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For reasons of protection of personal data and/or confidentiality, some information contained in this issue cannot be disclosed anymore and therefore a new authentic version has been published.

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Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2019/C 93/01)

Last publication

OJ C 82, 4.3.2019

Past publications

OJ C 72, 25.2.2019

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OJ C 54, 11.2.2019

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These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 17 January 2019 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against Petar Dzivev and Others

(Case C-310/16) [1]

(Reference for a preliminary ruling — Value added tax (VAT) — Protection of the European Union's financial interests — Article 325(1) TFEU — Convention on the protection of the European Communities' financial interests — Criminal proceedings concerning VAT offences — Principle of effectiveness — Taking of evidence — Interception of telecommunications — Authorisation granted by a court that lacks jurisdiction — Taking those interceptions into consideration as evidence — Provisions of national law — Prohibition)

(2019/C 93/02)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties in the main proceedings

Petar Dzivev, Galina Angelova, Georgi Dimov, Milko Velkov

Operative part of the judgment

Article 325(1) TFEU, and Article 1(1)(b) and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Luxembourg on 26 July 1995, read in conjunction with the Charter of Fundamental Rights of the European Union, must be interpreted to the effect that, in the light of the principle of effectiveness of the prosecution of value added tax (VAT) offences, they do not preclude a national court from applying a national provision excluding, from a prosecution, evidence such as the interception of telecommunications requiring prior judicial authorisation, where that authorisation was given by a court that lacked jurisdiction, in a situation in which that evidence alone is capable of proving that the offences in question were committed.

[1] OJ C 310, 29.8.2016.

Judgment of the Court (Eighth Chamber) of 16 January 2019 — Republic of Poland v Stock Polska sp. z o.o., European Union Intellectual Property Office (EUIPO), Lass & Steffen GmbH Wein- und Spirituosen-Import

(Case C-162/17 P) ([1])

(Appeal — EU trade mark — Opposition proceedings — Regulation (EC) No 207/2009 — Article 8(1) — Application for registration of the figurative mark including the word element LUBELSKA — Dominant and distinctive element)

(2019/C 93/03)

Language of the case: English

Parties

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

Other parties to the proceedings: Stock Polska sp. z o.o. (represented by: T. Gawrylczyk, radca prawny), European Union Intellectual Property Office (EUIPO) (represented by: M. Rajh and D. Botis, acting as Agents), Lass & Steffen GmbH Wein- und Spirituosen-Import (represented by: R. Kunz-Hallstein, Rechtsanwalt)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 239, 24.7.2017.

Judgment of the Court (Fourth Chamber) of 24 January 2019 (request for a preliminary ruling from the Conseil d'État — France) — Morgan Stanley & Co International plc v Ministre de l'Économie et des Finances

(Case C-165/17) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Sixth Council Directive 77/388/EEC — Directive 2006/112/EC — Deduction of input tax — Goods and services used for both taxable transactions and exempt transactions (mixed-use goods and services) — Determination of the applicable deductible proportion — Branch established in a Member State other than that of the principal establishment of the company — Expenditure incurred by the branch used exclusively for the transactions of the principal establishment — General costs of the branch used for both its transactions and those of the principal establishment)

(2019/C 93/04)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Morgan Stanley & Co International plc

Defendant: Ministre de l'Économie et des Finances

Operative part of the judgment

1. *Article 17(2), (3) and (5) and Article 19(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and Articles 168, 169 and 173 to 175 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in relation to the expenditure borne by a branch registered in a Member State, which is used, exclusively, both for transactions subject to value added tax and for transactions exempt from that tax, carried out by the principal establishment of that branch established in another Member State, it is necessary to apply a deductible proportion resulting from a fraction the denominator of which is formed by the turnover, exclusive of value added tax, made up of those transactions alone and the numerator of which is formed by the taxed transactions in respect of which value added tax which would also be deductible if they had been carried out in the Member State in which that branch is registered, including where that right to deduct stems from the exercise of an option, effected by that branch, consisting in making the transactions carried out in that State subject to value added tax.*

2. *Article 17(2), (3) and (5) and Article 19(1) of Sixth Directive 77/388, and Articles 168, 169 and 173 to 175 of Directive 2006/112 must be interpreted as meaning that, in order to determine the deductible proportion applicable to the general costs of a branch registered in a Member State, which are used for both transactions of that branch in that State and transactions of the principal establishment of that branch established in another Member State, account must be taken, in the denominator of the fraction which makes up that deductible proportion, of the transactions carried out by both that branch and that principal establishment, it being specified that it is necessary that, in the numerator of that fraction, besides the taxed transactions carried out by that branch, solely the taxed transactions carried out by that principal establishment must appear, in respect of which value added tax would also be deductible if they had been carried out in the State in which the branch concerned is registered.*

(1) OJ C 213, 3.7.2017.

Judgment of the Court (Third Chamber) of 17 January 2019 (request for a preliminary ruling from the Kúria — Hungary) — SH v TG

(Case C-168/17) (1)

(Reference for a preliminary ruling — Common foreign and security policy — Restrictive measures adopted in view of the situation in Libya — A chain of contracts concluded with the aim of issuing a bank guarantee for the benefit of an entity on a list of entities whose funds are to be frozen — Payment of costs arising under counter guarantee agreements — Regulation (EU) No 204/2011 — Article 5 — Definition of 'funds made available to an entity referred to in Annex III to Regulation No 204/2011' — Article 12(1)(c) — Definition of 'a claim under a guarantee' — Definition of a 'person or entity acting on behalf of a person referred to in Article 12(1)(a) or (b)')

(2019/C 93/05)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: SH

Defendant: TG

Intervening party: UF

Operative part of the judgment

1. *Article 5(2) of Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya is to be interpreted as:*

— *being applicable in a situation, such as that at issue in the main proceedings, in which the costs payable under a counter guarantee agreement must be paid by an EU bank to a Libyan bank listed in Annex III to that regulation; and*

— *not being applicable, in principle, in a situation, such as that at issue in the main proceedings, in which the costs payable under a counter guarantee agreement must be paid by an EU bank to a Libyan bank whose name is no longer on the list in Annex III to that regulation or by one EU bank to another EU bank, where the bank guarantee granted by the Libyan bank benefits an entity which is on that list, unless such a payment leads, as a result of the legal or financial links that exist between the bank receiving that payment and the entity on that list, to the costs in question being made available indirectly to that entity.*

2. *Article 12 of Regulation No 204/2011 is to be interpreted as:*

— *being applicable, in its original version, where costs payable under counter guarantee agreements must be paid by an EU bank to a Libyan bank listed in Annex III to that regulation and by an EU bank to a Libyan bank which is not on that list if the bank guarantee granted by the Libyan bank benefits an entity that is on that list, provided that the Libyan bank is regarded as an entity acting on behalf of the Libyan Government, which is a matter for the referring court to verify;*

— *not being applicable, in the version resulting from Council Regulation (EU) No 45/2014 of 20 January 2014, where the costs payable under counter guarantee agreements must be paid by an EU bank to a Libyan bank listed in Annex III to that regulation and by an EU bank to a Libyan bank which is not on that list if the bank guarantee granted by the Libyan bank benefits an entity which is on the list, provided that those costs were paid before the entry into force of that regulation; and*

— *not being applicable, either in the original version or in the version resulting from Regulation No 45/2014, where the costs payable under counter agreements must be paid by one EU bank to another EU bank.*

3. *Article 9 of Regulation No 204/2011 is to be interpreted as not being applicable to payments of costs such as those due under the various agreements at issue in the main proceedings.*

4. *Article 17(1) of Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 must be interpreted as being applicable to the counter guarantee costs payable by one EU bank to another EU bank in a situation, such as that at issue in the main proceedings, in which the final calculation of the costs is made after the entry into force of that regulation.*

(1) OJ C 221, 10.7.2017.

Judgment of the Court (Grand Chamber) of 22 January 2019 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Cresco Investigation GmbH v Markus Achatzi

(Case C-193/17) [1]

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 21 — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(2)(a) — Direct discrimination on grounds of religion — National legislation granting certain employees a day's holiday on Good Friday — Justification — Article 2(5) — Article 7(1) — Obligations of private employers and national courts resulting from the incompatibility of national law with Directive 2000/78)

(2019/C 93/06)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Cresco Investigation GmbH

Defendant: Markus Achatzi

Operative part of the judgment

1. *Articles 1 and 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that national legislation under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to a payment in addition to their regular salary for work done on that day, constitutes direct discrimination on grounds of religion.*

   The measures provided for by that national legislation cannot be regarded either as measures necessary for the protection of the rights and freedoms of others, within the meaning of Article 2(5) of that directive, or as specific measures intended to compensate for disadvantages linked to religion, within the meaning of Article 7(1) of the directive.

2. *Article 21 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, until the Member State concerned has amended its legislation granting the right to a public holiday on Good Friday only to employees who are members of certain Christian churches, in order to restore equal treatment, a private employer who is subject to such legislation is obliged also to grant his other employees a public holiday on Good Friday, provided that the latter have sought prior permission from that employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to approve such a request.*

[1] OJ C 283, 28.8.2017.

Judgment of the Court (Grand Chamber) of 15 January 2019 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — E.B. v Versicherungsanstalt öffentlich Bediensteter BVA

(Case C-258/17) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2 — Attempted act of same-sex indecency committed by a civil servant on male minors — Disciplinary sanction adopted in 1975 — Compulsory early retirement accompanied by a reduction in the pension entitlement — Discrimination on grounds of sexual orientation — Effects of the application of Directive 2000/78/EC on the disciplinary sanction — Calculation of the retirement pension paid)

(2019/C 93/07)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: E.B.

Respondent body: Versicherungsanstalt öffentlich Bediensteter BVA

Operative part of the judgment

1. *Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as applying, after the expiry of the time limit for transposing that directive, namely from 3 December 2003, to the future effects of a final disciplinary decision, adopted before the entry into force of that directive, ordering the early retirement of a civil servant, accompanied by a reduction in his pension entitlement.*

2. *Directive 2000/78 must be interpreted as meaning that, in a situation such as that referred to in point 1 of the operative part of the present judgment, it obliges the national court to review, with respect to the period starting on 3 December 2003, not the final disciplinary decision ordering the early retirement of the civil servant concerned, but the reduction in his pension entitlement, in order to calculate the amount he would have received in the absence of any discrimination on the ground of sexual orientation.*

([1]) OJ C 283, 28.8.2017.

Judgment of the Court (First Chamber) of 16 January 2019 — European Commission v United Parcel Service, Inc., FedEx Corp.

(Case C-265/17 P) ([1])

(Appeal — Merger control — Acquisition of TNT Express by UPS — Commission Decision declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement — Econometric model developed by the Commission — Failure to disclose amendments made to the econometric model — Infringement of the rights of the defence)

(2019/C 93/08)

Language of the case: English

Parties

Appellant: European Commission (represented by: T. Christoforou, N. Khan, H. Leupold and A. Biolan, acting as Agents)

Other parties to the proceedings: United Parcel Service, Inc. (represented by: A. Ryan, Solicitor, F. Hoseinian, advokat, W. Knibbeler, S.A. Pliego and P. van den Berg, advocaten, and F. Roscam Abbing, advocate), FedEx Corp. (represented by: F. Carlin, Barrister, G. Bushell, Solicitor, and N. Niejahr, Rechtsanwältin)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to pay the costs.*

(1) OJ C 231, 17.7.2017.

Judgment of the Court (Tenth Chamber) of 23 January 2019 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — K.M. Zyla v Staatssecretaris van Financiën

(Case C-272/17) (1)

(Reference for a preliminary ruling — Free movement of workers — Equal treatment — Income tax — Social security contributions — Worker who left the Member State of her employment during the course of the calendar year — Application of the pro rata temporis rule to social security credit)

(2019/C 93/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: K.M. Zyla

Respondent: Staatssecretaris van Financiën

Operative part of the judgment

Article 45 TFEU must be interpreted as not precluding legislation of a Member State which, with a view to establishing the amount of social security contributions payable by a worker, provides that the social security component of the tax credit to which a worker is entitled for a calendar year is to be proportionate to the period during which that worker was insured under the social security system of that Member State, thus excluding from that annual credit a fraction proportionate to the period during which that worker was not insured under that social security system and lived in another Member State where he did not engage in professional activity.

(1) OJ C 277, 21.8.2017.

Judgment of the Court (First Chamber) of 24 January 2019 — George Haswani v Council of the European Union, European Commission

(Case C-313/17 P) ([1])

(Appeal — Article 86 of the Rules of Procedure of the General Court — Admissibility — Procedure for modifying the application — Need to modify the pleas in law and arguments — Restrictive measures adopted against the Syrian Arab Republic — List of persons subject to the freezing of funds and economic resources — Inclusion of the applicant's name)

(2019/C 93/10)

Language of the case: French

Parties

Appellant: George Haswani (represented by: G. Karouni, avocat)

Other parties to the proceedings: Council of the European Union (represented by: A. Sikora-Kalėda and S. Kyriakopoulou, acting as Agents), European Commission (represented by: L. Havas and R. Tricot, acting as Agents)

Operative part of the judgment

The Court:

1. *Annuls paragraph 1 of the operative part of the judgment of the General Court of the European Union of 22 March 2017, Haswani v Council (T-231/15, not published, EU:T:2017:200);*

2. *Refers the case back to the General Court of the European Union;*

3. *Orders the costs to be reserved.*

([1]) OJ C 239, 24.7.2017.

Judgment of the Court (Fourth Chamber) of 24 January 2019 (request for a preliminary ruling from the Raad van State — Netherlands) — Directie van de Dienst Wegverkeer (RDW) v X, Y and X, Y v Directie van de Dienst Wegverkeer (RDW) and Directie van de Dienst Wegverkeer (RDW) v Z

(Case C-326/17) ([1])

(Reference for a preliminary ruling — Directive 1999/37/EC — Registration documents for vehicles — Omissions in the registration certificates — Mutual recognition — Directive 2007/46/EC — Vehicles manufactured prior to EU harmonisation of technical requirements — Alterations having an impact on the technical characteristics of the vehicle)

(2019/C 93/11)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Directie van de Dienst Wegverkeer (RDW), X, Y

Defendants: X, Y, Directie van de Dienst Wegverkeer (RDW), Z

Operative part of the judgment

1. *Article 2(a) of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, read in conjunction with Article 3(11) and (13) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, must be interpreted as meaning that Directive 1999/37 is applicable to the documents issued by Member States at the time of the registration of vehicles manufactured before 29 April 2009, the date of expiry of the period for transposition of Directive 2007/46.*

2. *Article 4 of Directive 1999/37, read in conjunction with Article 3(2) of that directive, must be interpreted as meaning that the authorities of the Member State in which the new registration of a second-hand vehicle is sought are entitled to refuse to recognise the registration certificate issued by the Member State in which the vehicle was previously registered where some mandatory data are missing, the data mentioned on the certificate do not match the vehicle and the certificate does not make it possible to identify the vehicle.*

3. *Article 24(6) of Directive 2007/46 must be interpreted as meaning that the regime provided for therein does not apply to a second-hand vehicle already registered in a Member State which is, on the basis of Article 4 of Directive 1999/37, submitted for re-registration before another Member State authority which is competent in that regard. However, if there is evidence that the vehicle presents a risk to road safety, that authority may, pursuant to Article 5(a) of Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers, require the vehicle to be submitted for testing prior to registration.*

(1) OJ C 293, 4.9.2017.

Judgment of the Court (First Chamber) of 16 January 2019 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Stefano Liberato v Luminita Luisa Grigorescu

(Case C-386/17) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and recognition and enforcement of judgments on maintenance obligations — Regulation (EC) No 44/2001 — Article 5 (2) — Article 27 — Article 35(3) — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 19 — Lis pendens — Article 22(a) — Article 23(a) — Non-recognition where the decisions are manifestly contrary to public policy — Article 24 — Prohibition of review of jurisdiction of the court of origin — Ground for the non-recognition based on a breach of the rules of lis pendens — Absence)

(2019/C 93/12)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Stefano Liberato

Respondent: Luminita Luisa Grigorescu

Operative part of the judgment

The rules of lis pendens in Article 27 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Article 19 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 must be interpreted as meaning that where, in a dispute in matrimonial matters, parental responsibility or maintenance obligations, the court second seised, in breach of those rules, delivers a judgment which becomes final, those articles preclude the courts of the Member State in which the court first seised is situated from refusing to recognise that judgment solely for that reason. In particular, that breach cannot, in itself, justify non-recognition of a judgment on the ground that it is manifestly contrary to public policy in that Member State.

(1) OJ C 338, 9.10.2017.

