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Information and Notices

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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2019/C 255/01)

Last publication

OJ C 246, 22.7.2019

Past publications

OJ C 238, 15.7.2019

OJ C 230, 8.7.2019

OJ C 220, 1.7.2019

OJ C 213, 24.6.2019

OJ C 206, 17.6.2019

OJ C 187, 3.6.2019

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 14 May 2019 (requests for a preliminary ruling from the Nejvyšší správní soud and from the Conseil du contentieux des étrangers — Czech Republic, Belgium) — M v Ministerstvo vnitra (C-391/16), X (C-77/17), X (C-78/17) v Commissaire général aux réfugiés et aux apatrides

(Joined Cases C-391/16, C-77/17 and C-78/17) [1]

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum policy — International protection — Directive 2011/95/EU — Refugee status — Article 14(4) to (6) — Refusal to grant or revocation of refugee status in the event of danger to the security or the community of the host Member State — Validity — Article 18 of the Charter of Fundamental Rights of the European Union — Article 78(1) TFEU — Article 6(3) TEU — Geneva Convention)

(2019/C 255/02)

Languages of the case: Czech and French

Referring courts

Nejvyšší správní soud and Conseil du contentieux des étrangers

Parties to the main proceedings

Applicants: M (C-391/16), X (C-77/17), X (C-78/17)

Defendants: Ministerstvo vnitra (C-391/16), Commissaire général aux réfugiés et aux apatrides (C-77/17, C-78/17)

Operative part of the judgment

Consideration of Article 14(4) to (6) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, has disclosed no factor of such a kind as to affect the validity of those provisions in the light of Article 78(1) TFEU and Article 18 of the Charter of Fundamental Rights of the European Union.

[1] OJ C 350, 26.9.2016.
OJ C 144, 8.5.2017.

Judgment of the Court (Grand Chamber) of 21 May 2019 — European Commission v Hungary

(Case C-235/17) ([1])

(Failure of a Member State to fulfil obligations — Article 63 TFEU — Free movement of capital — Article 17 of the Charter of Fundamental Rights of the European Union — Right to property — National legislation extinguishing, without compensation, the rights of usufruct over agricultural and forestry land acquired by legal persons or by natural persons who cannot demonstrate a close family tie with the owner of the land)

(2019/C 255/03)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: L. Malferrari and L. Havas, Agents)

Defendant: Hungary (represented by: M.Z. Fehér, Agent)

Operative part of the judgment

The Court:

1. Declares that, by adopting Paragraph 108(1) of mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény (Law No CCXII of 2013 laying down various provisions and transitional measures concerning Law No CXXII of 2013 on transactions in agricultural and forestry land) and thereby cancelling, by operation of law, the rights of usufruct over agricultural and forestry land located in Hungary that are held, directly or indirectly, by nationals of other Member States, Hungary has failed to fulfil its obligations under Article 63 TFEU in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union;

2. Orders Hungary to pay the costs.

([1]) OJ C 412, 4.12.2017.

Judgment of the Court (Eighth Chamber) of 15 May 2019 — Hellenic Republic v European Commission

(Case C-341/1 P) ([1])

(Appeal — Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD) — Expenditure excluded from EU financing — Expenditure incurred by the Hellenic Republic — Regulation (EC) No 1782/2003 — Regulation (EC) No 796/2004 — Area-related aid scheme — Concept of 'permanent pasture' — Flat-rate financial corrections — Deduction of earlier correction)

(2019/C 255/04)

Language of the case: Greek

Parties

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

Other party to the proceedings: European Commission (represented by: D. Triantafyllou and A. Sauka, Agents)

Intervener in support of the applicant: Kingdom of Spain (represented by: M.A. Sampol Pucurull, Agent)

Operative part of the judgment

The Court:

1. Sets aside points 2 and 3 of the operative part of the judgment of the General Court of the European Union of 30 March 2017, Greece v Commission (T-112/15, EU:T:2017:239) in so far as, first, the General Court dismissed the Hellenic Republic's action while limiting its examination to the correction for claim year 2008 that was imputed to the 2009 financial year as regards the financial correction of 5 % applied to aid under the second pillar of the common agricultural policy (CAP), which is dedicated to rural development, and not examining the correction for claim year 2008 that was imputed to the 2010 financial year in the sum of EUR 5 496 524,54 as regards the financial correction of 5 % applied to aid under the CAP's second pillar, dedicated to rural development, and, second, it made a decision as to costs;

2. Dismisses the appeal as to the remainder;

3. Annuls Commission Implementing Decision 2014/950/EU of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as it concerns the taking into account of Commission Implementing Decision 2013/214/EU of 2 May 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) when calculating the amount of the correction of EUR 5 496 524,54, of the deduction of EUR 270175,45 and of the financial impact of EUR 5 226 349,09, which related to expenditure incurred by the Hellenic Republic in the sector of Rural Development EAFRD Axis 2 (2007-2013, area-related measures) and were imposed in respect of the 2010 financial year, on account of weaknesses in the Land Parcel Identification System (LPIS) and the on-the-spot checks (second pillar, claim year 2008);

4. Orders the Hellenic Republic and the European Commission to bear their own costs at first instance and on appeal;

5. Orders the Kingdom of Spain to bear its own costs.

([1]) OJ C 249, 31.7.2017.

Judgment of the Court (Third Chamber) of 16 May 2019 (request for a preliminary ruling from the Arbeidshof te Antwerpen — Belgium) — Christa Plessers v PREFACO NV, Belgische Staat

(Case C-509/17) ([1])

(Reference for a preliminary ruling — Transfers of undertakings — Directive 2001/23/EC — Articles 3 to 5 — Safeguarding of employees' rights — Exceptions — Insolvency proceedings — Proceedings for judicial restructuring by transfer under judicial supervision — Total or partial safeguard of the undertaking — National legislation authorising the transferee, after the transfer, to choose which employees to keep on)

(2019/C 255/05)

Language of the case: Dutch

Referring court

Arbeidshof te Antwerpen

Parties to the main proceedings

Applicant: Christa Plessers

Defendants: PREFACO NV, Belgische Staat

Operative part of the judgment

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, in particular Articles 3 to 5 thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, in the event of the transfer of an undertaking which has taken place in the context of proceedings for judicial restructuring by transfer under judicial supervision applied with a view to maintaining all or part of the transferor or its activity, entitles the transferee to choose the employees which it wishes to keep on

(1) OJ C 374, 6.11.2017.

Judgment of the Court (Fifth Chamber) of 15 May 2019 — VM Vermögens-Management GmbH v European Union Intellectual Property Office (EUIPO), DAT Vermögensmanagement GmbH

(Case C-653/17 P) (1)

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Regulation (EU) 2015/2424 — Invalidity proceedings — Word mark Vermögensmanufaktur — Declaration of invalidity — Right to a fair hearing — Examination of the facts by EUIPO of its own motion — Retrospectivity — Jurisdiction of the General Court — Statement of reasons for judgments)

(2019/C 255/06)

Language of the case: German

Parties

Appellant: VM Vermögens-Management GmbH (represented by: T. Dolde and P. Homann, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: S. Hanne, acting as Agent), DAT Vermögensmanagement GmbH

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders VM Vermögens-Management GmbH to bear its own costs and to pay the costs incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 94, 12.3.2018.

Judgment of the Court (First Chamber) of 15 May 2019 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — M. Çoban v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-677/17) ([1])

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Additional Protocol — Article 59 — Decision No 3/80 — Social security for migrant workers — Waiver of residence clauses — Article 6 — Invalidity benefit — Withdrawal — Regulation (EC) No 883/2004 — Special non-contributory cash benefits — Residence condition — Directive 2003/109/EC — Long-term resident status)

(2019/C 255/07)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: M. Çoban

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Operative part of the judgment

The first subparagraph of Article 6(1) of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families, in conjunction with Article 59 of the Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, must be interpreted as not precluding a national provision, such as that at issue in the main proceedings, which withdraws a supplementary benefit from a Turkish national who returns to his country of origin and who holds, at the date of his departure from the host Member State, long-term resident status, within the meaning of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

([1]) OJ C 94, 12.3.2018.

Judgment of the Court (Fifth Chamber) of 16 May 2019 (request for a preliminary ruling from the Landgericht München I — Germany) — Conti 11. Container Schiffahrts-GmbH & Co. KG Ms 'MSC Flaminia' v Land Niedersachsen

(Case C-689/17) ([1])

(Reference for a preliminary ruling — Environment — Shipment of waste — Regulation (EC) No 1013/2006 — Waste subject to the prior written notification and consent procedure — Shipments within the European Union — Article 1(3)(b) — Exclusion from the regulation's scope — Waste generated on board ships — Waste on board a ship following damage at sea)

(2019/C 255/08)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Conti 11. Container Schiffahrts-GmbH & Co. KG Ms 'MSC Flaminia'

Defendant: Land Niedersachsen

Operative part of the judgment

Article 1(3)(b) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste must be interpreted as meaning that residues, in the form of scrap metal and of fire-extinguishing water mixed with sludge and cargo residues, such as those at issue in the main proceedings, attributable to damage occurring on board a ship at sea, must be regarded as waste generated on board ships, within the meaning of that provision, which is, therefore, excluded from that regulation's scope until it is offloaded in order to be recovered or disposed of.

([1]) OJ C 94, 12.3.2018.

