Official Journal of the European Union

C 338

English edition

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Volume 64

23 August 2021

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 8 July 2021 (request for a preliminary ruling from the Gyulai Közigazgatási és Munkaügyi Bíróság — Hungary) — OL, PM, RO v Rapidsped Fuvarozási és Szállítmányozási Zrt.

(Case C-428/19) [1]

(Reference for a preliminary ruling — Directive 96/71/EEC — Article 1(1) and Articles 3 and 5 — Posting of workers in the framework of the provision of services — Drivers working in international road transport — Compliance with the minimum rates of pay of the country of posting — Daily allowance — Regulation (EC) No 561/2006 — Article 10 — Remuneration paid to employees according to fuel consumption)

(2021/C 338/02)

Language of the case: Hungarian

Referring court

Gyulai Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicants: OL, PM, RO

Defendant: Rapidsped Fuvarozási és Szállítmányozási Zrt.

Operative part of the judgment

1. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as applying to the transnational provision of services in the road transport sector.

2. Article 3(1) and Article 6 of Directive 96/71, read in conjunction with Article 5 of that directive, must be interpreted as requiring that a breach, by an employer established in one Member State, of another Member State's provisions concerning minimum wage, may be relied on against that employer by workers posted from the first Member State, before a court of that State, if that court has jurisdiction.

3. The second subparagraph of Article 3(7) of Directive 96/71 must be interpreted as meaning that a daily allowance, the amount of which varies according to the duration of the worker's posting, constitutes an allowance specific to the posting and is part of the minimum wage, unless it is paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board or lodging, or unless it corresponds to an allowance which alters the relationship between the service provided by the worker, on the one hand, and the consideration which he or she receives in return, on the other.

4. Article 10(1) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 must be interpreted as not precluding, in principle, a road haulage undertaking from granting drivers a bonus calculated on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made. Nevertheless, such a bonus would infringe the prohibition laid down in that provision if, instead of being linked solely to saving fuel, it rewarded such saving on the basis of the distances travelled and/or the amount of goods carried, in such a way as to encourage the driver to act in a manner that endangers road safety or infringes Regulation No 561/2006.

(1) OJ C 95, 23.3.2020.

Judgment of the Court (Fourth Chamber) of 8 July 2021 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — Rádio Popular — Electrodomésticos SA v Autoridade Tributária e Aduaneira

(Case C-695/19) (1)

(Reference for a preliminary ruling — Directive 2006/112/EC — Value added tax (VAT) — Exemptions — Article 135(1)(a) — Definition of 'insurance' transactions and of 'related services performed by insurance brokers and insurance agents' — Article 174(2) — Right to deduction — Proportional deduction — Extended warranties on household electrical appliances and other computer and telecommunications equipment — Definition of 'financial transactions')

(2021/C 338/03)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Rádio Popular — Electrodomésticos SA

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

Article 174(2)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 135(1) of that directive, must be interpreted as meaning that it does not apply to transactions involving intermediation in the sale of warranty extensions that are performed by a taxable person in the course of its main activity consisting in the sale to consumers of household electrical appliances and other computer and telecommunications equipment, with the consequence that the amount of turnover relating to those transactions must not be excluded from the denominator of the fraction used to calculate the deductible proportion referred to in Article 174(1) of that directive.

(1) OJ C 406, 2.12.2019.

Judgment of the Court (First Chamber) of 8 July 2021 (request for a preliminary ruling from the tribunal de première instance de Namur — Belgium) — C.J. v Région wallonne

(Case C-830/19) ([1])

(Reference for a preliminary ruling — Agriculture — European Agricultural Fund for Rural Development (EAFRD) — Regulation (EU) No 1305/2013 — Delegated Regulation (EU) No 807/2014 — Young farmers setting up — Farm development — Business start-up aid for young farmers — Conditions of access — Equivalence — Not setting up as sole head of the holding — Upper thresholds — Fixing — Criteria — Standard output of the agricultural holding)

(2021/C 338/04)

Language of the case: French

Referring court

Tribunal de première instance de Namur

Parties to the main proceedings

Applicant: C.J.

Defendant: Région wallonne

Operative part of the judgment

Articles 2, 5 and 19 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, read in conjunction with Articles 2 and 5 of Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, must be interpreted as not precluding national legislation under which the criterion for determining the upper threshold for enabling a young farmer, who is not setting up as sole head of the holding, to access business start-up aid is the standard gross output of the entire agricultural holding, and not simply that young farmer's share in that holding.

([1]) OJ C 27, 27.1.2020.

Judgment of the Court (Eighth Chamber) of 8 July 2021 (request for a preliminary ruling from the Amtsgericht Köln — Germany) — KA

(Case C-937/19) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 1072/2009 — Article 1(5)(d) — Article 8 — International carriage of goods by road from one Member State to another Member State — Cabotage operations following that international carriage in the territory of the latter Member State — Restrictions — Requirement of a Community licence and, where appropriate, a carriage authorisation — Exemptions — Cabotage operations following an international carriage on one's own account — Conditions)

(2021/C 338/05)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

KA

Interveners: Staatsanwaltschaft Köln, Bundesamt für Güterverkehr

Operative part of the judgment

Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market must be interpreted as meaning that a haulier who has carried out an international carriage of goods on its own account, for the purposes of Article 1(5)(d) of that regulation, from one Member State to another Member State, is permitted, under Article 8(6) of that regulation, to carry out cabotage operations following that international carriage within the territory of the latter Member State, subject, nevertheless, to compliance with the conditions laid down in Article 8(2) to (4) of that regulation.

(1) OJ C 95, 23.3.2020.

Judgment of the Court (Fourth Chamber) of 8 July 2021 (request for a preliminary ruling from the Østre Landsret — Denmark) — Criminal proceedings against VAS Shipping ApS

(Case C-71/20) (1)

(Reference for a preliminary ruling — Articles 49 and 54 TFEU — Freedom of establishment — National legislation requiring third-country nationals employed on a vessel flying the flag of a Member State to hold a work permit in that Member State — Exemption covering vessels that call at the Member State's port no more than 25 times in a one-year period — Restriction — Article 79(5) TFEU — National legislation aimed at fixing the volumes of admission of third-country nationals coming from third countries to the territory of the Member State concerned in order to seek work, whether employed or self-employed)

(2021/C 338/06)

Language of the case: Danish

Referring court

Østre Landsret

Party in the main criminal proceedings

VAS Shipping ApS

Operative part of the judgment

Article 49 TFEU, read in the light of Article 79(5) TFEU, must be interpreted as not precluding legislation of a first Member State which provides that crew members, who are third-country nationals, of a vessel flying the flag of that Member State and owned, directly or indirectly, by a company with its head office in a second Member State must hold a work permit in that first Member State, unless the vessel concerned has made no more than 25 calls to ports in the first Member State in one year

(1) OJ C 137, 27.4.2020.

Judgment of the Court (Fifth Chamber) of 8 July 2021 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — Koleje Mazowieckie — KM Sp. z o.o. v Skarb Państwa — Minister Infrastruktury i Budownictwa obecnie Minister Infrastruktury i Prezes Urzędu Transportu Kolejowego, PKP Polskie Linie Kolejowe S.A.

(Case C-120/20) ([1])

(Reference for a preliminary ruling — Rail transport — Allocation of railway infrastructure capacity and levying of charges for the use of railway infrastructure — Directive 2001/14/EC — Article 4(5) — Charging — Article 30 — National regulatory body tasked with ensuring that infrastructure charges comply with that directive — Contract for use of infrastructure concluded between the infrastructure manager and a railway undertaking — Incorrect implementation — State liability — Claim for damages — Prior referral to the national regulatory body)

(2021/C 338/07)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: Koleje Mazowieckie — KM Sp. z o.o.

Defendants: Skarb Państwa — Minister Infrastruktury i Budownictwa obecnie Minister Infrastruktury i Prezes Urzędu Transportu Kolejowego, PKP Polskie Linie Kolejowe S.A.

intervener: Rzecznik Praw Obywatelskich (RPO)

Operative part of the judgment

1. The provisions of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, in particular Article 4(5) and Article 30 thereof, must be interpreted as precluding an ordinary court of a Member State ruling on an action for damages against the State brought by a railway undertaking on the basis of an incorrect implementation of that directive, resulting in an alleged overpayment of a charge to the infrastructure manager, where the regulatory body and, as the case may be, the court having jurisdiction to hear appeals against the decisions of that body have not yet ruled on the legality of that charge.

   Article 30(2), (5) and (6) of Directive 2001/14, as amended by Directive 2007/58, must be interpreted as requiring that a railway undertaking holding an access permit has the right to challenge the amount of individual charges set by the infrastructure manager before the regulatory body, that that body take a decision on that challenge and that that decision may be reviewed by the court having jurisdiction to conduct such review.

2. EU law must be interpreted not precluding national civil liability law from making the rights of individuals to obtain compensation for damage suffered as a result of an infringement of EU law by a Member State subject to less stringent conditions than those laid down by EU law.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Sixth Chamber) of 8 July 2021 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas- Lithuania) — BB v Lietuvos Respublikos sveikatos apsaugos ministerija

(Case C-166/20) [1]

(Reference for a preliminary ruling — Recognition of professional qualifications — Directive 2005/36/EC — Article 1 and Article 10(b) — Professional qualifications obtained in several Member States — Requirements for obtaining — No formal evidence of qualifications — Articles 45 and 49 TFEU — Workers — Freedom of establishment)

(2021/C 338/08)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: BB

Defendant: Lietuvos Respublikos sveikatos apsaugos ministerija

Operative part of the judgment

1. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, in particular Article 1 and Article 10(b) thereof, must be interpreted as not being applicable to a situation where a person applying for recognition of his or her professional qualifications has not obtained formal evidence of qualifications making him or her qualified, in the home Member State, to pursue a regulated profession there.