Judgment of the Court (First Chamber) of 23 January 2019 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Presidenza dei Consiglio dei Ministri v Fallimento Traghetti del Mediterraneo SpA

(Case C-387/17) (1)

(Reference for a preliminary ruling — State aid — Existing aid and new aid — Classification — Regulation (EC) No 659/1999 — Article 1(b)(iv) and (v) — Principles of legal certainty and protection of legitimate expectations — Applicability — Subsidies granted before the liberalisation of a market initially closed to competition — Action for damages against the Member State brought by a competitor of the beneficiary company)

(2019/C 93/13)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Presidenza dei Consiglio dei Ministri

Defendant: Fallimento Traghetti del Mediterraneo SpA

Operative part of the judgment

1. *Subsidies granted to an undertaking before the date of liberalisation of the market concerned, such as those at issue in the main proceedings, cannot be classified as existing aid because of the merely formal absence of liberalisation of that market at the time those subsidies were granted, to the extent that those subsidies were liable to affect trade between Member States and distorted or threatened to distort competition, which it is for the referring court to ascertain;*

2. *Article 1(b)(iv) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] must be interpreted as meaning that it is not applicable to a situation such as that at issue in the main proceedings. In so far as the subsidies at issue in the main proceedings were granted in breach of the obligation of prior notification laid down in Article 93 of the EEC Treaty, State entities cannot rely on the principle of the protection of legitimate expectations. In a situation such as that at issue in the main proceedings, where an action for damages against the Member State is brought by a competitor of the beneficiary company, the principle of legal certainty does not permit, by analogy, a limitation period, such as that laid down in Article 15(1) of that regulation, to be imposed on the applicant.*

(1) OJ C 338, 9.10.2017.

Judgment of the Court (First Chamber) of 16 January 2019 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — Proceedings brought by 'Paysera LT' UAB, formerly 'EVP International' UAB

(Case C-389/17) ([1])

(Reference for a preliminary ruling — Taking up of the business of electronic money institutions — Directive 2009/110/EC — Article 5(2) and (3) — Rules on own funds — Own funds required for the pursuit of activities linked to the issuance of electronic money — Definition of 'activity linked to the issuance of electronic money' — Issuance, for the benefit of the seller, of electronic money at par value of the funds received)

(2019/C 93/14)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: 'Paysera LT' UAB, formerly 'EVP International' UAB

Other party: Lietuvos bankas

Operative part of the judgment

Article 5(2) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, must be interpreted as meaning that services provided by electronic money institutions in payment transactions such as those at issue in the main proceedings constitute activities linked to the issuance of electronic money, within the meaning of that provision, if those services trigger the issuance or redemption of electronic money in a single payment transaction.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (First Chamber) of 23 January 2019 — Deza, a.s. v European Chemicals Agency, Kingdom of Denmark, Kingdom of the Netherlands, Kingdom of Sweden, Kingdom of Norway

(Case C-419/17 P) ([1])

(Appeal — Regulation (EC) No 1907/2006 (REACH Regulation) — Annex XIV — Establishment of a list of substances subject to authorisation — Inclusion in the list of substances identified for eventual inclusion in Annex XIV — Updating of the entry of the substance bis(2-ethylhexyl)phthalate (DEHP) in the list — Misinterpretation and misapplication of the REACH Regulation and of the principle of legal certainty — Distortion of the facts and evidence — Scope of the review)

(2019/C 93/15)

Language of the case: Czech

Parties

Appellant: Deza, a.s. (represented by: P.Dejl, advokát)

Other parties to the proceedings: European Chemicals Agency (ECHA) (represented by: W. Broere, N. Herbatschek and M. Heikkilä, acting as Agents, and by M. Procházka and M. Mašková, advokáti), Kingdom of Denmark (represented by: J. Nymann-Lindegren and M. Wolff, acting as Agents), Kingdom of the Netherlands, Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, H. Shev and L. Zettergren, acting as Agents), Kingdom of Norway

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Deza, a.s. to bear its own costs and to pay those incurred by the European Chemicals Agency (ECHA);*

3. *Orders the Kingdom of Denmark and the Kingdom of Sweden to bear their own costs.*

(1) OJ C 293, 4.9.2017.

Judgment of the Court (Third Chamber) of 23 January 2019 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Walbusch Walter Busch GmbH & Co. KG v Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV

(Case C-430/17) (1)

(Reference for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Distance contracts — Article 6(1)(h) — Obligation to provide information on the right of withdrawal — Article 8 (4) — Contract concluded through a means of distance communication which allows limited space or time to display the information — Meaning of 'limited space or time to display the information' — Brochure inserted in a periodical — Mail order coupon containing a hyperlink referring to information on the right of withdrawal)

(2019/C 93/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Walbusch Walter Busch GmbH & Co. KG

Defendant: Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV

Operative part of the judgment

The assessment of whether, in a specific case, the means of communication allows limited space or time to display the information, in accordance with Article 8(4) of 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, must be carried out having regard to all of the technical features of the trader's marketing communication. In that regard, it falls to the national court to ascertain whether, having regard to the space and time occupied by the communication and the minimum size of the typeface which is appropriate for the average consumer targeted by that communication, all the information set out in Article 6(1) of that directive may objectively be displayed within that communication.

Article 6(1)(h) and Article 8(4) of Directive 2011/83 must be interpreted to the effect that, in a situation where the contract is concluded through a means of distance communication which allows limited space or time to display the information, and where a right of withdrawal exists, the trader is required to provide the consumer, on the means of communication in question and before the conclusion of the contract, with information regarding the conditions, time limit and procedures for exercising that right. In such a situation, that trader must provide the consumer with the model withdrawal form, as provided for in Annex I(B) to that directive, by another source in plain and intelligible language.

(1) OJ C 347, 16.10.2017.

Judgment of the Court (First Chamber) of 24 January 2019 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — Raad van bestuur van de Sociale Verzekeringsbank v D. Balandin, I. Lukachenko, Holiday on Ice Services BV

(Case C-477/17) ([1])

(Reference for a preliminary ruling — Social security — Regulation (EU) No 1231/2010 — Applicable legislation — A1 certificate — Article 1 — Extension of coordination of social security systems to citizens of third countries residing legally in the territory of a Member State — Legal residence — Concept)

(2019/C 93/17)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: Raad van bestuur van de Sociale Verzekeringsbank

Defendants: D. Balandin, I. Lukachenko, Holiday on Ice Services BV

Operative part of the judgment

Article 1 of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality must be interpreted as meaning that third country nationals, such as those at issue in the main proceedings, who temporarily reside and work in different Member States in the service of an employer established in a Member State, may rely on the coordination rules laid down by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for Regulation No 883/2004, in order to determine the social security legislation to which they are subject, provided that they are legally staying and working in the territory of the Member States.

([1]) OJ C 357, 23.10.2017.

Judgment of the Court (Third Chamber) of 16 January 2019 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Deutsche Post AG v Hauptzollamt Köln

(Case C-496/17) ([1])

(Reference for a preliminary ruling — Customs union — The Union Customs Code — Article 39 — Status of authorised economic operator — Implementing Regulation (EU) 2015/2447 — The second subparagraph of Article 24(1) — Applicant not a natural person — Questionnaire — Collection of personal data — Directive 95/46/EC — Articles 6 and 7 — Regulation (EU) 2016/679 — Articles 5 and 6 — Processing of personal data)

(2019/C 93/18)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Deutsche Post AG

Defendant: Hauptzollamt Köln

Operative part of the judgment

The second subparagraph of Article 24(1) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, read in the light of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), must be interpreted as meaning that the customs authorities may require an applicant for AEO status to send to them the tax identification numbers, allocated for the purposes of collecting income tax, concerning solely the natural persons who are in charge of the applicant or who exercise control over its management and those who are in charge of the applicant's customs matters, and the details of the tax offices responsible for the taxation of all those persons, to the extent that that data enables those authorities to obtain information on serious or repeated infringements of customs legislation or taxation rules or on serious criminal offences, committed by those natural persons and relating to their economic activity.

(1) OJ C 347, 16.10.2017.

Judgment of the Court (Fourth Chamber) of 17 January 2019 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — SIA 'KPMG Baltics', acting as insolvency administrator of AS 'Latvijas Krājbanka' v SIA 'Ķipars AI'

(Case C-639/17) (1)

(Reference for a preliminary ruling — Settlement finality in payment and securities settlement systems — Directive 98/26/EC — Scope — Concept of 'transfer order' — Payment order sent by the holder of an ordinary current account to a credit institution subsequently declared insolvent)

(2019/C 93/19)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Appellant: SIA 'KPMG Baltics', acting as insolvency administrator of AS 'Latvijas Krājbanka'

Respondent: SIA 'Ķipars AI'

Operative part of the judgment

A payment order, such as that at issue in the main proceedings, given by the holder of an ordinary current account to a credit institution for a transfer of funds to another credit institution is not covered by the concept of 'transfer order', within the meaning of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009, and does not, therefore, come within the scope of that directive.

(1) OJ C 52, 12.2.2018.

Judgment of the Court (First Chamber) of 23 January 2019 (Request for a preliminary ruling from the High Court (Ireland) — Ireland) — M.A., S.A., A.Z. v International Protection Appeals Tribunal, Minister for Justice and Equality, Attorney General, Ireland

(Case C-661/17) ([1])

(Reference for a preliminary ruling — Asylum policy — Criteria and mechanisms for determining the Member State responsible for examining an application for international protection — Regulation (EU) No 604/2013 — Discretionary clauses — Assessment criteria)

(2019/C 93/20)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: M.A., S.A., A.Z.

Defendants: International Protection Appeals Tribunal, Minister for Justice and Equality, Attorney General, Ireland

Operative part of the judgment

1. *Article 17(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the fact that a Member State, designated as 'responsible' within the meaning of that regulation, has notified its intention to withdraw from the European Union in accordance with Article 50 TEU does not oblige the determining Member State to itself examine, under the discretionary clause set out in Article 17(1), the application for protection at issue.*

2. *Regulation No 604/2013 must be interpreted as meaning that it does not require the determination of the Member State responsible under the criteria defined by that regulation and the exercise of the discretionary clause set out in Article 17(1) of that regulation to be undertaken by the same national authority.*

3. *Article 6(1) of Regulation No 604/2013 must be interpreted as meaning that it does not require a Member State which is not responsible, under the criteria set out by that regulation, for examining an application for international protection to take into account the best interests of the child and to itself examine that application, under Article 17(1) of that regulation.*

4. *Article 27(1) of Regulation No 604/2013 must be interpreted as meaning that it does not require a remedy to be made available against the decision not to use the option set out in Article 17(1) of that regulation, without prejudice to the fact that that decision may be challenged at the time of an appeal against a transfer decision.*

5. *Article 20(3) of Regulation No 604/2013 must be interpreted as meaning that, in the absence of evidence to the contrary, that provision establishes a presumption that it is in the best interests of the child to treat that child's situation as indissociable from that of its parents.*

([1]) OJ C 42, 5.2.2018.

Judgment of the Court (Third Chamber) of 23 January 2019 — Toni Klement v European Union Intellectual Property Office (EUIPO)

(Case C-698/17 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 15(1) — Application for revocation of a mark — Three-dimensional mark representing the form of an oven — Genuine use of the mark — Statement of reasons)

(2019/C 93/21)

Language of the case: German

Parties

Appellant: Toni Klement (represented by: J. Weiser, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Hanf, D. Botis and D. Walicka, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Toni Klement to pay the costs.*

([1]) OJ C 134, 16.4.2018.

Judgment of the Court (Sixth Chamber) of 17 January 2019 (Request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Proceedings brought by A Ltd

(Case C-74/18) ([1])

(Reference for a preliminary ruling — Directive 2009/138/EC — Taking-up and pursuit of the business of insurance and reinsurance — Article 13(13) — Definition of 'Member State in which the risk is situated' — Company established in one Member State, providing insurance services relating to contractual risks connected with company conversions in another Member State — Article 157 — Member State levying tax on insurance premiums)

(2019/C 93/22)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

A Ltd

Intervener: Veronsaajien oikeudenvalvontayksikkö

Operative part of the judgment

The first subparagraph of Article 157(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended by Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013, read in conjunction with Article 13(13) of Directive 2009/138, must be interpreted as meaning that, when an insurance company established in a Member State offers insurance covering the contractual risks associated with the value of the shares and the fairness of the purchase price paid by the buyer in the acquisition of an undertaking, an insurance contract concluded in that context is subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State where the policyholder is established.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (Sixth Chamber) of 17 January 2019 (request for a preliminary ruling from the Oberlandesgericht Köln — Germany) — Proceedings brought by Klaus Manuel Maria Brisch

(Case C-102/18) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 650/2012 — Article 65(2) — European Certificate of Succession — Application for a certificate — Implementing Regulation (EU) No 1329/2014 — Mandatory or optional nature of the form established by Article 1(4) of Implementing Regulation No 1329/2014)

(2019/C 93/23)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: Klaus Manuel Maria Brisch

Operative part of the judgment

Article 65(2) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession and Article 1(4) of Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation No 650/2012 must be interpreted as meaning that, for the purposes of an application for a European Certificate of Succession, within the meaning of Article 65(2) of Regulation No 650/2012, the use of Form IV in Annex 4 to Implementing Regulation No 1329/2014 is optional.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (First Chamber) of 6 December 2018 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Execution of a European arrest warrant issued against IK

(Case C-551/18 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and the surrender procedures between Member States — European arrest warrant issued for the purposes of enforcing a custodial sentence — Substance and form — Article 8(1)(f) — Failure to refer to an additional sentence — Validity — Consequences — Effect on detention)

(2019/C 93/24)

Language of the case: Dutch

Referring court

Hof van Cassatie

Party to the main proceedings

IK

Operative part of the judgment

Article 8(1)(f) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that failure to indicate, in the European arrest warrant pursuant to which the person concerned has been surrendered, an additional sentence of conditional release which was imposed on that person for the same offence in the same judicial decision as that relating to the main custodial sentence does not, on the facts of the case in the main proceedings, preclude the enforcement of that additional sentence, on the expiry of the main sentence after an express decision to that effect is taken by the national court with jurisdiction for the enforcement of sentences, from resulting in deprivation of liberty.

([1]) OJ C 16, 14.1.2019.

Request for a preliminary ruling from the Amtsgericht Kassel Zweigstelle Hofgeismar (Germany) lodged on 27 April 2018 — Petra Breyer, Heiko Breyer v SUNDAIR GmbH

(Case C-292/18)

(2019/C 93/25)

Language of the case: German

Referring court

Amtsgericht Kassel Zweigstelle Hofgeismar

Parties to the main proceedings

Applicant: Petra Breyer, Heiko Breyer

Defendant: Sundair GmbH

By order of 6 December 2018, the Court ruled:

Article 3(5) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, read in conjunction with Article 2(a) thereof, must be interpreted as meaning that an undertaking, such as that at issue in the main proceedings, which had lodged an application for an operating licence which was not issued to it at the time for the performance of scheduled flights cannot fall within the scope of that regulation, so that the passengers concerned have no right to compensation under Article 5(1)(c) and Article 7(1) of the regulation.

Appeal brought on 7 May 2018 by Schniga GmbH against the judgment of the Court (Seventh Chamber) delivered on 23 February 2018 in Case T-445/16, Schniga GmbH v Gemeinschaftliches Sortenamt (CPVO)

(Case C-308/18 P)

(2019/C 93/26)

Language of the case: German

Parties

Appellant: Schniga GmbH (represented by: G. Würtenberger, R. Kunze und T. Wittmann, Rechtsanwälte)

Other party to the proceedings: Gemeinschaftliches Sortenamt (CPVO)

By decision of 8 November 2018, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal as unfounded and ordered the appellant to pay its own costs.

Request for a preliminary ruling from the Landesverwaltungsgericht Steiermark (Austria) lodged on 6 July 2018 — Fluctus s.r.o. and Others

(Case C-444/18)

(2019/C 93/27)

Language of the case: German

Referring court

Landesverwaltungsgericht Steiermark

Parties to the main proceedings

Appellants: Fluctus s.r.o., Fluentum s.r.o., SD

Respondent authority: Landespolizeidirektion Steiermark

Other party: Finanzpolizei

By order of 9 January 2019 the Court of Justice (Seventh Chamber) held as follows:

The request for a preliminary ruling submitted by the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria) (Austria) by decision of 2 July 2018 is manifestly inadmissible.

Appeal brought on 13 July 2018 by CeramTec GmbH against the judgment of the General Court (Eighth Chamber) delivered on 3 May 2018 in Case T-193/17: CeramTec GmbH v EUIPO

(Case C-463/18 P)

(2019/C 93/28)

Language of the case: English

Parties

Appellant: CeramTec GmbH (represented by: A. Renck, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 15 January 2019 the Court of Justice (Seventh Chamber) held that the appeal was inadmissible.

