decision to initiate the formal investigation procedure — Information used to determine the reference system — Progressivity of rates — Existence of a selective advantage — Burden of proof)

(2021/C 182/11)

Language of the case: Polish

Parties

Appellant: European Commission (represented by: K. Herrmann, P.-J. Loewenthal and V. Bottka, acting as Agents)

Other parties to the proceedings: Republic of Poland (represented by: B. Majczyna, M. Rzotkiewicz and M. Szydło, acting as Agents), Hungary (represented by: M.Z. Fehér and G. Koós, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Commission to pay the costs;

3. Orders Hungary to bear its own costs.

([1]) OJ C 328, 30.9.2019.

Judgment of the Court (Fifth Chamber) of 10 March 2021 — European Road Transport Telematics Implementation Coordination Organisation — Intelligent Transport Systems & Services Europe (Ertico — ITS Europe) v European Commission

(Case C-572/19 P) ([1])

(Appeal — State aid — Seventh Framework Programme for research, technological development and demonstration activities — Recommendation 2003/361/EC — Decision of the Validation Panel of the European Commission on classification as a micro, small or medium-sized enterprise (SME) — Decision 2012/838/EU, Euratom — Annex — Sections 1.2.6 and 1.2.7 — Request for review — Regulation (EC) No 58/2003 — Article 22 — No administrative proceedings — Link between request for review and administrative proceedings — Refusal of SME status despite formal observance of the Recommendation 2003/361 criteria — Legal certainty — Legitimate expectations — Handicaps usually faced by SMEs — None)

(2021/C 182/12)

Language of the case: English

Parties

Appellant: European Road Transport Telematics Implementation Coordination Organisation — Intelligent Transport Systems & Services Europe (Ertico — ITS Europe) (represented by: M. Wellinger and K. T'Syen, avocats)

Other party to the proceedings: European Commission (represented by: R. Lyal and A. Kyratsou, acting as Agents)

Intervener in support of the appellant: Czech Republic (represented by: M. Smolek, J. Vláčil, O. Serdula and J. Očková, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders European Road Transport Telematics Implementation Coordination Organisation — Intelligent Transport Systems & Services Europe (Ertico — ITS Europe) to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Czech Republic to bear its own costs.

(1) OJ C 312, 16.9.2019.

Judgment of the Court (Third Chamber) of 18 March 2021 (request for a preliminary ruling from the Supreme Court of the United Kingdom — United Kingdom) — X v Kuoni Travel Ltd

(Case C-578/19) (1)

(Reference for a preliminary ruling — Directive 90/314/EEC — Article 5(2), third indent — Package travel, package holidays and package tours — Contract concerning package travel concluded between a travel organiser and a consumer — Liability of the travel organiser for the proper performance of obligations arising from the contract by other suppliers of services — Damage resulting from the acts of an employee of a supplier of services — Exemption from liability — Event that cannot be foreseen or forestalled by the travel organiser or the supplier of services — Concept of a 'supplier of services')

(2021/C 182/13)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Appellant: X

Respondent: Kuoni Travel Ltd

Intervener: ABTA Ltd

Operative part of the judgment

The third indent of Article 5(2) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, in so far as it provides for a ground for exemption from liability of an organiser of package travel for the proper performance of the obligations arising from a contract relating to such travel, concluded between that organiser and a consumer and governed by that directive, must be interpreted as meaning that, in the event of non-performance or improper performance of those obligations, which is the result of the actions of an employee of a supplier of services performing that contract:

— that employee cannot be regarded as a supplier of services for the purposes of the application of that provision, and

— the organiser cannot be exempted from its liability arising from such non-performance or improper performance, pursuant to that provision.

(1) OJ C 328, 30.9.2019.

Judgment of the Court (Grand Chamber) of 9 March 2021 (request for a preliminary ruling from the Verwaltungsgericht Darmstadt — Germany) — RJ v Stadt Offenbach am Main

(Case C-580/19) ([1])

(Reference for a preliminary ruling — Protection of the safety and health of workers — Organisation of working time — Directive 2003/88/EC — Article 2 — Concept of 'working time' — Period of stand-by time according to a stand-by system — Professional firefighters — Directive 89/391/EEC — Articles 5 and 6 — Psychosocial risks — Obligation to prevent)

(2021/C 182/14)

Language of the case: German

Referring court

Verwaltungsgericht Darmstadt

Parties to the main proceedings

Applicant: RJ

Defendant: Stadt Offenbach am Main

Operative part of the judgment

Article 2(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as meaning that a period of stand-by time according to a stand-by system, during which a worker must be able to reach the town boundary of his or her workplace within a 20 minute response time, in uniform with the service vehicle made available to him or her by his or her employer, using traffic regulations privileges and rights of priority attached to that vehicle, constitutes, in its entirety, 'working time', within the meaning of that provision, solely if it follows from an overall assessment of all the circumstances of the case, in particular the consequences of such a response time and, where appropriate, the average frequency of interventions during that period, that the constraints imposed on that worker during that period are of such a nature as to constrain objectively and very significantly the ability that he or she has to freely manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests.

([1]) OJ C 372, 4.11.2019.

Judgment of the Court (Fifth Chamber) of 17 March 2021 (request for a preliminary ruling from the Tribunalul Bucureşti — Romania) — Academia de Studii Economice din Bucureşti v Organismul Intermediar pentru Programul Operațional Capital Uman — Ministerul Educației Naționale

(Case C-585/19) ([1])

(Reference for a preliminary ruling — Social policy — Protection of the safety and health of workers — Organisation of working time — Directive 2003/88/EC — Article 2 — Definition of 'working time' — Article 3 — Minimum period of daily rest — Workers having concluded several employment contracts with the same employer — Application by worker)

(2021/C 182/15)

Language of the case: Romanian

Referring court

Tribunalul Bucureşti

Parties to the main proceedings

Applicant: Academia de Studii Economice din Bucureşti

Defendant: Organismul Intermediar pentru Programul Operațional Capital Uman — Ministerul Educației Naționale

Operative part of the judgment

Articles 2(1) and 3 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as meaning that, where an employee has concluded several contracts of employment with the same employer, the minimum daily rest period provided for in Article 3 thereof applies to those contracts taken as a whole and not to each of those contracts taken separately.

([1]) OJ C 406, 2.12.2019.

Judgment of the Court (Grand Chamber) of 16 March 2021 — European Commission v Hungary, Republic of Poland

(Case C-596/19 P) ([1])

(Appeal — Article 107(1) TFEU — State aid — Hungarian tax on turnover linked to advertisements — Information used to determine the reference system — Progressivity of tax rates — Transitional measure for the partial deductibility of losses carried forward — Existence of a selective advantage — Burden of proof)

(2021/C 182/16)

Language of the case: Hungarian

Parties

Appellant: European Commission (represented by: V. Bottka, P.-J. Loewenthal and K. Herrmann, acting as Agents)

Other parties to the proceedings: Hungary (represented by: M.Z. Fehér and G. Koós, acting as Agents), Republic of Poland (represented by: B. Majczyna, acting as Agent)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Commission to pay the costs, including those incurred by the Republic of Poland.

([1]) OJ C 348, 14.10.2019.

Judgment of the Court (Second Chamber) of 17 March 2021 (request for a preliminary ruling from the Tribunale di Milano — Italy) — KO v Consulmarketing SpA, in liquidation

(Case C-652/19) ([1])

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — Objective reasons justifying different treatment of fixed-term workers — Directive 98/59/EC — Collective redundancy — National legislation on the protection to be afforded to a worker dismissed as part of an unlawful collective redundancy — Application of a less advantageous protection system to fixed-term contracts concluded before its entry into force and converted into contracts of an indefinite duration after that date)

(2021/C 182/17)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicant: KO

Defendant: Consulmarketing SpA, in liquidation

Interveners: Filcams CGIL, Confederazione Generale Italiana del Lavoro (CGIL)

Operative part of the judgment

1. National legislation which provides for the concurrent application, in the course of one and the same collective redundancy procedure, of two different systems for the protection of permanent workers in the event of a collective redundancy carried out in breach of the criteria for determining which workers will be dismissed under that procedure does not come within the scope of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies and cannot, therefore, be examined in the light of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and, in particular, Articles 20 and 30 thereof.

2. Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as not precluding national legislation which extends a new system for the protection of permanent workers in the event of unlawful collective redundancies to workers whose fixed-term contracts, which were entered into before the date of entry into force of that legislation, are converted into contracts of indefinite duration after that date.

([1]) OJ C 399, 25.11.2019.

Judgment of the Court (Eighth Chamber) of 10 March 2021 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Von Aschenbach & Voss GmbH v Hauptzollamt Duisburg

(Case C-708/19) ([1])

(Reference for a preliminary ruling — Definitive anti-dumping duty — Aluminium foil originating in China — Slightly modified aluminium foil — Implementing Regulation (EU) 2017/271 — Admissibility — No action for annulment brought by the applicant in the main proceedings — Locus standi in an action for annulment)

(2021/C 182/18)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Von Aschenbach & Voss GmbH

Defendant: Hauptzollamt Duisburg

Operative part of the judgment

The request for a preliminary ruling from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 21 August 2019, is inadmissible.

(1) OJ C 413, 9.12.2019.

Judgment of the Court (First Chamber) of 10 March 2021 (request for a preliminary ruling from the Supreme Court — Ireland) — VK v An Bord Pleanála

(Case C-739/19) (1)

(Reference for a preliminary ruling — Lawyers' freedom to provide services — Directive 77/249/EEC — Article 5 — Obligation for a visiting lawyer representing a client in domestic legal proceedings to work in conjunction with a lawyer who practises before the judicial authority in question — Limits)

(2021/C 182/19)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: VK

Defendant: An Bord Pleanála

Interested parties: The General Council of the Bar of Ireland, The Law Society of Ireland and the Attorney General

Operative part of the judgment

Article 5 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services must be interpreted as meaning that:

— it does not preclude, as such, in the light of the objective of the proper administration of justice, a lawyer, provider of representation services in respect of his or her client, from being required to work in conjunction with a lawyer who practises before the judicial authority in question and who would be responsible, if necessary, towards that judicial authority, under a system placing lawyers under ethical and procedural obligations such as that of submitting to the judicial authority in question any legal element, whether legislative or case-law-based, for the purposes of the proper course of the procedure, from which the litigant is exempt if he or she decides to conduct his or her own defence;

— it does not preclude, as such, in the light of the objective of the proper administration of justice, a lawyer, provider of representation services in respect of his or her client, from being required to work in conjunction with a lawyer who practises before the judicial authority in question and who would be responsible, if necessary, towards that judicial authority, under a system placing lawyers under ethical and procedural obligations such as that of submitting to the judicial authority in question any legal element, whether legislative or case-law-based, for the purposes of the proper course of the procedure, from which the litigant is exempt if he or she decides to conduct his or her own defence;

— a general obligation to work in conjunction with a lawyer who practises before the judicial authority in question not allowing account to be taken of the experience of the visiting lawyer would go beyond what is necessary in order to attain the objective of the proper administration of justice.

(1) OJ C 413, 9.12.2019.

Judgment of the Court (Seventh Chamber) of 11 March 2021 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Firma Z v Finanzamt Y

(Case C-802/19) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 90(1) — Reduction of the taxable amount — Principles laid down in the judgment of 24 October 1996, Elida Gibbs (C-317/94, EU:C:1996:400) — Supplies of medicinal products — Granting of discounts — Hypothetical nature of the question referred — Inadmissibility of the request for a preliminary ruling)

(2021/C 182/20)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Firma Z

Defendant: Finanzamt Y

Operative part of the judgment

Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a pharmacy established in one Member State may not reduce its taxable amount where it carries out intra-Community supplies of pharmaceutical products, those supplies being exempt from value added tax in that Member State, to a statutory health insurance fund established in another Member State and it grants a discount to those persons covered by that insurance.

(1) OJ C 45, 10.2.2020.

Judgment of the Court (Seventh Chamber) of 11 March 2021 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Danske Bank A/S, Danmark, Sverige Filial v Skatteverket

(Case C-812/19) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 9 — Taxable person — Concept — Article 11 — VAT group — Principal establishment and branch of a company situated in two different Member States — Principal establishment forming part of a VAT group to which the branch does not belong — Principal establishment providing services to the branch and imputing to it the costs of those services)

(2021/C 182/21)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicants: Danske Bank A/S, Danmark, Sverige Filial

Defendant: Skatteverket

Operative part of the judgment

Article 9(1) and Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, for value added tax (VAT) purposes, the principal establishment of a company, situated in a Member State and forming part of a VAT group formed on the basis of Article 11, and the branch of that company, established in another Member State, must be regarded as separate taxable persons where that principal establishment provides that branch with services and imputes the costs thereof to the branch.

(1) OJ C 19, 20.1.2020.

Judgment of the Court (Ninth Chamber) of 18 March 2021 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Gliwicach — Poland) — A. v Dyrektor Krajowej Informacji Skarbowej

(Case C-895/19) (1)

(Reference for a preliminary ruling — Indirect taxation — VAT — Directive 2006/112/EC — Intra-Community acquisition of goods — Deduction of input tax payable on such an acquisition — Procedural requirements — Substantive requirements — Period within which the tax declaration must be submitted — Principles of fiscal neutrality and proportionality)

(2021/C 182/22)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Gliwicach

Parties to the main proceedings

Applicant: A.

Defendant: Dyrektor Krajowej Informacji Skarbowej

Other party: Rzecznik Małych i Średnich Przedsiębiorców

Operative part of the judgment

Articles 167 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding national legislation which makes the exercise of the right to deduct value added tax (VAT) payable on an intra-Community acquisition in the same accounting period as that in which the VAT is due subject to entry of the VAT due in the tax declaration submitted within a three-month period following the end of the month in which the tax liability arose in relation to the goods acquired.