Judgment of the Court (Fourth Chamber) of 15 May 2019 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — AB 'Achema', AB 'Orlen Lietuva', AB 'Lifosa' v Valstybinė kainų ir energetikos kontrolės komisija (VKEKK)

(Case C-706/17) ([1])

(Reference for a preliminary ruling — State aid — Concept of 'aid granted by a Member State or through State resources' — Measures intended to compensate providers of public interest services in the electricity sector — Concept of aid 'affecting trade between Member States' and 'distorting or threatening to distort competition' — Concept of 'selective advantage' — Service of general economic interest — Offsetting of costs involved in the discharging of public service obligations)

(2019/C 255/09)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellants: AB 'Achema', AB 'Orlen Lietuva', AB 'Lifosa'

Respondent: Valstybinė kainų ir energetikos kontrolės komisija (VKEKK)

Joined parties: Lietuvos Respublikos energetikos ministerija, UAB 'Baltpool'

Operative part of the judgment

1. Article 107(1) TFEU must be interpreted as meaning that the funds earmarked for financing a public interest service scheme, such as the public interest services in the electricity sector, constitute State resources within the meaning of that provision.

2. Article 107(1) TFEU must be interpreted as meaning that, when distribution and transport system operators receive monies intended to finance public interest services in the electricity sector in order to offset the losses sustained by reason of the obligation to purchase electricity at a fixed rate from certain electricity producers and to balance it out, that compensation constitutes an advantage, within the meaning of that provision, granted to the electricity producers.

3. Article 107(1) TFEU must be interpreted as meaning that, in circumstances such as those in the main proceedings, funds, such as the monies intended for certain providers of public interest services in the electricity sector, must be regarded as conferring a selective advantage, within the meaning of that provision, on those providers and must be regarded as liable to affect trade between Member States.

4. Article 107(1) TFEU must be interpreted as meaning that a State measure, such as the regime of public interest services in the electricity sector, must not be regarded as compensation for services provided by the recipient undertakings in order to discharge public service obligations, within the meaning of the judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, EU:C:2003:415), unless the referring court establishes that any one of the public interest services in the electricity sector does in fact meet the four conditions set out in paragraphs 88 to 93 of that judgment.

5. Article 107(1) TFEU must be interpreted as meaning that a State measure, such as the regime relating to the provision of public interest services in the electricity sector, must be regarded as distorting or liable to distort competition.

([1]) OJ C 94, 12.3.2018.

Judgment of the Court (First Chamber) of 23 May 2019 (request for a preliminary ruling from the Amtsgericht Norderstedt- Germany) — Christian Fülla v Toolport GmbH

(Case C-52/18) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 1999/44/EC — Lack of conformity of the goods delivered — Article 3 — Right of the consumer to repair or replacement of the goods free of charge, within a reasonable time and without any significant inconvenience — Determination of where the consumer must make goods acquired under a distance contract available to the seller to be brought into conformity — Concept of bringing the goods into conformity 'free of charge' — Right of the consumer to rescind the contract)

(2019/C 255/10)

Language of the case: German

Referring court

Amtsgericht Norderstedt

Parties to the main proceedings

Applicant: Christian Fülla

Defendant: Toolport GmbH

Operative part of the judgment

1. Article 3(3) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as meaning that the Member States remain competent to establish the place where the consumer is required to make goods acquired under a distance contract available to the seller, for them to be brought into conformity in accordance with that provision. That place must be appropriate for ensuring that they can be brought into conformity free of charge, within a reasonable time and without significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods. In that regard, the national court is required to make an interpretation in accordance with Directive 1999/44, including, as necessary, amending established case-law if that law is based on an interpretation of national law which is incompatible with the objectives of that directive;

2. Article 3(2) to (4) of Directive 1999/44 must be interpreted as meaning that the consumer's right to the bringing of goods, acquired under a distance contract, into conformity 'free of charge' does not include the seller's obligation to pay the cost of transporting those goods, for the purposes of bringing them into conformity, to the seller's place of business, unless the fact that the consumer must advance those costs constitutes such a burden as to deter him from asserting his rights, which it is for the national court to ascertain;

3. The combined provisions of Article 3(3) and the second indent of Article 3(5) of Directive 1999/44 are to be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a consumer who has informed the vendor of the non-conformity of goods acquired under a distance contract, the transport of which to the seller's place of business was likely to cause a significant inconvenience to him, and who has made the goods available to the seller at his home for them to be brought into conformity, is entitled to rescission of the contract as a result of the failure to compensate him within a reasonable time, if the seller has failed to take any adequate steps to bring those goods into conformity, including that of informing the consumer of the place where those goods are to be made available to it for it to bring them into conformity. In that regard, it is for the national court, by means of an interpretation in conformity with Directive 1999/44, to ensure the right of that consumer to rescission of the contract.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Grand Chamber) of 14 May 2019 (request for a preliminary ruling from the Audiencia Nacional — Spain) — Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE

(Case C-55/18) ([1])

(Reference for a preliminary ruling — Social policy — Protection of the safety and health of workers — Organisation of working time — Article 31(2) of the Charter of Fundamental Rights of the European Union — Directive 2003/88/EC — Articles 3 and 5 — Daily and weekly rest — Article 6 — Maximum weekly working time — Directive 89/391/EEC — Safety and health of workers at work — Requirement to set up a system enabling the duration of time worked each day by each worker to be measured)

(2019/C 255/11)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: Federación de Servicios de Comisiones Obreras (CCOO)

Defendant: Deutsche Bank SAE

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

Operative part of the judgment

Articles 3, 5 and 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, and Article 4(1), Article 11(3) and Article 16(3) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, must be interpreted as precluding a law of a Member State that, according to the interpretation given to it in national case-law, does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Eighth Chamber) of 15 May 2019 — European Commission v Sabine Tuerck

(Case C-132/18 P) ([1])

(Appeal — Civil service — Pensions — Transfer of pension rights acquired in a national pension scheme to the European Union pension scheme — Deduction of the appreciation between the date of the application for a transfer and the actual date of the transfer)

(2019/C 255/12)

Language of the case: French

Parties

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

Other party to the proceedings: Sabine Tuerck (represented by: S. Orlandi and T. Martin, avocats)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Commission to pay the costs.

([1]) OJ C 161, 7.5.2018.

Judgment of the Court (Sixth Chamber) of 16 May 2019 (request for a preliminary ruling from the Vestre Landsret — Denmark) — Skatteministeriet v Estron A/S

(Case C-138/18) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Hearing aid connectors — Parts and accessories — Combined Nomenclature — Subheadings 85444290, 90214000 and 90219010)

(2019/C 255/13)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet
Defendant: Estron A/S

Operative part of the judgment

1. Note 2(a) to Chapter 90 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008, read in conjunction with General Rules Nos 1 and 6 for the interpretation of the Combined Nomenclature, must be interpreted as meaning that the expression 'Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91' in that note refers only to the four-digit headings of those chapters.

2. It is for the referring court to classify the hearing aid connectors at issue in the main proceedings for customs purposes in the light of the indications provided by the Court in answer to the questions that the referring court referred to it for a preliminary ruling.

3. Note 1(m) to Section XVI of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1031/2008, must be interpreted as meaning that, where goods are included in Chapter 90, they cannot also be included in Chapters 84 and 85 thereof.

([1]) OJ C 166, 14.5.2018.

Judgment of the Court (First Chamber) of 15 May 2019 — CJ v European Centre for Disease Prevention and Control (ECDC)

(Case C-170/18 P) ([1])

(Appeal — Civil service — Contract staff — European Centre for Disease Prevention and Control — Fixed-term contract — Termination of the contract — Compliance with a judgment of the European Union Civil Service Tribunal — Res judicata by means of a judgment annulling a decision — Limits)

(2019/C 255/14)

Language of the case: English

Parties

Appellant: CJ (represented by: V. Kolias, dikigoros)

Other party to the proceedings: European Centre for Disease Prevention and Control (ECDC) (represented by: J. Mannheim and A. Daume, acting as Agents, and by D. Waelbroeck and A. Duron, avocats)

Operative part of the judgment

The Court:

1. Dismisses the appeal.

2. Orders CJ to pay the costs.

([1]) OJ C 301, 27.8.2018.

Judgment of the Court (Ninth Chamber) of 16 May 2019 — Asociación de la pesca y acuicultura del entorno de Doñana y del Bajo Guadalquívir (Pebagua) v European Commission

(Case C-204/18 P) ([1])

(Appeal — Environment — Prevention and management of the introduction and spread of invasive alien species — Regulation (EU) No 1143/2014 — Implementing Regulation (EU) 2016/1141 — Adoption of a list of invasive alien species of Union concern — Inclusion of the species Procambarus clarkii)

(2019/C 255/15)

Language of the case: Spanish

Parties

Appellant: Asociación de la pesca y acuicultura del entorno de Doñana y del Bajo Guadalquívir (Pebagua) (represented by: A. Uceda Sosa, abogado)

Other party: European Commission (represented by: P. Němečková and C. Hermes, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Asociación de la pesca y acuicultura del entorno de Doñana y del Bajo Guadalquívir (Pebagua) to pay the costs.

([1]) OJ C 268, 30.7.2018.

Judgment of the Court (Fourth Chamber) of 22 May 2019 (Request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Krohn & Schröder GmbH v Hauptzollamt Hamburg-Hafen

(Case C-226/18) ([1])

(Reference for a preliminary ruling — Customs union — Regulation (EEC) No 2913/92 — Article 212a — Import procedures — Customs debt — Exemption — Dumping — Subsidies — Imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China — Implementing Regulations (EU) No 1238/2013 and (EU) No 1239/2013 imposing an anti-dumping duty and a countervailing duty — Exemptions)

(2019/C 255/16)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Krohn & Schröder GmbH

Defendant: Hauptzollamt Hamburg-Hafen

Operative part of the judgment

1. Article 212a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as applying to the exemptions from anti-dumping and countervailing duties provided for in Article 3(1) of Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, and Article 2(1) of Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China.

