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(2017/C 392/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Ninth Chamber) of 21 September 2017 — Feralpi Holding SpA v European Commission

(Case C-85/15 P) ([1])

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision — Time taken in the proceedings before the General Court)

(2017/C 392/02)

Language of the case: Italian

Parties

Appellant: Feralpi Holding SpA (represented by: G.M. Roberti and I. Perego, avvocati)

Other party to the proceedings: European Commission (represented by: L. Malferrari and P. Rossi, acting as Agents, assisted by M. Moretto, avvocato)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 9 December 2014, Feralpi v Commission (T-70/10, not published, EU:T:2014:1031);*

2. *Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Feralpi Holding SpA;*

3. *Orders the Commission to bear its own costs and to pay those incurred by Feralpi Holding SpA both at first instance and in the present appeal.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Ninth Chamber) of 21 September 2017 — Ferriera Valsabbia SpA (C-86/15 P), Valsabbia Investimenti SpA (C-86/15 P), Alfa Acciai SpA (C-87/15 P) v European Commission

(Joined Cases C-86/15 P and C-87/15 P) ([1])

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision — Time taken in the proceedings before the General Court)

(2017/C 392/03)

Language of the case: Italian

Parties

Appellants: Ferriera Valsabbia SpA (C-86/15 P), Valsabbia Investimenti SpA (C-86/15 P), Alfa Acciai SpA (C-87/15 P) (represented by: D.M. Fosselard, avocat, D. Slater, Solicitor, and A. Duron, avocate)

Other party to the proceedings: European Commission (represented by: L. Malferrari and P. Rossi, acting as Agents, assisted by P. Manzini, avvocato)

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the General Court of the European Union of 9 December 2014, Ferriera Valsabbia and Valsabbia Investimenti v Commission (T-92/10, not published, EU:T:2014:1032), and of 9 December 2014, Alfa Acciai v Commission (T-85/10, not published, EU:T:2014:1037);*

2. *Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Ferriera Valsabbia SpA, Valsabbia Investimenti SpA and Alfa Acciai SpA;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by Ferriera Valsabbia SpA, Valsabbia Investimenti SpA and Alfa Acciai SpA both at first instance and in the present appeals.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Ninth Chamber) of 21 September 2017 — Ferriere Nord SpA v European Commission

(Case C-88/15 P P) ([1])

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision)

(2017/C 392/04)

Language of the case: Italian

Parties

Appellant: Ferriere Nord SpA (represented by: W. Viscardini and G. Donà, avvocati)

Other party to the proceedings: European Commission (represented by: L. Malferrari and P. Rossi, acting as Agents, assisted by M. Moretto, avvocato)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 9 December 2014, Ferriere Nord v Commission (T-90/10, not published, EU:T:2014:1035);*

2. *Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Ferriere Nord SpA;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by Ferriere Nord SpA both at first instance and in the present appeal.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Ninth Chamber) of 21 September 2017 — Riva Fire SpA, in liquidation v European Commission

(Case C-89/15 P P) ([1])

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision — Time taken in the proceedings before the General Court)

(2017/C 392/05)

Language of the case: Italian

Parties

Appellant: Riva Fire SpA, in liquidation (represented by: M. Merola, M. Pappalardo, T. Ubaldi and M. Toniolo, avvocati)

Other party to the proceedings: European Commission (represented by: L. Malferrari and P. Rossi, acting as Agents, assisted by P. Manzini, avvocato)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 9 December 2014, Riva Fire v Commission (T-83/10, not published, EU:T:2014:1034);*

2. *Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Riva Fire SpA;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by Riva Fire SpA both at first instance and in the present appeal.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Fourth Chamber) of 21 September 2017 (request for a preliminary ruling from the Administratīvā apgabaltiesa — Latvia) — 'DNB BANKA' AS v Valsts ienemumu dienests

(Case C-326/15) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 132(1)(f) — Exemptions for certain activities in the public interest — Exemption for the supply of services by independent groups of persons for their members — Applicability to financial services)

(2017/C 392/06)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: 'DNB BANKA' AS

Defendant: Valsts ienemumu dienests

Operative part of the judgment

Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that the exemption provided for in that provision relates only to independent groups of persons whose members carry on an activity in the public interest referred to in Article 132 of that directive and that, therefore, the services supplied by a group whose members carry on an economic activity in the area of financial services, which does not constitute such an activity in the public interest, are not entitled to that exemption.

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (Fourth Chamber) of 21 September 2017 — Easy Sanitary Solutions BV v European Union Intellectual Property Office (EUIPO), Group Nivelles NV

(Joined Cases C-361/15 P and C-405/15 P) ([1])

(Appeal — Intellectual property — Community designs — Regulation (EC) No 6/2002 — Article 5 — Novelty — Article 6 — Individual character — Article 7 — Disclosure to the public — Article 63 — Powers of the European Union Intellectual Property Office (EUIPO) in the taking of evidence — Burden of proof on the applicant for a declaration of invalidity — Requirements relating to the reproduction of an earlier design — Design for a shower drainage channel — Dismissal of an application for a declaration of invalidity by the Board of Appeal)

(2017/C 392/07)

Language of the case: Dutch

Parties

Appellants: Easy Sanitary Solutions BV (represented by: F. Eijsvogels, advocaat) (C-361/15 P), European Union Intellectual Property Office (EUIPO) (represented by S. Bonne and A. Folliard-Monguiral, acting as Agents) (C-405/15 P)

Other party to the proceedings: Group Nivelles NV (represented by: H. Jonkhout, advocaat)

Intervener in support of the European Union Intellectual Property Office (EUIPO) (C-405/15 P): United Kingdom of Great Britain and Northern Ireland (represented by J. Kraehling and C.R. Brodie, acting as Agents, and by N. Saunders, Barrister)

Operative part of the judgment

The Court:

1. *Dismisses the appeals in the Cases C-361/15 P and C-405/15 P;*

2. *Orders Easy Sanitary Solutions BV to bear its own costs and to pay the costs incurred by Group Nivelles NV and by the European Union Intellectual Property Office (EUIPO) in Case C-361/15 P;*

3. *Orders EUIPO to bear its own costs and also to pay the costs incurred by Group Nivelles NV in Case C-405/15 P;*

4. *Orders EUIPO to pay a third of the costs incurred by Easy Sanitary Solutions BV in Case C-405/15 P, the remaining two thirds of those costs being borne by Easy Sanitary Solutions BV;*

5. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs in Case C-405/15 P.*

([1]) OJ C 337, 12.10.2015.

Judgment of the Court (Fourth Chamber) of 21 September 2017 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Minister Finansów v Aviva Towarzystwo Ubezpieczeń na Życie S.A. w Warszawie

(Case C-605/15) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 132(1)(f) — Exemptions for certain activities in the public interest — Exemption for the supply of services by independent groups of persons for their members — Applicability to insurance)

(2017/C 392/08)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Minister Finansów

Defendant: Aviva Towarzystwo Ubezpieczeń na Życie S.A. w Warszawie

Operative part of the judgment

Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that the exemption provided for in that provision relates only to independent groups of persons whose members carry on an activity in the public interest referred to in Article 132 of that directive and that, therefore, the services supplied by independent groups of persons whose members carry on an economic activity in the area of insurance, which does not constitute such an activity in the public interest, are not entitled to that exemption.

([1]) OJ C 90, 7.3.2016.

Judgment of the Court (Fourth Chamber) of 21 September 2017 — European Commission v Federal Republic of Germany

(Case C-616/15) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Value added tax — Directive 2006/112/EC — Article 132(1)(f) — Exemption for services supplied to their members by independent groups of persons — Restriction to independent groups whose members exercise a limited number of professions)

(2017/C 392/09)

Language of the case: German

Parties

Applicant: European Commission (represented by: M. Owsiany-Hornung and by B.-R. Killmann and R. Lyal, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller and by K. Petersen, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that by restricting the VAT exemption to IGPs whose members exercise a limited number of professions, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 98, 14.3.2016.