2. Articles 45 and 49 TFEU must be interpreted as meaning that, in a situation where the person concerned does not hold the evidence attesting to his or her professional qualification as a pharmacist, for the purposes of point 5.6.2 of Annex V to Directive 2005/36, as amended by Directive 2013/55, but has acquired professional skills relating to that profession both in the home Member State and in the host Member State, the competent authorities of the latter are required, when they receive an application for recognition of professional qualifications, to assess those skills and compare them with those required in the host Member State for the purposes of gaining access to the profession of pharmacist. If those skills correspond to those required by the national provisions of the host Member State, it must recognise them. If that comparative examination reveals that those skills correspond only partially, the host Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking. It is for the competent national authorities to assess, if necessary, whether the knowledge acquired in the host Member State, inter alia by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking. If that comparative examination reveals substantial differences between the education and training undertaken by the applicant and the education and training required in the host Member State, the competent authorities may set compensation measures to make up for those differences.

[1] OJ C 230, 13.7.2020.

Judgment of the Court (Fourth Chamber) of 8 July 2021 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Pharma Expressz Szolgáltató és Kereskedelmi Kft v Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet

(Case C-178/20) [1]

(Reference for a preliminary ruling — Free movement of goods — Medicinal products for human use — Directive 2001/83/EC — Article 5(1), Article 6(1), and Articles 70 to 73 — Medicinal products authorised in a first Member State — Classification as medicinal products not subject to medical prescription — Sale in pharmacies of a second Member State without marketing authorisation in that Member State — National legislation requiring notification to the competent authority and a declaration from that authority on the use of that medicinal product — Article 34 TFEU — Quantitative restriction)

(2021/C 338/09)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Pharma Expressz Szolgáltató és Kereskedelmi Kft

Defendant: Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet

Operative part of the judgment

1. Articles 70 to 73 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2012/26/EU of the European Parliament and of the Council of 25 October 2012 read in the light of Article 5(1) and Article 6(1) of that directive are to be interpreted as precluding, subject to the implementation of the derogation provided for in Article 5(1), a medicinal product which can be dispensed without medical prescription in one Member State from also being regarded as a medicinal product which can be dispensed without medical prescription in another Member State, including where, in that State, that medicinal product does not have a marketing authorisation and has not been classified.

2. A national measure transposing Article 5(1) of Directive 2001/83, as amended by Directive 2012/26, which requires, for dispensing a medicinal product which does not have a marketing authorisation, a medical prescription and a declaration from the competent health authority to ensure that the conditions laid down in that provision are satisfied does not constitute a quantitative restriction or a measure having equivalent effect within the meaning of Article 34 TFEU.

[1] OJ C 279, 24.8.2020.

Judgment of the Court (Ninth Chamber) of 8 July 2021 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — 'Sanresa' UAB v Aplinkos apsaugos departamentas prie Aplinkos ministerijos

(Case C-295/20) [1]

(Reference for a preliminary ruling — Public procurement — Award of a public contract for waste treatment services — Directive 2014/24/EU — Articles 58 and 70 — Classification of the obligation on the operator to hold prior written consent for cross-border shipments of waste — Condition for the performance of the contract)

(2021/C 338/10)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: 'Sanresa' UAB

Defendant: Aplinkos apsaugos departamentas prie Aplinkos ministerijos

Interveners: 'Toksika' UAB, 'Žalvaris' UAB, 'Palemono keramikos gamykla' AB, 'Ekometrija' UAB

Operative part of the judgment

1. Article 18(2) and Articles 58 and 70 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that, in the context of a procedure for the award of a public contract for waste management services, the obligation on an economic operator who wishes to ship waste from one Member State to another Member State to possess, in accordance in particular with Article 2(35) and Article 3 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, the consent of the competent authorities of the States concerned by that shipment constitutes a condition for the performance of that contract.

2. Article 70 of Directive 2014/24, read in conjunction with Article 18(1) of that directive, must be interpreted as precluding the rejection of a tenderer's tender on the sole ground that that tenderer fails to provide proof, when submitting its tender, that it satisfied a condition for the performance of the contract in question.

([1]) OJ C 329, 5.10.2020.

Request for a preliminary ruling from the Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent (Belgium) lodged on 27 May 2021 — The Escape Center BVBA v Belgische Staat

(Case C-330/21)

(2021/C 338/11)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent

Parties to the main proceedings

Applicant: The Escape Center BVBA

Defendant: Belgische Staat

Question referred

Must Article 98(2) of Directive 2006/112, ([1]) read in conjunction with point (14) of Annex III to that directive, be interpreted as meaning that the right to use sporting facilities is subject to the reduced rate of VAT only if no individual or group guidance is provided?

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

Request for a preliminary ruling from the tribunal de commerce de Paris (France) lodged on 2 June 2021 — AA, AA, née BB, Groupe AA SNC, SI, AM, RH, RT, OE, MD, CJ, MI, Brouard-Daude SCP, acting through Xavier Brouard in his capacity as insolvency administrator of Groupe AA SNC v Allianz Bank SA, Allianz France SA, successor in law to Métropole SA, Abitbol & Rousselet SCP, acting through Frédéric Abitbol in his capacity as insolvency administrator of Groupe AA SNC, BDR & Associés, acting through Xavier Brouard in his capacity as insolvency administrator of Groupe AA SNC, SELAFA MJA, acting through Jérôme Pierrel, insolvency co-administrator of AA, SELARL Axym, acting through Didier Courtoux, insolvency co-administrator of AA, Bibus SA, formerly Matinvest, Allianz I.A.R.D. SA, successor in law to Métropole SA

(Case C-344/21)

(2021/C 338/12)

Language of the case: French

Referring court

Tribunal de commerce de Paris

Parties to the main proceedings

Applicants: AA, AA, née BB, Groupe AA SNC, SI, AM, RH, RT, OE, MD, CJ, MI, Brouard-Daude SCP, acting through Xavier Brouard in his capacity as insolvency administrator of Groupe AA SNC

Defendants: Allianz Bank SA, Allianz France SA, successor in law to Métropole SA, Abitbol & Rousselet SCP, acting through Frédéric Abitbol in his capacity as insolvency administrator of Groupe AA SNC, BDR & Associés, acting through Xavier Brouard in his capacity as insolvency administrator of Groupe of AA SNC, SELAFA MJA, acting through Jérôme Pierrel, insolvency co-administrator of AA, SELARL Axym, acting through Didier Courtoux, insolvency co-administrator of AA, Bibus SA, formerly Matinvest, Allianz I.A.R.D. SA, successor in law to Métropole SA

Questions referred

— Must the rules on the control of concentrations under Regulations No 4064/89 ([1]) and No 139/2004 ([2]) be interpreted as meaning that a concentration implemented in infringement of the prior notification and standstill obligations must be classified as a non-notified concentration and, if it must, what are the legal consequences of a failure to notify on legal acts subsequently entered into on the basis of that first concentration? Specifically, must the non-notified concentration be regarded as 'incompatible' within the meaning of Regulations No 4064/89 and No 139/2004?

— Must Article 3(5)(a) of Regulations No 4064/89 and No 139/2004 be interpreted as meaning that the fact that a financial or credit institution or an insurance company holds securities for over a year with no authorisation by the Commission gives rise to an incompatible concentration?

— What are the legal consequences under Article 3(5)(a) of Regulations No 4064/89 and No 139/2004 of infringement of the obligation to request the Commission to extend the one-year period for which credit institutions and other financial institutions or insurance companies can hold securities?

— Must compliance with the general principle of legal certainty be interpreted as meaning that it limits the ability to challenge operations that are unlawful under EU law, where that unlawfulness has existed for a particularly long time and where natural and legal persons have established individual rights on the basis of the unlawful operation. Where infringements of EU law are found to occur, do they confer entitlement to bring actions for damages against the persons responsible for the unlawful conduct?

— Must the case-law of the Court of Justice of the European Union on the non-contractual liability of the Member States be interpreted as meaning that infringements of EU law caused by a financial institution that is a subdivision of the State impose an obligation on that State to compensate the victims of the unlawful conduct, on the general terms established by EU law?

— Must Article 108(3) TFEU be interpreted as meaning that, before the judgment in *Stardust Marine*, a selective loan at a preferential rate giving rise to an advantage compared with normal market conditions could be regarded as organically coming from 'State resources' because it was granted by a public undertaking, and that it is not necessary to verify whether it was functionally attributable to the State?

— Does the obligation of sincere cooperation by the Member States under Article 4(3) TEU, in conjunction with the effectiveness and direct effect of Article 88(3) [of the EC Treaty, now Article 108(3) TFEU], require the court hearing the substantive case of its own motion to draw attention to and, where applicable, declare unlawful any State aid that has not been notified to the Commission?

— What are the legal consequences of a failure to notify State aid to the European Commission in infringement of Article 108(3) TFEU, including as regards the validity of any acquisitions carried out using that State aid?

— Must Article 108(3) TFEU be interpreted as meaning that the fact that a public credit institution mobilises its capital on a large scale for the selective benefit of another bank constitutes State aid?

— Must Article 101 TFEU, as interpreted by the Court of Justice in its *Allianz Hungaria* case-law, be construed as meaning that an agreement concluded by an agent with other undertakings which entails infringement of a legal obligation must be regarded as constituting a restriction on competition by object since under French national law an agent cannot be the purchaser of an asset which the agent is entrusted to sell and has a duty to act fairly and a duty to provide information to the principal or principals?

