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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 22 September 2017 by Mediaexpert sp. z o.o. against the judgment of the General Court (Sixth Chamber) delivered on 20 July 2017 in Case T-780/16: Mediaexpert v EUIPO

(Case C-560/17 P)

(2018/C 152/02)

Language of the case: English

Parties

Appellant: Mediaexpert sp. z o.o. (represented by: J. Aftyka, radca prawny)

Other party to the proceedings: European Union Intellectual Property Office

By order of 13 March 2018 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Vilniaus apygardos teismas (Lithuania) lodged on 3 January 2018 — TE, UD, YB, ZC v Luminor Bank AB

(Case C-8/18)

(2018/C 152/03)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos teismas

Parties to the main proceedings

Applicants: TE, UD, YB, ZC

Defendant: Luminor Bank AB

Questions referred

1. Is a natural person who, prior to the date of 1 November 2007 specified in Article 70 of Directive 2004/39/EC, ([1]) acquired a derivate financial instrument from a bank using funds borrowed from that bank on the basis of collateral in favour of that bank to be regarded as a consumer under EU law on the ground that Article 3(3)(d) of Directive 2011/83/EU ([2]) on consumer rights provides that that directive is not to apply to contracts 'for financial services'?

2. Is a natural person who, prior to the date of 1 November 2007 specified in Article 70 of Directive 2004/39/EC, acquired a derivate financial instrument from a bank using funds borrowed from that bank on the basis of collateral in favour of that bank to be regarded as a retail client and a non-professional investor in financial instruments under EU law, and, if that is the case, must the provisions of EU law establishing consumer information obligations and prohibiting conflicts of interest when a bank offers and sells a financial instrument, such as the provisions laid down in Directive 2003/6, ([3]) Directive 2003/71/EC, ([4]) Directive 2001/34/EC, ([5]) Regulation (EC) No 809/2004, ([6]) the MiFID II Directive ([7]) and other rules of EU legislation protecting the rights of financial services consumers, be applied in the present case?

3. Is Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) to be interpreted as meaning that failure to disclose the fact that the financial instrument provider is not authorised to provide that financial service, failure to disclose essential information in a prospectus and in the supplement to a prospectus, as well as a potential conflict of interest on the part of the financial instrument provider, may, during the conclusion of contracts relating to a financial instrument, have a direct effect (in a particular direction) on the price of the financial instruments concerned, and that the other party to the contract thus has the right to request that those contracts be annulled or modified, or that compensation be paid for the losses incurred?

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

([2]) 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).

([3]) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

([4]) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ 2003 L 345, p. 64).

([5]) Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ 2001 L 184, p. 1).

([6]) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ 2004 L 149, p. 1).

([7]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ 2014 L 173, p. 349).

Request for a preliminary ruling from the Hessisches Finanzgericht (Germany) lodged on 16 January 2018 — Federal Express Corporation, German branch v Hauptzollamt Frankfurt am Main

(Case C-26/18)

(2018/C 152/04)

Language of the case: German

Referring court

Hessisches Finanzgericht

Parties to the main proceedings

Applicant: Federal Express Corporation, German branch

Defendant: Hauptzollamt Frankfurt am Main

Questions referred

1. Is importation within the meaning of Articles 2(1)(d) and 30 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) subject to the condition that goods which have been introduced into the territory of the European Union must enter the economic network of the European Union, or is the mere risk that the goods introduced may enter the economic network of the European Union sufficient?

   If importation is subject to the condition that goods must enter the economic network of the European Union:

2. Do goods which have been introduced into the territory of the European Union automatically enter the economic network of the European Union in the case where, contrary to customs law, those goods are not placed under an arrangement within the meaning of the first paragraph of Article 61 of the Directive or, although initially placed under such an arrangement, they later cease to be covered by that arrangement on account of conduct contrary to customs law, or is it the case that, in the event of conduct contrary to customs law, entry into the economic network of the European Union is subject to the condition that it may be presumed that, on account of the conduct contrary to customs law, the goods entered the economic network of the European Union in the fiscal territory of the Member State in which the unlawful conduct was committed and may have been consumed or used?

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 18 January 2018 — Tiroler Gebietskrankenkasse v Michael Moser

(Case C-32/18)

(2018/C 152/05)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: Tiroler Gebietskrankenkasse

Respondent in the appeal on a point of law: Michael Moser

Questions referred

1. Must the second sentence of Article 60(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Regulation No 883/2004) ([1]) be interpreted as meaning that a Member State having secondary competence (Austria) must pay, as a family benefit, to a parent resident and employed in a Member State having primary competence in accordance with Article 68(1)(b)(i) of Regulation No 883/2004 (Germany) the difference between the 'Elterngeld' (parental allowance) paid in the Member State having primary competence and the income-dependent 'Kinderbetreuungsgeld' (childcare allowance) in the other Member State, in the case where both parents live with their common children in the Member State having primary competence and the second parent alone is employed as a cross-border worker in the Member State having secondary competence?

In the event that the first question is answered in the affirmative:

2. Must the income-dependent 'Kinderbetreuungsgeld' be calculated by reference to the income actually earned in the Member State of employment (Germany) or by reference to the income which could hypothetically be earned from a comparable gainful activity in the Member State having secondary competence (Austria)?

(1) OJ 2009 L 284, p. 1.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 24 January 2018 — Finanzamt Trier v Cardpoint GmbH, as successor in law of Moneybox Deutschland GmbH

(Case C-42/18)

(2018/C 152/06)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: Finanzamt Trier

Respondent on a point of law: Cardpoint GmbH, as successor in law of Moneybox Deutschland GmbH

Question referred

Is technical and administrative assistance provided by a supplier of services to a bank operating a cash point (ATM) for cash withdrawals from the bank exempt from tax under Article 13.B(d)(3) of Directive 77/388/EEC (1) in the case where technical and administrative assistance of the same nature provided by a supplier of services for payments by card in connection with the sale of cinema tickets is, in accordance with the judgment of the Court of Justice of the European Union of 26 May 2016, *Bookit*, C-607/14, (EU:C:2016:355), not exempt from tax under that provision?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Appeal brought on 26 January 2018 by Toontrack Music AB against the judgment of the General Court (Ninth Chamber) delivered on 22 November 2017 in Case T-771/16, Toontrack Music AB v European Union Intellectual Property Office

(Case C-48/18 P)

(2018/C 152/07)

Language of the case: Swedish

Parties

Appellant: Toontrack Music AB (represented by: L.-E. Ström, advokat)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant, putting forward three different grounds of appeal, claims that the Court should

— set aside the judgment under appeal;

— principally, rule definitively in the case by upholding the claims made before the General Court;

— in the alternative, refer the case back to the General Court; and

— order EUIPO to pay the costs.

Pleas in law and main arguments

1. The grounds for the appellant's claim are that the judgment under appeal, as alleged under the first ground of appeal, runs counter to the applicable law in application of Article 7(1)(b), 7(1)(c) and 7(2), under the second ground of appeal, to Article 76 and under the third ground of appeal to Articles 65 and 75 of Council Regulation (EC) No 207/2009 ([1]) of 26 February 2009 on the European Union trade mark, as amended (replaced by Regulation (EU) 2017/1001 ([2]) of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ('the regulation')).

2. The first ground of appeal alleges that the judgment under appeal is incorrect, since the General Court was incorrect to find that the application for registration of EU trade mark No 13 945 423 EZMIX is descriptive for the purposes of Article 7(1)(c) of the regulation and was not sufficiently distinctive for the purpose of Article 7(1)(b) and 7(2) of the regulation. Since EZMIX in its entirety is a distinctive sign, the General Court erred in finding that there were grounds for refusal under the regulation. The General Court failed to have regard to all the relevant facts of the case concerning the application's significance, use and association as regards the relevant public. The General Court thus erred in law.

3. The second ground of appeal alleges that the General Court also erred in law in failing to have regard to Article 86 of the regulation and by distorting the evidence. The General Court presumes that ease is a major selling point in connection with music recording equipment and software and is one of the key factors. The General Court has incorrectly applied Article 76 such that the evidence in the case has been distorted. Deficiencies in the examination have led to an unsubstantiated and incorrect conclusion which is unsupported by the facts being given decisive meaning in the General Court's resulting judgment.

4. The third ground of appeal alleges that the General Court has disregarded Articles 65 and 75 of the regulation and thereby erred in law in failing to given the appellant the opportunity to present oral argument as to the fact underlying the judgment under appeal and the decision of the Board of Appeal of EUIPO.

5. The fact was presented for the first time in the decision of the Board of Appeal of EUIPO, was not substantiated by EUIPO and was sprung upon the appellant. Accordingly, it was possible for the evidence which the appellant adduced to counter the validity of that fact to be considered for the first time only before the General Court and it was thus made impossible for the appellant to provide complete evidence, contrary to the principle of equal arms.

([1]) OJ 2009 L 78, p. 1.
([2]) OJ 2017 L 154, p. 1.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña (Spain) lodged on 26 January 2018 — Carlos Escribano Vindel v Ministerio de Justicia

(Case C-49/18)

(2018/C 152/08)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Applicant: Carlos Escribano Vindel

Defendant: Ministerio de Justicia

Questions referred

1. Must the general principle of EU law prohibiting all discrimination be interpreted as not precluding a national rule enshrined in Article 31(One) of Law 39/2010 of 22 December 2010 on the National Budget for 2011, which established different percentage reductions that were more burdensome on the section of the judiciary which earned the least, thus requiring a greater sacrifice from that section in order to preserve public expenditure? (non-discrimination principle)

2. Must the general principle of EU law of preserving judicial independence through fair and stable remuneration commensurate with the duties performed by the members of the judiciary be interpreted as precluding a national rule such as that in Article 31(One) of Law 39/2010 of 22 December 2010 on the National Budget, which does not have regard to the nature of their duties, their length of service or the importance of their tasks, and which requires a greater sacrifice in order to preserve public expenditure solely from those members of the judiciary who earn the least? (principle of judicial independence)

Request for a preliminary ruling from the Amtsgericht Norderstedt (Germany) lodged on 29 January 2018 — Christian Fülla v Toolport GmbH

(Case C-52/18)

(2018/C 152/09)

Language of the case: German

Referring court

Amtsgericht Norderstedt

Parties to the main proceedings

Applicant: Christian Fülla

Defendant: Toolport GmbH

Questions referred

1. Is the third subparagraph of Article 3(3) of Directive 1999/44/EC ([1]) to be interpreted as meaning that a consumer must in all cases offer goods acquired under a distance contract to an undertaking in order to enable repair or replacement only at the place where the goods are located?

2. If not:

   Is the third subparagraph of Article 3(3) of Directive 1999/44/EC to be interpreted as meaning that a consumer must in all cases offer goods acquired under a distance contract to an undertaking in order to enable repair or replacement at the undertaking's place of business?

3. If not:

   What criteria can be derived from the third subparagraph of Article 3(3) of Directive 1999/44/EC as regards how to specify the place where the consumer must offer goods acquired under a distance contract to the undertaking in order to enable repair or replacement?

4. If the place where the consumer must offer goods acquired under a distance contract to an undertaking for examination and to enable repair is — in all cases or in this specific case — the undertaking's place of business:

   Is it compatible with the first subparagraph of Article 3(3) of Directive 1999/44/EC, in conjunction with Article 3(4) thereof, for a consumer to have to pay the costs of outward and/or return shipping, or does it follow from the requirement 'to repair free of charge' that the seller is required to make an advance payment?

5. If the place where the consumer must offer goods acquired under a distance contract to an undertaking for examination and to enable repair is — in all cases or in this specific case — the undertaking's place of business and a requirement for the consumer to pay costs in advance is compatible with the first subparagraph of Article 3(3) of Directive 1999/44/EC, in conjunction with Article 3(4) thereof:

   Is the third subparagraph of Article 3(3) of Directive 1999/44/EC, in conjunction with the second indent of Article 3(5) thereof, to be interpreted as meaning that a consumer who has merely notified a defect to the undertaking is not entitled to have a contract rescinded without offering to transport the goods to the place where the undertaking is located?

6. If the place where the consumer must offer goods acquired under a distance contract to an undertaking for examination and to enable repair is — in all cases or in this specific case — the undertaking's place of business and a requirement for the consumer to pay costs in advance is not compatible with the first subparagraph of Article 3(3) of Directive 1999/44/EC, in conjunction with Article 3(4) thereof:

   Is the third subparagraph of Article 3(3) of Directive 1999/44/EC, in conjunction with the second indent of Article 3(5) thereof, to be interpreted as meaning that a consumer who has merely notified a defect to the undertaking is not entitled to have a contract rescinded without offering to transport the goods to the place where the undertaking is located?