Judgment of the Court (Third Chamber) of 21 September 2017 (request for a preliminary ruling from the Prim'Awla tal-Qorti Ċivili — Malta) — Malta Dental Technologists Association, John Salomone Reynaud v Superintendent tas-Saħħa Pubblika, Kunsill tal-Professjonijiet Kumplimentari għall-Mediċina

(Case C-125/16) ([1])

(Reference for a preliminary ruling — Directive 2005/36/EC — Recognition of professional qualifications — Dental technologists — Conditions governing the practice of the profession in the host Member State — Requirement for the compulsory intermediation of a dental practitioner — Application of that requirement in the case of clinical dental technologists pursuing their profession in the home Member State — Article 49 TFEU — Freedom of establishment — Restriction — Justification — Public interest objective of ensuring the protection of public health — Proportionality)

(2017/C 392/10)

Language of the case: Maltese

Referring court

Prim'Awla tal-Qorti Ċivili

Parties to the main proceedings

Applicants: Malta Dental Technologists Association, John Salomone Reynaud

Defendants: Superintendent tas-Saħħa Pubblika, Kunsill tal-Professjonijiet Kumplimentari għall-Mediċina

Operative part of the judgment

Article 49 TFEU, and Article 4(1) and the first subparagraph of Article 13(1) of 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, must be interpreted to the effect that they do not preclude legislation of a Member State, such as that at issue in the main proceedings, which stipulates that the activities of a dental technologist must be pursued in collaboration with a dental practitioner, inasmuch as that requirement is applicable, in accordance with that legislation, to clinical dental technologists who obtained their professional qualifications in another Member State and who wish to pursue their profession in the first Member State.

([1]) OJ C 191, 30.5.2016.

Judgment of the Court (Tenth Chamber) of 21 September 2017 (request for a preliminary ruling from the Sąd Rejonowy dla Wrocławia-Śródmieścia — Poland) — Halina Socha, Dorota Olejnik, Anna Skomra v Szpital Specjalistyczny im. A. Falkiewicza we Wrocławiu

(Case C-149/16) ([1])

(Reference for a preliminary ruling — Social policy — Collective redundancies — Directive 98/59/EC — Article 1(1) — Concept of 'redundancies' — Assimilation to redundancies of 'terminations of an employment contract which occur on the employer's initiative' — Unilateral amendment by the employer of pay and working conditions)

(2017/C 392/11)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Wrocławia-Śródmieścia

Parties to the main proceedings

Applicants: Halina Socha, Dorota Olejnik, Anna Skomra

Defendant: Szpital Specjalistyczny im. A. Falkiewicza we Wrocławiu

Operative part of the judgment

Article 1(1) and Article 2 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that an employer is required to engage in the consultations provided for in Article 2 when it intends, to the detriment of the employees, to make a unilateral amendment to the terms of remuneration which, if refused by the employees, will result in termination of the employment relationship, to the extent that the conditions laid down in Article 1(1) of that directive are fulfilled, which is for the referring court to determine.

([1]) OJ C 222, 20.6.2016.

Judgment of the Court (Fifth Chamber) of 21 September 2017 (request for a preliminary ruling from the Sofiyski Rayonen sad — Bulgaria) — Trayan Beshkov v Sofiyska rayonna prokuratura

(Case C-171/16) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Framework Decision 2008/675/JHA — Scope — Taking into account, in the course of new criminal proceedings, a previous conviction handed down in another Member State, in order to impose an overall sentence — National procedure for prior recognition of that conviction — Altering the arrangements for enforcing the sentence imposed in the other Member State)

(2017/C 392/12)

Language of the case: Bulgarian

Referring court

Sofiyski Rayonen sad

Parties to the main proceedings

Applicant: Trayan Beshkov

Defendant: Sofiyska rayonna prokuratura

Operative part of the judgment

1. *Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings must be interpreted as meaning that it is applicable to a national procedure that is concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court and also that imposed following a previous conviction handed down by a court of another Member State against the same person for different facts.*

2. *Framework Decision 2008/675 must be interpreted as precluding the possibility that it should be a prerequisite of account being taken, in a Member State, of a previous conviction handed down by a court of another Member State that a national procedure for prior recognition of that conviction by the courts with jurisdiction in the former Member State, such as that laid down in Articles 463 to 466 of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure), be implemented.*

3. *Article 3(3) of Framework Decision 2008/675 must be interpreted as precluding national legislation which provides that a national court, seised of an application for the imposition, for the purposes of execution, of an overall custodial sentence that takes into account, inter alia, the sentence imposed following a previous conviction handed down by a court of another Member State, may alter for that purpose the arrangements for execution of that latter sentence.*

([1]) OJ C 200, 6.6.2016.

Judgment of the Court (Tenth Chamber) of 21 September 2017 (request for a preliminary ruling from the Sąd Okręgowy w Łodzi — Poland) — Małgorzata Ciupa and Others v II Szpital Miejski im. L. Rydygiera w Łodzi, now Szpital Ginekologiczno-Położniczy im. dr L. Rydygiera sp. z o.o. w Łodzi

(Case C-429/16) ([1])

(Reference for a preliminary ruling — Social policy — Collective redundancies — Directive 98/59/EC — Article 1(1) and Article 2 — Concept of 'redundancies' — Assimilation to redundancies of 'terminations of an employment contract which occur on the employer's initiative' — Unilateral amendment by the employer of working and pay conditions — Determination of the employer's 'intention' to effect redundancies)

(2017/C 392/13)

Language of the case: Polish

Referring court

Sąd Okręgowy w Łodzi

Parties to the main proceedings

Applicants: Małgorzata Ciupa, Jolanta Deszczka, Ewa Kowalska, Anna Stańczyk, Marta Krzesińska, Marzena Musielak, Halina Kaźmierska, Joanna Siedlecka, Szymon Wiaderek, Izabela Grzegora

Defendant: II Szpital Miejski im. L. Rydygiera w Łodzi, now Szpital Ginekologiczno-Położniczy im. dr L. Rydygiera sp. z o.o. w Łodzi

Operative part of the judgment

Article 1(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that a unilateral amendment of conditions of pay by the employer, to the detriment of the employees, which, in the event of an employee's refusal, entails the termination of the contract of employment is capable of being regarded as a 'redundancy' within the meaning of that provision, and Article 2 of that directive must be interpreted as meaning that an employer is required to carry out the consultations provided for in Article 2 where he contemplates effecting such a unilateral amendment of the conditions of pay, in so far as the conditions laid down in Article 1 of the directive are satisfied, which is for the referring court to ascertain.

([1]) OJ C 392, 24.10.2016.

Judgment of the Court (Tenth Chamber) of 21 September 2017 (request for a preliminary ruling from the Înalta Curte de Casație și Justiție — Romania) — SMS group GmbH v Direcția Generală Regională a Finanțelor Publice București

(Case C-441/16) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Eighth Directive 79/1072/EEC — Directive 2006/112/EC — Taxable person residing in another Member State — Refund of VAT charged on imported goods — Conditions — Objective elements confirming the intention of the taxable person to use the imported goods in the course of his economic activities — Serious risk of non-completion of the transaction that justified the importation)

(2017/C 392/14)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: SMS group GmbH

Defendant: Direcția Generală Regională a Finanțelor Publice București

Operative part of the judgment

Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, read in conjunction with Article 170 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as precluding a refusal by a Member State to refund the value added tax paid on the importation of goods to a taxable person who is not established on its territory in circumstances such as those in the main proceedings where, at the time of importation, the performance of the contract in connection with which the taxable person purchased and imported those goods was suspended, the transaction for which they were intended to be used was in the end not carried out, and the taxable person did not provide proof of their subsequent movements.