(1) OJ C 54, 17.2.2020.

Judgment of the Court (First Chamber) of 17 March 2021 (request for a preliminary ruling from the Conseil d'État — France) — Association One Voice, Ligue pour la protection des oiseaux v Ministre de la Transition écologique et solidaire

(Case C-900/19) ([1])

(Reference for a preliminary ruling — Environment — Directive 2009/147/EC — Conservation of wild birds — Articles 5 and 8 — Prohibition of the use of any method of capture of birds — Article 9(1) — Authorisation to use, by way of derogation, a traditional method of capture of birds — Conditions — No other satisfactory solution — Preservation of that traditional method as the sole justification for the absence of an 'other satisfactory solution' — Selectivity of catches — National legislation authorising the capture of birds using limes)

(2021/C 182/23)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Association One Voice, Ligue pour la protection des oiseaux

Defendant: Ministre de la Transition écologique et solidaire

Interested party: Fédération nationale des Chasseurs

Operative part of the judgment

1. Article 9(1) and (2) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds must be interpreted as meaning that the fact that a method of capture of birds is traditional is not, in itself, sufficient to establish that another satisfactory solution, within the meaning of that provision, cannot be substituted for that method;

2. Article 9(1)(c) of Directive 2009/147 must be interpreted as precluding national legislation which authorises, by way of derogation from Article 8 of that directive, a method of capture leading to by-catch where that by-catch, even in small quantities and for a limited period, is likely to cause harm other than negligible harm to the non-target species captured.

([1]) OJ C 54, 17.2.2020.

Judgment of the Court (Ninth Chamber) of 10 March 2021 (request for a preliminary ruling from the Krajský soud v Ostravě — Czech Republic) — Samohýl group a.s. v Generální ředitelství cel

(Case C-941/19) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Tariff headings 3004 and 3808 — Interpretation — Regulation (EC) No 455/2007 — Spot-on solution for cats against infestations of fleas and ticks — Therapeutic or prophylactic effects)

(2021/C 182/24)

Language of the case: Czech

Referring court

Krajský soud v Ostravě

Parties to the main proceedings

Applicant: Samohýl group a.s.

Defendant: Generální ředitelství cel

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version resulting from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014, must be interpreted as meaning that a product consisting of a solution intended for cats, which must be applied by local cutaneous route (spot-on) by means of pipettes (0,5 ml) and which contains the active substance fipronil (50 mg per pipette), and excipients, such as butylated hydroxyanisole E 320, butylated hydroxytoluene E 321, benzyl alcohol and diethylene glycol monoethyl ether, comes within tariff heading 3808 of the CN, as an 'insecticide', subject to the assessment by the referring court of all the facts at its disposal.

(1) OJ C 68, 2.3.2020.

Judgment of the Court (First Chamber) of 10 March 2021 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — M.A. v Konsul Rzeczypospolitej Polskiej w N.

(Case C-949/19) (1)

(Reference for a preliminary ruling — Border controls, asylum and immigration — Visa policy — Convention implementing the Schengen Agreement — Article 21(2a) — Charter of Fundamental Rights — Article 47 — Right to an effective remedy — Refusal of a long-stay visa by the consul — Obligation on a Member State to guarantee a remedy before a tribunal against a decision refusing such a visa)

(2021/C 182/25)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: M.A.

Defendant: Konsul Rzeczypospolitej Polskiej w N.

Operative part of the judgment

1. Article 21(2a) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, which was signed in Schengen on 19 June 1990 and entered into force on 26 March 1995, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, must be interpreted as not being applicable to a national of a third State who has been refused a long-stay visa.

2. EU law, in particular Article 34(5) of Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it requires the Member States to provide for an appeal procedure against decisions refusing a visa for the purpose of studies, within the meaning of that directive, the procedural rules of which are a matter for the legal order of each Member State, in conformity with the principles of equivalence and effectiveness, and that procedure must, at a certain stage, guarantee a judicial appeal. It is for the referring court to establish whether the application for a national long-term visa for the purpose of studies that is at issue in the main proceedings falls within the scope of that directive.

(1) OJ C 191, 8.6.2020.

Judgment of the Court (Sixth Chamber) of 18 March 2021 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — UAB 'P.' v Dyrektor Izby Skarbowej w B.

(Case C-48/20) (1)

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 203 — Taxes improperly invoiced — Good faith on the part of the issuer of the invoice — Risk of loss of tax revenue — Obligations of the Member States to provide for the possibility of adjusting tax improperly invoiced — Principles of fiscal neutrality and proportionality)

(2021/C 182/26)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: UAB 'P.'

Respondent: Dyrektor Izby Skarbowej w B.

Operative part of the judgment

Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principles of proportionality and neutrality of VAT must be interpreted as precluding national legislation which does not allow a taxable person acting in good faith to adjust invoices improperly indicating VAT following the initiation of a tax investigation procedure, even though the recipient of those invoices would have been entitled to reimbursement of that tax if the transactions which were the subject of those invoices had been duly declared.

(1) OJ C 191, 8.6.2020.

Judgment of the Court (Eighth Chamber) of 10 March 2021 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Ordine Nazionale dei Biologi, MX, NY, OZ v Presidenza del Consiglio dei Ministri

(Case C-96/20) ([1])

(Reference for a preliminary ruling — Public health — Article 168 TFEU — Directive 2002/98/EC — Standards of quality and safety of human blood and of blood components — Objective of ensuring a high level of protection of human health — Article 4(2) and Article 9(2) — Blood establishments — Responsible person — Minimum conditions of qualification — Option for a Member State to provide for a more stringent regime — Discretion afforded to the Member States)

(2021/C 182/27)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Ordine Nazionale dei Biologi, MX, NY, OZ

Defendant: Presidenza del Consiglio dei Ministri

intervening parties: Sds Snabi, Agenzia Regionale Protezione Ambiente (ARPA)

Operative part of the judgment

Article 9(2)(a) of Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC, read in conjunction with Article 4(2) thereof, must be interpreted as not precluding national legislation which provides that only individuals holding a degree in medicine and in surgery may be designated as the responsible person of a blood establishment, provided that that legislation complies with EU law in all aspects.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Tenth Chamber) of 11 March 2021 (request for a preliminary ruling from the Conseil d'État — Belgium) — M. A. v État belge

(Case C-112/20) ([1])

(Reference for a preliminary ruling — Directive 2008/115/EC — Article 5 — Return decision — Father of a minor child who is a citizen of the European Union — Taking into account the best interests of the child at the time of the adoption of the return decision)

(2021/C 182/28)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: M. A.

Defendant: État belge

Operative part of the judgment

Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Article 24 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that Member States are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even where the person to whom that decision is addressed is not a minor but his or her father.

(1) OJ C 161, 11.5.2020.

Judgment of the Court (First Chamber) of 10 March 2021 (request for a preliminary ruling from Westminster Magistrates' Court — United Kingdom) — Execution of a European arrest warrant issued against PI

(Case C-648/20 PPU) (1)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 8(1)(c) — European arrest warrant issued by the public prosecutor's office of a Member State for the purposes of a criminal prosecution on the basis of a detention order issued by the same authority — No judicial review prior to surrender of the requested person — Consequences — Effective judicial protection — Article 47 of the Charter of Fundamental Rights of the European Union)

(2021/C 182/29)

Language of the case: English

Referring court

Westminster Magistrates' Court

Parties to the main proceedings

PI

Operative part of the judgment

Article 8(1)(c) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union and the case-law of the Court, must be interpreted as meaning that the requirements inherent in the effective judicial protection that must be afforded to a person who is the subject of a European arrest warrant for the purpose of criminal prosecution are not satisfied where both the European arrest warrant and the judicial decision on which that warrant is based are issued by a public prosecutor — who may be classified as an 'issuing judicial authority' within the meaning of Article 6(1) of that framework decision — but cannot be reviewed by a court in the issuing Member State prior to the surrender of the requested person by the executing Member State.

(1) OJ C 62, 22.2.2021.

Order of the Court (Eighth Chamber) of 4 February 2021 — Pilatus Bank plc v European Central Bank

(Case C-701/19 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Appeal manifestly unfounded — Economic and monetary policy — Prudential supervision of credit institutions — Suspension measures taken by the national supervisory authority — Appointment of a contact person — Conditional communication with the European Central Bank (ECB) — Withdrawal of licence prior to the commencement of proceedings — Action for annulment — Inadmissibility — Absence of a sufficiently clear and precise summary of the pleas in law relied on before the General Court — Failure to demonstrate a legal interest in bringing proceedings — Incorrect classification as a preparatory act — Substitution of grounds)

(2021/C 182/30)

Language of the case: English

Parties

Appellant: Pilatus Bank plc (represented initially by O.H. Behrends and M. Kirchner, Rechtsanwälte, and subsequently by O.H. Behrends)

Other party to the proceedings: European Central Bank (represented by: E. Yoo, M. Anastasiou and A. Karpf, acting as Agents)

Operative part of the order

1. The appeal is dismissed.

2. Pilatus Bank plc is ordered to pay the costs.

([1]) OJ C 406, 2.12.2019.

Order of the Court (Sixth Chamber) of 11 February 2021 (request for a preliminary ruling from the Conseil d'État — Belgium) — T.H.C. v Commissaire général aux réfugiés et aux apatrides

(Case C-755/19) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Asylum policy — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 46 — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Action brought against the rejection of a subsequent application for international protection as inadmissible — Time limit for bringing proceedings — Detention)

(2021/C 182/31)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: T.H.C.

Defendant: Commissaire général aux réfugiés et aux apatrides

Operative part of the order

Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which subjects an appeal against a decision to reject a subsequent application for international protection to a time limit of five days, including public holidays, where the applicant concerned is held in detention, provided, first, that the principle of equivalence is observed and, second, that genuine access for the applicants held in detention to the procedural safeguards granted by EU law to applicants for international protection is ensured within that period.

It is for the national court to ascertain whether the national legislation at issue in the main proceedings meets those requirements.

(1) OJ C 423, 16.12.2019.

Order of the Court (Seventh Chamber) of 4 February 2021 (request for a preliminary ruling from the Audiencia Provincial de Barcelona — Spain) — CDT, SA v MIMR, HRMM

(Case C-321/20) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Consumer protection — Temporal effects of a judgment — Directive 93/13/EEC — Unfair terms in consumer contracts — Powers of the national court when dealing with a term regarded as 'unfair' — Accelerated repayment term — Partial removal of the content of an unfair term — Principle of legal certainty — Obligation to interpret in conformity with EU law)

(2021/C 182/32)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: CDT, SA

Defendant: MIMR, HRMM

Operative part of the order

1. EU law, in particular the principle of legal certainty, must be interpreted as not precluding the national court from refraining from applying a provision of national law enabling it to review an unfair term of a contract concluded between a seller or supplier and a consumer in a situation in which that provision, which was held to be contrary to Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts by judgment of 14 June 2012, Banco Español de Crédito (C-618/10, EU: C:2012:349), had not yet been the subject of a legislative amendment, in accordance with that judgment, at the time of the conclusion of that contract.

2. The principle of legal certainty must be interpreted as meaning that it does not allow a national court which has found that a contractual term is unfair within the meaning of Article 3 of Directive 93/13 to review the content of that term, with the result that that court is required to disapply it. However, Articles 6 and 7 of that directive do not preclude the national court from substituting a supplementary provision of national law for such a term, provided that the loan agreement in question cannot survive if the unfair term is removed and that the annulment of the agreement as a whole would expose the consumer to particularly unfavourable consequences, which is a matter for the national court to determine.

(1) OJ C 359, 26.10.2020.

Order of the Court (Eight Chamber) of 25 February 2021 (request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich — Austria) — Stadtapotheke E v Bezirkshauptmannschaft Linz-Land

(Case C-378/20) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 47 — Right to a fair trial — Application for a licence for a new pharmacy — Obligation to request an expert opinion from the chamber of pharmacists — Freedom to choose an occupation and right to engage in work — Freedom to conduct a business — Right to property — Conditions for the establishment of a new pharmacy — Proportionality — Failure to implement EU law — Article 53(2) and Article 94 of the Rules of Procedure of the Court — Clear lack of jurisdiction of the Court)

(2021/C 182/33)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicant: Stadtapotheke E

Defendant: Bezirkshauptmannschaft Linz-Land

Intervener: AW

Operative part of the order

The Court of Justice of the European Union clearly lacks jurisdiction to answer the questions referred by the Landesverwaltungsgericht Oberösterreich (Regional Administrative Court, Upper Austria, Austria) by decision of 10 August 2020.

([1]) OJ C 443, 21.12.2020.

Appeal brought on 26 November 2020 by CEDC International sp. z o.o. against the judgment of the General Court (Ninth Chamber) delivered on 23 September 2020 in Case T-796/16, CEDC International v EUIPO — Underberg

(Case C-639/20 P)

(2021/C 182/34)

Language of the case: English

Parties

Appellant: CEDC International sp. z o.o. (represented by: M. Fijałkowski, radca prawny)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Underberg AG

By order of 23 March 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that CEDC International sp. z o.o. should bear its own costs.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 21 December 2020 — W.G. v Dyrektor Izby Skarbowej in L.

(Case C-697/20)

(2021/C 182/35)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: W.G.

Respondent: Dyrektor Izby Skarbowej in L.