(1) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12).

Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 29 January 2018 — Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE

(Case C-55/18)

(2018/C 152/10)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: Federación de Servicios de Comisiones Obreras (CCOO)

Defendant: Deutsche Bank SAE

Interested parties: Federación Estatal de Servicios de la Unión General de Trabajadores (FES-UGT), Confederación General del Trabajo (CGT), Confederación Solidaridad de Trabajadores Vascos (ELA), Confederación Intersindical Galega (CIG)

Questions referred

1. Must it be understood that the Kingdom of Spain, by means of Articles 34 and 35 of the Workers' Statute, as they have been interpreted by case-law, has taken the measures necessary to ensure the effectiveness of the limits to working time and of the weekly and daily rest periods established by Articles 3, 5 and 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 (1) [concerning certain aspects of the organisation of working time, OJ L 299, 18/11/2003, p. 9] for full-time workers who have not expressly agreed, whether individually or collectively, to work overtime and who are not mobile workers or persons working in the merchant navy or railway transport?

2. Must Article 31(2) of the Charter of Fundamental Rights of the European Union and Articles 3, 5, 6, 16 and 22 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, in conjunction with Articles 4(1), 11(3) and 16(3) of Council Directive 89/391/EEC of 12 June 1989 ([2]) [on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29/06/1989, p. 1], be interpreted as precluding internal national legislation such as Articles 34 and 35 of the Workers' Statute from which, as settled case-law has shown, it cannot be inferred that employers must set up a system for recording actual daily working time for full-time workers who have not expressly agreed, whether individually or collectively, to work overtime and who are not mobile workers or persons working in the merchant navy or railway transport?

3. Must the imperative requirement laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, and Articles 3, 5, 6, 16 and 22 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, in conjunction with Articles 4(1), 11(3) and 16(3) of Council Directive 89/391/EEC of 12 June 1989, for the Member States to limit the working time of all workers in general, be understood to be satisfied for ordinary workers by the internal national legislation, contained in Articles 34 and 35 of the Workers' Statute from which, as settled case-law has shown, it cannot be inferred that employers are required to set up a system for recording actual daily working time for full-time workers who have not expressly agreed, whether individually or collectively, to work overtime, unlike mobile workers or persons working in the merchant navy or railway transport?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).
([2]) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

Appeal brought on 29 January 2018 by the European Commission against the judgment of the General Court of 17 November 2017 in Case T-263/15, Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo v Commission

(Case C-56/18 P)

(2018/C 152/11)

Language of the case: Polish

Parties

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

Other parties to the proceedings: Gmina Miasto Gdynia, Port Lotniczy Gdynia-Kosakowo sp. z o.o., Republic of Poland

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 17 November 2017 in Case T-263/15, *Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo* v *Commission*;

— reject the third complaint in the sixth plea in law as unfounded;

— refer the case back to the General Court in order that it may re-examine the remaining five pleas in law;

in the alternative:

— set aside the judgment of the General Court of 17 November 2017 in Case T-263/15 *Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo* v *Commission* in so far as point 1 of its operative part also includes a decision on the investment aid;

— refer the case back to the General Court in order that it may re-examine the remaining five pleas in law;

— reserve the costs of the proceedings at first instance and on appeal.

Grounds of appeal and main arguments

The Commission considers that the judgment of the General Court in Case T-263/15 ('the judgment under appeal') should be set aside, because it is vitiated by errors of law, which the Commission has divided into three grounds of appeal:

1. ***Incorrect legal classification of 'the right of the parties concerned to submit their comments' and the legal consequences of infringing that right in the light of the judgment of the Court in Ferriere Nord v Commission, C-49/05 P.***

The contested Decision 2015/1586/EU ([1]) based its finding that the operating aid for Port Lotniczy Gdynia-Kosakowo ('PLGK') was incompatible with the internal market on two independent grounds. The main ground for that incompatibility was the incompatibility of the investment aid with the internal market (see recital 244 of the contested decision). The failure to fulfil the first criterion set out in the 2014 Guidelines as regards the operating aid contributing to a well-defined objective of common interest was only the second, complementary ground for declaring that aid to be incompatible with the internal market.

However, the reasoning of the General Court in paragraphs 71 to 89 of the judgment under appeal was based on the assumption that the incompatibility of the operating aid for PLGK with the internal market is based exclusively on the application of the 2014 Guidelines, and the General Court therefore conducted its analysis in the light of the judgment in *Ferriere Nord* v *Commission*, C-49/05 P. That assumption was based on an incorrect interpretation of the contested decision, in particular recitals 244 and 245 thereof (see the second ground of appeal, below). If the General Court had correctly interpreted the contested decision in that regard, it would have had to find that an examination of the third complaint in the sixth plea in law was ineffective from the outset, and hence could not lead to a finding that the contested decision was unlawful.

In paragraphs 69 to 89 of the judgment under appeal, the General Court made two errors of law, because it applied 'the right to submit comments' conferred on the parties concerned by Article 108(2) TFEU in a manner contrary to the judgment of the Court in *Ferriere Nord* v *Commission*, C-49/05 P, paragraphs 78 to 84. The first ground of appeal is divided into two parts:

(i) the General Court erred in its legal classification of 'the right of the parties concerned to submit their comments' in the situation giving rise to the judgment under appeal as 'an essential procedural requirement', failure to comply with which automatically leads to a finding that the Commission's decision was unlawful, without establishing the effect of that failure to comply on the situation of one of the parties and the operative part of the decision (paragraphs 70, 81 and 83 of the judgment under appeal).

(ii) however, even assuming — as the General Court did — that the incompatibility of the operating aid for PLGK with the internal market was based on application of the 2014 Guidelines — *quod non* — the General Court incorrectly interpreted and applied the judgment of the Court in *Ferriere Nord* v *Commission*, C-49/05 P, in that regard. This is because, in fact, the provisions of the 2014 Guidelines applied in assessing the operating aid were, in essence, the same as the provisions applied in the withdrawn decision on the basis of the 2005 Guidelines, and thus the comments of the parties concerned regarding the 2014 Guidelines could not have had any effect on the operative part of the decision in that regard.

2. ***Incorrect interpretation of the contested decision and of the Commission's withdrawn decision.***

The General Court's finding, in paragraph 89 of the judgment under appeal, that the contested decision is unlawful is based on an incorrect interpretation, in paragraphs 84 to 87 of that judgment, of the ground of the incompatibility of the operating aid with the internal market set out in recital 244 of the contested decision as being based on the 2014 Guidelines and the withdrawn Decision 2014/883/EU. ([2]) The incorrect interpretation of recital 244 of the contested decision was the result of an incorrect interpretation of recital 245 of that decision.

In recital 244 of the contested decision, the Commission made reference to recital 227 of withdrawn Decision 2014/883/EU, repeating the conclusion reached in that decision that 'granting operating aid in order to ensure the operation of an investment project that benefits of incompatible investment aid is inherently incompatible with the internal market'. In the next sentence of recital 244 the Commission justified that conclusion as follows: 'Without the incompatible investment aid Gdynia airport would not exist, as it is entirely financed by that aid, and operating aid cannot be granted for non-existent airport infrastructure.'

In recital 245, however, the Commission stated that 'that conclusion under the 2005 Aviation Guidelines is equally valid under the 2014 Aviation Guidelines and sufficient to find that the operating aid granted to the airport operator is incompatible with the internal market.'

The expression 'valid under the 2014 Aviation Guidelines' used in recital 245 of the contested decision does not mean that it results from those Guidelines. The idea is that it cannot be affected by application of the provisions of the 2014 Guidelines. It is apparent from recital 245 of the contested decision as cited above that the incompatibility of the operating aid with the internal market resulting from the incompatibility of the investment aid is independent (being based on other arguments) of the 2014 Guidelines. The slight 'imprecision' regarding the withdrawn decision which was pointed out by the General Court in paragraph 85 of the judgment under appeal is not capable of calling the legal propriety of the abovementioned conclusion of the contested decision into question.

3. ***Ground of appeal: point 1 of the operative part of the judgment under appeal is disproportionate.***

In the alternative, should the Court reject the preceding grounds of appeal, the Commission emphasises that point 1 of the operative part of the judgment under appeal, annulling Articles 2 to 5 of the contested decision in their entirety, is disproportionate. By including a decision on the investment aid, it goes beyond the scope of the finding, made in paragraphs 71 to 89 of that judgment, that the contested decision is unlawful in relation to the operating aid. The General Court incorrectly found that the contested decision is not severable, on the basis of the wording of Article 2 thereof. However, according to settled case-law, the criterion governing severability of an act is whether the result of annulling part of that act would be a change in its substance. Annulling the contested decision in relation to the operating aid would not change the substance of the contested decision, because that decision would still apply to the investment aid for PLGK.

(1) Commission Decision (EU) 2015/1586 of 26 February 2015 on measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo airport (notified under document C(2015) 1281) (OJ 2015 L 250, p. 165).

(2) Commission Decision of 11 February 2014 on the measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo Airport (notified under document C(2014) 759) (OJ 2014 L 357, p. 51).

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 30 January 2018 — AX v BW

(Case C-57/18)

(2018/C 152/12)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: AX

Defendant: BW

Questions referred

1. Must point (a) of the first subparagraph of Article 1(1) of Directive 98/59/EC of the Council of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ([1]) ('Directive 98/59/EC') be interpreted as meaning that, for the purposes of determining the number of workers normally employed in an establishment, regard is to be had to the number of workers employed in the usual course of business at the time of the redundancy?

2. Must point (a) of the first subparagraph of Article 1(1) of Directive 98/59/EC be interpreted as meaning that, for the purposes of determining the number of workers normally employed in a user undertaking's business, account may be taken of temporary agency workers employed there?

If the answer to the second question is in the affirmative:

3. Which conditions apply to the taking into account of temporary agency workers for the purposes of determining the number of workers normally employed in a user undertaking's business?

([1]) OJ L 225, p. 16.

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 2 February 2018 — SC Petrotel-Lukoil SA v Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili and Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor

(Case C-68/18)

(2018/C 152/13)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: SC Petrotel-Lukoil SA

Defendants: Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili and Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor

Questions referred

1. Do the provisions of Article 21(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([1]) preclude the provisions laid down in Article 175, in force until 31 March 2010, of the Codul fiscal — Legea nr. 571 (Tax Code — Law No 571) of 22 December 2003 and in Article 206^{16}, in force as from 1 April 2010, of the Codul fiscal — Legea nr. 571/2003 (Tax Code — Law No 571/2003), and the rules arising therefrom?

2. Do the provisions of Article 2(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity preclude the provisions laid down in Article 175, in force until 31 March 2010, of the Codul fiscal — Legea nr. 571 (Tax Code — Law No 571) and in Article 206^{16}, in force as from 1 April 2010, of the Codul fiscal — Legea nr. 571/2003 (Tax Code — Law No 571/2003), and the rules arising therefrom?

3. Does the principle of proportionality prevent the State from taking no notice of the fact that the company, following the tax inspection, obtained a decision permitting 'unfinished fuel oil' to be treated in the same way as 'fuel oil' and, at the time of investigation of the complaint of the taxpayer/company, prevent the excise duty initially calculated for 'gas oil' from being maintained?

(1) OJ 2003 L 283, p. 51.

Action brought on 1 February 2018 — European Commission v Republic of Slovenia

(Case C-69/18)

(2018/C 152/14)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: H. Støvelbæk, G. von Rintelen and M. Žebre)

Defendant: Republic of Slovenia

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (OJ 2014 L 158, p. 196), or in any event, by failing to communicate those provisions to the Commission, the Republic of Slovenia has failed to fulfil its obligations under Article 2 of that directive;

— order the Republic of Slovenia to pay a penalty payment, under Article 260(3) TFEU, in the sum of EUR 7 986,60 per day, as from the day of delivery of the Court's judgment in the present case;

— order Republic of Slovenia to pay the costs.

Pleas in law and main arguments

In accordance with Article 2 of Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, the Republic of Slovenia should have adopted and communicated the laws, regulations and administrative provisions necessary to comply with that directive by 17 June 2016. Since the Republic of Slovenia did not notify the Commission, before the expiry of that deadline, that it has transposed all the provisions of that directive, the Commission decided to refer the case to the Court.

By its action, the Commission asks the Court to order the Republic of Slovenia to pay a penalty of EUR 7 986,60 per day. In calculating that amount, the Commission took into consideration the seriousness and the duration of the infringement of EU law, as well as the deterrent effect in relation to the ability of the Member State concerned, namely the Republic of Slovenia, to pay.