— Is Article 101 TFEU infringed where undertakings have reached an agreement to acquire a third undertaking at a price significantly below its market value, and where that acquisition involved one of the undertakings in the agreement infringing the duty to act fairly, the duty to provide information or the prohibition on acquiring the asset which French law imposes on an agent?

— Is Article 101 TFEU infringed where an agreement between undertakings has contributed to concealing information from the European Commission in relation to the concentration-related obligations (in particular the notification obligation) on the undertakings or certain undertakings

— Is Article 101 TFEU infringed where an agreement between undertakings had the object or effect, inter alia, of State aid not being duly notified to the European Commission?

— Must Article 3 of Directive 2014/104/EU ([3]) be interpreted as meaning that in the present case 'full compensation' under that directive is the same as the current market value of Adidas?

— Having regard to all the relevant facts in the present case, must Article 10 of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union or the principle of effectiveness that it embodies be interpreted as meaning that the right to reparation of harm resulting from the infringements of Articles 101 and 102 TFEU alleged by the applicants must be found to be time-barred or not to be time-barred?

— Since that directive does not apply to infringements of EU law relating to concentrations and State aid, what rules of EU law should be applied in respect of any limitation of the right to reparation and how must those rules be interpreted in the light of the relevant facts of the case?

([1]) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1).

([2]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1).

([3]) Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 4 June 2021 — Criminal proceedings against DD

(Case C-347/21)

(2021/C 338/13)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

DD

Questions referred

Is the right of the accused person to be present in person under Article 8(1) of Directive 2016/343, ([1]) read in conjunction with Article 10(1) and recital 44 thereof, safeguarded where a witness has been examined in the absence of the accused person at a separate hearing but the accused person had the opportunity to put questions to that witness at the subsequent hearing but stated that he or she had no questions, or is it necessary, in order to safeguard the right to be present in person, for that examination to be repeated in its entirety, including the questions put by the other parties who were present at the first examination?

Is the right to be defended by a lawyer under Article 3(1) of Directive 2013/48, ([2]) read in conjunction with Article 12(1) thereof, safeguarded where two witnesses have been examined in the absence of the lawyer at two separate hearings but the lawyer was given the opportunity to put questions to the two witnesses at the subsequent hearing, or is it necessary, in order to safeguard the right of defence by a lawyer, for those two examinations to be repeated in their entirety, including the questions of the other parties from the first hearing, and, in addition, for the lawyer who was absent from the two previous hearings to be given the opportunity to ask his questions?

([1]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

([2]) Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294, p. 1).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 4 June 2021 — Criminal proceedings against HYA and Others

(Case C-348/21)

(2021/C 338/14)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties to the main proceedings

HYA and Others

Question referred

Is a national law which provides that the right of an accused person to be present in proceedings is safeguarded and the public prosecutor's office properly discharges its obligation to prove the guilt of the accused person compatible with Articles 8(1) and 6(1) of Directive 2016/343, ([1]) read in conjunction with recitals 33 and 34 thereof, and the second paragraph of Article 47 of the Charter if the testimony given at the pre-trial stage of the proceedings by witnesses who cannot be examined for objective reasons is introduced at the trial stage of the criminal proceedings, whereby those witnesses were examined solely by the prosecution and without the participation of the defence, but before a judge, and the prosecution could have provided the defence with the opportunity to participate in that examination at the pre-trial stage, but did not do so?

([1]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 4 June 2021 — Criminal proceedings against HYA and Others

(Case C-349/21)

(2021/C 338/15)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties to the main proceedings

HYA and Others

Questions referred

Is a practice of national courts in criminal proceedings whereby the court authorises the interception, recording and storage of telephone conversations of suspects by means of a pre-drafted, generic text template in which it is merely asserted, without any individualisation, that the statutory provisions have been complied with compatible with Article 15(1) of Directive 2002/58, ([1]) read in conjunction with Article 5(1) and recital 11 thereof?

If not, is it contrary to EU law if the national law is interpreted as meaning that information obtained as a result of such authorisation is used to prove the charges brought?

([1]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37, Special edition in Bulgarian: Chapter 13 Volume 036 P. 63).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 4 June 2021 — Criminal proceedings against Spetsializirana prokuratura

(Case C-350/21)

(2021/C 338/16)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

Spetsializirana prokuratura

Questions referred

Is national legislation (Article 251b(1) of the Zakon za elektronnite saobshtenia (Law on electronic communications)) providing for the general and indiscriminate retention of all traffic data (traffic data and location data of users of electronic means of communication) for a period of 6 months in order to fight serious crime compatible with Article 15(1) of Directive 2002/58, ([1]) read in combination with Article 5(1) and recital 11 thereof, provided that the national legislation contains certain safeguards?

Is national legislation (Article 159a of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure)) which does not limit access to traffic data to what is strictly necessary and does not grant the persons whose traffic data are accessed by the law enforcement authorities the right to be notified thereof, provided that that does not impede criminal proceedings, or the right to a legal remedy against unlawful access compatible with Article 15(1) of Directive 2002/58, read in combination with Article 5(1) and recital 11 thereof?

([1]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37, Special edition in Bulgarian: Chapter 13 Volume 036 P. 63).

Request for a preliminary ruling from the Justice de paix du canton de Forest (Belgium) lodged on 4 June 2021 — ZG v Beobank SA

(Case C-351/21)

(2021/C 338/17)

Language of the case: French

Referring court

Justice de paix du canton de Forest

Parties to the main proceedings

Applicant: ZG

Defendant: Beobank SA

Questions referred

1. Under Article 38(a) of Directive 2007/64/EC, ([1]) is the payment service provider under a best endeavours obligation or an obligation of result regarding the provision of 'information relating to the payee'?

2. Does the 'information relating to the payee' referred to in that provision include information from which the natural or legal person that received the payment can be identified?

([1]) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1).

Request for a preliminary ruling from the Cour de cassation (Belgium) lodged on 9 June 2021 — Tilman SA v Unilever Supply Chain Company AG

(Case C-358/21)

(2021/C 338/18)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant in cassation: Tilman SA

Respondent in cassation: Unilever Supply Chain Company AG

Question referred

Are the requirements under Article 23(1)(a) and (2) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007, satisfied where a clause conferring jurisdiction is contained in general terms and conditions to which a contract concluded in writing refers by providing the hypertext link to a website, access to which allows those general terms and conditions to be viewed, downloaded and printed, without the party against whom that clause is enforced having been asked to accept those general terms and conditions by ticking a box on that website?

GENERAL COURT

Judgment of the General Court of 7 July 2021 — HTTS v Council

(Case T-692/15 RENV) [1]

(Non-contractual liability — Common foreign and security policy — Restrictive measures against Iran — List of persons and entities subject to the freezing of funds and economic resources — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2021/C 338/19)

Language of the case: German

Parties

Applicant: HTTS Hanseatic Trade Trust & Shipping GmbH (Hamburg, Germany) (represented by: M. Schlingmann, lawyer)

Defendant: Council of the European Union (represented by: J.-P. Hix and M. Bishop, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: R. Tricot, C. Hödlmayr, J. Roberti di Sarsina and M. Kellerbauer, acting as Agents)

Re:

Action based on Articles 268 and 340 TFEU and seeking compensation for the losses which the applicant allegedly suffered following the listing of its name, first, by Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25) in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1) and, secondly, by Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1) in Annex VIII to Regulation No 961/2010.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders HTTS Hanseatic Trade Trust & Shipping GmbH to bear its own costs and to pay those of the Council of the European Union relating to the present proceedings and the proceedings in Case T-692/15;

3. Orders each party to bear its own costs relating to the proceedings in Case C-123/18 P.

4. Orders the European Commission to bear its own costs relating to the present proceedings, the proceedings in Case T-692/15 and the proceedings in Case C-123/18 P.

[1] OJ C 59, 15.2.2016.

Judgment of the General Court of 7 July 2021 — HM v Commission

(Case T-587/16 RENV) [1]

(Civil service — Officials — Recruitment — Competition notice EPSO/AST-SC/03/15 — Refusal to allow participation in the assessment tests — Request for review — Refusal to forward that request to the selection board for the open competition on the grounds that it was out of time — Division of competences between EPSO and the competition selection board — Interest in bringing proceedings)

(2021/C 338/20)

Language of the case: German

Parties

Applicant: HM (represented by: H. Tettenborn, lawyer)

Defendant: European Commission (represented by: T. Bohr and G. Gattinara, acting as Agents)

Re:

Application on the basis of Article 270 TFEU for the annulment of the decision of the European Personnel Selection Office (EPSO) of 17 August 2015 not to take into account the request for review of the decision of the selection board not to allow the applicant to participate in the next stage of Competition EPSO/AST-SC/03/15-3.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Personnel Selection Office (EPSO) of 17 August 2015 not to take into account the request for review of the decision of the selection board not to allow the applicant to participate in the next stage of Competition EPSO/AST-SC/03/15-3;

2. Orders the European Commission to pay the costs relating to the initial proceedings before the Civil Service Tribunal of the European Union (F-17/16) and the General Court (T-587/16), the proceedings before the Court of Justice in Case C-70/19 P and the present referral proceedings (T-587/16 RENV).

[1] OJ C 191, 30.5.2016 (case initially registered before the Civil Service Tribunal of the European Union under number F-17/16 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 7 July 2021 — Bateni v Council

(Case T-455/17) [1]

(Non-contractual liability — Common foreign and security policy — Restrictive measures against Iran — List of persons and entities subject to the freezing of funds and economic resources — Jurisdiction of the General Court — Limitation period — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2021/C 338/21)

Language of the case: German

Parties

Applicant: Naser Bateni (Hamburg, Germany) (represented by: M. Schlingmann, lawyer)

Defendant: Council of the European Union (represented by: .-P. Hix and M. Bishop, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: C. Hödlmayr, J. Roberti di Sarsina and M. Kellerbauer, acting as Agents)

Re:

Action based on Articles 268 and 340 TFEU and seeking compensation for the losses which the applicant allegedly suffered following the listing of his name in the lists set out, first, in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), by means of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71), and in Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), by means of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), secondly, in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), and, thirdly, in the Annex to Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413 (OJ 2013 L 306, p. 18), and in the Annex to Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation No 267/2012 (OJ 2013 L 306, p. 3).