Questions referred

1. Must the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, as amended), ([1]) in particular Articles 9, 295 and 296, be interpreted as precluding a national practice laid down in Article 15(4) and (5) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on the tax on goods and services) (*Journal of Laws* [Dz. U.] of 2011, No 177, item 1054, as amended), which excludes the option of treating as separate VAT taxable persons spouses who engage in agricultural activity within an agricultural holding using their marital joint property?

2. Is it relevant to the answer to the first question that, according to national practice, if one spouse opts to tax his or her business on the basis of general VAT rules, the other spouse ceases to be a flat-rate farmer?

3. Is it relevant to the answer to the first question that it is possible to clearly distinguish between the assets used independently and autonomously by each spouse for the purposes of the business activity concerned?

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

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 21 December 2020 — Municipality of Wieliszew v Administrator in the insolvency of Spółdzielczy Bank Rzemiosła i Rolnictwa in Wołomin, in liquidation

(Case C-698/20)

(2021/C 182/36)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Municipality of Wieliszew

Respondent: Administrator in the insolvency of Spółdzielczy Bank Rzemiosła i Rolnictwa in Wołomin, in liquidation

Question referred

Must Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, ([1]) in particular Article 2(5), Articles 3 and 4, Article 57(1), and Articles 70 and 80 thereof, and, currently, Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, ([2]) in particular Article 2(15), Article 37(1), Article 66, Article 67(1), Article 74(1) and Article 89(1) thereof, be interpreted as precluding national legislation which prevents an entity that has received resources from the budget of the European Union from effectively seeking in court proceedings that those resources be excluded from the insolvency estate where they have been paid into a bank account held at a bank which was subsequently declared insolvent, or national legislation which does not exclude those resources from the insolvency estate of the insolvent bank?

([1]) OJ 2006 L 210, p. 25.
([2]) OJ 2013 L 347, p. 320.

Request for a preliminary ruling from the Sąd Rejonowy dla Krakowa — Nowej Huty w Krakowie (Poland) lodged on 18 December 2020 — KL v X sp. z o.o.

(Case C-715/20)

(2021/C 182/37)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Krakowa — Nowej Huty w Krakowie

Parties to the main proceedings

Applicant: KL

Defendant: X sp. z o.o.

Questions referred

1. Is Article 1 of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, ([1]) and also Clauses Nos 1 and 4 of that framework agreement, to be interpreted as precluding provisions of national law obliging employers to state in writing the reasons for a decision giving notice of termination of an employment contract only in relation to employment contracts of indefinite duration, and consequently subjecting to judicial review the well-foundedness of the reasons for the notice of termination of contracts of indefinite duration, without at the same time imposing such an obligation on employers (that is to say, an obligation to state the reasons justifying the notice of termination) in relation to fixed-term employment contracts (as a result of which only the issue of the compliance of the notice of termination with the provisions on termination of contracts is subject to judicial review)?

2. May the parties to a dispute before a court of law, in which private parties appear on both sides, rely on Clause No 4 of the abovementioned framework agreement and the general EU-law principle of non-discrimination (Article 21 of the Charter of Fundamental Rights of the European Union), and consequently do the rules referred to above have horizontal effect?

([1]) OJ 1999 L 175, p. 43.

Appeal brought on 31 December 2020 by Ultrasun AG against the order of the General Court (Sixth Chamber) delivered on 20 October 2020 in Case T-805/19, Ultrasun AG v European Union Intellectual Property Office

(Case C-722/20 P)

(2021/C 182/38)

Language of the case: German

Parties

Appellant: Ultrasun AG (represented by: A. Mühlendahl, H. Hartwig, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

By order of 25 March 2021, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) did not allow the appeal to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Sąd Okręgowy w Łodzi (Poland) lodged on 15 January 2021 — TM v EJ

(Case C-28/21)

(2021/C 182/39)

Language of the case: Polish

Referring court

Sąd Okręgowy w Łodzi

Parties to the main proceedings

Applicant: TM

Defendant: EJ

Question referred

Must the phrase 'each Member State shall take all appropriate measures' in Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability [1] in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11) be interpreted as meaning that, under the legislation of the Member States, insurance undertakings should be made fully liable under insurance against civil liability, including for such consequences as lost profits on the part of the victim?

[1] OJ 2009 L 263, p. 11.

Request for a preliminary ruling from the Landgericht München (Germany) lodged on 28 January 2021 — Phoenix Contact GmbH & Co. KG v HARTING Deutschland GmbH & Co. KG, Harting Electric GmbH & Co. KG

(Case C-44/21)

(2021/C 182/40)

Language of the case: German

Referring court

Landgericht München

Parties to the main proceedings

Applicant: Phoenix Contact GmbH & Co. KG

Defendants: HARTING Deutschland GmbH & Co. KG, Harting Electric GmbH & Co. KG

Question referred

Is it compatible with Article 9(1) of Directive 2004/48/EC [1] if German higher regional courts (*Oberlandesgerichte*), which have jurisdiction at last instance in proceedings for interim relief, refuse, in principle, to grant interim measures for patent infringement if the patent in dispute has not survived opposition or invalidity proceedings at first instance?

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

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 2 February 2021 — Rigall Arteria Management Sp. z o.o. sp. k. v Bank Handlowy w Warszawie S.A.

(Case C-64/21)

(2021/C 182/41)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant in cassation: Rigall Arteria Management Sp. z o.o. sp. k.

Other party to the proceedings: Bank Handlowy w Warszawie S.A.

Question referred

In the light of the wording and purpose of Article 7(1)(b) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, [1] must that provision be understood as conferring on a self-employed commercial agent an absolute right to commission on a contract concluded during the term of an agency contract with a third party whom he or she has previously acquired as a customer for transactions of the same kind, or may that entitlement be contractually excluded?

[1] OJ 1986 L 382, p. 17.

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 8 February 2021 — Wacker Chemie AG v Bundesrepublik Deutschland represented by the Umweltbundesamt

(Case C-76/21)

(2021/C 182/42)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Wacker Chemie AG

Defendant: Bundesrepublik Deutschland represented by the Umweltbundesamt

Questions referred

1. Is the definition of capacity extension in the Commission's ETS Guidelines (OJ 2012 C 158, p. 4), ([1]) whereby the installation can be operated at a capacity that is at least 10 % higher compared to the installation's initial installed capacity before the change and it results from a physical capital investment (or a series of incremental physical capital investments) to be interpreted as meaning that this depends on:

   (a) a causal link between the physical capital investment and an extension of the technically and legally possible maximum capacity; or

   (b) in keeping with Article 3(i) and (l) of Commission Decision 2011/278/EU of 27 April 2011, a comparison with the average of the 2 highest monthly production volumes within the first 6 months following the start of changed operation?

2. If point 1(b) applies, is Article 3(i) of Commission Decision 2011/278/EU ([2]) of 27 April 2011 to be interpreted as meaning that it depends not on the scope of the extension of the technically and legally possible maximum capacity, but solely on the average values referred to in Article 3(l) of Decision 2011/278, irrespective of whether and to what extent they follow from the physical change made or a higher load?

3. Is the term 'initial installed capacity' in Annex I to the ETS Guidelines to be interpreted in accordance with Article 7(3) of Decision 2011/278/EU?

4. Is a decision by the European Commission not to raise objections to a notified State aid scheme to be interpreted as meaning:

   (a) that it finds that the national scheme is compatible overall with the State aid guidelines even with regard to additional references in the national aid scheme to other provisions of national law; or

   (b) that the national aid scheme and the other provisions of national law are to be interpreted as meaning that they must as a result comply with the aid guidelines?

5. If 4(a) applies, is a decision by the European Commission not to raise objections to a notified State aid scheme binding on the national court with regard to the finding that it complies with the relevant aid guidelines?

6. Does the fact that the European Commission refers to its aid guidelines in a decision not to raise objections to a notified State aid rule and examines the compatibility of the notified aid based on the guidelines mean that those guidelines are binding on the Member State for the purpose of the interpretation and application of the approved aid scheme?

7. Is Article 10a(6) of Directive 2003/87/EC, ([3]) as amended by Directive (EU) 2018/410, which states that the Member States should adopt financial measures to compensate for indirect CO_2 costs, relevant to the interpretation of point 5 of the ETS Guidelines, which states that aid must be limited to the minimum needed to achieve the environmental protection sought?

([1]) Communication from the Commission — Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 (OJ 2012 C 158, p. 4).

([2]) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

([3]) 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).

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 8 February 2021 — Digi Távközlési és Szolgáltató Kft. v Nemzeti Adatvédelmi és Információszabadság Hatóság

(Case C-77/21)

(2021/C 182/43)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Digi Távközlési és Szolgáltató Kft.

Defendant: Nemzeti Adatvédelmi és Információszabadság Hatóság

Questions referred

1. Must the concept of 'purpose limitation' as defined in Article 5(1)(b) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ([1]) (the 'Regulation'), be interpreted as meaning that the fact that the controller stores in parallel in another database personal data which were otherwise collected and stored for a limited legitimate purpose is consistent with that concept or, conversely, is the limited legitimate purpose of collecting those data no longer valid so far as the parallel database is concerned?

2. Should the answer to the first question referred be that the parallel storage of data is in itself incompatible with the principle of 'purpose limitation', is the fact that the controller stores in parallel in another database personal data which were otherwise collected and stored for a limited legitimate purpose compatible with the principle of 'storage limitation' established in Article 5(1)(e) of the Regulation?

([1]) OJ 2016 L 119, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 February 2021 — Airbnb Ireland UC, Airbnb Payments UK Ltd v Agenzia delle Entrate

(Case C-83/21)

(2021/C 182/44)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Airbnb Ireland UC, Airbnb Payments UK Ltd

Respondent: Agenzia delle Entrate

Questions referred

1. How are the terms 'technical regulation' for information society services and 'rule on services' in respect of the information society, referred to in Directive 2015/1535/EU ([1]) to be interpreted and, in particular, are those terms to be interpreted as including tax measures not directly aimed at regulating the specific information society service, but which affect the way in which it is provided in practice in the Member State, in particular by imposing on all property intermediation service providers — including, therefore, operators not established in that State which provide their services online — ancillary obligations for the effective collection of taxes payable by landlords, such as:

(a) the collection and subsequent transmission to the tax authorities in the Member State of information relating to short-term rental agreements entered into as a result of the intermediary's activity;

(b) the deduction of the portion due to the tax authorities from the amounts paid by tenants to landlords and subsequent payment of those amounts to the Treasury.

2.

(a) Do the principle of freedom to provide services set out in Article 56 TFEU, and, if deemed applicable in the present case, the similar principles which may be inferred from Directives 2006/123/EC ([2]) and 2000/31/EC, ([3]) preclude a national measure that imposes, on property intermediaries operating in Italy — including, therefore, operators not established in Italy which provide their services online — obligations to collect information relating to the short-term rental agreements concluded through them and subsequent transmission of that information to the tax authority, for the purpose of the collection of direct taxes payable by users of the service?

(b) Do the principle of the freedom to provide services under Article 56 TFEU, and, if deemed applicable in the present case, the similar principles which may be inferred from Directives 2006/123/EC and 2000/31/EC, preclude a national measure that imposes, on property intermediaries operating in Italy — including, therefore, operators not established in Italy which provide their services online — and involved at the payment stage of the short-term rental agreements entered into through them, the obligation to levy, for the purpose of collecting direct taxes payable by users of the service, a withholding tax on those payments, with subsequent payment to the Treasury?

(c) May the principle of the freedom to provide services under Article 56 TFEU, and, if deemed applicable in the present case, the similar principles which may be inferred from Directives 2006/123/EC and 2000/31/EC — where the above questions are answered in the affirmative — however be limited in accordance with [EU] law by national measures such as those described above under (a) and (b), in view of the fact that the tax levy relating to direct taxes payable by service users is otherwise ineffective?

(d) May the principle of the freedom to provide services referred to in Article 56 TFEU and, if deemed applicable in the present case, the similar principles which may be inferred from Directives 2006/123/EC and 2000/31/EC, be limited in accordance with [EU] law by a national measure that imposes, on property intermediaries not established in Italy, the obligation to appoint a tax representative required to comply, in the name and on behalf of the intermediary not established in Italy, with the national measures described above under (b), in view of the fact that the tax levy relating to direct taxes payable by users of the service is otherwise ineffective?

3. Must Article 267(3) TFEU be interpreted as meaning that, where a question of the interpretation of (primary or secondary) [EU] law is raised by one of the parties and accompanied by a precise indication of the wording of the question, the court is still entitled rephrase that question, by identifying, at its discretion, to the best of its knowledge and belief, the relevant provisions of [EU] law, the national provisions potentially in conflict with them, and the lexical content of the reference, provided that it is within the bounds of the subject matter of the dispute, or is the court obliged to refer the question as worded by the applicant?

([1]) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1).

([2]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

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

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 15 February 2021 — Finanzamt R v W-GmbH

(Case C-98/21)

(2021/C 182/45)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant in the appeal on a point of law: Finanzamt (Tax Office) R

Respondent in the appeal on a point of law: W-GmbH

Questions referred

1. Under circumstances such as those in the main proceedings, is Article 168(a) in conjunction with Article 167 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax to be interpreted in such a way that a managing holding that supplies taxable output services for subsidiaries is entitled to deduction, also for services that it obtains from third parties and contributes to the subsidiaries in return for the grant of a share in the general profit, even though the obtained inputs are not directly and immediately linked to the holding's own transactions but instead to the (largely) tax-exempt activities of the subsidiaries, the obtained input services are not included in the price of the taxable transactions (supplied to the subsidiaries), and they do not form part of the general cost components of the holding's own economic activity?

