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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Landesverwaltungsgericht Steiermark (Austria) lodged on 15 October 2018 — NE

(Case C-645/18)

(2019/C 122/02)

Language of the case: German

Referring court

Landesverwaltungsgericht Steiermark

Parties to the main proceedings

Appellant: NE

Respondent authority: Bezirkshauptmannschaft Hartberg-Fürstenfeld

Interested party: Finanzpolizei

Questions referred

1. Must Article 56 TFEU, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([1]) and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC ([2]) be interpreted as precluding a national provision which, for infringements of formal obligations in connection with the cross-border deployment of labour, such as a failure to make available documents relating to pay and social security documentation or a failure to report to the Central Coordination Office, provides for very high fines, in particular high minimum penalties, which are imposed *cumulatively* in respect of each worker concerned?

2. If the answer to Question 1 is in the negative:

   Must Article 56 TFEU, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC be interpreted as precluding the imposition of cumulative fines for infringements of formal obligations in connection with the cross-border deployment of labour *which have no absolute upper limits*?

([1]) OJ 1997 L 18, p. 1.

([2]) OJ 2014 L 159, p. 11.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 23 October 2018 — Pólus Vegas Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-665/18)

(2019/C 122/03)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Pólus Vegas Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. May paragraphs 39 to 42 of the judgment delivered by the Court of Justice of the European Union in Case C-98/14 be interpreted as meaning that the fact that domestic legislation increases five-fold the fixed-rate tax on gaming, without providing for any transitional arrangements, while at the same time introducing a proportional tax on gaming, constitutes a restriction on the freedom to provide services under Article 56 TFEU?

2. May the terms 'impede' or 'render less attractive' which are used in the judgment in Case C-98/14 be interpreted — having regard to and in application of Additional Protocol No 1 to the European Convention on Human Rights (ECHR) and Article 17 of the Charter of Fundamental Rights of the European Union — as meaning that an unjustified and unreasonable increase in the tax on gaming in a Member State deprives the organisers of games of chance in amusement arcades of their profits in a disproportionate and discriminatory fashion which distorts competition in favour of casinos and infringes the aforementioned Additional Protocol to the ECHR and Article 17 of the Charter of Fundamental Rights of the European Union?

3. May the content of the judgment delivered in Case C-98/14 be interpreted as meaning that the fact that the operation of gaming machines ceases to be profitable and may be carried on only at a loss as a result of an unjustified and unreasonable increase in the tax on gaming warrants the assessment that that increase has the effect of 'impeding' that activity or 'rendering it less attractive'?

4. In the context of the implementation in the Member State of the judgment delivered in Case C-98/14, may the freedom to provide services be interpreted as meaning that amusement arcades and casinos operated in a Member State must, in principle, be assumed to entail an EU cross-border component consisting in the fact that EU citizens from other Member States may also make use of the gaming opportunities in question?

Request for a preliminary ruling from the Landesverwaltungsgericht Steiermark (Austria) lodged on 13 November 2018 — ZR, AR, BS

(Case C-712/18)

(2019/C 122/04)

Language of the case: German

Referring court

Landesverwaltungsgericht Steiermark

Parties to the main proceedings

Appellants: ZR, AR and BS

Respondent authority: Bezirkshauptmannschaft Hartberg-Fürstenfeld

Interested party: Finanzpolizei

Questions referred

1. Must Article 56 TFEU, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([1]) and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC ([2]) be interpreted as precluding a national provision which, for infringements of formal obligations in connection with the cross-border deployment of labour, such as a failure to make available documents relating to pay or to report to the Central Coordination Office (ZKO notifications), provides for very high fines, in particular high minimum penalties, which are imposed *cumulatively* in respect of each worker concerned?

2. If the answer to Question 1 is in the negative:

   Must Article 56 TFEU, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC be interpreted as precluding the imposition of cumulative fines for infringements of formal obligations in connection with the cross-border deployment of labour *which have no absolute upper limits*?

([1]) OJ 1997 L 18, p. 1.

([2]) OJ 2014 L 159, p. 11.

Request for a preliminary ruling from the Landesverwaltungsgericht Steiermark (Austria) lodged on 14 November 2018 — ZR, BS, AR

(Case C-713/18)

(2019/C 122/05)

Language of the case: German

Referring court

Landesverwaltungsgericht Steiermark

Parties to the main proceedings

Appellants: ZR, BS and AR

Respondent authority: Bezirkshauptmannschaft Hartberg-Fürstenfeld

Interested party: Finanzpolizei

Questions referred

1. Must Article 56 TFEU, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([1]) and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC ([2]) be interpreted as precluding a national provision which, for infringements of formal obligations in connection with the cross-border deployment of labour, such as a failure to make available documents relating to pay or to report to the Central Coordination Office (ZKO notifications), provides for very high fines, in particular high minimum penalties, which are imposed *cumulatively* in respect of each worker concerned?

2. If the answer to Question 1 is in the negative:

   Must Article 56 TFEU, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC be interpreted as precluding the imposition of cumulative fines for infringements of formal obligations in connection with the cross-border deployment of labour *which have no absolute upper limits*?

([1]) OJ 1997 L 18, p. 1.

([2]) OJ 2014 L 159, p. 11.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 17 December 2018 — Stichting Schoonzicht, other party to the proceedings: Staatssecretaris van Financiën

(Case C-791/18)

(2019/C 122/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Stichting Schoonzicht

Other party to the proceedings: Staatssecretaris van Financiën

Questions referred

1. Do Articles 184 to 187 of the 2006 VAT Directive ([1]) preclude a national adjustment regime for capital goods which provides for an adjustment spread over a number of years, whereby in the year the goods enter into use — which year is moreover the first adjustment year — the total amount of the initial deduction for that capital good is adjusted (revised) in a single step, if, upon the entry into use thereof, it turns out that that initial deduction deviates from the deduction which the taxable person is entitled to apply on the basis of the actual use of the capital good?