Operative part of the judgment

The Court:

1. Dismisses the action as in part inadmissible and in part unfounded;

2. Orders Mr Bateni to bear his own costs and to pay those incurred by the Council of the European Union;

3. Orders the European Commission to bear its own costs.

([1]) OJ C 300, 11.9.2017.

Judgment of the General Court of 14 July 2021 — Nike European Operations Netherlands and Converse Netherlands v Commission

(Case T-648/19) ([1])

(State aid — Aid implemented by the Netherlands in favour of Nike — Tax rulings — Decision to initiate the formal investigation procedure — Arm's length principle — Advantage — Selective nature — Equal treatment — Good administration — Inadequate preliminary examination — Serious difficulties — Obligation to state reasons)

(2021/C 338/22)

Language of the case: English

Parties

Applicants: Nike European Operations Netherlands BV (Hilversum, Netherlands), Converse Netherlands BV (Amsterdam, Netherlands) (represented by: R. Martens and D. Colgan, lawyers)

Defendant: European Commission (represented by: P.-J. Loewenthal and S. Noë, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Decision C(2019) 6 final of 10 January 2019 on State aid SA.51284 (2018/NN) — Netherlands — Possible State aid in favour of Nike, initiating the formal investigation procedure laid down in Article 108(2) TFEU.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Nike European Operations Netherlands BV and Converse Netherlands BV to pay the costs.

([1]) OJ C 413, 9.12.2019.

Judgment of the General Court of 7 July 2021 — Irish Wind Farmers' Association and Others v Commission

(Case T-680/19) ([1])

(State aid — Energy sector — Irish legislation on business property taxation — Method for calculating the amount of the tax owed by fossil fuel electricity producers — Complaint from wind farm operators — Decision finding that there is no State aid — Failure to initiate the formal investigation procedure — Serious difficulties — Procedural rights of the interested parties)

(2021/C 338/23)

Language of the case: English

Parties

Applicants: Irish Wind Farmers' Association Clg (Kilkenny, Ireland), Carrons Windfarm Ltd (Shanagolden, Ireland), Foyle Windfarm Ltd (Dublin, Ireland), Greenoge Windfarm Ltd (Bunclody, Ireland) (represented by: M. Segura Catalán and M. Clayton, lawyers)

Defendant: European Commission (represented by: K. Herrmann and S. Noë, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Decision C(2019) 5257 final of 9 July 2019 on State aid SA.44671 (2019/NN) — Ireland.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders each party to bear its own costs.

([1]) OJ C 423, 16.12.2019.

Judgment of the General Court of 7 July 2021 — ID v EEAS

(Case T-28/20) ([1])

(Civil service — Members of the contract staff — Decision to dismiss before the end of the probationary period — Obvious inadequacy — Inappropriate conduct — Article 84 of the CEOS)

(2021/C 338/24)

Language of the case: English

Parties

Applicant: ID (represented by: C. Bernard-Glanz, lawyer)

Defendant: European External Action Service (represented by: S. Marquardt and R. Spáč, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of the EEAS of 6 March 2019 terminating the applicant's contract before the end of the probationary period and, secondly, compensation for the material and non-material damage allegedly suffered by the applicant as a result of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ID to pay the costs.

(1) OJ C 95, 23.3.2020.

Judgment of the General Court of 7 July 2021 — Frommer v EUIPO — Minerva (I-cosmetics)

(Case T-205/20) (1)

(EU trade mark — Revocation proceedings — EU word mark I-cosmetics — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2021/C 338/25)

Language of the case: English

Parties

Applicant: Angela Frommer (Unterschleißheim, Germany) (represented by: F. Remmertz, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Minerva GmbH (Munich, Germany) (represented by: R. Dissmann, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 10 February 2020 (Case R 675/2019-2), relating to revocation proceedings between Minerva and Ms Frommer.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ms Angela Frommer to bear her own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders Minerva GmbH to bear its own costs.

(1) OJ C 201, 15.6.2020.

Judgment of the General Court of 7 July 2021 — Micron Technology v EUIPO (INTELLIGENCE, ACCELERATED)

(Case T-386/20) (1)

(EU trade mark — Application for EU word mark INTELLIGENCE, ACCELERATED — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2021/C 338/26)

Language of the case: English

Parties

Applicant: Micron Technology, Inc. (Boise, Idaho, United States) (represented by: M. Edenborough QC)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini and V. Ruzek, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 April 2020 (Case R 2873/2019-1), relating to an application for registration of the word sign INTELLIGENCE, ACCELERATED as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Micron Technology, Inc., to pay the costs.

(1) OJ C 271, 17.8.2020.

Judgment of the General Court of 7 July 2021 — S. Tous v EUIPO — Zhejiang China-Best Import & Export (Lamp)

(Case T-492/20) (1)

(Community design — Invalidity proceedings — Registered Community design representing a lamp — Earlier EU figurative marks representing a teddy bear — Grounds for invalidity — Article 25(1)(b) and (e) of Regulation (EC) No 6/2002)

(2021/C 338/27)

Language of the case: Spanish

Parties

Applicant: S. Tous, SL (Manresa, Spain) (represented by: D. Gómez Sánchez and J. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO) (represented by: A. Söder, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Zhejiang China-Best Import & Export Co. Ltd (Hangzhou, China)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 26 May 2020 (Case R 1553/2019-3), relating to invalidity proceedings between S. Tous and Zhejiang China-Best Import & Export.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders S. Tous, SL to pay the costs.

(1) OJ C 313, 21.9.2020.

Order of the Vice-President of the General Court of 2 July 2021 — Bourel and Others v Commission

(Case T-777/19 R)

(Application for interim measures — State aid — Construction of wind farms — Individual aid measures granted by France to several marine wind farms — Decision declaring the aid compatible with the internal market — Start of work — Application for interim measures — No urgency)

(2021/C 338/28)

Language of the case: French

Parties

Applicants: David Bourel (Pléneuf-Val-André, France) and five other applicants whose names are set out in the annex to the order (represented by: M. Le Berre, lawyer)

Defendant: European Commission (represented by: B. Stromsky and A. Bouchagiar, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking, inter alia, suspension of the operation of Commission Decision C(2019) 5498 final of 26 July 2019 by which the Commission decided not to raise objections to aid granted to several marine wind farms which was notified by the French Republic.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs shall be reserved.

Order of the General Court of 25 June 2021 — OM v Commission

(Case T-728/20) [1]

(Action for annulment — Civil service — Officials — Social security — JSIS — Reimbursement of medical expenses — Rejection of the application — Rejection of the complaint — Substitution of grounds — Lodging of a second complaint — Time limit for bringing an action — Inadmissibility)

(2021/C 338/29)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: L. Hohenecker and L. Vernier, acting as Agents)

Re:

Application under Article 270 TFEU for annulment, first, of the decisions of the Office for Administration and Payment of Individual Entitlements (PMO) of the Commission of 9 and 17 September 2019 refusing to reimburse the costs of medical analyses incurred by the applicant and, secondly, of the decision of 23 March 2020 rejecting the complaint lodged by the applicant against those decisions.

Operative part of the order

1. The action is dismissed as inadmissible.

2. OM shall pay the costs.

(1) OJ C 53, 15.2.2021.

Order of the General Court of 8 July 2021 — Mendes de Almeida v Council

(Case T-75/21) (1)

(Action for annulment — Law governing the institutions — Enhanced cooperation on the establishment of the European Public Prosecutor's Office — Regulation (EU) 2017/1939 — Appointment of the European Prosecutors of the European Public Prosecutor's Office — Appointment of one of the candidates nominated by Portugal — Period for instituting proceedings — Starting point of the period for instituting proceedings — Inadmissibility)

(2021/C 338/30)

Language of the case: Portuguese

Parties

Applicant: Ana Mendes de Almeida (Sobreda, Portugal) (represented by: R. Leandro Vasconcelos and M. Marques de Carvalho, lawyers)

Defendant: Council of the European Union (represented by: K. Pleśniak, R. Meyer, K. Kouri and J. Gil, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Council Implementing Decision (EU) 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office (OJ 2020 L 244, p. 18), in so far as it appoints Mr Moreira Alves d'Oliveira Guerra as European Prosecutor of the European Public Prosecutor's Office as temporary agent at grade AD 13 for a non-renewable period of three years from 29 July 2020.

Operative part of the order

1. The action is dismissed as inadmissible.

2. There is no longer any need to rule on the request for an expedited procedure.

3. There is no longer any need to rule on the cross-claim made by the Council.

4. Ms Ana Carla Mendes de Almeida is ordered to pay the costs.

(1) OJ C 128, 12.4.2021.

Action brought on 21 June 2021 — Germany v Commission

(Case T-349/21)

(2021/C 338/31)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: J. Möller and R. Kanitz, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2021/534 of 24 March 2021 determining under Article 39(1) of Directive 2014/33/EU of the European Parliament and of the Council whether a measure taken by Germany to prohibit the placing on the market of a lift model manufactured by Orona is justified or not; ([1])

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Section 2.2, Annex I to Directive 95/16/EC in conjunction with harmonised standard EN 81-1 in so far as the Commission misinterpreted the scope of the requirement of the vertical distance between the car roof and the well ceiling

   — The Commission misinterpreted the scope of the vertical distance between the car roof and the well ceiling which harmonised standard EN 81-1 prescribes in its original version and even emphasises in its updated version (EN 81-20). First, the contested decision essentially errs as regards the measurement of the minimum vertical distance. In the Commission's view, for the assessment of essential health and safety requirements in accordance with Directive 95/16/EC it is, principally, not the vertical distance that is decisive but the volume of the refuge above the car. In addition, the Commission erred in comparing the requirements in respect of refuges and free spaces in the headroom with those in the pit.

