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(2017/C 239/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 11 May 2017 — Kingdom of Sweden v Darius Nicolai Spirlea, Mihaela Spirlea, European Commission, Czech Republic, Kingdom of Denmark, Kingdom of Spain, Republic of Finland

(Case C-562/14 P) ([1])

(Appeal — Right of public access to documents — Regulation (EC) No 1049/2001 — Third indent of Article 4(2) — Exceptions to the right of access to documents — Incorrect interpretation — Protection of the purpose of inspections, investigations and audits — Overriding public interest justifying the disclosure of documents — General presumption of confidentiality — Documents relating to an EU Pilot procedure)

(2017/C 239/02)

Language of the case: German

Parties

Appellant: Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents)

Other parties to the proceedings: Darius Nicolai Spirlea, Mihaela Spirlea, European Commission (represented by: H. Krämer and P. Costa de Oliveira, acting as Agents), Czech Republic (represented by: M. Smolek, D. Hadroušek and J. Vláčil, acting as Agents), Kingdom of Denmark (represented by: C. Thorning, acting as Agent), Kingdom of Spain (represented by: M. J. García-Valdecasas Dorrego, acting as Agent), Republic of Finland (represented by: S. Hartikainen, acting as Agent)

Intervener in support of the European Commission: Federal Republic of Germany (represented by: T. Henze and A. Lippstreu, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Kingdom of Sweden to pay the costs incurred by the European Commission;*

3. *Orders the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain and the Republic of Finland to bear their own costs.*

([1]) OJ C 46, 9.2.2015.

Opinion of the Court (Full Court) of 16 May 2017 — European Commission

(Opinion 2/15) ([1])

(Opinion pursuant to Article 218(11) TFEU — Free Trade Agreement between the European Union and the Republic of Singapore — 'New generation' trade agreement negotiated after the entry into force of the EU and FEU Treaties — Competence to conclude the agreement — Article 3(1)(e) TFEU — Common commercial policy — Article 207(1) TFEU — Trade in goods and services — Foreign direct investment — Public procurement — Commercial aspects of intellectual property — Competition — Trade with third States and sustainable development — Social protection of workers — Environmental protection — Article 207(5) TFEU — Services in the field of transport — Article 3(2) TFEU — International agreement which may affect common rules or alter their scope — Rules of secondary EU law concerning freedom to provide services in the field of transport — Non-direct foreign investment — Article 216 TFEU — Agreement necessary in order to achieve one of the objectives of the Treaties — Free movement of capital and of payments between Member States and third States — Succession of treaties concerning investment — Replacement of the investment agreements between Member States and the Republic of Singapore — Institutional provisions of the agreement — Investor-State dispute settlement — Dispute settlement between the Parties)

(2017/C 239/03)

Language of the procedure: all the official languages

Requested by

European Commission (represented by: U. Wölker, B. De Meester, R. Vidal-Puig and M. Kocjan, acting as Agents)

Operative part

The Free Trade Agreement between the European Union and the Republic of Singapore falls within the exclusive competence of the European Union, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States:

— *the provisions of Section A (Investment Protection) of Chapter 9 (Investment) of that agreement, in so far as they relate to non-direct investment between the European Union and the Republic of Singapore;*

— *the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and*

— *the provisions of Chapters 1 (Objectives and General Definitions), 14 (Transparency), 15 (Dispute Settlement between the Parties), 16 (Mediation Mechanism) and 17 (Institutional, General and Final Provisions) of that agreement, in so far as those provisions relate to the provisions of Chapter 9 and to the extent that the latter fall within a competence shared between the European Union and the Member States.*

([1]) OJ C 363, 3.11.2015.