2. If Question 1 is answered in the affirmative: Does it constitute abuse of rights in the sense of the case-law of the Court of Justice of the European Union, if a managing holding is involved as an 'intermediary' in obtaining services for subsidiaries in such a way that it obtains services itself for which the subsidiaries would have no entitlement to deduction if services were obtained directly, contributes these services to the subsidiaries in return for participation in its profit, and then claims full deduction on the basis of the inputs on the grounds of its position as a managing holding; or can acting as an intermediary in this way be justified on grounds that fall outside the scope of tax law, even though full deduction is in itself in conflict with the system and would result in a competitive advantage for holding structures over single-tier companies?

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

Appeal brought on 17 February 2021 by Danske Slagtermestre against the order of the General Court (Third Chamber) delivered on 1 December 2020 in Case T-486/18, Danske Slagtermestre v European Commission

(Case C-99/21 P)

(2021/C 182/46)

Language of the case: Danish

Parties

Appellant: Danske Slagtermestre (represented by: H. Sønderby Christensen, advokat)

Other parties to the proceedings: European Commission and Kingdom of Denmark

Form of order sought

The appellant claims that the Court should:

— set aside the order of the General Court of 1 December 2020 in Case T-486/18.

Grounds of appeal and main arguments

— First ground of appeal: the General Court misapplies the requirement of direct concern. In support of that ground, the appellant claims that it is sufficient, in order to be directly concerned, that Danske Slagtermestre explained the reasons why the stepped system is liable to place its members in an unfavourable competitive position (see paragraphs 47 and 50 of the judgment in Case C-622/16 P — C-624/16 P). [1] The General Court therefore erred in taking the view, in paragraph 103 of the order under appeal, that Danske Slagtermestre must demonstrate which specific members have been affected and how exactly the stepped system affects their competitive position.

— Second ground of appeal: the General Court overlooks the fact that the requirement for individual concern is not applicable to cases covered by the third part of the fourth paragraph of Article 263 TFEU. The appellant therefore claims that the General Court's order is vitiated by error in so far as, in assessing direct concern in paragraph 103 it makes a reference to the considerations in paragraphs 71 to 77 concerning individual concern. The General Court explicitly states both in paragraph 63, which heads the section, and in paragraph 82, which concludes it, that paragraphs 71 to 77 concern the criteria for individual concern, exclusively.

— Third ground of appeal: the General Court overlooks the fact that the criteria applied by the Court in C-622/16 P — C-624/16 P confirm that the requirement of direct concern is met in the present case. The appellant claims thus that Danske Slagtermestre properly stated that (i) the activities are similar, (ii) its members are active in the same market for goods and services as the company supported by the aid, and (iii) its members are active in the same geographical market as the company supported by the aid. In the present case its members' activities are not merely similar but are identical to the activity of the beneficiary of the aid.

— Fourth ground of appeal: the General Court uses the word 'demonstrated' incorrectly in paragraph 103, since that word constitutes a significant intensification of the terms 'explained' or 'set out'. In that connection the appellant claims that it is not the case that Danske Slagtermestre has not explained the reasons why the members are exposed to competition which is distorted by the stepped system. The requirement that the beneficiary is released from costs which it would normally have had to bear in its day-to-day management or normal activities is already met. That follows from the case-law of the Court (see, inter alia, Case C-172/03, *Heiser*, paragraph 55). [2]

— Fifth ground of appeal: the General Court, in any event, misapplies the facts of the case and, therefore, paragraphs 71 to 77 contain errors of law. The appellant claims, first, that the General Court errs in expressing reservations as regards some of the information provided by Danske Slagtermestre despite that information not being contested by the Commission or the Danish Government, and, second, that the General Court erred in ignoring a number of important details which Danske Slagtermestre set out on several occasions in its application, reply and annexes.

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[1] Judgment of the Court of Justice of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori and Commission* v *Ferracci* (C-622/16 P to C-624/16 P, EU:C:2018:873).

[2] Judgment of the Court of Justice of 3 March 2005 (C-172/03, EU:C:2005:130).

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 22 February 2021 — Deutsche Lufthansa AG v BC

(Case C-106/21)

(2021/C 182/47)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: BC

Question referred

Does a strike by the air carrier's own employees which is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

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

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 22 February 2021 — Deutsche Lufthansa AG v ZR

(Case C-107/21)

(2021/C 182/48)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: ZR

Question referred

Does a strike by the air carrier's own employees that is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

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

Appeal brought on 23 February 2021 by Universität Bremen against the order of the General Court (Eighth Chamber) made on 16 December 2020 in Case T-660/19, Universität Bremen v Research Executive Agency

(Case C-110/21 P)

(2021/C 182/49)

Language of the case: German

Parties

Appellant: Universität Bremen (represented by: C. Schmid, university teacher)

Other party to the proceedings: Research Executive Agency

Form of order sought

The appellant claims that the Court should:

1. set aside the order of the General Court of the European Union (Eighth Chamber) of 16 December 2020 in Case T-660/19, *Universität Bremen* v *Research Executive Agency*;

2. refer the case back to the General Court for a ruling on the merits, where possible to another chamber;

3. declare that the representation of Universität Bremen by the university teacher, Christoph Schmid, in Case T-660/19 is effective in accordance with the seventh paragraph of Article 19 of the Statute of the Court of Justice of the European Union;

4. in the alternative, in the event that representation by the university teacher referred to above is deemed ineffective, declare that Universität Bremen is entitled to have a lawyer who fulfils the requirements of the third and fourth paragraphs of Article 19 of the Statute pursue before the General Court the proceedings in Case T-660/19 as they currently stand;

5. reserve the costs pending the final decision of the General Court, provided that, irrespective of the final decision of the General Court, the defendant is to bear the costs relating to the proceedings to date, namely the direct action and the appeal, or that — in the alternative — each party is to bear its own costs relating to the proceedings to date; order that, in both cases, the applicant is to be reimbursed immediately in respect of lawyers' fees for the proceedings before the General Court paid by the applicant to the defendant.

Grounds of appeal and main arguments

The appellant claims that the order under appeal wrongly dismissed as manifestly inadmissible, in accordance with Article 126 of the Rules of Procedure of the General Court, its action for annulment of decision Ares (2019) 4590599 of the Research Executive Agency of 16 July 2019 on the ground of ineffective legal representation by the university teacher, Christoph Schmid. The appellant submits that that order of the General Court is legally flawed. First, the appellant claims that the General Court disregarded the fact that university teachers having a right of audience under the law of their home country are privileged as legal representatives under the wording and scheme of the seventh paragraph of Article 19 of the Statute of the Court of Justice of the European Union and do not have to fulfil the conditions of the autonomous concept of a lawyer under the third and fourth paragraphs of Article 19 of the Statute. Secondly — and in the alternative — the appellant claims that the General Court ought, in accordance with the fundamental right to be heard under Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) ECHR and in accordance with the principle of proportionality, to have in any event provided an indication of the problems regarding admissibility; in the alternative, such an indication ought to have at least been provided on the website of the General Court, for example in the 'Aide-mémoire: Application'.

Appeal brought on 25 February 2021 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2020 in Case T-243/18, VW v Commission

(Case C-116/21 P)

(2021/C 182/50)

Language of the case: French

Parties

Appellant: European Commission (represented by: B. Schima, B. Mongin and G. Gattinara, acting as Agents)

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

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber) delivered on 16 December 2020 in Case T-243/18, *VW* v *Commission*;

— dismiss the action at first instance;

— order the respondent to pay the costs of the proceedings at first instance;

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

Grounds of appeal and main arguments

The first ground of appeal alleges an error of law concerning the criteria for assessing the legality of the choices made by the legislature, as well as a failure to fulfil the obligation to state reasons (paragraphs 46 to 49 and paragraph 58 of the judgment under appeal). The Commission claims that:

— the General Court departed from the principle according to which the assessment of the legality of an EU measure in the light of fundamental rights may not be based on claims relating to the consequences of that measure in a specific case;

— the illegality of a provision of the Staff Regulations may not be based on the 'unreasonable' nature of the choice made by the legislature;

— the General Court did not take account of all the elements which characterise the two situations under comparison, in breach of the principles laid down by the judgment in *HK* v *Commission* (C-460/18 P).

The second ground of appeal alleges an error of law in the interpretation of the principle of non-discrimination, because the General Court judged the situations referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations to be comparable (paragraphs 50 to 61 of the judgment under appeal). The Commission considers that:

— the date of the marriage is not the only criterion which distinguishes Article 18 of Annex VIII to the Staff Regulations from Article 20 of that annex. The distinction stems from a number of factors which the General Court refused to take into account;

— the General Court should have considered the purpose of the minimum duration of the marriage in the two provisions in question, which would have highlighted the differences between them;

— discrimination on grounds of age is not established.

The third ground of appeal alleges an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights of the European Union and several instances of failure to fulfil the obligation to state reasons (paragraphs 65 to 80 and 81 to 88 of the judgment under appeal):

— the first part of the ground alleges a failure to adjudicate with regard to the survivor's pension referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations;

— the second part of the ground alleges an error of law in the interpretation of the objective of preventing fraud as well as a failure to fulfil the obligation to state reasons (paragraphs 65 to 80 of the judgment under appeal);

— the third part of the ground alleges an error of law in the interpretation of the objective of protecting the financial equilibrium of the EU pension scheme (paragraphs 81 to 88 of the judgment under appeal).

Appeal brought on 25 February 2021 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2020 in Case T-315/19, BT v Commission

(Case C-117/21 P)

(2021/C 182/51)

Language of the case: French

Parties

Appellant: European Commission (represented by: B. Schima, B. Mongin and G. Gattinara, acting as Agents)

Other parties to the proceedings: BT, European Parliament, Council of the European Union and International Association of Former Officials of the European Union (AIACE International)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of 16 December 2020, *BT* v *Commission* (T-315/19);

— dismiss the action at first instance;

— order the respondent to pay the costs of the proceedings at first instance;

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

Grounds of appeal and main arguments

The first ground of appeal alleges an error of law concerning the criteria for assessing the legality of the choices made by the legislature, as well as a failure to fulfil the obligation to state reasons (paragraphs 42, 49 and 57 of the judgment under appeal). The Commission submits that:

— the General Court departed from the principle according to which the assessment of the legality of an EU measure in the light of fundamental rights may not be based on claims relating to the consequences of that measure in a specific case;

— the illegality of a provision of the Staff Regulations may not be based on the 'unreasonable' nature of the choice made by the legislature;

— the General Court did not take account of all the elements which characterise the two situations under comparison, in breach of the principles laid down by the judgment in *HK* v *Commission* (C-460/18 P).

The second ground of appeal alleges an error of law in the interpretation of the principle of non-discrimination, because the General Court judged the situations referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations to be comparable (paragraphs 51 to 63 of the judgment under appeal). The Commission claims that:

— the date of the marriage is not the only criterion which distinguishes Article 18 of Annex VIII to the Staff Regulations from Article 20 of that annex. The distinction stems from a number of factors which the General Court refused to take into account;

— the General Court should have considered the purpose of the minimum duration of the marriage in the two provisions in question, which would have highlighted the differences between them;

— discrimination on grounds of age is not established.

The third ground of appeal alleges an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights of the European Union and several instances of failure to fulfil the obligation to state reasons (paragraphs 66 to 93 of the judgment under appeal):

— the first part of the ground alleges an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights of the European Union consisting in a refusal to distinguish between the consequences of the death of the official for the surviving spouse depending on whether the marriage was contracted before or after the official left the service (paragraphs 87 to 88 of the judgment under appeal);

— the second part of the ground alleges an error of law in the interpretation of the objective of preventing fraud, as well as a failure to fulfil the obligation to state reasons (paragraphs 66 to 84 of the judgment under appeal);

— the third part of the ground alleges an error of law in the interpretation of the objective of protecting the financial equilibrium of the EU pension scheme (paragraphs 85 to 93 of the judgment under appeal).

Appeal brought on 25 February 2021 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2020 in Case T-442/17 RENV, RN v Commission

(Case C-118/21 P)

(2021/C 182/52)

Language of the case: French

Parties

Appellant: European Commission (represented by: B. Schima, B. Mongin and G. Gattinara, acting as Agents)

Other parties to the proceedings: RN and European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of 16 December 2020, *RN* v *Commission* (T-442/17 RENV);

— dismiss the action at first instance;

— order the respondent to pay the costs of the proceedings at first instance;

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

Grounds of appeal and main arguments

The first ground of appeal alleges an error of law consisting in the fact that the General Court extended the scope of the case brought before it beyond the subject matter of the dispute referred as circumscribed by the appeal court (paragraphs 41 to 46 of the judgment under appeal). The Commission claims that:

— the scope of the referral is not to be left to the assessment of the court hearing the case following referral;

— the appeal court stated that Articles 18 and 20 of Annex VIII to the Staff Regulations referred to different situations. Those situations are to be treated differently; it therefore implicitly but necessarily ruled that there was no infringement of the principle of equal treatment;

— the judgment of the General Court following the referral contradicts the appeal judgment regarding the issue of the existence of discrimination, even though a definitive ruling had been given on that issue.

The second ground of appeal alleges an error of law concerning the criteria for assessing the legality of the choices made by the legislature, as well as a failure to fulfil the obligation to state reasons (paragraphs 68 to 71 and paragraph 79 of the judgment under appeal). According to the Commission:

— the General Court departed from the principle according to which the assessment of the legality of an EU measure in the light of fundamental rights may not be based on claims relating to the consequences of that measure in a specific case;

— the illegality of a provision of the Staff Regulations may not be based on the 'unreasonable' nature of the choice made by the legislature;

— the General Court did not take account of all the elements which characterise the two situations under comparison, in breach of the principles laid down by the judgment in *HK* v *Commission* (C-460/18 P).