The deadline for transposition of the directive expired on 17 June 2013.

Request for a preliminary ruling from the Judecătoria Oradea (Romania) lodged on 8 February 2018 — CV v DU

(Case C-85/18)

(2018/C 152/15)

Language of the case: Romanian

Referring court

Judecătoria Oradea

Parties to the main proceedings

Applicant: CV

Respondent: DU

Questions referred

1. Is the concept of habitual residence of the child, within the meaning of Article 8(1) of Regulation No 2201/2003 ([1]), to be interpreted as meaning that such habitual residence corresponds to the place where the child has demonstrated some degree of integration into the social and family environment, irrespective of the fact that a ruling has been made in another Member State, after the child moved with his father to the territory of the State, where the minor has integrated into that social and family environment? If that is the case, should Article 13 of Regulation No 2201/2003, which determines jurisdiction based on the child's presence, be applied?

2. Is the fact that the minor has the nationality of the Member State in which he lives with his father, in circumstances where his parents have Romanian nationality only, relevant for the purpose of determining habitual residence?

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

Reference for a preliminary ruling from the Court of Appeal in Northern Ireland (United Kingdom) made on 9 February 2018 — Ermira Bajratari v Secretary of State for the Home Department

(Case C-93/18)

(2018/C 152/16)

Language of the case: English

Referring court

Court of Appeal in Northern Ireland

Parties to the main proceedings

Applicant: Ermira Bajratari

Defendant: Secretary of State for the Home Department

Questions referred

1. Can income from employment that is unlawful under national law establish, in whole or in part, the availability of sufficient resources under Article 7(1)(b) of the Citizens Directive ([1])?

2. If 'yes', can Article 7(1) (b) be satisfied where the employment is deemed precarious solely by reason of its unlawful character?

(1) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004, L 158, p. 77).

Reference for a preliminary ruling from High Court (Ireland) made on 12 February 2018 — Nalini Chenchooliah v Minister for Justice and Equality

(Case C-94/18)

(2018/C 152/17)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Nalini Chenchooliah

Defendant: Minister for Justice and Equality

Questions referred

1. Where the spouse of an EU citizen who has exercised free movement rights under Article 6 of Directive 2004/38/EC (1) has been refused a right of residence under Article 7 on the basis that the EU citizen in question was not, or was no longer, exercising EU Treaty Rights in the host Member State concerned, and where it is proposed that the spouse should be expelled from that Member State, must that expulsion be pursuant to and in compliance with the provisions of the Directive, or does it fall within the competence of the national law of the Member State?

2. If the answer to the above question is that the expulsion must be made pursuant to the provisions of the Directive, must the expulsion be made pursuant to and in compliance with the requirements of Chapter VI of the Directive, and particularly Articles 27 and 28 thereof, or may the Member State, in such circumstances, rely on other provisions of the Directive, in particular Articles 14 and 15 thereof?

(1) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004, L 158, p. 77).

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 12 February 2018 — T. Boer & Zonen BV v Staatssecretaris van Economische Zaken

(Case C-98/18)

(2018/C 152/18)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicant: T. Boer & Zonen BV

Defendant: Staatssecretaris van Economische Zaken

Question referred

Should the provisions of Annex III, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004 ([1]) be interpreted as meaning that the cooling of meat must take place in the slaughterhouse itself — such that the loading of the meat into a refrigerated truck may commence once that meat has attained a maximum temperature of 7 degrees Celsius — or may the cooling of the meat also take place in the refrigerated truck, provided that the truck does not leave the premises of the slaughterhouse?

([1]) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55).

Appeal brought on 13 February 2018 by Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ against the judgment of the General Court (Second Chamber) delivered on 30 November 2017 in Case T-687/16: Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ v European Union Intellectual Property Office

(Case C-104/18 P)

(2018/C 152/19)

Language of the case: English

Parties

Appellant: Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ (represented by: J. Güell Serra, E. Stoyanov Edissonov, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Joaquín Nadal Esteban

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— annul the contested decision;

— declare invalid the contested EUTM No. 9917436; and

— order Joaquín Nadal Esteban and EUIPO to pay the costs.

Pleas in law and main arguments

The General Court stated in the judgment under appeal as regards the assessment of the conditions for the application of Article 52(1)(b) of Regulation No. 207/2009 ([1]) that it was apparent from the judgment of the Court of Justice of 11 June 2009, Chocoladefabriken Lindt & Sprüngli, C-529/07, EU:C:2009:361, that bad faith presupposed the existence of a likelihood of confusion and that it consequently required the goods and services at stake to be similar or identical.

The appellant claims that it does not follow from the judgment in Chocoladefabriken Lindt & Sprüngli that bad faith on the part of the applicant for registration presupposes the existence of a likelihood of confusion between the marks/signs of the parties, but that the existence of such a likelihood of confusion is just an example of factors that can be taken into account, and not a *sine qua non* condition for the application of Article 52(1)(b) of Regulation No. 207/2009.

The appellant thus alleges that, by finding that Article 52(1)(b) of Regulation No. 207/2009 presupposed or required the existence of a likelihood of confusion on the part of the public and thus similarity or identity in the goods and services at stake, the General Court misinterpreted Chocoladefabriken Lindt & Sprüngli and misapplied Article 52(1)(b) of Regulation No. 207/2009. It consequently erred in law.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009, L 78, p. 1).

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 14 February 2018 — Sandoz Ltd, Hexal AG v G.D. Seale LLC, Janssen Sciences Ireland

(Case C-114/18)

(2018/C 152/20)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicants: Sandoz Ltd, Hexal AG

Defendants: G.D. Seale LLC, Janssen Sciences Ireland

Question referred

Where the sole active ingredient the subject of a supplementary protection certificate issued under [the SPC Regulation] (1) is a member of a class of compounds which fall within a Markush definition in a claim of the patent, all of which class members embody the core inventive technical advance of the patent, is it sufficient for the purposes of Article 3(a) of the SPC Regulation that the compound would, upon examination of its structure, immediately be recognised as one which falls within the class (and therefore would be protected by the patent as a matter of national patent law) or must the specific substituents necessary to form the active ingredient be amongst those which the skilled person could derive, based on their common general knowledge, from a reading of the patent claims?

(1) Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009, L 152, p. 1).

Request for a preliminary ruling from the Tribunal correctionnel de Saint-Brieuc — Chambre détachée de Guingamp (France) lodged on 12 February 2018 — Procureur de la République v Tugdual Carluer and Others

(Case C-115/18)

(2018/C 152/21)

Language of the case: French

Referring court

Tribunal correctionnel de Saint-Brieuc — Chambre détachée de Guingamp

Parties to the main proceedings

Applicant: Procureur de la République

Defendants: Tugdual Carluer, Yann Latouche, Dominique Legeard, Thierry Leleu, Dimitri Pinschof, Brigitte Plunian, Rozenn Marechal

Questions referred

1. Is Regulation (EC) No 1107/2009 ([1]) compatible with the precautionary principle when it provides no specific definition of an active substance, leaving it to the applicant to determine what it designates as the active substance in its product and granting it scope to focus its whole application dossier on a single substance, while its end product placed on the market is made up of several substances?

2. Is the precautionary principle observed and impartiality of the authorisation to place products on the market maintained when the tests, analyses and evaluations necessary for compilation of the dossier are conducted by the applicants alone, who may be biased in their presentation, without any independent counter-analysis?

3. Is the precautionary principle observed and impartiality of the authorisation to place products on the market maintained without publication of the application reports on the pretext of protecting industrial secrecy?

4. Is Regulation (EC) No 1107/2009 compatible with the precautionary principle when it takes no account of there being multiple active substances or of their cumulative use, in particular when it makes no provision for any comprehensive specific analysis at European level of cumulation of active substances within a single product?

5. Is Regulation (EC) No 1107/2009 compatible with the precautionary principle when, in Chapters III and IV, it exempts from toxicity tests (genotoxicity, carcinogenicity assessment, assessment of endocrine disruptors, etc.) pesticide products in the commercial formulations in which they are placed on the market and in which consumers and the environment are exposed to them, requiring only summary testing, which is always performed by the applicant itself?

([1]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1).

Request for a preliminary ruling from the Juzgado de Primera Instancia de Barcelona (Spain) lodged on 16 February 2018 — Marc Gómez del Moral Guasch v Bankia S.A.

(Case C-125/18)

(2018/C 152/22)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Barcelona

Parties to the main proceedings

Applicant: Marc Gómez del Moral Guasch

Defendant: Bankia S.A.

Questions referred

1. Must the index concerned, the IRPH ([1]) Cajas, be the object of judicial protection, in the sense that it must be ascertained whether it is intelligible to the consumer, without this being precluded by the fact that it is governed by regulatory or administrative provisions, this not being a case provided for in Article 1(2) of Directive 93/13 ([2]) because it is not a mandatory provision, but instead such variable ordinary and remunerative interest is included in the contract by the seller or supplier when he so chooses?

2. 2.1 Under Article 4(2) of Directive 93/13, which has not been transposed into Spanish law, is it contrary to Directive 93/13, and to Article 8 thereof, for a Spanish court to rely upon and apply Article 4(2) of that act when that provision has not been transposed into Spanish law at the wish of the legislature, which sought a full level of protection in relation to all the terms that a seller or supplier may insert into a consumer contract, including those which relate to the main subject-matter of the contract, even if those terms were drafted in plain, intelligible language?

2.2 At all events, must information of promotional material be provided about all or some of the following facts or data, for the purpose of the understanding of an essential term, specifically the IRPH:

(i) An explanation of how the reference rate was configured, that is to say, stating that that index includes charges and other costs on top of the nominal interest rate, that it is a simple, unweighted average, that the seller or supplier had to know and notify the fact that he must apply a negative differential and that the data provided is not public, compared with the other usual index, the Euribor?

(ii) An explanation of past and possible future fluctuations in the IRPH, notifying and publishing graphs that explain clearly and intelligibly to the consumer the fluctuations in that specific rate in relation to the Euribor, the usual rate on loans secured by a mortgage?

2.3 And, if the Court of Justice concludes that it is for the referring court to examine whether contractual terms are unfair and to draw the necessary inferences in accordance with its national law, the Court is asked whether failure to provide information about all those consequences does not make the term unintelligible, inasmuch as it is not clear to an average consumer (Article 4(2) of Directive 93/13), or whether that failure to provide information amounts to unfair conduct by the seller or supplier and, therefore, the consumer would not have agreed to the use of the IRPH as the reference rate for his loan if he had been properly informed?

3. If the IRPH cajas term is declared null and void, failing agreement or if that would be more detrimental to the consumer, which of the two following consequences would be compatible with Articles 6(1) and 7(1) of Directive 93/13?

3.1 The contract is adjusted by applying the usual replacement index, the Euribor, it being a contract essentially linked to a profitable rate of interest for the benefit of the bank [which is classified as] a seller or supplier.

3.2 The interest rate ceases to be applied, and the sole obligation for the borrower or debtor is to repay the loan capital in the instalments stipulated.

(1) Índice de Referencia de Préstamos Hipotecarios (Mortgage Loan Reference Index)
(2) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 21.4.1993, p. 29.

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 16 February 2018 — A-PACK CZ, s r.o. v Odvolací finanční ředitelství

(Case C-127/18)

(2018/C 152/23)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Appellant (applicant at first instance): A-PACK CZ, s.r.o.

Other party (defendant at first instance): Odvolací finanční ředitelství

Questions referred

1. Can Article 90(2) of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax be interpreted, having regard to the principle of fiscal neutrality and the principle of proportionality, in such a way that it allows Member States by way of derogation to lay down conditions which for certain cases exclude a reduction of the taxable amount in the event of total or partial non-payment of the price?

2. If the answer to Question 1 is in the affirmative, is national legislation contrary to the purpose of Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax if it does not allow payers of value added tax to make a correction to the amount of tax where tax became chargeable on a taxable supply to another taxpayer who paid for it only in part or not at all, and who subsequently ceased to be a value added tax payer?

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

Action brought on 28 February 2018 — European Commission v Kingdom of Spain

(Case C-164/18)

(2018/C 152/24)

Language of the case: Spanish

Parties

Applicant: European Commission (representatives: P. Ondrůšek, E. Sanfrutos Cano and G. von Rintelen, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court of Justice should:

— Declare that, by failing to adopt, by 18 April 2016, all of the laws, regulations and administrative provisions necessary to comply with Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, (1) or, in any case, by failing to notify those measures to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 51(1) of that directive;

— Impose on the Kingdom of Spain, in accordance with Article 260(3) TFEU a daily penalty payment of EUR 61 964,32, with effect from the date of delivery of the judgment declaring the failure to fulfil the obligation to adopt or, in any case, notify to the Commission, the measures necessary to comply with Directive 2014/23/EU;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for adapting national law to Directive 2014/23/EU of the European Parliament and of the Council ended on 18 April 2016.