Judgment of the Court (First Chamber) of 17 May 2017 (request for a preliminary ruling from the Grondwettelijk Hof — Belgium) — X v Ministerraad

(Case C-68/15) ([1])

(Reference for a preliminary ruling — Freedom of establishment — Parent-Subsidiary Directive — Tax legislation — Tax on company profits — Distribution of dividends — Withholding tax — Double taxation — 'Fairness tax')

(2017/C 239/04)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicant: X

Defendant: Ministerraad

Operative part of the judgment

1. *Freedom of establishment must be interpreted as not precluding tax legislation of a Member State, such as that at issue in the main proceedings, under which both a non-resident company conducting an economic activity in that Member State through a permanent establishment and a resident company, including the resident subsidiary of a non-resident company, are subject to a tax such as the 'fairness tax' when they distribute dividends which, as a result of the use of certain tax advantages provided for by the national tax system, are not included in their final taxable profits, provided that the method of determining the taxable amount of that tax does not in fact lead to that non-resident company being treated in a less advantageous manner than a resident company, which is for the referring court to ascertain.*

2. *Article 5 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States must be interpreted as not precluding tax legislation of a Member State, such as that at issue in the main proceedings, providing for a tax such as the 'fairness tax', to which non-resident companies conducting an economic activity in that Member State through a permanent establishment and resident companies, including the resident subsidiary of a non-resident company, are subject when they distribute dividends which, as a result of the use of certain tax advantages provided for by the national tax system, are not included in their final taxable profits.*

3. *Article 4(1)(a) of Directive 2011/96, read in conjunction with Article 4(3) thereof, must be interpreted as precluding national tax legislation, such as that at issue in the main proceedings, in so far as that legislation, in a situation where profits received by a parent company from its subsidiary are distributed by the parent company after the year in which they were received, has the consequence of subjecting those profits to taxation exceeding the 5 % ceiling provided for in that provision.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Grand Chamber) of 10 May 2017 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — H.C. Chavez-Vilchez and Others v Raad van bestuur van de Sociale verzekeringsbank and Others

(Case C-133/15) ([1])

(Reference for a preliminary ruling — Union citizenship — Article 20 TFEU — Access to social assistance and child benefit conditional on right of residence in a Member State — Third-country national responsible for the primary day-to-day care of her minor child, a national of that Member State — Obligation on the third-country national to establish that the other parent, a national of that Member State, is not capable of caring for the child — Refusal of residence possibly obliging the child to leave the territory of the Member State, or the territory of the European Union)

(2017/C 239/05)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicants: H.C. Chavez-Vilchez, P. Pinas, U. Nikolic, X.V. Garcia Perez, J. Uwituze, I.O. Enowassam, A.E. Guerrero Chavez, Y. R. L. Wip

Defendants: Raad van bestuur van de Sociale verzekeringsbank, College van burgemeester en wethouders van de gemeente Arnhem, College van burgemeester en wethouders van de gemeente 's-Gravenhage, College van burgemeester en wethouders van de gemeente 's-Hertogenbosch, College van burgemeester en wethouders van de gemeente Amsterdam, College van burgemeester en wethouders van de gemeente Rijswijk, College van burgemeester en wethouders van de gemeente Rotterdam

Operative part of the judgment

1. *Article 20 TFEU must be interpreted as meaning that for the purposes of assessing whether a child who is a citizen of the European Union would be compelled to leave the territory of the European Union as a whole and thereby deprived of the genuine enjoyment of the substance of the rights conferred on him by that article if the child's third-country national parent were refused a right of residence in the Member State concerned, the fact that the other parent, who is a Union citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but it is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would indeed be so compelled were there to be such a refusal of a right of residence. Such an assessment must take into account, in the best interests of the child concerned, all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium.*

2. *Article 20 TFEU must be interpreted as not precluding a Member State from providing that the right of residence in its territory of a third-country national, who is a parent of a minor child that is a national of that Member State and who is responsible for the primary day-to-day care of that child, is subject to the requirement that the third-country national must provide evidence to prove that a refusal of a right of residence to the third-country national parent would deprive the child of the genuine enjoyment of the substance of the rights pertaining to the child's status as a Union citizen, by obliging the child to leave the territory of the European Union, as a whole. It is however for the competent authorities of the Member State concerned to undertake, on the basis of the evidence provided by the third-country national, the necessary enquiries in order to be able to assess, in the light of all the specific circumstances, whether a refusal would have such consequences.*

([1]) OJ C 178, 1.6.2015.