Appeal brought on 29 August 2018 by Lion's Head Global Partners LLP against the judgment of the General Court (Ninth Chamber) delivered on 14 June 2018 in Case T-294/17: Lion's Head Global Partners LLP v EUIPO

(Case C-553/18 P)

(2019/C 93/29)

Language of the case: English

Parties

Appellant: Lion's Head Global Partners LLP (represented by: R. Nöske, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 15 January 2019 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 29 August 2018 by Lion's Head Global Partners LLP against the judgment of the General Court (Ninth Chamber) delivered on 14 June 2018 in Case T-310/17: Lion's Head Global Partners LLP v EUIPO

(Case C-554/18 P)

(2019/C 93/30)

Language of the case: English

Parties

Appellant: Lion's Head Global Partners LLP (represented by: R. Nöske, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 15 January 2019 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 24 September 2018 by the Republic of Cyprus against the judgment of the General Court (Second Chamber) delivered on 13 July 2018 in Case T-825/16: Republic of Cyprus v EUIPO

(Case C-608/18 P)

(2019/C 93/31)

Language of the case: English

Parties

Appellant: Republic of Cyprus (represented by: S. Malynicz QC, Barrister, V. Marsland, Solicitor)

Other parties to the proceedings: European Union Intellectual Property Office, Papouis Dairies Ltd.

Form of order sought

The appellant claims that the Court should:

— allow the appeal against the judgment of the General Court in case T-825/16 Republic of Cyprus v EUIPO and grant the application for annulment;

— order the Office and intervener to bear their own costs and pay those of the appellant.

Pleas in law and main arguments

First, the General Court erred in considering that the Board of Appeal was correct to transpose the conclusions from the General Court's earlier judgments in in Joined Cases T-292/14 and T-293/14 (ΧΑΛΛΟΥΜΙ and HALLOUMI) and Case T-534/10 (HELLIM) to the present case. Those cases were not concerned with certification marks but different kinds of marks, namely ordinary EU trade marks and collective marks respectively. The essential function of such marks is to act as an indication of the commercial origin of the goods (a plurality of traders linked by membership of an association in the case of a collective mark). Certification marks, by contrast, do not have the essential function of indicating origin, but of distinguishing a class of goods, namely goods which are certified in that they in fact comply with and have been authorised to be made under the regulations for permitted use of the HALLOUMI certification mark. Moreover the relevant public in those earlier General Court judgments was different to the relevant public in the present case.

Secondly, the General Court wrongly held that an earlier national mark — the national certification mark in this case — wholly lacked distinctive character as distinguishing goods which are certified from those which were not; wrongly holding the mark to be descriptive and generic; wrongly undermining the national protection of the national mark; and wrongly calling into question in EUIPO opposition proceedings the validity of the said mark.

Thirdly, the General Court erred in the comparison of the marks and the assessment of the likelihood of confusion. It wrongly approached these questions as if the earlier mark were an origin-indicating trade mark rather than a certification mark. It failed to accord the earlier mark any distinctiveness as a certification mark, i.e. as distinguishing goods which in fact complied with the standards of the certification mark and were in fact made by producers authorised by the certification mark holder. It also failed to consider how certification marks are typically used (i.e. invariably along with a distinctive name, trade mark or logo). It failed to consider the meaning and significance of the contested EUTM, in particular by failing to consider whether the 'HALLOUMI' element had an independent distinctive character in the later mark as a sign indicating, contrary to fact, that the goods covered by the contested EUTM were certified.

Fourthly, the General Court failed to consider national provisions and case law as to the scope and effect of national certification marks. The conditions and modalities of Member States' laws on certification marks were not harmonised under the Trade Marks Directives 89/104 ([1]) or 2008/95 ([2]) and yet the EUTMR provides that such national marks can form the basis of earlier rights which prevent registration of EUTMs. Such rights should be considered in the light of national case law and national provisions, by analogy with the various national rights under Article 8(4) EUTMR (which rights are also not harmonised and vary greatly in their nature, scope and effect from Member State to Member State).

([1]) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989, L 40, p. 1).

([2]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008, L 299, p. 25).

Appeal brought on 24 September 2018 by the Republic of Cyprus against the judgment of the General Court (Second Chamber) delivered on 13 July 2018 in Case T-847/16: Republic of Cyprus v EUIPO

(Case C-609/18 P)

(2019/C 93/32)

Language of the case: English

Parties

Appellant: Republic of Cyprus (represented by: S. Malynicz QC, Barrister, V. Marsland, Solicitor)

Other parties to the proceedings: European Union Intellectual Property Office, Pancyprian Organisation of Cattle Farmers (P.O.C.F) Public Ltd.

Form of order sought

The appellant claims that the Court should:

— allow the appeal against the judgment of the General Court in case T-847/16 Republic of Cyprus v EUIPO and grant the application for annulment;

— order the Office and intervener to bear their own costs and pay those of the appellant.

Pleas in law and main arguments

First, the General Court erred in considering that the Board of Appeal was correct to transpose the conclusions from the General Court's earlier judgments in in Joined Cases T-292/14 and T-293/14 (ΧΑΛΛΟΥΜΙ and HALLOUMI) and Case T 534/10 (HELLIM) to the present case. Those cases were not concerned with certification marks but different kinds of marks, namely ordinary EU trade marks and collective marks respectively. The essential function of such marks is to act as an indication of the commercial origin of the goods (a plurality of traders linked by membership of an association in the case of a collective mark).Certification marks, by contrast, do not have the essential function of indicating origin, but of distinguishing a class of goods, namely goods which are certified in that they in fact comply with and have been authorised to be made under the regulations for permitted use of the HALLOUMI certification mark. Moreover the relevant public in those earlier General Court judgments was different to the relevant public in the present case.

Secondly, the General Court wrongly held that an earlier national mark — the national certification mark in this case — wholly lacked distinctive character as distinguishing goods which are certified from those which were not; wrongly holding the mark to be descriptive and generic; wrongly undermining the national protection of the national mark; and wrongly calling into question in EUIPO opposition proceedings the validity of the said mark.

Thirdly, the General Court erred in the comparison of the marks and the assessment of the likelihood of confusion. It wrongly approached these questions as if the earlier mark were an origin-indicating trade mark rather than a certification mark. It failed to accord the earlier mark any distinctiveness as a certification mark, i.e. as distinguishing goods which in fact complied with the standards of the certification mark and were in fact made by producers authorised by the certification mark holder. It also failed to consider how certification marks are typically used (i.e. invariably along with a distinctive name, trade mark or logo). It failed to consider the meaning and significance of the contested EUTM, in particular by failing to consider whether the 'HALLOUMI' element had an independent distinctive character in the later mark as a sign indicating, contrary to fact, that the goods covered by the contested EUTM were certified.

Fourthly, the General Court failed to consider national provisions and case law as to the scope and effect of national certification marks. The conditions and modalities of Member States' laws on certification marks were not harmonised under the Trade Marks Directives 89/104 ([1]) or 2008/95 ([2]) and yet the EUTMR provides that such national marks can form the basis of earlier rights which prevent registration of EUTMs. Such rights should be considered in the light of national case law and national provisions, by analogy with the various national rights under Article 8(4) EUTMR (which rights are also not harmonised and vary greatly in their nature, scope and effect from Member State to Member State).

([1]) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989, L 40, p. 1).

([2]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008, L 299, p. 25).

Appeal brought on 25 September 2018 by ClientEarth against the judgment of the General Court (Eighth Chamber) delivered on 11 July 2018 in Case T-644/16: ClientEarth v Commission

(Case C-612/18 P)

(2019/C 93/33)

Language of the case: English

Parties

Appellant: ClientEarth (represented by: O. W. Brouwer, advocaat, N. Frey, Solicitor, E. N. M. Raedts, advocaat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 11 July 2018 in Case T-644/16 ('the contested judgment') and to refer the case back to the General Court for consideration;

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

Pleas in law and main arguments

First ground of appeal: errors of law and breaches of procedure in the contested judgment in relation to the argument that the disclosure of the documents cannot weaken the Commission's negotiation position (contested judgment paragraphs 34-51), by:

— widening of the exception to material not specifically related to an envisaged international agreement;

— applying the international relations exception without requiring a specific explanation of how disclosure could specifically and actually undermine international relations;

— substituting reasoning regarding the legal analysis contained in the requested documents; and

— distorting evidence regarding the state of negotiations at the time of the contested decision.

Second ground of appeal: error of law in the contested judgment relating to the argument that the strategic objectives of the European Union would not be undermined (contested judgment paragraphs 52-53).

Third ground of appeal: breach of procedure and error of law in the considerations in the contested judgment relating to the argument that disclosure of the requested documents furthers rather than undermines the public interest as regards international relations (contested judgment paragraphs 54-58).

Fourth ground of appeal: error of law and irregularity of procedure in the considerations in the contested judgment relating to the argument that non-disclosure as long as there are 'ongoing negotiations' effectively results in indefinite non-disclosure (contested judgment paragraphs 59-67).

Fifth ground of appeal: denaturation of arguments brought before the General Court in the considerations in the contested judgment relating to the Commission's argument that the Regulation does not allow for documents to be disclosed 'as long as the position of the Court of Justice is not known' (contested judgment paragraphs 68-69).

Sixth ground of appeal: breach of procedure in the considerations in the contested judgment relating to the seventh argument that disclosure cannot be made dependent on equal transparency obligations of trade partners (contested judgment paragraphs 72-74).

Seventh ground of appeal: error of law through breach of Art. 4(6) of Regulation 1049/2001 [1] when assessing partial access (contested judgment paragraphs 79-90).

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

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Toscana (Italy) lodged on 22 November 2018 — FW, GY v U.T.G. — Prefettura di Lucca

(Case C-726/18)

(2019/C 93/34)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Toscana

Parties to the main proceedings

Applicants: FW, GY

Defendant: U.T.G. — Prefettura di Lucca

Questions referred

1. Does Article 20(4) of Directive 2013/33/EU [1] preclude an interpretation of Article 23 of Legislative Decree No 142/2015 as meaning that conduct that infringes general rules of national law, not specifically reproduced in reception centre rules, may also constitute a serious breach of those rules if it potentially disrupts life within the reception centres?

   In the event of an affirmative answer, the following further question is referred to, and requires an answer by, the Court:

2. Does Article 20(4) of Directive 2013/33/EU preclude an interpretation of Article 23 of Legislative Decree No 142/2015 as meaning that conduct on the part of the applicant for international protection that does not constitute a criminal offence punishable under the laws of the Member State may also be taken into consideration for the purpose of withdrawing reception measures, if that conduct might nevertheless potentially disrupt life within the centre in which the persons concerned are placed?

[1] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

Appeal brought on 23 November 2018 by VTB Bank PAO, formerly VTB Bank OAO, against the judgment of the General Court (Sixth Chamber) delivered on13 September 2018 in Case T-734/14: VTB Bank v Council

(Case C-729/18 P)

(2019/C 93/35)

Language of the case: English

Parties

Appellant: VTB Bank PAO, formerly VTB Bank OAO (represented by: M. Lester QC, J. Dawid, Barristers, C. Claypoole, Solicitor, J. Ruiz Calzado, abogado)

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

Form of order sought

The appellant claims that the Court should:

— allow the appeal of VTB against the decision of the General Court;

— order that the restrictive acts be annulled insofar as they apply to VTB;

— make a declaration of illegality / inapplicability as regards article 1 of Council decision 2014/512/CFSP ([1]), article 5 of regulation 833/2014 ([2]), article 1 of Council decision 2014/659/CFSP ([3]), and article 1(5) of regulation 960/2014 ([4]);

— order the Council to pay VTB's costs of this appeal and of the proceedings before the General Court.

Pleas in law and main arguments

First plea in law, alleging:

The General Court erred in its interpretation of article 5(1)(a) of the regulation in concluding that the condition that an institution have 'an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment' did not apply to VTB as a 'major credit institution'. In consequence, the General Court erred in holding that the Council made no manifest error of assessment in finding that VTB satisfied the conditions to be listed under article 5(1)(a) of the regulation.

Second plea in law, alleging:

The General Court erred in finding that the criteria under which VTB was listed pursuant to article 1 of the decision and article 5(1)(a) of the regulation were appropriate and proportionate having regard to the objectives of the restrictive acts.

Third plea in law, alleging:

The General Court erred in finding that the restrictive acts applied to VTB represented a proportionate interference with VTB's fundamental rights as guaranteed by article 16 and 17 of the Charter of Fundamental Rights and article 1, protocol 1 of the European Convention on Human Rights, both in respect of the criteria adopted under the restrictive acts and the decision to list VTB pursuant to those criteria.

([1]) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 229, p. 13).

([2]) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 229, p. 1).

([3]) Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 271, p. 54).

([4]) Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 271, p. 3).

Appeal brought on 23 November 2018 by PAO Rosneft Oil Company, formerly NK Rosneft OAO, RN-Shelf-Arctic OOO, AO RN-Shelf-Far East, formerly RN-Shelf-Dalniy Vostok ZAO, RN-Exploration OOO, Tagulskoe OOO against the judgment of the General Court (Sixth Chamber) delivered on 13 September 2018 in Case T-715/14: Rosneft and Others v Council

(Case C-732/18 P)

(2019/C 93/36)

Language of the case: English

Parties

Appellants: PAO Rosneft Oil Company, formerly NK Rosneft OAO, RN-Shelf-Arctic OOO, AO RN-Shelf-Far East, formerly RN-Shelf-Dalniy Vostok ZAO, RN-Exploration OOO, Tagulskoe OOO (represented by: L. Van den Hende, advocaat)

Other parties to the proceedings: Council of the European Union, European Commission, United Kingdom of Great Britain and Northern Ireland

Form of order sought

The appellants claim that the Court should:

— set aside the judgment in so far as it concerns the grounds concerned by this appeal;

— give a final judgment in the matter or refer the case back to the General Court for judgment; and

— order the Council to pay the costs, including the costs before the General Court.

Pleas in law and main arguments

The appeal concerns contested non-conventional oil restrictions, contested capital market restrictions and contested legal claims restrictions as contained in Council Regulation No 833/2014 ([1]) and/or Council Decision 2014/512/CFSP ([2]).

The appellants rely on seven pleas:

First plea: The General Court erred in law when it determined that the Council complied with Article 296 TFEU when adopting the contested non-conventional oil restrictions.

Second plea: The General Court erred in law when it determined that the Council complied with Article 296 TFEU when adopting the contested capital market restrictions.

Third plea: The General Court erred in law when it determined that there exists a rational connection between the contested non-conventional oil restrictions and the objective found to be pursued by them.

Fourth plea: The General Court erred in law when it determined that the contested nonconventional oil restrictions do not infringe the appellants' fundamental rights to property and to conduct a business.

Fifth plea: The General Court erred in law when it determined that contested legal claims restrictions are not disproportionate and do not otherwise infringe the appellants' fundamental right to property.

Sixth plea: The General Court erred in law when it determined that the contested capital market restrictions comply with the principle of proportionality and do not infringe the appellants' fundamental right to conduct a business.

Seventh plea: The General Court erred in law when it determined that the contested nonconventional oil restrictions and contested capital market restrictions are justified by the security exceptions of the EU-Russia Partnership and Cooperation Agreement and WTO General Agreement on Tariffs and Trade.

([1]) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 229, p. 1).

([2]) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 229, p. 13).

Request for a preliminary ruling from the Cour administrative (Luxembourg) lodged on 30 November 2018 –B, C, D v Administration des contributions directes

(Case C-749/18)

(2019/C 93/37)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Appellants: B, C, D

Respondent: Administration des contributions directes

Questions referred

1. Must Articles 49 and 54 TFEU be interpreted as precluding the legislation of a Member State relating to a tax integration scheme which, on the one hand, permits consolidation of the results of companies forming part of the same group and allowing vertical tax integration only between a resident parent company or a permanent native establishment of a non-resident parent company and its resident subsidiaries and, on the other hand, similarly precludes the purely horizontal tax integration of the subsidiaries alone of both a non-resident parent company with no permanent native establishment and a resident or non-resident parent company which has a permanent local establishment?

2. If the answer to the first question is in the affirmative, must Articles 49 and 54 TFEU be interpreted as precluding the same legislation of a Member State relating to a tax integration scheme, in particular to strict separation between vertical integration schemes (between a group parent company and its direct or indirect subsidiaries) and horizontal integration schemes (between two or more resident subsidiaries of a group parent company which remains outside the tax integration perimeter) stemming from that legislation, and the resulting obligation to end a pre-existing vertical tax integration arrangement before being able to form a horizontal tax integration group, where:

   — a vertical tax integration arrangement with an integrating group parent company at national level which is resident in the Member State concerned (which, at the same time, represents the intermediate subsidiary in relation to the ultimate parent company, resident in another Member State) and the resident subsidiaries of the group parent company, had previously been established, on account of the fact that the legislation of the Member State concerned allows only vertical tax integration for the purposes of admission to the scheme, notwithstanding the fact that the ultimate parent company is resident in another Member State;

   — sister companies of the integrating group parent company of the Member State concerned (therefore also subsidiaries of the ultimate parent company resident of another Member State) are denied access to the existing tax integration arrangements on the ground that the two integration schemes, vertical and horizontal, are incompatible; and

   — the inclusion of the results of those sister companies in the consolidated results of the companies within the group would entail the undoing of the pre-existing vertical tax integration arrangement — with the ensuing negative tax consequences on account of non-compliance with the minimum duration of the integration arrangement required by national law — and the setting up of a new horizontal tax integration arrangement, even though the resident integrating company (at the level at which the results of the fiscally integrated companies are consolidated) remains the same?