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

Action brought on 28 February 2018 — European Commission v Kingdom of Spain

(Case C-165/18)

(2018/C 152/25)

Language of the case: Spanish

Parties

Applicant: European Commission (representatives: P. Ondrůšek, E. Sanfrutos Cano and G. von Rintelen, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court of Justice should:

— Declare that, by failing to adopt, by 18 April 2016, all of the laws, regulations and administrative provisions necessary to comply with Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014, ([1]) or, in any case, by failing to notify those measures to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 106(1) of that directive;

— Impose on the Kingdom of Spain, in accordance with Article 260(3) TFEU a daily penalty payment of EUR 123 928,64, with effect from the date of delivery of the judgment declaring the failure to fulfil the obligation to adopt or, in any case, notify to the Commission, the measures necessary to comply with Directive 2014/25/EU;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for adapting national law to Directive 2014/25/EU of the European Parliament and of the Council ended on 18 April 2016.

([1]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

Appeal brought on 5 March 2018 by the Republic of Poland against the order of the General Court (First Chamber) made on 14 December 2017 in Case T-849/16, PGNiG Supply & Trading v European Commission

(Case C-181/18 P)

(2018/C 152/26)

Language of the case: Polish

Parties

Appellant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Other parties to the proceedings: PGNiG Supply & Trading GmbH, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside, in its entirety, the order of the General Court of the European Union (First Chamber) of 14 December 2017 in Case T-849/16, *PGNiG Supply & Trading* v *European Commission*;

— refer the case back to the General Court for reconsideration;

— order each party to bear its own costs.

Grounds of appeal and main arguments

By the order under appeal, the General Court dismissed the action brought by PGNiG Supply & Trading seeking annulment of Commission Decision C(2016) 6950 final of 28 October 2016 on review of the exemption of the OPAL gas pipeline from the requirements on third-party access and tariff regulation granted under Directive 2003/55/EC, stating that that company did not have standing to bring proceedings.

The Republic of Poland takes the view that, in paragraphs 6, 10, 11 and 43 of the order under appeal, the General Court concurrently made findings on the substance of the dispute regarding the validity of the contested decision. In connection with the foregoing, the Republic of Poland raises the following grounds against the order under appeal:

First, the General Court infringed Article 130(1) and (7) of its Rules of Procedure, and also infringed the rights of the Republic of Poland to an effective judicial remedy and to a fair trial as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, as well as infringing the principle of *audi alteram partem*, by making findings of fact and of law in the order under appeal which concern the substance of the dispute regarding the validity of the contested decision before the substance of that dispute could be addressed in the proceedings in Case T-883/16 *Republic of Poland* v *European Commission*.

Second, the General Court erred in its legal assessment of the contested decision, relying on the assumption that that decision provides that 50 % of the transport capacities of the OPAL gas pipeline between Greifswald and Brandov are to be opened to third-party access by way of a transparent and non-discriminatory auction, in such a way that other persons will be able to acquire those capacities, and on the assumption that the contested decision does not introduce a new regulatory exemption, but removes in part the existing exemption. The Republic of Poland considers that that assessment of the legal nature and of the effects of the contested decision is incorrect, because the contested decision only ostensibly introduces solutions presented as transparent and non-discriminatory. In fact it constitutes a mechanism enabling undertakings from the Gazprom group to acquire exclusive use of at least 90 % of the transport capacities of the OPAL gas pipeline covered by the contested decision (of which 50 % is completely exempt from the rules on third-party access, while 40 % is DZK (Dynamically Allocable Capacity), which only Gazprom may reserve).

Third, the General Court failed in its duty to provide a proper statement of reasons for the order under appeal. The Republic of Poland considers that the General Court did not explain the conditions on the basis of which it made the findings as to the substance of the contested decision. Consequently, it is impossible to know the reasons why the General Court stated that the contested decision makes the capacities of the OPAL gas pipeline accessible to undertakings not connected with the Gazprom group and that it will have a positive impact on competition on the natural gas market.

Action brought on 12 March 2018 — European Commission v Republic of Slovenia

(Case C-188/18)

(2018/C 152/27)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: P. Ondrůšek, G. von Rintelen, M. Žebre)

Defendant: Republic of Slovenia

Form of order sought

The applicant claims that the Court should:

— declare that, by not having adopted the laws, regulations and administrative provisions necessary to comply with Directive 2014/23/EU of the European Parliament and the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1) by 18 April 2016 or, in any event, by not having communicated those provisions to the Commission, the Republic of Slovenia has failed to fulfil its obligations under Article 51 of that directive;

— order the Republic of Slovenia to pay a penalty payment, under Article 260(3) TFEU, in the sum of EUR 8 992,32 per day, as from the day of delivery of the Court's judgment in the present case;

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

In accordance with Article 51 of Directive 2014/23/EU of the European Parliament and the Council of 26 February 2014 on the award of concession contracts, the Republic of Slovenia should have adopted and communicated the laws, regulations and administrative provisions necessary to comply with that directive by 18 April 2016. Since the Republic of Slovenia did not notify the Commission, before the expiry of that deadline, that it has transposed all the provisions of that directive, the Commission decided to refer the case to the Court.

By its action, the Commission asks the Court to order the Republic of Slovenia to pay a penalty of EUR 8 992,32 per day. In calculating that amount, the Commission took into consideration the seriousness and the duration of the infringement of EU law, as well as the deterrent effect in relation to the ability of the Member State concerned, namely the Republic of Slovenia, to pay.

The deadline for the transposition of the Directive expired on 18 April 2016.

GENERAL COURT

Judgment of the General Court of 13 March 2018 — Alouminion tis Ellados v Commission

(Case T-542/11 RENV) ([1])

(State aid — Electricity — Decision declaring the aid unlawful and incompatible with the internal market and ordering its recovery — Preferential electricity tariff granted by a contract entered into with the incumbent supplier — Termination of the contract by the incumbent supplier — Judicial suspension, by way of interim measures, of the effects of termination of the contract — Annulment of the Commission's decision by the General Court — Judgment of the General Court set aside by the Court of Justice — Referral of the case back to the General Court — Scope of the action after being referred back — Classification of the order granting interim measures as constituting new aid — Competence of the Commission — Effective judicial protection — Classification of the preferential tariff as State aid — Advantage — Legitimate expectations — Rights of defence of the recipient — Obligation to recover — Obligation to state reasons)

(2018/C 152/28)

Language of the case: Greek

Parties

Applicant: Alouminion tis Ellados VEAE, formerly Alouminion AE (Athens, Greece) (represented by: G. Dellis, N. Korogiannakis, E. Chrysafis, D. Diakopoulos and N. Keramidas, lawyers)

Defendant: European Commission (represented by: A. Bouchagiar and É. Gippini Fournier, acting as Agents)

Intervener in support of the defendant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: E. Bourtzalas, C. Synodinos, A. Oikonomou and H. Tagaras, lawyers)

Re:

Action based on Article 263 TFEU and seeking annulment of Commission Decision 2012/339/EU of 13 July 2011 on State aid SA.26117 — C 2/2010 (ex NN 62/2009) implemented by Greece in favour of Aluminium of Greece SA (OJ 2012 L 166, p. 83).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alouminion tis Ellados VEAE to bear its own costs and to pay those incurred by the European Commission and by Dimosia Epicheirisi Ilektrismou AE (DEI).*

([1]) OJ C 370, 17.12.2011.

Judgment of the General Court of 15 March 2018 — Poland v Commission

(Case T-507/15) ([1])

(EAGF — Expenditure excluded from financing — Regulation (EC) No 2200/96, Directive 2002/55/EC, Regulations (EC) No 1432/2003, (EC) No 1433/2003, (EC) No 1290/2005, (EC) No 885/2006, (EC) No 1182/2007, (EC) No 1234/2007, (EC) No 1580/2007 and (EU) No 1306/2013 — Expenditure effected by Poland — Risk to EAGF — On-the-spot checks — Recognition criteria of a producer organisation — Discrepancies between language versions — Financial correction)

(2018/C 152/29)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, K. Straś, M. Pawlicka and B. Paziewska, acting as Agents)

Defendant: European Commission (represented by: D. Triantafyllou and A. Stobiecka Kuik, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the partial annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the Republic of Poland to pay the costs.*

([1]) OJ C 354, 26.10.2015.

Judgment of the General Court of 14 March 2018 — Kim and Others v Council and Commission

(Joined Cases T-533/15 and T-264/16) ([1])

(Common foreign and security policy — Restrictive measures against North Korea with the aim of preventing nuclear proliferation — List of persons and entities to which the freezing of funds and economic resources applies — Inclusion of the applicants' names — Proof that inclusion on the list is well founded — Obligation to state reasons)

(2018/C 152/30)

Language of the case: English

Parties

Applicants in Case T-533/15: Il-Su Kim (Pyongyang, North Korea) and the five other applicants whose names appear in the annex to the judgment (represented by: M. Lester QC, S. Midwinter QC, T. Brentnall and A. Stevenson, Solicitors)

Applicant in Case T-264/16: Korea National Insurance Corporation (Pyongyang) (represented by: M. Lester, S. Midwinter, T. Brentnall and A. Stevenson)

Defendants: Council of the European Union (represented initially by A. de Elera-San Miguel Hurtado and A. Vitro, and subsequently by A. Vitro and F. Naert, acting as Agents), European Commission (represented, in Case T-533/15, by L. Havas, S. Bartelt and D. Gauci, acting as Agents, and, in Case T-264/16, by L. Havas and S. Bartelt, acting as Agents, and subsequently, in Case T-533/15, by L. Havas and D. Gauci, acting as Agents, and, in Case T-264/16, by L. Havas, acting as Agent)

Intervener in support of the defendants in Case T-533/15: United Kingdom of Great Britain and Northern Ireland (represented initially by V. Kaye, subsequently by S. Brandon, then by S. Brandon and C. Crane, and finally by S. Brandon, acting as Agents)

Re:

APPLICATION, in Case T-533/15, pursuant to Article 263 TFEU for annulment of Council Decision (CFSP) 2015/1066 of 2 July 2015 amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2015 L 174, p. 25), of Commission Implementing Regulation (EU) 2015/1062 of 2 July 2015 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2015 L 174, p. 16), of Council Decision (CFSP) 2016/475 of 31 March 2016 amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2016 L 85, p. 34), of Commission Implementing Regulation (EU) 2016/659 of 27 April 2016 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2016 L 114, p. 9), of Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP (OJ 2016 L 141, p. 79), and of any related Council implementing regulations, in so far as those acts concern the applicants, and, in Case T-264/16, pursuant to Article 263 TFEU for annulment of Decision 2016/475, of Implementing Regulation 2016/659, of Decision 2016/849 and of any related Council implementing regulations, in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *In Case T-533/15, orders Mr Kim Il-Su and the other applicants whose names appear in the annex to pay the costs, with the exception of those incurred by the United Kingdom of Great Britain and Northern Ireland;*

3. *In Case T-264/16, orders Korea National Insurance Corporation to pay the costs;*

4. *In Case T-533/15, orders the United Kingdom to bear its own costs.*

([1]) OJ C 381, 16.11.2015.

Judgment of the General Court of 14 March 2018 — TestBioTech v Commission

(Case T-33/16) ([1])

(Environment — Genetically modified products — Regulation (EC) No 1367/2006 — Regulation (EC) No 1829/2003 — Genetically modified soybeans MON 87769, MON 87705 and 305423 — Rejection of an application for internal review of market authorisation decisions — Concept of 'environmental law' — Article 10 of Regulation No 1367/2006)

(2018/C 152/31)

Language of the case: English

Parties

Applicant: TestBioTech eV (Munich, Germany) (represented by: R. Stein, Solicitor, K. Smith QC, and J. Stevenson, Barrister)

Defendant: European Commission (represented by: J. Tomkin, L. Pignataro-Nolin and C. Valero, acting as Agents)

Interveners in support of the defendant: Monsanto Europe (Antwerp, Belgium) and Monsanto Company (Wilmington, Delaware, United States) (represented by: M. Pittie, lawyer), Pioneer Overseas Corp. (Johnston, Iowa, United States) and Pioneer Hi-Bred International, Inc. (Johnston) (represented by: G. Forwood, lawyer, J. Killick, Barrister, and S. Nordin, Solicitor)

Re:

Action under Article 263 TFEU for annulment of the letter from the Commissioner for Health and Food Safety of 16 November 2015 rejecting an application for internal review, based on Article 10 of 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), of implementing decisions authorising the placing on the market of the genetically modified soybeans MON 87769, MON 87705 and 305423.