2. If Question 1 is answered in the affirmative:

   Must Article 189(b) or (c) of the 2006 VAT Directive be interpreted as meaning that the single adjustment of the initial deduction in the first year of the adjustment period referred to in Question 1 constitutes a measure which the Netherlands may adopt for the application of Article 187 of the 2006 VAT Directive?

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

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 17 December 2018 — Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie) and Others v Ministero dello Sviluppo Economico, Gestore dei servizi energetici (GSE) SpA

(Case C-798/18)

(2019/C 122/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie), Società Agricola N.B. Solar s.r.l., 3G s.r.l., AET s.r.l. Apparati Elettromeccanici e Telecomunicazioni, Società Agricola La Fontana s.s., Società Agricola Le Macchie di Sparapani Gabriele e C. s.s., Agricoltura Innovativa s.r.l. — Società Agricola, Società Agricola Agrilite s.r.l., Agrisolar Società Agricola s.r.l., Agrisun s.r.l., Società Agricola Agroenergia s.r.l., Alpi — Società Agricola s.s., Ambrasol 2 s.r.l., Ambrasol 3 s.r.l., Ambrasol 4 s.r.l., Ape Immobiliare s.r.l., Arizzi Fonderie S. Giorgio s.p.a., Artech s.r.l., ASP Solar Italia Alpha s.r.l. Società Agricola, Associazione Centro Servizi Pastorali Mons. Biglia, Aurora Group s.p.a., AVG s.r.l. Società Agricola, Tosi Sante, Cinesi Palmino, B&B Energia s.r.l., Bauexpert s.p.a., Belvedere Società Agricola a r.l., Biancolino Società Agricola a r.l., BMN Green Energy s.r.l., Brandoni Solare s.p.a., Brenta CRE s.r.l., Calipso s.r.l., Cappello s.r.l., Casale s.a.s. di CGS Energia s.p.a. & C. Società Agricola, Cavicchi Solar s.r.l., C.B. s.r.l., Ce.Ma.Co. s.r.l., Cedro s.r.l., Centro Risorse s.r.l., CGA s.r.l., Chiarano Green Power s.r.l., Chierese Pak s.r.l., C.L. Solar s.r.l., Colombo Bolla s.r.l., Comino Energia s.r.l., Corà Domenico & Figli s.p.a., Corfin Energy s.r.l., Corna s.r.l., Coronet s.p.a., Società Agricola Coste della Chiesa s.r.l., Ecoenergy 04 s.r.l., Elektrosolar s.r.l., Elettronica Cimone s.r.l., Energia Capoterra Società Agricola s.r.l., Energia e Impresa s.r.l., Società Agricola Energo di Buratti Enrico & C. s.s., Energy Gestion s.r.l., Energy Italia 3 s.r.l., Energy Italia 4 s.r.l., Energylife s.r.l., Energy Resources Pesaro 2 s.r.l., Enervis s.r.l., EQ Energia s.r.l., Esco Roma s.r.l., E-Solar s.r.l., E. Sole s.r.l., Euroline 2 s.r.l., Eurosun Tarquinia s.r.l., Fratelli Dalle Crode s.p.a., Fratelli Raviola s.r.l., Falmec s.p.a., Fiere di Parma s.p.a., Flash Energy s.r.l., Fotoeos s.r.l., Fotosfera s.r.l., Fotosintesi 1 s.r.l., Fotosintesi 2 s.r.l., Fotosintesi 6 s.r.l., Fotovoltaica s.r.l., Fresia Energie s.r.l., Giuseppe Ciccaglione, Generali PIO s.p.a., Gi.Gi.Emme di Caramello Marta e C. s.a.s., Gifa s.r.l., G.P.B. Energia s.r.l., Green Energy Ambiente e Tecnologie s.r.l., Green Land di Giuseppe Ciccaglione s.s. agricola, Green Power 2010 s.r.l., Happy Island Società Agricola s.r.l., I.C.S. Industria Costruzioni Stampi s.p.a., Iesse Commerciale s.r.l., ISA s.r.l. Società Agricola, Isolpack s.p.a., Italcoat s.r.l., La Base s.r.l., La T.I.S. Service s.p.a., Società Agricola Lombardia Group s.r.l., Mafin Green Power s.r.l., Marina Costruzioni s.r.l., Mercato Solare s.p.a., Metalco Group s.r.l., Società Agricola Mostrazzi Solar s.r.l., Mozzone Building System s.r.l., Mozzone Fratelli s.r.l., MSM Solar s.r.l., New E-Co s.r.l., Nordpan s.p.a., Nuvoleto s.r.l. Società Agricola, Omera s.r.l., Palar s.r.l., Paolin Energia s.r.l., Pbsol 1 s.r.l., Pizzarotti Energia s.r.l., Plasti Max s.p.a., PMM Energy s.r.l., Società Agricola Poggio Tortollo di Alessandra Pennuto, Profilumbra s.p.a., Quabas s.p.a., Reco 2 s.r.l., Reti s.r.l., Revi s.r.l., Righi Group s.r.l., Società Agricola Righi s.r.l., Righi s.r.l., Rovigo Solare A s.r.l., Rovigo Solare B s.r.l., Rubner Haus s.p.a., Rubner Holzbau s.p.a., Rubner Tueren s.p.a., Ruscalla Energia s.r.l., Sabenergia s.r.l., San Felice Agrar s.r.l. Società Agricola, Sangiorgio Fotovoltaica

Società Agricola a r.l., Società Agricola Sargenti Agroenergie s.s. di Sargenti Carlo & C., SD Agrar s.r.l. Società Agricola, Senergia s.r.l., å Sequenza s.p.a., Sider Sipe s.p.a., Sinergya s.r.l., S.I.Pro. — Agenzia provinciale per lo sviluppo s.p.a., Siriac s.r.l., Società Agricola Cascina Gallotto s.s., Società Agricola Solar Farm s.r.l., Premi Giuseppe — Adelfranca — Piergiorgio s.s. Società Agricola, Sociovit Società Agricola s.s., Solivrea s.r.l., Studio Agri Power s.r.l., Studio Energia s.r.l., Taricco Fratelli s.s., Tecno Pool s.p.a., Toscasolar s.r.l., Trea s.r.l., Trifase s.r.l., Uniernergy s.r.l., V.S. 1 s.r.l., Vercelli s.p.a., Vetraria Bergamasca — Tecnovetro s.r.l., Vinlisca s.r.l., VRV s.p.a., The Wierer Holding s.p.a.