The third ground of appeal alleges an error of law in the interpretation of the principle of non-discrimination, because the General Court judged the situations referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations to be comparable (paragraphs 72 to 85 of the judgment under appeal). The Commission submits that:

— the date of the marriage is not the only criterion which distinguishes Article 18 of Annex VIII to the Staff Regulations from Article 20 of that annex. The distinction stems from a number of factors which the General Court refused to take into account;

— the General Court should have considered the purpose of the minimum duration of the marriage in the two provisions in question, which would have highlighted the differences between them;

— discrimination on grounds of age is not established.

The fourth ground of appeal alleges an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights of the European Union, as well as several instances of failure to fulfil the obligation to state reasons (paragraphs 87 to 88 and 90 to 113 of the judgment under appeal):

— the first part of the ground alleges an error of law in the interpretation of Article 52(1) of the Charter of Fundamental Rights of the European Union consisting in a refusal to distinguish between the consequences of the death of the official for the surviving spouse depending on whether the marriage was contracted before or after the official left the service (paragraphs 87 to 88 of the judgment under appeal);

— the second part of the ground alleges an error of law in the interpretation of the objective of preventing fraud, as well as a failure to fulfil the obligation to state reasons (paragraphs 90 to 105 of the judgment under appeal);

— the third part alleges an error of law in the interpretation of the objective of protecting the financial equilibrium of the EU pension scheme (paragraphs 106 to 113 of the judgment under appeal).

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 26 February 2021 — LB v TO

(Case C-120/21)

(2021/C 182/53)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: LB

Respondent in the appeal on a point of law: TO

Question referred

Do Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [1] and Article 31(2) of the Charter of Fundamental Rights of the European Union preclude the application of national legislation such as Paragraph 194(1), in conjunction with Paragraph 195, of the Bürgerliches Gesetzbuch (German Civil Code; 'the BGB'), under which the entitlement to paid annual leave is subject to a standard limitation period of three years, which starts to run at the end of the leave year under the conditions set out in Paragraph 199(1) of the BGB, if the employer has not actually enabled a worker to exercise his or her leave entitlement by accordingly informing him or her of the leave and inviting him or her to take that leave?

[1] OJ 2003 L 299, p. 9.

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 26 February 2021 — *Get Fresh Cosmetics Limited* v *Valstybinė vartotojų teisių apsaugos tarnyba*

(Case C-122/21)

(2021/C 182/54)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: Get Fresh Cosmetics Limited

Respondent: Valstybinė vartotojų teisių apsaugos tarnyba

Questions referred

1. Should Article 1(2) of Council Directive 87/357/EEC ([1]) of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers be interpreted as defining the products referred to in paragraph 1 of that article as being those which, although not foodstuffs, possess a form, odour, colour, appearance, packaging, labelling, volume or size, such that it is likely that consumers, especially children, will confuse them with foodstuffs and in consequence place them in their mouths, or suck or ingest them, which could be dangerous as it is demonstrated by objective and substantiated data that this may cause, for example, suffocation, poisoning, or the perforation or obstruction of the digestive tract?

2. If the first question is answered in the affirmative, should the burden of proving this be borne by the competent supervisory authority of the Member State?

([1]) OJ 1987 L 192, p. 49.

Appeal brought on 26 February 2021 by Changmao Biochemical Engineering Co. Ltd against the judgment of the General Court (Third Chamber) delivered on 16 December 2020 in Case T-541/18, Changmao Biochemical Engineering v Commission

(Case C-123/21 P)

(2021/C 182/55)

Language of the case: English

Parties

Appellant: Changmao Biochemical Engineering Co. Ltd (represented by: K. Adamantopoulos, dikigoros, P. Billiet, advocaat)

Other parties to the proceedings: European Commission, Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA and Caviro Distillerie Srl

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 16 December 2020 in case T-541/18;

— grant the form of order sought by the appellant in its action before the General Court and annul the contested regulation ([1]), in so far as it relates to the appellant or, in the alternative, in its entirety, pursuant article 61 of the statute of the Court of Justice; and

— order the defendant and the interveners to pay the appellant's costs of this appeal and of the proceedings before the General Court in case T-541/18; or

— in the alternative, refer the case to the General Court for it to rule on any or all of the appellant's pleas, as justified by the state of procedure; and

— reserve the costs.

Pleas in law and main arguments

First ground of appeal: Paragraphs 64, 65 and 74 of the contested judgment are vitiated by an error of law in considering that the legality of EU acts adopted pursuant to Article 2(7) of the Basic Regulation ([2]) may not be reviewed in light of the Protocol of Accession of the People's Republic of China to the WTO ('Accession Protocol'). Alternatively, the contested judgment is vitiated by an error of law by failing to recognize that Article 2(7) of the Basic Regulation is an exception from Articles 2, (l) to (6), of the Basic Regulation that may specifically only be applied to imports from China into the EU by virtue of the Accession Protocol provisions 15(a)(ii) and (d) and for as long as these provisions are in force. The use by the Commission of Argentina as an analogue country in the appellant's case was erroneous under both EU and WTO law. This approach resulted in a finding by the Commission of a very high dumping margin for the appellant where there would have been none, had the Commission instead applied the provisions of Articles 2, (l) to 6), of the Basic Regulation to the appellant.

Second ground of appeal: The General Court's findings in paragraphs 103, 106, 109 to 112, 114, 116, 117, 120 and 121 of the contested judgment are vitiated by manifest error in the application of law in determining that the Commission did not infringe Articles 3(1), (2) and (5), as well as 11(2) and (9) of the Basic Regulation and its duty of care and good administration by failing to take into account in its assessment of the state of the Union tartaric acid industry the performance and commercial activities of Distilerie Mazzari, the largest, profitable and most successful Union tartaric acid producer, as well as the fact that ill-conceived investment decisions of certain EU tartaric acid producers negatively affected their performance.

Third ground of appeal: the General Court's findings in paragraphs 138, 139, 145 to 147, 150 and 152 of the contested judgment are vitiated by manifest errors in the application of law in determining that the Commission did not infringe Articles 3(1), (2) and (5) as well as 11(2) of the Basic Regulation and its duty of care and good administration by refusing to take into account the activities of Hangzhou Bioking, the largest Chinese tartaric acid exporter to the EU, as well as the impact of climatic changes and the differences between the end uses of synthetic and naturally produced tartaric acid in its assessment of the likelihood of recurrence of injury.

Fourth ground of appeal: the General Court erred in law in paragraphs 171 and 173 to 177 of the contested judgment in concluding that the Commission had offered disclosure of all essential facts and considerations in good time to the appellant in the present case. Had the Commission complied with its duties under Articles 3(2), 11(2), 6(7), 19(2) and (4), and 20(2) and (4) of the Basic Regulation as well as Articles 6(4) and 6(2) of the WTO Anti-dumping Agreement, the appellant would have submitted meaningful comments to the Commission and the resultant Union vulnerability and likelihood of recurrence of injury determinations would have been different and beneficial to the appellant.

In addition, the appellant respectfully submits that the General Court erred in law in assessing, under Article 296 TFEU, the appellant's claims on (1) the lack of legal basis for the application of Article 2(7) of the Basic Regulation by the contested regulation in paragraph 187 of the contested judgment; (2) the state of the Union tartaric acid industry in paragraph 188 of the contested judgment; and (3) the likelihood of recurrence of injury and the relevance of Hangzhou Bioking's performance in paragraph 189 of the contested judgment. These claims should have been respectively dealt with in the context of the appellant's first and fourth pleas set forth in the application before the General Court.

([1]) Commission Implementing Regulation (EU) 2018/921 of 28 June 2018 imposing a definitive antidumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2018, L 164, p. 14).

([2]) Council Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on the Protection against dumped imports from countries not members of the EU (OJ 2016, 176, p. 21).

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 26 February 2021 — Lietuvos notarų rūmai, M. S., S. Š., D. V., V. P., J. P., D. L.-B., D. P., R. O. I. v Lietuvos Respublikos konkurencijos taryba

(Case C-128/21)

(2021/C 182/56)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicants: Lietuvos notarų rūmai, M. S., S. Š., D. V., V. P., J. P., D. L.-B., D. P., R. O. I.

Defendant: Lietuvos Respublikos konkurencijos taryba

Questions referred

1. Is Article 101(1) TFEU to be interpreted as meaning that notaries in the Republic of Lithuania, when carrying out activity related to the clarifications adopted by the Chamber of Notaries that are described in the present case, are undertakings within the meaning of Article 101 TFEU?

2. Is Article 101(1) TFEU to be interpreted as meaning that the clarifications adopted by the Lithuanian Chamber of Notaries that are described in the present case constitute a decision of an association within the meaning of Article 101 (1) TFEU?

3. If the answer to the second question is in the affirmative, do those clarifications have as their object or effect the prevention, restriction or distortion of competition in the internal market for the purposes of Article 101(1) TFEU?

4. When ruling on a possible infringement of Article 101(1) TFEU, are those clarifications, described in the present case, to be assessed in accordance with the criteria set out in paragraph 97 of the judgment in *Wouters*? ([1])

5. If the answer to the fourth question is in the affirmative, do the objectives referred to by the applicants, that is to say, making notarial practice uniform, filling a regulatory gap, protecting the interests of consumers, safeguarding the principles of equal treatment of consumers and proportionality, and protecting notaries against unjustified civil liability, constitute legitimate objectives when assessing those clarifications in accordance with the criteria set out in paragraph 97 of the judgment in *Wouters*?

6. If the answer to the fifth question is in the affirmative, are the restrictions imposed in those clarifications to be regarded as not going beyond what is necessary in order to ensure that legitimate objectives are attained?

7. Is Article 101 TFEU to be interpreted as meaning that notaries who were members of the presidium may be regarded as having infringed that article and may be fined on the ground that they participated in the adoption of the clarifications described in the present case while working as notaries?

([1]) Judgment of 19 February 2002, C-309/99, EU:C:2002:98.

Appeal brought on 1 March 2021 by Lukáš Wagenknecht against the order of the General Court (Eighth Chamber) delivered on 17 December 2020 in Case T-350/20, Wagenknecht v Commission

(Case C-130/21 P)

(2021/C 182/57)

Language of the case: English

Parties

Appellant: Lukáš Wagenknecht (represented by: A. Koller, advokátka)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— set aside in full the order of the General Court in the case T-350/20, Wagenknecht v Commission;

— order the Commission to pay the costs.

Pleas in law and main arguments

The first plea in law alleging violation of the duty of impartiality due to the conflict of interest of judge Laitenberger of the General Court resulting from, first, the fact that until 2019 he was employed as a Director-General of the European Commission and, second, that within that post he gave in 2018 in communication with the appellant an official view via his spokesperson, which said that European Commission should avoid examining possibly illegal state aid to the Agrofert Group. Such situation gives objective impression of conflict of interest of judge Laitenberger, irrespective of whether a concrete conflict of interest rule was breached.

The second plea in law alleging violation of the duty of conscientiousness of judges of the General Court resulting from their inability to recognise the fundamental importance of this case in relation to basic institutional functioning of the EU and its fundamental values and adjustment of the procedure and the resulting order to this aspects.

The third plea in law alleging violation of the duty of independence of the Eighth Chamber of the General Court due to having uncritically subscribed to the litigation strategy of the European Commission aiming at avoiding substantive control of its acts as a public institution as well as having effectively abandoned judicial control of institutions of the European Union, including the European Commission, in relation to their obligation to enforce prohibition of conflict of interest in relation to the EU budget.

The fourth plea in law alleging denial of justice to the appellant by the General Court by not allowing sanctioning of public institutions of the EU, including the European Commission, if they infringed concrete provisions of EU law and breached fundamental values of EU. Preventing EU citizens and their elected representatives to sue such institutions for failure to act would constitute 'denial of justice'.

The fifth plea in law alleging violation of the right to life of the appellant since the General Court did not examine the evidenced claim of the appellant that his life is threatened due to his assertion of rights before the Court of Justice concerning, although indirectly, the conflict of interest of the Czech Prime Minister Andrej Babiš.

The sixth plea in law alleging violation of the right to a fair trial under Article 6(1) ECHR and Article 47 of the EU Charter of Fundamental Right due to, first, absence of assessment of most of applicant's arguments stemming from the quantitative as well as qualitative ignorance of arguments of the appellant, second, the use of 'argumentation fouls' in relation to the few arguments of the appellant consisting in positive and negative misinterpretation of the arguments of the appellant and, third, absence of any assessment of appellant's arguments.

The seventh plea in law alleging violation of the fundamental value of democracy due to the fact that overall procrastination of the EU institutions to resolve the problem of conflict of interest of the Czech Prime Minister is advantageous for them as it allows the European Commission and other Member States to more easily 'extract consent' from the Czech Republic in the European Council on issues that are in the interest of those other Member States and the European Commission, but not in the interest of the Czech Republic, which effectively diminishes the value of votes the Czech Republic has as a Member State in European Council.

The eighth plea in law alleging violation of the fundamental value of rule of law by the General Court when stating that there a member of a Parliament of a Member State has no interest to ask the Court whether the EU executive branch (Commission) respects obligations resulting for it from the binding EU legislation and that there is no interest of an EU taxpayer to ask the Court, via its elected representative, a chairman of the Permanent Committee of the Czech Republic, for control of legality of distribution of public funds and of whether the EU executive branch (Commission) complies and enforces rules on proper distribution of taxpayers' money.