Operative part of the judgment

The Court:

1. *Annuls the letter of the Commissioner for Health and Food Safety of 16 November 2015, bearing the reference Ares(2015) 5145741, concerning a request for internal review, based on Article 10 of 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, of the implementing decisions authorising the placing on the market of the genetically modified soybeans MON 87769, MON 87705 and 305423.*

2. *Orders the Commission to bear its own costs and to pay those incurred by TestBioTech eV.*

3. *Orders Monsanto Europe, Monsanto Company, Pioneer Overseas Corp. and Pioneer Hi-Bred International, Inc. each to bear their own costs.*

([1]) OJ C 136, 18.4.2016.

Judgment of the General Court of 15 March 2018 — Naviera Armas v Commission

(Case T-108/16) ([1])

(State aid — Conditions of use of the Puerto Las Nieves port infrastructure by a shipping company — Exclusive use of infrastructures financed by public funds, without a concession contract — Partial exoneration of payment of port dues — Complaint lodged by a competitor — Decision finding no State aid at the end of the preliminary investigation procedure — Serious difficulties in the examination of the measures concerned — Developments in the situation during the administrative procedure — Concept of advantage granted by means of State resources — Errors of assessment of the facts and errors of law — Decision of a national court suspending the effects of a tendering procedure — Requirement of diligent and impartial examination of the complaint)

(2018/C 152/32)

Language of the case: Spanish

Parties

Applicant: Naviera Armas, SA (Las Palmas de Gran Canaria, Spain) (represented by: J. L. Buendía Sierra and Á. Givaja Sanz, lawyers)

Defendant: European Commission (represented by: A. Bouchagiar, G. Luengo and S. Noë, acting as Agents)

Intervener in support of the defendant: Fred Olsen, SA (Santa Cruz de Tenerife, Spain) (represented by: F. Marín Riaño, lawyer)

Re:

Application under Article 263 TFEU for annulment of Commission Decision C(2015) 8655 final of 8 December 2015 concerning State aid SA.36628 (2015/NN) (ex 2013/CP) — Spain — Fred Olsen.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2015) 8655 final of 8 December 2015 concerning State aid SA.36628 (2015/NN) (ex 2013/CP) — Spain — Fred Olsen in so far as it is found therein that, at the end of the preliminary investigation procedure, the exclusive use of the Puerto de Las Nieves port infrastructure by Fred Olsen, SA had not entailed any State aid to that company;*

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

3. *Orders Naviera Armas, SA to bear 25 % of its own costs, with the remainder to be paid by the European Commission;*

4. *Orders the Commission and Fred Olsen to bear their own costs.*

([1]) OJ C 175, 17.5.2016.

Judgment of the General Court of 15 March 2018 — Caviro Distillerie and Others v Commission

(Case T-211/16) ([1])

(Dumping — Imports of tartaric acid originating in China and produced by Hangzhou Bioking Biochemical Engineering Co., Ltd — Implementing Decision (EU) 2016/176 — Non-imposition of a definitive anti-dumping duty — Article 3(2), (3) and (5) and Article 17(1) and (2) of Regulation (EC) No 1225/2009 — Sampling — No material injury — Manifest error of assessment — Determination of injury — Profitability of the Union industry)

(2018/C 152/33)

Language of the case: English

Parties

Applicants: Caviro Distillerie Srl (Faenza, Italy), Distillerie Bonollo SpA (Formigine, Italy), Distillerie Mazzari SpA (Sant'Agata sul Santerno, Italy), Industria Chimica Valenzana (ICV) SpA (Borgoricco, Italy) (represented by: A. Bochon, lawyer, and R. MacLean, Solicitor)

Defendant: European Commission (represented by: J.-F. Brakeland and A. Demeneix, acting as Agents)

Re:

Action under Article 263 TFEU seeking annulment of Article 1 of Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co., Ltd (OJ 2016 L 33, p. 14).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Caviro Distillerie Srl, Distillerie Bonollo SpA, Distillerie Mazzari SpA and Industria Chimica Valenzana (ICV) SpA to bear their own costs and to pay those incurred by the European Commission.*

([1]) OJ C 260, 18.7.2016.

Judgment of the General Court of 20 March 2018 — Grupo Osborne v EUIPO — Ostermann (DONTORO dog friendship)

(Case T-390/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark DONTORO dog friendship — Relative ground for refusal — Likelihood of confusion — Complementarity of the goods and services — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 152/34)

Language of the case: English

Parties

Applicant: Grupo Osborne, SA (El Puerto de Santa María, Spain) (represented by: J.M. Iglesias Monravá, lawyer)

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: Daniel Ostermann (Leipzig, Germany)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 28 April 2016 (Case R 2002/2015-1), relating to opposition proceedings between Grupo Osborne and Mr Ostermann.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Grupo Osborne, SA to pay the costs.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 14 March 2018 — Gifi Diffusion v EUIPO — Crocs (Footwear)

(Case T-424/16) ([1])

(Community design — Invalidity proceedings — Registered Community design representing footwear — Earlier Community design — Grounds for invalidity — Duty to state reasons — Article 62 of Regulation (EC) No 6/2002 — Ground raised by the Board of Appeal of its own motion — Powers of the Board of Appeal — Article 63(1) of Regulation No 6/2002)

(2018/C 152/35)

Language of the case: English

Parties

Applicant: Gifi Diffusion (Villeneuve-sur-Lot, France) (represented by: C. de Chassey, lawyer)

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: Crocs, Inc. (Niwot, Colorado, United States) (represented by: H. Seymour, L. Cassidy, J. Guise and D. Knight, Solicitors, N. Hadjadj Cazier, M. Berger and H. Haouideg, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 25 April 2016 (Case R 37/2015-3), relating to invalidity proceedings between Gifi Diffusion and Crocs.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 25 April 2016 (Case R 37/2015-3) concerning invalidity proceedings between Gifi Diffusion and Crocs, Inc.;*

2. *Orders EUIPO to bear its own costs and pay those incurred by Gifi Diffusion in the proceedings before the General Court;*

3. *Orders Crocs to bear its own costs.*

([1]) OJ C 392, 24.10.2016.

Judgment of the General Court of 14 March 2018 — Crocs v EUIPO — Gifi Diffusion (Footwear)

(Case T-651/16) ([1])

(Community design — Invalidity proceedings — Registered Community design representing footwear — Earlier Community design — Ground for invalidity — Lack of novelty — Disclosure prior to the priority date — Examination of the facts of the Office's own motion — Additional evidence adduced before the Board of Appeal — Articles 5, 7 and Article 63(2) of Regulation (EC) No 6/2002)

(2018/C 152/36)

Language of the case: English

Parties

Applicant: Crocs, Inc. (Niwot, Colorado, United States) (represented by: H. Seymour, L. Cassidy, J. Guise and D. Knight, Solicitors, N. Hadjadj Cazier, M. Berger and H. Haouideg, 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: Gifi Diffusion (Villeneuve-sur-Lot, France) (represented by: C. de Chassey, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 6 June 2016 (Case R 853/2014-3), relating to invalidity proceedings between Gifi Diffusion and Crocs.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Crocs, Inc. to bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Gifi Diffusion in the proceedings before the General Court.*

([1]) OJ C 410, 7.11.2016.

Judgment of the General Court of 13 March 2018 — Kiosked v EUIPO — VRT (K)

(Case T-824/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark K — Earlier Benelux figurative mark K — 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))

(2018/C 152/37)

Language of the case: English

Parties

Applicant: Kiosked Oy Ab (Espoo, Finland) (represented by: L. Laaksonen, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: De Vlaamse Radio- en Televisieomroeporganisatie (VRT) (Brussels, Belgium) (represented by: P.-Y. Thoumsin and E. Van Melkebeke, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 September 2016 (Case R 279/2016-4), relating to opposition proceedings between VRT and Kiosked.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kiosked Oy Ab to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by De Vlaamse Radio- en Televisieomroeporganisatie (VRT).*

([1]) OJ C 22, 23.1.2017.

Judgment of the General Court of 15 March 2018 — La Mafia Franchises v EUIPO — Italy (La Mafia SE SIENTA A LA MESA)

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

(EU trade mark — Invalidity proceedings — EU figurative mark La Mafia SE SIENTA A LA MESA — Absolute ground for refusal — Whether contrary to public policy or to accepted principles of morality — Article 7(1)(f) of Regulation (EC) No 207/2009 (now Article 7(1)(f) of Regulation (EU) 2017/1001))

(2018/C 152/38)

Language of the case: English

Parties

Applicant: La Mafia Franchises, SL (Zaragoza, Spain) (represented by: I. Sempere Massa, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Italian Republic (represented by: G. Palmieri, acting as Agent, and by D. Del Gaizo, avvocato dello Stato)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 27 October 2016 (Case R 803/2016-1), relating to invalidity proceedings between the Italian Republic and La Mafia Franchises.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders La Mafia Franchises, SL, to pay the costs.*

(1) OJ C 53, 20.2.2017.

Judgment of the General Court of 15 March 2018 — Marriott Worldwide v EUIPO — Graf (Representation of a winged bull)

(Case T-151/17) (1)

(EU trade mark — Invalidity proceedings — EU figurative mark representing a winged bull — Earlier EU and national figurative marks representing a griffin — Relative ground for refusal — Similarity of the signs — Article 53(1)(a) and Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 60(1)(a) and Article 8(1)(b) of Regulation (EU) 2017/1001) — Earlier copyright protected by national law — Article 53(2)(c) of Regulation No 207/2009 (now Article 60(2)(c) of Regulation 2017/1001) — Examination of the facts of the Office's own motion — Article 76(1) of Regulation No 207/2009 (now Article 95(1) of Regulation 2017/1001))

(2018/C 152/39)

Language of the case: English

Parties

Applicant: Marriott Worldwide Corp. (Bethesda, Maryland, United States) (represented by: A. Reid, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Johann Graf (Gumpoldskirchen, Austria) (represented by: S. Salomonowitz, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 17 January 2017 (Case R 165/2016-4), relating to invalidity proceedings between Marriott Worldwide and Mr Graf.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 17 January 2017 (Case R 165/2016-4);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Marriott Worldwide Corp.;*

3. *Orders Mr Johann Graf to bear his own costs.*

(1) OJ C 129, 24.4.2017.

Judgment of the General Court of 15 March 2018 — SSP Europe v EUIPO (SECURE DATA SPACE)

(Case T-205/17) ([1])

(EU trade mark — Application for EU figurative mark SECURE DATA SPACE — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

(2018/C 152/40)

Language of the case: German

Parties

Applicant: SSP Europe GmbH (Munich, Germany) (represented by: B. Bittner, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Tóhatí and M. Fischer, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 27 January 2017 (Case R 2467/2015-5) concerning an application for registration of the figurative sign SECURE DATA SPACE as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders SSP Europe GmbH to pay the costs.*

([1]) OJ C 161, 22.5.2017.

Judgment of the General Court of 15 March 2018 — Hermann Bock v EUIPO (Push and Ready)

(Case T-279/17) ([1])

(EU trade mark — Application for EU figurative mark Push and Ready — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2018/C 152/41)

Language of the case: German

Parties

Applicant: Hermann Bock GmbH (Verl, Germany) (represented by: S. Maaßen and V. Schoene, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 January 2017 (Case R 1279/2016-5) concerning an application for registration of the figurative sign Push and Ready as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hermann Bock GmbH to pay the costs.*

(1) OJ C 213, 3.7.2017.

Judgment of the General Court of 13 March 2018 — Hotelbeds Spain v EUIPO — Guidigo Europe (Guidego what to do next)

(Case T-346/17) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Guidego what to do next — Earlier EU word mark GUIDIGO — 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))

(2018/C 152/42)

Language of the case: English

Parties

Applicant: Hotelbeds Spain, SL (Palma de Mallorca, Spain) (represented by: L. Broschat García, lawyer)

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: Guidigo Europe (Paris, France) (represented by: S. Lipovetsky, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 21 March 2017 (Case R 449/2016-4), relating to opposition proceedings between Guidigo Europe and Hotelbeds Spain.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hotelbeds Spain, SL to pay the costs.*

(1) OJ C 239, 24.7.2017.