2. Article 212a of Regulation No 2913/92, as amended by Regulation No 648/2005, must be interpreted as meaning that, when it applies to the incurrence of a customs debt pursuant to Article 204(1) of Regulation No 2913/92, as amended, for exceeding the time limit under Article 49(1) of that regulation, the conditions laid down in Article 3(1)(a) of Implementing Regulation No 1238/2013 and in Article 2(1)(a) of Implementing Regulation No 1239/2013 are not fulfilled when the company which is affiliated with the company listed in the Annex to Commission Implementing Decision 2013/707/EU of 4 December 2013 confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures, and which manufactured, consigned and invoiced the goods concerned, did not act as the importer of those goods and did not ensure the release of the goods into free circulation, even if it had the intention to do so and was the company to which the goods were actually delivered.

([1]) OJ C 268, 30.7.2018.

Judgment of the Court (Eighth Chamber) of 15 May 2019 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Vega International Car Transport and Logistic — Trading GmbH v Dyrektor Izby Skarbowej w Warszawie

(Case C-235/18) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 135(1)(b) — Supply of goods — Exemptions for other activities — Granting and negotiation of credit — Fuel cards)

(2019/C 255/17)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Vega International Car Transport and Logistic — Trading GmbH

Other party to the proceedings: Dyrektor Izby Skarbowej w Warszawie

Operative part of the judgment

Article 135(1)(b) 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 circumstances such as those of the case in the main proceedings, the provision of fuel cards by a parent company to its subsidiaries, enabling those subsidiaries to refuel the vehicles they transport, may be classified as a service granting credit which is exempt from value added tax as referred to in that provision.

([1]) OJ C 231, 2.7.2018.

Judgment of the Court (Eighth Chamber) of 15 May 2019 (request for a preliminary ruling from the Krajský soud v Ostravě — pobočka v Olomouci — Czech Republic) — KORADO a.s. v Generální ředitelství cel

(Case C-306/18) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Welded steel parts — Radiators for central heating, not electrically heated — Headings 7307 and 7322 — Concepts of radiator 'parts' and 'tube or pipe fittings' — Implementing Regulation (EU) 2015/23 — Validity)

(2019/C 255/18)

Language of the case: Czech

Referring court

Krajský soud v Ostravě — pobočka v Olomouci

Parties to the main proceedings

Applicant: KORADO a.s.

Defendant: Generální ředitelství cel

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014, must be interpreted as meaning that welded steel parts such as those at issue in the main proceedings must, subject to the referring court's assessment of all the factual information available to it, be classified under CN heading 7307, as 'tube or pipe fittings'.

([1]) OJ C 240, 9.7.2018.

Appeal brought on 18 December 2018 by FCA US LLC against the judgment of the General Court (Sixth Chamber) delivered on 18 October 2018 in Case T-109/17: FCA US v EUIPO — Busbridge

(Case C-795/18 P)

(2019/C 255/19)

Language of the case: English

Parties

Appellant: FCA US LLC (represented by: C. Morcom QC)

Other party to the proceedings: European Union Intellectual Property Office

By order of 20 June 2019 the Court of Justice (Seventh Chamber) held that the appeal was inadmissible.

Appeal brought on 18 December 2018 by Saga Furs Oyj against the order of the General Court (Third Chamber) delivered on 12 October 2018 in Case T-313/18: Saga Furs v EUIPO — Support Design

(Case C-805/18 P)

(2019/C 255/20)

Language of the case: English

Parties

Appellant: Saga Furs Oyj (represented by: J. Kaulo, luvan saanut oikeudenkäyntiavustaja)

Other parties to the proceedings: European Union Intellectual Property Office, Support Design AB

By order of 12 June 2019 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 21 December 2018 by OY against the judgment of the General Court (Fourth Chamber) delivered on 16 October 2018 in Case T-605/16: OY v Commission

(Case C-816/18 P)

(2019/C 255/21)

Language of the case: English

Parties

Appellant: OY (represented by: S. Rodrigues and N. Flandin, avocats)

Other party to the proceedings: European Commission

By order of 12 June 2019 the Court of Justice (Eighth Chamber) held that the appeal was inadmissible.

Appeal brought on 27 December 2018 by Linak A/S against the judgment of the General Court (Fifth Chamber) delivered on 18 October 2018 in Case T-368/17: Linak v EUIPO — ChangZhou Kaidi Electrical

(Case C-820/18 P)

(2019/C 255/22)

Language of the case: English

Parties

Appellant: Linak A/S (represented by: V. von Bomhard, Rechtsanwältin, and J. Fuhrmann, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 19 June 2019 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 27 December 2018 by Linak A/S against the judgment of the General Court (Fifth Chamber) delivered on 18 October 2018 in Case T-367/17: Linak v EUIPO — ChangZhou Kaidi Electrical

(Case C-821/18 P)

(2019/C 255/23)

Language of the case: English

Parties

Appellant: Linak A/S (represented by: V. von Bomhard, Rechtsanwältin, and J. Fuhrmann, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 19 June 2019 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 27 December 2018 by Aldo Supermarkets against the judgment of the General Court (Eighth Chamber) delivered on 25 October 2018 in Case T-359/17: Aldo Supermarkets v EUIPO — Aldi Einkauf

(Case C-822/18 P)

(2019/C 255/24)

Language of the case: English

Parties

Appellant: Aldo Supermarkets (represented by: M. Thewes, avocat)

Other parties to the proceedings: European Union Intellectual Property Office, Aldi Einkauf GmbH & Co. OHG

By order of 4 June 2019 the Court of Justice (Sixth Chamber) held that the appeal was inadmissible.

Appeal brought on 15 April 2019 by Boudewijn Schokker against the order of the General Court (Eighth Chamber) delivered on 8 February 2019 in Case T-817/17 Schokker v EASA

(Case C-310/19 P)

(2019/C 255/25)

Language of the case: French

Parties

Appellant: Boudewijn Schokker (represented by: T. Martin and S. Orlandi, avocats)

Other party to the proceedings: European Aviation Safety Agency (EASA)

Form of order sought

The appellant claims that the Court should:

— set aside the order of 8 February 2019 in Case T-817/17, *Schokker* v *EASA*;

— refer the case back to the General Court; and

— reserve the costs.

Grounds of appeal and main arguments

The appellant claims, first, that the General Court erred in law by dismissing the action on a ground that it had raised if its own motion and erroneously categorised as 'manifest'. When it did so, the General Court infringed Article 126 of its Rules of Procedure and the appellant's rights of defence.

The appellant submits, second, that the General Court erred in law by concluding that a verification of the grounds for the withdrawal of the offer of employment at issue was irrelevant, as an offer of employment can, in any case, be withdrawn at any moment without being subject to any conditions.

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 19 April 2019 — eurocylinder systems AG v Hauptzollamt Hamburg

(Case C-324/19)

(2019/C 255/26)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: eurocylinder systems AG

Defendant: Hauptzollamt Hamburg

Question referred

Is Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China ([1]) valid?

([1]) OJ 2009, L 262, p. 19.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 23 April 2019 — Staatssecretaris van Financiën v X

(Case C-331/19)

(2019/C 255/27)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Other party: X

Questions referred

1. Must the term 'foodstuffs for human consumption' used in point 1 of Annex III to the 2006 VAT Directive ([1]) be interpreted as covering, in accordance with Article 2 of Regulation (EC) No 178/2002 ([2]) of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans?

   If this question is answered in the negative, how must that term then be defined?

2. If edible or potable products cannot be regarded as foodstuffs for human consumption, on the basis of which criteria must it then be assessed whether such products can be regarded as products normally used to supplement foodstuffs or as a substitute for foodstuffs?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
([2]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 25 April 2019 — SC Romenergo SA and Aris Capital SA v Autoritatea de Supraveghere Financiară

(Case C-339/19)

(2019/C 255/28)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Appellants: SC Romenergo SA and Aris Capital SA

Respondent: Autoritatea de Supraveghere Financiară

Question referred

Must Article 63 et seq. TFEU, read in conjunction with Article 2(2) of Directive 2004/25/EC [1] and Article 87 of Directive 2001/34/EC, [2] be interpreted as precluding a national legislative framework (in the present case Article 2(3)(j) of CNVM Regulation No 1/2006) which establishes a legal presumption of concerted practice in respect of holdings in companies whose shares are admitted to trading on a regulated market and which are treated as alternative investment funds (known as 'financial investment companies') with regard to:

1. persons who have carried out or who are carrying out economic transactions together, whether related or unrelated to the capital market, and

2. persons who, in carrying out economic transactions, use financial resources which have the same origin or which originate from different entities which are involved persons?

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[1] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12).
[2] Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ 2001 L 184, p. 1).

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 30 April 2019 — MH Müller Handels GmbH v MJ

(Case C-341/19)

(2019/C 255/29)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: MH Müller Handels GmbH

Respondent in the appeal on a point of law: MJ

Questions referred

1. Can established indirect unequal treatment on grounds of religion within the meaning of Article 2(2)(b) of Directive 2000/78/EC, [1] resulting from an internal rule of a private undertaking, be justifiable only if, according to that rule, it is prohibited to wear any visible sign of religious, political or other philosophical beliefs, and not only such signs as are prominent and large-scale?

2. If Question 1 is answered in the negative:

   (a) Is Article 2(2)(b) of Directive 2000/78/EC to be interpreted as meaning that the rights derived from Article 10 of the Charter of Fundamental Rights of the European Union and from Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms may be taken into account in the examination of whether established indirect unequal treatment on grounds of religion is justifiable on the basis of an internal rule of a private undertaking which prohibits the wearing of prominent, large-scale signs of religious, political or other philosophical beliefs?

(b) Is Article 2(2)(b) of Directive 2000/78/EC to be interpreted as meaning that national rules of constitutional status which protect freedom of religion may be taken into account as more favourable provisions within the meaning of Article 8(1) of Directive 2000/78/EC in the examination of whether established indirect unequal treatment on grounds of religion is justifiable on the basis of an internal rule of a private undertaking which prohibits the wearing of prominent, large-scale signs of religious, political or other philosophical beliefs?