Defendants: Ministero dello Sviluppo Economico, Gestore dei servizi energetici (GSE) SpA

Question referred

Does EU law preclude the application of a provision of national law, such as that in Article 26(2) and (3) of Decree-Law No 91/2014, as converted by Law No 116/2014, which significantly reduces or delays the payment of incentives already granted by law and defined on the basis of corresponding agreements concluded by undertakings generating electrical energy by means of photovoltaic conversion with Gestore dei servizi energetici SpA, a public company responsible for that process?

In particular, is that provision of national law compatible with the general principles of EU law relating to legitimate expectation, legal certainty, sincere cooperation and effectiveness, with Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, with Directive 2009/28/EC [1] and with the rules governing support schemes laid down in that directive, and with Article 216(2) TFEU, in particular in relation to the European Energy Charter Treaty?

[1] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 17 December 2018 — Athesia Energy Srl and Others v Ministero dello Sviluppo Economico, Gestore dei Servizi Energetici (GSE) SpA

(Case C-799/18)

(2019/C 122/08)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Athesia Energy Srl, Pv Project Cologna S.r.l., Belriccetto S.r.l., Itt Energy S.r.l., Pietra dei Fiori S.r.l., Energia Solare S.r.l., Green Hunter S.p.A, Actasol 5 S.r.l., Actasol 6 S.r.l., Cinque S.r.l., Spf Energy Uno S.r.l., Spr Energy Due S.r.l., Spf Energy Tre S.r.l., Bulicata S.r.l., Energy Line S.r.l., Marche Solare 1 S.r.l.

Defendants: Ministero dello Sviluppo Economico, Gestore dei servizi energetici (GSE) SpA

Question referred

Does EU law preclude the application of a provision of national law, such as that in Article 26(2) and (3) of Decree-Law No 91/2014, as converted by Law No 116/2014, which significantly reduces or delays the payment of incentives already granted by law and defined on the basis of corresponding agreements concluded by undertakings generating electrical energy by means of photovoltaic conversion with Gestore dei servizi energetici SpA, a public company responsible for that process?

In particular, is that provision of national law compatible with the general principles of EU law relating to legitimate expectation, legal certainty, sincere cooperation and effectiveness, with Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, with Directive 2009/28/EC [1] and with the rules governing support schemes laid down in that directive, and with Article 216(2) TFEU, in particular in relation to the European Energy Charter Treaty?

[1] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 20 December 2018 — JZ

(Case C-806/18)

(2019/C 122/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Party to the main proceedings

Applicant: JZ

Question referred

Is the criminalisation under national law which criminalises the stay of a third-country national in the territory of the Netherlands after an entry ban has been imposed on him pursuant to Article 66a(7) of the Vreemdelingenwet 2000 compatible with EU law, in particular with the finding of the Court of Justice of the European Union in the judgment of 26 July 2017, *Ouhrami* v *Netherlands* (C-225/16, EU:C:2017:590, paragraph 49) according to which the entry ban provided for in Article 11 of the Return Directive [1] produces its 'effects' only from the point in time the foreign national has returned to his country of origin or to another third country, when national law also holds that that foreign national has no lawful residence and moreover it is established that the steps of the return procedure set out in the Return Directive have been followed but the actual return has not taken place?

[1] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 21 December 2018 — Ursa Major Services B.V. v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-814/18)

(2019/C 122/10)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Ursa Major Services B.V.

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Questions referred

1. Is Article 55(1) of Regulation 1198/2006 ([1]) applicable to the relationship between the provider of a subsidy, in the present case the Minister, and the beneficiary (the recipient of the subsidy)?

2. If the first question is answered to the effect that Article 55(1) of Regulation 1198/2006 does apply to the relationship between the provider of the subsidy and the beneficiary: can expenditure that has been paid by a third party (whether or not by set-off) be regarded as expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation 1198/2006?

3. If the second question is answered to the effect that expenditure paid by a third party (whether or not by set-off) cannot be regarded as expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation 1198/2006:

   (a) does an executive practice whereby the provider of the subsidy has consistently considered contributions from third parties to be expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation 1198/2006 mean that the beneficiary could not have been expected to detect such an incorrect interpretation of Article 55(1) of Regulation 1198/2006 by the provider of the subsidy, with the result that the beneficiary is entitled to the subsidy as granted to him, and

   (b) should the contributions from third parties then be included in the expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation 1198/2006 (in which case the subsidy is set higher) or

   (c) should recovery of the wrongly granted subsidy then be waived on the basis of the principle of the protection of legitimate expectations and/or the principle of legal certainty?

   (d) does it make any difference in that regard if the provider of the subsidy, as in the present case, has granted an advance on the subsidy?

([1]) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ 2006 L 223, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 21 December 2018 — Federatie Nederlandse Vakbeweging v Van den Bosch Transporten B.V., Van den Bosch Transporte GmbH, Silo-Tank Kft

(Case C-815/18)

(2019/C 122/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Federatie Nederlandse Vakbeweging

Respondents: Van den Bosch Transporten B.V., Van den Bosch Transporte GmbH, Silo-Tank Kft

Questions referred

1. Must Directive 96/71/EC [1] of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [OJ 1997 L 18, p. 1; 'the Posting of Workers Directive'] be interpreted as meaning that it also applies to a worker who works as a driver in international road transport and thus carries out his work in more than one Member State?

2. (a) If the answer to Question 1 is in the affirmative, what criterion or considerations should be used to determine whether a worker working as a driver in international road transport is posted 'to the territory of a Member State' as referred to in Article 1(1) and (3) of the Posting of Workers Directive, and whether that worker 'for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works' as referred to in Article 2(1) of the Posting of Workers Directive?