2. Second plea in law, alleging infringement of Section 2.2, Annex I to Directive 95/16/EC in conjunction with harmonised standard EN 81-1 in so far as the Commission erred in establishing the relevant accident scenarios for the assessment

   — The Commission incorrectly assessed the requirements under Section 2.2, Annex I to Directive 95/16/EC concerning prevention of the risk of crushing by merely referring, in recital 55 of the contested decision, to the failure of the redundant brake as a relevant accident scenario.

3. Third plea in law, alleging incorrect findings of fact in so far as the Commission failed to have regard to the significance of the time necessary to assume a safe position and to the risk of uncontrolled upward movements of the car

   — In recitals 55 to 57 of the contested decision, the Commission based its overall assessment on incorrect assumptions concerning the danger and probability of uncontrolled upward movements of the car.

4. Fourth plea in law, alleging incorrect findings and assessment of fact in so far as the Commission adopted a misrepresentation derived from the Conformance study

   — The Commission based its decision on an incorrect overall comparison derived from the Conformance study.

5. Fifth plea in law, alleging failure to observe the rules of evidence and infringement of Article 5(2) of Directive 95/16/EC

   — In its decision, the Commission did not sufficiently take into account that the declarations of conformity submitted by the manufacturer were substantially incomplete. It is also clear from the recitals that the Commission incorrectly assumes the burden of proof to lie with the market surveillance authorities if, in the case of a deviation from the standard, there is a dispute as to whether the safety requirements would be fulfilled by an alternative, equivalent solution.

([1]) OJ 2021 L 106, p. 60.

Action brought on 25 June 2021 — Hotel Cipriani v EUIPO — Altunis (CIPRIANI FOOD)

(Case T-358/21)

(2021/C 338/32)

Language of the case: English

Parties

Applicant: Hotel Cipriani (Venice, Italy) (represented by: M. Rieger-Jansen, D. Op de Beeck and W. Pors, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Altunis-Trading, Gestão e Serviços, Lda (Funchal, Portugal)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark CIPRIANI FOOD — European Union trade mark No 683 250

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 27 April 2021 in Case R 1599/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— uphold the cancellation action in full and revoke the contested European Union trade mark;

— order EUIPO and any intervener who chooses to intervene to bear their own costs of the proceedings and to pay those of the cancellation applicant.

Pleas in law

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 15 of Council Regulation (EC) No 207/2009;

— The Board erred by holding that 'preparations made from cereals' could not be suitably subdivided.

Action brought on 18 June 2021 — ClientEarth v Commission

(Case T-359/21)

(2021/C 338/33)

Language of the case: English

Parties

Applicant: ClientEarth AISBL (Brussels, Belgium) (represented by: F. Logue, Solicitor, and J. Kenny, Barrister at Law)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's implied decision of 9 April 2021 refusing to grant access to the requested documents and information, pursuant to Regulation (EC) No 1049/2001 ([1]) and Regulation (EC) No 1367/2006, ([2]) related to, firstly, the active substances mancozeb and cypermethrin and, secondly, to voting positions of Member States in the Standing Committee on Plants, Animals, Food and Feed in relation to the defendant's Implementing Regulations (EU) No 2019/2094, ([3]) (EC) No 2020/2087, ([4]) (EU) No 2019/1589 ([5]) and (EU) No 2018/1262, ([6]) and

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the defendant failed to state reasons in breach of Article 8(1) of the Regulation (EC) No 1049/2001, Article 41(2), third indent, of the Charter of Fundamental Rights of the EU and Article 296(2) TFEU.

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

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

([3]) Commission implementing Regulation (EU) No 2019/2094 of 29 November 2019 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances benfluralin, dimoxystrobin, fluazinam, flutolanil, mancozeb, mecoprop-P, mepiquat, metiram, oxamyl and pyraclostrobin (Text with EEA relevance) (OJ 2019 L 317, p. 102-104).

([4]) Commission Implementing Regulation (EU) No 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 (Text with EEA relevance) (OJ 2020 L 423, p. 50-52).

([5]) Commission Implementing Regulation (EU) No 2019/1589 of 26 September 2019 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances amidosulfuron, beta-cyfluthrin, bifenox, chlorotoluron, clofentezine, clomazone, cypermethrin, daminozide, deltamethrin, dicamba, difenoconazole, diflubenzuron, diflufenican, fenoxaprop-P, fenpropidin, fludioxonil, flufenacet, fosthiazate, indoxacarb, lenacil, MCPA, MCPB, nicosulfuron, picloram, prosulfocarb, pyriproxyfen, thiophanate-methyl, triflusulfuron and tritosulfuron (Text with EEA relevance.)(OJ 2019 L 248, p. 24-27).

([6]) Commission Implementing Regulation (EU) No 2018/1262 of 20 September 2018 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances 1-methylcyclopropene, beta-cyfluthrin, chlorothalonil, chlorotoluron, clomazone, cypermethrin, daminozide, deltamethrin, dimethenamid-p, diuron, fludioxonil, flufenacet, flurtamone, fosthiazate, indoxacarb, MCPA, MCPB, prosulfocarb, thiophanate-methyl and tribenuron (Text with EEA relevance.) (OJ 2018 L 238, p. 62-64).

Action brought on 29 June 2021 — Coinbase v EUIPO — bitFlyer (coinbase)

(Case T-366/21)

(2021/C 338/34)

Language of the case: English

Parties

Applicant: Coinbase, Inc. (San Francisco, California, United States) (represented by: A. Nordemann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: bitFlyer Inc. (Tokyo, Japan)

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 mark coinbase — International registration designating the European Union No 1 308 248

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 April 2021 in Case R 1751/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear the costs of the proceedings.

Plea in law

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

Action brought on 30 June 2021 — Unimax Stationery v EUIPO — Mitsubishi Pencil (uni)

(Case T-369/21)

(2021/C 338/35)

Language of the case: English

Parties

Applicant: Unimax Stationery (Daman, India) (represented by: E. Amoah, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mitsubishi Pencil Co. Ltd (Tokyo, Japan)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark uni — European Union trade mark No 6 920 615

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 April 2021 in Case R 1909/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Plea in law

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

Action brought on 1 July 2021 — Etablissements Nicolas v EUIPO — St. Nicolaus (NICOLAS)

(Case T-373/21)

(2021/C 338/36)

Language in which the application was lodged: French

Parties

Applicant: Etablissements Nicolas (Thiais, France) (represented by: T. de Haan, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: St. Nicolaus a.s. (Liptovský Mikuláš, Slovakia)

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 NICOLAS — European Union trade mark No 6 231 484

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of the EUIPO of 21 April 2021 in Case R 1195/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to pay the costs, including the costs incurred by the applicant in respect of the proceedings before the Fourth Board of Appeal of EUIPO.

Plea in law

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

Action brought on 2 July 2021 — Instituto Cervantes v Commission

(Case T-376/21)

(2021/C 338/37)

Language of the case: French

Parties

Applicant: Instituto Cervantes (Madrid, Spain) (represented by: E. van Nuffel d'Heynsbroeck, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action inadmissible;

— annul the decision of the European Commission to award lot 3 (Spanish language) of the contract relating to framework contracts for language training for the institutions, bodies and agencies of the European Union (No HR/2020/OP/0014), in first place to the consortium CLL Centre de Langues-Allingua and in second place to the applicant;

— order the Commission 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, alleging a failure to give sufficient reasons in the contested decision with regard to the assessment of the relative merits of the tenders.

2. Second plea in law, alleging failure to compare the relative merits of the tenders.

3. Third plea in law, alleging that the Commission committed a manifest error of assessment by rejecting, without verifying their validity, the parts of the tender which were accessible via a hypertext link incorporated in the tender.

4. Fourth plea in law, raised in the alternative, alleging, first, that there was no link between the assessment of the intrinsic qualities of the applicant's tender and its scoring under sub-criteria 1.1 and 1.2 set out in the contract notice and, second, that there was a breach of the principle of transparency.

5. Fifth plea in law, alleging infringement of the objective of opening up public contracts to competition as widely as possible.

Action brought on 5 July 2021 — Flybe v Commission

(Case T-380/21)

(2021/C 338/38)

Language of the case: English

Parties

Applicant: Flybe Ltd (London, United Kingdom) (represented by: G. Peretz; QC, and D. Colgan, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— partially annul the decision of the European Commission of 23 April 2021, which concerns the approval by the Commission of a slot release agreement entered into by British Airways and Flybe Limited, relating to case Nº COMP/M.6447 — IAG/BMI, by annulling the entirety of footnote 23 of the contested decision; or in the alternative, amending footnote 23 of the contested decision and,

— grant the applicant its costs of preparing and presenting this appeal.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has made an error of fact in its explanation of the restrictions imposed under the slot release agreement. The applicant states that the agreement, negotiated by British Airways and Flybe limited (formerly Thyme OPCO Limited), makes no reference to any need for any slot transfer to be accompanied by the transfer of the operating licence. The applicant alleges that the Commission, by adding the wording *'i.e. together with Thyme's OL'* in footnote 23 is therefore incorrect in what is meant to be a summary of the agreement.