3. If the answer to the second question is also in the affirmative, must Articles 49 and 54 TFEU, together with the principle of effectiveness of EU law, be interpreted as precluding that same legislation of a Member State relating to a tax integration scheme, in particular the imposition of a time limit under which any request seeking admission to the tax integration scheme must necessarily be submitted to the competent authority before the end of the first tax year for which application of that scheme is sought, where:

   — if the first two questions are answered in the affirmative, that legislation precluded, in a manner incompatible with freedom of establishment, horizontal tax integration between the subsidiaries alone of the same parent company and the modification of an existing vertically fiscally integrated group by the addition of sister companies of the integrating company;

— before the publication of the judgment of the [Court of Justice of the European Union] of 12 June 2014 (Joined Cases C-39/13, C-40/13 and C-41/13), the national administrative and judicial practice of the Member State concerned was to accept that that legislation was valid;

— a number of companies submitted, following the publication of the judgment of 12 June 2014 and again before the end of 2014, a request to join an existing fiscally integrated group by being allowed to join a horizontal tax integration arrangement with the integrating company of the existing group, in reliance on the judgment of 12 June 2014; and

— that request relates not only to the 2014 tax year still ongoing at the time that the request was submitted, but also to the previous tax year, 2013, as from which the companies concerned satisfied all the substantive conditions compatible with EU law for admission to the tax integration scheme?

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 3 December 2018 — A, B v C

(Case C-750/18)

(2019/C 93/38)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicants: A, B

Defendant: C

Question referred

How should Directive 93/13, [1] and, more specifically, the principle of cumulative effect contained in it, be interpreted when assessing whether the sum which a consumer who fails to fulfil his obligations is required to pay in compensation (hereinafter: the penalty clause) is disproportionately high within the meaning of point 1(e) of the annex to that directive, in a case in which penalty clauses are associated with a variety of shortcomings of different types which, by their very nature, do not have to occur jointly, and indeed do not do so in the present case?

[1] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 30 November 2018 — Bulgarian Air Charter Limited v NE

(Case C-758/18)

(2019/C 93/39)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Appellant: Bulgarian Air Charter Limited

Respondent: NE

Questions referred

1. Are Articles 5(3) and 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1]) to be interpreted as meaning that an operating air carrier which asserts the existence of extraordinary circumstances as the cause of a long delay may rely on the ground for exemption from liability under Article 5(3) of the Flight Compensation Regulation only if it can also assert and demonstrate that the delay suffered by the individual passenger could also not have been prevented by re-booking onto alternative transport?

2. Must a re-booking required under Question 1 meet more specific temporal or qualitative criteria, in particular the criteria set out in Article 5(1)(c)(iii) or in Article 8(1)(b) and (c) of the Flight Compensation Regulation?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 19 December 2018 — Informatikgesellschaft für Software-Entwicklung (ISE) mbH v Stadt Köln

(Case C-796/18)

(2019/C 93/40)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Informatikgesellschaft für Software-Entwicklung (ISE) mbH

Defendant: Stadt Köln

Party to the proceedings: Land Berlin

Questions referred

1. Does the provision of software by one public administrative authority to another public administrative authority, which is agreed in writing and linked to a cooperation agreement, constitute a 'public contract' within the meaning of Article 2.1(5) of Directive 2014/24/EU ([1]) or a contract within the meaning of Article 12(4) of that directive which — at least initially, subject to Article 12(4)(a) to (c) thereof — comes within the scope of the directive if, although the software recipient does not have to pay a price or reimbursement costs for the software, the cooperation agreement connected with the provision of the software provides that each cooperation partner — and therefore also the software recipient — is required to make available to the other partner, free of charge, any of its own further developments of the software that it may create — but is not obliged to create — in the future?

Only if Question 1 is answered in the affirmative:

2. Pursuant to Article 12(4)(a) of Directive 2014/24/EU, does the subject matter of the cooperation of the participating contracting authorities have to be the actual public services that are to be provided to citizens and must be provided jointly, or is it sufficient if the cooperation relates to activities that in some way serve the public services that are to be provided in the same way but do not necessarily have to be provided jointly?

3. Does a so-called — unwritten — prohibition on placing a party in a position of advantage ('Besserstellungsverbot') apply in the context of Article 12(4) of Directive 2014/24/EU and, if so, with what content does it apply?

(1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Appeal brought on 21 December 2018 by Deza, a.s. against the judgment of the General Court (Second Chamber) delivered on 24 October 2018 in Case T-400/17 Deza v Commission

(Case C-813/18 P)

(2019/C 93/41)

Language of the case: Czech

Parties

Appellant: Deza, a.s. (represented by: P. Dejl, advokát)

Other parties to the proceedings: European Commission, Republic of Finland, Kingdom of Sweden, European Chemicals Agency

Form of order sought

— set aside the judgment of the General Court of 24 October 2018 in Case T-400/17;

— annul in part Commission Regulation (EU) No 2017/776 (1) of 4 May 2017 amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008, in so far as it concerns the classification and labelling of the substance anthraquinone;

— order the Commission to pay the appellant's costs incurred in the present appeal proceedings before the Court of Justice and in the previous proceedings before the General Court.

Grounds of appeal and main arguments

In support of its appeal, the appellant puts forward four grounds of appeal.

1. The General Court interpreted and applied the CLP Regulation (2) incorrectly, in particular the following basic principles: (i) the substance evaluated and classified must be placed on the EU market; (ii) a causal link between a substance and carcinogenic effects in test animals must be demonstrated by sufficient evidence; (iii) sufficient evidence must be obtained from reliable and admissible scientific studies; and (iv) classification of a substance must take account of new scientific and technical knowledge and scientific and technical progress.

2. The General Court reviewed the classification of anthraquinone, in other words part of the Commission Regulation, in a manner contrary to the requirements for judicial review of decisions of the EU institutions and bodies, and distorted the facts and evidence.

3. The General Court interpreted and applied the principle of legal certainty incorrectly.

4. As a result of the above defects, the General Court breached the appellant's rights and the principles laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, in particular the right to a fair hearing, the right to the peaceful enjoyment of property, and the principle of legal certainty.

([1]) OJ 2017 L 116, p. 1.

([2]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1).

Appeal brought on 27 December 2018 by the European Commission against the judgment of the General Court (Fifth Chamber) delivered on 18 October 2018 in Case T-640/16: GEA Group AG v Commission

(Case C-823/18 P)

(2019/C 93/42)

Language of the case: English

Parties

Appellant: European Commission (represented by: T. Christoforou, P. Rossi, V. Bottka, Agents)

Other party to the proceedings: Gea Srl

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— order GEA to bear the entirety of the costs of these proceedings and those at first instance.

Pleas in law and main arguments

The Commission bases its appeal on the following two grounds of appeal:

The Commission submits, the General Court committed two errors of law. First, it incorrectly applied the principle of equal treatment, it disregarded the case law on the notion of an undertaking and on joint and several liability, and also erred on the consequences of a fine reduction which can be attributed only to a former subsidiary of the infringing undertaking. Specifically, the Commission considers that, with the judgment under appeal, the General Court has deviated from the Court's case law according to which the notion of joint liability for the part of the fine that is common to all addressed legal entities is a manifestation of the concept of an undertaking for the purposes of Article 101 TFEU (see C-231/11 P, Siemens Österreich, § 57). Hence, the legal entities belonging to the same undertaking at the time of the infringement are by definition all jointly liable for the fine corresponding to the undertaking's participation in the infringement (up to the maximum amount for which each legal entity is individually liable). The judgment's logic is based on an application by analogy of the theory on internal shares of joint liability, which also aimed to exclude co-debtors from liability for parts of the jointly imposed fine. However, that theory was rejected by the Court in Case C-231/11 P, Siemens Österreich and the joined cases C-247/11 P and C-253/11 P, Areva. In addition, the Judgment disregards the case law according to which a parent company cannot benefit from the lower 10 % cap of its own former subsidiary (C-50/12 P, Kendrion, § § 58, 68 and 70). Therefore, the judgment is affected by errors of law in the interpretation and application of established case law of the Court, it creates legal uncertainty, and affects the margin of discretion which the Commission has in setting fines on an undertaking for having violated Article 101 TFEU.

Second, the Commission considers that the General Court has erred by holding that the time limit for paying the fine for all jointly liable legal entities in the undertaking (including the parent GEA) starts anew from the notification of an amending decision reducing the fine for only one of these legal entities (ACW, a former subsidiary of GEA). This is an error in law because the Commission is entitled to reduce with an amending decision the fine for only one of the legal entities jointly liable, if there is a material error affecting that legal entity only, without having to amend the fines in the other parts of the decision addressed to the remaining legal entities. Equally, the Commission is entitled (but not obliged) in such circumstances to set a new due date for one or more legal entities, which can be at an earlier date than the notification of the latest amending decision. This is because amending the fine does not amount to replacing it. Similarly, when the Court reduces a fine for a legal entity, that does not amount to setting a new fine with a new due date (Case C-523/15 P, WDI, § § 29-48 and 63-68 and Case T-275/94, Groupement des cartes bancaires, § § 60 and 65). If maintained, the errors on which the judgment is based can affect the deterrent effect of the Commission's fines because it would mean that a modification of a fine for one addressee would lead to the loss of interest generated on the maintained part of the fine for the entire undertaking.

Finally, on both aspects covered by the grounds of the appeal, the judgment is unclear and insufficiently reasoned.

Request for a preliminary ruling from the Helsingin hovioikeus (Finland) lodged on 21 December 2018 — A and Others v Finnair Oyj

(Case C-832/18)

(2019/C 93/43)

Language of the case: Finnish

Referring court

Helsingin hovioikeus

Parties to the main proceedings

Applicants: A and Others

Defendant: Finnair Oyj

Questions referred

1. Is Regulation No 261/2004 [1] to be interpreted as meaning that a passenger has the right to further compensation in accordance with Article 7(1) if he has received compensation for a cancelled flight, the operating air carrier of the re-routed flight is the same as that of the cancelled flight, and the re-routed flight after the cancelled flight is also delayed beyond the scheduled time of arrival to such an extent that it entitles the passenger to compensation?

2. If Question 1 is answered in the affirmative, can the operating air carrier rely on extraordinary circumstances within the meaning of Article 5(3) if, following a technical follow-up by the aircraft manufacturer in relation to aircraft already in use, the part dealt with in that document is in fact treated as a so-called 'on condition' part, that is to say as a part that is used until it becomes defective, and the operating air carrier has prepared to replace the part in question by permanently stocking a spare part?

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

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 4 January 2019 — A.P. v Riigiprokuratuur

(Case C-2/19)

(2019/C 93/44)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Appellant: A.P.

Respondent: Riigiprokuratuur

Question referred

Is the recognition and supervision of execution of a judgment of a Member State compatible with Council Framework Decision 2008/947/JHA ([1]) of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions even where the sentenced person has by that judgment been conditionally released without any additional obligations being imposed, so that the person's only obligation is to avoid committing a new intentional offence during the probation period (this being a suspended sentence within the meaning of Paragraph 73 of the Estonian Criminal Code)?

([1]) Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ 2008 L 337, p. 102).

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 4 January 2019 — Overgaz Mrezhi AD, Non-profit association Bulgarska Gazova Asotsiatsia v Komisia za energiyno i vodno regulirane

(Case C-5/19)

(2019/C 93/45)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicants: Overgaz Mrezhi AD, Non-profit association Bulgarska Gazova Asotsiatsia

Defendant: Komisia za energiyno i vodno regulirane

Questions referred

1. Is a national measure such as the one in issue in this case, provided for in Article 35 of the Zakon za energetikata (Energy Law) and set out in more detail in Article 11 of Naredba No 2 za regulirane na tsenite na prirodnia gaz (Ordinance No 2 on Natural Gas Price Regulation) of the Darzhavnata Komisia za energiyno i vodno regulirane (State Energy and Water Regulatory Commission; 'KEVR') of 19 March 2013, according to which the entire financial burden associated with the public service obligations imposed on the energy companies is to be borne by customers, permissible under Articles 36 and 38 of the Charter of Fundamental Rights of the European Union and under Article 3 of Directive 2009/73/EC ([1]) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, considering that:

(a) the economic burden arising from the public service obligations does not affect all energy companies;

(b) the costs of the public service obligations are borne mainly by the end customers, who are unable to contest them, even though they obtain natural gas from the end suppliers at freely determined prices;

(c) there is no differentiation of the economic burden arising from the performance of the public service obligations which is borne by different types of customers;

(d) there is no time limitation for the application of this measure;

(e) the calculation of the value of the public service obligations is made on the basis of the costs accounting method according to a forecast model?

2. Is a national legal provision such as Section 5 of the Transitional and Final Provisions of the Zakon za normativnite aktove (Law on Normative Legal Acts), which releases the KEVR from the obligations of Articles 26 to 28 of the Zakon za normativnite aktove and in particular from the obligations that exist when preparing the draft of a sub-statutory normative legal act to observe the principles of necessity, merit, foreseeability, transparency, coherence, subsidiarity, proportionality and stability, to hold a public hearing with citizens and legal persons, to publish the draft in advance together with the reasoning and to set out reasoning, including with regard to compatibility with EU law, permissible under Article 3 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, in consideration of recitals 44, 47, 48 and 49 thereof?

([1]) OJ 2009 L 211, p. 94.

Request for a preliminary ruling from the Spetsializran nakazatelen sad (Bulgaria) lodged on 7 January 2019 — Criminal proceedings against RH

(Case C-8/19)

(2019/C 93/46)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

RH

Questions referred

1. Is an interpretation of national law, namely Article 489(2) of the NPK, which requires the referring court to adjudicate immediately on the legality of pre-trial detention in criminal proceedings instead of waiting for an answer from the Court of Justice when the referring court has made a request for a preliminary ruling concerning the legality of that detention, consistent with Article 267 TFEU and the second paragraph of Article 47 of the Charter?

If the first question is answered in the negative:

2.1. Taking account of the final sentence of recital 16 of Directive 2016/343, ([1]) must the national court interpret its national law as meaning that, before issuing a decision extending a pre-trial detention, it must 'verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned'?

2.2. If the accused person's defence counsel challenges the existence of 'sufficient elements of incriminating evidence', with full and well founded arguments, in the context of the judicial review of the extension of the pre-trial detention, is the national court required to give a response, in accordance with the requirement of an effective remedy provided for in the first paragraph of Article 47 of the Charter?

2.3. Does the national court infringe Article 4 [of Directive 2016/343], read together with Article 3 [thereof], as interpreted in the judgment [of 19 September 2018, *Milev* (C-310/18 PPU, EU:C:2018:732)], if it justifies its decision on the extension of the pre-trial detention in accordance with the case-law of the European Court of Human Rights relating to Article 5(1)(c) of the Convention and clearly identifies the existence of evidence in support of the charge which, by nature 'would satisfy an objective observer that the person concerned might have committed an offence', and Article 5(4) of the Convention, in particular, by giving a decision on the objections of the accused person's defence counsel on the legality of the pre-trial detention which is effective and based on the facts?

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

Appeal brought on 24 January 2019 by the Mouvement pour une Europe des nations et des libertés against the judgment of the General Court (Eighth Chamber) delivered on 27 November 2018 in Case T-829/16, *Mouvement pour une Europe des nations et des libertés* v *Parliament*

(Case C-60/19 P)

(2019/C 93/47)

Language of the case: French

Parties

Appellant: Mouvement pour une Europe des nations et des libertés (represented by: A. Varaut, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— annul the decision of the European Parliament of 12 September 2016 declaring certain expenditure ineligible for the purposes of a grant for the 2015 financial year;

— order the Parliament to pay the full costs, and

— make an order as to the amount to be awarded to the appellant in relation to the costs of the proceedings.

Grounds of appeal and main arguments

The Mouvement pour une Europe des nations et des libertés (MENL) edited a poster relating to the migration crisis and the Schengen agreement featuring its logo, together with those, in a much smaller size, of the Front National and the Vlaams Belang.

The Parliament declared ineligible the expenditure relating to that poster, considering that it constituted an unfair advantage for a national political party.

By the judgment under appeal, the General Court dismissed the MENL's action for annulment of that decision.

The MENL seeks to have the judgment under appeal set aside because of the following errors of law:

— The facts of the case have been distorted, since, further to its finding that the Bureau of the Parliament was not aware of the MENL's defence submissions, the General Court nonetheless found that the latter had been able to defend itself because its defence submissions had been forwarded to an assistant of one of the members of the Bureau;

— Article 41 of the Charter, Article 16 of the European Code of Good Administrative Behaviour and Article 8 of the decision of the Bureau of the Parliament of 29 March 2004 laying down the procedures for implementing Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding ([1]) were infringed, in that the General Court found that the decision-making work of the Parliament's services can replace a decision of the Bureau of the Parliament;

— The General Court erred in rejecting the plea of illegality of Article 7 of Regulation No 2004/2003, raised pursuant to Article 277 TFEU, by ruling that the content of the prohibition on indirect funding is an indeterminate legal notion while acknowledging that it applied that notion;

— The General Court misapplied Article 7 of Regulation No 2004/2003 in finding that the presence of the logo of a political party, whatever its size, on a poster of a European political party constituted, as such, illegal direct funding of that party.