   (b) When answering question 2 (a), should any significance be attached to the fact that the undertaking posting the worker referred to in question 2(a) is affiliated — for example, in a group of companies — to the undertaking to which that worker is posted and, if so, what should that significance be?

   (c) If the work undertaken by the worker referred to in question 2(a) relates partly to cabotage transport — that is to say: transport carried out exclusively in the territory of a Member State other than that in which that worker habitually works — will that worker then in any case for that part of his work, be considered to be working temporarily in the territory of the first Member State? If so, does a lower limit apply in that regard, for example, in the form of a minimum period per month in which that cabotage transport takes place?

3. (a) If the answer to Question 1 is in the affirmative, how should the term 'collective agreements. which have been declared universally applicable', as referred to in Article 3(1) and the first subparagraph of Article 3(8) of the Posting of Workers Directive, be interpreted? Is that an autonomous concept of European Union law and is it therefore sufficient that the conditions laid down in the first subparagraph of Article 3(8) of the Posting of Workers Directive have for practical purposes been met, or do those provisions also require that the collective labour agreement was declared universally applicable on the basis of national law?

   (b) If a collective labour agreement cannot be regarded as a universally applicable collective labour agreement within the meaning of Article 3(1) and the first subparagraph of Article 3(8) of the Posting of Workers Directive, does Article 56 TFEU preclude an undertaking which is established in a Member State and which posts a worker to the territory of another Member State from being obliged by contractual means to comply with the provisions of such a collective labour agreement which is in force in the latter Member State?

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[1] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

Request for a preliminary ruling from the Rechtbank Limburg (Netherlands) lodged on 28 December 2018 — LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied v College van burgemeester en wethouders van de gemeente Echt-Susteren, other party: Sebava BV

(Case C-826/18)

(2019/C 122/12)

Language of the case: Dutch

Referring court

Rechtbank Limburg

Parties to the main proceedings

Applicants: LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied

Defendant: College van burgemeester en wethouders van de gemeente Echt-Susteren

Other party: Sebava B.V.

Questions referred

1. Must European law and, in particular, Article 9(2) of the Aarhus Convention [1] be interpreted as precluding a total exclusion of the right of access to justice for the public (any person), in so far as the latter is not the public concerned (interested parties)?

   If Question 1 is answered in the affirmative:

2. Must European law and, in particular, Article 9(2) of the Aarhus Convention be interpreted as meaning that it follows therefrom that the public (any person) should, in the event of an alleged infringement of the procedural requirements and public-participation rights applicable to that public, as contained in Article 6 of that Convention, have access to justice?

   Is it important in that regard that the public concerned (interested parties) should have access to justice in that respect and can also raise substantive complaints before the courts?

3. Must European law and, in particular, Article 9(2) of the Aarhus Convention be interpreted as precluding a situation in which access to justice for the public concerned (interested parties) is made dependent on the exercise of public-participation rights within the meaning of Article 6 of that Convention?

   If Question 3 is answered in the negative:

4. Must European law and, in particular, Article 9(2) of the Aarhus Convention be interpreted as precluding a provision of national law which excludes access to justice in respect of a decision on the part of the public concerned (interested parties) if that public can reasonably be criticised for not having set out any views against (parts of) the draft decision?

   If Question 4 is answered in the negative:

5. Is it entirely up to the national court to provide an opinion, on the basis of the circumstances of the case, as to what should be understood by the term 'who can reasonably be criticised' or is the court obliged to take certain European legal safeguards into account in that regard?

6. To what extent are the answers to Questions 3, 4 and 5 different in relation to the public (any person), in so far as that is not the public concerned (interested parties)?

[1] Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded in Aarhus on 25 June 1998 and approved, on behalf of the European Community, by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

Request for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 4 January 2019 — QG v Germanwings GmbH

(Case C-7/19)

(2019/C 122/13)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: QG

Defendant: Germanwings GmbH

Question referred:

Does a regular strike under national law announced by a trade union and involving an operating air carrier's own staff members constitute an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

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

Action brought on 18 January 2019 — European Commission v Republic of Bulgaria

(Case C-33/19)

(2019/C 122/14)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by C. Georgieva-Kecsmar and J. Hottiaux)

Defendant: Republic of Bulgaria

Form of order sought

The Commission claims that the Court should:

Declare that Bulgaria has failed to fulfil its obligations in accordance with Article 21 of Directive 2004/49/EC ([1]) as follows:

— by failing to ensure the independence of the specialised investigation unit from the infrastructure manager, Bulgaria failed to fulfil its obligations under Article 21(1) of Directive 2004/49/EC;

— by failing to ensure sufficient resources for the specialised investigation unit in order for it to carry out its functions independently, Bulgaria failed to fulfil its obligations under Article 21(2) of Directive 2004/49/EC;

— Order the Republic of Bulgaria to pay the costs of the proceedings.

Pleas in law and main arguments

1. Under Article 21 of Directive 2004/49/EC, Member States must ensure that investigations of accidents and incidents referred to in Article 19 are conducted by a permanent body, which is to comprise at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident. This body is to be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It is furthermore to be functionally independent from the safety authority and from any regulator of railways.

2. In its application, the Commission maintains that the specialised unit for investigation of accidents and incidents set up under the Ministry of Transport, is not independent from the infrastructure manager — the national company 'Zhelezoputna infrastruktura'. More specifically, the unit lacks decision-making autonomy. In that regard, the Republic of Bulgaria has failed to comply with the provisions of Article 21(1) of Directive 2004/49/EC.

3. In its application, the Commission also submits that the legislation of the Republic of Bulgaria does not ensure access to sufficient resources for the specialised unit to be able to carry out its functions independently, in accordance with Article 21(2) of Directive 2004/49/EC.

([1]) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)

OJ 2004, L 164, p. 44.

Reference for a preliminary ruling from the High Court (Ireland) made on 5 February 2019 — Minister for Justice and Equality v PI

(Case C-82/19)

(2019/C 122/15)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Minister for Justice and Equality

Defendant: PI

Questions referred

1. Is the independence from the executive of a public prosecutor to be decided in accordance with his position under the relevant national legal system? If not what are the criteria according to which independence from the executive is to be decided?