Order of the General Court of 21 February 2018 — MedSkin Solutions Dr. Suwelack v EUIPO — Cryo-Save (CryoDafe)

(Case T-482/13) (1)

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

(2018/C 152/43)

Language of the case: German

Parties

Applicant: MedSkin Solutions Dr. Suwelack AG (Billerbeck, Germany) (represented by: A. Thünken, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cryo-Save AG (Freienbach, Switzerland) (represented by: C. Onken, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 4 July 2013 (Case R 1759/2012 4), relating to opposition proceedings between Cryo-Save AG and MedSkin Solutions Dr. Suwelack AG.

Operative part of the order

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

2. *MedSkin Solutions Dr. Suwelack AG and Cryo-Save AG are ordered to jointly and severally to bear the costs incurred by the European Union Intellectual Property Office (EUIPO);*

3. *MedSkin Solutions Dr. Suwelack AG et Cryo-Save AG are ordered to bear their own costs in accordance with the terms of their agreement.*

(1) OJ C 313, 26.10.2013.

Order of the General Court of 5 March 2018 — Estamede v ECB

(Case T-124/17) (1)

(Non-contractual liability — Economic and Monetary Policy — ECB — Restructuring of Greek Government debt — Involvement of a Greek public law body managing a pension fund for engineers and contractors carrying out public works — Absence of interest or assignment of the right to compensation — Disregard of the procedural requirements — Manifest inadmissibility)

(2018/C 152/44)

Language of the case: Greek

Parties

Applicant: Enosi Syntaxiouchon Tameiou Asfaliseon Michanikon kai Ergolipton Dimosion Ergon (Estamede) (Athens, Greece) (represented by: P. Miliarakis, lawyer)

Defendant: European Central Bank (ECB) (represented by: A. Koutsoukou and K. Laurinavičius, acting as Agents, and by H.-G. Kamann, lawyer)

Re:

Application pursuant to Article 263 TFEU seeking compensation for the damage allegedly suffered by the Eniaios Foreas Koinonikis Asfalisis (EFKA) and, more particularly, its professional branch of engineers and contractors carrying out public works, the Tameio Syntaxeon Michanikon kai Ergolipton Dimosion Ergon (TSMEDE) (Tomeis Michanikon Ergolipton Dimosion Ergon), and its affiliates who retired following, in particular, the adoption by the ECB of Decision 2012/153/EU of 5 March 2012 on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic in the context of the Hellenic Republic's debt exchange offer (OJ 2012 L 77, p. 19), and other measures of the ECB connected with the restructuring of Greek Government debt.

Operative part of the order

1. *The action is dismissed as being manifestly inadmissible;*

2. *The Enosi Syntaxiouchon Tameiou Asfaliseon Michanikon kai Ergolipton Dimosion Ergon (Estamede) is ordered to pay the costs.*

(1) OJ C 151, 15.5.2017.

Order of the General Court of 9 March 2018 — Naftogaz of Ukraine v Commission

(Case T-196/17) (1)

(Action for annulment — Internal market in natural gas — Directive 2009/73/EC — Commission Decision on review of the exemption of the OPAL pipeline from the requirements on third-party access and tariff regulation — Lack of direct concern — Inadmissibility)

(2018/C 152/45)

Language of the case: English

Parties

Applicant: NJSC Naftogaz of Ukraine (Kiev, Ukraine) (represented by: D. Mjaaland, A. Haga, M. Krakowiak and P. Grzejszczak, lawyers)

Defendant: European Commission (represented by: Y. G. Marinova, O. Beynet and K. Herrmann, acting as Agents)

Re:

Action based on Article 263 TFEU and seeking annulment of Commission Decision C(2016) 6950 final of 28 October 2016 on the review of the conditions for exemption of the OPAL pipeline, granted under Directive 2003/55/EC, from the rules on third-party access and tariff regulation.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no longer any need to adjudicate on the applications to intervene.*

3. *NJSC Naftogaz of Ukraine shall bear its own costs and the costs of the European Commission.*

4. *Naftogaz of Ukraine, the Commission, OPAL Gastransport GmbH & Co. KG, Gazprom Eksport LLC and Polskie Górnictwo Naftowe i Gazownictwo S.A. shall each bear their own costs relating to the applications to intervene.*

(1) OJ C 151, 15.5.2017.

Order of the General Court of 27 February 2018 — SD v EIGE

(Case T-263/17) (1)

(Civil service — Members of the temporary staff — Fixed-term contracts — Decision not to renew — Request for renewal having the same purpose as a complaint within the meaning of Article 90(2) of the Staff Regulations — Inadmissibility)

(2018/C 152/46)

Language of the case: English

Parties

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

Defendant: European Institute for Gender Equality (represented by: V. Langbakk, acting as Agent, and by B. Wägenbaur, lawyer)

Re:

Action under Article 270 TFEU for, first, annulment of the implied decision of EIGE dated 26 August 2016 rejecting the Applicant's request dated 26 April 2016 for a second renewal of his contract of employment and, where necessary, annulment of the decision of EIGE of 20 January 2017 rejecting the applicant's complaint of 3 October 2016 against the implied decision of 26 August 2016 and, secondly, compensation for the damage allegedly suffered by the applicant as a result of those decisions.

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *SD is ordered to bear his own costs and to pay those incurred by the European Institute for Gender Equality (EIGE).*

([1]) OJ C 239, 24.7.2017.

Action brought on 15 February 2018 — VG v Commission

(Case T-84/18)

(2018/C 152/47)

Language of the case: English

Parties

Applicant: VG (represented by: G. Pandey and V. Villante, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— as a preliminary matter, where appropriate, declare Article 90 of the Staff Regulations invalid and inapplicable in the present proceedings under Article 270 of the Treaty on the Functioning of the European Union;

— annul, first, the decision of 30 October 2017 of the European Personnel Selection Office (EPSO) rejecting the applicant's complaint lodged on 31 July 2017;

— annul, second, the EPSO decision of 19 April 2017 rejecting her request for review of the decision of EPSO/the Selection Board not to admit her to the next phase of the competition;

— annul, third, the decision of 6 February 2017 at the online EPSO account not to include the applicant in the draft list of candidates selected for the purposes of the EPSO/AD/323/16 competition;

— annul, fourth, the notice of competition EPSO/AD/323/16, published on 26 May 2016; ([1])

— annul, finally, in its entirety, the resulting draft list of officials selected to take part in the aforesaid competition;

— award damages to the applicant amounting to 50 000 euros;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment by EPSO/the Selection Board in the evaluation of the applicant's working experience and, further, the infringement of Annex III to the notice of competition at issue detailing the required work experience.

2. Second plea in law, alleging infringement of Article 41 of the Charter of Fundamental Rights of the European Union and of the applicant's right to be heard, and, further, infringement of the duty to state reasons and of Article 296 of the Treaty on the Functioning of the European Union.

3. Third plea in law, alleging infringement of Article s 1, 2, 3 and 4 of Regulation No 1/58, ([2]) breach of Article s 1d and 28 of the Staff Regulations and of Article 1(1)(f) of Annex III to those Regulations and, further, breach of the principles of equal treatment and non-discrimination.

([1]) OJ 2016 C 187, p. A/1.
([2]) Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958 (I), p. 59).

Action brought on 15 February 2018 — Batchelor v Commission

(Case T-85/18)

(2018/C 152/48)

Language of the case: English

Parties

Applicant: Edward William Batchelor (Brussels, Belgium) (represented by: B. Hoorelbeke, lawyer, and M. Healy, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 8430 final of 5 December 2017, refusing access to a document containing a desk officer's ethics declaration filed in the Human Resource Management information system Sysper2 of the European Commission and to other documents falling within the scope of the initial access request;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging violation of Article 15(3) TFEU, Article 42 of the Charter of Fundamental Rights of the EU, Articles 2(1) and 4(1)(b) of Regulation 1049/2001, ([1]) read in conjunction with Article 8(b) of Regulation 45/2001, ([2]) by refusing to grant full or partial access to the ethics declaration.

— In the first part of the first plea in law, the applicant demonstrates that the Commission did not examine nor demonstrate that the disclosure of the ethics declaration would specifically and actually undermine the interest protected by Article 4(1)(b) Regulation 1049/2001. Therefore, the Commission did not discharge its legal burden and erred in law by refusing access, at least in part, to the ethics declaration.

— In the second part of the first plea in law, the applicant shows that the Commission erred in the application of Article 4 (1)(b) of Regulation 1049/2001, read in conjunction with Article 8 (b) Regulation 45/2001, when finding that the applicant had not properly demonstrated that disclosure of the ethics declaration was necessary.

2. Second plea in law, alleging violation of Article 42 of the Charter of Fundamental Rights, Article 15 (3) TFEU, and Article 2 (1) of Regulation 1049/2001, by refusing to grant access to further documents falling within the scope of the initial access request.

— In the second plea in law, the applicant sets out the relevant and consistent evidence underpinning its belief that more documents which fall within the scope of its initial access request exist, than the seventy-one documents identified by the Commission. By refusing access to those further documents, the Commission violated Article 42 of the Charter of Fundamental Rights, Article 15(3) TFEU and Article 2(1) of Regulation 1049/2001.

3. Third plea in law, alleging violation of the principles of good administration, in particular the duty of care.

— In the third plea in law, the applicant demonstrates that the Commission infringed its duty of care under Article 41 of the Charter of Fundamental Rights by failing to exercise the requisite due diligence when it determined that there are no further documents falling within the scope of the initial access request. In support of this plea, the applicant shows that there is no explanation how the Commission has ensured that no further documents exist, as no information is provided on the search methods applied by the Commission.

4. Fourth plea in law, alleging violation of the duty to state reasons as laid down in Article 296(2) TFEU.

— In the first part of the fourth plea in law, the applicant demonstrates that the Commission violated its duty to state reasons under Article 296 TFEU by failing to explain why disclosure of the ethics declaration would actually and specifically undermine the interest protected by Article 4(1)(b) of Regulation 1049/2001, nor does it set out why it is assumed that such disclosure would jeopardise the legitimate interest of the data subject in accordance with Article 8 (b) of Regulation 45/2001.

— In the second part of the fourth plea in law, the applicant shows that the contested decision does not contain any reasoning why it did not identify any additional documents falling within the scope of the initial access request despite the applicant's submissions in his confirmatory application. Therefore also this part of the contested decision is based on insufficient reasoning.

(1) Regulation (EC) 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 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

Action brought on 20 February 2018 — Wehrheim v ECB

(Case T-100/18)

(2018/C 152/49)

Language of the case: French

Parties

Applicant: Christine Wehrheim (Offenbach, Germany) (represented by: N. De Montigny, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

1. annul:

   — the decision to reject the claim for compensation for the loss suffered as a result of having withdrawn her [expatriation allowance] (introduced on 10 May 2017) and dating from 3 July 2017;

   — in so far as necessary, the express decision rejecting her appeal (brought on 3 September 2017) against that decision, which dates from 21 December 2017;

2. order the defendant to pay compensation claimed by the applicant in her claims, as follows:

   — the difference of remuneration for as long as she will employed within the institution under her permanent staff contract, in the amount of EUR 700,53 per month from the month of April 2017;

   — relocation costs in addition to the EUR 1 079,10 already accepted, namely an additional EUR 1 000;

   — in respect of psychological harm suffered, the mount of EUR 2 000;

   — together with interest at the statutory rate until full payment;

3. order the defendant to pay all the costs and expenses of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the defendant administration has failed to fulfil its obligations regarding good administration and assistance by failing to comply with its duty to have regard for the welfare of staff and by creating an expectation which is clearly untenable with regard to the applicant and which consists of granting an expatriation allowance although she did not meet, initially, the conditions required by the Staff Regulations to do so. That fault, it is claimed, caused damage which has a direct causal link with the failure by the institution to fulfil its obligations.

Action brought on 21 February 2018 — Austria v Commission

(Case T-101/18)

(2018/C 152/50)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: G. Hesse, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul European Commission Decision (EU) 2017/2112 of 6 March 2017 on the measure/aid scheme/State aid SA.38454 — 2015/C (ex 2015/N) which Hungary is planning to implement for supporting the development of two new nuclear reactors at Paks II nuclear power station (notified under document C(2017) 1486), published in the *Official Journal of the European Union*, L 317 of 1 December 2017, p. 45; and

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on ten pleas in law:

1. First plea in law: Failure to conduct a procurement procedure

   First, the decision is void due to infringement of fundamental rules of procurement law, compliance with which is inextricably linked to the purpose of the aid.

2. Second plea in law: Misapplication of Article 107(3)(c) TFEU — Lack of an objective of common interest

   Second, the Republic of Austria claims that, contrary to the view taken by the defendant, there is no common interest pursuant to Article 107(3)(c) TFEU, which is required for authorisation of the aid.