3. If Questions 2(a) and 2(b) are answered in the negative:

In the examination of an instruction based on an internal rule of a private undertaking which prohibits the wearing of prominent, large-scale signs of religious, political or other philosophical beliefs, must national rules of constitutional status which protect freedom of religion be set aside because of primary EU law, even if primary EU law, such as, for example, Article 16 of the Charter of Fundamental Rights, recognises national laws and practices?

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 16 April 2019 — EUflight.de GmbH v Eurowings GmbH

(Case C-345/19)

(2019/C 255/30)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: EUflight.de GmbH

Defendant: Eurowings GmbH

Questions referred

1. Are the provisions of Articles 4, 5, 6 and 7 of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that passengers who are transported to their final destination via the booked flight over an hour before the planned time of departure obtain compensation, by application by analogy of Article 7 of that regulation?

2. Can that compensation be reduced according to flight distance pursuant to Article 7(2) if the time of arrival precedes the periods of delayed arrival specified therein, or even the scheduled time of arrival?

3. Is the possibility of a reduction excluded if the time of departure precedes the scheduled time of departure by the same amount of time provided for by the delay limits in Article 7(2) (that is, more than two, three or four hours)?

(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 Verwaltungsgericht Köln (Germany) lodged on 6 May 2019 — Interseroh Dienstleistungs GmbH v Land Nordrhein-Westfalen

(Case C-353/19)

(2019/C 255/31)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: Interseroh Dienstleistungs GmbH

Defendant: Land Nordrhein-Westfalen

Questions referred

1. (a) Is Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, (1) in particular Annex III in conjunction with entry B 3020 of Annex IX to the Basel Convention, (2) to be interpreted as meaning that the indents contained in that entry are various single entries for the purposes of Regulation No 1013/2006?

   (b) If Question 1(a) is answered in the negative:

   Does entry B 3020 cover mixed paper and paperboard waste, which — like the waste at issue in the main proceedings — in addition to lightweight paper, paperboard and cardboard packaging, also contains liquid packaging board made of laminated paperboard?

2. If Question 1(b) is answered in the affirmative:

   (a) Is entry B 3020 or the fourth indent thereof to be interpreted as meaning that it requires absolute freedom from foreign material, in the sense that the classification of waste under that entry is precluded if the waste — regardless of its volume and potential danger — contains materials other than waste and scrap of paper or paperboard (foreign materials)?

(b) If Question 2(a) is answered in the negative:

Can a proportion of foreign material in waste, in particular on account of its volume, also preclude classification under entry B 3020 or the fourth indent thereof, if the conditions of the so-called chapeau of Annex III to Regulation 1013/2006 have not been met, that is to say, the waste is contaminated by other materials to an extent which does not increase the risks associated with the waste sufficiently to render it appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 2008/98/EC, ([3]) and does not prevent the recovery of the waste in an environmentally sound manner?

3. If Question 1(b) is answered in the negative:

(a) Is point 3(g) of Annex IIIA to Regulation No 1013/2006 to be interpreted as meaning that it requires absolute freedom from foreign material, in the sense that the classification of a mixture of waste under that entry is precluded if the mixture — regardless of its volume and potential danger — contains waste other than the waste referred to in the first three indents of entry B 3020 (foreign materials)?

(b) If Question 3(a) is answered in the negative:

Can foreign materials which, in any event, do not preclude classification under point 3(g) of Annex IIIA to Regulation No 1013/2006, also be waste which, viewed in isolation, would be classified under the fourth indent of entry B 3020?

([1]) OJ 2006 L 190, p. 1.

([2]) Basel Convention on the control of transboundary movements of hazardous wastes and their disposal of 22 March 1989

([3]) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives; OJ 2008 L 312, p. 3.

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 8 May 2019 — 'BOSOLAR' EOOD v 'CHEZ ELEKTRO BULGARIA' AD

(Case C-366/19)

(2019/C 255/32)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: 'BOSOLAR' EOOD

Defendant: 'CHEZ ELEKTRO BULGARIA' AD

Questions referred

1. Is Article 16 of the Charter of Fundamental Rights of the European Union, which governs the right to have the freedom to conduct a business in the EU legal order, to be interpreted as meaning that it precludes a national provision such as Paragraph 18 of the Prehodni i zaklyuchitelni razporedbi na Zakona za izmenenie i dopalnenie na zakona za energetikata (Transitional and final provisions of the Law amending and supplementing the Law on energy, 'the PZR ZIDZE'), pursuant to which, despite the fact that an agreement has been entered into and a contractual relationship exists — aspects that are subject to special provisions of the applicable law — one of the fundamental elements of the agreement (the price) is changed in favour of one of the contracting parties by legislative act?

2. Is the principle of legal certainty to be interpreted as meaning that it precludes the redefinition of legal relationships that have already been established between private legal entities or between the State and private legal entities on the basis of special provisions if such redefinition has an adverse effect on the legitimate expectations of the legal entities governed by private law and rights already acquired by them?

3. Having regard to the judgment of the Court of Justice of 10 September 2009, *Plantanol* (C-201/08, EU:C:2009:539), is the principle of the protection of legitimate expectations, as a fundamental principle of EU law, to be interpreted as meaning that it precludes a Member State from changing the applicable legal regime for the generation of electricity from renewable sources without a sufficient guarantee of predictability by prematurely withdrawing measures provided for by law which are aimed at promoting the generation of electricity from renewable sources and are linked to long-term power purchase agreements, contrary to the conditions under which private actors have made investments in the generation of electricity from renewable sources and entered into long-term power purchase agreements with State-regulated electricity suppliers?

4. Having regard to recitals 8 and 14 in the preamble to the directive, are Articles 3 and 4 of Directive 2009/28/EC [1] on the promotion of the use of energy from renewable sources to be interpreted as meaning that they oblige Member States to guarantee legal certainty for investors in the area of generation of electricity from renewable sources, including solar energy, by means of national measures for implementing the directive?

   If that question is answered in the affirmative: Is a national provision such as Paragraph 18 PZR ZIDZE, which significantly changes the preferential conditions for the purchase of electricity from renewable sources, even for long-term agreements which have already been entered into for the purchase of electricity from such sources in accordance with the originally adopted national measures for implementing the directive, permissible pursuant to Articles 3 and 4 in conjunction with recitals 8 and 14 of Directive 2009/28?

5. How is the term 'Member State' to be interpreted for the purposes of applying EU law at a national level? Having regard to the judgment of the Court of Justice of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313) and the subsequent judgments of the Court of Justice in that area of case-law, does this term also cover the providers of a service of general economic interest (electricity supply), such as the defendant company in the pending court proceedings, which have been made responsible for providing that service under conditions governed by law pursuant to a measure adopted by a State authority and under the supervision of that authority?

[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 (Text with EEA relevance) (OJ 2009 L 140, p. 16).

Reference for a preliminary ruling from International Protection Appeals Tribunal (Ireland) made on 16 May 2019 — Ms R.A.T., Mr D.S. v Minister for Justice and Equality

(Case C-385/19)

(2019/C 255/33)

Language of the case: English

Referring court

International Protection Appeals Tribunal

Parties to the main proceedings

Appellants: Ms R.A.T. and Mr D.S.

Respondent: Minister for Justice and Equality

Questions referred

1) Are there separate categories of 'Applicant' envisaged in Article 15 of Directive 2013/33/EU [1]?

2) What type of conduct will amount to delay attributable to the applicant within the meaning of Article 15(1) of Directive 2013/33/EU?

[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).

Action brought on 23 May 2019 — European Commission v Hungary

(Case C-400/19)

(2019/C 255/34)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: A. Sipos, A. Lewis and E. Manhaeve, acting as Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

— Declare that, by restricting the fixing of sale prices of agricultural and food products, having particular regard to Article 3(2)(u) of the a mezőgazdasági és élelmiszeripari termékek vonatkozásában a beszállítókkal szemben alkalmazott tisztességtelen forgalmazói magatartás tilalmáról szóló, 2009. évi XCV. törvény (Law XCV of 2009 prohibiting unfair trading practices by suppliers in respect of agricultural and food products), Hungary has failed to fulfil its obligations under Article 34 of the Treaty on the Functioning of the European Union and Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products; ([1])

— Order Hungary to pay the costs.

Pleas in law and main arguments

Law XCV of 2009 prohibiting unfair trading practices by suppliers in respect of agricultural and food products ('the Tfmtv') introduced sector-specific provisions in relation to the fixing of the retail prices of the products in question.

The Commission submits that Article 3(2)(u) of the Tfmtv does not refer to the characteristics of agricultural and food products, but solely to their selling arrangements, and must therefore be regarded as a provision relating to sales arrangements within the meaning of the *Keck and Mithouard* judgment (see judgment of 24 November 1993, *Keck and Mithouard*, Joined Cases C-267/91 and C-268/91, EU:C:1993:905). In analysing the effects of that measure, it can be said to be a measure having equivalent effect to a quantitative restriction on trade between Member States within the meaning of Article 34 TFEU.

According to the Commission, Article 3(2)(u) of the Tfmtv does not in fact affect the sale of domestic and imported products in equal measure, and is neither an adequate nor proportionate measure with regard to any legitimate aim connected to it.