2. Second plea in law, alleging that the Commission has failed to properly consider the ability of the applicant to be able to comply with the additional requirement of only transferring the Remedy Slots as part of a going concern where it includes the transfer of its operating licence, in contradiction of what is possible under UK airline licensing regulations.

3. Third plea in law, alleging that the Commission has failed to take account of the factual, economic and legal context of the slot release agreement, which showed that there is no need to impose a requirement in relation to the transfer of an operating licence.

4. Fourth plea in law, alleging that the Commission's approach is contrary to the principle of legal certainty. The applicant states that the International Consolidated Airlines Group Commitments did not contain a restriction on the transfer of the Remedy Slots.

5. Fifth plea in law, alleging that the Commission has breached the applicant's right to be heard by imposing a restriction without first discussing that restriction with the applicant.

6. Sixth plea in law, alleging that the Commission has infringed the duty to give reasons. The applicant states that the Commission gives no reasons for imposing the restriction on the applicant, in breach of the requirement that legal acts shall state the reasons on which they are based.

Action brought on 7 July 2021 — Banque postale v SRB

(Case T-383/21)

(2021/C 338/39)

Language of the case: French

Parties

Applicant: La Banque postale (Paris, France) (represented by: A. Gosset-Grainville, M. Trabucchi and M. Dalon, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2021/22 of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the SRF in so far as it concerns the applicant;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, the Implementing Regulation and the Delegated Regulation inapplicable:

  — Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

  — Article 4(2) and Articles 6 and 7 of the Delegated Regulation and Annex I thereto;

  — Article 4 of the Implementing Regulation;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of equal treatment in that the methods of calculation of ex ante contributions to the Single Resolution Fund (SRF) laid down in the SRM Regulation and the Delegated Regulation do not reflect the actual size or the actual risk of the institutions.

2. Second plea in law, alleging infringement of the principle of proportionality in that the mechanism of ex ante contributions to the SRF laid down in the SRM Regulation and the Delegated Regulation is based on an assessment that artificially exacerbates the risk profile of large French institutions such as the applicant, and therefore leads to disproportionately high contributions.

3. Third plea in law, alleging infringement of the principle of legal certainty, since the calculation of the amount of the ex ante contributions fixed by the SRM Regulation, the Delegated Regulation and the Implementing Regulation, first, cannot be predicted with clarity sufficiently early and, second, does not depend so much on the inherent situation and risk profile of the institution but rather on its relative situation compared to the other contributing institutions. Lastly, the applicant considers that the Commission should not have had responsibility for determining risk indicators in the context of the Delegated Regulation, since those criteria have an extremely fundamental and decisive function in determining the amounts of the contributions (Article 290 TFEU).

4. Fourth plea in law, alleging infringement of the principle of good administration in that the contested decision does not put forward sufficiently clear and precise information to justify the amount of the contribution owed and to enable that amount to be reviewed.

5. Fifth plea in law, alleging infringement of the principle of effective judicial protection. In support of that plea, the applicant also relies on the fact that the contested decision does not put forward sufficiently clear and precise information to justify the amount of the contribution owed and to enable that amount to be reviewed.

6. Sixth plea in law, alleging infringement of the obligation to state reasons as regards the restriction on the use of irrevocable payment commitments, on the ground that the contested decision does not show in a clear and detailed way why there is any need for, first, setting a ceiling on the use of irrevocable payment commitments ('IPCs') at 15 % and, second, accepting as collateral only cash.

7. Seventh plea in law, alleging a manifest error of assessment. The applicant claims in that regard that the pro-cyclicality and liquidity risks relied on by the SRB in order to limit the use of IPCs are unfounded, particularly in the light of the specific characteristics of the IPCs and the context of their use.

8. Eighth plea in law, alleging an error in law. The applicant claims that the SRB, first, relies on a misinterpretation of the provisions allowing the use of IPCs in imposing an identical measure on all the institutions on the basis of an abstract analysis and, second, negates the effectiveness of those provisions in so far as the proportion of IPCs is consistently and without sufficient justification limited to the statutory minimum.

Action brought on 7 July 2021 — Confédération nationale du Crédit Mutuel and Others v SRB

(Case T-384/21)

(2021/C 338/40)

Language of the case: French

Parties

Applicants: Confédération nationale du Crédit Mutuel (Paris, France) and 26 other applicants (represented by: A. Gosset-Grainville, M. Trabucchi and M. Dalon, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2021/22 of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the SRF in so far as it concerns the applicants;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, the Implementing Regulation and the Delegated Regulation inapplicable:

  — Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

  — Article 4(2) and Articles 6 and 7 of the Delegated Regulation, and Annex I thereto;

  — Article 4 of the Implementing Regulation;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law which are, in essence, identical or similar to those put forward in Case T-383/21, *Banque postale* v *SRB*.

Action brought on 7 July 2021 — BPCE and Others v SRB

(Case T-385/21)

(2021/C 338/41)

Language of the case: French

Parties

Applicants: BPCE (Paris, France) and 44 other applicants (represented by: A. Gosset-Grainville, M. Trabucchi and M. Dalon, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2021/22 of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the SRF in so far as it concerns the applicants;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, the Implementing Regulation and the Delegated Regulation inapplicable:

  — Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

  — Article 4(2) and Articles 6 and 7 of the Delegated Regulation, and Annex I thereto;

  — Article 4 of the Implementing Regulation;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law which are, in essence, identical or similar to those put forward in Case T-383/21, *Banque postale* v *SRB*.

Action brought on 7 July 2021 — Crédit agricole and Crédit agricole Corporate and Investment Bank v Commission

(Case T-386/21)

(2021/C 338/42)

Language of the case: English

Parties

Applicants: Crédit agricole SA (Montrouge, France), Crédit agricole Corporate and Investment Bank (Montrouge) (represented by: D. Beard, Barrister, and C. Hutton, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul (in whole or part) the decision of the European Commission of 28 April 2021 (C(2021) 2871);º

— Annul (in whole or part) the penalty imposed by the decision of the European Commission of 28 April 2021 (C(2021) 2871);

— Order that the European Commission take the necessary measures to comply with the judgment of the Court under 266 TFEU;

— Order that the European Commission pay the costs incurred by the applicants in relation to this application and all subsequent stages of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in law and fact in finding that the applicants participated in a single and continuous infringement by object:

   — The Commission made errors of law and fact in finding that the alleged information exchange categories of conduct constitute object infringements capable of forming part of an alleged single and continuous infringement.

   — The Commission failed to conduct the necessary analysis to support a finding of an infringement by object in relation to the alleged coordination categories of conduct.

2. Second plea in law, alleging that the Commission erred in law and fact in finding that the applicants contributed to an overall plan, and by finding that the applicants' alleged participation was continuous.

   — The Commission has not proven that the applicants contributed to, or was aware of, an overall plan.

   — The Commission has not proven that the first or the second applicant participated in a continuous infringement.

3. Third plea in law, alleging that the Commission erred in law by presuming that the second applicant was aware of certain information.

   — The Commission has erred in law and fact by presuming that traders were aware of all the information contained in a Bloomberg chat, simply by being logged into a chat room. The Commission has therefore either misinterpreted or over-stretched the application of existing case law.

4. Fourth plea in law, alleging that the Commission committed manifest errors of fact and law in calculating the amount of the penalty.

— The Commission has impermissibly departed from the Penalty Guidelines by not calculating the value of sales based on the last full year of the alleged infringement.

— The Commission has violated the principle of equal treatment in determining the multiplier for specific deterrence.

— The Commission has impermissibly departed from the Penalty Guidelines by not using the best available figures to calculate the value of sales.

— The Commission has committed errors of assessment in considering gravity and mitigating circumstances.

— The Commission has committed manifest errors of fact in assessing the duration of the alleged infringement.

Action brought on 7 July 2021 — Société générale and Others v SRB

(Case T-387/21)

(2021/C 338/43)

Language of the case: French

Parties

Applicants: Société générale (Paris, France), Crédit du Nord (Lille, France) and SG Option Europe (Puteaux, France) (represented by: A. Gosset-Grainville, M. Trabucchi and M. Dalon, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2021/22 of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the SRF in so far as it concerns the applicants;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, the Implementing Regulation and the Delegated Regulation inapplicable:

— Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

— Article 4(2) and Articles 6 and 7 of the Delegated Regulation, and Annex I thereto;

— Article 4 of the Implementing Regulation;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law which are, in essence, identical or similar to those put forward in Case T-383/21, *Banque postale* v *SRB*.

Action brought on 7 July 2021 — Crédit agricole and Others v SRB

(Case T-388/21)

(2021/C 338/44)

Language of the case: French

Parties

Applicants: Crédit agricole (Montrouge, France) and 48 other applicants (represented by: A. Gosset-Grainville, M. Trabucchi and M. Dalon, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2021/22 of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the SRF in so far as it concerns the applicants;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, the Implementing Regulation and the Delegated Regulation inapplicable:

  — Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

  — Article 4(2) and Articles 6 and 7 of the Delegated Regulation, and Annex I thereto;

  — Article 4 of the Implementing Regulation;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law which are, in essence, identical or similar to those put forward in Case T-383/21, *Banque postale* v *SRB*.

Action brought on 7 July 2021 — BNP Paribas v SRB

(Case T-397/21)

(2021/C 338/45)

Language of the case: French

Parties

Applicant: BNP Paribas (Paris, France) (represented by: A. Gosset-Grainville, M. Trabucchi and M. Dalon, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2021/22 of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the SRF in so far as it concerns the applicant;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, the Implementing Regulation and the Delegated Regulation inapplicable:

  — Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

  — Article 4(2) and Articles 6 and 7 of the Delegated Regulation, and Annex I thereto;

  — Article 4 of the Implementing Regulation;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law which are, in essence, identical or similar to those put forward in Case T-383/21, *Banque postale* v *SRB*.