2. Is a public prosecutor who, in accordance with national law, is subject to a possible direction or instruction either directly or indirectly from a Ministry of Justice, sufficiently independent of the executive to be considered a judicial authority within the meaning of Article 6(1) of the Framework Decision ([1])?

3. If so, must the public prosecutor also be functionally independent of the executive and what are the criteria according to which functional independence is to be decided?

4. If independent of the executive, is a public prosecutor who is confined to initiating and conducting investigations and assuring that such investigations are conducted objectively and lawfully, the issuing of indictments, executing judicial decisions and conducting the prosecution of criminal offences, and does not issue national warrants and may not perform judicial functions a 'judicial authority' for the purposes of Article 6(1) of the Framework Decision?

5. Is the Public Prosecutor in Zwickau a judicial authority within the meaning of Article 6(1) of the Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States?

([1]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (OJ 2002, L 190, p. 1).

GENERAL COURT

Judgment of the General Court of 12 February 2019 — Hércules Club de Fútbol v Commission

(Case T-134/17) ([1])

[Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a procedure for reviewing State aid — Refusal of access — Lis alibi pendens — Exception relating to protection of the purpose of inspections, investigations and audits — Exception relating to protection of the commercial interests of a third party — Obligation to conduct a specific and individual examination — Overriding public interest]

(2019/C 122/16)

Language of the case: Spanish

Parties

Applicant: Hércules Club de Fútbol, SAD (Alicante, Spain) (represented by: S. Rating and Y. Martínez Mata, lawyers)

Defendant: European Commission (represented by: J. Baquero Cruz, G. Luengo and P. Němečková, acting as Agents)

Re:

Action under Article 263 TFEU seeking annulment of Commission Decision C(2017) 736 final of 2 February 2017, refusing Hércules Club de Fútbol access to documents relating to the procedure for reviewing State aid SA.363872.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hércules Club de Fútbol, SAD to pay the costs, including those relating to the application for interim measures.*

([1]) OJ C 144, 8.5.2017.

Judgment of the General Court of 12 February 2019 — Printeos v Commission

(Case T-201/17) ([1])

[Non-contractual liability — Competition — Cartels — Decision finding infringement of Article 101 TFEU — Fines — Judgment annulling the decision in part — Reimbursement of the principal amount of the fine — Default interest — Sufficiently serious breach of a rule of law conferring rights on individuals — Causal link — Harm — Article 266 TFEU — Article 90(4)(a), second sentence, of Delegated Regulation (EU) No 1268/2012]

(2019/C 122/17)

Language of the case: Spanish

Parties

Applicant: Printeos, SA (Alcalá de Henares, Spain) (represented by: H. Brokelmann and P. Martínez-Lage Sobredo, lawyers)

Defendant: European Commission (represented by: F. Dintilhac and F. Jimeno Fernández, acting as Agents)

Re:

Principally, application under Article 268 TFEU seeking compensation in respect of the harm suffered as a result of the Commission's refusal to pay the applicant default interest on the principal amount of a fine which was reimbursed following the annulment of its Decision C(2014) 92 95 final of 10 December 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (AT.39780 — Envelopes), by the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722); and, in the alternative, application under Article 263 TFEU seeking annulment of the Commission's decision of 26 January 2017 refusing that reimbursement.

Operative part of the judgment

1. *The European Union, represented by the European Commission, is required to pay compensation in respect of the damage suffered by Printeos, SA, on account of the failure to pay to that company the amount of EUR 184 592.95 due to it in respect of default interest, incurred during the period from 9 March 2015 to 1 February 2017, pursuant to the first paragraph of Article 266 TFEU, in enforcement of the judgment of 13 December 2016, Printeos and Others v Commission (T-95/15);*

2. *The compensation referred to in paragraph 1 is to bear default interest, starting from the date of delivery of this judgment and continuing until full payment, at the rate set by the European Central Bank (ECB) for its principal refinancing operations, plus 3.5 percentage points;*

3. *The action is dismissed as to the remainder;*

4. *The Commission is ordered to pay the costs.*

([1]) OJ C 168, 29.5.2017.

Judgment of the General Court of 12 February 2019 — TV v Council

(Case T-453/17) ([1])

(Civil service — Probationary officials — Probationary period — Probation report — Opinion of the Reports Committee — Dismissal at the end of the probationary period — Work not adequate — Article 34 of the Staff Regulations — Manifest error of assessment — Duty to state reasons)

(2019/C 122/18)

Language of the case: French

Parties

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

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

Re:

Application pursuant to Article 270 TFEU seeking first, the annulment of the decision of the Council of 19 August 2016 dismissing the applicant at the end of his probationary period and the decision of the Council of 11 April 2017 rejecting the applicant's complaint and, secondly, compensation for the non-material damage which the applicant claims to have suffered as a result of those decisions.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TV to pay the costs.*

(1) OJ C 347, 16.10.2017.

Judgment of the General Court of 14 February 2019 — Mouldpro v EUIPO — Wenz Kunststoff (MOULDPRO)

(Case T-796/17) (1)

[EU trade mark — Invalidity proceedings — EU word mark MOULDPRO — Absolute ground for invalidity — Bad faith — Article 59(1)(b) of Regulation (EU) 2017/1001 — Relative grounds for invalidity — Article 60(1)(b) and Article 8(3) of Regulation 2017/1001 — Article 60(1)(c) and Article 8(4) of Regulation 2017/1001]

(2019/C 122/19)

Language of the case: English

Parties

Applicant: Mouldpro ApS (Ballerup, Denmark) (represented by: W Rebernik, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Wenz Kunststoff GmbH & Co. KG (Lüdenscheid, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 16 October 2017 (Case R 2153/2015-4), relating to invalidity proceedings between Mouldpro and Wenz Kunststoff.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mouldpro ApS to pay the costs.*

(1) OJ C 32, 29.1.2018.