([1]) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

Request for a preliminary ruling from the Cour du travail de Liège (Belgium) lodged on 24 May 2019 — LM v Centre public d'action sociale de Seraing

(Case C-402/19)

(2019/C 255/35)

Language of the case: French

Referring court

Cour du travail de Liège

Parties to the main proceedings

Appellant: LM

Respondent: Centre public d'action sociale de Seraing

Questions referred

Does point 1 of the first subparagraph of Article 57(2) of the Organic Law of 8 July 1976 on public social welfare centres infringe Articles 5 and 13 of Directive 2008/115/EC, [1] read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union, and Article 14(1)(b) of that directive and Articles 7 and [21] of the Charter of Fundamental Rights of the European Union as interpreted by the Court of Justice of the European Union in the *Abdida* judgment of 18 December 2014 (Case C-562/13):

— first, in so far as it results in depriving a third-country national, staying illegally on the territory of a Member State, of provision, in so far as possible, for his basic needs pending resolution of the action for suspension and annulment that he has brought in his own name as the representative of his child, who was at that time a minor, against a decision ordering them to leave the territory of a Member State;

— where, second, on the one hand, that child who has now come of age suffers from a serious illness and the enforcement of that decision may expose that child to a serious risk of grave and irreversible deterioration in her state of health and, on the other, the presence of that parent alongside his daughter who has now come of age is considered to be imperative by the medical professional given that she is particularly vulnerable as a result of her state of health (recurrent sickle cell crises and the need for surgery in order to prevent paralysis)?

[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).

Reference for a preliminary ruling from Supreme Court of the United Kingdom (United Kingdom) made on 27 May 2019 — The Software Incubator Ltd v Computer Associates (UK) Ltd

(Case C-410/19)

(2019/C 255/36)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: The Software Incubator Ltd

Defendant: Computer Associates (UK) Ltd

Questions referred

1. Where a copy of computer software is supplied to a principal's customers electronically, and not on any tangible medium, does it constitute '*goods*' within the meaning of that term as it appears in the definition of a commercial agent in Article 1(2) of Council Directive 86/653/EEC of December 1986 on the co-ordination of the laws of member states relating to self-employed commercial agents ([1]) ('**Directive**')?

2. Where computer software is supplied to a principal's customers by way of the grant to the customer of a perpetual licence to use a copy of the computer software, does that constitute a '*sale of goods*' within the meaning of that term as it appears in the definition of commercial agent in Article 1(2) of the Directive?

([1]) OJ 1986, L 382, p. 17

Appeal brought on 6 June 2019 by Pometon SpA against the judgment delivered by the General Court (Third Chamber, Extended Composition) on 28 March 2019 in Case T-433/16, Pometon v Commission

(Case C-440/19 P)

(2019/C 255/37)

Language of the case: Italian

Parties

Appellant: Pometon SpA (represented by: E. Fabrizi, V. Veneziano and A. Molinaro, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

principally, set aside the judgment under appeal in so far as it rejected the pleas in law seeking annulment of the contested decision in its entirety and, consequently, annul the contested decision;

in the alternative:

— set aside the judgment under appeal in so far as the General Court unfairly found that Pometon's alleged participation in the alleged cartel had not been interrupted during the period from 18 November 2005 to 20 March 2007 and, accordingly, in the exercise of its unlimited jurisdiction, reduce the financial penalty imposed on Pometon;

— in any event, in the exercise of its unlimited jurisdiction, reduce the financial penalty imposed on Pometon on account of the General Court having failed to observe the principle of equal treatment;

in any event, order the Commission to pay the appellant's legal fees and any other costs and charges connected with the present proceedings and the proceedings before the General Court.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on four grounds of appeal.

1. **First ground of appeal:** The General Court misapplied fundamental principles of EU law, namely the principle of the presumption of innocence and the principle of a fair trial, by failing to criticise the Commission's failure to observe those fundamental principles.

2. **Second ground of appeal:** The General Court failed to observe the principles governing the burden of proof and failed to apply the principle of the presumption of innocence when it confirmed the Commission's findings that Pometon had taken part in the alleged cartel. It also gave contradictory and/or insufficient reasoning in that regard.

   The General Court found the appellant culpable on the basis of assumptions and 'likelihoods', indicating in quite generic terms the documents on which those assumptions were based.

3. **Third ground of appeal:** The General Court misapplied the principles governing the burden of proof and failed to apply the principle of the presumption of innocence when it held that the Commission had demonstrated to the requisite legal standard that Pometon had not interrupted its participation in the infringement during the (approximately) 16-month period from 18 November 2005 to 20 March 2007, even though, for that period, it did not have evidence of collusive contact. It also gave contradictory and/or insufficient reasoning in that regard.

4. **Fourth ground of appeal:** The General Court failed to observe the principle of equal treatment when setting the amount of the fine imposed on Pometon and provided contradictory and/or insufficient reasoning in that regard. In particular, the General Court recalculated the amount of the penalty imposed on the appellant by identifying a percentage reduction of the basic amount of the fine that was not consistent with the percentage reductions granted by the Commission to the settling parties, and did not provide objective justification for such treatment.

GENERAL COURT

Judgment of the General Court of 5 June 2019 — Bank Saderat v Council

(Case T-433/15) ([1])

(Non-contractual liability — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds — Restriction on admission to the territory of the Member States — Compensation for the damage allegedly sustained by the applicant following its inclusion and re-inclusion in the list of persons and entities subject to the restrictive measures at issue — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2019/C 255/38)

Language of the case: English

Parties

Applicant: Bank Saderat plc (London, United Kingdom) (represented by: S. Jeffrey, S. Ashley, A. Irvine, Solicitors, M. Demetriou QC, and R. Blakeley, Barrister)

Defendant: Council of the European Union (represented by: initially M. Bishop and N. Rouam, and subsequently M. Bishop and H. Marcos Fraile, Agents)

Intervener in support of the defendant: European Commission (represented by: initially M. Konstantinidis and D. Gauci, and subsequently M. Konstantinidis, A. Tizzano and C. Zadra, Agents)

Re:

Application based on Article 268 TFEU for compensation for the damage allegedly sustained by the applicant as a result of the inclusion of its name on the list of designated persons and entities in Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1), and Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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

([1]) OJ C 320, 28.9.2015.

Judgment of the General Court of 6 June 2019 — Dalli v Commission

(Case T-399/17) ([1])

(Non-contractual liability — Investigation by OLAF — Sufficiently serious breach of a rule of law conferring rights on individuals — Non-material damage — Causal link)

(2019/C 255/39)

Language of the case: English

Parties

Applicant: John Dalli (St. Julians, Malta) (represented by: L. Levi and S. Rodrigues, lawyers)

Defendant: European Commission (represented by: J. P. Keppenne and J. Baquero Cruz, Agents)

Re:

Action under Article 268 TFEU seeking compensation for damage allegedly suffered by the applicant as a result of the illegal conduct of the Commission and the European Anti-Fraud Office (OLAF), connected with the termination of his office as a Member of the Commission on 16 October 2012.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr John Dalli to bear his own costs as well as those incurred by the European Commission.*

([1]) OJ C 277, 21.8.2017.

Judgment of the General Court of 6 June 2019 –EIB v Syria

(Case T-539/17) ([1])

(Arbitration clause — Al Thawra Loan Agreement No 16405 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

(2019/C 255/40)

Language of the case: English

Parties

Applicant: European Investment Bank (represented initially by P. Chamberlain, T. Gilliams, F. Oxangoiti Briones and J. Shirran, and subsequently by F. Oxangoiti Briones, J. Klein and J. Shirran, acting as Agents, and by D. Arts, lawyer, and T. Cusworth, Solicitor)

Defendant: Syrian Arab Republic

Re:

Action pursuant to Article 272 TFEU, seeking an order that the Syrian Arab Republic repay sums due under Al Thawra Loan Agreement No 16405, plus default interest.

Operative part of the judgment

The Court:

1. *Orders the Syrian Arab Republic to repay the European Union, represented by the European Investment Bank (EIB) the sums of EUR 404 792,06, 954 331,07 pounds sterling (GBP), 29 130 433,00 Japanese yen (JPY) and 1 498 184,58 US dollars (USD).*

2. *Declares that those sums are to bear default interest at an annual rate of 4.52% on the principal amounts and on the contractual interest, from 9 August 2017 up to the date that payment is made.*

3. *Dismisses the action as to the remainder.*

4. *Orders the Syrian Arab Republic to pay the costs.*

([1]) OJ C 369, 30.10.2017.

Judgment of the General Court of 6 June 2019 — EIB v Syria

(Case T-540/17) ([1])

(Arbitration clause — Electricity Distribution Project Loan Agreement No 20948 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

(2019/C 255/41)

Language of the case: English

Parties

Applicant: European Investment Bank (represented initially by P. Chamberlain, T. Gilliams, F. Oxangoiti Briones and J. Shirran, and subsequently by F. Oxangoiti Briones, J. Klein and J. Shirran, acting as Agents, and by D. Arts, lawyer, and T. Cusworth, Solicitor)

Defendant: Syrian Arab Republic

Re:

Action pursuant to Article 272 TFEU, seeking an order that the Syrian Arab Republic repay sums due under Electricity Distribution Project Loan Agreement No 20948, plus default interest

Operative part of the judgment

The Court:

1. *Orders the Syrian Arab Republic to repay the European Union, represented by the European Investment Bank (EIB), the sum of EUR 52 657 141,77;*

2. *Declares that that sum is to bear default interest, on the principal amounts and on the contractual interest, calculated in accordance with the method laid down in Article 3.02 of Electricity Distribution Project loan agreement No 20948, entered into by the EIB and the Syrian Arab Republic on 5 February 2001 and amended by the letters of 3 October 2003, 28 February 2006, 9 May and 8 October 2007, from 9 August 2017 up to the date that payment is made;*

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

4. *Orders the Syrian Arab Republic to pay the costs.*

(1) OJ C 369, 30.10.2017.

Judgment of the General Court of 6 June 2019 — EIB v Syria

(Case T-541/17) (1)

(Arbitration clause — Electricity Transmission Project Loan Agreement No 20868 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

(2019/C 255/42)

Language of the case: English

Parties

Applicant: European Investment Bank (represented initially by P. Chamberlain, T. Gilliams, F. Oxangoiti Briones and J. Shirran, and subsequently by F. Oxangoiti Briones, J. Klein and J. Shirran, acting as Agents, and D. Arts, lawyer, and T. Cusworth, Solicitor)

Defendant: Syrian Arab Republic

Re:

Action pursuant to Article 272 TFEU, seeking an order that the Syrian Arab Republic repay sums due under Electricity Transmission Project Loan Agreement No 20868, plus default interest.