([1]) OJ 2003 L 297, p. 1.

GENERAL COURT

Judgment of the General Court of 14 December 2018 — Hamas v Council

(Case T-400/10 RENV) ([1])

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — Possibility for an authority of a non-member State to be classified as a competent authority within the meaning of Common Position 2001/931/CFSP — Factual basis of the decisions to freeze funds — Duty to state reasons — Error of assessment — Right to effective judicial protection — Rights of the defence — Right to property)

(2019/C 93/48)

Language of the case: French

Parties

Applicant: Hamas (Doha, Qatar) (represented by: L. Glock, lawyer)

Defendant: Council of the European Union (represented by: B. Driessen, M. Bishop and A. Sikora-Kalėda, acting as Agents)

Intervener in support of the defendant: French Republic (represented by: D. Colas and F. Fize, acting as Agents), and European Commission (represented initially by F. Castillo de la Torre, M. Konstantinidis and R. Tricot, and subsequently by F. Castillo de la Torre, L. Baumgart and C. Zadra, acting as Agents)

Re:

Action under Article 263 TFEU seeking annulment, first, of the Council Notice for the attention of the persons, groups and entities whose names were included in the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2010 C 188, p. 13), of Council Decision 2010/386/CFSP of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2010 L 178, p. 28) and of Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1), in so far as those measures concern the applicant, secondly, of Council Decision 2011/70/CFSP of 31 January 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2011, L 28, p. 57) and of Council Implementing Regulation (EU) No 83/2011 of 31 January 2011 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 610/2010 (OJ 2011, L 28, p. 14), in so far as those measures concern the applicant, thirdly, of Council Decision 2011/430/CFSP of 18 July 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2011 L 188, p. 47) and of Council Implementing Regulation (EU) No 687/2011 of 18 July 2011 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulations No 610/2010 and No 83/2011 (OJ 2011 L 188, p. 2), in so far as those measures concern the applicant, fourthly, of Council Decision 2011/872/CFSP of 22 December 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2011/430 (OJ 2011, L 343, p. 54) and of Council Implementing Regulation (EU) No 1375/2011 of 22 December 2011 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 687/2011 (OJ 2011 L 343, p. 10), in so far as those measures concern the applicant, fifthly, of Council Decision 2012/333/CFSP of 25 June 2012 updating the list of persons groups and

entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2011/872 (OJ 2012 L 165, p. 72) and of Council Implementing Regulation (EU) No 542/2012 of 25 June 2012 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 1375/2011 (OJ 2012 L 165, p. 12), in so far as those measures concern the applicant, sixthly, of Council Decision 2012/765/CFSP of 10 December 2012 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2012/333 (OJ 2012 L 337, p. 50) and of Council Implementing Regulation (EU) No 1169/2012 of 10 December 2012 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 542/2012 (OJ 2012 L 337, p. 2), in so far as those measures concern the applicant, seventhly, Council Decision 2013/395/CFSP of 25 July 2013 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2012/765 (OJ 2013 L 201, p. 57) and of Council Implementing Regulation (EU) No 714/2013 of 25 July 2013 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 1169/2012 (OJ 2013 L 201, p. 10), in so far as those measures concern the applicant, eighthly, Council Decision 2014/72/CFSP of 10 February 2014 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2013/395 (OJ 2014 L 40, p. 56) and of Council Implementing Regulation (EU) No 125/2014 of 10 February 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 714/2013 (OJ 2014 L 40, p. 9), in so far as those measures concern the applicant, ninthly, Council Decision 2014/483/CFSP of 22 July 2014 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2014/72 (OJ 2014 L 217, p. 35) and of Council Implementing Regulation (EU) No 790/2014 of 22 July 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation No 125/2014 (OJ 2014 L 217, p. 1), in so far as those measures concern the applicant, and tenthly, Council Decision (CFSP) 2017/1426 of 4 August 2017 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision (CFSP) 2017/154 (OJ 2017 L 204, p. 95) and of Council Implementing Regulation (EU) 2017/1420 of 4 August 2017 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2017/150 (OJ 2017 L 204, p. 3), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hamas to bear its own costs and to pay those incurred by the Council of the European Union;*

3. *Orders the French Republic and the European Commission to bear their own costs.*

(1) OJ C 317, 20.11.2010.

Judgment of the General Court of 14 December 2018 — East West Consulting v Commission

(Case T-298/16) ([1])

(Non-contractual liability — Instrument for Pre-Accession Assistance — Third country — National public procurement — Devolved management — Decision 2008/969/EC, Euratom — Early Warning System (EWS) — Activation of a warning in the EWS — Protection of the financial interests of the European Union — Commission's refusal to give ex ante approval — Contract not awarded — Jurisdiction of the General Court — Admissibility of evidence — No legal basis for the warning — Rights of defence — Presumption of innocence — Sufficiently serious breach of a rule of law conferring rights on individuals — Causal link — Material and non-material damage — Loss of the contract — Loss of the opportunity to be awarded other contracts)

(2019/C 93/49)

Language of the case: French

Parties

Applicant: East West Consulting SPRL (Nandrin, Belgium) (represented by: initially L. Levi and A. Tymen, and subsequently L. Levi, lawyers)

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

Re:

Application under Article 268 TFEU seeking compensation for the material and non-material harm allegedly suffered by the applicant as a result of a warning being activated against it in the Early Warning System (EWS) and the subsequent refusal, on the basis of that warning, to endorse the contract awarded, following a public procurement procedure, to the consortium which it led and which was to be financed by the European Union in the context of the Instrument for Pre-Accession Assistance (IPA).

Operative part of the judgment

The Court:

1. *Orders the European Commission to pay to East West Consulting SPRL the sum of EUR 20 000;*

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

3. *Orders each party to bear its own costs.*

([1]) OJ C 270, 25.7.2016.

Judgment of the General Court of 17 January 2019 — Aristoteleio Panepistimio Thessalonikis v ERCEA

(Case T-348/16 OP) ([1])

(Arbitration clause — Seventh framework programme for research, technological development and demonstration activities — Minatran project — Eligible costs — Compensation — Judgment by default — Application to have a judgment set aside)

(2019/C 93/50)

Language of the case: Greek

Parties

Applicant: Aristoteleio Panepistimio Thessalonikis (Thessaloniki, Greece) (represented by: V. Christianos and S. Paliou, lawyers)

Defendant: European Research Council Executive Agency (represented by: M. Pesquera Alonso and F. Sgritta, acting as Agents, and E. Kourakis and P. Dikaiou, lawyers)

Re:

Application by ERCEA to set aside the judgment of 6 April 2017, *Aristoteleio Panepistimio Thessalonikis* v *ERCEA* (T-348/16, not published, EU:T:2017:268).

Operative part of the judgment

The Court:

1. *Annuls points 1, 2 and 3 of the operative part of the judgment of 6 April 2017, Aristoteleio Panepistimio Thessalonikis v ERCEA (T-348/16);*

2. *Declares that the claim formulated in debit note No 3241606289 of the European Research Council Executive Agency (ERCEA) of 26 May 2016 for the return by Aristoteleio Panepistimio Thessalonikis of part of the subsidy it received for the Minatran project, amounting to EUR 245 525,43, is unfounded up to an amount of EUR 233 611,75 and that the latter amount corresponds to eligible costs;*

3. *Dismisses the action brought by Aristoteleio Panepistimio Thessalonikis and the application filed by ERCEA as to the remainder;*

4. *Orders ERCEA to bear its own costs and to pay those incurred by Aristoteleio Panepistimio Thessalonikis in Cases T-348/16 and T-348/16 OP;*

5. *Orders ERCEA to bear its own costs and to pay those incurred by Aristoteleio Panepistimio Thessalonikis in Case T-348/16 OP-R.*

(1) OJ C 296, 16.8.2016.

Judgment of the General Court of 16 January 2019 — Bena Properties v Council

(Case T-412/16) (1)

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Rights of the defence — Right to effective judicial protection — Obligation to state reasons — Manifest error of assessment — Right to respect for one's good name and reputation — Right to property — Presumption of innocence — Proportionality)

(2019/C 93/51)

Language of the case: French

Parties

Applicant: Bena Properties Co. SA (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union (represented by: initially S. Kyriakopoulou, G. Etienne and A. Vitro, then S. Kyriakopoulou and A. Vitro, and finally S. Kyriakopoulou, A. Vitro and V. Piessevaux, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of Council Decision (CFSP) 2016/850 of 27 May 2016, amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125) and the subsequent measures implementing it, Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 139, p. 62), and Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018 L 131, p. 16), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Declares that Bena Properties Co. SA is to bear its own costs and orders it to pay those incurred by the Council of the European Union.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 16 January 2019 — Cham v Council

(Case T-413/16) ([1])

(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Rights of the defence — Right to effective judicial protection — Obligation to state reasons — Manifest error of assessment — Right to honour and reputation — Right to property — Presumption of innocence — Proportionality)

(2019/C 93/52)

Language of the case: French

Parties

Applicant: Cham Holding (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union (represented by: initially, S. Kyriakopoulou, G. Étienne and A. Vitro, then by S. Kyriakopoulou and A. Vitro, and subsequently by S. Kyriakopoulou, A. Vitro and V. Piessevaux, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking the annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125), and its subsequent implementing acts, of Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 139, p. 62), and of Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018 L 131, p. 16), in so far as those measures apply to the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cham Holding to bear its own costs and to pay those incurred by the Council of the European Union.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 14 December 2018 — GQ and Others v Commission

(Case T-525/16) ([1])

(Civil service — Officials — Reform of the Staff Regulations — Regulation (EU, Euratom) No 1023/2013 — Types of posts — Transitional rules on grading in the types of posts — Article 31 of Annexe XIII to the Staff Regulations — Assistants in transition — Promotion under Article 45 of the Staff Regulations only allowed within the career streams corresponding to the type of post occupied — Access to the 'senior assistant' (AST 10) type of post exclusively in accordance with the procedure under Article 4 and Article 29(1) of the Staff Regulations — Equal treatment — Loss of eligibility for promotion to the next higher grade — Legitimate expectations)

(2019/C 93/53)

Language of the case: French

Parties

Applicants: GQ and the 7 other applicants whose names appear in the annex to the judgment (represented by T. Bontinck and A. Guillerme, lawyers)

Defendant: European Commission (represented initially by J. Currall and G. Gattinara, subsequently by G. Gattinara and C. Berardis-Kayser and finally by G. Gattinara and G. Berscheid, acting as Agents)

Interveners in support of the defendant: European Parliament (represented initially by M. Dean and N. Chemaï, subsequently by J. Steele, L. Deneys and J. Van Pottelberge, acting as Agents); and the Council of the European Union (represented initially by M. Bauer and E Rebasti and subsequently by M. Bauer and R. Meyer, acting as Agents)

Re:

Application based on Article 270 TFEU and seeking annulment of the Commission's decisions by which the appointing authority of that institution classified the applicants in the 'senior assistant' type of post, with the consequence that, with effect from 1 January 2014, they were no longer eligible for promotion to the next higher grade, as confirmed by the decisions of that authority of 3 July 2014 rejecting the complaints lodged by the applicants between 11 and 28 March 2014.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders GQ and the other officials of the European Commission whose names are listed in the annex to pay the costs;*

3. *Orders the European Parliament and the Council of the European Union to bear their own costs.*

([1]) OJ C 7, 12.1.2015 (case initially registered before the European Union Civil Service Tribunal under Case No F-111/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 14 December 2018 — FZ and Others v Commission

(Case T-526/16) ([1])

(Civil service — Officials — Reform of the Staff Regulations — Regulation (EU, Euratom) No 1023/2013 — Types of posts — Transitional rules on grading in the types of posts — Article 30 of Annexe XIII to the Staff Regulations — Administrators in transition (AD 13) — Administrators (AD 12) — Promotion under Article 45 of the Staff Regulations only allowed within the career streams corresponding to the type of post occupied — Access to the type of post 'Head of Unit or equivalent' or 'Adviser or equivalent' exclusively in accordance with the procedure under Article 4 and Article 29(1) of the Staff Regulations — Equal treatment — Loss of eligibility for promotion to the next higher grade — Legitimate expectations)

(2019/C 93/54)

Language of the case: French

Parties

Applicants: FZ, and the 9 other applicants whose names appear in the annex to the judgment (represented by T. Bontinck and A. Guillerme, lawyers)

Defendant: European Commission (represented initially by J. Currall and G. Gattinara, subsequently by G. Gattinara and C. Berardis-Kayser and finally by G. Gattinara and L. Radu Bouyon, acting as Agents)

Interveners in support of the defendant: European Parliament (represented initially by N. Chemaï and M. Dean, subsequently by L. Deneys, J. Steele and J. Van Pottelberge, acting as Agents); and the Council of the European Union (represented initially by M. Bauer and E Rebasti and subsequently by M. Bauer and R. Meyer, acting as Agents)

Re:

Application based on Article 270 TFEU and seeking annulment of the Commission's decisions by which the appointing authority of that institution classified the applicants in the 'administrator in transition' or 'administrator' types of post, with the consequence that, with effect from 1 January 2014, they were no longer eligible for promotion to the next higher grade, as confirmed by the decisions of that authority of 3 July, 17 July and 6 August 2014.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders FZ and the other officials of the European Commission whose names are listed in the annex to pay the costs;*

3. *Orders the European Parliament and the Council of the European Union to bear their own costs.*

([1]) OJ C 7, 12.1.2015 (case initially registered before the European Union Civil Service Tribunal under Case No F-113/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 14 December 2018 — FZ and Others v Commission

(Case T-540/16) ([1])

(Civil service — Officials — Reform of the Staff Regulations — Regulation (EU, Euratom) No 1023/2013 — Types of posts — Transitional rules on grading in the types of posts — Article 30 of Annexe XIII to the Staff Regulations — Administrators in transition (AD 13) — Administrators (AD 12) — Promotion under Article 45 of the Staff Regulations only allowed within the career streams corresponding to the type of post occupied — Access to the type of post 'Head of Unit' or equivalent' or 'Adviser or equivalent' exclusively in accordance with the procedure under Article 4 and Article 29(1) of the Staff Regulations — Concept of an act adversely affecting an official — Confirmatory act — Lis pendens — Compliance with the requirements of the pre-litigation procedure — Inadmissibility)

(2019/C 93/55)

Language of the case: French

Parties

Applicants: FZ, and the 8 other applicants whose names appear in the annex to the judgment (represented by T. Bontinck and A. Guillerme, lawyers)

Defendant: European Commission (represented initially by J. Currall and G. Gattinara, subsequently by G. Gattinara and C. Berardis-Kayser and finally by G. Gattinara and L. Radu Bouyon, acting as Agents)

Interveners in support of the defendant: European Parliament (represented initially by N. Chemaï and M. Dean, subsequently by L. Deneys, J. Steele and J. Van Pottelberge, acting as Agents); and the Council of the European Union (represented initially by M. Bauer and M. Veiga and subsequently by M. Bauer and R. Meyer, acting as Agents)

Re:

Application based on Article 270 TFEU and seeking annulment of the Commission's decisions by which the appointing authority of that institution classified the applicants in the 'administrator in transition' or 'administrator' types of post, with the consequence that, with effect from 1 January 2014, they were no longer eligible for promotion to the next higher grade.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible, in so far as it is brought by FZ and the eight officials of the European Commission, other than GL, whose names are listed in the annex.*

2. *Dismisses the action as inadmissible and, in any event, as unfounded in so far as it is brought by GL.*

3. *Orders the Commission to bear its own costs and to pay half the costs incurred by the officials whose names are listed in the annex.*

4. *Orders FZ and the other officials whose names are listed in the annex to bear half of their own costs.*

5. *Orders the European Parliament and the Council of the European Union to bear their own costs.*

([1]) OJ C 96, 23.3.2015 (case initially registered before the European Union Civil Service Tribunal under Case No F-18/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 13 December 2018 — Kakol v Commission

(Cases T-641/16 RENV and T-137/17) [1]

(Staff case — Officials — Recruitment — Notice of competition — Open competition — Non-admission of a candidate to take part in the tests of the assessment centre — Non-recognition of qualifications or diplomas — Admission to a previous competition — Conditions for similar competitions — Concordance rule between the request and the complaint — Res judicata — Non-compliance with the prior administrative procedure — Measure adversely affecting the applicant within the meaning of Article 91 of the Staff Regulations — Competence of the authority which adopted the measure — Claim for damages)

(2019/C 93/56)

Language of the case: French

Parties

Applicant: Danuta Kakol (Luxembourg, Luxembourg) (represented by: R. Duta, lawyer)