Judgment of the General Court of 13 February 2019 — Etnia Dreams v EUIPO — Poisson (Etnik)

(Case T-823/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Etnik — Earlier EU trade mark — Relative ground for refusal — Failure to identify the earlier trade mark in the notice of opposition — Principle of sound administration — Right to an effective remedy — Equality of arms — Principle of good faith — Legitimate expectations)

(2019/C 122/20)

Language of the case: Spanish

Parties

Applicant: Etnia Dreams, SL (Valencia, Spain) (represented by: P. Gago Comes, 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: Serge Poisson (Limal, Belgium)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 October 2017 (Case R 880/2017-4) relating to opposition proceedings between Etnia Dreams and Mr Poisson.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Etnia Dreams SL to pay the costs.*

([1]) OJ C 72, 26.2.2018.

Judgment of the General Court of 12 February 2019 — Et Djili Soy Dzhihangir Ibryam v EUIPO — Lupu (Djili)

(Case T-231/18) ([1])

[EU trade mark — Opposition proceedings — Application for the EU figurative mark Djili — Earlier national word mark GILLY — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001]

(2019/C 122/21)

Language of the case: English

Parties

Applicant: Et Djili Soy Dzhihangir Ibryam (Dulovo, Bulgaria) (represented by C.-R. Romițan, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Victor Lupu (Bucharest, Romania)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 31 January 2018 (Case R 1902/2017-5) relating to opposition proceedings between Mr Lupu and Et Djili Soy Dzhihangir Ibryam.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Et Djili Soy Dzhihangir Ibryam to pay the costs.*

([1]) OJ C 200, 11.6.2018.

Judgment of the General Court of 13 February 2019 — Nemius Group v EUIPO (DENTALDISK)

(Case T-278/18) ([1])

[EU trade mark — Application for EU word mark DENTALDISK — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001]

(2019/C 122/22)

Language of the case: German

Parties

Applicant: Nemius Group GmbH (Obertshausen, Germany) (represented by: C. Bildhäuser, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 30 January 2018 (Case R 741/2017-5) concerning an application for registration of the word sign DENTALDISK as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nemius Group GmbH to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 221, 25.6.2018.

Action brought on 24 January 2019 — Acron and Others v Commission

(Case T-45/19)

(2019/C 122/23)

Language of the case: English

Parties

Applicants: Acron OAO (Veliky Novgorod, Russia), Dorogobuzh OAO (Dorogobuzh, Russia), Acron Switzerland AG (Baar, Switzerland) (represented by: T. De Meese, J. Stuyck and A. Nys, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission Implementing Decision (EU) 2018/1703 of 12 November 2018; ([1]) and

— order the defendant to pay the costs;

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant breached its international obligations, which amounts to a breach of the Treaty and it failed to provide sufficient motivation by finding that the Russian Federation was not complying with its World Trade Organisation obligations.

   The applicants submit that the defendant would have failed to take into account the Russian Federation's accession to the World Trade Organisation as relevant to the change in the calculation of the dumping margin of the applicants. The defendant would be under the obligation to take into account the commitments made by the Russian Federation regarding the price of gas when investigating the interim review of the duties applicable to the import of ammonium nitrate. Since the defendant would have argued that the Russian Federation would not have been complying with its own Protocol of Accession, the defendant would have acted in breach of Article VI of General Agreement on Tariffs and Trade and Article II of World Trade Organisation Antidumping Agreement. In failing to do so, it would have breached its international obligations, which amounts to a breach of the Treaty.

2. Second plea in law, alleging that the defendant made a manifest error of assessment and failed to provide sufficient motivation, resulting in the breach of the rights of defence of the applicants by finding that the change of circumstances invoked by the applicants was not of a lasting nature.

   — The applicants submit that, within the scope of the second plea, there would be two separate grounds for annulment of the contested decision. Both grounds relate to the erroneous conclusion that the change of circumstances was not of lasting nature.

   — In any case, the defendant would have breached its obligation of motivation under Article 296 TFEU by failing to motivate the contested decision in a clear and unequivocal fashion.

3. Third plea in law, alleging that the defendant infringed Articles 19(2) and 20(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, ([2]) as well as the applicants' rights of defence and provided for a lack of legal certainty by failing to provide its dumping calculation.

   — The defendant would have failed to disclose the final calculation of the dumping margin to the applicants, even though that calculation served as the basis for the findings relating to the continuation and existence of dumping, the lasting nature of the change of circumstances, and also the termination of the partial interim review. If the defendant would have communicated the calculation, it would have allowed the applicants to defend their rights more effectively with regard to the dumping calculation and the findings of dumping as a whole, including the argument relating to the calculation methodology used in the original investigation, which could have had a significant impact on their legal situation.

— The applicants submit that the defendant would have infringed Article 19(2) and Article 20(2) of Regulation 2016/1036, the applicants' rights of defence and the principle of legal certainty by failing to provide the applicants with a meaningful summary of the evidence collected during the investigation or the considerations on the basis of which the defendant proposed to amend the applicants' anti-dumping margin. The applicants submit that by refusing to provide them with its dumping margin calculation, the defendant would have infringed the applicants' rights of defence and would have breached the principle of legal certainty.

([1]) Commission Implementing Decision (EU) 2018/1703 of 12 November 2018 terminating the partial interim review concerning imports of ammonium nitrate originating in Russia (OJ L 285, 13.11.2018, p. 97).

([2]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

Action brought on 31 January 2019 — Rot Front v EUIPO — Kondyterska korporatsiia 'Roshen' (РОШЕН)

(Case T-63/19)

(2019/C 122/24)

Language of the case: English

Parties

Applicant: Rot Front OAO (Moscow, Russia) (represented by: M. Geitz and J. Stock, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' (Kiev, Ukraine)

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: International registration designating the European Union in respect of the figurative mark РОШЕН — International registration designating the European Union No 11 233 784

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 16 November 2018 in Case R 1872/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Pleas in law

— Infringement of Articles 94(1), 47(5) and 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 February 2019 — Vlaamse Gemeenschap and Vlaams Gewest v Parliament and Council

(Case T-66/19)

(2019/C 122/25)

Language of the case: Dutch

Parties

Applicants: Vlaamse Gemeenschap and Vlaams Gewest (represented by: T. Eyskens, N. Nonbled and P. Geysens, lawyers)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicants claim that the General Court should:

— declare the action admissible and well founded;

— annul Regulation (EU) 2018/1724;

— order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 4(2) TEU.