Action brought on 6 July 2021 — Ryanair and Ryanair Sun v Commission

(Case T-398/21)

(2021/C 338/46)

Language of the case: English

Parties

Applicants: Ryanair DAC (Swords, Ireland), Ryanair Sun S.A. (Warsaw, Poland) (represented by: F.-C. Laprévote, E. Vahida, V. Blanc, S. Rating and I.-G Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 22 December 2020 on State Aid SA.59158 — Poland – *COVID-19 — Aid to LOT,* ([1]) and

— 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, alleging that the defendant misapplied the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. In particular, it is alleged that the defendant failed to demonstrate that LOT is eligible to the recapitalisation aid under the Temporary Framework and it is also alleged that the defendant failed to assess whether there were any other more appropriate and less distortive measures available besides the recapitalisation. The applicant also argues that the defendant conducted a flawed review of the proportionality of the amount of recapitalisation, of the aid's remuneration and the conditions for exit of the State as well as of the elements of the aid concerning governance and the prevention of undue distortions of competition.

2. Second plea in law, alleging that the defendant misapplied Article 107(3)(b) TFEU by considering that it could provide a legal basis to justify the aid. The applicant also argues that the defendant did not establish that the aid is necessary, appropriate and proportionate to address a serious disturbance in the Polish economy, and failed to perform a 'balancing test' *i.e.*, to weigh the aid's expected positive effects in terms of realisation of the objectives set out in Article 107(3)(b) TFEU against its negative effects in terms of distortion of competition and the effect on trade between Member States.

3. Third plea in law, alleging that the contested decision violates specific provisions of the TFEU and the general principles of European Law that have underpinned the liberalisation of EU air transport since the late 1980s (i.e., non-discrimination, the free provision of services –applied to air transport through Regulation No 1008/2008 [2]- and free establishment).

4. Forth plea in law, alleging that the defendant failed to initiate a formal investigation procedure despite serious difficulties and violated the applicant's procedural rights.

5. Fifth plea in law, alleging that the defendant violated its duty to state reasons.

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[1] OJ 2021 C 260, p. 10-11.

[2] Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance) (OJ 2008 L 293, p. 3–20).

Action brought on 7 July 2021 — KN v Parliament

(Case T-401/21)

(2021/C 338/47)

Language of the case: French

Parties

Applicant: KN (represented by: M. Casado García-Hirschfeld and M. Aboudi, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible;

— annul the contested decision;

— order the defendant to pay compensation in respect of the non-material damage suffered, estimated to be in the sum *ex aequo et bono* of EUR 100 000;

— order the defendant to bear the entirety of the costs.

Pleas in law and main arguments

In support of the action against the decision of the European Parliament of 28 April 2021 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section VI — European Economic and Social Committee [2020/2145(DEC)] and of the resolution of the European Parliament of 29 April 2021 with observations forming an integral part of the aforementioned decision, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of Article 16(1) TFEU, Articles 1 and 8 of the Charter of Fundamental Rights of the European Union and Articles 4 and 5 of Regulation 2018/1725, [1] as well as infringement of the principle of confidentiality of disciplinary proceedings and judicial information and Article 10 of Regulation No 883/2013. [2]

2. Second plea in law, alleging infringement of the right to the presumption of innocence, the principle of sound administration and the principle of proportionality.

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[1] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

[2] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

Action brought on 7 July 2021 — Dexia Crédit Local v SRB

(Case T-405/21)

(2021/C 338/48)

Language of the case: French

Parties

Applicant: Dexia Crédit Local (Paris, France) (represented by: H. Gilliams and J.-M. Gollier, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 14 April 2021 on the calculation of the 2021 ex-ante contributions to the Single Resolution Fund, with reference SRB/ES/2021/22;

— order the Single Resolution Board to pay the costs of proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision infringes Article 69 of Regulation No 806/2014 in so far as it sets the target level for 2021 at one-eighth of 1,35 % of covered deposits.

2. Second plea in law, alleging that Delegated Regulation 2015/63 is unlawful:

   — on the ground that it infringes the principle of proportionality in so far as the calculation of the ex-ante contributions to the SRF, first, is not consistent with the objectives pursued by Regulation No 806/2014, second, does not take into account the fact that the applicant is a credit institution in run-off management which is covered by a State guarantee and in respect of which the SRF will theoretically never be called upon and, third, makes its orderly resolution more expensive;

   — on the ground that it infringes the principle of equal treatment in so far as it treats institutions in run-off management under State guarantee and operative institutions in the same way.

3. Third plea in law, alleging, in the alternative, that the SRB infringed the principles of proportionality and equal treatment for the same reasons as those stated in the second plea in law, in so far as the SRB failed to respect those principles by applying to the applicant, without any adjustment, the provisions of Delegated Regulation 2015/63.

4. Fourth plea in law, alleging lack of transparency and failure to state reasons in so far as the information provided does not make it possible to exercise properly the rights of defence.

5. Fifth plea in law, alleging lack of legal basis for Articles 5, 69 and 70 of Regulation No 806/2014 in so far as they were adopted on the basis of Article 114 TFEU even though they do not concern approximation of laws.

6. Sixth plea in law, alleging lack of legal basis for Articles 5, 69 and 70 of Regulation No 806/2014 in so far as they were adopted on the basis of Article 114 TFEU despite the fact that they are fiscal provisions.

Action brought on 8 July 2021 — Credit Suisse Group and Credit Suisse Securities (Europe) v Commission

(Case T-406/21)

(2021/C 338/49)

Language of the case: English

Parties

Applicants: Credit Suisse Group AG (Zurich, Switzerland), Credit Suisse Securities (Europe) Ltd (London, United Kingdom) (represented by: R. Wesseling and F. ten Have, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1 of the Commission Decision C(2021) 2871 of 28 April 2021 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40346 — SSA Bonds) ('the Decision'); in the alternative, annul Article 1(d) of the Decision; in the further alternative, annul in part Article 1(d) of the Decision in so far as it holds that the Price Discovery Communications restrict competition by object and/or the applicants participated in a single and continuous infringement for the full duration set out in that Article;

— annul Article 2(d) of the Decision; in the alternative, annul in part Article 2(d) of the Decision;

— order the Commission to pay the costs or, in the alternative, an appropriate proportion of their costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission violated Article 101 TFEU and provided insufficient reasons in finding that the applicants engaged in conduct that has as its object the restriction and/or distortion of competition. In particular,

   — the Commission violated Article 101 TFEU by insufficiently considering the relevant legal and economic context and failed to discharge its burden in proving that the conduct at issue in the Decision restricts competition by object;

   — in the alternative, the Commission violated Article 101 TFEU by concluding that the Price Discovery Communications restrict competition by object;

   — with respect to the Price Discovery Communications, the Commission erred in law by substituting the assessment of whether conduct restricts competition by object with the assessment of whether conduct falls outside the scope of Article 101 TFEU as an ancillary restraint.

2. Second plea in law, alleging that the Commission violated Article 101 TFEU by misapplying the concept of the single and continuous infringement. In particular,

   — the Commission fails to prove and to provide sufficient reasons that the frequent communications taking place in multilateral persistent chatrooms, a practice that ceased in February 2013, and the sporadic bilateral communications which followed from February 2013, shared an overall plan pursuing a common objective;

— the Commission does not prove and does not provide sufficient reasons that the applicants were aware or ought to have been aware of, or could have reasonably foreseen, the other traders' bilateral communications as of February 2013;

— the Decision fails to prove and to provide sufficient reasons that the alleged infringement was continuous;

— the Decision fails to prove the existence of the single and continuous infringement for the full duration set out in Article 1(d) of the Decision.

3. Third plea in law, alleging that the Commission's fine methodology violates Article 23 of Regulation 1/2003 ([1]) the Commission's Guidelines on Fines ([2]) and the duty to state reasons. In particular,

— the Commission failed to provide sufficient reasons to enable the applicants to assess whether the fine methodology is vitiated by an error;

— the Commission adopts a value of sales proxy that significantly overstates the applicants' value of sales and therefore the economic importance of the alleged infringement, departing from the concept of 'value of sales' in the 2006 Guidelines on Fines;

— the fine imposed on the applicants significantly overstates the gravity of the alleged infringement;

— the fine imposed on the applicants includes a period in which they did not participate in the alleged infringement.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1).

([2]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006, C 210, p. 2) ('Guidelines on Fines').

Action brought on 9 July 2021 — PB v Commission

(Case T-407/21)

(2021/C 338/50)

Language of the case: French

Parties

Applicant: PB (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible and well-founded;

consequently,

— annul the Commission's decision of 5 May 2021, notified on 10 May 2021, relating to the recovery, respectively, of (i) EUR 4 241 507 (TACIS/2006/101-510 contract) (the principal amount) or of EUR 4 674 256,92 (the principal amount plus default interest as at 30 April 2021) and (ii) EUR 1 197 055,86 (CARDS/2008/166-429 contract) (the principal amount) or EUR 1 298 608,85 (the principal amount plus default interest as at 30 April 2021) from which EUR 399 825 must be deducted;

— order the repayment of any amounts recovered by the Commission on the basis of that decision, together with default interest at the rate applied by the European Central Bank, increased by seven percentage points;

— order the payment of EUR 10 000 by way of damages, subject to increase;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the Financial Regulation, in that the Commission has no means for claiming repayment from the applicant and, in any case, no claim that is certain.