Defendant: European Commission (represented by: G. Gattinara and L. Radu Bouyon, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, the annulment of the decisions of 14 February 2014, notified on 2 May 2016, and of 25 November 2016 not to admit the applicant to the assessment centre tests for competition AD/177/10, organised by the European Personnel Selection Office (EPSO), on the ground that she did not fulfil the specific conditions relating to qualifications or diplomas required in the competition notice, or rejecting her complaint against that refusal of admission, and, secondly, that the Commission be ordered to pay her the sum of EUR 5 000 as compensation for the non-material damage she allegedly suffered as a result of the vexatious nature of the processing of her application

Operative part of the judgment

The Court:

1. *Joins Cases T-641/16 RENV and T-137/17 for the purposes of the judgment;*

2. *Rules, in Case T-641/16 RENV, that there is no longer any need to adjudicate on the application for annulment and, dismisses the remainder of the action;*

3. *Dismisses the action in Case T-137/17;*

4. *Orders each party to bear its own costs relating to Cases T-641/16 RENV and T-137/17 and Cases F-48/14 and T-152/15 P.*

[1] OJ C 52, 22.2.2014 (proceedings initially brought before the Civil Service Tribunal of the European Union under number F-1/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 14 December 2018 — FV v Council

(Case T-750/16) [1]

(Civil Service — Officials — Article 42c of the Staff Regulations — Leave in the interests of the service — Equal treatment — Prohibition of discrimination on grounds of age — Manifest error of assessment — Liability)

(2019/C 93/57)

Language of the case: French

Parties

Applicant: FV (represented by: initially, L. Levi and A. Tymen, and subsequently, L. Levi, lawyers)

Defendant: Council of the European Union (represented by: M. Bauer and R. Meyer, acting as Agents)

Interveners in support of the defendant: European Parliament (represented by: A. Troupiotis and J. A. Steele, acting as Agents); and European Commission (represented by: G. Berscheid and D. Martin, acting as Agents)

Re:

Application pursuant to Article 270 TFEU and seeking, first, annulment of the decision of the Council of 8 December 2015 to place the applicant on leave in the interests of the service on the basis of Article 42c of the Staff Regulations of Officials of the European Union and, if necessary, the decision of 19 July 2016 rejecting the complaint brought by the applicant and, secondly, compensation for the harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Annuls the decision of 8 December 2015 by which FV has been placed on leave in the interests of the service;*

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

3. *Orders the Council of the European Union to bear its own costs and to pay the costs incurred by FV;*

4. *Orders the European Parliament and the European Commission to bear their own costs.*

[1] OJ C 6, 9.1.2017.

Judgment of the General Court of 15 January 2019 — HJ v EMA

(Case T-881/16) [1]

(Civil service — Temporary agents — Partial inadmissibility — Application for an injunction — Access of officials to their personal file — Articles 26 and 26a of the Staff Regulations — Access to documents — Regulation (EC) No 1049/2001 — Personal file made accessible to all members of staff of the EMA — Protection of natural persons with regard to the processing of personal data by EU institutions and bodies — Liability — Non-material harm)

(2019/C 93/58)

Language of the case: French

Parties

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

Defendant: European Medicines Agency (represented by: I. Ratescu and F. Cooney, acting as Agents, and S. Orlandi and T. Martin, lawyers)

Re:

Application pursuant to Article 270 TFEU seeking, first, compensation in respect of the non-material harm which the applicant claims to have suffered following the disclosure of his personal file to all members of staff of the EMA and, second, the withdrawal of two documents from that file.

Operative part of the judgment

The Court:

1. *Orders the European Medicines Agency (EMA) to pay HJ the symbolic sum of EUR 1 by way of compensation for the non-material harm suffered;*

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

3. *Orders the EMA to bear its own costs and pay those incurred by HJ.*

(1) OJ C 46, 13.2.2017.

Judgment of the General Court of 14 December 2018 — TDH Group v EUIPO — Comercial de Servicios Agrigán (Pet Cuisine)

(Case T-46/17) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark Pet Cuisine — Earlier EU figurative mark The Pet CUISINE alimento para mascotas felices Genial — 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))

(2019/C 93/59)

Language of the case: English

Parties

Applicant: TDH Group (Brussels, Belgium) (represented by: D. Chen, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Comercial de Servicios Agrigán, SA (Huesca, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 10 November 2016 (Case R 685/2016 2), relating to opposition proceedings between Comercial de Servicios Agrigán and TDH Group.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TDH Group to pay the costs.*

(1) OJ C 78, 13.3.2017.

Judgment of the General Court of 15 January 2019 — Computer Market v EUIPO (COMPUTER MARKET)

(Case T-111/17) (1)

(EU trade mark — Application for the EU figurative mark COMPUTER MARKET — Absolute ground for refusal — Late filing of the notice of appeal — Inadmissibility of the appeal before the Board of Appeal — Article 60 of Regulation (EC) No 207/2009 (now Article 68 of Regulation (EU) 2017/1001) — Rule 49 (1) of Regulation (EC) No 2868/95 (now Article 23(1)(b) of Delegated Regulation (EU) 2018/625))

(2019/C 93/60)

Language of the case: English

Parties

Applicant: Computer Market (Sofia, Bulgaria) (represented by: B. Dimitrova, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 13 December 2016 (Case R 1778/2016-2), relating to an application for registration of the figurative sign COMPUTER MARKET as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Computer Market to pay the costs.*

(1) OJ C 213, 3.7.2017.

Judgment of the General Court of 14 December 2018 — Torné v Commission

(Case T-128/17) (1)

(Civil service — Officials — 2014 reform of the Staff Regulations — Leave on personal grounds — Engagement at the same time as a member of the temporary staff — Transitional measures relating to certain details in the calculation of pension rights — Request for an advance ruling — Act having an adverse effect — Purpose of the transitional measures — Application ratione personae — Entry into service)

(2019/C 93/61)

Language of the case: French

Parties

Applicant: Isabel Torné (Algés, Portugal) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: initially G. Berscheid and A.C. Simon, subsequently G. Berscheid and L. Radu Bouyon, and lastly G. Berscheid and B. Mongin, acting as Agents)

Interveners in support of the applicant: Agency for the Cooperation of Energy Regulators (represented by: initially S. Manessi, and subsequently P. Martinet, acting as Agents, assisted by S. Orlandi and T. Martin, lawyers); European Border and Coast Guard Agency (represented by: H. Caniard and S. Drew, acting as Agents, assisted by S. Orlandi and T. Martin, lawyers); European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (represented by: M. Chiodi, acting as Agent, assisted by D. Waelbroeck and A. Duron, lawyer); European Maritime Safety Agency (represented by: S. Dunlop, acting as Agent, assisted by S. Orlandi and T. Martin, lawyers); European Banking Authority (represented by: S. Giordano and J. Overett Somnier, acting as Agents); European Securities and Markets Authority (represented by: A. Lorenzet and N. Vasse, acting as Agents, assisted by S. Orlandi and T. Martin, lawyers); and European Asylum Support Office (represented by: initially W. Stevens, and subsequently M. Vitsa, acting as Agents, assisted by A. Duron, lawyer)

Re:

Application based on Article 270 TFEU seeking annulment of the Commission's decision rejecting the applicant's request of 16 December 2015 for an advance ruling setting the date of her entry into service within the meaning of the transitional provisions of Annex XIII to the Staff Regulations of Officials of the European Union regarding certain methods for calculating pension rights.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Commission of 16 April 2016, confirmed by the note of the Office for 'Administration and Payment of Individual Entitlements' (PMO) of 29 April 2016;*

2. *Orders the Commission to bear its own costs and to pay those incurred by Ms Isabel Torné;*

3. *Orders the Agency for the Cooperation of Energy Regulators (ACER), the European Border and Coast Guard Agency (Frontex), the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), the European Maritime Safety Agency (EMSA), the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Asylum Support Office (EASO) to bear their own respective costs.*

(1) OJ C 129, 24.4.2017.

Judgment of the General Court of 10 January 2019 — RY v Commission

(Case T-160/17) (1)

(Civil service — Temporary staff — Article 2(c) of the Conditions of Employment of Other Servants — Open-ended contract — Dismissal — Breakdown in the relationship of trust — Right to be heard — Burden of proof)

(2019/C 93/62)

Language of the case: French

Parties

Applicant: RY (represented initially by J.-N. Louis and N. de Montigny, and subsequently by J.-N. Louis, lawyers)

Defendant: European Commission (represented by: G. Berscheid and L. Radu Bouyon, acting as Agents)

Re:

Application on the basis of Article 270 TFEU seeking annulment of the decision of the Commission of 27 April 2016 terminating the applicant's open-ended contract.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Commission of 27 April 2016 terminating RY's open-ended contract;*

2. *Orders the Commission to pay the costs.*

(1) OJ C 144, 8.5.2017.

Judgment of the General Court of 14 December 2018 — TP v Commission

(Case T-464/17) (1)

(Civil service — Officials — Remuneration — Deduction from salary — Maintenance awarded by a national court in the context of divorce proceedings — Sincere cooperation with the national courts — Circumscribed powers — Article 24 of the Staff Regulations — European Code of Good Administrative Behaviour — Rule of correspondence — Act adversely affecting a person — Claim for compensation — Compliance with the pre-litigation procedure)

(2019/C 93/63)

Language of the case: Italian

Parties

Applicant: TP (represented by: W. Limuti, lawyer)

Defendant: European Commission (represented by: G. Berscheid and R. Striani, acting as Agents)

Re:

Action under Article 270 TFEU seeking, first, annulment of the decision of the Commission to make a monthly deduction from the applicant's salary in respect of maintenance to be paid to his ex-wife pursuant to the ruling of an Italian court and, second, compensation for the harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TP to pay the costs.*

(1) OJ C 309, 18.9.2017.

Judgment of the General Court of 16 January 2019 — Haswani v Council

(Case T-477/17) (1)

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Obligation to state reasons — Proportionality — Error of assessment)

(2019/C 93/64)

Language of the case: French

Parties

Applicant: George Haswani (Yabroud, Syria) (represented by: G. Karouni, lawyer)

Defendant: Council of the European Union (represented by: S. Kyriakopoulou and A. Sikora-Kalėda, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: L. Baumgart, A. Bouquet and A. Tizzano, acting as Agents)

Re:

First, application under Article 263 TFEU for the annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125), of Council Implementing Regulation (EU) 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 141, p. 30), Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 139, p. 62), Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2017 L 139, p. 15), Council Implementing Decision (CFSP) 2017/1245 of 10 July 2017 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 178, p. 13), Council Implementing Regulation (EU) 2017/1241 of 10 July 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2017 L 178, p. 1), Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018 L 131, p. 16), and of Council Implementing Regulation (EU) 2018/774 of 28 May 2018 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2018 L 131, p. 1), in so far as those measures concern the applicant, and, secondly, an application under Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicant as a result of Decision 2017/917 and Implementing Regulation 2017/907.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr George Haswani to bear his own costs and to pay those incurred by the Council of the European Union.*

(1) OJ C 347, 16.10.2017.

Judgment of the General Court of 16 January 2019 — Windspiel Manufaktur v EUIPO (Representation of the position of a bottle closure)

(Case T-489/17) (1)

(EU trade mark — Application for an EU trade mark representing a bottle closure — 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))

(2019/C 93/65)

Language of the case: German

Parties

Applicant: Windspiel Manufaktur GmbH (Daun, Germany) (represented by: O. Löffel, lawyer)

Defendant: European Union Intellectual Property Office (represented by: V. Mensing, M. Fischer and D. Walicka, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 1 June 2017 (Case R 1374/2016-4) concerning an application for registration of a sign representing a bottle closure as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Windspiel Manufaktur GmbH to pay the costs.*

(1) OJ C 309, 18.9.2017.

Judgment of the General Court of 14 December 2018 — UC v Parliament

(Case T-572/17) (1)

(Staff case — Officials — Promotion — 2015 promotion round — Staff report — Award of merit points — Obligation to state reasons — Right to be heard — Manifest error of assessment — Liability — Non-material damage)

(2019/C 93/66)

Language of the case: French

Parties

Applicant: UC (represented by: A. Tymen, lawyer)

Defendant: European Parliament (represented by: J. Steele and J. Van Pottelberge, acting as Agents)

Re:

Action under Article 270 TFEU seeking, first, annulment of the applicant's staff report for 2015, of the decision to award him two merit points for that year and of the decision to reject his complaint and, secondly, compensation for the non-material damage allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders UC to pay the costs.*

(1) OJ C 369, 30.10.2017.

Judgment of the General Court of 17 January 2019 — Mas Que Vinos Global v EUIPO — JESA (EL SEÑORITO)

(Case T-576/17) (1)

(European Union trade mark — Opposition proceedings — Application for EU word mark EL SEÑORITO — Earlier national word mark SEÑORITA — 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))

(2019/C 93/67)

Language of the case: Spanish

Parties

Applicant: Mas Que Vinos Global, S.L. (Dosbarrios, Spain) (represented by: M. J. Sanmartín Sanmartín, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Jose Estevez, SA (JESA) (Jerez de la Frontera, Spain) (represented by: M. de Justo Bailey, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 9 June 2017 (Case R 1775/2016-4), relating to opposition proceedings between JESA and Mas Que Vinos Global.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mas Que Vinos Global S. L. to pay the costs.*

(1) OJ C 357, 23.10.2017.

Judgment of the General Court of 17 January 2019 — Turbo-K International v EUIPO — Turbo-K (TURBO-K)

(Case T-671/17) (1)

(EU trade mark — Opposition proceedings — Application for EU work mark TURBO-K — Earlier non-registered marks TURBO-K — Relative ground for refusal — Use of a sign in the course of trade of more than mere local significance — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Rules governing common-law actions for passing-off — Goodwill)

(2019/C 93/68)

Language of the case: English

Parties

Applicant: Turbo-K International Ltd (Birmingham, United Kingdom) (represented by: A. Norris and A. Muir Wood, Barristers)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Turbo-K Ltd (Winchester, United Kingdom) (represented by: O. van Haperen, lawyer, T. St Quintin, Barrister, and E. Morris, Solicitor)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 July 2017 (Case R 2135/2016-2), relating to opposition proceedings between Turbo-K and Turbo-K International.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the cross-claim as inadmissible;*

3. *Orders Turbo-K International Ltd and Turbo-K Ltd each to bear their own costs and each to pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 424, 11.12.2017.

Judgment of the General Court of 14 December 2018 — UR v Commission

(Case T-761/17) (1)

(Civil service — Open competition — Notice of competition EPSO/AD/322/16 for the recruitment of administrators in the field of audit (AD 5/AD 7) — Eligibility condition — Required qualification — Non-inclusion on the reserve list — Obligation to state reasons — Manifest error of assessment — Article 27, first paragraph, of the Staff Regulations)

(2019/C 93/69)

Language of the case: French

Parties

Applicant: UR (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: P. Mihaylova and B. Mongin, acting as Agents)

Re:

Application pursuant to Article 270 TFEU seeking annulment of the decision of 11 August 2017 of the selection board in Competition EPSO/AD/322/16, taken following a review, not to include the applicant's name on the reserve list for that competition.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders UR to pay the costs.*

(1) OJ C 32, 29.1.2018.

Judgment of the General Court of 14 December 2018 — Dermatest v EUIPO (ORIGINAL excellent dermatest 3-star-guarantee.de)

(Case T-801/17) (1)

(EU trade mark — Application for EU figurative mark ORIGINAL excellent dermatest 3-star-guarantee.de — Absolute grounds for refusal — Descriptive character — No distinctive character — No distinctive character acquired through use — Article 7(1)(b) and (c) and 7(3) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) and 7(3) of Regulation (EU) 2017/1001))

(2019/C 93/70)

Language of the case: German

Parties

Applicant: Dermatest Gesellschaft für allergologische Forschung u. Vertrieb von Körperpflegemitteln mbH (Münster, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 September 2017 (Case R 524/2017-4), relating to an application for registration of the figurative sign ORIGINAL excellent dermatest 3-star-guarantee.de as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dermatest Gesellschaft für allergologische Forschung u. Vertrieb von Körperpflegemitteln mbH to pay the costs.*

(1) OJ C 42, 5.2.2018.

Judgment of the General Court of 14 December 2018 — Dermatest v EUIPO (ORIGINAL excellent dermatest 5-star-guarantee.de CLINICALLY TESTED)

(Case T-802/17) (1)

(EU trade mark — Application for EU figurative mark ORIGINAL excellent dermatest 5-star-guarantee.de CLINICALLY TESTED — Absolute grounds for refusal — Descriptive character — No distinctive character — No distinctive character acquired through use — Article 7(1)(b) and (c) and 7(3) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) and 7(3) of Regulation (EU) 2017/1001))

(2019/C 93/71)

Language of the case: German

Parties

Applicant: Dermatest Gesellschaft für allergologische Forschung u. Vertrieb von Körperpflegemitteln mbH (Münster, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 September 2017 (Case R 525/2017-4), relating to an application for registration of the figurative sign ORIGINAL excellent dermatest 5-star-guarantee.de CLINICALLY TESTED as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dermatest Gesellschaft für allergologische Forschung u. Vertrieb von Körperpflegemitteln mbH to pay the costs.*

(1) OJ C 42, 5.2.2018.