   The language obligations imposed by Regulation (EU) 2018/1724 ([1]) are contrary to domestic language legislation in the field of administrative matters, as constitutionally protected in Belgium. That domestic language regime forms part of the political and constitutional foundation of the Belgian State and is part of the identity of the Belgian State. Regulation (EU) 2018/1724 is therefore contrary to Article 4(2) TEU, according to which the Union is to respect the national identities of Member States.

2. Second plea in law, alleging infringement of Article 5(1) and (4) TEU and of Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

   The linguistic obligations imposed by Regulation (EU) 2018/1724 are not in accordance with the principle of conferral (1) or with the proportionality principle (2).

   (1) There is not a single provision of the Treaty which confers on the Union the competence to govern the use of languages within and by public administrations in the Member States.

   (2) The obligation to make a translation available to the public 'in an official language of the Union broadly understood by the largest possible number of cross-border users' (Article 12(1) of Regulation (EU) 2018/1724) is not in accordance with and contains no reasons in respect of the proportionality principle. The language requirements that are imposed by Regulation (EU) 2018/1724 are disproportionate in view of the intended objective.

3. Third plea in law, alleging infringement of Article 3(3) TEU, Article 22 of the Charter of Fundamental Rights of the European Union, and breach of the general principle of non-discrimination on the basis of language and of the principle of equality between the Member States.

   Regulation (EU) 2018/1724 infringes Article 3(3) TEU, Article 22 of the Charter of Fundamental Rights of the European Union, and breaches the general principle of non-discrimination on the basis of language and the principle of equality between the Member States in so far as it discourages citizens who wish to establish themselves in a Member State which is not their own Member State from learning the official language or one of the official languages of that Member State, and also in so far as it imposes the generalisation of the use of one unique working language, which in that way becomes the de facto European language of public services and administrations.

4. Fourth plea in law, alleging breach of the principles of legal certainty and of normative clarity and infringement of point I.2 of the Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on 'Better Law-Making'.

   The language obligations imposed on the Member States by Regulation (EU) 2018/1724 are manifestly contrary to the principles of clarity, precision, foreseeability and coherence. The translation obligations imposed by Regulation (EU) 2018/1724 are unclear, imprecise, unforeseeable and incoherent as regards the language into which it is necessary to translate.

5. Fifth plea in law, alleging infringement of Article 291(2) TFEU.

   The implementation of the translation obligations imposed by Regulation (EU) 2018/1724 requires that the language into which it is necessary to translate be stated in a certain and express manner. The institutional arrangement of Regulation (EU) 2018/1724 is, however, unclear in that respect. Regulation (EU) 2018/1724 is then also not in accordance with the delicate institutional balance provided for in Article 291 TFEU and Regulation (EU) No 182/2011 ([2]) (the 'Comitology Regulation'), given that the arrangement effectively allows the European Commission to bypass the procedure laid down in Regulation (EU) No 182/2011 and adopt legislation in the informal way.

([1]) Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ 2018 L 295, p. 1).

([2]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Members States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13).

Action brought on 6 February 2019 — Nosio v EUIPO — Passi (LA PASSIATA)

(Case T-70/19)

(2019/C 122/26)

Language of the case: English

Parties

Applicant: Nosio SpA (Mezzocorona, Italy) (represented by: J. Graffer and A. Ottolini, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Passi AG (Rothrist, 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 word mark LA PASSIATA — Application for registration No 14 593 131

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 5 November 2018 in Case R 928/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

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

Action brought on 6 February 2019 — BMC v Commission and Clean Sky 2 Joint Undertaking

(Case T-71/19)

(2019/C 122/27)

Language of the case: Italian

Parties

Applicant: BMC Srl (Medicina, Italy) (represented by: S. Dindo and L. Picotti, lawyers)

Defendants: European Commission and Clean Sky 2 Joint Undertaking

Form of order sought

The applicant claims that the Court should annul the decision of the Clean Sky 2 Unit of 6 December 2018 confirming the decision of 10 October 2018 by which Clean Sky 2 found that proposal No 831874, concerning the call for proposals H2020-CS2-CFP08-2018-01 — relating to a suction system for engines and systems for protection against the icing of rotor blades — was not eligible for financing.

Pleas in law and main arguments

The applicant submitted its proposal for participation in call for proposals H2020-CS2-CFP08-2018-01 (Clean Sky 2 Call for proposals 08), managed by Clean Sky 2 (Programme Clean Sky 2), which has as its objective the development of a suction system for engines and systems for protection against the icing of rotor blades (integrating a removable anti-ice system).

The applicant claims to be the only business in the world, currently, to have found a solution to a flight safety problem for helicopters in icy conditions.

The applicant points out in this regard that, even though the call for proposals concerned specifically a request to put forward proposals for the development of the system for protection against icing, Clean Sky 2 (and therefore the unit entrusted with the management of the call) found that the applicant's proposal did not meet the threshold set out by the call.

That decision, it is submitted, is vitiated by infringement of the procedural rules on the following grounds:

1. Infringement of Article 15 of Regulation (EU) No 1290/2013 entitled 'Selection and award criteria' (including where an intermediate score has been given in comparison with those laid down by the provision) and the duty to state reasons under Article 296 TFEU and Article 41 of the Charter of Fundamental Rights.

2. The existence in the present case of a misuse of powers in that an (intermediate) score was applied to each of the three criteria; the scale of scores for the evaluation of the proposals submitted made no provision for such a score.

3. The existence in the present case of a misuse of powers by reason of the failure to investigate adequately and distortion of the facts, in particular in that the objectives pursued by the measure at issue are not met.