([1]) OJ C 419, 14.11.2016.

Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 24 January 2017 — Saferoad Grawil sp. z o.o., Saferoad Kabex sp. z o.o. v Generalna Dyrekcja Dróg Krajowych i Autostrad Oddział w Poznaniu

(Case C-35/17)

(2017/C 392/15)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Appellants: Saferoad Grawil sp. z o.o., Saferoad Kabex sp. z o.o.

Respondent: Generalna Dyrekcja Dróg Krajowych i Autostrad Oddział w Poznaniu

Interveners: Przedsiębiorstwo Budownictwa Drogowego S.A., Zakład Bezpieczeństwa Ruchu Drogowego (Zaberd) S.A.

By order of 13 July 2017, the Court of Justice (Sixth Chamber) ruled that Article 2 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, ([1]) the principle of equal treatment and the obligation of transparency must be interpreted as precluding the exclusion of an economic operator from a public tendering procedure as a result of non-compliance, on the part of that operator, with an obligation which does not follow expressly from the documents relating to that procedure.

([1]) OJ 2004 L 134, p. 114.

Appeal brought on 25 July 2017 by Ori Martin SA against the order of the General Court (Second Chamber) delivered on 1 June 2017 in Case T-797/16 Ori Martin v Court of Justice of the European Union

(Case C-463/17 P)

(2017/C 392/16)

Language of the case: Italian

Parties

Appellant: Ori Martin SA (represented by: G. Belotti, avvocato)

Other party to the proceedings: Court of Justice of the European Union

Form of order sought

— The appellant claims that the Court of Justice of the European Union ('the Court') should, reversing the General Court's order dismissing its action in Case T-797/16 (*Ori Martin spa* v *Court of Justice of the European Union*), rule that in Cases C-490/15P and C-505/15P (EU:C:2016:678) the Court itself (Sixth Chamber) infringed ORI's right to a fair trial in accordance with Article 47 of the EU Charter of Fundamental Rights ('the Charter') and, consequently, make an order for compensation for damage.

Pleas in law and main arguments

The action dismissed by the General Court by the order at issue was based on a single plea in law: infringement by the Court (Sixth Chamber) of Article 47 of the Charter, in particular, infringement of ORI's right to a fair trial. ORI claimed that it is a requirement of this general principle of law that a company that has been definitively penalised should understand what it is alleged specifically to have done, so that, inter alia, it may avoid reoffending. This is not the situation in the present case, ORI still not knowing the actual ground for the order made against it.

The General Court dismissed ORI's action as manifestly devoid of any basis in law, on the assumption that the application for compensation was not based on the excessive duration of the proceedings, which could have constituted a breach of Article 47 of the Charter, but on an alleged illegality vitiating the judgment. The General Court did not rule on the question of whether or not breach of the right to a fair trial, expressly invoked by the applicant, was covered by Article 47 of the Charter or not. In this respect, the issues underlying the present appeal are of interest beyond the present case.

ORI contests the order of the General Court in that the right to a fair trial, here in the form of any person's right to know the grounds for an order made against him, is an inalienable right of the persons on whom penalties are imposed in the field of competition, the essentially penal nature of which is now recognised by settled case-law. The principle of effective judicial protection of an individual's rights is a general principle of EU law stemming from the constitutional traditions common to the Member States; it has been enshrined in Articles 6 and 13 of the European Convention on Human Rights and reiterated in Article 47 of the Charter.

Moreover, ORI emphasises the importance of the question asked, given the personal nature of liability in the field of competition ([1]) as set out in Article 23 of Regulation No 1/2003 EC and given the fact that neither strict liability nor *culpa in vigilando* has any place in EU competition law.

As a result, no one may be penalised without fault or owing to lack of vigilance; no procedural law principle of reversal of the burden of proof can invalidate those conclusions.

([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).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 10 August 2017 — Verbraucherzentrale Berlin e.V. v Unimatic Vertriebs GmbH

(Case C-485/17)

(2017/C 392/17)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Verbraucherzentrale Berlin e.V.

Defendant: Unimatic Vertriebs GmbH

Questions referred

1. Does a trade fair stand in a hall which is used by a trader for the purpose of selling his products during a trade fair taking place for a few days each year constitute immovable retail premises within the meaning of Article 2(9)(a) of Directive 2011/83/EU ([1]) or movable retail premises within the meaning of Article 2(9)(b) of Directive 2011/83/EU?

2. If it constitutes movable retail premises:

   Is the question whether a trader carries out his activity 'on a usual basis' on trade fair stands to be answered by reference to

   (a) how the trader organises his activity or

   (b) whether the consumer can expect to conclude a contract for the goods concerned at the trade fair in question?

3. If, in the answer to the second question, the perspective of the consumer is relevant (Question 2(b)):

   In connection with the question whether the consumer can expect to conclude a contract for the goods concerned at the trade fair in question, must regard be had to how the trade fair is presented to the public or to how the trade fair actually appears to the consumer when he makes the contractual declaration?

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

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 18 August 2017 — Germanwings GmbH v Wolfgang Pauels

(Case C-501/17)

(2017/C 392/18)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Germanwings GmbH

Respondent: Wolfgang Pauels

Question referred

Is the damage to an aircraft tyre caused by a screw lying on the take-off or landing runway (foreign object damage/FOD) an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 25 August 2017 — Spiegel Online GmbH v Volker Beck

(Case C-516/17)

(2017/C 392/19)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Spiegel Online GmbH

Defendant: Volker Beck

Questions referred

1. Do the provisions of EU law on the exceptions or limitations to the rights concerned laid down in Article 5(3) of Directive 2001/29/EC ([1]) allow any latitude in terms of implementation in national law?

2. In which way are the fundamental rights of the Charter of Fundamental Rights of the European Union to be taken into account when determining the scope of the exceptions or limitations provided for in Article 5(3) of Directive 2001/29/EC to the exclusive right of authors to reproduce (Article 2(a) of Directive 2001/29/EC) and communicate to the public their works, including the right to make their works available to the public (Article 3(1) of Directive 2001/29/EC)?

3. Can the fundamental rights of freedom of information (second sentence of Article 11(1) of the Charter) or freedom of the media (Article 11(2) of the Charter) justify exceptions or limitations to the exclusive rights of authors to reproduce (Article 2(a) of Directive 2001/29/EC) and communicate to the public their works, including the right to make their works available to the public (Article 3(1) of Directive 2001/29/EC), beyond the exceptions or limitations provided for in Article 5(3) of Directive 2001/29/EC?

4. Is the making available to the public of copyright-protected works on the web portal of a press undertaking to be excluded from consideration as the reporting of current events not requiring permission as provided for in Article 5(3)(c), second case, of Directive 2001/29/EC, because it was possible and reasonable for the press undertaking to obtain the author's consent before making his works available to the public?

5. Is there no publication for quotation purposes under Article 5(3)(d) of Directive 2001/29/EC if quoted textual works or parts thereof are not inextricably integrated into the new text — for example, by way of insertions or footnotes — but are made available to the public on the Internet by means of a link in the form of PDF files which can be downloaded independently of the new text?

6. In determining when a work within the meaning of Article 5(3)(d) of Directive 2001/29/EC has already been made available lawfully to the public, should the focus be on whether that work in its specific form was published previously with the author's consent?