Judgment of the General Court of 14 December 2018 — Dermatest v EUIPO (ORIGINAL excellent dermatest)

(Case T-803/17) ([1])

(EU trade mark — Application for EU figurative mark ORIGINAL excellent dermatest — Absolute grounds for refusal — Descriptive character — No distinctive character — No distinctive character acquired through use — Article 7(1)(b) and (c) and 7(3) of Regulation (EC) No 207/2009 (now Article 7 (1)(b) and (c) and 7(3) of Regulation (EU) 2017/1001))

(2019/C 93/72)

Language of the case: German

Parties

Applicant: Dermatest Gesellschaft für allergologische Forschung u. Vertrieb von Körperpflegemitteln mbH (Münster, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 September 2017 (Case R 526/2017-4), relating to an application for registration of the figurative sign ORIGINAL excellent dermatest as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dermatest Gesellschaft für allergologische Forschung u. Vertrieb von Körperpflegemitteln mbH to pay the costs.*

([1]) OJ C 42, 5.2.2018.

Judgment of the General Court of 10 January 2019 — achtung! v EUIPO (achtung!)

(Case T-832/17) ([1])

(EU trade mark — International registration designating the European Union — Figurative mark achtung! — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 93/73)

Language of the case: German

Parties

Applicant: achtung! GmbH (Hamburg, Germany) (represented by: G. Seelig and D. Bischof, lawyers)

Defendant: European Union Intellectual Property Office (represented by: initially A. Söder, J. Schäfer and D. Walicka, and subsequently A. Söder, J. Schäfer and H. O'Neill, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 23 October 2017 (Case R 490/2017-4), relating to the international registration designating the European Union in respect of the figurative mark achtung!.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders achtung! GmbH to pay the costs.*

(1) OJ C 63, 19.2.2018.

Judgment of the General Court of 14 December 2018 — Inforsacom Logicalis v EUIPO (Business and technology working as one)

(Case T-7/18) (1)

((EU trade mark — Application for EU word mark Business and technology working as one — Trade mark consisting in an advertising slogan — Absolute ground for refusal — Descriptive character — Article 7(1) (c) of Regulation (EU) 2017/1001))

(2019/C 93/74)

Language of the case: German

Parties

Applicant: Inforsacom Logicalis GmbH (Neu-Isenburg, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 20 October 2017 (Case R 808/2017-1), concerning an application for registration of the word sign Business and technology working as one as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Inforsacom Logicalis GmbH to pay the costs.*

(1) OJ C 72, 26.2.2018.

Judgment of the General Court of 13 December 2018 — Yado v EUIPO — Dvectis CZ (Support pillow)

(Case T-30/18) (1)

(Community design — Invalidity proceedings — Community design No 2371591-0001 (Support pillow) — Inadmissibility of the appeal before the Board of Appeal — Sending of a document to EUIPO by means of a contact form — Sending of a document to EUIPO by electronic means and by fax)

(2019/C 93/75)

Language of the case: Slovak

Parties

Applicant: Yado s.r.o. (Handlová, Slovakia) (represented by: D. Futej, lawyer)

Defendant: European Union Intellectual Property Office (represented by: R. Cottrell and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Dvectis CZ s.r.o. (Brno, Czech Republic) (represented by: L. Litváková, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 14 November 2017 (Case R 1017/2017-3) relating to invalidity proceedings between Dvectis CZ and Yado.

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 14 November 2017 (Case R 1017/2017-3);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Yado s.r.o.;*

3. *Orders Dvectis CZ s.r.o. to bear its own costs.*

(1) OJ C 94, 12.3.2018.

Judgment of the General Court of 17 January 2019 — Ecolab USA v EUIPO (SOLIDPOWER)

(Case T-40/18) (1)

(EU trade mark — International registration designating the European Union — Word mark SOLIDPOWER — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2019/C 93/76)

Language of the case: English

Parties

Applicant: Ecolab USA, Inc. (Wilmington, Delaware, United States) (represented by: V. Töbelmann, K. Middelhoff, and C. Saatkamp, lawyers)

Defendant: European Union Intellectual Property Office (represented by: K. Kompari and D. Walicka, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 9 November 2017 (Case R 1182/2017-5), relating to the international registration designating the European Union in respect of the word mark SOLIDPOWER.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ecolab USA, Inc. to pay the costs.*

(1) OJ C 104, 19.3.2018.

Judgment of the General Court of 17 January 2019 — Equity Cheque Capital Corporation v EUIPO (DIAMOND CARD)

(Case T-91/18) ([1])

(EU trade mark — Application for EU figurative mark DIAMOND CARD — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 93/77)

Language of the case: English

Parties

Applicant: Equity Cheque Capital Corporation (Victoria, Canada) (represented by: I. Berkeley, Barrister, P. Wheeler and C. Rani, Solicitors)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh and A. Folliard-Monguiral, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 December 2017 (Case R 1544/2017-4), relating to an application for registration of the figurative sign DIAMOND CARD as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Equity Cheque Capital Corporation to pay the costs.*

([1]) OJ C 134, 16.4.2018.

Judgment of the General Court of 17 January 2019 — ETI Gıda Sanayi ve Ticaret v EUIPO — Grupo Bimbo (ETI Bumbo)

(Case T-368/18) ([1])

(European Union trade mark — Opposition proceedings — Application for EU word mark ETI Bumbo — Earlier EU figurative mark BIMBO — Relative ground for refusal — Likelihood of confusion — Relevant public — Similarity of the signs — Distinctiveness of the earlier mark — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 93/78)

Language of the case: Spanish

Parties

Applicant: ETI Gıda Sanayi ve Ticaret AŞ (Eskişehir, Turkey) (represented by: D. Cañadas Arcas, P. Merino Baylos, D. Gómez Sánchez and N. Martínez de las Rivas Malagón, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Grupo Bimbo, SAB de CV (Mexico, Mexico) (represented by: N. A. Fernández-Fernández-Pacheco, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 11 April 2018 (Case R 1459/2017-1), relating to opposition proceedings between Grupo Bimbo and ETI Gıda Sanayi ve Ticaret.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ETI Gıda Sanayi ve Ticaret AŞ to pay the costs.*

(1) OJ C 276, 6.8.2018.

Order of the General Court of 16 January 2019 — Theodorakidi v EUIPO — Benopoulou (THYREOS VASSILIKI)

(Case T-160/18) (1)

(EU trade mark — Invalidity proceedings — EU figurative mark THYREOS VASSILIKI — Declaration of invalidity — Right to the name Vassiliki in Greece — Relative ground for invalidity regarding the infringement of the right to a name — Article 60(2)(a) of Regulation (EU) 2017/1001 — Action manifestly lacking any foundation in law)

(2019/C 93/79)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (represented by: E. Markakis, Agent)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 December 2017 (Case R 40/2017-4), relating to invalidity proceedings between Ms Benopoulou and Ms Theodorakidi.

Operative part of the order

1. *The action is dismissed.*

2. *Ms Vassiliki Theodorakidi shall bear her own costs and pay those of the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 152, 30.4.2018.

Order of the General Court of 23 January 2019 — MLPS v Commission

(Case T-304/18) (1)

(Action for annulment and for failure to act — Decision to take no further action on a complaint — Refusal by the Commission to institute proceedings under Article 7 TEU — Act not open to challenge — No direct concern — Inadmissibility)

(2019/C 93/80)

Language of the case: French

Parties

Applicant: Mouvement pour la liberté de la protection sociale (MLPS) (Paris, France) (represented by: M. Gibaud, lawyer)

Defendant: European Commission (represented by: H. Tserepa–Lacombe and H. Krämer, acting as Agents)

Re:

First, application pursuant to Article 263 TFEU seeking annulment of the decision of the Commission of 7 March 2018 refusing to take any further action on a complaint requesting that proceedings be brought on the basis of Article 7 TEU against the French Republic and, secondly, action based on Article 265 TFEU seeking a declaration that the Commission unlawfully refrained from dealing with that complaint.

Operative part of the order

1. *The action is dismissed.*

2. *The Mouvement pour la liberté de la protection sociale shall pay the costs.*

(1) OJ C 259, 23.7.2018.

Order of the General Court of 16 January 2019 — Szécsi and Somossy v Commission

(Case T-331/18) (1)

(Action for damages — Law governing the institutions — Failure by the Commission to adopt appropriate measures to ensure compliance, by Hungarian courts, with Article 13 of Directive 2005/29/EC and the relevant national transposition measure — Inadmissibility)

(2019/C 93/81)

Language of the case: German

Parties

Applicants: István Szécsi (Szeged, Hungary) and Nóra Somossy (Szeged) (represented by: D. Lazar, lawyer)

Defendant: European Commission (represented by: B. Bertelmann and N. Ruiz García, acting as Agents)

Re:

Application based on Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicants as a result of the breach by the Commission of its supervisory obligation.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr István Szécsi and Ms Nóra Somossy shall pay the costs.*

(1) OJ C 259, 23.7.2018.

Order of the General Court of 23 January 2019 — Prigent v Commission

(Case T-436/18) (1)

(Action for annulment — Decision to take no further action on a complaint — Refusal of the Commission to bring infringement proceedings — Act not open to challenge — No direct concern — Inadmissibility)

(2019/C 93/82)

Language of the case: French

Parties

Applicant: Claude Prigent (Caudan, France) (represented by: A. Bove, lawyer)

Defendant: European Commission (represented by: D. Martin, acting as Agent)

Re:

Application pursuant to Article 263 TFEU seeking annulment of the decision of the Commission of 23 May 2018 not to take any further action on the applicant's complaint seeking a declaration that the French authorities infringed Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1).

Operative part of the order

1. *The action is dismissed.*

2. *Mr Claude Prigent shall pay the costs.*

(1) OJ C 352, 1.10.2018.

Order of the General Court of 10 January 2019 — LG Electronics v EUIPO — Beko (BECON)

(Case T-557/18) (1)

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

(2019/C 93/83)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, South Korea) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Beko plc (Watford, United Kingdom)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 11 July 2018 (Case R 41/2018-5), relating to opposition proceedings between Beko plc and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc. shall bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 399, 5.11.2018.

Order of the President of the General Court of 21 January 2019 — Agrochem-Maks v Commission

(Case T-574/18 R)

(Application for interim measures — Plant-protection products — Active substance oxasulfuron — Non-renewal of approval for placing on the market — Application for suspension of operation — Lack of urgency — Balancing of interests)

(2019/C 93/84)

Language of the case: English

Parties

Applicant: Agrochem-Maks d.o.o. (Zagreb, Croatia) (represented by S. Pappas, lawyer)

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

Re:

Application based on Articles 278 and 279 TFEU, seeking suspension of the operation of Commission Implementing Regulation (EU) 2018/1019 of 18 July 2018 concerning the non-renewal of approval of the active substance oxasulfuron, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ 2018 L 183, p. 14).

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 21 December 2018 — Daimler v Commission

(Case T-751/18)

(2019/C 93/85)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: N. Wimmer, C. Arhold and G. Ollinger, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision CLIMA/C4/WB/sg Ares(2018) Reference Ares(2018)5413709 of 22 October 2018 taken under Article 12(2) of Implementing Regulation (EU) No 725/2011, ([1]) and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 12(1)(2) of Implementing Regulation (EU) No 725/2011 in conjunction with Article 1(3) of Implementing Decision (EU) 2015/158 ([2])

— Within the context of the first plea in law, it is claimed that the defendant infringed Article 12(1)(2) of Implementing Regulation (EU) No 725/2011 in conjunction with Article 1(3) of Implementing Decision (EU) 2015/158, since in the context of the verification of CO2 savings it diverged from the authorised procedure in so far as it applied an inaccurate Willans' factor.

2. Second plea in law, alleging an infringement of Article 12(1)(2) of Implementing Regulation (EU) No 725/2011 in conjunction with Article 1(3) of Implementing Decision (EU) 2015/158 in conjunction with Article 6(1) of Implementing Regulation (EU) No 725/2011

— Within the context of the second plea in law, it is claimed that the defendant infringed Article 12(1)(2) of Implementing Regulation (EU) No 725/2011 in conjunction with Article 1(3) of Implementing Decision (EU) 2015/158 in conjunction with Article 6(1) of Implementing Regulation (EU) No 725/2011, since in the context of the verification procedure adopted by it for the ad-hoc review it disregarded the essential specific preconditions.

3. Third plea in law, alleging an infringement of Article 12(2) of Implementing Regulation (EU) No 725/2011

— Within the context of the third plea in law, it is claimed that the defendant infringed Article 12(2) of Implementing Regulation (EU) No 725/2011, in so far as it ordered the exclusion of eco-innovation with respect to the previous year (2017), although the regulations expressly permits a decision on exclusion only with respect to the subsequent year.

4. Fourth plea in law, alleging an infringement of the right to be heard

— Within the context of the fourth plea in law, it is claimed that the applicant's right to be heard in accordance with the requirements of the general legal principle of observance of the rights of the defence and those of Article 41(2)(a) of the Charter of Fundamental Rights was infringed. The defendant authorised an exchange of legal positions, but thereby adopted the contested decision.

5. Fifth plea in law, alleging a breach of the obligation to state reasons

— Within the context of the fifth plea in law, it is claimed that the decision is not duly justified in accordance with the requirements of Article 296(2) TFEU and Article 41(2)(c) of the Charter of Fundamental Rights. In the contested decision, the defendant merely vaguely referred to discrepancies in the testing methodology, but failed to take a position on the decisive question whether and to what extent the testing methodology required a specific preconditioning and whether the defendant approved such a testing methodology in Implementing Decision (EU) 2015/158.

([1]) Commission Implementing Regulation (EU) No 725/2011 of 25 July 2011 establishing a procedure for the approval and certification of innovative technologies for reducing CO 2 emissions from passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council (OJ 2011 L 194, p. 19).

([2]) Commission Implementing Decision (EU) 2015/158 of 30 January 2015 on the approval of two Robert Bosch GmbH high efficient alternators as the innovative technologies for reducing CO 2 emissions from passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council (OJ 2015 L 26, p. 31).

Action brought on 22 December 2018 — FL Brüterei M-V and Others v Commission

(Case T-755/18)

(2019/C 93/86)

Language of the case: German

Parties

Applicants: FL Brüterei M-V GmbH (Finkenthal, Germany), Erdegut GmbH (Finkenthal), Ökofarm Groß Markow GmbH (Lelkendorf, Germany) (represented by: H. Schmidt, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1(4) of Commission Implementing Regulation (EU) 2018/1584 ([1]) of 22 October 2018, published under L 264/1 in the *Official Journal of the European Union* on 23 October 2018, which amended Regulation (EC) No 889/2008 ([2]) as follows: 'in Article 42(b), the date "31 December 2018" is replaced by "31 December 2020"';

— order the defendant to pay EUR 2 469 503,44 to FL Brüterei M-V GmbH plus default interest from the date of notification of the action at the rate of eight percentage points per annum above the base rate of the European Central Bank; and

— rule that the defendant is under an obligation to compensate the applicants for the additional harm caused to them by the Commission's adoption of a further two-year exception with Implementing Regulation (EU) 2018/1584, which, when organic pullets 'are not available', permits non-organic pullets to be brought into organic pullet livestock, without, having regard to the Commission's duty to keep that exception 'to a minimum' under Article 22(2) of Regulation (EC) No 834/2007, ([3]) the use of the exception requiring that no hatcheries within a radius of up to 700 kilometres from the location of the pullet farm supply organic pullets, and that proof of the lack of availability of organic pullets is to be provided through the unsuccessful placement of orders with three hatcheries that are known suppliers of organic pullets and not through demand at hatcheries that are known for not supplying organic pullets.

Pleas in law and main arguments

The action is based on the following pleas in law.

1. First plea in law: invalidity of the regulatory act

— In the context of the first plea in law, the applicants claim that the defendant failed to fulfil its duty to keep exceptions to the principle laid down by Article 14(1)(a) of Regulation (EC) No 834/2007, according to which young animals for organic livestock production must be born and raised on organic holdings, to a minimum.

— In that regard, it is submitted that the extension of the exception by two years infringes the requirement in Article 22 of Regulation (EC) No 834/2007 to keep exceptions to a minimum. In the applicants' view, the lack of qualitative conditions and limits makes possible an abusive practice, as the defendant found in the Kingdom of the Netherlands.

2. Second plea in law: liability for administrative wrongdoing under the second paragraph of Article 340 TFEU

— In the context of the second plea in law, it is submitted that the defendant failed to ensure compliance by the Netherlands with the rule in Article 42(b) of Regulation (EC) No 889/2008.

— It that regard, it is submitted that the applicants suffered losses of income on account of the defendant's deficient conduct, since the defendant failed to urge the Dutch authorities properly to conduct the bringing of organic pullets into organic pullet livestock.

3. Third plea in law: liability for wrongdoing in the exercise of implementing powers

In the context of the third plea in law, the applicants claim that, by further adopting an exception that is merely limited in time and is not subject to any qualitative conditions and requirements, the defendant failed to respect the requirements of Article 22 of Regulation (EC) No 834/2007 and acted outwith the powers conferred on it.

(1) Commission Implementing Regulation (EU) 2018/1584 of 22 October 2018 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2018 L 264, p. 1).

(2) Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1).

(3) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1).

Action brought on 28 December 2018 — AG v Europol

(Case T-756/18)

(2019/C 93/87)

Language of the case: German

Parties

Applicant: AG (represented by: C. Abrar, lawyer)

Defendant: European Union Agency for Law Enforcement Cooperation

Form of order sought

The applicant claims that the Court should:

— annul the defendant's implied rejection of the applicant's complaint of 2 July 2018;

— order the defendant to issue to the applicant a duly reasoned and lawful decision on his claim for a share of the Europol Pension Fund; and

— order the defendant to pay all of the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: general infringement of the obligation to state reasons

— In the context of the first plea in law, the applicant submits that his request concerning (i) the transfer of an administrative act by which the defendant applied Decision (EU) 2015/1889 (1) to the applicant and (ii) the statement of the reasons on which that administrative act is based together with an explanation as to why a significant part of the assets of the pension fund was distributed to the Member States, was implicitly rejected.

— In that regard, it is claimed that the defendant failed to fulfil its duties in accordance with the principles of good European administrative practice and in accordance with Article 296 TFEU. The applicant also has an interest in bringing proceedings because only a reasoned decision on his rights to the Europol Pension Fund would enable him to assess the lawfulness of the allocation and the implementation of any further claims.

2. Second plea in law: collateral review of Decision (EU) 2015/1889

— In the context of the second plea in law, it is submitted that the supposed basis of the decision not taken could also transpire in the course of judicial review to be vitiated by an error of assessment and therefore unlawful. To that extent, it is particularly necessary to have an explanation as to why significant parts of the Europol Pension Fund were distributed to the EU Member States.

— It is further submitted that the Court could, in the interests of procedural economy and for the avoidance of any further judicial proceedings, issue to the defendant indications as to the unlawfulness of Decision (EU) 2015/1889, since the collateral review of that decision might not succeed in the absence of a reasoned decision.

(1) Council Decision (EU) 2015/1889 of 8 October 2015 on the dissolution of the Europol Pension Fund (OJ 2015 L 276, p. 60).

Action brought on 20 December 2018 — Intercontinental Exchange Holdings v EUIPO — New York Mercantile Exchange (NYMEX BRENT)

(Case T-760/18)

(2019/C 93/88)

Language of the case: English

Parties

Applicant: Intercontinental Exchange Holdings, Inc. (Atlanta, Georgia, United States) (represented by: R. Hoy, Solicitor, and J. Bowhill, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: New York Mercantile Exchange, Inc. (New York, 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: Application for European Union word mark NYMEX BRENT — Application for registration No 15 333 891

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 October 2018 in Case R 102/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the other party to the proceedings before the Board of Appeal to pay the costs.

Plea in law

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

Action brought on 4 January 2019 — Irish Wind Farmers' Association and Others v Commission

(Case T-6/19)

(2019/C 93/89)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the letter of the European Commission dated 25 October 2018 regarding case SA.44671 Ireland — Alleged illegal State aid granted to the fossil fuel sector in the form of reduced property tax rates;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, namely that the Commission failed to open the formal investigation under Article 108(2) TFEU and Article 4(4) of Regulation 2015/1589, [1] notwithstanding doubts as to the existence of State aid, thereby depriving the applicants of their procedural rights. This plea comprises two branches:

1. First branch: the Commission should have adopted a formal decision. The Commission has not conducted a proper examination of the complaint as required under its own rules and the contested act has been adopted in contravention of the provisions of Regulation 2015/1589.

2. Second branch: the Commission should have had serious doubts as to the classification of the measure as aid and accordingly opened the formal investigation under Article 4(4) of Regulation 2015/1589, in particular and inter alia as the Commission misunderstood the scope of the complaint, failed to adequately examine all the information provided by the complainant in the context of the complaint, did not properly examine the measure, and followed the wrong approach regarding the assessment of selectivity and did not examine the other requirements laid down in Article 107 TFEU.

[1] Council Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Action brought on 4 January 2019 — United States Seafoods v EUIPO (UNITED STATES SEAFOODS)

(Case T-10/19)

(2019/C 93/90)

Language of the case: English

Parties

Applicant: United States Seafoods LLC (Seattle, Washington, United States) (represented by: C. Spintig, S. Pietzcker and M. Prasse, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative sign UNITED STATES SEAFOODS — Application for registration No 1 365 398

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 11 October 2018 in Case R 817/2018-5

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 (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 January 2019 — Giulia Moi v Parliament

(Case T-17/19)

(2019/C 93/91)

Language of the case: Italian

Parties

Applicant: Giulia Moi (XX (*), Italy) (represented by: M. Contini, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— principally, annul the decision of the Bureau of the European Parliament of 12 November 2018, confirming the decision of the President of the European Parliament of 2 October 2018, which imposed on Giulia Moi the penalty of forfeiture of entitlement to the daily subsistence allowance for a period of 12 days on the ground that she psychologically harassed her two accredited parliamentary assistants;

— in the alternative, in the unlikely and disputed event that the main form of order sought is not granted, and without prejudice to any appeal, hold that the disciplinary penalty imposed is excessive and/or disproportionate and, consequently, replace it by the penalty laid down in Rule 166(a) of the Rules of Procedure of the European Parliament;

— in any event, order the European Parliament to provide redress, to be determined on an equitable basis by the Court, in the form of the payment of compensation to AE in the amount of EUR 50 000 — or such greater or lesser amount as may be deemed appropriate by the Court — and order the President to communicate that information publicly in the plenary session of the European Parliament;

— order the European Parliament to pay the costs.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Pleas in law and main arguments

In support of the action, the applicant claims infringement of the principle of the right to a fair hearing, due process and Article 41 of the Charter of Fundamental Rights of the European Union.

1. It must be noted that the disciplinary penalty in question — apparently justified by the mere reference to the report of the Advisory Committee, which, in turn and without giving any reasons, characterises the applicant's conduct as amounting to 'psychological harassment' without adducing any proof — is unfounded.

2. It is also clear that the Bureau of the European Parliament manifestly misused its powers and manifestly exercised its authority improperly, in that the facts which it is assumed were relied on by the assistants subject to the alleged harassment cannot be regarded as constituting psychological harassment for the purposes of Article 12a of the Staff Regulations.

3. The Bureau of the European Parliament, for its part, erred and misrepresented the facts which are the subject of the decision in the light of the definition of psychological harassment as laid down in Article 12 of the Staff Regulations. Such harassment means 'improper conduct' in the form of physical behaviour, spoken or written language, gestures or other acts, which takes place 'over a period, is repetitive or systematic', resulting from intentional repeated and/or confirmatory actions that may undermine the personality, dignity or physical or psychological integrity of a person.

4. The concept of harassment having been defined, it follows from the documents in the file that the applicant's conduct does not in any way constitute a case of 'harassment' and that the limited complaints, which, moreover, covered a very short period of time, relate to the completion by the assistants of their tasks and their presence in the office, and are the result of retaliation against the applicant, who is guilty of having requested their dismissal.

5. Furthermore, no external observer with normal sensitivity and knowledge of the professional context specific to members of the Parliament and their direct colleagues could ever conclude that the applicant's alleged conduct was excessive and open to criticism to the extent that it undermined the personality, dignity or physical or psychological integrity of the assistants in question, particularly in the light of the generous remuneration granted to them by the Parliament.

Action brought on 11 January 2019 — Pablosky v EUIPO — docPrice (mediFLEX easystep)

(Case T-21/19)

(2019/C 93/92)

Language of the case: English

Parties

Applicant: Pablosky, SL (Madrid, Spain) (represented by: A. Tarí Lázaro, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: docPrice GmbH (Koblenz, Germany)

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: Application for European Union figurative mark mediFLEX easystep — Application for registration No 15 730 898

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 November 2018 in Case R 76/2018-4

Form of order sought

The applicant claims that the Court should:

— reverse the contested decision;

— reject the EUTM No 15 730 898 in its entirety as regards products included in classes 10 and 25;

— award the costs to the applicant.

Plea in law

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

Action brought on 14 January 2019 — Limango v EUIPO — Consolidated Artists (limango)

(Case T-23/19)

(2019/C 93/93)

Language of the case: English

Parties

Applicant: Limango GmbH (Munich, Germany) (represented by: C. Hauss-Löhde, and M. Mette, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Consolidated Artists BV (Rotterdam, Netherlands)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark limango — Application for registration No 6 943 096

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 3 October 2018 in related Cases R 1844/2017-1 and R 2093/2017-1

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision;

— dismiss the opposition in its entirety;

— order the defendant and the intervener to pay the costs of the proceedings.

Pleas in law

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

— Infringement of Article 8(5) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 January 2019 — INC and Consorzio Stabile Sis v Commission

(Case T-24/19)

(2019/C 93/94)

Language of the case: English

Parties

Applicants: INC SpA (Turin, Italy) and Consorzio Stabile Sis SCpA (Turin) (represented by: H.-G. Kamann, F. Louis and G. Tzifa, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission decision C(2018) 2435 final of 27 April 2018 in Cases SA. 49335 (2017/N) and SA.49336 (2017/N); ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law for each of the two separate instances of alleged State aid.

1. Plea in law in respect of Case SA.49336 (2017/N), alleging that, by adopting the contested decision, the Commission failed to open the formal investigation procedure provided for in Article 108(2) TFEU and Articles 4(4) and 6 of Regulation (EU) 2015/1589, ([2]) despite the existence of serious difficulties encountered during the preliminary examination procedure as regards the compatibility of the notified individual State aid in relation to an Italian toll motorway operator (Autostrade per l'Italia SpA) with the internal market. The applicants allege that the Commission thereby breached Article 108(3) TFEU and Article 4(3) of Regulation 2015/1589.

2. Plea in law in respect of Case SA.49335 (2017/N), alleging that, by adopting the contested decision, the Commission failed to open the formal investigation procedure provided for in Article 108(2) TFEU and Articles 4(4) and 6 of Regulation (EU) 2015/1589, despite the existence of serious difficulties encountered during the preliminary examination procedure as regards the compatibility of the notified individual State aid in relation to a second Italian toll motorway operator (Società Iniziative Autostradali e Servizi Spa) with the internal market. The applicants allege that the Commission thereby breached Article 108(3) TFEU and Article 4(3) of Regulation (EU) 2015/1589.

([1]) OJ 2018 C 379, p. 3.
([2]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Action brought on 15 January 2019 — Idea Groupe v EUIPO — The Logistical Approach (Idealogistic Verhoeven Greatest care in getting it there)

(Case T-29/19)

(2019/C 93/95)

Language in which the application was lodged: French

Parties

Applicant: Idea Groupe (Montoir de Bretagne, France) (represented by: P. Langlais, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: The Logistical Approach BV (Uden, Netherlands)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU figurative mark Idealogistic Verhoeven Greatest care in getting it there in the colours black, white and shades of blue — Application for registration No 14 567 184

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 November 2018 in Case R 2064/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— order the company The Logistical Approach B.V to pay the costs occasioned by its intervention, should it intervene.

Pleas in law

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

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

Action brought on 17 January 2019 — Benavides Torres/Council

(Case T-35/19)

(2019/C 93/96)

Language of the case: English

Parties

Applicant: Antonio José Benavides Torres (Caracas, Venezuela) (represented by: L. Giuliano and F. Di Gianni, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1656 ([1]) and Council Implementing Regulation (EU) 2018/1653, ([2]) in so far as their provisions concern the applicant; and

— order the defendant to pay costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law alleging that the defendant committed a manifest error of assessment in finding that his name should be maintained on the lists set out in Annex I to Council Decision (CFSP) 2017/2074 ([3]) and Annex IV to Council Regulation (EU) 2017/2063, ([4]) notwithstanding the fact that he would no longer serve any role within and would not be related to the Venezuelan political or military authorities.

([1]) Council Decision (CFSP) 2018/1656 of 6 November 2018 amending Decision (CFSP) 2017/2074 concerning restrictive measures in view of the situation in Venezuela (OJ L 276, 7.11.2018, p. 10).

([2]) Council Implementing Regulation (EU) 2018/1653 of 6 November 2018 implementing Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela (OJ L 276, 7.11.2018, p. 1).

([3]) Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela (OJ L 295, 14.11.2017, p. 60).

([4]) Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela (OJ L 295, 14.11.2017, p. 21).

Action brought on 18 January 2019 — PE Digital v EUIPO — Spark Networks Services (ElitePartner)

(Case T-36/19)

(2019/C 93/97)

Language in which the application was lodged: German

Parties

Applicant: PE Digital GmbH (Hamburg, Germany) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Spark Networks Services GmbH (Berlin, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark ElitePartner — EU trade mark No 5 996 351

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 25 October 2018 in Case R 614/2017-1

Form of order sought

The applicant claims that the Court should:

— alter the contested decision to the effect that the ground for invalidity under Article 59(1)(a), in conjunction with Article 7(1)(b), of Regulation (EU) 2017/1001 does not preclude the contested EU trade mark;

— in the alternative, annul the contested decision;

— order the defendant and also, with regard to its intervention, the other party in the proceedings before the Board of Appeal to pay the costs of the proceedings, including the applicant's costs.

Pleas in law

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

— Infringement of Article 94(1), first sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 January 2019 — Amigüitos pets & life v EUIPO – Société des produits Nestlé (THE ONLY ONE by alphaspirit wild and perfect)

(Case T-40/19)

(2019/C 93/98)

Language of the case: English

Parties

Applicant: Amigüitos pets & life, SA (Lorca, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Société des produits Nestlé SA (Vevey, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark THE ONLY ONE by alphaspirit wild and perfect in colours white, red and black — Application for registration No 15 385 719

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 November 2018 in Case R 272/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far the contested decision accepted the opposition against EUTM application No 15 385 719 for goods in classes 5 and 31;

— order EUIPO to confirm the registration of EUTM application No 15 385 719 for all goods for which the said trademark seeks protection;

— order the intervener and, in which it may apply, the defendant, to bear the costs of the proceedings followed before the EUIPO and the General Court.

Pleas in law

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

— Infringement of Article 8(5) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 23 January 2019 — Globalia Corporación Empresarial v EUIPO — Touring Club Italiano (TC Touring Club)

(Case T-44/19)

(2019/C 93/99)

Language of the case: English

Parties

Applicant: Globalia Corporación Empresarial, SA (Llucmajor, Spain) (represented by: A. Gómez López, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Touring Club Italiano (Milan, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark TC Touring Club in colours red and light grey — Application for registration No 15 299 001

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 November 2018 in Case R 448/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision due to infringement of Article 95(1) and (2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council, constituting a substantial procedural error; and/or

— set aside the contested decision due to erroneous application of Article 47(2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council and enter a finding to the effect that proof of 'genuine' use of the earlier trade mark is insufficient or inconclusive; and/or

— set aside the contested decision due to erroneous application of Article 8(1)(b) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council and enter a finding to the effect that there does not exists likelihood of confusion between the confronted trade marks;

— order the defendant and the intervener, if he enters an appearance in proceedings, to pay the costs.

Pleas in law

— Infringement of Article 95(1) and (2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 47(2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 25 January 2019 — Hellenic Republic v Commission

(Case T-46/19)

(2019/C 93/100)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, E. Leftheriotou and A-E. Vasilopoulou, as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as that decision imposed on the Hellenic Republic one-off and flat-rate financial corrections, amounting to a gross sum of EUR 25 092 988,84 and a net sum of EUR 24 851 438,56, following the inquiry AA/2016/013/GR with respect to area-based payments for the claim years 2015/2016 (financial years 2016 and 2017, pages 63-74 of the summary report); and order the defendant to pay the legal costs of the Hellenic Republic.

Pleas in law and main arguments

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

1. The first plea in law is based on an infringement by the Commission of Article 4(1)(h) of Regulation No 1307/2013, ([1]) with respect to the interpretation and application of the term 'permanent grassland'.

2. The second plea in law is based on defective reasoning with respect to an infringement of Article 296 TFEU, infringement of Article 18(5) of Regulation No 640/2014, ([2]) of the LPIS quality assurance guidelines (Executable Test Suite (ETS) LPIS data quality measures, version 6.0), and of the principle of proportionality.

3. The third plea in law is based on a defective statement of reasons by the defendant as to the imposition of one-off corrections in addition to the flat-rate correction.

([1]) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013, L 347, p. 608).

([2]) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014, L 181, p. 48).

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