2. Second plea in law, alleging infringement of essential procedural requirements, due diligence, and the principle of impartiality enshrined by Article 41 of the Charter of Fundamental Rights of the European Union. The applicant claims that, in order to justify initiating recovery proceedings, the contested decision states that there was no response to the debit note, the reminder or the letter of formal notice. In doing so, the defendant failed to state, first, that the applicant disputed the latter documents and, second, that the Belgian court ruled that it had jurisdiction to hear the action brought before it by HB on the basis of the two contracts. The applicant adds that the defendant also disregarded its obligation to state reasons, since it failed to explain the reasons that led it to decide as it did in the present case. Lastly, the applicant takes the view that the Commission failed to examine, carefully and impartially, all of the relevant elements of the case in point.

3. Third plea in law, alleging lack of jurisdiction on the part of the Commission to adopt decisions forming writs of execution, lack of legal basis and manifest error of assessment. The applicant claims that the Commission did not have jurisdiction to adopt the two decisions forming writs of execution for the recovery of the amount allegedly due to it from the economic operator, of which the applicant is the director and who the Commission holds to be jointly and severally liable, in the absence of an arbitration clause conferring on the EU Courts jurisdiction for contractual disputes between them. The applicant takes the view that if the Commission does not have jurisdiction to adopt the two decisions against that operator, it also cannot have jurisdiction to do so against the applicant, since the cause of its action is contractual in nature.

Action brought on 9 July 2021 — HB v Commission

(Case T-408/21)

(2021/C 338/51)

Language of the case: French

Parties

Applicant: HB (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible and well-founded;

consequently,

— annul the Commission's decisions of 5 May 2021, notified on 10 May 2021, relating to the recovery, respectively, of (i) EUR 4 241 507 (TACIS/2006/101-510 contract) (the principal amount) or of EUR 4 674 256,92 (the principal amount plus default interest as at 30 April 2021) and (ii) EUR 1 197 055,86 (CARDS/2008/166-429 contract) (the principal amount) or EUR 1 298 608,85 (the principal amount plus default interest as at 30 April 2021) from which EUR 399 825 must be deducted;

— order the repayment of any amounts recovered by the Commission on the basis of those decisions, together with default interest at the rate applied by the European Central Bank, increased by seven percentage points;

— order the symbolic payment of one euro by way of damages, subject to increase;

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

Pleas in law and main arguments

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

1. First plea in law, alleging lack of jurisdiction on the part of the Council to adopt the contested decisions, lack of legal basis and infringement of the principle of legitimate expectations. The applicant takes the view that the Commission did not have jurisdiction to adopt the two decisions forming writs of execution for the recovery of the amount allegedly due to it in the absence of an arbitration clause conferring on the EU Courts jurisdiction for contractual disputes between them.

2. First plea in law, alleging infringement of the Financial Regulation, in that the Commission has no means for claiming repayment from the applicant and, in any case, no claim that is certain.

3. Second plea in law, alleging infringement of essential procedural requirements, due diligence, and the principle of impartiality enshrined by Article 41 of the Charter of Fundamental Rights of the European Union. The applicant claims that the contested decision sets out, in order to justify initiating recovery proceedings, that there was no response to the debit note, the reminder or the letter of formal notice. In doing so, the defendant failed to state, first, that the applicant disputed the latter documents and, second, that the Belgian court ruled that it had jurisdiction to hear the action brought before it on the basis of the two contracts. The applicant adds that the defendant also disregarded its obligation to state reasons, since it failed to explain the reasons that led it to decide as it did in the present case. Lastly, the applicant takes the view that the Commission failed to examine, carefully and impartially, all of the relevant elements of the case in point.

Action brought on 12 July 2021 –Alauzun and Others v Commission and EMA

(Case T-418/21)

(2021/C 338/52)

Language of the case: French

Parties

Applicants: Virginie Alauzun (Saint-Cannat, France) and 774 other applicants (represented by: F. Di Vizio, lawyer)

Defendants: European Commission, European Medicines Agency (EMA)

Form of order sought

The applicants claim that the Court should:

— annul the European Commission's implementing decision of 31 May 2021 EMEA/H/C/005735/II/0030 on the grounds of infringement of essential procedural requirements and failure to state reasons in connection with the conditional marketing authorisation;

— in the alternative, annul the opinion of the Committee for Medicinal Products for Human Use of the European Medicines Agency (EMA), delivered on 28 May 2021, by which the EMA recommended a conditional marketing authorisation for the vaccine Comirnaty, manufactured by BioNTech and Pfizer;

— order the EMA and the Commission to pay all of the applicant's costs.

Pleas in law and main arguments

In support of their action against the Commission Decision of 31 May 2021 amending the conditional marketing authorisation for the medicinal product for human use 'Comirnaty — COVID-19 mRNA (nucleoside modified) vaccine' granted by Decision C(2020) 9598(final), the applicants rely two pleas in law.

1. First plea in law alleging breach of essential procedural requirements and failure to state reasons. The applicants submit in this regard that the contested decisions do not demonstrate that the vaccine in question falls within the scope or meets the requirements of Articles 2 and 4 of Regulation No 507/2006. ([1]) In fact, according to the applicants, the conditional marketing authorisation in question does not meet the condition of the existence of an emergency or a life-threatening disease for the public concerned. The applicants add that the authorisation in question cannot be based on a positive benefit/risk balance or constitute a response to unmet medical needs. Finally, the applicants consider that the benefit to public health of the contested authorisation cannot outweigh the risk inherent in the fact that additional data are still required.

2. Second plea in law alleging infringement of the fundamental right to integrity of the person and of the fundamental right to life provided for in Articles 3 and 2 respectively of the Charter of Fundamental Rights of the European Union.

([1]) Commission Regulation (EC) No 507/2006 of 29 March 2006 on the conditional marketing authorisation for medicinal products for human use falling within the scope of Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ 2006. L 92, p. 6).

Action brought on 12 July 2021 — Cargolux v Commission

(Case T-420/21)

(2021/C 338/53)

Language of the case: English

Parties

Applicant: Cargolux Airlines International SA (Cargolux) (Sandweiler, Luxembourg) (represented by: G. Goeteyn and E. Aliende Rodríguez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claim that the Court should:

— annul the letter from the Commission to Cargolux dated 30 April 2021 in full;

— order the Union, represented by the Commission, to redress the damage sustained by Cargolux because of the Commission's failure to pay the Default Interest Amount Payable and Compound Interest Amount Payable, pursuant to the first paragraph of Article 266 TFEU, in compliance with the judgment of 16 December 2015, Cargolux Airlines International SA v Commission (Case T-39/11), and therefore pay the following amounts, pursuant to the second paragraph of Article 266 TFEU, Article 268 TFEU and the second paragraph of Article 340 TFEU:

  (a) the Default Interest Amount Payable, i.e. interest on the sum of EUR 39 900 000 at the European Central Bank interest rate for its refinancing operations on 1 November 2010 (namely, 1 %), increased by 3,5 %, for the period between 15 February 2011 and 5 February 2016, which results in an amount of EUR 8 075 972,03 or, failing that, at the interest rate the General Court considers appropriate; and

  (b) the Compound Interest Amount Payable, i.e. interest on the amount of the Default Interest Amount Payable under paragraph (a) above, for the period between 5 February 2016 and the date of actual payment by the Commission of the amount claimed in paragraph (a) above (or in the event that the Court rejects Cargolux's request for the Compound Interest Amount Payable to run from 5 February 2016, at the very least for the period between the date of this application and the date of actual payment by the Commission of the amount claimed in paragraph (a) above), at the European Central Bank interest rate for its refinancing operations on 1 November 2010 (namely, 1 %), increased by 3,5 % (or, failing that, at the interest rate the General Court considers appropriate);

— order the Commission to pay the entirety of Cargolux's costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision notified by the letter of 30 April 2021 is vitiated by an error of law and must be annulled in full pursuant to Article 263 TFEU. The applicant alleges that the contested decision incorrectly asserts that Cargolux's request of 2 February 2021 for payment of the Default Interest Amount Payable and the Compound Interest Amount Payable is time-barred and inadmissible.

2. Second plea in law, alleging that the Commission's breach of the first paragraph of Article 266 TFEU renders the Union non-contractually liable to pay compensation equal to the Default Interest Amount Payable and the Compound Interest Amount Payable to Cargolux, pursuant to the second paragraph of Article 266 TFEU, Article 268 TFEU and the second paragraph of Article 340 TFEU.

Action brought on 14 July 2021 — Assaad v Council

(Case T-426/21)

(2021/C 338/54)

Language of the case: English

Parties

Applicant: Nizar Assaad (Beirut, Lebanon) (represented by: M. Lester, Barrister, G. Martin and C. Enderby Smith, Solicitors)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should annul the Council Implementing Decision (CFSP) 2021/751 of 6 May 2021 ([1]) and Council Implementing Regulation (EU) 2021/743 of 6 May 2021 ([2]), which amend entry 36 to Annex I to Council Decision 2013/255/CFSP and entry 36 to Annex II to Council Regulation (EU) No 36/2012 of 18 January 2012 ('the Contested Measures'), in so far as they apply to the applicant.

Pleas in law and main arguments

In support of the action, the applicant alleges that the Council has repeatedly stated since 2011 that the applicant is not the person listed at entry 36 to the EU's restrictive measures on Syria. By the Contested Measures, the Council has sought to reverse this position, and now, without any justification or factual or legal basis, contends that the applicant has in fact been listed since 2011. The applicant's grounds for annulment challenge the Council's volte face in the Contested Measures as being based on multiple errors of assessment; unlawfully retroactive and inimical to the principle of legal certainty; an abuse and misuse of the Council's powers; and contrary to the principle of *res judicata*.

([1]) OJ 2021, L 160, p. 115.
([2]) OJ 2021, L 160, p. 1.

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

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN