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

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(2022/C 408/01)

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These texts are available on:

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 1 August 2022 (request for a preliminary ruling from the Vilniaus apygardos administracinis teismas — Lithuania) — OT v Vyriausioji tarnybinės etikos komisija

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(2022/C 408/02)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: OT

Defendant: Vyriausioji tarnybinės etikos komisija

Third party: Fondas 'Nevyriausybinių organizacijų informacijos ir paramos centras'

Operative part of the judgment

1. Article 7(c) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and point (c) of the first subparagraph of Article 6(1) and Article 6(3) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), read in the light of Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation that provides for the publication online of the declaration of private interests that any head of an establishment receiving public funds is required to lodge, in so far as, in particular, that publication concerns name-specific data relating to his or her spouse, cohabitee or partner, or to persons who are close relatives of the declarant, or are known by him or her, liable to give rise to a conflict of interests, or concerns any transaction concluded during the last 12 calendar months the value of which exceeds EUR 3 000.

2. Article 8(1) of Directive 95/46 and Article 9(1) of Regulation 2016/679 must be interpreted as meaning that the publication, on the website of the public authority responsible for collecting and checking the content of declarations of private interests, of personal data that are liable to disclose indirectly the sexual orientation of a natural person constitutes processing of special categories of personal data, for the purpose of those provisions.

(1) OJ C 255, 3.8.2020.

Judgment of the Court (Third Chamber) of 1 August 2022 (requests for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v SW (C-273/20), BL, BC (C-355/20)

(Joined Cases C-273/20 and C-355/20) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Immigration policy — Right to family reunification — Directive 2003/86/EC — Article 10(3)(a) — Article 16(1)(b) — Concept of 'minor child' — Concept of 'real family relationship' — Adult applying for family reunification with a minor who has obtained refugee status — Relevant date for assessing status as a minor)

(2022/C 408/03)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendants: SW (C-273/20), BL, BC (C-355/20)

Joined parties: Stadt Darmstadt (C-273/20), Stadt Chemnitz (C-355/20)

Operative part of the judgment

1. Article 16(1)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that, in the case of family reunification of parents with an unaccompanied minor refugee, pursuant to Article 10(3)(a) of that directive, read in conjunction with Article 2(f) thereof, the fact that that refugee is still a minor on the date of the decision on the application for entry and residence for the purpose of family reunification submitted by the sponsor's parents does not constitute a 'condition', within the meaning of Article 16(1)(a), failure to comply with which allows the Member States to reject such an application. Furthermore, those provisions, read in the light of Article 13(2) of that directive, must be interpreted as precluding national legislation under which, in such a situation, the right of residence of the parents concerned comes to an end as soon as the child reaches the age of majority.

2. Article 16(1)(b) of Directive 2003/86 must be interpreted as meaning that, in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a parent with a minor child who has been granted refugee status, where that child attained his or her majority before the decision on the application for entry and residence for the purpose of family reunification, submitted by that parent, was adopted, a first-degree relationship in the direct ascending line is not sufficient on its own. However, it is not necessary for the child sponsor and the parent concerned to cohabit in a single household or to live under the same roof in order for that parent to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be

sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the child sponsor and the parent concerned be required to support each other financially.

(1) OJ C 378, 9.11.2020.
OJ C 348, 19.10.2020.

Judgment of the Court (Third Chamber) of 1 August 2022 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v XC

(Case C-279/20) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Immigration policy — Right to family reunification — Directive 2003/86/EC — Article 4(1), first subparagraph, point (c) — Concept of 'minor child' — Article 16(1)(b) — Concept of 'real family relationship' — Child applying for family reunification with her father who has obtained refugee status — Relevant date for assessing status as a minor)

(2022/C 408/04)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: XC

Joined party: Landkreis Cloppenburg

Operative part of the judgment

1. Point (c) of the first subparagraph of Article 4(1) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that the date to which reference must be made in order to determine whether the child of a sponsor who has been granted refugee status is a minor child, within the meaning of that provision, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, is the date on which the parent sponsor submitted his or her asylum application with a view to obtaining refugee status, provided that an application for family reunification was submitted within three months of the recognition of the parent sponsor's refugee status.

2. Article 16(1)(b) of Directive 2003/86 must be interpreted as meaning that in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a minor child with a parent who has been granted refugee status, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, the legal parent/child relationship is not sufficient on its own. However, it is not necessary for the parent sponsor and the child concerned to cohabit in a single household or to live under the same roof in order for that child to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the parent sponsor and his or her child be required to support each other financially.

(1) OJ C 378, 9.11.2020.

Judgment of the Court (Fourth Chamber) of 1 August 2022 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Roma Multiservizi SpA, Rekeep SpA v Roma Capitale, Autorità Garante della Concorrenza e del Mercato

(Case C-332/20) ([1])

(Reference for a preliminary ruling — Public procurement — Concession contracts — Formation of a semi-public company — Award to that company of the management of an 'integrated school service' — Appointment of the private partner under a tender procedure — Directive 2014/23/EU — Article 38 — Directive 2014/24/EU — Article 58 — Applicability — 'In-house' criteria — Requirement for minimum participation of the private partner in the capital of the semi-public company — Indirect participation of the contracting authority in the capital of the private partner — Selection criteria)

(2022/C 408/05)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Roma Multiservizi SpA, Rekeep SpA

Defendants: Roma Capitale, Autorità Garante della Concorrenza e del Mercato

Intervener: Consorzio Nazionale Servizi Soc. coop. (CNS)

Operative part of the judgment

1. Article 58 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, as amended by Commission Delegated Regulation (EU) 2017/2365 of 18 December 2017 must be interpreted as meaning that a contracting authority may exclude an economic operator from the procedure seeking, first, to form a semi-public company and, second, to award that company a service contract, where that exclusion is justified by the fact that, on the basis of the indirect participation of that contracting authority in that economic operator, the maximum participation of that contracting authority in that company, as determined in the call-for-tenders documents would be, in practice, exceeded if that contracting authority selected that economic operator as its partner, in so far as the excess participation serves to increase the financial uncertainty borne by that contracting authority;

2. Article 38 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, as amended by Commission Delegated Regulation (EU) 2017/2366 of 18 December 2017 must be interpreted as meaning that a contracting authority may exclude an economic operator from the procedure seeking, first, to form a semi-public company and, second, to award that company a services concession, where that exclusion is justified by the fact that, on the basis of the indirect participation of that contracting authority in that economic operator, the maximum participation of that contracting authority in that company, as determined in the call-for-tenders documents would be, in practice, exceeded if that contracting authority selected that economic operator as its partner, in so far as that excess participation serves to increase the financial uncertainty borne by that contracting authority.

([1]) OJ C 329, 5.10.2020.

Judgment of the Court (First Chamber) of 1 August 2022 (request for a preliminary ruling from the Kúria — Hungary) — HOLD Alapkezelő Befektetési Alapkezelő Zrt. v Magyar Nemzeti Bank

(Case C-352/20) ([1])

(Reference for a preliminary ruling — Approximation of laws — Directive 2009/65/EC — Undertakings for collective investment in transferable securities (UCITS) — Directive 2011/61/EU — Alternative investment funds — Remuneration policies and practices in respect of the senior managers of a UCITS management company or manager of an alternative investment fund — Dividends distributed to certain senior managers — Concept of 'remuneration' — Article 17(1) of the Charter of Fundamental Rights of the European Union — Right to property)

(2022/C 408/06)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: HOLD Alapkezelő Befektetési Alapkezelő Zrt.

Defendant: Magyar Nemzeti Bank

Operative part of the judgment

Articles 14 to 14b of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014, Article 13(1) of, and points 1 and 2 of Annex II to, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010,

must be interpreted as meaning that:

the provisions relating to remuneration policies and practices are applicable to the dividends paid by a company, the regular business of which is the management of undertakings for collective investment in transferable securities (UCITS) and Alternative Investment Funds (AIFs), directly or indirectly to those of its employees who perform the duties of managing director, investment manager or portfolio manager by virtue of their right to property in respect of the shares of that company, where the payment policy of those dividends is such as to induce those employees to take excessive risks which are detrimental to the interests of the UCITS or AIFs managed by that company and to the interests of their investors and is thus capable of facilitating the circumvention of the requirements flowing from those provisions.

([1]) OJ C 423, 7.12.2020.

Judgment of the Court (Grand Chamber) of 7 September 2022 (request for a preliminary ruling from the Latvijas Republikas Satversmes tiesa — Latvia) — proceedings brought by Boriss Cilevičs and Others

(Case C-391/20) ([1])

(Reference for a preliminary ruling — Article 49 TFEU — Freedom of establishment — Restriction — Justification — The organisation of education systems — Institutions of higher education — Obligation to provide courses of study in the official language of the Member State concerned — Article 4(2) TEU — National identity of a Member State — Defence and promotion of the official language of a Member State — Principle of proportionality)

(2022/C 408/07)

Language of the case: Latvian

Referring court

Latvijas Republikas Satversmes tiesa

Parties to the main proceedings

Applicants: Boriss Cilevičs, Valērijs Agešins, Vjačeslavs Dombrovskis, Vladimirs Nikonovs, Artūrs Rubiks, Ivans Ribakovs, Nikolajs Kabanovs, Igors Pimenovs, Vitālijs Orlovs, Edgars Kucins, Ivans Klementjevs, Inga Goldberga, Evija Papule, Jānis Krišāns, Jānis Urbanovičs, Ļubova Švecova, Sergejs Dolgopolovs, Andrejs Klementjevs, Regīna Ločmele-Luņova, Ivars Zariņš

Interested party: Latvijas Republikas Saeima

Operative part of the judgment

Article 49 TFEU must be interpreted as not precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State, in so far as such legislation is justified on grounds related to the protection of its national identity, that is to say, that it is necessary and proportionate to the protection of the legitimate aim pursued.

([1]) OJ C 359, 26.10.2020.

Judgment of the Court (Grand Chamber) of 1 August 2022 (request for a preliminary ruling from the Finanzgericht Bremen — Germany) — S v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit

(Case C-411/20) ([1])

(Reference for a preliminary ruling — Citizenship of the Union — Freedom of movement of persons — Equal treatment — Directive 2004/38/EC — Article 24(1) and (2) — Social security benefits — Regulation (EC) No 883/2004 — Article 4 — Family benefits — Exclusion of nationals of other Member States who are economically inactive during the first three months of residence in the host Member State)

(2022/C 408/08)

Language of the case: German

Referring court

Finanzgericht Bremen

Parties to the main proceedings

Applicant: S

Defendant: Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit

Operative part of the judgment

Article 4 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems must be interpreted as precluding legislation of a Member State under which a Union citizen, who is a national of another Member State, who has established his or her habitual residence on the territory of the first Member State and who is economically inactive in so far as he or she is not in gainful employment in that State, is refused an entitlement to 'family benefits', within the meaning of Article 3(1)(j) of that regulation, read in conjunction with Article 1(z) thereof, during the first three months of his or her residence in the territory of that Member State, whereas an economically inactive national of that Member State is entitled to such benefits, including during the first three months following his or her return to the same Member State after having made use, under EU law, of his or her right to move and reside in another Member State.

Article 24(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that it is not applicable to such legislation.

([1]) OJ C 423, 7.12.2020.

Judgment of the Court (Third Chamber) of 1 August 2022 (request for a preliminary ruling from the Audiencia Provincial de Barcelona- Spain) — MPA v LCDNMT

(Case C-501/20) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Articles 3, 6 to 8 and 14 — Definition of 'habitual residence' — Jurisdiction, recognition, enforcement of decisions and cooperation in matters relating to maintenance obligations — Regulation (EC) No 4/2009 — Articles 3 and 7 — Nationals of two different Member States residing in a third State as members of the contract staff working in the EU Delegation to that third State — Determination of jurisdiction — Forum necessitatis)

(2022/C 408/09)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: MPA

Defendant: LCDNMT

Operative part of the judgment

1. Article 3(1)(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and Article 3(a) and (b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations must be interpreted as meaning that the status of the spouses concerned as members of the contract staff of the European Union, working in the latter's delegation to a third country and in respect of whom it is claimed that they enjoy diplomatic status in that third State, is not capable of constituting a decisive factor for the purposes of determining habitual residence, within the meaning of those provisions;

2. Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that, for the purposes of determining a child's habitual residence, the connecting factor of the mother's nationality and her residence, prior to the marriage, in the Member State of the court seised of an application relating to parental responsibility is irrelevant, whereas the fact that the minor children were born in that Member State and hold the nationality of that Member State is insufficient;

3. Where no court of a Member State has jurisdiction to rule on an application for the dissolution of matrimonial ties pursuant to Articles 3 to 5 of Regulation No 2201/2003, Article 7 of that regulation, read in conjunction with Article 6 thereof, must be interpreted as meaning that the fact that the respondent in the main proceedings is a national of a Member State other than that of the court seised prevents the application of the clause relating to residual jurisdiction laid down in Article 7 to establish the jurisdiction of that court without, however, preventing the courts of the Member State of which the respondent is a national from having jurisdiction to hear such an application pursuant to the latter Member State's national rules on jurisdiction;

   Where no court of a Member State has jurisdiction to rule on an application relating to parental responsibility pursuant to Articles 8 to 13 of Regulation No 2201/2003, Article 14 of that regulation must be interpreted as meaning that the fact that the respondent in the main proceedings is a national of a Member State other than that of the court seised does not preclude the application of the clause relating to residual jurisdiction laid down in Article 14 of that regulation;

4. Article 7 of Regulation No 4/2009 must be interpreted as meaning that:

   — where the habitual residence of all the parties to the dispute in matters relating to maintenance obligations is not in a Member State, jurisdiction founded, on an exceptional basis, on the *forum necessitatis* referred to in Article 7 may be established if no court of a Member State has jurisdiction under Articles 3 to 6 of that regulation, if the proceedings cannot reasonably be brought or conducted in the third State with which the dispute is closely connected, or proves to be impossible, and there is a sufficient connection between the dispute and the court seised;

   — in order to find, on an exceptional basis, that proceedings cannot reasonably be brought or conducted in a third State, it is important that, following an analysis of the evidence put forward in each individual case, access to justice in that third State is, in law or in fact, hindered, in particular by the application of procedural conditions that are discriminatory or contrary to the fundamental guarantees of a fair trial, without there being any requirement that the party relying on Article 7 demonstrate that he or she has been unsuccessful in bringing or has attempted to bring the proceedings in question before the courts of the third State concerned; and

   — in order to consider that a dispute must have a sufficient connection with the Member State of the court seised, it is possible to rely on the nationality of one of the parties.

([1]) OJ C 423, 7.12.2020.

Judgment of the Court (First Chamber) of 1 August 2022 (request for a preliminary ruling from the Landgericht Hannover — Germany) — Landkreis Northeim v Daimler AG

(Case C-588/20) ([1])

(Reference for a preliminary ruling — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Actions for damages for infringements of the provisions of EU competition law — European Commission decision finding an infringement — Settlement procedure — Products concerned by the infringement — Specialised trucks — Household refuse collection trucks)

(2022/C 408/10)

Language of the case: German

Referring court

Landgericht Hannover

Parties to the main proceedings

Applicant: Landkreis Northeim

Defendant: Daimler AG

Intervening parties: Iveco Magirus AG, Traton SE, successor in law to MAN SE, MAN Truck & Bus and MAN Truck & Bus Deutschland GmbH, Schönmackers Umweltdienste GmbH & Co. KG

Operative part of the judgment

The decision of the European Commission of 19 July 2016, notified under reference C(2016) 4673 final, relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 — Trucks) must be interpreted as meaning that specialised trucks, including household refuse collection trucks, fall within the scope of the products covered by the cartel found in that decision.

([1]) OJ C 53, 15.2.2021.

Judgment of the Court (First Chamber) of 8 September 2022 (request for a preliminary ruling from the Tallina Halduskohus — Estonia) — Lux Express Estonia AS v Majandus- ja Kommunikatsiooniministeerium

(Case C-614/20) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 1370/2007 — Public passenger transport services by rail and by road — Imposition by means of general rules of an obligation to carry certain categories of passenger free of charge — Obligation for the competent authority to grant public service compensation to operators — Calculation method)

(2022/C 408/11)

Language of the case: Estonian

Referring court

Tallina Halduskohus

Parties to the main proceedings

Applicant: Lux Express Estonia AS

Defendant: Majandus- ja Kommunikatsiooniministeerium

Operative part of the judgment

1. Article 2(e) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016

   must be interpreted as meaning that:

   the concept of 'public service obligation', referred to in that provision, covers an obligation for undertakings providing in the territory of the Member State concerned a public transport service by road and by rail — laid down in national legislation — to carry free of charge and without receiving compensation from the State certain categories of passenger, in particular, children of pre-school age and certain categories of persons with disabilities;

2. Articles 3(2) and Article 4(1)(b)(i) of Regulation No 1370/2007, as amended by Regulation (EU) 2016/2338

   must be interpreted as meaning that:

   the competent authorities are required to compensate undertakings providing in the territory of the Member State concerned a public transport service by road and by rail for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the obligation for those undertakings, established through a general rule, to carry certain categories of traveller free of charge, in particular, children of pre-school age and certain categories of persons with disabilities;

3. Article 3(2) of Regulation No 1370/2007, as amended by Regulation (EU) 2016/2338, and point 2 of the annex thereto

must be interpreted as meaning that:

compensation for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules, which aim at establishing maximum tariffs for certain categories of passenger, must be granted in accordance with the principles set out in Article 4 and Article 6 of that regulation and in the annex thereto, in a way that prevents overcompensation. The compensation may not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service operator, which are assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met.

(1) OJ C 35, 1.2.2021.

Judgment of the Court (Grand Chamber) of 7 September 2022 (request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Amsterdam — Netherlands) — E.K. v Staatssecretaris van Justitie en Veiligheid

(Case C-624/20) (1)

(Reference for a preliminary ruling — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Scope — Third-country national with a right of residence under Article 20 TFEU — Article 3(2)(e) — Residence solely on temporary grounds — Autonomous concept of EU law)

(2022/C 408/12)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Amsterdam

Parties to the main proceedings

Applicant: E.K.

Defendant: Staatssecretaris van Justitie en Veiligheid

Operative part of the judgment

1. Article 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, is an autonomous concept of EU law, which must be interpreted uniformly throughout the Member States.

2. Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, does not cover the residence of a third-country national under Article 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.