Operative part of the judgment

The Court:

1. *Orders the Syrian Arab Republic to repay the European Union, represented by the European Investment Bank (EIB) the sums of EUR 38 934 400,51 and 3 383 971,66 Swiss francs (CHF);*

2. *Declares that those sums are to bear default interest, in accordance with the method laid down in Article 3.02 of Electricity Transmission Project loan agreement No 20868, entered into by the EIB and the Syrian Arab Republic on 14 December 2000 and amended on 20 December 2004, on the principal amounts and on the contractual interest, from 9 August 2017 up to the date that payment is made;*

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

4. *Orders the Syrian Arab Republic to pay the costs.*

(1) OJ C 369, 30.10.2017.

Judgment of the General Court of 6 June 2019 — Bonnafous v EACEA

(Case T-61/17) ([1])

(Civil service — Contract staff — Dismissal at the end of the probationary period — Normal probationary conditions — Psychological harassment — Principle of sound administration — Duty of care — Rights of the defence — Right to be heard — Manifest error of assessment — Misuse of powers — Liability)

(2019/C 255/43)

Language of the case: French

Parties

Applicant: Laurence Bonnafous (Brussels, Belgium) (represented by S. Rodrigues and A. Blot, lawyers)

Defendant: Education, Audiovisual and Culture Executive Agency (represented by H. Monet and V. Kasparian, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application based on Article 270 TFEU seeking, first, annulment of the dismissal decision of 14 November 2016 and of the decision rejecting the applicant's complaint of 2 June 2017, taken by the EACEA, and second, compensation for the harm allegedly suffered by the applicant following those decisions.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Laurence Bonnafous to pay the costs.*

([1]) OJ C 374, 6.11.2017.

Judgment of the General Court of 5 June 2019 — Siragusa v Council

(Case T-616/17 RENV) ([1])

(Civil service — Officials — Leaving the service — Request to retire — Amendment of the Staff Regulations after that request had been made — Withdrawal of an earlier decision — Liability)

(2019/C 255/44)

Language of the case: French

Parties

Applicant: Sergio Siragusa (Brussels, Belgium) (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: Council of the European Union (represented by: initially, M. Bauer and M. Veiga, then M. Bauer and R. Meyer, Agents)

Intervener in support of the defendant: European Parliament (represented by: initially, M. Rantala and Í. Ní Riagáin Düro, then I. Lázaro Bentacor and C. González Argüelles, Agents)

Re:

Application on the basis of Article 270 TFEU and seeking, first, the annulment of the Council's decision of 12 November 2014 withdrawing the Council's earlier decision approving the applicant's request of 11 July 2013 for early retirement and, secondly, compensation in respect of the material and non-material harm allegedly suffered by the applicant as a result of that decision.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Council of the European Union of 12 November 2014 withdrawing the Council's earlier decision approving Mr Sergio Siragusa's request of 11 July 2013 for early retirement;*

2. *Orders the Council to pay Mr Siragusa the sum of EUR 5 000, together with default interest, to be calculated as from the date of delivery of the present judgment is delivered and until full payment, at the rate fixed by the European Central Bank (ECB) for its main refinancing operations, increased by two percentage points;*

3. *Dismisses the claim for damages as to the remainder*

4. *Declares that the Council is to bear its own costs and orders it to pay those incurred by Mr Siragusa, including those relating to Case F-124/15 and Case T-678/16 P;*

5. *Declares that the European Parliament is to bear its own costs, including those relating to Case F-124/15 and Case T-678/16 P.*

([1]) OJ C 414, 14.12.2015 (Case initially registered before the European Union Civil Service Tribunal under number F-124/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 6 June 2019 — Rietze v EUIPO — Volkswagen (VW Bus T 5 vehicle)

(Case T-43/18) ([1])

(Community designs — Invalidity proceedings — Registered Community design representing the VW Bus T 5 vehicle — Earlier Community design — Ground for invalidity — Individual character — Informed user — Different overall impression — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2019/C 255/45)

Language of the case: German

Parties

Applicant: Rietze GmbH & Co. KG (Altdorf, Germany) (represented by: M. Krogmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Volkswagen AG (Wolfsburg, Germany) (represented by: C. Klawitter, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 21 November 2017 (Case R 1204/2016-3) relating to invalidity proceedings between Rietze and Volkswagen.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rietze GmbH & Co. KG to pay the costs.*

([1]) OJ C 104, 19.3.2018.

Judgment of the General Court of 6 June 2019 — Rietze v EUIPO — Volkswagen (Motor vehicle VW Caddy Maxi)

(Case T-191/18) ([1])

(Community design — Invalidity proceedings — Registered Community design representing the motor vehicle VW Caddy Maxi — Earlier Community design — Ground for invalidity — Individual character — Informed user — Different overall impression — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002 — Burden of proof on the applicant for a declaration of invalidity — Requirements relating to the reproduction of an earlier design)

(2019/C 255/46)

Language of the case: German

Parties

Applicant: Rietze GmbH & Co. KG (Altdorf, Germany) (represented by: M. Krogmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Volkswagen AG (Wolfsburg, Germany) (represented by: C. Klawitter, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 11 January 2018 (Case R 1203/2016-3) relating to invalidity proceedings between Rietze and Volkswagen.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Rietze GmbH & Co. KG to pay the costs.*

([1]) OJ C 161, 7.5.2018.

Judgment of the General Court of 6 June 2019 — Rietze v EUIPO — Volkswagen (Motor vehicle VW Caddy)

(Case T-192/18) ([1])

(Community design — Invalidity proceedings — International registration designating the European Union — Registered Community design representing the motor vehicle VW Caddy — Earlier Community design — Ground for invalidity — Individual character — Informed user — Different overall impression — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002 — Burden of proof on the applicant for a declaration of invalidity — Requirements relating to the reproduction of an earlier design)

(2019/C 255/47)

Language of the case: German

Parties

Applicant: Rietze GmbH & Co. KG (Altdorf, Germany) (represented by: M. Krogmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Volkswagen AG (Wolfsburg, Germany) (represented by: C. Klawitter, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 11 January 2018 (Case R 1244/2016-3) relating to invalidity proceedings between Rietze and Volkswagen.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Rietze GmbH & Co. KG to pay the costs.*

([1]) OJ C 161, 7.5.2018.

Judgment of the General Court of 6 June 2019 — Porsche v EUIPO — Autec (Motor vehicles)

(Case T-209/18) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a motor vehicle — Earlier Community design — Ground for invalidity — No individual character — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2019/C 255/48)

Language of the case: German

Parties

Applicant: Dr. Ing. h.c. F. Porsche AG (Stuttgart, Germany) (represented by: C. Klawitter, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Autec AG (Nuremberg, Germany) (represented by: M. Krogmann, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 19 January 2018 (Case R 945/2016-3), relating to invalidity proceedings between Autec AG and Dr. Ing. h.c. F. Porsche AG.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Dr. Ing. h.c. F. Porsche AG to pay the costs.*

([1]) OJ C 166, 14.5.2018.

Judgment of the General Court of 6 June 2019 — Porsche v EUIPO — Autec (Cars)

(Case T-210/18) ([1])

(Community design — Invalidity proceedings — Registered Community design representing a car — Earlier Community design — Ground for invalidity — No individual character — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2019/C 255/49)

Language of the case: German

Parties

Applicant: Dr. Ing. h.c. F. Porsche AG (Stuttgart, Germany) (represented by: C. Klawitter, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Autec AG (Nuremberg, Germany) (represented by: M. Krogmann, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 19 January 2018 (Case R 941/2016-3), relating to invalidity proceedings between Autec AG and Dr. Ing. h.c. F. Porsche AG.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Dr. Ing. h.c. F. Porsche AG to pay the costs.*

([1]) OJ C 166, 14.5.2018.

Judgment of the General Court of 6 June 2019 — Torrefazione Caffè Michele Battista v EUIPO — Battista Nino Caffè (Battistino)

(Case T-220/18) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Figurative mark Battistino — Earlier EU word mark BATTISTA — Declaration of partial invalidity — Proof of genuine use of the earlier trade mark — Article 57(2) of Regulation (EC) No 207/2009 (now Article 64(2) of Regulation (EU) 2017/1001))

(2019/C 255/50)

Language of the case: Italian

Parties

Applicant: Torrefazione Caffè Michele Battista Srl (Triggiano, Italy) (represented by: V. Franchini, F. Paesan and R. Bia, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Battista Nino Caffè Srl (Triggiano, Italy) (represented by: D. Russo, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 22 January 2018 (Case R 400/2017-5), relating to invalidity proceedings between Battista Nino Caffè and Torrefazione Caffè Michele Battista.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 January 2018 (Case R 400/2017-5);*

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

3. *Orders EUIPO and Battista Nino Caffè Srl to bear the costs incurred in the course of the proceedings before the Court.*

([1]) OJ C 190, 4.6.2018.

Judgment of the General Court of 6 June 2019 — Torrefazione Caffè Michele Battista v EUIPO — Battista Nino Caffè (BATTISTINO)

(Case T-221/18) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Word mark BATTISTINO — Earlier EU word mark BATTISTA — Declaration of invalidity — Proof of genuine use of the earlier trade mark — Article 57(2) of Regulation (EC) No 207/2009 (now Article 64(2) of Regulation (EU) 2017/1001))

(2019/C 255/51)

Language of the case: Italian

Parties

Applicant: Torrefazione Caffè Michele Battista Srl (Triggiano, Italy) (represented by: V. Franchini, F. Paesan and R. Bia, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Battista Nino Caffè Srl (Triggiano, Italy) (represented by: D. Russo, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 22 January 2018 (Case R 402/2017-5), relating to invalidity proceedings between Battista Nino Caffè and Torrefazione Caffè Michele Battista.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 January 2018 (Case R 402/2017-5);*

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

3. *Orders EUIPO and Battista Nino Caffè Srl to bear the costs incurred in the course of the proceedings before the Court.*

([1]) OJ C 190, 4.6. 2018.

Judgment of the General Court of 5 June 2019 — Biolatte v EUIPO (Biolatte)

(Case T-229/18) ([1])

(EU trade mark — Application for the EU word mark Biolatte — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 255/52)

Language of the case: English

Parties

Applicant: Biolatte Oy (Turku, Finland) (represented by: J. Ikonen, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and H. O'Neill, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 6 February 2018 (Case R 351/2017-1), relating to an application for registration of the word sign Biolatte as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Biolatte Oy to pay the costs.*

([1]) OJ C 190, 4.6.2018.

Judgment of the General Court of 5 June 2019 — EBM Technologies v EUIPO (MobiPACS)

(Case T-272/18) ([1])

(EU trade mark — Application for EU word mark MobiPACS — Absolute ground for refusal — Slogan — Level of attention of the relevant public — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 255/53)

Language of the case: German

Parties

Applicant: EBM Technologies, Inc. (Taipei, Taiwan) (represented by: J. Liesegang, M. Jost and N. Lang, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 19 February 2018 (Case R 2145/2017-2) relating to an application for registration of the word sign MobiPACS as an EU trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of EUIPO of 19 February 2018 (Case R 2145/2017-2);*

2. *Orders EUIPO to pay the costs.*

(1) OJ C 221, 25.6.2018.

Judgment of the General Court of 5 June 2019 — Bernaldo de Quirós v Commission

(Case T-273/18) (1)

(Civil service — Officials — Disciplinary measures — Disciplinary procedure — Acts contrary to the dignity of the civil service — Administrative investigation — Mandate given to IDOC — Principle of impartiality — Principle of good administration — Rights of the defence — Disciplinary procedure — Principle of equality of arms — Disciplinary penalty of a reprimand — Proportionality — Non-material damage)

(2019/C 255/54)

Language of the case: French

Parties

Applicant: Belén Bernaldo de Quirós (Brussels, Belgium) (represented by M. Casado García-Hirschfeld, lawyer)

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

Re:

Application pursuant to Article 270 TFEU seeking, first, annulment of Commission decision of 6 July 2017 imposing the penalty of a reprimand on the applicant under Article 9(1)(b) of Annex IX to the Staff Regulations of Officials of the European Union, and, where appropriate, of the decision of 31 January 2018 rejecting the applicant's complaint against that decision and, secondly, compensation for the harm allegedly suffered by the applicant following those decisions.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Belén Bernaldo de Quirós to pay the costs.*

(1) OJ C 240, 9.7.2018.

Order of the General Court of 11 June 2019 — Dickmanns v EUIPO

(Case T-538/18) ([1])

(Civil service — Temporary staff — Fixed-term contract with a termination clause — Clause terminating the contract in the event that the name of the agent is not included on the reserve list of a competition — Purely confirmatory measure — Period within which an action must be brought — Inadmissibility)

(2019/C 255/55)

Language of the case: German

Parties

Applicant: Sigrid Dickmanns (Gran Alacant, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė, acting as Agent, and by B. Wägenbaur, lawyer)

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of 14 December 2017, and 'if need be' the decisions of 28 November 2013 and 4 June 2014 of EUIPO terminating the applicant's employment contract as of 30 June 2018, and, second, compensation for the damage which the applicant claims to have suffered.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Ms Sigrid Dickmanns shall bear her own costs and pay the costs incurred by EUIPO.*

([1]) OJ C 399, 5.11.2018.

Order of the General Court of 12 June 2019 — Durand and Others v Parliament

(Case T-702/18) ([1])

(Actions for failure to act and for annulment — Agricultural policy — Regulation (EC) No 1/2005 — Animal welfare — Request by Members of the European Parliament to set up an inquiry committee — Defined position of the Parliament — Act not open to challenge — Informative act — Inadmissibility)

(2019/C 255/56)

Language of the case: English

Parties

Applicants: Pascal Durand (Paris, France) and the seven other applicants whose names are listed in the annex to the order (represented by: O. Brouwer and E. Raedts, lawyers)

Defendant: European Parliament (represented by: N. Lorenz and S. Alonso de León, acting as Agents)

Re:

Action, principally, pursuant to Article 265 TFEU seeking a declaration that the Parliament, by decision taken by the Conference of Presidents of the Parliament, unlawfully failed to act on a request of 17 July 2018 seeking the setting up of an inquiry committee and, in the alternative, seeking the annulment, pursuant to Article 263 TFEU, of the decision contained in the letter of the President of the Parliament of 21 September 2018.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Pascal Durand and the other applicants whose names are listed in the annex shall pay the costs.*

([1]) OJ C 65, 18.2.2019.

Order of the General Court of 7 June 2019 — Hebberecht v EEAS

(Case T-171/19) ([1])

(Civil service — Officials — Disciplinary proceedings — Suspension — Amounts withheld from remuneration — Failure to comply with the procedural requirements — Manifest inadmissibility)

(2019/C 255/57)

Language of the case: French

Parties

Applicant: Chantal Hebberecht (Luxembourg, Luxembourg) (represented by: K. Bicard, lawyer)

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

Re:

Application based on Article 270 TFEU and seeking, first, annulment of the EEAS's decision communicated to the applicant on 20 September 2018 rejecting the applicant's complaint directed against the EEAS's decision to suspend her from her duties and to withhold amounts from her monthly salary and, secondly, payment of compensation in respect of the harm allegedly suffered by the applicant.

Operative part of the order

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

2. *Ms Chantal Hebberecht shall pay her own costs.*

([1]) OJ C 172, 20.5.2019.

Action brought on 24 May 2019 — Gollnisch v Parliament

(Case T-319/19)

(2019/C 255/58)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Villiers-le-Mahieu, France) (represented by B. Bonnefoy-Claudet, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the European Parliament Bureau Decision of 10 December 2018, together with the decision of 26 March 2019 of the President of the European Parliament rejecting the internal appeal brought before him against that decision;

— declare invalid all the acts, modifications, notifications, decisions and deductions resulting from that decision;

— award the applicant the sum of EUR 6 500 for the costs incurred in preparing the present action;

— order the European Parliament to pay the entirety of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 27 of the Statute for Members. That provision prohibits the Bureau from prejudicing acquired rights or future entitlements of parliamentarians.

2. Second plea in law, alleging infringement of Article 76(3) of the Implementing measures for the Statute for Members. According to the applicant, the abovementioned Article 27 of the Statute for Members has the effect of guaranteeing the integrity of the provisions of the Implementing measures for the Statute for Members in relation to the pension fund, thereby preventing any change to their structure.

3. Third plea in law, alleging infringement of Article 223(2) TEU and incompetence on the part of the Bureau, in so far as it introduced a tax on the payment of the pensions of former Members which it was not entitled to do, since any decisions on the taxation of parliamentarians fall within the competence of the Council.

4. Fourth plea in law, alleging infringement of the principles of legal certainty and legitimate expectations. The contested act was adopted in breach of the undertakings and texts which constitute reliable assurances and guarantees that no change may be made to the voluntary pension fund scheme.

5. Fifth plea in law, alleging infringement of the principle of proportionality. The Parliament, which is alone responsible for the financial situation created, adopted unfair and insufficient measures on the pretext of addressing it.

6. Sixth plea in law, alleging infringement of the principle of equal treatment. The contested decision creates unequal treatment between Members who pay contributions and those who do not, as well as between Members who have already drawn a pension and those who have not.

Action brought on 30 May 2019 — Mubarak v Council

(Case T-327/19)

(2019/C 255/59)

Language of the case: English

Parties

Applicant: Mohamed Hosni Elsayed Mubarak (Cairo, Egypt) (represented by: B. Kennelly QC, J. Pobjoy, Barrister, G. Martin, C. Enderby Smith and F. Holmey, Solicitors)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2019/468 of 21 March 2019 ([1]) and Council Implementing Regulation (EU) 2019/459 of 21 March 2019 ([2]), insofar as they apply to the applicant; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant had failed to verify that the Egyptian authorities would have respected the applicant's fundamental European Union rights, including Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, in the context of the proceedings and investigations relied upon by the defendant.

2. Second plea in law, alleging that the defendant made errors of assessment in considering that the criterion for listing the applicant in Article 1 of Council Decision 2011/172/CFSP ([3]) and Article 2 of Council Regulation (EU) No 270/2011 of 21 March 2011 ([4]) would have been satisfied.

([1]) Council Decision (CFSP) 2019/468 of 21 March 2019 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ L 80, 22.3.2019, p. 40).
([2]) Council Implementing Regulation (EU) 2019/459 of 21 March 2019 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ L 80, 22.3.2019, p. 1).
([3]) Council Decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ L 76, 22.3.2011, p. 63).
([4]) Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ L 76, 22.3.2011, p. 4).

Action brought on 4 June 2019 — Google and Alphabet v Commission

(Case T-334/19)

(2019/C 255/60)

Language of the case: English

Parties

Applicants: Google LLC (Mountain View, California, United States), Alphabet, Inc. (Mountain View) (represented by: C. Jeffs, lawyer, J. Staples, Solicitor, D. Beard QC and J. Williams, Barrister)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— to annul (in whole or in part) the Commission's decision of 20 March 2019 in Case COMP/AT.40411 — Google Search (AdSense);

— consequently, or in the alternative, to annul or reduce the fine imposed on the applicants in exercise of the Court's unlimited jurisdiction; and

— in any event, order the Commission to bear the applicants' costs and expenses in connection with these proceedings.