(1) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ 2001 L 167, p. 10.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 28 August 2017 — Milkiyas Addis v Bundesrepublik Deutschland

(Case C-517/17)

(2017/C 392/20)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Milkiyas Addis

Defendant: Bundesrepublik Deutschland

Questions referred

1. Does EU law preclude a Member State (in this case, Germany) from rejecting an application for international protection as inadmissible on the ground that refugee status has been granted in another Member State (in this case, Italy), in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU (1) or under the rule in Article 25(2)(a) of Directive 2005/85/EC (2) that preceded it, if the form which the international protection takes, and more specifically, the living conditions of persons qualifying as refugees, in the other Member State which has already granted the applicant international protection (in this case, Italy), does not satisfy the requirements of Article 20 et seq. of Directive 2011/95/EU but does not, in and of itself, infringe Article 4 of the Charter of Fundamental Rights of the European Union or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

2. If Question 1 is to be answered in the affirmative, is this also the case where, although the persons qualifying as refugees in the Member State in which they so qualify (in this case, Italy)

   (a) do not receive any subsistence benefits at all, or those which they do receive are very limited by comparison with those available in other Member States, they are to this extent not treated any differently from nationals of that Member State, and they

   (b) are admittedly, granted the rights provided for under Article 20 et seq. of Directive 2011/95/EU but in fact have greater difficulty in accessing the related benefits or benefits under family or social networks which replace or supplement State benefits?

3. Does the first sentence of Article 14(1) of Directive 2013/32/EU or the rule in the first sentence of Article 12(1) of Directive 2005/85/EC that preceded it preclude the application of a national provision under which the failure to conduct a personal interview with the applicant in the case where the determining authority rejects an asylum application as inadmissible, in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU or the rule in Article 25(2)(a) of Directive 2005/85/EC that preceded it, does not result in that decision being annulled by reason of that failure if the applicant has an opportunity in the judicial proceedings to set out all the circumstances mitigating against a decision of inadmissibility and, even having regard to those submissions, no other decision can be taken in the case?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ 2013 L 180, p. 60.

([2]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005 L 326, p. 13.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 28 August 2017 — Stefan Rudigier

(Case C-518/17)

(2017/C 392/21)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Stefan Rudigier

Other party in the appeal on a point of law: Salzburger Verkehrsverbund GmbH

Questions referred

1. Is Article 7(2) of Regulation (EC) No 1370/2007 ([1]) on public passenger transport services by rail and by road also applicable in the case of the award of a service contract pursuant to the second sentence of Article 5(1) of that regulation for passenger transport services by bus in accordance with a procedure laid down in the Procurement Directives (Directive 2004/17/EC or Directive 2004/18/EC)?

2. If the first question is answered in the affirmative:

   Does a breach of the obligation to publish, at least one year before the launch of an invitation to tender procedure, the information indicated in Article 7(2)(a) to (c) of Regulation (EC) No 1370/2007 result in an invitation to tender being regarded as unlawful in the case where there was no such publication one year prior to the launch of the procedure but the invitation to tender followed a procedure that was, under the second sentence of Article 5(1) of that regulation, in accordance with the Procurement Directives?

3. If the second question is answered in the affirmative:

Do the rules of EU law governing the award of public contracts preclude national legislation under which the setting-aside of an invitation to tender, as provided for in Article 2(1)(b) of Directive 89/665/EEC, ([2]) on the ground that it is unlawful by reason of the failure to publish information in accordance with Article 7(2) of Regulation No 1370/2007, may be dispensed with if that illegality does not have a significant influence on the outcome of the procurement procedure because the operator concerned was able to react in a timely manner and there was no adverse effect on competition?

([1]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ 2007 L 315, p. 1.

([2]) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ 1989 L 395, p. 33.

Action brought on 27 September 2017 — European Commission v Kingdom of Spain

(Case C-569/17)

(2017/C 392/22)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: T. Scharf, G. von Rintelen and I. Galindo Martín, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that by failing to adopt before 21 March 2016 the laws, regulations and administrative provisions necessary to comply with Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 ([1]) or, in any event, by failing to notify the Commission of those provisions, the Kingdom of Spain has failed to fulfil its obligations under Article 42(1) of Directive 2014/17/EU;

— order the Kingdom of Spain, in accordance with Article 260(3) TFEU, to pay a daily penalty payment of EUR 105 991,60, with effect from the date of delivery of the judgment establishing its failure to fulfil its obligation to adopt or, in any event, to notify the Commission of the provisions necessary to comply with Directive 2014/17/EU;

— order the Kingdom of Spain to pay the costs of the proceedings.

Pleas in law and main arguments

1. The Member States were required, under Article 42(2) of Directive 2014/17/EU, to adopt the national measures necessary to transpose the obligations under Directive 2014/17/EU by 21 March 2016. As the Kingdom of Spain has not given notification of the transposition of the directive, the Commission decided to refer the matter to the Court of Justice.

2. In its application, the Commission proposes that the Court of Justice impose a daily penalty payment of EUR 105 991,60 on the Kingdom of Spain. The amount of that penalty payment having been calculated taking into account the gravity and duration of the infringement and the deterrent effect based on that Member State's ability to pay.

(1) OJ 2014, L 60, p. 34.

GENERAL COURT

Judgment of the General Court of 5 October 2017 — Ben Ali v Council

(Case T-149/15) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Tunisia — Freezing of funds — Action for annulment — Admissibility — Legal basis — Reinclusion of the applicant's name on the basis of new grounds — Obligation to state reasons — Factual basis — Right to property — Proportionality)

(2017/C 392/23)

Language of the case: English

Parties

Applicant: Sirine Bent Zine El Abidine Ben Haj Hamda Ben Ali (Tunis, Tunisia) (represented by: S. Maktouf, lawyer)

Defendant: Council of the European Union (represented: initially by Á. de Elera-San Miguel Hurtado and G. Étienne, and subsequently by Á. de Elera San Miguel Hurtado, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of Council Decision (CFSP) 2015/157 of 30 January 2015 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2015 L 26, p. 29) and Council Implementing Regulation (EU) 2015/147 of 30 January 2015 implementing Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia (OJ 2015 L 26, p. 3), in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sirine Bent Zine El Abidine Ben Haj Hamda Ben Ali to bear her own costs and to pay the costs incurred by the Council of the European Union.*

([1]) OJ C 262, 10.8.2015.

Judgment of the General Court of 5 October 2017 — Mabrouk v Council

(Case T-175/15) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Tunisia — Measures taken against persons responsible for misappropriation of State funds and associated persons and entities — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds — Continued listing of the applicant's name — Inadequate factual basis — Manifest error of assessment — Error of law — Right to property — Principle of good administration — Obligation to adjudicate within a reasonable time — Presumption of innocence — Request for modification — Confirmatory measure — Inadmissibility)

(2017/C 392/24)

Language of the case: English

Parties

Applicant: Mohamed Marouen Ben Ali Ben Mohamed Mabrouk (Tunis, Tunisia) (represented by: J.-R. Farthouat, J.-P. Mignard, N. Boulay, lawyers, and S. Crosby, Solicitor)

Defendant: Council of the European Union (represented: initially by Á. de Elera-San Miguel Hurtado and G. Étienne, and subsequently by Á. de Elera San Miguel Hurtado, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of Council Decision (CFSP) 2015/157 of 30 January 2015 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2015 L 26, p. 29), in so far as it concerns the applicant, the Council's Decision of 16 November 2015 rejecting the applicant's request of 29 May 2015 to remove his name from the list in the Annex to Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 28, p. 62) and Council Decision (CFSP) 2016/119 of 28 January 2016 amending Decision 2011/72 (OJ 2016 L 23, p. 65), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Mohamed Marouen Ben Ali Ben Mohamed Mabrouk to bear his own costs and to pay the costs incurred by the Council of the European Union.*

([1]) OJ C 236, 20.7.2015.

Judgment of the General Court of 4 October 2017 — 1. FC Köln v EUIPO (SPÜRBAR ANDERS.)