The ninth plea in law alleging violation of the fundamental value of equality before law by the General Court since the EU would no longer be an international organisation respecting the fundamental value of equality before law if, as claimed by the Commission and confirmed by the General Court, some persons and institutions (national ones) would be bound by Article 61 of the Financial Regulation ([1]) and Article 325(1) TFEU, whereas other persons (Commissioners) and institutions (Commission) would effectively not be bound by it as there would be no one to sue them before the Court of Justice in case the latter two would violate those articles by their failure to act consisting in non-respect of obligations resulting from those articles.

The tenth plea in law alleging violation of the fundamental value of rule of law because the refusal to act, which breaches the fundamental values of the EU, cannot be healed by the Commission's continuous refusal to act.

The eleventh plea in law alleging violation of principles common to legal systems of Member States, namely the principle of prohibition of conflict of interest of public officers, including members of the government, which also involves an effective enforcement of this principle, which, in turn, presupposes a possibility for a person with different interest than those of an institution of the European Union, including the European Commission, to bring an action for failure of the European Commission to effectively enforce the prohibition of conflict of interest.

(1) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018, L 193, p. 1).

Request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Hungary) lodged on 2 March 2021 — Criminal proceedings against KI

(Case C-131/21)

(2021/C 182/58)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Party to the main proceedings

KI

Question referred

Is it contrary to Article 50 of the Charter of Fundamental Rights of the European Union — interpreted in the light of Article 4 of the Additional Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950, and the relevant case-law of the European Court of Human Rights — to initiate a criminal prosecution which is based, in part, on facts in respect of which the defendant has already, in administrative proceedings leading to sanctions and by a final decision, been given an on-the-spot fine which, as a result of non-payment, was converted by means of a court decision into a custodial sentence?

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 4 March 2021 — Deutsche Lufthansa AG v GD and WT

(Case C-135/21)

(2021/C 182/59)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendants: GD, WT

Question referred

Does a strike by the air carrier's own employees which is called by a trade union constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

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

Appeal brought on 26 February 2021 by Council of the European Union against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2020 in Case T-315/19, BT v Commission

(Case C-138/21 P)

(2021/C 182/60)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: M. Bauer and M. Alver, acting as Agents)

Other parties to the proceedings: BT, European Commission, European Parliament, International Association of Former Officials of the European Union (AIACE International)

Form of order sought

The appellant submits that the Court should:

— allow the appeal and set aside the judgment under appeal;

— dispose of the case and dismiss the action brought at first instance as unfounded;

— order the applicants at first instance to pay the costs incurred by the Council in the course of the present proceedings and the proceedings at first instance.

Grounds of appeal and main arguments

In support of the appeal, the Council puts forward four grounds of appeal.

The first, and main, ground of appeal alleges errors of law regarding the existence of a difference in treatment, for the purposes of the grant of a survivor's pension under Article 18 or Article 20 of Annex VIII to the Staff Regulations, between, on the one hand, the surviving spouse of a former official who married before the latter's employment ceased and, on the other hand, the surviving spouse of a former official who married after the latter's employment ceased. According to the Council, the General Court failed to assess the comparability of the situations at issue having regard to all the elements which characterise them, including their respective legal situations, in the light of the subject matter and purpose of the EU act which makes the distinction in question, namely the Staff Regulations as a whole. The General Court therefore erred in law in so far as it declared that the date on which the marriage was concluded is the sole element which determines the application of Article 18 or Article 20 of Annex VIII to the Staff Regulations, while the difference in treatment is justified by the fundamental factual and legal difference between the legal situation of an official who has one of the administrative statuses set out in Article 35 of the Staff Regulations and that of a former official.

The second ground of appeal, raised in the alternative, alleges errors of law concerning the extent of the judicial review of choices made by the EU legislature. The General Court referred to the existence of a 'simple' discretion on the part of the EU legislature which 'implies the need to ensure that it does not appear unreasonable for the EU legislature to consider that the difference in treatment introduced is appropriate and necessary to achieve the intended aim'. However, the EU Courts acknowledge that the EU legislature, in the exercise of the powers conferred on it, has a broad discretion in areas in which its action involves political, economic and social choices, and in which it is called upon to undertake complex assessments and evaluations, which is the case for the organisation of a social security system. Thus, the criterion to be applied is not whether a measure adopted in this area was the only or the best possible measure. The lawfulness of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institutions are seeking to pursue. Through a review that went beyond the manifestly inappropriate nature of the measure at issue, the General Court substituted its own assessment to that of the legislature and thus exceeded the limits of its power of judicial review.

The third ground of appeal, raised in the alternative, alleges that the General Court erred in law in its examination as to whether the difference in treatment is justified. First, that assessment is vitiated by the error committed by the General Court in so far as concerns the definition of the extent of its review of the choices made by the legislature. Second, the General Court disregarded the case-law which establishes that it is for the applicant to demonstrate the conflict of a legislative provision with primary law, and not for the institutions which drafted the act to demonstrate the lawfulness of the latter. Third, the General Court erred in law when assessing whether the difference in treatment is justified in the light of case-law which states that a general presumption of fraud is not sufficient to justify a measure which undermines the objectives of the FEU Treaty, finding that Article 20 of Annex VIII to the Staff Regulations establishes a 'general and non-rebuttable presumption of fraud against marriages of less than five years'.

The fourth ground of appeal alleges errors of law and infringement of the obligation to state reasons in so far as concerns the findings of the General Court on the infringement of the prohibition of discrimination on grounds of age. In the first place, in paragraph 61 of the contested judgment, the General Court talks either of the age of the surviving spouse, or of the age of the official or of the former official, thus failing to fulfil the obligation to state reasons. In the second place, the finding of a particular disadvantage for people of a particular age or of a specific age range depends, in particular, upon proof that the regulations at issue negatively affect a significantly greater portion of persons of a certain age compared to persons of a different age/age group, and there is no such proof in the present case. Lastly, assuming that there is a difference in treatment based indirectly on the age of the former official on the date of the marriage, the General Court failed to examine whether that difference was nonetheless in conformity with Article 21(1) of the Charter of Fundamental Rights and whether it satisfied the criteria set out in Article 52(1) thereof.

Appeal brought on 26 February 2021 by the Council of the European Union against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2020 in Case T-243/18, VW v Commission

(Case C-139/21 P)

(2021/C 182/61)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: M. Bauer and M. Alver, acting as Agents)

Other parties to the proceedings: VW, European Commission, European Parliament

Form of order sought

The appellant submits that the Court should:

— allow the appeal and set aside the judgment under appeal;

— dispose of the case and dismiss the action brought at first instance as unfounded;

— order the applicant at first instance to pay the costs incurred by the Council in the course of the present proceedings and the proceedings at first instance.

Grounds of appeal and main arguments

In support of its appeal, the Council puts forward three grounds of appeal.

The first, and main, ground of appeal alleges errors of law regarding the existence of a difference in treatment, for the purposes of the grant of a survivor's pension under Article 18 or Article 20 of Annex VIII to the Staff Regulations, between, on the one hand, the surviving spouse of a former official who married before the latter's employment ceased and, on the other hand, the surviving spouse of a former official who married after the latter's employment ceased. In that regard, the Council submits that the General Court failed to assess the comparability of the situations at issue having regard to all the elements which characterise them including their respective legal situations, in the light of the subject matter and purpose of the EU act which makes the distinction in question, namely the Staff Regulations as a whole. The General Court thus erred in law in so far as it declared that the date on which the marriage was concluded is the only element which determines the application of Article 18 or Article 20 of Annex VIII to the Staff Regulations, while the difference in treatment is justified the fundamental factual and legal difference between the legal situation of an official who has one of the administrative statuses referred to in Article 35 of the Staff Regulations and that of a former official.

The second ground of appeal, raised in the alternative, alleges errors of law regarding the extent of judicial review of choices made by the EU legislature. In the Council's view, the General Court referred to the existence of a 'simple' discretion on the part of the EU legislature which 'implies the need to ensure that it does not appear unreasonable for the EU legislature to consider that the difference in treatment introduced is appropriate and necessary to achieve the intended aim'. However, the EU Courts acknowledge that the EU legislature, in the exercise of the powers conferred on it, has a broad discretion in areas in which its action involves political, economic and social choices, and in which it is called upon to undertake complex assessments and evaluations, which is the case for the arrangement of a social security system. Thus, the criterion to be applied is not whether a measure adopted in this area was the only or the best possible measure. The lawfulness of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institutions are seeking to pursue. Through a review that went beyond the manifestly inappropriate nature of the measure at issue, the General Court substituted its own assessment to that of the legislature and thus exceeded the limits of its power of judicial review.

The third ground of appeal alleges that the General Court erred in law in its examination as to whether the difference in treatment is justified. First, that assessment is vitiated by the error committed by the General Court as regards the definition of the extent of its extent of its review of the choices made by the legislature. Second, the General Court disregarded the case-law which establishes that it is for the applicant to demonstrate the conflict of a legislative provision with primary law, and not for the institutions which drafted the act to demonstrate the lawfulness of the latter. Third, the General Court erred in law when assessing whether the difference in treatment is justified in the light of case-law which states that a general presumption of fraud is not sufficient to justify a measure which undermines the objectives of the FEU Treaty, finding that Article 20 of Annex VIII to the Staff Regulations establishes a 'general and non-rebuttable presumption of fraud against marriages of less than five years'.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 8 March 2021 — Comité interprofessionnel des huiles essentielles françaises (CIHEF), Florame, Hyteck Aroma-Zone, Laboratoires Gilbert, Laboratoire Léa Nature, Laboratoires Oméga Pharma France, Pierre Fabre Médicament, Pranarom France, Puressentiel France v Ministre de la Transition écologique, Premier ministre

(Case C-147/21)

(2021/C 182/62)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Comité interprofessionnel des huiles essentielles françaises (CIHEF), Florame, Hyteck Aroma-Zone, Laboratoires Gilbert, Laboratoire Léa Nature, Laboratoires Oméga Pharma France, Pierre Fabre Médicament, Pranarom France, Puressentiel France

Defendants: Ministre de la Transition écologique, Premier ministre

Question referred

Does the regulation of 22 May 2012 concerning the making available on the market and use of biocidal products ([1]) preclude a Member State from adopting, in the interests of public health and the environment, restrictive rules relating to commercial practices and advertising such as those laid down in Articles L. 522-18 and L. 522-5-3 of the Environmental Code? If not, under what conditions may a Member State adopt such measures?

([1]) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).

Appeal brought on 5 March 2021 by Fakro sp. z o.o. against the judgment of the General Court delivered on 16 December 2020 in Case T-515/18, Fakro v Commission

(Case C-149/21 P)

(2021/C 182/63)

Language of the case: Polish

Parties

Appellant: Fakro sp. z o.o. (represented by: A. Radkowiak-Macuda and Z. Kiedacz, radcy prawni)

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

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court in part, that is to say, point 1 of the operative part of that judgment;

— give a final ruling in the case and annul the Commission's decision;

— order the Commission to pay the costs of the proceedings before the Court of Justice.

Grounds of appeal and main arguments

In its first ground of appeal, which is divided into two substantive parts, the appellant argues that the General Court infringed Article 105(1) TFEU, read in conjunction with Article 102 TFEU, by assuming that:

1. the Commission did not commit a manifest error by assessing the Union interest in further investigation of the case as low and rejecting the complaint on grounds of low priority. The ground is divided into four specific complaints concerning the errors in law which the General Court made by assuming that: (i) the Commission did not commit a manifest error by stating that there is only a low likelihood of establishing the existence of the alleged infringement; (ii) the Commission did not commit a manifest error by stating that the scope of the investigation required would be disproportionate in view of the likelihood of establishing the existence of the alleged infringement; (iii) the Commission did not commit a manifest error by failing to assess the impact of the alleged infringement on the functioning of the common market; and (iv) conditions for assessing the Union interest other than those considered by the Commission are inadmissible;

2. the two roof window distribution channels (investment sales and other sales) do not constitute equivalent transactions.

In its second ground of appeal, which is divided into two parts, the appellant argues that the General Court infringed the right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter')), the right to effective judicial protection, and the right to an effective remedy before a tribunal (Article 47 of the Charter), as well as Article 102 TFEU through the misinterpretation of that provision, whereby it assumed that:

1. the duration of the proceedings before the Commission and the failure to issue a substantive decision did not have an impact on the possibility for Fakro to assert its fundamental rights;

2. there was no infringement of the principle of impartiality by the Commission in the case, and, as a result, the finding that there was a lack of Union interest in investigation of the case was not based on grounds that were discriminatory.

In its third ground of appeal, the appellant argues that the General Court erred in law by failing to give full effect (*effet utile*) to Article 102 TFEU, read in conjunction with Article 17(1) TEU and Article 105 TEU, the principle of good administration, and the right to effective judicial protection, by assuming that the Commission did not have exclusive competence to conduct the proceedings and that the Commission was not obliged to analyse Fakro's situation with regard to the possibility for it effectively to assert the rights covered by the complaint submitted to the Commission, whilst Fakro, in order to assert its rights, was obliged to bring, in parallel with the proceedings conducted before the Commission, legal actions before the national competition authorities as well as before the courts in the territories of the Member States where the alleged infringements took place.

In its fourth ground of appeal, the appellant argues that the General Court infringed Article 296 TFEU through the misinterpretation of that provision and by its assumption that the Commission did not fail to fulfil its obligation to provide a proper statement of reasons in respect of the fighting brands and investment rebates.

Order of the President of the Court of Justice of 11 February 2021 — Islamic Republic of Iran Shipping Lines, Hafize Darya Shipping Lines (HDSL), Safiran Payam Darya Shipping Lines (SAPID), Khazar Sea Shipping Lines Co., Rahbaran Omid Darya Ship Management Co., Irinvestship Ltd, IRISL Europe GmbH v Council of the European Union

(Case C-506/19 P) ([1])

(2021/C 182/64)

Language of the case: English

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

([1]) OJ C 319, 23.9.2019.

Order of the President of the Seventh Chamber of the Court of 26 February 2021 (request for a preliminary ruling from the Tribunal administratif de Montreuil — France) — Bank of China Limited v Ministre de l'Action and des Comptes publics

(Case C-737/19) ([1])

(2021/C 182/65)

Language of the case: French

The President of the Seventh Chamber 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 Justice of 5 February 2021 (request for a preliminary ruling from the Landgericht Köln — Germany) — PR, BV v Germanwings GmbH

(Case C-558/20) ([1])

(2021/C 182/66)

Language of the case: German

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

([1]) OJ C 28, 25.1.2021.

Order of the President of the Court of Justice of 5 February 2021 (request for a preliminary ruling from the Landgericht Köln — Germany) — Germanwings GmbH v KV

(Case C-8/21) ([1])

(2021/C 182/67)

Language of the case: German

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

([1]) OJ C 88, 15.3.2021.

GENERAL COURT

Judgment of the General Court of 17 March 2021 — FMC v Commission

(Case T-719/17) ([1])

(Plant-protection products — Active substance flupyrsulfuron-methyl — Non-renewal of inclusion in the Annex to Implementing Regulation (EU) No 540/2011 — Assessment procedure — Proposed classification of an active substance — Precautionary principle — Rights of defence — Legal certainty — Manifest error of assessment — Proportionality — Principle of non-discrimination — Principle of sound administration — Legitimate expectations)

(2021/C 182/68)

Language of the case: English

Parties

Applicant: FMC Corporation (Philadelphia, Pennsylvania, United States) (represented by: D. Waelbroeck, I. Antypas and A. Accarain, lawyers)

Defendant: European Commission (represented by: X. Lewis, G. Koleva and I. Naglis, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Commission Implementing Regulation (EU) 2017/1496 of 23 August 2017 concerning the non-renewal of approval of the active substance DPX KE 459 (flupyrsulfuron methyl), in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ 2017 L 218, p. 7).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders FMC Corporation to bear its own costs and to pay the costs incurred by the European Commission, including those relating to the substitution procedure and the proceedings for interim measures.

([1]) OJ C 22, 22.1.2018.

Judgment of the General Court of 17 March 2021 — EJ v EIB

(Case T-585/19) ([1])

(Civil service — EIB staff — Remuneration — Travel costs — Double dependent child allowance — Child with serious illness — Capping of the backdated reimbursement of those costs and of that double allowance — Reasonable period — Duty to have regard for the welfare of staff — Action for annulment and for damages)

(2021/C 182/69)

Language of the case: French

Parties

Applicant: EJ (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Investment Bank (represented by: J. Klein, M. Loizou and T. Gilliams, acting as Agents, and by J. Currall and B. Wägenbaur, lawyers)

Re:

Application based on Article 270 TFEU and on Article 50a of the Statute of the Court of Justice of the European Union seeking, first, annulment of the decision of 16 February 2018 capping the backdated reimbursement of the recurring travel costs incurred by the applicant owing to her child's serious illness at 18 months and of the decision of 23 March 2018 capping the backdated award of the double dependent child allowance at five years and, secondly, compensation for the material and pecuniary harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders each party to bear its own costs.

(1) OJ C 363, 28.10.2019.

Order of the General Court of 10 March 2021 — Productos Jamaica v EUIPO — Alada 1850 (flordeJamaica)

(Case T-739/19) (1)

(EU trade mark — Invalidity proceedings — No need to adjudicate)

(2021/C 182/70)

Language of the case: Spanish

Parties

Applicant: Productos Jamaica, SL (Algezares, Spain) (represented by: I. Temiño Ceniceros, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. F. Crespo Carrillo and S. Palmero Cabezas, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Alada 1850, SL (Madrid, Spain) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 24 July 2019 (Joined Cases R 1431/2018-1 and R 1440/2018-1), concerning invalidity proceedings between Alada 1850 and Productos Jamaica.

Operative part of the order

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

2. Productos Jamaica, SL and Alada 1850, SL shall bear their own costs, and each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 432, 23.12.2019.

Order of the General Court of 12 March 2021 — PNB Banka v ECB

(Case T-50/20) ([1])

(Economic and monetary policy — Prudential supervision of credit institutions — Insolvency proceedings — Refusal by the ECB to accede to a request from the board of directors of a credit institution that the insolvency administrator of that institution be instructed to grant the lawyer authorised by that board access to the premises, information, staff and resources of that institution — Competence of the author of the act — Action manifestly lacking any foundation in law)

(2021/C 182/71)

Language of the case: English

Parties

Applicant: PNB Banka AS (Riga, Latvia) (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: C. Hernández Saseta, F. Bonnard and V. Hümpfner, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of the ECB's decision of 19 November 2019 refusing to instruct the applicant's insolvency administrator to grant the lawyer authorised by the applicant's board of directors access to its premises, to the information that it holds and to its staff and resources.

Operative part of the order

1. The action is dismissed.

2. There is no need to rule on the application to intervene submitted by the Republic of Latvia.

3. PNB Banka AS shall bear its own costs and shall pay those incurred by the European Central Bank (ECB), with the exception of those relating to the application to intervene.

4. PNB Banka, the ECB and the Republic of Latvia shall each bear their own costs relating to the application to intervene.

([1]) OJ C 114, 6.4.2020.

Order of the General Court of 17 March 2021 — 3M Belgium v ECHA

(Case T-160/20) ([1])

(Action for annulment — REACH — Identification of perfluorobutanesulfonic acid (PFBS) and of its salts as a substance of very high concern — Inclusion in the list of substances identified with a view to their eventual inclusion in Annex XIV to Regulation (EC) No 1907/2006 — Time limit for bringing an action — Article 59(10) of Regulation No 1907/2006 — Article 59 of the Rules of Procedure — Inadmissibility)

(2021/C 182/72)

Language of the case: English

Parties

Applicant: 3M Belgium (Diegem, Belgium) (represented by: J.-P. Montfort and T. Delille, lawyers)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Decision ECHA/01/2020 of ECHA of 16 January 2020 concerning the inclusion of perfluorobutanesulfonic acid and its salts in the list of substances identified with a view to their eventual inclusion in Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1, corrigendum OJ 2007 L 136, p. 3).

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the application to intervene by the European Chemical Industry Council (CEFIC).

3. 3M Belgium shall bear its own costs and shall pay the costs incurred by the European Chemicals Agency (ECHA), with the exception of those relating to the application to intervene.

4. 3M Belgium, ECHA and CEFIC shall each bear their own costs relating to the application to intervene.

(1) OJ C 201, 15.6.2020.

Order of the General Court of 11 March 2021 — Techniplan v Commission

(Case T-426/20) (1)

(Action for annulment and for damages — EDF — Article 76(d) of the Rules of Procedure — Failure to comply with procedural requirements — Inadmissibility)

(2021/C 182/73)

Language of the case: Italian

Parties

Applicant: Techniplan Srl (Rome, Italy) (represented by: R. Giuffrida and A. Bonavita, lawyers)

Defendant: European Commission (represented by: D. Bianchi and J. Estrada de Solà, acting as Agents)

Re:

First, application under Article 263 TFEU seeking, seemingly, the annulment of the Commission's email of 28 May 2020 and accompanying debit note and, second, application seeking compensation for the harm allegedly suffered by the applicant.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Techniplan Srl shall pay the costs.

(1) OJ C 279, 24.8.2020.

Order of the President of the General Court of 19 March 2021 — Indofil Industries (Netherlands) v Commission

(Case T-742/20 R)

(Application for interim relief — Plant protection products — Regulation (EC) No 1107/2009 — Implementing Regulation (EU) 2020/2087 — Non-renewal of approval of the active substance mancozeb — Application for suspension of operation of a measure — No urgency)

(2021/C 182/74)

Language of the case: English

Parties

Applicant: Indofil Industries (Netherlands) BV (Amsterdam, Netherlands) (represented by: C. Mereu and P. Sellar, lawyers)

Defendant: European Commission (represented by: A. Dawes, I. Naglis and G. Koleva, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU for suspension of operation of Commission Implementing Regulation (EU) 2020/2087 of 14 December 2020 concerning the non-renewal of the approval of the active substance mancozeb, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2020 L 423, p. 50).

Operative part of the order

1. The application for interim relief is dismissed.

2. The costs are reserved.

Order of the Vice-President of the General Court of 12 March 2021 — Ciano Trading & Services CT & S and Others v Commission

(Case T-45/21 R)

(Interim relief — Public procurement — Application for interim measures — Inadmissibility — Lack of urgency)

(2021/C 182/75)

Language of the case: French

Parties

Applicants: Ciano Trading & Services CT & S SpA (Fiuminco, Italy), Silvia Brizio (Venaria Reale, Italy), Laurence André (Grivegnée, Belgium), Lidia Pacitti (Neder-over-Heembeek, Belgium) (represented by: D. Gillet and S. Van Beisen, lawyers)

Defendant: European Commission (represented by: T. Van Noyen and M. Ilkova, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking, in particular and in essence, the suspension of the operation of the decision of the Commission of 20 November 2020 cancelling the call for tenders OIB/2019/CPN/0039 for a contract to be concluded for the management/operation of a service concession for sustainable group catering, including banqueting services, beverages for meetings and meals for children.

Operative part of the order

1. The application for temporary interim relief is dismissed.

2. The costs are reserved.

Action brought on 30 November 2020 — OQ v Commission

(Case T-713/20)

(2021/C 182/76)

Language of the case: Croatian

Parties

Applicant: OQ (represented by: R. Štaba, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— in accordance with Article 263 TFEU, annul the decision of the European Personnel Selection Office of 3 September 2020, issued in respect of the competition EPSO/AD/378/20 (AD7) — Croatian-language (HR) lawyer-linguists, field: lawyer-linguists at the Court of Justice of the European Union, Official Journal of the European Union, C 72 A — of 5 March 2020; and

— annul the decision of the European Personnel Selection Office of 12 October 2020, issued in respect of the competition EPSO/AD/378/20 (AD7) — Croatian-language (HR) lawyer-linguists, field: lawyer-linguists at the Court of Justice of the European Union, Official Journal of the European Union, C 72 A — of 5 March 2020;

— order the defendant to pay the costs incurred by the applicant.

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 abuse of power on part of the defendant

On 12 October 2020, the European Personnel Selection Office (EPSO) issued a decision by which it rejected the applicant's complaint against the decision of 3 September 2020 excluding her from the following stage of the competition, on the grounds that the applicant, inter alia, has neither a diploma in Croatian law nor knowledge of Croatian law, and that the decision of 13 March 2013, which had recognised her diploma in the Croatian Republic, does not include a comparison of the study programmes. In this way, EPSO conducted its own assessment, although no provision of EU law entitles it to do so, and, therefore, infringed the principle of distribution of powers in the European Union and exceeded its powers, because it is indisputable that the assessment of foreign qualifications is to be undertaken exclusively by the national bodies which are entitled to do so by law; in this case, by the Croatian Agencija za znanost i visoko obrazovanje (Agency for Science and Higher Education), under the Law on recognition of foreign qualifications, the rules for the assessment of qualifications obtained from foreign institutions of higher education, and the assessment criteria applied in proceedings concerning the recognition of professional qualifications. One of the fundamental principles, the principle of subsidiarity, has been infringed.

2. Second plea in law, alleging a manifest error of assessment of the facts

EPSO acted in an arbitrary and discretionary manner. It did not take into account the legislature of the Croatian Republic, the practice of the Constitutional Court of the Croatian Republic, or the decision of the Agency for Science and Higher Education of 13 March 2013 which had recognised the applicant's foreign qualifications. Additionally, it entirely failed to examine the fact that the applicant had been registered on the list of trainee lawyers of the Croatian Bar Association, in accordance with the Croatian Law on the legal profession, and that, for the purposes of that registration, the applicant's recognised foreign qualifications had been regarded as equivalent to the Croatian qualifications that are required to carry out the professional duties of a trainee lawyer. The applicant undertook traineeships in law firms, which makes it clear, contrary to the defendant's assertions, that she has knowledge of the Croatian legal system and of Croatian law, as well as a sufficient level of professional skills and experience for the post in respect of which the competition was organised (in the meantime, the applicant also sat — and passed — the bar exam). Additionally, EPSO did not take into account the fact that the applicant has over three years' experience in the field of translation.

Action brought on 16 February 2021 — Sánchez-Gavito León v Council and Commission

(Case T-100/21)

(2021/C 182/77)

Language of the case: English

Parties

Applicant: Maria del Carmen Sánchez-Gavito León (Reston, Virginia, United States) (represented by: M. Veissiere, lawyer)

Defendants: Council of the European Union, European Commission

Form of order sought

The applicant claims that the Court should:

— declare unlawful the failure to act of the defendants;

— order the EU represented by the defendants, as a member of the International Cotton Advisory Committee (ICAC), to take actions against the Executive Director of the ICAC for misconduct;

— order the immediate suspension of the EU's financial contribution to the ICAC until the ICAC respects the human rights as protected by the EU Treaties;

— order the EU represented by the Commission and the Council to pay her by way of compensation for moral damages the amount of €300 000,00;

— order the EU represented by the Commission and Council to paid her by way of compensation for loss of employment, opportunity and damage to her career: US$103 542,92 (at the current exchange rate in Euro) equivalent to one year and half of salary based on her last salary slip at the ICAC (US$69 055,28);

— order the EU represented by the Commission and Council to paid her by way of compensation for material damages: US $19 368,13 (at the current exchange rate in Euro) with a payment of interest at the current legal rate per annum (since June 2019);

— order the EU to pay the costs, including but not limited to legal costs as per attorney invoice(s).

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission and Council have failed to adopt any measure, and that in their inaction they have cause severe moral and material damages to the applicant who was deprived of any access to justice, and breached her right to dignity and safe work environment.

2. Second plea in law, alleging that the defendants have an obligation to act pursuant to the treaties of the EU, in particular under Article 207 TFEU, the ground on which the European Union acceded to the ICAC, which provides that the common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action. The Commission has an obligation under Articles 314 and 317 TFEU and must comply with the interests, values and principles pursuant to Article 3 TEU and the Charter.

3. Third plea in law, alleging that by their inaction, the Commission and the Council breached the applicant's fundamental rights, such as the right of access to justice and the right to a safe working environment.

Action brought on 18 February 2021 — Bastion Holding and Others v Commission

(Case T-102/21)

(2021/C 182/78)

Language of the case: English

Parties

Applicants: Bastion Holding BV (Amsterdam, Netherlands) and 35 other applicants (represented by: B. Braeken and X.Y. G. Versteeg, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— principally, annul the contested decision C(2020) 8286 final of 20 November 2020 concerning the amendment of the scheme SA.57712 — COVID-19: direct grant scheme to support the fixed costs for small and medium-sized enterprises affected by the COVID-19 outbreak (SA.59535 (2020/N)), both in so far as it relates to (a) the distinction between SMEs and other undertakings, and (b) the maximum amount of EUR 90 000;

— in the alternative, annul the contested decision in so far as it relates to either (a) the distinction between SMEs and other undertakings, or (b) the maximum amount of EUR 90 000;

— in the further alternative, annul the contested decision in its entirety;

— additionally, order the Commission to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the failure of the Commission to open a formal investigation procedure by wrongly deciding that the contested State aid measure raises no doubts as to its compatibility with the internal market.

2. Second plea in law, alleging procedural shortcomings by the Commission, as the contested decision contains an inadequate statement of reasons.

Action brought on 1 March 2021 — Colombani v EEAS

(Case T-129/21)

(2021/C 182/79)

Language of the case: French

Parties

Applicant: Jean-Marc Colombani (Auderghem, Belgium) (represented by: N. de Montigny, lawyer)

Defendant: European External Action Service

Form of order sought

The applicant claims that the Court should:

— annul the decision of EEAS rejecting the applicant's application for the post of Head of the EU Delegation to Canada, notified by a note of 6 July 2020 signed by the Director of Human Resources;

— annul the decision of EEAS rejecting the applicant's application for the post of Director MENA, notified by a note of 17 April 2020 signed by the Director of Human Resources;

— annul the decision of EEAS rejecting the applicant's complaint R/353/20;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, relating to unlawfulness of the rejection of the applicant's application as a national diplomat and a plea of illegality in respect of the vacancy notices covered by the application, namely that concerning the post of Director for Middle East and North Africa (MENA) (vacancy notice 2020/48) and that concerning the post of Head of the Delegation to Canada (vacancy notice 2020/134).

2. Second plea in law, alleging manifest error of assessment with regard to the selection requirement relating to experience in a middle management post or equivalent function for at least two years;

3. Third plea in law, alleging infringement of the principle of equal treatment and non-discrimination, legal certainty and predictability in that the assessment of the professional experience is narrowly applied to the applicant in contrast with the flexibility shown with regard to the other applicants and infringement of Article 27 of the Staff Regulations of Officials of the European Union;

4. Fourth plea in law, alleging manifest error of assessment of the applicant's grade and infringement of the principle that a person may not invoke his own fault;

5. Fifth plea in law, alleging manifest error of assessment of the type of functions performed by the applicant.

Action brought on 1 March 2021 — QK v ECB

(Case T-133/21)

(2021/C 182/80)

Language of the case: Latvian

Parties

Applicant: QK (represented by: A. Bērziņš, lawyer)

Defendant: European Central Bank (ECB)

Form of order sought

The applicant claims that the General Court should:

— find the application admissible and examine the substance of the case;

— order the ECB to pay the applicant EUR 15 583 195 in compensation for the losses sustained;

— order the ECB to pay all the applicant's costs;

— require the ECB to pay all the costs arising from the present proceedings.

Pleas in law and main arguments

Relying on Article 268 TFEU and the third paragraph of Article 340 TFEU, the applicant has raised a single plea in law. In that plea the applicant submits that, by adopting on 3 March 2016 the allegedly unfounded decision to withdraw the operating licence of Trasta Komercbanka AS, ([1]) a bank partly owned by the applicant, the ECB was responsible for the loss in the value of the applicant's shares in that bank.

([1]) European Central Bank (ECB) Decision ECB/SSM/2016 — 529900WIP0INFDAWTJ81/1 WOANCA-2016-0005 of 3 March 2016 on the withdrawal of the licence (authorisation) of Trasta Komercbanka, replaced by Decision ECB/SSM/2016 — 529900WIPOINF-DAWTJ81/2 of 11 July 2016, which is the subject of an application for annulment lodged with the General Court in Case T-698/16, *Trasta Komercbanka and Others* v *ECB*, in which proceedings are pending (OJ 2016 C 441, p. 29; corrigendum in OJ 2017 C 6, p. 57).

Action brought on 5 March 2021 — Apologistics v EUIPO — Kerckhoff (apo-discounter.de)

(Case T-140/21)

(2021/C 182/81)

Language of the case: English

Parties

Applicant: Apologistics GmbH (Markkleeberg, Germany) (represented by: H. Hug, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Markus Kerckhoff (Bergisch Gladbach, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark apo-discounter.de in red and yellow — European Union trade mark No 9 435 496

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 8 December 2020 in Case R 1439/2019-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision to the extent that the European Trademark apo-discounter.de (No. 9 435 496) was declared invalid for the following services:

Class 35 — Retail services in relation to pharmacy products, chemicals, household goods and goods for the health sector;

— order EUIPO to bear the costs of the proceeding.

Plea in law

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 5 March 2021 — Shakutin v Council

(Case T-141/21)

(2021/C 182/82)

Language of the case: English

Parties

Applicant: Aleksandr Vasilevich Shakutin (Minsk, Belarus) (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2020/2129 of 17 December 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Council Implementing Decision (CFSP) 2020/2130 of 17 December 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus, Council Implementing Regulation (EU) 2021/339 of 25 February 2021 implementing Article 8a of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, and Council Decision (CFSP) 2021/353 of 25 February 2021 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council failed to provide a sufficient statement of reasons regarding the scope of grounds used by the Council to designate the Applicant, specifically with regard to any alleged involvement in repression of civil society and democratic opposition under Article 4(a) of Council Decision 2012/642/CFSP.

2. Second plea in law, alleging that the Council failed to provide actual reasons and made a series of manifest errors of assessment in finding that the applicant is benefitting from and supporting the Lukashenka regime.

Action brought on 15 March 2021 — Vetpharma Animal Health v EUIPO — Deltavit (DELTATIC)

(Case T-146/21)

(2021/C 182/83)

Language of the case: English

Parties

Applicant: Vetpharma Animal Health, SL (Barcelona, Spain) (represented by: M. Escudero Pérez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Deltavit SAS (Janzé, France)

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 DELTATIC — Application for registration No 17 806 241

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 December 2020 in Case R 776/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to bear their own costs and to pay those of the applicant.

Pleas in law

— Infringement of Article 47(2) in connection with Article 18(1), second subparagraph, point a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 18 March 2021 — UGA Nutraceuticals v EUIPO — Vitae Health Innovation (VITADHA)

(Case T-149/21)

(2021/C 182/84)

Language of the case: English

Parties

Applicant: UGA Nutraceuticals Srl (Gubbio, Italy) (represented by: M. Riva, J. Graffer and A. Ottolini, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vitae Health Innovation SL (Montmeló, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the mark VITADHA — International registration designating the European Union No 1 352 764

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 January 2021 in Case R 2719/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision by declaring the signs dissimilar and admitting the opposed application to registration;

— order the adverse parties to bear the costs of the present proceedings.

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 15 March 2021 — Hangzhou Dingsheng Industrial Group and Others v Commission

(Case T-150/21)

(2021/C 182/85)

Language of the case: English

Parties

Applicants: Hangzhou Dingsheng Industrial Group Co., Ltd (Hangzhou, China), Dingheng New Materials Co., Ltd (Rayong, Thailand), Thai Ding Li New Materials Co., Ltd (Rayong) (represented by: G. Coppo and G. Pregno, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2020/2162 of 18 December 2020 initiating an investigation concerning possible circumvention of the antidumping measures imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration, insofar as it concerns the applicants;

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the Commission erred in law in initiating the Investigation in absence of sufficient evidence within the meaning of Article 13(3) of the Basic Anti-dumping Regulation.

Action brought on 19 March 2021 — Union Syndicale Solidaires des SDIS de France et DOM/TOM v Commission

(Case T-152/21)

(2021/C 182/86)

Language of the case: French

Parties

Applicant: Union Syndicale Solidaires des services départementaux d'incendie et de secours (SDIS) de France et DOM/TOM (Nîmes, France) (represented by: O. Coudray, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— order the European Union (European Commission) to pay the applicant EUR 10 000 in compensation for the non-pecuniary harm which it suffered, with interest as set by the European Central Bank for capital refinancing operations, increased by three and a half percentage points;

— hold the European Union (European Commission) liable for all the costs, in the amount of EUR 6 600.

Pleas in law and main arguments

In support of its action for damages, the applicant criticises the Commission for not having responded for over a year and a half to the negligence complaint which it brought in respect of the French Republic. The applicant also complains that the Commission did not inform it promptly of the state of the assessment which it carried out and did not take a position on the complaint within a reasonable period of time. According to the applicant, the Commission therefore acted unlawfully, such as to give rise to non-contractual liability of the European Union.

Action brought on 23 March 2021 — Völkl v EUIPO — Marker Dalbello Völkl (International) (Völkl)

(Case T-155/21)

(2021/C 182/87)

Language in which the application was lodged: German

Parties

Applicant: Völkl GmbH & Co. KG (Erding, Germany) (represented by: C. Raßmann, M. Suether and F. Adinolfi, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Marker Dalbello Völkl (International) GmbH (Baar, Switzerland)

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: EU figurative mark Völkl — EU trade mark No 4 467 569

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 January 2021 in Case R 568/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party, should it intervene, to pay the costs of these proceedings and of the earlier appeal proceedings.

Plea in law

— Infringement of Article 8(1)(b) and (4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 23 March 2021 — Völkl v EUIPO — Marker Dalbello Völkl (International) (Marker Völkl)

(Case T-156/21)

(2021/C 182/88)

Language in which the application was lodged: German

Parties

Applicant: Völkl GmbH & Co. KG (Erding, Germany) (represented by: C. Raßmann, M. Suether and F. Adinolfi, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Marker Dalbello Völkl (International) GmbH (Baar, Switzerland)

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 Marker Völkl — International registration designating the European Union No W00891106

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 January 2021 in Case R 0055/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant and the other party, should it intervene, to pay the costs of these proceedings and of the earlier appeal proceedings.

Plea in law

— Infringement of Article 8(1)(b) and (4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 25 March 2021 — Bustos v EUIPO — Bicicletas Monty (motwi)

(Case T-159/21)

(2021/C 182/89)

Language in which the application was lodged: Spanish

Parties

Applicant: Dante Ricardo Bustos (Wenling, China) (represented by: A. Lorente Berges, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Bicicletas Monty, SA (Sant Feliú de Llobregat, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for registration of the European Union figurative mark motwi — Application No 17 802 158

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 January 2021 in Case R 289/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— grant the registration of the European Union mark No 17 802 158 motwi in respect of the goods applied for in Class 12 of the Nice Agreement;

— order the defendants to pay the costs of the present proceedings.

Plea in law

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

Order of the General Court of 16 March 2021 — Yavorskaya v Council and Others

(Case T-405/14) ([1])

(2021/C 182/90)

Language of the case: French

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

([1]) OJ C 261, 11.8.2014.

Order of the General Court of 11 March 2021 — UPL Europe and Indofil Industries (Netherlands) v EFSA

(Case T-162/20) ([1])

(2021/C 182/91)

Language of the case: English

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

([1]) OJ C 201, 15.6.2020.

CORRIGENDA

Corrigendum to notice in the Official Journal in Case T-87/21

(Official Journal of the European Union C 110 of 29 March 2021)

(2021/C 182/92)

On page 37, Case T-87/21, *Condor Flugdienst* v *Commission* should read as follows:

'Action brought on 12 February 2021 — Condor Flugdienst v Commission

(Case T-87/21)

Language of the case: English

Parties

Applicant: Condor Flugdienst GmbH (Kelsterbach, Germany) (represented by: A. Israel, J. Lang and M. Negro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 25 June 2020 on State aid SA.57153 (2020/N) — *Germany — COVID-19: Aid to Lufthansa* [1], and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant infringed its obligation to initiate the formal investigation procedure under Article 108(2) TFEU.

2. Second plea in law, alleging that the defendant committed a manifest error of assessment by holding that the aid to Lufthansa is compatible with the internal market under Article 107(3)(b) TFEU.

3. Third plea in law, alleging that the defendant failed to fulfil its duty to state reasons.'

[1] OJ C 397, 20.11.2020, p. 2.

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