Pleas in law and main arguments

The present action seeks the annulment of the Commission's decision of 20 March 2019 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (AT.40411 — Google Search (AdSense)). The applicants seek annulment of each of the three findings of infringement, the finding that they amounted to a single continuous infringement and the imposition of a fine.

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

1. First plea in law, alleging that the contested decision errs in its assessments of market definition and thus dominance. In particular, the contested decision errs in finding that:

   — search ads and non-search ads do not compete;

   — directly sold ads and intermediated ads do not compete.

2. Second plea in law, alleging that the contested decision errs in finding that Google's so-called exclusivity clause ('Site-Exclusivity Clause') was abusive. The contested decision:

   — mischaracterizes the Site-Exclusivity Clause as an exclusive supply obligation;

   — errs in finding that the decision was not required to analyze if the Site-Exclusivity Clause was likely to have anti-competitive effects;

   — fails to demonstrate that the Site-Exclusivity clause, however characterized, was likely to restrict competition.

3. Third plea in law, alleging that the contested decision errs in finding that Google's premium placement and minimum Google ads clause ('Placement Clause') was abusive. The contested decision:

   — mischaracterizes the Placement Clause;

   — fails to demonstrate that the Placement Clause was likely to restrict competition.

4. Fourth plea in law, alleging that the contested decision errs in finding that Google's authorising equivalent ads clause ('Modification Clause') was abusive. The contested decision:

   — does not demonstrate that the Modification Clause was likely to restrict competition;

   — alternatively wrongly ignores that the Modification Clause was objectively justified because it protected website users, publishers, advertisers and Google and/or that any foreclosure effect was outweighed by the advantages of the clause.

5. Fifth plea in law, alleging that the contested decision errs in imposing a fine and in calculating that fine. The contested decision:

   — fails to consider Google's lack of intent or negligence and that the Commission selected the case for commitments;

   — alternatively errs in calculating the fine;

   — further or alternatively does not respect the principle of proportionality.

Action brought on 31 May 2019 — BZ v Commission

(Case T-336/19)

(2019/C 255/61)

Language of the case: French

Parties

Applicant: BZ (represented by: C. Mourato, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the European Commission's decision of 25 July 2018 to dismiss the applicant in response to a report on the probationary period before the end of that period;

— Order the Commission to pay the applicant the following separate sums by way of damages:

   — EUR 5 000 in respect of non-material harm caused by the dismissal decision;

   — EUR 5 000 in respect of damage to reputation caused by the dismissal decision;

   — EUR 10 000 in respect of material harm caused by the adverse effects on the applicant's state of health following her dismissal;

   — EUR 58 900 in respect of material harm linked to the loss of income as a result of her unlawful dismissal;

— Order the defendant to pay the costs of the proceedings, under Article 87 of the Rules of Procedure of the General Court.

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 the procedural guarantees in respect of administrative and disciplinary investigations, and infringement of the rights of the defence and of the presumption of innocence.

2. Second plea in law, alleging infringement of Article 84(1) and (3) of the Conditions of Employment of Other Servants and of the rights connected with the probationary period and a consequent manifest error of assessment by the administration.

3. Third plea in law, alleging infringement of Article 84(2) of the Conditions of Employment of Other Servants and of the principle of proportionality:

4. Fourth plea in law, alleging infringement of the principle of equal treatment.

5. Fifth plea in law, concerning a claim for special damages in response to the abovementioned irregularities.

Action brought on 6 June 2019 — Martínez Albainox v EUIPO — Taser International (TASER)

(Case T-341/19)

(2019/C 255/62)

Language of the case: English

Parties

Applicant: Martínez Albainox, SL (Albacete, Spain) (represented by: J. Carbonell Callicó, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Taser International, Inc. (Scottsdale, Arizona, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark TASER in colours black, yellow and red — European Union trade mark No 12 817 052

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 March 2019 in Case R 1577/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision expressly declaring the validity of the European Union trademark No. 12 817 052'TASER' (fig.) for all registered goods in class 8;

— order EUIPO and the intervening party, Taser International, Inc., to pay all the costs of the dispute before the General Court, including those relating to the procedure before the Board of Appeal.

Pleas in law

— Infringement of Article 60(1)(a) in conjunction with Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 60(1)(a) in conjunction with Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 6 June 2019 — Martínez Albainox v EUIPO — Taser International (TASER)

(Case T-342/19)

(2019/C 255/63)

Language of the case: English

Parties

Applicant: Martínez Albainox, SL (Albacete, Spain) (represented by: J. Carbonell Callicó, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Taser International, Inc. (Scottsdale, Arizona, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark TASER in colours black, yellow and red — European Union trade mark No 11 710 134

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 March 2019 in Case R 1576/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision expressly declaring the validity of the European Union trademark No. 11 710 134'TASER' (fig.) for all registered goods in class 18 and 25;

— order EUIPO and the intervening party, Taser International, Inc., to pay all the costs of the dispute before the General Court, including those relating to the procedure before the Board of Appeal.

Plea in law

— Infringement of Article 60(1)(a) in conjunction Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 7 June 2019 — Decathlon v EUIPO — Athlon Custom Sportswear (athlon custom sportswear)

(Case T-349/19)

(2019/C 255/64)

Language of the case: English

Parties

Applicant: Decathlon (Villeneuve-d'Ascq, France) (represented by: A. Cléry and C. Devernay, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Athlon Custom Sportswear P.C. (Kallithea, Greece)

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 athlon custom sportswear — Application for registration No 16 162 596

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 March 2019 in Case R 1724/2018-2

Form of order sought

The applicant claims that the Court should:

— grant its request;

— annul the contested decision;

— confirm the opposition decision of 6 July 2018 in case No B 002879164;

— refuse the registration of the mark athlon custom sportswear No 016162596;

— order EUIPO to pay the costs of the proceedings, including those incurred in the appeal 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 11 June 2019 — Bontempi and Others v EUIPO — Sand Cph (WhiteSand)

(Case T-350/19)

(2019/C 255/65)

Language of the case: English

Parties

Applicants: Emanuela Bontempi (Montemarciano, Italy) and 6 others (represented by: S. Rizzo and O. Musco, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sand Cph A/S (Copenhagen, Denmark)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark WhiteSand — Application for registration No 16 416 596

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 April 2019 in Case R 1913/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO 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 10 June 2019 — Gamma-A v EUIPO — Piejūra (Packing for foodstuffs)

(Case T-352/19)

(2019/C 255/66)

Language of the case: English

Parties

Applicant: Gamma-A SIA (Riga, Latvia) (represented by: M. Liguts, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Piejūra SIA (Nīcas novads, Latvia)

Details of the proceedings before EUIPO

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

Design at issue: European Union design No 2022 772-0001 (Packing for foodstuffs)

Contested decision: Decision of the Third Board of Appeal of EUIPO of 25 March 2019 in Case R 2516/2017-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and declare the design valid;

— order EUIPO and the invalidity applicant to pay the costs.

Plea in law

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

Action brought on 10 June 2019 — Gamma-A v EUIPO — Piejūra (Packing for foodstuffs)

(Case T-353/19)

(2019/C 255/67)

Language of the case: English

Parties

Applicant: Gamma-A SIA (Riga, Latvia) (represented by: M. Liguts, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Piejūra SIA (Nīcas novads, Latvia)

Details of the proceedings before EUIPO

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

Design at issue: European Union design No 1819 558-0002 (Packing for foodstuffs)

Contested decision: Decision of the Third Board of Appeal of EUIPO of 12 March 2019 in Case R 2543/2017-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and declare the design valid;

— order EUIPO and the invalidity applicant to pay the costs.

Pleas in law

— Infringement of Article 7(1) of Council Regulation (EC) No 6/2002;

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

Action brought on 11 June 2019 — Palacio Domecq v EUIPO — Domecq Bodega Las Copas (PALACIO DOMECQ 1778)

(Case T-354/19)

(2019/C 255/68)

Language in which the application was lodged: Spanish

Parties

Applicant: Palacio Domecq, SL (Madrid, Spain) (represented by: A. Otero Iglesias, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Domecq Bodega Las Copas, SL (Jerez de la Frontera, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for the EU figurative mark PALACIO DOMECQ 1778 — Application for registration No 11 499 506

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 28 March 2019 in Case R 867/2018-1

Form of order sought

The applicant claims that the Court should:

— declare the action well-founded and alter the contested decision by granting in its entirety the applicant's appeal against the decision of the Opposition Division of EUIPO, dismissing in its entirety the cross-appeal brought by the opponent and, consequently, dismissing the intervener's opposition in its entirety;

— in the alternative, and if appropriate, annul the contested decision and refer the case back to the Board of Appeal of EUIPO in order for it to adopt a new decision;

— order EUIPO to pay the costs of the proceedings before the Court and the Board of Appeal;

— order the intervener to pay the costs incurred by Palacio Domecq, SL in the opposition proceedings and in the appeal before the Board of Appeal.

Pleas in law

Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, and of Article 25(5) of the Delegated Regulation.

Action brought on 13 June 2019 — CE v Committee of the Regions

(Case T-355/19)

(2019/C 255/69)

Language of the case: French

Parties

Applicant: CE (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: Committee of the Regions

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

— annul the decision of 16 April 2019 and, in the alternative, annul the decision of 16 May 2019;

— order the payment of compensation in respect of the material harm incurred, amounting to the sum of EUR 19 200 non-inclusive of VAT, and compensation in respect of the non-material harm incurred, estimated to amount to the sum of EUR 83 208,24;

— order the defendant to pay all 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 an abuse of process and infringement of Articles 47 and 49 of the Conditions of Employment of Other Servants and of Articles 23 and 24 of Annex IX to the Staff Regulations of Officials of the European Union.

2. Second plea in law, alleging infringement of the right to fair and just working conditions, of the principle of sound administration and of the prohibition on any form of psychological harassment.

3. Third plea in law, alleging material inaccuracy and a manifest error of assessment.

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