(Case T-126/16) ([1])

(EU trade mark — Application for the EU word mark SPÜRBAR ANDERS. — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) and (2) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (2) of Regulation (EU) 2017/1001))

(2017/C 392/25)

Language of the case: German

Parties

Applicant: 1. FC Köln GmbH & Co. KGaA (Cologne, Germany) (represented by: G. Hasselblatt, V. Töbelmann and S. Stier, lawyers)

Defendant: European Union Intellectual Property Office (represented by: W. Schramek and D. Hanf, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 7 January 2016 (Case R 718/2015-1), concerning an application for registration of the word sign SPÜRBAR ANDERS. as an EU trade mark.

Operative part of the judgment

The Court:

1. *The action is dismissed;*

2. *1. FC Köln GmbH & Co. KGaA is ordered to pay the costs.*

([1]) OJ C 165, 10.5.2016.

Judgment of the General Court of 6 October 2017 — SDSR v EUIPO — Berghaus (BERG OUTDOOR)

(Case T-139/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark BERG OUTDOOR — Earlier EU word marks BERGHAUS — Relative ground for refusal — Likelihood of confusion — Similarity of signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2017/C 392/26)

Language of the case: English

Parties

Applicant: Sports Division SR, SA (SDSR) (Matosinhos, Portugal) (represented by A. Sebastião and J. Pimenta, lawyers)

Defendant: European Union Intellectual Property Office (represented by J. Ivanauskas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Berghaus Ltd (London, United Kingdom) (represented by S. Ashby, A. Carboni and J. Colbourn, Solicitors)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 21 January 2016 (Case R 153/2015-2) relating to opposition proceedings between Berghaus and SDSR.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sports Division SR, SA (SDSR) to bear its own costs and to pay those incurred by EUIPO and the intervener.*

(1) OJ C 175, 17.5.2016.

Judgment of the General Court of 4 October 2017 — Intesa Sanpaolo v EUIPO — Intesia Group Holding (INTESA)

(Case T-143/16) (1)

(EU trade mark — Revocation proceedings — EU word mark INTESA — Article 51(1)(a) and (2) of Regulation (EC) No 207/2009 (now Article 58(1)(a) and (2) of Regulation (EU) 2017/1001 — No genuine use of the trade mark)

(2017/C 392/27)

Language of the case: English

Parties

Applicant: Intesa Sanpaolo SpA (Turin, Italy) (represented by: P. Pozzi and G. Ghisletti, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Intesia Group Holding GmbH (Böblingen, Germany)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 21 January 2016 (Case R 632/2015-1), relating to revocation proceedings between Intesa Sanpaolo and Intesia Group Holding.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Intesa Sanpaolo SpA to bear its own costs and to pay those incurred in the present proceedings by the European Union Intellectual Property Office (EUIPO) and by Intesia Group Holding GmbH.*

(1) OJ C 191, 30.5.2016.

Judgment of the General Court of 6 October 2017 — Kofola ČeskoSlovensko v EUIPO — Mionetto (UGO)

(Case T-176/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark UGO — Earlier EU figurative mark il UGO! — Partial surrender of the earlier mark — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2017/C 392/28)

Language of the case: English

Parties

Applicant: Kofola ČeskoSlovensko a.s (Ostrava, Czech Republic) (represented by: L. Lorenc, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Mionetto SpA (Valdobbiadne, Italy)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 22 February 2016 (Case R 2707/2014-4), relating to opposition proceedings between Mionetto and Kofola ČeskoSlovensko.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kofola ČeskoSlovensko a.s. to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 5 October 2017 — Versace 19.69 Abbigliamento Sportivo v EUIPO — Gianni Versace (VERSACE 19.69 ABBIGLIAMENTO SPORTIVO)

(Case T-336/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative trade mark VERSACE 19.69 ABBIGLIAMENTO SPORTIVO — Earlier EU word mark VERSACE — Genuine use of the earlier mark — Article 42(2) of Regulation (EC) No 207/2009 — Relative ground for refusal — Likelihood of confusion — Similarity of signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 392/29)

Language of the case: Italian

Parties

Applicant: Versace 19.69 Abbigliamento Sportivo Srl (Busto Arsizio, Italy) (represented initially by F. Caricato, and subsequently by M. Cartella and B. Cartella, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Gianni Versace SpA (Milan, Italy) (represented by: M. Francetti, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 April 2016 (Case R 1005/2015-1) relating to opposition proceedings between Gianni Versace and Versace 19.69 Abbigliamento Sportivo.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 6 April 2016 (Case R 1005/2015-1) in so far as the Board of Appeal held that there had been genuine use of the earlier EU mark VERSACE for textile goods (not included in other classes) other than 'household linen' in class 24;*

2. *Dismisses the action as to the remainder;*

3. *Orders Versace 19.69 Abbigliamento Sportivo Srl to bear its own costs and to pay one half of the costs incurred by EUIPO;*

4. *Orders EUIPO to bear one half of its own costs;*

5. *Orders Gianni Versace SpA to bear its own costs.*

([1]) OJ C 296, 16.8.2016.

Judgment of the General Court of 5 October 2017 — Versace 19.69 Abbigliamento Sportivo v EUIPO — Gianni Versace (VERSACCINO)

(Case T-337/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative trade mark VERSACCINO — Earlier EU word mark VERSACE — Genuine use of the earlier mark — Article 42(2) of Regulation (EC) No 207/2009 — Relative ground for refusal — Likelihood of confusion — Similarity of signs — Article 8 (1)(b) of Regulation (EC) No 207/2009)

(2017/C 392/30)

Language of the case: Italian

Parties

Applicant: Versace 19.69 Abbigliamento Sportivo Srl (Busto Arsizio, Italy) (represented initially by F. Caricato, and subsequently by M. Cartella and B. Cartella, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Gianni Versace SpA (Milan, Italy) (represented by: M. Francetti, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 April 2016 (Case R 1172/2015-1), relating to opposition proceedings between Gianni Versace and Versace 19.69 Abbigliamento Sportivo.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Versace 19.69 Abbigliamento Sportivo Srl to pay the costs.*

([1]) OJ C 296, 16.8.2016.

Judgment of the General Court of 5 October 2017 — Forest Pharma v EUIPO — Ipsen Pharma (COLINEB)

(Case T-36/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark COLINEB — Earlier national figurative mark Colina — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Extent of the examination to be carried out by the Board of Appeal — Article 76(1) of Regulation No 207/2009 (now Article 95(1) of Regulation (EU) 2017/1001))

(2017/C 392/31)

Language of the case: English

Parties

Applicant: Forest Pharma BV (Amsterdam, Netherlands) (represented by: T. Holman, Solicitor)

Defendant: European Union Intellectual Property Office (represented by: P. Sipos, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ipsen Pharma SAS (Boulogne-Billancourt, France) (represented by: E. Baud, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 13 October 2016 (Case R 500/2016-5), relating to opposition proceedings between Ipsen Pharma and Forest Pharma.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Forest Pharma BV to bear its own costs and to pay the costs incurred by the European Union Intellectual Property Office (EUIPO);*

3. *Orders Ipsen Pharma SAS to bear its own costs.*

([1]) OJ C 70, 6.3.2017.