3. Third plea in law: Misapplication of Article 107(3)(c) TFEU — Erroneous demarcation of the economic sector and incorrect assumption of a market failure pursuant to Article 107(3)(c) TFEU

   Third, the defendant erred in authorising the planned State aid pursuant to Article 107(3)(c) TFEU inasmuch as it wrongly assumes the existence of a separate market for nuclear energy and — also wrongly — assumes that there is a market or capital market failure on that market.

4. Fourth plea in law: Disproportionate nature of the measure

   Fourth, the decision is also void because the defendant did not carry out a legally-compliant assessment of proportionality pursuant to Article 107(3)(c) TFEU: *in concreto*, the negative effects outweigh the positive effects.

5. Fifth plea in law: Undue distortions of competition which are incompatible with the internal market pursuant to Article 107(3)(c) TFEU

   Fifth, the decision in question leads to a disproportionate distortion of competition and of the rules of State aid on the difference of treatment in the internal market in electricity and is therefore incompatible with EU law.

6. Sixth plea in law: Existence of a 'project in difficulties'

   Sixth, the applicant argues that aid for a 'project in difficulties' in the liberalised internal market in electricity should not have been authorised on the basis of Article 107(3)(c) TFEU.

7. Seventh plea in law: Strengthening or creation of a dominant market position

   Seventh, the dominant market position of the Hungarian State, operating in a market economy, resulting from the aid renders that aid incompatible with the common market on the basis of Article 107(3)(c) TFEU

8. Eighth plea in law: Wholesale market liquidity risk

   Eighth, the aid should not have been granted in light of the intrinsic risk of the reduction of market liquidity.

9. Ninth plea in law: Inadequate definition of the aid

   Ninth, the applicant bases its action on the contention that the defendant defined the extent of the aid in an inadequate manner.

10. Tenth plea in law: Failure to comply with the obligation to state reasons pursuant to the second paragraph of Article 296 TFEU

    Tenth, the defendant infringed its obligation to state reasons in numerous ways and in a very serious manner.

Action brought on 23 February 2018 — Pink Lady America v CPVO — WAAA (Cripps Pink)

(Case T-112/18)

(2018/C 152/51)

Language in which the application was lodged: English

Parties

Applicant: Pink Lady America LLC (Yakima, Washington, United States) (represented by: R. Manno and S. Travaglio, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal: Western Australian Agriculture Authority (WAAA) (South Perth, Australia)

Details of the proceedings before CPVO

Proprietor of the Community plant variety right at issue: Other party to the proceedings before the Board of Appeal

Community Plant variety right at issue: Community Plant Variety Right No EU1640, apple variety Cripps Pink

Procedure before CPVO: Proceedings for a declaration of invalidity.

Contested decision: Decision of the Board of Appeal of CPVO of 14 September 2017 in Case A007/2016

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the Cripps Pink apple tree variety CPVR No 1640 for lack of novelty according to Article 10 along with Article 20 of Regulation No 2100/94;

— order the CPVO and the Western Australian Agriculture Authority to bear the costs and expenses of the proceedings.

Pleas in law

— Infringement of the combined provisions of Articles 10 and 20 of Regulation No 2100/94;

— Infringement of Article 76 of Regulation No 2100/94 and of the general principles of law on legal certainty and sound administration of justice in conjunction with Article 50(3) of Regulation No 874/2009.

Action brought on 22 February 2018 — Miles-Bramwell Executive Services v EUIPO (FREE)

(Case T-113/18)

(2018/C 152/52)

Language of the case: English

Parties

Applicant: Miles-Bramwell Executive Services Ltd (Alfreton, United Kingdom) (represented by: J. Mellor, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark FREE — Application for registration No 15 083 091

Contested decision: Decision of the First Board of Appeal of EUIPO of 27 November 2017 in Case R 2164/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation No 2017/1001;

— Infringement of Article 7(1)(c) of Regulation No 2017/1001.

Action brought on 22 February 2018 — Miles-Bramwell Executive Services v EUIPO (FREE)

(Case T-114/18)

(2018/C 152/53)

Language of the case: English

Parties

Applicant: Miles-Bramwell Executive Services Ltd (Alfreton, United Kingdom) (represented by: J. Mellor, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark FREE — Application for registration No 15 081 508

Contested decision: Decision of the First Board of Appeal of EUIPO of 27 November 2017 in Case R 2166/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation No 2017/1001;

— Infringement of Article 7(1)(c) of Regulation No 2017/1001.

Action brought on 27 February 2018 — Darmanin v EASO

(Case T-116/18)

(2018/C 152/54)

Language of the case: French

Parties

Applicant: Joanna Darmanin (Sliema, Malta) (represented by: N. De Montigny, lawyer)

Defendant: European Asylum Support Office

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Authority Empowered to Conclude Contracts (Executive Director) of 27 June 2017 by which the applicant was dismissed at the end of the probation period, from 15 July 2017;

— in so far as necessary, annul the express decision rejecting the complaint of 29 January 2018;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 14 of the Conditions of Employment of Other Servants ('the CEOS') and of the Guide applicable to the procedure for appraising trainees at the European Asylum Support Office (EASO).

2. Second plea in law, alleging infringement of Article 43 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') and of the decision of the Management Board of EASO of 18 January 2016 implementing Articles 43 and 44 of the Staff Regulations for temporary staff.

3. Third plea in law, alleging infringement of Decision No 11 of the Management Board of EASO of 4 July 2012 on middle management staff.

4. Fourth plea in law, alleging infringement of the principles of good administration and legal certainty.

5. Fifth plea in law, alleging, in the alternative, a plea of illegality due to infringement of the principle of equal treatment and infringement of the effective right to be heard.

6. Sixth plea in law, alleging infringement of the right to implement an appraisal procedure that is lawful, equitable and predictable.

7. Seventh plea in law, alleging non-compliance with the rules concerning the burden of proof.

Action brought on 27 February 2018 — Wendel and Others/Commission

(Case T-124/18)

(2018/C 152/55)

Language of the case: English

Parties

Applicants: Wendel GmbH & Co. KG Schuhproduktionen International (Detmold, Germany), Jana shoes GmbH & Co. KG (Detmold), Novi International GmbH & Co. KG (Detmold), shoe.com GmbH & Co. KG (Detmold), Wortmann KG Internationale Schuhproduktionen (Detmold) (represented by: A. Willems, S. De Knop and C. Zimmermann, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30); and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that by proceeding without a valid legal basis, Commission Implementing Regulation (EU) 2017/2232 ([1]) violates the principle of conferral under Articles 5(1) and 5(2) TEU and, in any event, the principle of institutional balance under Article 13(2) TEU.

2. Second plea in law, alleging that by failing to take the necessary measures to comply with the judgment in Joined Cases C-659/13 and C-34/14, C&J Clark International, Commission Implementing Regulation (EU) 2017/2232 violates Article 266 TFEU.

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of footwear 'which took place during the period of application of Council Regulation (EC) No 1472/2006 ([2]) and Council Implementing Regulation (EU) No 1294/2009 ([3]),' Commission Implementing Regulation (EU) 2017/2232 violates Articles 1(1) and 10(1) of Regulation (EU) No 2016/1036 ([4]), and the principle of legal certainty (non-retroactivity).

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, Commission Implementing Regulation (EU) 2017/2232 violates Article 21 of Regulation (EU) No 2016/1036; in any event, it would have been manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest.

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective, Commission Implementing Regulation (EU) 2017/2232 violates Articles 5(1) and 5(4) TEU.

(1) Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30).

(2) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

(3) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

(4) Regulation (EU) No 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 28 February 2018 — Associazione — GranoSalus v Commission

(Case T-125/18)

(2018/C 152/56)

Language of the case: Italian

Parties

Applicant: Associazione Nazionale GranoSalus — Liberi — Cerealicoltori & Consumatori (Associazione — GranoSalus) (Foggia, Italia) (represented by: G. Dalfino, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017, published in the Official Journal of the European Union of 15 December 2017, renewing the approval of the active substance glyphosate 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 540/201.

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 infringement of Articles 168, 169 and 191 TFEU in conjunction with Article 35 of the Charter of Fundamental Rights of the European Union, Regulation (EC) No 1107/2009, Regulation (EU) 2016/429 and Regulation (EU) No 1305/2013, as amended by Regulation (EU) 2017/2393, Directive 98/83/EC and Directive (EU) 2015/1787; infringement of the precautionary principle, the principles of proportionality and reasonableness, and the principles of sound, proper and transparent administration; misuse of powers because the facts have been distorted and the preliminary investigation and statement of reasons are insufficient and exist in appearance only; manifest illogicality, mistaken grounds and misapplication of Implementing Regulation (EU) 2017/2324.

   In support of this plea in law, the applicant claims:

   — that Implementing Regulation (EU) 2017/2324 is contrary to the principles and precautions laid down in Regulation (EC) No 1107/2009 for the protection of human health, consumers, animals and the environment;

— infringement of the precautionary principle and incompatibility with the case-law of the General Court and the Court of Justice;

— failure to carry out proper preliminary investigation into the effects of glyphosate, in particular on animals and groundwater, and breach of the procedures set out in Regulation (EC) No 1107/2009;

— unlawfulness of the specifications of Implementing Regulation (EU) 2017/2324 in that they are left to the Member States' discretion without any reference standard having been fixed.

2. Second plea in law, alleging that Implementing Regulation (EU) No 2017/2324 is unlawful for breach of the right to health of GranoSalus members, and incompatibility with the CAP guidelines in Regulation (EU) No 1305/2013, as amended by Regulation (EU) 2017/2393.

In support of that plea in law, the applicant claims that:

— the presence of glyphosate in everyday goods and products affects the health of GranoSalus members, EU citizens and consumers;

— the use of glyphosate affects the marketing of GranoSalus members' products and the proper functioning of the rules of competition within the European Union.

Action brought on 27 February 2018 — adidas International Trading and Others/Commission

(Case T-130/18)

(2018/C 152/57)

Language of the case: English

Parties

Applicants: adidas International Trading BV (Amsterdam, Netherlands) and 27 Others (represented by: E. Vermulst and J. Cornelis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30); and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission did not have the legal competence to adopt Commission Implementing Regulation (EU) 2017/2232 ([1]).

2. Second plea in law, alleging that the reopening of the concluded footwear proceeding and the retroactive imposition of the expired anti-dumping duty by Commission Implementing Regulation (EU) 2017/2232:

— lacks legal basis, is based on a manifest error in the application of Article 266 TFEU and of Regulation (EU) No 2016/1036 ([2]) and infringes Article 9(4) of Regulation (EU) No 2016/1036;

— is inconsistent with the principles of protection of legitimate expectations, legal certainty and non-retroactivity as far as the Applicants are concerned; and

— is based on a misapplication of Article 266 TFEU and a misuse of powers by the Commission and infringes Article 5 (4) TEU.

3. Third plea in law, alleging that the retroactive imposition of the anti-dumping duty on the Applicants' suppliers preventing repayment to the Applicants violates the principle of non-discrimination.

4. Fourth plea in law, alleging that the Commission misused its power in the assessment of the market economy and individual treatment claims of the Applicants' suppliers to impose a retroactive anti-dumping duty and violated the principle of non-discrimination.

5. Fifth plea in law, alleging that the assessment with regard to the companies listed in Annexes III and VI of Commission Implementing Regulation (EU) 2017/2232 by the Commission and ordering the rejection of the anti-dumping duty reimbursement requests concerning imports from those companies is based on a manifest error of assessment, misapplication of Article 266 TFEU and is in breach of the obligation of due diligence and proper administration.

([1]) Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30).

([2]) Regulation (EU) No 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 28 February 2018 — Deichmann/Commission

(Case T-131/18)

(2018/C 152/58)

Language of the case: English

Parties

Applicant: Deichmann SE (Essen, Germany) (represented by: S. De Knop, B. Natens, A. Willems and C. Zimmermann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30); and

— 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 that by proceeding without a valid legal basis, Commission Implementing Regulation (EU) 2017/2232 ([1]) violates the principle of conferral under Articles 5(1) and 5(2) TEU and, in any event, the principle of institutional balance under Article 13(2) TEU.

2. Second plea in law, alleging that by failing to take the necessary measures to comply with the judgment in Joined Cases C-659/13 and C-34/14, C&J Clark International, Commission Implementing Regulation (EU) 2017/2232 violates Article 266 TFEU.

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of footwear 'which took place during the period of application of Council Regulation (EC) No 1472/2006 ([2]) and Council Implementing Regulation (EU) No 1294/2009 ([3]),' Commission Implementing Regulation (EU) 2017/2232 violates Articles 1(1) and 10(1) of Regulation (EU) No 2016/1036 ([4]), and the principle of legal certainty (non-retroactivity).