(1) OJ C 128, 12.4.2021.

Judgment of the Court (Fourth Chamber) of 8 September 2022 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — ET v Ministerstvo životního prostředí

(Case C-659/20) [1]

(Reference for a preliminary ruling — Protection of species of wild fauna and flora by regulating trade therein — Regulation (EC) No 338/97 — Article 8(3)(d) — Concept of 'specimens of animal species that are born and bred in captivity' — Regulation (EC) No 865/2006 — Article 1(3) — Concept of 'breeding stock' — Article 54(2) — Establishment of the breeding stock — Controlled ancestry)

(2022/C 408/13)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: ET

Defendant: Ministerstvo životního prostředí

Operative part of the judgment

1. Article 1(3) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein,

must be interpreted as meaning that:

the concept of 'breeding stock', within the meaning of that provision, does not include the ancestors of specimens bred in a breeding operation which have never been owned or kept by that operation.

2. Article 54(2) of Regulation No 865/2006, read in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union and the principle of protection of legitimate expectations,

must be interpreted as:

precluding a specimen, kept by a breeder, of a species of animal referred to in Annex A to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, from being regarded as having been born and bred in captivity, within the meaning of Article 8(3) of that regulation, where the ancestors of that specimen, which do not form part of the breeding stock of that breeder, were acquired by a third party before the entry into force of those regulations in a manner which is detrimental to the survival of the species concerned in the wild.

[1] OJ C 62, 22.2.2021.

Judgment of the Court (Fifth Chamber) of 8 September 2022 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — RTL Television GmbH v Grupo Pestana S.G.P.S., S.A., SALVOR — Sociedade de Investimento Hoteleiro, S.A.

(Case C-716/20) [1]

(Reference for a preliminary ruling — Copyright and related rights — Satellite broadcasting and cable retransmission — Directive 93/83/EEC — Article 1(3) — Concept of 'cable retransmission' — Provider of the retransmission not having the status of a cable operator — Simultaneous, unaltered and unabridged distribution of television and radio programmes broadcast by satellite and intended for reception by the public, performed by the operator of a hotel establishment, by means of a satellite dish, a cable and television or radio sets — None)

(2022/C 408/14)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: RTL Television GmbH

Defendants: Grupo Pestana S.G.P.S., S.A., SALVOR — Sociedade de Investimento Hoteleiro, S.A.

Operative part of the judgment

Article 1(3) of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, read in conjunction with Article 8(1) thereof,

must be interpreted as meaning:

— that it does not provide for an exclusive right for broadcasting organisations to authorise or prohibit cable retransmission, within the meaning of that provision, and

— that the simultaneous, unaltered and unabridged distribution of television or radio programmes broadcast by satellite and intended for reception by the public, where that retransmission is carried out by a person other than a cable operator, within the meaning of that directive, such as a hotel, does not constitute cable retransmission.

[1] OJ C 110, 29.3.2021.

Judgment of the Court (Grand Chamber) of 1 August 2022 (request for a preliminary ruling from the Verwaltungsgericht Cottbus — Germany) — RO, legally represented v Bundesrepublik Deutschland

(Case C-720/20) [1]

(Reference for a preliminary ruling — Common policy on asylum — Criteria and mechanisms for determining the Member State responsible for examining an application for international protection — Regulation (EU) No 604/2013 (Dublin III) — Application for international protection lodged by a minor in his or her Member State of birth — Parents of that minor who have previously obtained refugee status in another Member State — Article 3(2) — Article 9 — Article 20(3) — Directive 2013/32/EU — Article 33(2)(a) — Admissibility of the application for international protection and responsibility for examining it)

(2022/C 408/15)

Language of the case: German

Referring court

Verwaltungsgericht Cottbus

Parties to the main proceedings

Applicant: RO, legally represented

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1. Article 20(3) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

must be interpreted as meaning that:

it is not applicable by analogy to a situation in which a minor and his or her parents lodge applications for international protection in the Member State in which that minor was born, in circumstances where his or her parents are already the beneficiaries of international protection in another Member State;

2. Article 33(2)(a) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

must be interpreted as meaning that:

it does not apply by analogy to an application for international protection lodged by a minor in a Member State where it is not that minor himself or herself, but his or her parents, who are beneficiaries of international protection in another Member State.

[1] OJ C 88, 15.3.2021.

Judgment of the Court (Grand Chamber) of 1 August 2022 (request for a preliminary ruling from the Rechtbank Den Haag zittingsplaats Haarlem — Netherlands) — I, S v Staatssecretaris van Justitie en Veiligheid

(Case C-19/21) [1]

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Criteria and mechanisms for determining the Member State responsible for examining an application for international protection — Article 8(2) and Article 27(1) — Unaccompanied minor with a relative legally present in another Member State — Refusal by that Member State of that minor's take charge request — Right to an effective remedy of that minor or of that relative against the refusal decision — Articles 7, 24 and 47 of the Charter of Fundamental Rights of the European Union — Best interests of the child)

(2022/C 408/16)

Language of the case: Dutch

Referring court

Rechtbank Den Haag zittingsplaats Haarlem

Parties to the main proceedings

Applicants: I, S

Defendant: Staatssecretaris van Justitie en Veiligheid

Operative part of the judgment

Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in conjunction with Articles 7, 24 and 47 of the Charter of Fundamental Rights of the European Union;

must be interpreted as meaning that:

it requires a Member State to which a take charge request has been made, based on Article 8(2) of that regulation, to grant a right to a judicial remedy against its refusal decision to the unaccompanied minor, within the meaning of Article 2(j) of that regulation, who applies for international protection, but not to the relative of that minor, within the meaning of Article 2(h) of that regulation.

[1] OJ C 128, 12.4.2021.

Judgment of the Court (Ninth Chamber) of 8 September 2022 (requests for a preliminary ruling from the Sąd Rejonowy dla Warszawy — Śródmieścia w Warszawie — Poland) — E.K., S.K. v D.B.P. (C-80/21), and B.S., W.S. v M. (C-81/21), and B.S., Ł.S. v M. (C-82/21)

(Joined Cases C-80/21 to C-82/21) [1]

(Request for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts — Article 6(1) and Article 7(1) — Mortgage credit agreements — Effects of a finding that a term is unfair — Period of limitation — Principle of effectiveness)

(2022/C 408/17)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy — Śródmieścia w Warszawie

Parties to the main proceedings

Applicants: E.K., S.K. (C 80/21), B.S., W.S. (C-81/21), B.S., Ł.S. (C-82/21)

Defendants: D.B.P. (C-80/21), M. (C-81/21), M. (C-82/21)

Operative part of the judgment

1. Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

must be interpreted as:

precluding national case-law according to which the national court may declare unfair not the entire term of a contract concluded between a consumer and a seller or supplier, but only those parts of it which are unfair, so that the term remains partially effective after the removal of those parts, where such removal would be tantamount to revising the content of the term by affecting its substance, which is a matter for the national court to determine.

2. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as:

precluding national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier is void and does not result in the annulment of that contract as a whole, replace that term with a supplementary provision of national law.

3. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as:

precluding national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier is void and that the contract as a whole is void, replace the annulled term either by interpreting the parties' wishes in order to avoid the annulment of the contract, or by applying to the annulled unfair term a supplementary provision of national law, even though the consumer has been informed of the consequences of the annulment of that contract and has accepted them.

4. Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as:

precluding national case-law according to which the 10-year limitation period for a consumer's action for the restitution of sums unduly paid to a seller or supplier in performance of an unfair term contained in a credit agreement with a duration of 30 years begins to run on the date of each performance by the consumer, even though the consumer was not in a position, at that date, to assess the unfairness of the contractual term himself or herself or was not aware of the unfairness of the term, and regardless of the fact that the contract had a repayment period, in this case 30 years, which is much longer than the statutory limitation period of 10 years.

(1) OJ C 242, 21.6.2021.

Judgment of the Court (Seventh Chamber) of 8 September 2022 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt R v W-GmbH

(Case C-98/21) [1]

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 2(1), Article 9(1), Article 167 and Article 168(a) — Deduction of input tax — Definition of 'taxable person' — Holding company — Expenditure linked to a shareholder contribution in kind to its subsidiaries — No contribution of expenditure to the general costs — Subsidiaries' activities largely tax-exempt)

(2022/C 408/18)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt R

Defendant: W-GmbH

Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 167 thereof,

must be interpreted as meaning that:

a holding company which carries out taxable output transactions in favour of subsidiaries is not entitled to deduct the input tax levied on the services that it obtains from third parties and supplies to the subsidiaries in return for the grant of a share in the general profit, where, first, the input services have direct and immediate links not with the holding company's own transactions but with the largely tax-exempt activities of the subsidiaries, second, those services are not included in the price of the taxable transactions carried out in favour of the subsidiaries and, third, the said services are not part of the general costs of the holding company's own economic activity.

[1] OJ C 182, 10.5.2021.

Judgment of the Court (Fifth Chamber) of 8 September 2022 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los Contenidos Digitales (AMETIC) v Administracíon del Estado and Others

(Case C-263/21) [1]

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Article 5 (2)(b) — Exclusive reproduction right — Exception — Copies for private use — Levy — Ex ante exemption — Exemption certificate issued by a private law entity controlled solely by copyright management societies — Powers of review of that entity)

(2022/C 408/19)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los Contenidos Digitales (AMETIC)

Defendants: Administracíon del Estado, Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Asociación para el Desarrollo de la Propiedad Intelectual (ADEPI), Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), Artistas Intérpretes, Entidad de Gestión de Derechos de Propiedad Intelectual (AISGE), Ventanilla Única Digital, Derechos de Autor de Medios Audiovisuales (DAMA), Centro Español de Derechos Reprográficos (CEDRO), Asociación de Gestión de Derechos Intelectuales (AGEDI), Sociedad General de Autores y Editores (SGAE)

Operative part of the judgment

1. Both Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and the principle of equal treatment

must be interpreted as not precluding national legislation under which a legal person established and controlled by intellectual property rights management organisations is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, where that national legislation provides that exemption certificates and reimbursements must be granted in good time and in accordance with objective criteria which do not allow that legal person to refuse an application for the granting of such a certificate or of reimbursement on the basis of considerations involving the exercise of discretion and that the decisions of that legal person refusing such an application may be challenged before an independent body.

2. Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment

must be interpreted as not precluding national legislation which empowers a legal person, which is established and controlled by intellectual property rights management organisations and which is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, to request access to the information necessary for the exercise of the powers of review conferred on it in that regard, without it being possible, in particular, for the person under review to rely on the confidentiality of business accounts provided for by national law, that legal person being obliged to safeguard the confidential nature of the information obtained.

(1) OJ C 329, 16.8.2021.

Judgment of the Court (Tenth Chamber) of 1 August 2022 (request for a preliminary ruling from the Înalta Curte de Casație și Justiție — Romania) — Uniqa Asigurări SA v Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Direcția Generală de Administrare a Marilor Contribuabili

(Case C-267/21) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 56 — Supply of insurance services — Point of reference for tax purposes — Claims settlement services provided by third-party companies in the name and on behalf of an insurer)

(2022/C 408/20)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: Uniqa Asigurări SA

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

Operative part of the judgment

Article 56(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that claims settlement services provided by third-party companies, in the name and on behalf of an insurance company, do not come within the scope of the 'services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the provision of information' referred to in that provision.

([1]) OJ C 349, 30.8.2021.

Judgment of the Court (First Chamber) of 1 August 2022 (request for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg — Luxembourg) — État luxembourgeois, Administration de l'enregistrement, des domaines et de la TVA v Navitours Sàrl

(Case C-294/21) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Sixth Council Directive 77/388/EEC — Article 2(1) — Scope — Taxable transactions — Article 9(2)(b) — Place where transport services are supplied — Tourist trips on the Moselle — River subject to condominium status)

(2022/C 408/21)

Language of the case: French

Referring court

Cour de cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Appellants: État luxembourgeois, Administration de l'enregistrement, des domaines et de la TVA

Respondent: Navitours Sàrl

Operative part of the judgment

Articles 2(1) and 9(2)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991,

must be interpreted as meaning:

a Member State must tax passenger transport performed, by a service transport provider established in that Member State, within a territory which, pursuant to an international treaty concluded between that Member State and another Member State, constitutes a joint territory under joint sovereignty of those two Member states and which is not subject to any exception provided for by EU law, provided that those services have not already been taxed by that other Member State. The taxation, by one of the Member States, of those services prevents the other Member State from taxing them in turn, without prejudice to the possibility for those two Member States to regulate in another way the taxation of services performed within that territory, inter alia by means of an agreement, provided that non-taxation and double taxation is avoided.

([1]) OJ C 191, 10.5.2022.

Judgment of the Court (Eighth Chamber) of 1 August 2022 (request for a preliminary ruling from the Corte d'appello di Venezia — Italy) — Agecontrol SpA v ZR, Lidl Italia Srl

(Case C-319/21) ([1])

(Reference for a preliminary ruling — Agriculture — Common organisation of the markets — Regulation (EC) No 1234/2007 — Packed fresh fruit and vegetables — Commission Implementing Regulation (EU) No 543/2011 — Conformity check — Transport to a point of sale of the same company — Accompanying document — Indication of country of origin)

(2022/C 408/22)

Language of the case: Italian

Referring court

Corte d'appello di Venezia

Parties to the main proceedings

Applicant: Agecontrol SpA

Defendant: ZR, Lidl Italia Srl

Operative part of the judgment

Article 5(4) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011, laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, read in the light of Article 8 of that regulation and of Articles 113 and 113a of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), as amended by Council Regulation (EC) No 361/2008 of 14 April 2008, must be interpreted as meaning that the check for conformity with the marketing standards for products in the fruit and vegetables sector does not require the holder of those products to issue an accompanying document. However, where that holder issues such a document, it must, at all stages of the marketing of those products, indicate the name and the country of origin of those products, irrespective of the fact that the external information particulars required by Implementing Regulation No 543/2011 already appear, obviously and indelibly, on one side of their packaging, on a notice placed in an obvious position inside the means of transport by which they are transported and on the invoices issued by the supplier of those products.

([1]) OJ C 310, 2.8.2021.

Judgment of the Court (Ninth Chamber) of 8 September 2022 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — R.T. v Hauptzollamt Hamburg

(Case C-368/21) ([1])

(Reference for a preliminary ruling — Customs union — Union Customs Code — Regulation (EU) No 952/2013 — Place where the customs debt is incurred — Value added tax (VAT) — Directive 2006/112/EC — Article 30 — Article 60 — Article 71(1) — Chargeable event and place where the import VAT becomes chargeable — Place where the tax liability is incurred — Finding of a failure to comply with an obligation imposed by EU customs legislation — Determination of the place of importation of goods — Means of transport registered in a third country and imported into the European Union in infringement of customs legislation)

(2022/C 408/23)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: R.T.

Defendant: Hauptzollamt Hamburg

Operative part of the judgment

Articles 30 and 60 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2018/2057 of 20 December 2018

must be interpreted as meaning that:

for value added tax purposes, the place of importation of a vehicle registered in a third country and imported into the European Union in breach of customs legislation is situated in the Member State in which the person who failed to comply with customs obligations resides and actually uses the vehicle.

(1) OJ C 382, 20.9.2021.

Judgment of the Court (Ninth Chamber) of 8 September 2022 (request for a preliminary ruling from the Svea hovrätt — Sweden) — IRnova AB v FLIR Systems AB

(Case C-399/21) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Article 24(4) — Exclusive jurisdiction — Jurisdiction over the registration or validity of patents — Scope — Patent application deposited and patent granted in a third State — Status of inventor — Proprietor of the right to an invention)

(2022/C 408/24)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicant: IRnova AB

Defendant: FLIR Systems AB

Operative part of the judgment

Article 24(4) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,

must be interpreted as:

not applying to proceedings aimed at determining, in the context of an action based on alleged inventor or co-inventor status, whether a person is the proprietor of the right to inventions covered by patent applications deposited and by patents granted in third countries.

(1) OJ C 368, 13.9.2021.

Judgment of the Court (Tenth Chamber) of 1 August 2022 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ministero dell'Interno v TO

(Case C-422/21) ([1])

(Reference for a preliminary ruling — Applicants for international protection — Directive 2013/33/EU — Article 20(4) and (5) — Seriously violent behaviour — Member States' right to determine the sanctions applicable — Scope — Withdrawal of material reception conditions)

(2022/C 408/25)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Ministero dell'Interno

Respondent: TO

Operative part of the judgment

1. Article 20(4) of 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 must be interpreted as applying to seriously violent behaviour engaged in outside an accommodation centre.

2. Article 20(4) and (5) of Directive 2013/33 must be interpreted as precluding the imposition, on an applicant for international protection who has engaged in seriously violent behaviour against public officials, of a sanction consisting in the withdrawal of material reception conditions, within the meaning of Article 2(f) and (g) of that directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs The imposition of other sanctions under Article 20(4) of the directive must, in all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity.

([1]) OJ C 368, 13.9.2021.

Judgment of the Court (Tenth Chamber) of 8 September 2022 — Puma SE and Others v European Commission

(Case C-507/21 P) ([1])

(Appeal — Dumping — Imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam — Implementation of the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 — Reimposition of a definitive anti-dumping duty — Competence ratione temporis — Principle of non-discrimination)

(2022/C 408/26)

Language of the case: English

Parties

Appellants: Puma SE, Puma United Kingdom Ltd, Puma Nordic AB, Austria Puma Dassler GmbH, Puma Italia Srl, Puma France SAS, Puma Denmark A/S, Puma Iberia SL, Puma Retail AG (represented by: J. Cornelis and E. Vermulst, advocaten)

Other party to the proceedings: European Commission (represented by: L. Armati, G. Luengo and T. Maxian Rusche, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Puma SE, Puma United Kingdom Ltd, Puma Nordic AB, Austria Puma Dassler GmbH, Puma Italia Srl, Puma France SAS, Puma Denmark A/S, Puma Iberia SL and Puma Retail AG to bear their own costs and to pay those incurred by the European Commission.

(1) OJ C 431, 25.10.2021.

Order of the Court (Tenth Chamber) of 8 September 2022 (request for a preliminary ruling from the Sąd Okręgowy w Opolu — Poland) — VP

(Case C-188/22) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Judicial cooperation in civil and commercial matters — Regulation (EC) No 1206/2001 — Taking of evidence — Written evidence of a person residing in a Member State other than the Member State of the court having jurisdiction — Possibility of having recourse to the means of taking evidence provided for by national law and not to that provided for by that regulation)

(2022/C 408/27)

Language of the case: Polish

Referring court

Sąd Okręgowy w Opolu

Parties to the main proceedings

Applicant: VP

Defendant: KS represented by AS

Operative part of the order

Articles 1 and 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that a court of a Member State wishing to take evidence from a person residing in another Member State is not necessarily obliged, in order to carry out such an act of investigation, to use methods of taking evidence provided for by that regulation, but may use the written statement of that person, in accordance with the law of the Member State to which that court belongs, and to do so without obtaining the authorisation of the central body or competent authority of the requested Member State, within the meaning of Article 3 of that regulation.

(1) Date lodged: 11.3.2022.

Order of the Court of 8 July 2022 (request for a preliminary ruling from the Curtea de Apel Alba Iulia — Romania) — C.D.A. v I.J., N.L.

(Case C-205/22) (1)

(Removal from the register)

(2022/C 408/28)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Applicant: C.D.A.

Defendants: I.J., N.L.

Operative part of the order

Case C-205/22 is removed from the Register of the Court.

(1) Date lodged: 16.3.2022.

Appeal brought on 14 January 2022 by Silvia González Sordo and Others against the order of the General Court (Eighth Chamber) delivered on 24 November 2021 in Case T-642/21, Gonzáles Sordo and Others v Commission

(Case C-36/22 P)

(2022/C 408/29)

Language of the case: Spanish

Parties

Appellants: Silvia González Sordo, Marta Calzado Melida, Evangelina Camino Nates, María José Canoura González, Félix Fernández Gascón, María Isabel Martínez de Lecea, José Antonio Pardo Cuesta, Natalia Ruisanchez Cáceres, María Ángeles Sáez Díaz, Mónica Ruiz Maccione, Ignacio Serrulla Rech, Celia Baños Olavarri, David Buitrago Cobo, Ana María Pardo García, Adriana Castillo Jiménez, José Manuel Salazar Castillo, María Lorena Tresgallo Salmón, Luis Alfredo Barroso Prados, Ana Isabel Alegre Rubio, Emilio-Joaquín Barrio Fernández de la Pradilla, Zulema Alexandra Lemolt García-Lago (represented by: B. González González, abogada)

Other party to the proceedings: European Commission

By order of 6 September 2022, the Court of Justice (Eighth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellants to bear their own costs.

Appeal brought on 14 January 2022 by GZ (*) and Others against the order of the General Court (Eighth Chamber) delivered on 24 November 2021 in Case T-687/21, GZ (*) and Others v Commission

(Case C-37/22 P)

(2022/C 408/30)

Language of the case: Spanish

Parties

Appellants: GZ (*), FK (*), AT (*), DH (*), ML (*), ZX (*), FO (*), RT (*), JC (*) (represented by: B. González González, abogada)

Other party to the proceedings: European Commission

By order of 6 September 2022, the Court of Justice (Eighth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellants to bear their own costs.

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

Appeal brought on 18 January 2022 by José Antonio Santos Cañibano and Others against the order of the General Court (Eighth Chamber) delivered on 24 November 2021 in Case T-649/21, Santos Cañibano and Others v Commission

(Case C-38/22 P)

(2022/C 408/31)

Language of the case: Spanish

Parties

Appellants: José Antonio Santos Cañibano, Ruth Hompanera Lanzós, Judith Lapresa Isla, José Manuel Arias García, María del Mar Barba Barba, María Isabel Bernárdez Rodríguez, Mónica Camara Torio, Adriana Canella Suárez, Eladio Cano Nieto, Pilar Carbajales García, Luis De Miguel Ribón, Luis Ángel Díaz Suárez, Daniel Fernández González, Cristina Fernández Somoano, Pedro García Parada, Inmaculada Garcia Perez, Susana González González, Pedro Óscar González Menéndez, José Manuel González Riopedre, Carlos Ángel Lazo Reguera, Salvador Llorens García, José Luis Lozano Garrido, Fernando Luiña Vela, Miguel Mera Vega, Abel Miravalles Pindas, Rafael Munguria Rubio, María Montserrat Muñiz Fernández, Aurora Nicolás Herreros, Verónica Pereira Torres, Ernesto Real Arias, Javier Rodríguez Lana, María Belén Rodríguez Menéndez, José Javier Rodríguez Mier, Concepción Rodríguez Rodríguez, María Elena Rodríguez Suárez, Alejandro Sánchez Gión, José Luis Santos Lobato, Susana Solís García, María de los Ángeles Ugido López, María Elvira Vega Fernández, Isabel María Vilalta Suárez, Antonio Villabela Pataño, María José Fernández Gutiérrez, Lourdes Cano Nieto (represented by: B. González González, abogada)

Other party to the proceedings: European Commission

By order of 6 September 2022, the Court of Justice (Eighth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellants to bear their own costs.

Appeal brought on 18 January 2022 by Enol Velasco Granda and Others against the order of the General Court (Eighth Chamber) delivered on 24 November 2021 in Case T-658/21, Velasco Granda and Others v Commission

(Case C-39/22 P)

(2022/C 408/32)

Language of the case: Spanish

Parties

Appellants: Enol Velasco Granda, María José Díaz Rodríguez, Silvia García Miguélez, Beatriz González Carvajal, Antonia Trinidad González Castro, Isabel Merediz Gutiérrez, María Miranda García, Ana Moreira Varillas, Lucía Villa Gutiérrez (represented by: B. González González, abogada)

Other party to the proceedings: European Commission

By order of 6 September 2022, the Court of Justice (Eighth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellants to bear their own costs.

Appeal brought on 18 January 2022 by Ramón Baides Fernández and Others against the order of the General Court (Eighth Chamber) delivered on 24 November 2021 in Case T-659/21, Baides Fernández v Commission

(Case C-40/22 P)

(2022/C 408/33)

Language of the case: Spanish

Parties

Appellants: Ramón Baides Fernández, Alberto Baranda Álvarez, José Luis Bermúdez Cuetos, Juan Carlos Campos Menéndez, María Gloria Díaz Blanco, José Vicente Galán Soto, María José González Delgado, María Rosario López Rodríguez, Erundina Prieto Álvarez, Mónica Regueira Álvarez, Patricia Sánchez Caballero (represented by: B. González González, abogada)

Other party to the proceedings: European Commission

By order of 6 September 2022, the Court of Justice (Eighth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellants to bear their own costs.

Appeal brought on 4 March 2022 by Plataforma de Trabajador@s Temporales del Ayuntamiento de Zaragoza (PTTAZ) against the order of the General Court (Eighth Chamber) delivered on 27 January 2022 in Case T-736/21, PTTAZ v Commission

(Case C-195/22 P)

(2022/C 408/34)

Language of the case: Spanish

Parties

Appellant: Plataforma de Trabajador@s Temporales del Ayuntamiento de Zaragoza (PTTAZ) (represented by: B. González González, abogada)

Other party to the proceedings: European Commission

By order of 6 September 2022, the Court of Justice (Eighth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellants to bear their own costs.

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 16 June 2022 — VT, UR v Conny GmbH

(Case C-400/22)

(2022/C 408/35)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Appellants: VT, UR

Respondent: Conny GmbH

Question referred

Is it compatible with the second subparagraph of Article 8(2) of Directive 2011/83/EU [1] if a national provision (in the present case, Paragraph 312j(3), second sentence, and (4) of the BGB in the version in force from 13 June 2014 to 27 May 2022) is to be interpreted as meaning that its scope, like that of the second subparagraph of Article 8(2) of Directive 2011/83/EU, also covers a case in which the consumer is not unconditionally obliged to pay the trader at the time of the conclusion of the contract by electronic means, but only under certain further conditions — for example, exclusively in the event that a legal action which the trader has been instructed to bring is subsequently successful, or in the event that formal notice is subsequently given to a third party?

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

Request for a preliminary ruling from the Varhoven kasatsionen sad (Bulgaria) lodged on 28 June 2022 — Criminal proceedings against BG

(Case C-427/22)

(2022/C 408/36)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Party to the main proceedings

BG

Questions referred

1. Is the definition of a credit institution in Article 4(1)(1) of Regulation (EU) No 575/2013 ([1]) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 to be interpreted as meaning that credit is to be granted exclusively from funds received from the public as deposits or other repayable funds, or may a credit institution also grant credit from funds from other sources?

2. How is the content of the 'instrument […] in any form […] by which the right to carry out the business is granted' within the meaning of Article 4(1)(42) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 to be interpreted, and does it include both the authorisation scheme and the registration scheme which grant approval for credit operations?

([1]) OJ 2013 L 176, p. 1.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 28 June 2022 — Criminal proceedings against VB

(Case C-430/22)

(2022/C 408/37)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

VB

Questions referred

Must the second sentence of Article 8(4) of Directive 2016/343 ([1]) be interpreted as obliging a national court which convicts an accused person *in absentia*, without the conditions of Article 8(2) being met, to make express reference to the accused person's right to have the proceedings reopened, to which he or she is entitled under Article 9 of that directive, in order that he or she can be informed of that right at a later stage, in particular when he or she is detained for the purpose of executing the sentence? The question arises in the light of the fact that national law provides neither for the person convicted *in absentia* to be informed of his or her right to have the proceedings reopened when he or she is detained for the purpose of executing the sentence, nor for the involvement of a court in the issuing of a European arrest warrant for the purpose of executing the sentence.

Must the second sentence of Article 8(4) of Directive 2016/343, and in particular the phrase 'also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9', be interpreted as meaning that such information concerns a formally recognised right to have the proceedings reopened, or does it concern the right to request such reopening, whereby the substance of the request must then be examined?

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

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 28 June 2022 — Criminal proceedings against PT, SD

(Case C-432/22)

(2022/C 408/38)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties to the main proceedings

PT, SD

Questions referred

In the context of criminal proceedings concerning charges brought for offences coming within the scope of EU law, is it compatible with the second sentence of Article 19(1) TEU and the first and second paragraphs of Article 47 of the Charter for a national law to impose a requirement under which a court other than the one hearing the case and before which all the evidence has been taken is to examine the substance of an agreement entered into between the public prosecutor and an accused person, whereby the reason behind that requirement is the fact that there are other co-accused persons who have not entered into an agreement?

Is a national law under which an agreement discontinuing criminal proceedings is to be approved only with the consent of all other co-accused persons and their defence counsel compatible with Article 5 of Framework Decision 2004/757, (1) Article 4 of Framework Decision 2008/841, (2) the second sentence of Article 19(1) TEU and Article 52 of the Charter, in conjunction with Article 47 thereof?

Does the second paragraph of Article 47 of the Charter require a court, after having examined and approved an agreement, to decline to examine the charges against the other co-accused persons where it has ruled on that agreement in such a manner that it does not make any statement as to their involvement or express an opinion as to their guilt?

(1) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8).

(2) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ 2008 L 300, p. 42).

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 4 July 2022 — Em akaunt BG EOOD v Zastrahovatelno aktsionerno druzhestvo 'Armeets' AD

(Case C-438/22)

(2022/C 408/39)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: Em akaunt BG EOOD

Defendant: Zastrahovatelno aktsionerno druzhestvo 'Armeets' AD

Questions referred

1. Must Article 101(1) TFEU, as interpreted in the judgment in Joined Cases C-427/16 and C-428/16, ([1]) *CHEZ Elektro Bulgaria*, be understood as meaning that national courts may disapply a rule of national law under which the court is not entitled to order the unsuccessful party to pay the costs for lawyers' remuneration in an amount which is less than a minimum amount set by a regulation adopted only by a professional association of lawyers, such as the Vissh advokatski savet (Supreme Bar Council, Bulgaria), where that regulation is not limited to the attainment of legitimate objectives, not only in relation to the contracting parties but also in relation to third parties who would be ordered to pay the costs of the proceedings?

2. Must Article 101(1) TFEU, as interpreted in the judgment in Joined Cases C-427/16 and C-428/16, *CHEZ Elektro Bulgaria*, be understood as meaning that the legitimate objectives justifying the application of a rule of national law under which the court is not entitled to order the unsuccessful party to pay the costs for lawyers' remuneration in an amount which is less than a minimum amount set by a regulation adopted by a professional association of lawyers, such as the Supreme Bar Council (Bulgaria), are to be regarded as having been defined by law, and the court may disapply the national rule where it does not find that those objectives are exceeded in the specific case, or, conversely, must it be assumed that the rule of national law is inapplicable unless it is found that those objectives have been attained?

3. Under Article 101(1) TFEU, in conjunction with Article 2 of Regulation (EC) No 1/2003, ([2]) which party, in a civil dispute in which the unsuccessful party is ordered to pay the costs, is required to establish the existence of a legitimate objective and the proportionality of pursuing it by means of a regulation concerning the lowest possible level of lawyers' remuneration adopted by a professional association of lawyers where a reduction in the lawyers' remuneration is sought on the ground of excessiveness — the party seeking the award of costs or the unsuccessful party seeking a reduction in the remuneration?

4. Must Article 101(1) TFEU, as interpreted in the judgment in Joined Cases C-427/16 and C-428/16, *CHEZ Elektro Bulgaria*, be understood as meaning that a public authority, such as the Narodno sabranie (National Assembly, Bulgaria), when delegating the adoption of minimum prices to a professional association of lawyers by way of a regulation, must expressly specify the specific methods by which the proportionality of the restriction is to be determined, or must it instruct the professional association to discuss them when adopting the regulation (for example in the explanatory memorandum to the draft or in other preparatory documents), and, if such methods are not taken into account, must the court, where appropriate, disapply the regulation without examining the specific amounts, and is the existence of a reasoned discussion of such methods sufficient to presume that the rule is limited to what is necessary to achieve the legitimate objectives set?

5. If Question 4 is answered in the negative, must Article 101(1) TFEU, as interpreted in the judgment in Joined Cases C-427/16 and C-428/16, *CHEZ Elektro Bulgaria*, be understood as meaning that the court must assess the legitimate objectives justifying the application of a rule of national law under which the court is not entitled to order the unsuccessful party to pay the costs for lawyers' remuneration in an amount which is less than a minimum amount set by a regulation adopted by a professional association of lawyers, such as the Supreme Bar Council (Bulgaria), and the proportionality of those objectives, with regard to the effect on the amount specifically provided for in respect of the case concerned, and to disapply that amount where it exceeds what is necessary to achieve the objectives, or must the court investigate, in principle, the nature of the criteria provided for in the regulation for the determination of the amount and the manner in which those criteria manifest themselves, and, if it finds that in certain cases they might exceed what is necessary to achieve the objectives, to disapply the rule in question in all cases?

6. If the guarantee of high-quality legal services is regarded as a legitimate objective of the minimum remuneration, does Article 101(1) TFEU then allow the minimum amounts to be set solely on the basis of the nature of the case (subject matter of the claim), the material interest in the case and, in part, the number of hearings held, without taking into account other criteria such as the existence of factual complexity, the applicable national and international rules, and so forth?

7. If the answer to Question 5 is that the national court is to assess, separately for each case, whether the legitimate objectives of ensuring effective legal protection may justify the application of the legal rule for the minimum amount of remuneration, what criteria must the court use to assess the proportionality of the minimum amount of remuneration in the specific case if it considers that a minimum amount is regulated with the objective of ensuring effective legal protection at national level?

8. Must Article 101(1) TFEU, in conjunction with the third paragraph of Article 47 of the Charter of Fundamental Rights, be interpreted as meaning that, for the purpose of assessing Question 7, account must be taken of rules, approved by the executive, on the remuneration payable by the State to court-appointed lawyers which constitutes — by virtue of a statutory reference — the maximum amount that can be reimbursed to successful parties represented by an in-house legal adviser?

9. Must Article 101(1) TFEU, in conjunction with Article 47 of the Charter of Fundamental Rights, be interpreted as meaning that the national court, for the purpose of assessing Question 7, is required to specify a level of remuneration which is sufficient to achieve the objective of ensuring high-quality legal protection and which it must compare with the level of remuneration resulting from the legal rule, and to state the reasons for the level which it has determined using its discretion?

10. Must Article 101(2) TFEU, in conjunction with the principles of the effectiveness of domestic procedural remedies and the prohibition of abuse of rights, be interpreted as meaning that, where a national court finds that a decision of an association of undertakings infringes the prohibitions on the restriction of competition by fixing minimum tariffs for its members, without there being any valid reasons for allowing such interference, it is obliged to apply the minimum tariff rates laid down in that decision, since they reflect the actual market prices of the services to which the decision relates, because all persons providing the service in question are required to be members of that association?

([1]) EU:C:2017:890.

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 5 July 2022 — Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Upravlyavashtia organ na operativna programa 'Regioni v rastezh' 2014-2020 v Obshtina Razgrad

(Case C-441/22)

(2022/C 408/40)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant in the appeal on a point of law: Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Upravlyavashtia organ na operativna programa 'Regioni v rastezh' 2014-2020

Respondent in the appeal on a point of law: Obshtina Razgrad

Questions referred

1. Does Article 72(1)(e) of Directive 2014/24, ([1]) in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which a breach of the rules on substantial modifications of public contracts can be invoked only where the parties have signed a written agreement/annex amending the contract?

2. If the first question is answered in the negative, does Article 72(1)(e) of Directive 2014/24, in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which an unlawful modification of public contracts may take place not only by means of a written agreement signed by the parties but also by joint acts of the parties which are contrary to the rules on the modification of contracts, and are expressed in communications and the associated paper trail (such as that in the main proceedings), from which a common intention regarding that modification can be inferred?

3. Does Article 72(1)(e) of Directive 2014/24, in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which, in a case such as that in the main proceedings (where a maximum time frame and the deadline for performance of the contract were specified in the contract documents; the time frame also serves as an indicator in the methodology for evaluating tenders; performance of the contract actually exceeded the maximum time frame and the deadline laid down in the documents, without there being any unforeseeable circumstances, and the contracting authority accepted the performance without any complaints and did not seek to enforce a penalty for delay), performance of the contract in a manner contrary to the conditions in the part of the contract and contract documents which relates to the time frame, without there being any unforeseeable circumstances or complaints on the part of the contracting authority, is to be interpreted only as a form of improper performance of the contract and not as an unlawful substantial modification of the contract concerning the part relating to the time frame for performance?

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

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 5 July 2022 — Zamestnik ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Natsionalnia organ po programa 'INTERREG V-A Romania-Bulgaria 2014-2020' v Obshtina Balchik

(Case C-443/22)

(2022/C 408/41)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant in the appeal on a point of law: Zamestnik ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Natsionalnia organ po programa 'INTERREG V-A Romania-Bulgaria 2014-2020'

Respondent in the appeal on a point of law: Obshtina Balchik

Questions referred

1. Does Article 72(1)(e) of Directive 2014/24, ([1]) in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which a breach of the rules on substantial modifications of public contracts can be invoked only where the parties have signed a written agreement/annex amending the contract?

2. If the first question is answered in the negative, does Article 72(1)(e) of Directive 2014/24, in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which an unlawful modification of public contracts may take place not only by means of a written agreement signed by the parties but also by joint acts of the parties which are contrary to the rules on the modification of contracts, and are expressed in communications and the associated paper trail (such as that in the main proceedings), from which a common intention to effect the modification can be inferred?

3. Does the concept of 'diligent preparation of the … award' within the meaning of recital [109] of Directive 2014/24, in the part relating to the period for performance of the works, cover an assessment of the risks arising from ordinary weather conditions which could have an adverse effect on the performance of the contract within the time frame, as well as an assessment of statutory prohibitions on the performance of works during a certain period which falls within the period of performance of the contract?

4. Does the concept of 'unforeseeable circumstances' within the meaning of Directive 2014/24 cover only circumstances which arose after the award of the contract (as provided for in the national provision of Paragraph 2(27) of the Dopalnitelni razporedbi na Zakona za obshtestvenite porachki [Additional Provisions for the Law on public procurement]) and which could not have been foreseen even with reasonably diligent preparation and are not attributable to acts or omissions of the parties, but render performance under the agreed conditions impossible? Or does that directive not require that such circumstances arise after the award of the contract?

5. Do ordinary weather conditions, which do not constitute 'unforeseeable circumstances' within the meaning of recital [109] of Directive 2014/24, and a statutory prohibition — announced prior to the award of the contract — of construction works during a certain period constitute objective justification for failure to perform the contract within the time frame? In that context, is a participant obliged (for the purposes of exercising due diligence and acting in good faith) to take ordinary risks relevant to the performance of the contract within the time frame into account in his or her calculation of the time frame proposed in the tender?

6. Does Article 72(1)(e) of Directive 2014/24, in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which unlawful modification of a public contract may take place in a case such as that in the main proceedings, where the time frame for performance of the contract within certain limits constitutes a condition of participation in the award procedure (and the participant is excluded if those limits are not complied with); the contract was not performed within the time frame on account of ordinary weather conditions and a statutory prohibition of activities, which was announced prior to the award of the contract, whereby those circumstances are covered by the subject matter and time frame of the contract and do not constitute unforeseeable circumstances; performance of the contract was accepted without any objections regarding the time frame, and no contractual penalty for delay was asserted, with the result that a material condition in the contract documents which determined the competitive environment was modified and the economic balance of the contract was shifted in favour of the contractor?

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

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 6 July 2022 — Caixabank, SA and Others v ADICAE and Others

(Case C-450/22)

(2022/C 408/42)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellants: Caixabank SA, Caixa Ontinyent SA, Banco Santander SA, successor to the rights and obligations of Banco Popular Español SA y Banco Pastor SA, Targobank, SA, Credifimo SAU, Caja Rural de Teruel SCC, Caja Rural de Navarra SCC, Cajasiete Caja Rural SCC, Liberbank SA, Banco Castilla La Mancha SA, Bankia SA, successor to the rights and obligations of Banco Mare Nostrum SA, Unicaja Banco, SA, Caja Rural de Asturias SA, Caja de Arquitectos SCC (Arquia Bank SA), Nueva Caja Rural de Aragón SC, Caja Rural de Granada SCC SA, Caja Rural del Sur SCC, Caja Rural de Jaén, Barcelona y Madrid SCC, Caja Rural de Albacete, Ciudad Real y Cuenca SCC (Globalcaja), Caja Laboral Popular SCC (Kutxa), Caja Rural Central SCC, Caja Rural de Extremadura SCC, Caja Rural de Zamora SCC, Banco Sabadell SA, Banca March SA, Ibercaja, Banca Pueyo SA

Respondents: ADICAE, M.A.G.G., M.R.E.M., A.B.C., Óptica Claravisión, S.L., A.T.M., F.A.C., A.P.O., P.S.C., J.V.M.B., legal successor of C.M.R.

Questions referred

1. For the purposes of a review of transparency in the context of a collective action, is an abstract assessment of terms used by more than one hundred financial institutions in millions of banking contracts, without taking into account the level of pre-contractual information offered on the legal and financial burden of the term or the other circumstances occurring in each case at the time when the contract was concluded, covered by Article 4(1) of Directive 93/13/EEC, ([1]) where it refers to the circumstances attending the conclusion of the contract, and by Article 7(3) of that directive, where it refers to similar terms?

2. Is the possibility of conducting an abstract review of transparency from the perspective of the average consumer, where a number of the contracts offered are aimed at different specific groups of consumers or where numerous financial institutions having, economically and geographically, very different business areas were using standard terms and conditions over a very long period of time during which public awareness of such terms was developing, compatible with Articles 4(2) and 7(3) of Directive 93/13/EEC?

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

Request for a preliminary ruling from the Spetsialisiran nakazatelen sad (Bulgaria) lodged on 13 July 2022 — Criminal proceedings against VB

(Case C-468/22)

(2022/C 408/43)

Language of the case: Bulgarian

Referring court

Spetsialisiran nakazatelen sad

Accused person

VB

Question referred

Is it compatible with Article 9 of Directive 2016/343 ([1]) and the principle of effectiveness for a national provision such as Article 423(3) of the NPK to oblige a person who makes a request for a new trial, because he or she had been absent from the first trial and neither of the cases in Article 8(2) [of that directive] applied, to appear before the court in person in order to have that request examined on the merits?

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

Appeal brought on 10 August 2022 by Roberto Aquino against the judgment of the General Court (First Chamber) delivered on 1 June 2022 in Case T-253/21, Aquino v Parliament

(Case C-534/22 P)

(2022/C 408/44)

Language of the case: French

Parties

Appellant: Roberto Aquino (represented by: L. Levi, S. Rodrigues, avocats)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— take a decision itself on the case, resulting in a ruling that the action at first instance is well founded;

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

Pleas in law and main arguments

1. Error of law due to an erroneous interpretation of the criterion of doubt entitling the administration to intervene in the electoral process to elect the Bureau of the Staff Committee — Contradictory reasoning — Infringement of the right to freedom of association and assembly (Article 12 of the Charter of Fundamental Rights of the European Union) as reflected in the prohibition of any unjustified interference by the administration in that electoral process.

2. Incorrect classification of certain documents drawn up at the request of the defendant for the purposes of reviewing the electoral process — Breach by the Court of its obligation to state reasons.

3. Distortion of the file and erroneous interpretation of the rules applicable to the constituent meeting of the Staff Committee — Infringement of the rights of the defence.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 16 August 2022 — GF v Schauinsland-Reisen GmbH

(Case C-546/22)

(2022/C 408/45)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: GF

Defendant: Schauinsland-Reisen GmbH

Questions referred

1. Is Article 12(3) of Directive (EU) 2015/2302 ([1]) of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (package travel directive) to be interpreted as meaning that, for an organiser to rely on unavoidable and extraordinary circumstances preventing performance of a contract, it is sufficient that the authority authorised in the customer's Member State to issue travel warnings has issued the highest-level warning for the destination country before the start of the proposed journey?

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

   Is Article 12(3) of Directive (EU) 2015/2302 to be interpreted as meaning that there are no unavoidable and extraordinary circumstances in a case where the traveller, who is aware of the travel warning and the uncertainty as to the subsequent development of the pandemic, has nevertheless stated that he wishes to proceed with the journey and that it would not have been impossible for the organiser to carry it out?

([1]) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).

Order of the President of the Second Chamber of the Court of 21 July 2022 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — AB, AB-CD v Z EF

(Case C-265/21) [1]

(2022/C 408/46)

Language of the case: French

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

[1] OJ C 263, 5.7.2021.

Order of the President of the Court of 9 August 2022 (request for a preliminary ruling from the Verwaltungsgericht Wiesbaden — Germany) — TX v Bundesrepublik Deutschland

(Case C-481/21) [1]

(2022/C 408/47)

Language of the case: German

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

[1] OJ C 422, 18.10.2021.

GENERAL COURT

Action brought on 4 August 2022 — Genzyme Europe v Commission

(Case T-483/22)

(2022/C 408/48)

Language of the case: English

Parties

Applicant: Genzyme Europe BV (Amsterdam, Netherlands) (represented by: P. Bogaert, B. Van Vooren and M. Oyarzabal Arigita, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision that avalglucosidase alfa does not qualify as a 'new active substance', as contained in, or at least implied by, Commission Decision C(2022) 4531 final of 24 June 2022;

— annul Article 5 of that Commission Decision, providing that the medicinal product Nexviadyme — avalglucosidase alfa shall not be classified as an orphan medicinal product; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging a breach of Article 10(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 ([1]) and of Article 14(11) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 ([2]) and a manifest error of assessment, combined with inadequate statement of reasons (against the first part of the contested decision, refusing the status of 'new active substance').