Order of the General Court of 13 September 2017 — Germany v Commission

(Case T-97/09) ([1])

(Action for annulment — ERDF — Reduction in financial aid — Failure to comply with the time limit for adoption of a decision — Infringement of essential procedural requirements — Action manifestly well founded)

(2017/C 392/32)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented initially by: M. Lumma, C. Blaschke and T. Henze, and subsequently by: T. Henze and J. Möller, acting as Agents, and C. von Donat, lawyer)

Defendant: European Commission (represented by: B. Conte, A. Steiblytė and B.-R. Killmann, acting as Agents)

Interveners in support of the form of order sought by the applicant: Kingdom of Spain (represented initially by: J. Rodríguez Cárcamo, lawyer, and subsequently by: A. Rubio González, abogado del estado, and finally by: V. Ester Casas, acting as Agent), and Kingdom of the Netherlands (represented initially by: C. Wissels and Y. de Vries, and subsequently by: J. Langer and B. Koopman, acting as Agents)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of Commission Decision C(2008) 8465 final of 19 December 2008 on the reduction of the assistance from the European Regional Development Fund (ERDF) for an operational programme in the Objective 1 region of the Land of Saxony in the Federal Republic of Germany (1994-1999) in accordance with Commission Decision C(94) 1939/4 of 5 August 1994, Commission Decision C(94) 2273/4 of 22 August 1994 and Commission Decision C(94) 1425 of 6 September 1994.

Operative part of the order

1. *Commission Decision C(2008) 8465 final of 19 December 2008 on the reduction of the assistance from the European Regional Development Fund (ERDF) for an operational programme in the Objective 1 region of the Land of Saxony in the Federal Republic of Germany (1994-1999) in accordance with Commission Decision C(94) 1939/4 of 5 August 1994, Commission Decision C(94) 2273/4 of 22 August 1994 and Commission Decision C(94) 1425 of 6 September 1994 is annulled.*

2. *The European Commission shall bear its own costs and pay the costs incurred by the Federal Republic of Germany.*

3. *The Kingdom of Spain and the Kingdom of the Netherlands shall bear their own costs.*

([1]) OJ C 129, 6.6.2009.

Order of the General Court of 13 September 2017 — Germany v Commission

(Case T-21/10) ([1])

(Action for annulment — ERDF — Reduction in financial aid — Failure to comply with the time limit for adoption of a decision — Infringement of essential procedural requirements — Action manifestly well founded)

(2017/C 392/33)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented initially by: J. Möller, T. Henze and C. Blaschke, and subsequently by: J. Möller and T. Henze, acting as Agents, and C. von Donat, lawyer)

Defendant: European Commission (represented by: B.-R. Killmann, B. Conte and A. Steiblytė, acting as Agents)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of Commission Decision C(2009) 9049 of 13 November 2009 reducing the assistance granted to the Single Programming Document Objective 2 Saarland (1997-1999) in the Federal Republic of Germany from the European Regional Development Fund (ERDF) under Commission Decision C(97) 1123 of 7 May 1997.

Operative part of the order

1. *Commission Decision C(2009) 9049 of 13 November 2009 reducing the assistance granted to the Single Programming Document Objective 2 Saarland (1997-1999) in the Federal Republic of Germany from the European Regional Development Fund (ERDF) under Commission Decision C(97)1123 of 7 May 1997 is annulled.*

2. *The European Commission shall pay the costs.*

([1]) OJ C 100, 17.4.2010.

Order of the General Court of 13 September 2017 — Germany v Commission

(Case T-104/10) ([1])

(Action for annulment — ERDF — Reduction in financial aid — RESIDER II programme — Failure to comply with the time limit for adoption of a decision — Infringement of essential procedural requirements — Action manifestly well founded)

(2017/C 392/34)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: J. Möller and T. Henze, acting as Agents, and C. von Donat, lawyer)

Defendant: European Commission (represented by: B.-R. Killmann, B. Conte and A. Steiblytė, acting as Agents)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of Commission Decision C(2009) 10561 of 18 December 2009 on the reduction of the contribution from the European Regional Development Fund (ERDF) granted by Commission Decision C(95) 2529 of 27 November 1995 in respect of the RESIDER II Programme Saarland (1994-1999) in the Federal Republic of Germany.

Operative part of the order

1. *Commission Decision C(2009) 10561 of 18 December 2009 on the reduction of the contribution from the European Regional Development Fund (ERDF) granted by Commission Decision C(95) 2529 of 27 November 1995 in respect of the RESIDER II Programme Saarland (1994-1999) in the Federal Republic of Germany is annulled.*

2. *The European Commission shall pay the costs.*

(1) OJ C 134, 22.5.2010.

Order of the General Court of 13 September 2017 — Germany v Commission

(Case T-114/10) (1)

(Action for annulment — ERDF — Reduction in financial aid — Programme Interreg II/C programme 'Rhine-Meuse flood' — Failure to comply with the time limit for adoption of a decision — Infringement of essential procedural requirements — Action manifestly well founded)

(2017/C 392/35)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented initially by: J. Möller and C. Blaschke, and subsequently by: J. Möller and T. Henze, acting as Agents, and U. Karpenstein, lawyer)

Defendant: European Commission (represented by: B.-R. Killmann, B. Conte and A. Steiblytė, acting as Agents)

Interveners in support of the form of order sought by the applicant: French Republic (represented initially by: G. de Bergues and B. Messmer, and subsequently by: D. Colas and J. Bousin, acting as Agents), and Kingdom of the Netherlands (represented initially by: C. Wissels and M. Noort, and subsequently by: M. Bulterman and B. Koopman, acting as Agents)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial aid granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97)3742 of 18 December 1997 (ERDF No 970010008).

Operative part of the order

1. *Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial aid granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97)3742 of 18 December 1997 (ERDF No 970010008) is annulled insofar as it concerns the Federal Republic of Germany.*

2. *The European Commission shall bear its own costs and pay the costs incurred by the Federal Republic of Germany.*

3. *The French Republic and the Kingdom of the Netherlands shall bear their own costs.*

(1) OJ C 134, 22.5.2010.

Order of the General Court of 25 September 2017 — Hungary v Commission

(Case T-542/15) (1)

(ERDF — Operational Programme 'Transport' and Regional Operational Programmes for Central Hungary, West Pannon, South Great Plain, Central Transdanubia, North Hungary, North Great Plain and South Transdanubia — Decision to suspend the interim payments — Repeal of the contested act — No need to adjudicate)

(2017/C 392/36)

Language of the case: English

Parties

Applicant: Hungary (represented by: J. Bonhage and F. Quast, lawyers)

Defendant: European Commission (represented by: B.-R. Killmann and A. Tokár, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Decision C(2015) 4979 final of 14 July 2015 on the suspension of part of the interim payments from the European Regional Development Fund (ERDF) and the Cohesion Fund for the expenditure paid for the Operational Programme 'Transport' for the regions of Central Hungary, West Pannon, South Great Plain, Central Transdanubia, North Hungary, North Great Plain and South Transdanubia

Operative part of the order

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

2. *Hungary is ordered to pay the costs.*

(1) OJ C 406, 7.12.2015.

Order of the General Court of 26 September 2017 — Gyarmathy v EMCDDA

(Case T-297/16 P) (1)

(Appeal — Civil service — Temporary staff — EMCDDA staff — Decision not to renew a contract of employment — Termination of the contract — Psychological harassment — Request for assistance — Administrative inquiry — Impartiality of the inquiry)

(2017/C 392/37)

Language of the case: English

Parties

Appellant: Valéria Anna Gyarmathy (Győr, Hungary) (represented by: A. Véghely, lawyer)

Other party to the proceedings: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (represented by: D. Storti and F. Pereyra, acting as Agents, and B. Wägenbaur, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 18 May 2015, *Gyarmathy* v *EMCDDA* (F-79/13, EU:F:2015:49), seeking the setting aside of that judgment.

Operative part of the order

1. *The appeal is dismissed.*

2. *Ms Valéria Anna Gyarmathy is to bear her own costs and to pay the costs incurred by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in the appeal proceedings.*

([1]) OJ C 364, 3.10.2016.

Order of the General Court of 20 September 2017 — Berliner Stadtwerke v EUIPO (berlinGas)

(Case T-402/16) ([1])

(EU trade mark — Application for EU word mark berlinGas — Absolute ground for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law)

(2017/C 392/38)

Language of the case: German

Parties

Applicant: Berliner Stadtwerke GmbH (Berlin, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (represented by: R. Manea and D. Hanf, agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 12 May 2016 (Case R 291/2016-1), relating to the application for registration of the word sign berlinGas as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Berliner Stadtwerke GmbH is ordered to pay the costs.*

([1]) OJ C 335, 12.9.2016.

Order of the General Court of 20 September 2017 — Berliner Stadtwerke v EUIPO (berlinWärme)

(Case T-719/16) ([1])

(EU trade mark — Application for EU word mark berlinWärme — Absolute ground for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law)

(2017/C 392/39)

Language of the case: German

Parties

Applicant: Berliner Stadtwerke GmbH (Berlin, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (represented by: R. Manea and D. Hanf, agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 19 July 2016 (Case R 618/2016-1), relating to the application for registration of the word sign berlinWärme as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Berliner Stadtwerke GmbH is ordered to pay the costs.*

([1]) OJ C 411, 28.11.2016.

Order of the General Court of 20 September 2017 — Habermaaß v EUIPO (Here Global (h)

(Case T-40/17) ([1])

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

(2017/C 392/40)

Language of the case: English

Parties

Applicant: Habermaaß GmbH AG (Bad Rodach, Germany) (represented by: U. Blumenröder, H. Gauß and E. Bertram, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Here Global BV (Eindhoven, Netherlands) (represented by: J. Erkkilä, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 24 October 2016 (Case R 53/2016-2) concerning opposition proceedings between Here Global BV and Habermaaß GmbH.

Operative part of the order

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

2. *Habermaaß GmbH and Here Global BV shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 86, 20.3.2017.

Order of the President of the General Court of 26 September 2017 — António Conde & Companhia v Commission

(Case T-443/17 R)

(Application for interim measures — Fishing vessels — Regional fisheries management organisation for the North-East Atlantic — Application for interim measures — No urgency)

(2017/C 392/41)

Language of the case: English

Parties

Applicant: António Conde & Companhia, SA (Gafanha de Nazaré, Portugal) (represented by J. García-Gallardo Gil-Fournier, lawyer)

Defendant: European Commission (represented by A. Bouquet, A. Lewis and F. Moro, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking an order that the Commission submit to the secretary of the North-East Atlantic Fisheries Commission (NEAFC) the amended list for 2017, sent to the Commission by the Portuguese Republic, containing the Portuguese-flagged vessels *Santa Isabel* and *Calvão*.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Action brought on 17 August 2017 — Algebris (UK) and Others v Commission

(Case T-570/17)

(2017/C 392/42)

Language of the case: English

Parties

Applicants: Algebris (UK) Ltd (London, United Kingdom), Anchorage Capital Group LLC (New York, New York, United States), Ronit Capital LLP (London) (represented by: T. Soames, lawyer, R. East, Solicitor, N. Chesaites, Barrister, and J. Vandenbussche, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme adopted by the Single Resolution Board by Decision SRB/EES/2017/08 of 7 June 2017 in respect of Banco Popular Español, S.A. ([1]) in its entirety, or alternatively, Article 1 thereof;

— order the Commission to pay the Applicants' legal costs.

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 European Commission failed properly, or at all, to comply with its legal obligation to assess the discretionary aspects of the Resolution Scheme.

2. Second plea in law, alleging that the European Commission failed to provide adequate reasons for its contested decision.

3. Third plea in law, alleging that the European Commission committed serious breaches of the principles of confidentiality and professional secrecy, contrary to Article 339 TFEU and Article 88(1) of the Single Resolution Mechanism and Single Resolution Fund Regulation (EU) No 806/2014 ([2]) and the case-law of the Court of Justice, thereby also failing to respect the applicants' right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union.

4. Fourth plea in law, alleging manifest errors of assessment in the European Commission's application of Articles 14, 18, 20, 21, 22 and 24 of Regulation No 806/2014.

   — In this regard, the applicants argue that the valuation of Banco Popular, which formed the basis for the resolution action taken under the Resolution Scheme, was not fair, prudent or reliable, and was inconsistent with the "no creditor worse off principle'; it did not therefore constitute accurate and reliable and consistent evidence on which to base the Resolution Scheme; and it was not capable of supporting the contested decision. Further and for the same reasons, the Resolution Scheme (and so the Decision) was manifestly disproportionate by going beyond the measures necessary to secure the resolution objectives.

5. Fifth plea in law, alleging that the Resolution Scheme endorsed by the contested decision violates the applicants' property rights as enshrined in general principles of EU law and in Article 17 of the Charter of Fundamental Rights.

6. Sixth plea in law, alleging that the Resolution Scheme was adopted and endorsed by the European Commission in violation of the applicants' right to be heard, in accordance with Article 41 of the Charter of Fundamental Rights and the case law of the Court of Justice.

([1]) Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español S.A. (notified under document C(2017) 4038), OJ 2017 L 178, p. 15.

([2]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

Action brought on 6 September 2017 — Volotea v Commission

(Case T-607/17)

(2017/C 392/43)

Language of the case: English

Parties

Applicant: Volotea, SA (Barcelona, Spain) (represented by: M. Carpagnano, lawyer, and M. Nordmann, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in part, the European Commission decision of 29 July 2016 concerning State aid SA.33983 (2013/C) (ex 2012/NN) (ex 2011/NN) implemented by Italy as compensation to Sardinian airports for public service obligations;

— order the Commission to pay its own costs and those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission misinterpreted the meaning of State aid under Article 107(1) TFEU.

   — The applicant alleges, inter alia, that the Commission misinterpreted the concept of the beneficiary. It further submits that the Commission was wrong to classify airport operators as mere 'intermediaries' between the region and the airlines, meaning that it failed duly to consider whether such operators received an economic advantage. In addition, funding was not selective. The Commission furthermore misinterpreted the meaning of distortion of competition and effects on trade.

2. Second plea in law, alleging that the Commission misinterpreted the meaning of justification of State aid.

   — The applicant disputes the Commission's assertion that the framework relating to services of general economic interest does not apply to the activities at issue in the present case. It further alleges that the Aviation Guidelines of 2005 may justify the funding in question.

3. Third plea in law, alleging that, in ordering the recovery of the allegedly unlawful aid, the Commission failed to take the legitimate interests of the applicant into account. The Commission, lacking a clear practice with regard to indirect aid, should not have insisted upon recovery.

4. Fourth plea in law, alleging that the Commission mishandled the investigation since it did not diligently and impartially investigate the contested measures.

   — The Commission, it is argued, did not conduct a proper analysis with regard to the market economy operator test, although required by law and requested in various submissions by third parties.

5. Fifth plea in law, alleging that the Commission failed to state reasons.

— In this regard, it is alleged that the Commission did not discuss some important legal or factual matters, gave reasons that were not unequivocal, failed to have regard to certain important arguments raised by third parties, and made statements which were contradictory in nature.

Action brought on 15 September 2017 – Slovenia v Commission

(Case T-626/17)

(2017/C 392/44)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: V. Klemenc and T. Mihelič Žitko, državni pravobranilki, and R. Knaak, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety Commission Delegated Regulation (EU) 2017/1353 of 19 May 2017 amending Regulation (EC) No 607/2009 as regards the wine grape varieties and their synonyms that may appear on wine labels (OJ 2017 L 190, p. 5); and

— order the Commission to pay 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 that, with the adoption of the contested regulation, the Commission infringed Article 232 of Regulation No 1308/2013 establishing a common organisation of the markets in agricultural products (Single CMO Regulation), in light of the fact that the latter regulation has been applicable since 1 January 2014, while the contested regulation has been applicable since 1 July 2013. In so doing, the Commission exceeded the limits of the power conferred on it by the second subparagraph of Article 100(3) of Single CMO Regulation No 1308/2013.