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, Commission Implementing Regulation (EU) 2017/2232 violates Article 21 of Regulation (EU) No 2016/1036; in any event, it would have been manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest.

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective, Commission Implementing Regulation (EU) 2017/2232 violates Articles 5(1) and 5(4) TEU.

([1]) Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30).

([2]) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

([3]) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

([4]) Regulation (EU) No 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 28 February 2018 — Roland/Commission

(Case T-132/18)

(2018/C 152/59)

Language of the case: English

Parties

Applicant: Roland SE (Essen, Germany) (represented by: S. De Knop, A. Willems and C. Zimmermann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30); and

— 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 that by proceeding without a valid legal basis, Commission Implementing Regulation (EU) 2017/2232 ([1]) violates the principle of conferral under Articles 5(1) and 5(2) TEU and, in any event, the principle of institutional balance under Article 13(2) TEU.

2. Second plea in law, alleging that by failing to take the necessary measures to comply with the judgment in Joined Cases C-659/13 and C-34/14, C&J Clark International, Commission Implementing Regulation (EU) 2017/2232 violates Article 266 TFEU.

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of footwear 'which took place during the period of application of Council Regulation (EC) No 1472/2006 ([2]) and Council Implementing Regulation (EU) No 1294/2009 ([3]),' Commission Implementing Regulation (EU) 2017/2232 violates Articles 1(1) and 10(1) of Regulation (EU) No 2016/1036 ([4]), and the principle of legal certainty (non-retroactivity).

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, Commission Implementing Regulation (EU) 2017/2232 violates Article 21 of Regulation (EU) No 2016/1036; in any event, it would have been manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest.

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective, Commission Implementing Regulation (EU) 2017/2232 violates Articles 5(1) and 5(4) TEU.

([1]) Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30).

([2]) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

([3]) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

([4]) Regulation (EU) No 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 28 February 2018 — Deichmann-Shoes UK/Commission

(Case T-141/18)

(2018/C 152/60)

Language of the case: English

Parties

Applicant: Deichmann-Shoes UK Ltd (Leicestershire, United Kingdom) (represented by: S. De Knop, B. Natens, A. Willems and C. Zimmermann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30); and

— 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 that by proceeding without a valid legal basis, Commission Implementing Regulation (EU) 2017/2232 ([1]) violates the principle of conferral under Articles 5(1) and 5(2) TEU and, in any event, the principle of institutional balance under Article 13(2) TEU.

2. Second plea in law, alleging that by failing to take the necessary measures to comply with the judgment in joined cases C-659/13 and C-34/14 C&J Clark International, Commission Implementing Regulation (EU) 2017/2232 violates Article 266 TFEU.

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of footwear 'which took place during the period of application of Council Regulation (EC) No 1472/2006 ([2]) and Council Implementing Regulation (EU) No 1294/2009 ([3]),' Commission Implementing Regulation (EU) 2017/2232 violates Articles 1(1) and 10(1) of Regulation (EU) No 2016/1036 ([4]), and the principle of legal certainty (non-retroactivity).

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, Commission Implementing Regulation (EU) 2017/2232 violates Article 21 of Regulation (EU) No 2016/1036; in any event, it would have been manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest.

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective, Commission Implementing Regulation (EU) 2017/2232 violates Articles 5(1) and 5(4) TEU.

([1]) Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30).

([2]) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

([3]) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

([4]) Regulation (EU) No 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 28 February 2018 — Buffalo — Boots/Commission

(Case T-142/18)

(2018/C 152/61)

Language of the case: English

Parties

Applicant: Buffalo — Boots GmbH (Hochheim am Main, Germany) (represented by: S. De Knop, A. Willems and C. Zimmermann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30); and

— 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 that by proceeding without a valid legal basis, Commission Implementing Regulation (EU) 2017/2232 ([1]) violates the principle of conferral under Articles 5(1) and 5(2) TEU and, in any event, the principle of institutional balance under Article 13(2) TEU.

2. Second plea in law, alleging that by failing to take the necessary measures to comply with the judgment in joined cases C-659/13 and C-34/14 C&J Clark International, Commission Implementing Regulation (EU) 2017/2232 violates Article 266 TFEU.

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of footwear 'which took place during the period of application of Council Regulation (EC) No 1472/2006 ([2]) and Council Implementing Regulation (EU) No 1294/2009 ([3]),' Commission Implementing Regulation (EU) 2017/2232 violates Articles 1(1) and 10(1) of Regulation (EU) No 2016/1036 ([4]), and the principle of legal certainty (non-retroactivity).

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, Commission Implementing Regulation (EU) 2017/2232 violates Article 21 of Regulation (EU) No 2016/1036; in any event, it would have been manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest.

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective, Commission Implementing Regulation (EU) 2017/2232 violates Articles 5(1) and 5(4) TEU.

(1) Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017 L 319, p. 30).

(2) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

(3) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

(4) Regulation (EU) No 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 5 March 2018 — Sona Nutrition v EUIPO — Solgar Holdings (SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA)

(Case T-152/18)

(2018/C 152/62)

Language in which the application was lodged: English

Parties

Applicant: Sona Nutrition Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Solgar Holdings, Inc. (Ronkonkoma, New York, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colours purple, light brown, beige, dark brown and golden brown, SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA — Application for registration No 13 781 331

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 December 2017 in Case R 1319/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Solgar Holdings, Inc., if it should intervene in these proceedings, to bear the costs.

Pleas in law

— Infringement of Article 94(1) of Regulation No 2017/1001;

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 5 March 2018 — Sona Nutrition v EUIPO — Solgar Holdings (SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA)

(Case T-153/18)

(2018/C 152/63)

Language in which the application was lodged: English

Parties

Applicant: Sona Nutrition Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Solgar Holdings, Inc. (Ronkonkoma, New York, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colours red, light brown, beige, dark brown and golden brown, SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA — Application for registration No 13 781 299

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 December 2017 in Case R 1321/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Solgar Holdings, Inc., if it should intervene in these proceedings, to bear the costs.

Pleas in law

— Infringement of Article 94(1) of Regulation No 2017/1001;

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 5 March 2018 — Sona Nutrition v EUIPO — Solgar Holdings (SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA)

(Case T-154/18)

(2018/C 152/64)

Language in which the application was lodged: English

Parties

Applicant: Sona Nutrition Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Solgar Holdings, Inc. (Ronkonkoma, New York, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colours green, light brown, beige, dark brown and golden brown, SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA — Application for registration No 13 781 273

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 December 2017 in Case R 1322/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Solgar Holdings, Inc., if it should intervene in these proceedings, to bear the costs.

Pleas in law

— Infringement of Article 94(1) of Regulation No 2017/1001;

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 5 March 2018 — Sona Nutrition v EUIPO — Solgar Holdings (SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA)

(Case T-155/18)

(2018/C 152/65)

Language in which the application was lodged: English

Parties

Applicant: Sona Nutrition Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Solgar Holdings, Inc. (Ronkonkoma, New York, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colours light green, light brown, beige, dark brown and golden brown, SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA — Application for registration No 13 781 315

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 December 2017 in Case R 1323/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Solgar Holdings, Inc., if it should intervene in these proceedings, to bear the costs.

Pleas in law

— Infringement of Article 94(1) of Regulation No 2017/1001;

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 6 March 2018 — Scaloni and Figini v Commission

(Case T-158/18)

(2018/C 152/66)

Language of the case: Italian.

Parties

Applicants: Mario Scaloni (Ancona, Italia) and Ennio Figini (Chiaravalle, Italia) (represented by: P. Putti, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should order the European Union and/or the European Commission, depending on the interpretation to be given of the directive and the regulation at issue, to pay compensation for the full face value of the shares as described in the application and as is apparent from the documentation attached, and to pay the costs of the present proceedings.

Pleas in law and main arguments

The applicants claim that after the entry into force of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance), ([1]) followed by 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, ([2]) the Italian State was not allowed to take action in support of some of its banks, including Banca Marche.

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

1. First plea in law, claiming damages because the Commission's interpretation of Directive 2014/59/EU and Regulation (EU) No 806/2014 was not in conformity with EU law, and because of the unlawfulness of the exclusion of Banca Marche from the framework for State aid and the consequent breach of the principle of equality and/or of non-discrimination.

   — In that regard, the applicants claim that the Commission considered that aid to banks from various Member States met the conditions set out in Article 107(3)(b), and were therefore considered to be lawful. Italy's planned interventions ought to have been assessed on the basis of that same provision, the only one that governs State aid, and not according to the directive and the regulation at issue. Those two pieces of legislation do not affect State aid, and could not have done so, being secondary legislation. The aid to the Italian banks ought also to have been allowed because it was based on the same considerations that, according to the Commission, had justified aid already paid.

   — Furthermore, if the secondary legislation should be held to be applicable, the first plea in law is that the Commission, by not allowing that aid, breached the principle of equality.

2. Second plea in law, alleging breach of the hierarchical principle of EU norms by the EU legislature.

— In that regard, the applicants claim that, if the Court were to find that the Commission's interpretation was correct, the breach would date from the legislative measures and the responsibility would be that of the European Union as a whole.

3. Third plea in law, alleging breach of the fundamental principles of the Italian legal order and the inapplicability of EU law.

— In that regard, the applicants claim that, if the Court were to find that the directive and the regulation at issue did not infringe the EU principle of equality either, the Italian Constitutional Court will have to be asked to ascertain whether the Italian constitutional legal rules are compatible with the principle of equality. If the Court were to find otherwise, the legislation that was in breach of that principle could not be incorporated into the Italian legal order.

(1) OJ 2014 L 173, p. 190.
(2) OJ 2014 L 225, p. 1.

Action brought on 02 March 2018 — Theodorakidi v EUIPO — Benopoulou (THYREOS VASSILIKI)

(Case T-160/18)

(2018/C 152/67)

Language in which the application was lodged: English

Parties

Applicant: Vassiliki Theodorakidi (Veroia, Greece) (represented by: F. Ikonomidou Ikonomou, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vassiliki Benopoulou (Kifissia, Greece).

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark THYREOS VASSILIKI — EU trade mark No 8 206 963

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 December 2017 in Case R 40/2017-4.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and, consequently, reject the invalidity action;

— order EUIPO and the other party to pay the costs, including the costs incurred before the Court, the Board of Appeal of EUIPO and the Cancellation Division.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation No 2017/1001;

— The Board of Appeal of EUIPO erred in law when stating that the other party is 'widely known';

— Infringement of the obligation to state reasons;

— The Board of Appeal of EUIPO erred when accepting that there should be no restriction as to the goods/services the invalidity should be accepted for.

Action brought on 7 March 2018 — Beko v EUIPO — Acer (ALTUS)

(Case T-162/18)

(2018/C 152/68)

Language in which the application was lodged: English

Parties

Applicant: Beko plc (Watford, United Kingdom) (represented by: G. Tritton, barrister)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Acer, Inc. (Taipei City, Taiwan).

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU figurative mark ALTUS — Application for registration No 6 490 809

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 13 December 2017 in Case R 1991/2016-5.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and remit the matter back to EUIPO to reconsider the request for suspension;

— order the suspension of the proceedings;

— order EUIPO to pay its own costs and pay the costs of the applicant.

Plea in law

— EUIPO was wrong not to grant the request for suspension of the opposition pending the outcome of the Slovakian proceedings. In particular, it is submitted that the reasoning of the Fifth Board of Appeal was manifestly flawed and/or unreasonable and/or failed to address the 'the whole picture' and accordingly was not in a position to weigh properly the various interests involved and/or amounted to a misuse of powers.

Order of the General Court of 26 February 2018 — Deloitte Consulting v Commission

(Case T-688/13) ([1])

(2018/C 152/69)

Language of the case: English

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

([1]) OJ C 93, 29.3.2014.

Order of the General Court of 6 March 2018 — CFA Institute v EUIPO — Bloss and Others (CERTIFIED FINANCIAL ENGINEER CFE)

(Case T-155/16) ([1])

(2018/C 152/70)

Language of the case: English

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

([1]) OJ C 211, 13.6.2016.

Order of the General Court of 6 March 2018 — CFA Institute v EUIPO — Ernst and Häcker (CERTIFIED FINANCIAL MODELER CFM)

(Case T-156/16) ([1])

(2018/C 152/71)

Language of the case: English

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

([1]) OJ C 211, 13.6.2016.

Order of the General Court of 28 February 2018 — Ferri v ECB

(Case T-641/17) ([1])

(2018/C 152/72)

Language of the case: Italian

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

([1]) OJ C 382, 13.11.2017.

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