2. Second plea in law, alleging breach of the principle of good administration, as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union (against the first part of the contested decision, refusing the status of 'new active substance').

3. Third plea in law, alleging breach of Article 5(12)(b) of Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products, ([3]) manifest error of assessment and inadequate statement of reasons (against the second part of the contested decision — withdrawal of orphan designation).

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended.

([2]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended.

([3]) Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1), as amended.

Action brought on 19 August 2022 — Schrom Farms v Commission

(Case T-507/22)

(2022/C 408/49)

Language of the case: English

Parties

Applicant: Schrom Farms spol. s r. o. (Velké Albrechtice, Czech Republic) (represented by: S. Sobolová and O. Billard, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— annul Commission Implementing Decision (EU) 2022/908 of 8 June 2022 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (notified under document C(2022) 3543) (OJ 2022 L 157, p. 15), insofar as it excludes from the Union financing expenditure related to a grant awarded to the applicant by the Czech authorities in the amount of EUR 30 606,96;

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

— order any other measure deemed appropriate.

Pleas in law and main arguments

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

1. First plea in law, alleging that the exclusion from the Union financing of expenditure related to the grant awarded to the applicant by the Czech authorities in the amount of EUR 30 606,96 is insufficiently motivated, i.e. is deprived of any statement of reasons, in violation of Article 296 TFEU as well as of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging that the applicant's fundamental rights have been violated both directly and indirectly by the defendant, as the applicant was not given the opportunity to express its views in the course of the audit leading up to the adoption of the contested decision even though the latter allegedly adversely affects the grant awarded to the applicant.

3. Third plea in law, alleging that the defendant has no competence to interpret and apply Member States' internal law.

4. Fourth plea in law, alleging that the defendant did not prove the content of the Czech law and erred in its interpretation and application.

5. Fifth plea in law, alleging that the defendant erred also in the interpretation and application of EU law, as it wrongly considered that there was a breach of Article 61 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ 2018 L 193, p. 1), and applied the Czech rules on conflicts of interest in violation of the fundamental principles of EU law, including the fundamental principle of equal treatment and non-discrimination.

Action brought on 31 August 2022 — PAN Europe v Commission

(Case T-536/22)

(2022/C 408/50)

Language of the case: French

Parties

Applicant: Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) (represented by: A. Bailleux, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible and well founded;

— annul the decision, validly communicated to the applicant on 18 July 2022, rejecting the request for internal review of Commission Implementing Regulation (EU) 2021/2049 of 24 November 2021 renewing the approval of the active substance cypermethrin as a candidate for substitution in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011; [1]

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

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging breach of the precautionary principle and of the European Union's obligation to ensure a high level of protection of human health and the environment, as set out in Article 9, Article 11, Article 168(1) and Article 191(1) TFEU and Articles 35 and 37 of the Charter of Fundamental Rights of the European Union.

[1] OJ 2021 L 420, p. 6.

Action brought on 2 September 2022 — Sanity Group v EUIPO — AC Marca Brands (Sanity Group)

(Case T-541/22)

(2022/C 408/51)

Language in which the application was lodged: English

Parties

Applicant: Sanity Group GmbH (Berlin, Germany) (represented by: B. Koch and V. Wolf, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: AC Marca Brands, SL (Barcelona, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark Sanity Group — Application for registration No 18 110 653

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 22 June 2022 in Case R 2107/2021-1

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(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 September 2022 — Martin Rodrigo v EUIPO — Louis Vuitton Malletier (CALIFORNIA Dreaming by Made in California)

(Case T-542/22)

(2022/C 408/52)

Language in which the application was lodged: English

Parties

Applicant: Andres Carlos Martin Rodrigo (Fuente el Saz de Jarama, Spain) (represented by: J. L. Donoso Romero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Louis Vuitton Malletier (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark CALIFORNIA Dreaming by Made in California — Application for registration No 18 224 612

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 2 June 2022 in Case R 2242/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in all its pronouncements;

— therefore, the opposition must be rejected in its entirety; and consequently the European Union figurative mark application must be granted for all the goods and services;

— order EUIPO and the intervener 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 5 September 2022 — Laboratorios Ern v EUIPO — BRM Extremities (BIOPLAN)

(Case T-543/22)

(2022/C 408/53)

Language in which the application was lodged: English

Parties

Applicant: Laboratorios Ern, SA (Barcelona, Spain) (represented by: S. Correa Rodríguez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: BRM Extremities Srl (Milan, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark BIOPLAN — Application for registration No 18 095 065

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 June 2022 in Case R 2147/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and to BRM Extremities Srl, in case BRM Extremities Srl decides to intervene in the present proceedings, 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 6 September 2022 — Prolactal v EUIPO — Prolàctea (PROLACTAL)

(Case T-549/22)

(2022/C 408/54)

Language in which the application was lodged: English

Parties

Applicant: Prolactal GmbH (Hartberg, Austria) (represented by: H. Roerdink and S. Janssen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Prolàctea, SAU (Castrogonzalo, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the mark PROLACTAL — International registration designating the European Union No 1 475 897

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 10 June 2022 in Case R 752/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it relates to Prolactal;

— order EUIPO to pay the costs of the proceedings.

Pleas in law

— Infringement of Article 27(4) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of the principles of the protection of legitimate expectations and legal certainty, on the ground that the EUIPO's decision that the requests for proof of use filed by Prolactal do not comply with the requirements of Article 10 (1) EUTMDR, and are thus inadmissible, is not proportional to the consequences thereof;

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

— Infringement of Article 94 of Regulation (EU) 2017/1001 of the European Parliament and of the Council and of Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of the protection of legitimate expectations and legal certainty as the burden of proof imposed by EUIPO went beyond the scope of what could be expected from the applicant to provide as evidence for coexistence;

— Infringement of relevant case-law with regard to the overall assessment of the likelihood of confusion.

Action brought on 7 September 2022 — mataharispaclub v EUIPO — Rouha (SpaClubMatahari)

(Case T-552/22)

(2022/C 408/55)

Language in which the application was lodged: Czech

Parties

Applicant: mataharispaclub s.r.o. (Mníšek pod Brdy, Czech Republic) (represented by: M. Diamant, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Alena Rouha (Prague, Czech Republic)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'SpaClubMatahari' — EU trade mark No 17 642 661

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 30 June 2022 in Case R 937/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to pay the costs.

Pleas in law

— Infringement of Article 8(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

Action brought on 9 September 2022 — France v Commission

(Case T-555/22)

(2022/C 408/56)

Language of the case: French

Parties

Applicant: French Republic (represented by: T. Stehelin, A. Daniel and E. Leclerc, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the notice of Open Competition EPSO/AD/400/22, entitled 'Administrators (AD 7) and experts (AD 9) in the fields of defence industry and space' published on 16 June 2022 in the Official Journal of the European Union; ([1])

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the notice of Open Competition EPSO/AD/400/22, entitled 'Administrators (AD 7) and experts (AD 9) in the fields of defence industry and space' ('the contested notice of competition') creates discrimination that is based on language and which is not justified.

2. Second plea in law, alleging infringement of the requirement to recruit officials of the highest standard of ability, efficiency and integrity.

3. Third plea in law, alleging the contested notice of competition circumvents the procedures provided by the Treaties to determine the rules governing the languages of the institutions of the European Union and the detailed rules for their application.

4. Fourth plea in law, alleging infringement of the European Union's duty to respect its rich cultural and linguistic diversity and ensure that Europe's cultural heritage is safeguarded and enhanced.

5. Fifth plea in law, alleging infringement of the duty to state reasons.

([1]) OJ 2022 C 233A, p. 1.

Action brought on 13 September 2022 — HF v Parliament

(Case T-565/22)

(2022/C 408/57)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well-founded;

and consequently,

— annul the decision of 3 November 2021 rejecting the applicant's request for assistance of 11 December 2014;

— in so far as necessary, annul the decision of 3 June 2022, received on 7 June 2022, rejecting the applicant's complaint of 3 February 2022;

— order the defendant to pay damages, fixed *ex aequo et bono* at EUR 50 000, as compensation for the non-material damage suffered by the applicant;

— order the defendant to pay all 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 irregularity in the procedure followed by the Committee, infringement of Article 41 of the Charter of Fundamental Rights of the European Union and infringement of Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations').

2. Second plea in law, alleging errors of assessment, breach of the duty to provide assistance and infringement of Articles 12a and 24 of the Staff Regulations.

Order of the General Court of 8 September 2022 — Schenk Italia v EUIPO — Consorzio per la tutela dei vini Valpolicella (AMICONE)

(Case T-474/21) ([1])

(2022/C 408/58)

Language of the case: Italian

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

([1]) OJ C 382, 20.9.2021.

Order of the General Court of 8 September 2022 — Automobiles Citroën v EUIPO Polestar (Device of two inverted chevrons)

(Case T-608/21) ([1])

(2022/C 408/59)

Language of the case: English

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

([1]) OJ C 471, 22.11.2021.

Order of the General Court of 8 September 2022 — Automobiles Citroën v EUIPO — Polestar (Device of two inverted chevrons)

(Case T-625/21) ([1])

(2022/C 408/60)

Language of the case: English

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

([1]) OJ C 471, 22.11.2021.

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