2. Second plea in law, alleging that, with the adoption of the contested regulation, the Commission retroactively infringed the acquired rights of Slovenian producers of wines covered by the Protected Designation of Origin 'Teran' (PDO-SI-A1581), thereby infringing fundamental principles of EU law, in particular the principle of legal certainty and the principle of legitimate expectations, the principle of the protection of acquired rights and of legitimate expectations, as well as the principle of proportionality.

3. Third plea in law, alleging that, with the adoption of the contested regulation, the Commission disproportionately infringed the property rights of Slovenian producers of wines covered by the Protected Designation of Origin 'Teran' (PDO-SI-A1581), thereby infringing Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Fourth plea in law, alleging that, by providing, in Article 2 of the contested regulation, a transitional period for the marketing of stocks of wine produced before the entry into force of that regulation, even if the labelling requirements as referred to in Article 1 of that regulation are not complied with, the Commission infringed Article 41 of the Act on the conditions of accession of the Republic of Croatia to the European Union, to the extent that the provision referred to above concerns wine produced before 1 July 2013.

5. Fifth plea in law, alleging that, with the adoption of the contested regulation, the Commission infringed the second subparagraph of Article 100(3) of Single CMO Regulation No 1308/2013, in light of the importance of that provision in relation to the fundamental principles of EU law and of Article 17 of the Charter and Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission thus exceeded the limits of the power conferred on it by that provision.

6. Sixth plea in law, alleging that, with the adoption of the contested regulation, the Commission infringed Article 290 TFEU and Article 13(2) TEU, in so far as it exceeded the limits of its power to adopt a delegated act, as conferred upon it by Article 290 TFEU, and also exceeded the limits of the powers conferred on it by the Treaties.

7. Seventh plea in law, alleging that, given that the Commission adopted the contested regulation with reference to a request from Croatia to include the wine grape variety 'Teran' in Part A of Annex XV of Commission Regulation No 607/2009 — a request that Croatia should have made before its accession to the EU — even though no such request was in fact made, and Slovenia was not informed of any such request for the purpose of opening negotiations, the Commission infringed the second subparagraph of Article 100(3) of Single CMO Regulation No 1308/2013 and Article 62(3) of Commission Regulation No 607/2009 in conjunction with Article 4(3) TEU. In the same way, the Commission has thus exceeded the power conferred on it by the aforementioned provision of Single CMO Regulation No 1308/2013.

8. Eighth plea in law, alleging that the Commission, having amended the contents of the contested regulation as regards the draft delegated act, which was submitted on 24 January 2017 at the meeting of GREX WINE wine experts, without giving the experts from the Member States the opportunity to comment on the amended version of the draft act, acted in breach of its own commitment under Chapter V, paragraph 28 of the Interinstitutional Agreement on Better Law-Making and Chapter II, paragraph 7, of the Common Understanding on delegated acts between the European Parliament, the Council and the Commission, which is appended to that Interinstitutional Agreement. In so doing, the Commission has committed a breach of essential procedural requirements and a breach of the principle of interinstitutional balance.

Action brought on 21 September 2017 — Rodonita v Commission and SRB

(Case T-645/17)

(2017/C 392/45)

Language of the case: Spanish

Parties

Applicant: Rodonita, SL (Coruña, Spain) (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín and B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Annul Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 adopting the resolution scheme regarding the institution Banco Popular Español, S.A.;

— Annul Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español, S.A.;

— Additionally, in accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the defendants and the parties intervening in full or partial support of the form of order sought by them to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 22 September 2017 — Addicion Sicav and Others v SRB

(Case T-646/17)

(2017/C 392/46)

Language of the case: Spanish

Parties

Applicants: Addicion Sicav, SA (Madrid, Spain), Allocation Sicav, SA (Madrid), Fundación Rafael de Pinto (Madrid), Chart Inversiones Sicav, SA (Madrid) and Match Ten Inversiones Sicav, SA (Madrid) (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicants for the harm suffered, in an amount corresponding to the nominal value of the bonds, updated at the date of resolution, and the related default interest accrued from that date up to the date the reimbursement will be made;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 22 September 2017 — Serendipity and Others v EUIPO — CKL Holdings (CHIARA FERRAGNI)

(Case T-647/17)

(2017/C 392/47)

Language in which the application was lodged: Italian

Parties

Applicant: Serendipity Srl (Milan, Italy), Giuseppe Morgese (Barletta, Italy), Pasquale Morgese (Barletta) (represented by: C. Volpi and L. Aliotta, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: CKL Holdings NV (CV Bussum, Netherlands)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word elements 'CHIARA FERRAGNI' in black and sky blue — Registration application No 14 346 795

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 17 July 2017 in Case R 2444/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Seniority of earlier European Union trade mark No 011841582 'Chiara Ferrangni' filed on 25 June 2013, registered on 10 October 2013;

— Incorrect comparison of the marks at issue;

— Incorrect global assessment of the likelihood of confusion.

Action brought on 2 October 2017 — ClientEarth v Commission

(Case T-677/17)

(2017/C 392/48)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: A. Jones, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded,

— annul the second sub-paragraph of Article 1(3)(a) of the Commission Regulation (EU) 2017/1154 of 7 June 2017, amending Regulation (EU) 2017/1151 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2017 L 175, p. 708);

— order the Commission to pay the applicant's costs; and

— order any other measure deemed appropriate.

Pleas in law and main arguments

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

1. First plea in law, alleging that the confidentiality requirement imposed by the contested provision is unlawful because it will necessarily preclude public authorities in EU Member States from disclosing information on emissions into the environment in response to a request from a member of the public, in breach of Articles 3 and 4 of the Environmental Information Access Directive ([1]).

2. Second plea in law, alleging the blanket confidentiality requirement imposed by the contested provision is unlawful because it will necessarily preclude EU institutions and bodies from disclosing information on emissions into the environment in response to a request from a member of the public, in breach of Article 6 of the Aarhus Regulation ([2]) and Article 2 the Public Access Regulation ([3]).

3. Third plea in law, alleging that the Commission, in introducing a blanket confidentiality provision, has introduced an essential element that goes beyond the scope of supplementing measures within the meaning of Articles 5(3) and 14(3) of Regulation (EC) No 715/2007, modifying the effect of the Environmental Information Access Directive, the Aarhus Regulation, and the Public Access Regulation, and depriving those measures of their *effet utile*.

4. Fourth plea in law, alleging that the blanket confidentiality requirement imposed by the contested provision violates the general principle of proportionality at EU law.

([1]) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003, L 41, p. 26)

([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]) 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).

Order of the General Court of 18 September 2017 — Volfas Engelman v EUIPO — Rauch Fruchtsäfte (BRAVORO PINTA)

(Case T-700/15) ([1])

(2017/C 392/49)

Language of the case: English

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

([1]) OJ C 38, 1.2.2016.

Order of the General Court of 19 September 2017 — Oil Pension Fund Investment Company v Council

(Case T-56/16) ([1])

(2017/C 392/50)

Language of the case: German

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

([1]) OJ C 111, 29.3.2016.

Order of the General Court of 19 September 2017 — Barnett and Others v EESC

(Case T-158/16) ([1])

(2017/C 392/51)

Language of the case: French

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

([1]) OJ C 191, 30.5.2016.

Order of the General Court of 26 September 2017 — Scheffler v EUIPO — Doc Generici (docfauna)

(Case T-299/16) ([1])

(2017/C 392/52)

Language of the case: English

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

([1]) OJ C 296, 16.8.2016.

Order of the General Court of 22 September 2017 — Czech Republic v Commission

(Case T-18/17) ([1])

(2017/C 392/53)

Language of the case: Czech

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

([1]) OJ C 70, 6.3.2017.

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