Action brought on 7 February 2019 — Bergslagernas Järnvaru v EUIPO — Scheppach Fabrikation von Holzbearbeitungsmaschinen (Wood splitting tools)

(Case T-73/19)

(2019/C 122/28)

Language of the case: English

Parties

Applicant: Bergslagernas Järnvaruaktiebolag (Saltsjö-Boo, Sweden) (represented by: S. Kirschstein-Freund, V. Dalichau and B. Breitinger, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Scheppach Fabrikation von Holzbearbeitungsmaschinen GmbH (Ichenhausen, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: European Union design No 1 289 243-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 23 November 2018 in Case R 1455/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— alternatively, amend the contested decision and rule that the appeal is justified;

— order EUIPO to pay the costs of the appeal proceedings and of the proceedings before the Court.

Pleas in law

— Infringement of Article 62 of Council Regulation (EC) No 6/2002;

— Infringement of Article 6(1) of Council Regulation (EC) No 6/2002.

Action brought on 7 February 2019 — Pontinova v EUIPO — Ponti & Partners (pontinova)

(Case T-76/19)

(2019/C 122/29)

Language of the case: English

Parties

Applicant: Pontinova AG (Zürich, Switzerland) (represented by: K. Loth, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ponti & Partners, SLP (Barcelona, Spain)

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 pontinova — Application for registration No 15 878 085

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 27 November 2018 in Case R 566/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— award the costs in favour of 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 8 February 2019 — Lidl Stiftung v EUIPO — Plásticos Hidrosolubles (green cycles)

(Case T-78/19)

(2019/C 122/30)

Language of the case: English

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: A. Marx and K. Bonhagen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Plásticos Hidrosolubles, SL (Rafelbuñol, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark green cycles in colours blue, grey and white — European Union trade mark No 8 807 265

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 November 2018 in Case R 778/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs of the proceedings;

— order Plásticos Hidrosolubles, SL to pay the costs of the proceedings before EUIPO.

Plea in law

— Infringement of Article 18(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in combination with Article 10(3) and (4) of Delegated Regulation 2018/625.

Action brought on 12 February 2019 — Dekoback v EUIPO — DecoPac (DECOPAC)

(Case T-80/19)

(2019/C 122/31)

Language in which the application was lodged: German

Parties

Applicant: Dekoback GmbH (Helmstadt-Bargen, Germany) (represented by: V. von Moers, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DecoPac, Inc. (Anoka, Minnesota, United States)

Details of the proceedings before EUIPO

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

Mark at issue: EU word mark DECOPAC — EU trade mark No 160 747

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 November 2018 in Case R 1795/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and declare invalid, in its entirety, the trade mark DECOPAC registered for the other party to the proceedings before the Board of Appeal.

Pleas in law

— No confidentiality of business data;

— Infringement of the right to be heard;

— No submission of invoices to any significant extent;

— No use of the trade mark as the other party's own brand;

— Sale also to consumers was planned but did not take place;

— A distinction between edible and inedible decorations is necessary.

Action brought on 12 February 2019 — AL v Commission

(Case T-83/19)

(2019/C 122/32)

Language of the case: French

Parties

Applicant: AL (represented by: A. Blot and S. Rodrigues, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action admissible and well founded;

— annul the decision implicitly rejecting the applicant's claim for compensation submitted on 19 December 2017 and, if necessary, the decision of 12 November 2018 rejecting the applicant's complaint;

— compensate the material and non-material damage suffered by the applicant;

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

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the defendant's contractual commitments to the applicant, in that the Commission failed to comply with the undertaking it had given by appointing the applicant as the European Union facilitator for the Congo Basin Forests Partnership.

2. Second plea in law, alleging infringement of the principle of respect for legitimate expectations.

3. Third plea in law, alleging breach of the right to be heard.

4. Fourth plea in law, alleging breach of the principle of good administration and the duty to have regard for the welfare of officials.

Action brought on 14 February 2019 — Gwo Chyang Biotech v EUIPO — Norma (KinGirls)

(Case T-85/19)

(2019/C 122/33)

Language in which the application was lodged: German

Parties

Applicant: Gwo Chyang Biotech Co. Ltd (Tainan, Taiwan) (represented by: J. Kakoures, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Norma Lebensmittelfilialbetrieb Stiftung & Co. KG (Nuremberg, Germany)

Details of the proceedings before EUIPO

Proprietor of the mark at issue: Applicant

Mark at issue: Application for EU figurative mark KinGirls — Application for registration No 15 151 038

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 December 2018 in Case R 718/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it upheld the opposition in respect of goods in Class 3 and reject the opposition in its entirety;

— order EUIPO and Norma Lebensmittelfilialbetrieb Stiftung & Co. KG to pay the costs of the opposition, appeal and present proceedings.

Plea in law

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

Action brought on 15 February 2019 — Solnova v EUIPO — Canina Pharma (BIO-INSECT Shocker)

(Case T-86/19)

(2019/C 122/34)

Language in which the application was lodged: German

Parties

Applicant: Solnova AG (Zollikon, Switzerland) (represented by: P. Lee, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Canina Pharma GmbH (Hamm, Germany)

Details of the proceedings before EUIPO

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

Mark at issue: Application for EU trade mark BIO-INSECT Shocker — Application for registration No 14 837 553

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 11 December 2018 in Case R 276/2018-2

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 of the proceedings, including those incurred in the appeal proceedings.

Pleas in law

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

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

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

Order of the General Court of 6 February 2019 — British Aggregates v Commission

(Joined Cases T-101/14 and T-610/15) ([1])

(2019/C 122/35)

Language of the case: English

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

([1]) OJ C 112, 14.4.2014.

Order of the General Court of 6 February 2019 — British Aggregates and Others v Commission

(Case T-741/15) ([1])

(2019/C 122/36)

Language of the case: English

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

([1]) OJ C 68, 22.2.2016.

Order of the General Court of 6 February 2019 — Argus Security Projects v EEAS

(Case T-131/17) ([1])

(2019/C 122/37)

Language of the case: French

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

([1]) OJ C 129, 24.4.2017.

Order of the General Court of 31 January 2019 — Lillelam v EUIPO — Pfaff (LITTLE LAMB)

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

(2019/C 122/38)

Language of the case: English

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

([1]) OJ C 94, 12.3.2018.

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