Judgment of the Court (Fifth Chamber) of 11 May 2017 — Yoshida Metal Industry Co. Ltd v European Union Intellectual Property Office (EUIPO), Pi-Design AG, Bodum France SAS, Bodum Logistics A/S

(Case C-421/15 P) ([1])

(Appeal — EU trade mark — Registration of signs consisting of a surface with black dots — Declaration of invalidity — Regulation (EC) No 40/94 — Article 7(1)(e)(ii) — Article 51(3))

(2017/C 239/06)

Language of the case: English

Parties

Appellant: Yoshida Metal Industry Co. Ltd (represented by: J. Cohen, Solicitor, T. St Quintin, Barrister, and G. Hobbs QC)

Other parties to the proceedings: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, D. Gaja and J. Crespo Carrillo, acting as Agents), Pi-Design AG (Triengen, Switzerland), Bodum France SAS (Neuilly sur Seine, France), Bodum Logistics A/S (Billund, Denmark) (represented by: H. Pernez, avocate, and R. Löhr, Rechtsanwalt)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Yoshida Metal Industry Co. Ltd to pay the costs.*

(1) OJ C 389, 23.11.2015.

Judgment of the Court (Third Chamber) of 17 May 2017 — European Union Intellectual Property Office v Deluxe Entertainment Services Group Inc.

(Case C-437/15 P) (1)

(Appeal — EU trade mark — Figurative mark containing the word element 'deluxe' — Refusal of registration by the examiner)

(2017/C 239/07)

Language of the case: Spanish

Parties

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

Other party to the proceedings: Deluxe Entertainment Services Group Inc. (represented by: L. Gellman, advocate, and M. Esteve Sanz, abogada)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 4 June 2015, Deluxe Laboratories v OHIM (deluxe) (T-222/14, not published, EU:T:2015:364);*

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

3. *Reserves the costs.*

(1) OJ C 346, 19.10.2015.

Judgment of the Court (Second Chamber) of 18 May 2017 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Hummel Holding A/S v Nike Inc., Nike Retail BV

(Case C-617/15) (1)

(Reference for a preliminary ruling — Intellectual property — Regulation (EC) No 207/2009 — EU trade mark — Article 97(1) — International jurisdiction — Action for infringement brought against an undertaking with its seat in a third country — Second-tier subsidiary with its seat in the Member State of the court seised — Definition of 'establishment')

(2017/C 239/08)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Hummel Holding A/S

Defendant: Nike Inc., Nike Retail BV

Operative part of the judgment

Article 97(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that a legally distinct second-tier subsidiary, with its seat in a Member State, of a parent body that has no seat in the European Union is an 'establishment', within the meaning of that provision, of that parent body if the subsidiary is a centre of operations which, in the Member State where it is located, has a certain real and stable presence from which commercial activity is pursued, and has the appearance of permanency to the outside world, such as an extension of the parent body.

(1) OJ C 38, 1.2.2016.

Judgment of the Court (Ninth Chamber) of 18 May 2017 (request for a preliminary ruling from the Vilniaus apygardos administracinis teismas — Lithuania) — 'Litdana' UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-624/15) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 314 — Margin scheme — Conditions under which it is applicable — Refusal by the national tax authorities to grant a taxable person the right to apply the margin scheme — References on the invoices relating both to the application of the margin scheme by the supplier and to exemption from VAT — Margin scheme not applied by the supplier to the supply — Indications giving grounds for suspecting an infringement or fraud in the supply)

(2017/C 239/09)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: 'Litdana' UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Third party: Klaipėdos apskrities valstybinė mokesčių inspekcija

Operative part of the judgment

Article 314 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding the competent authorities of a Member State from denying a taxable person the right to apply the margin scheme where he received an invoice that includes references relating both to the margin scheme and to exemption from value added tax (VAT), even if it is apparent from a subsequent check carried out by those authorities that the taxable dealer supplying the second-hand goods had not actually applied that scheme to the supply of those goods, unless it is established by the competent authorities that the taxable person did not act in good faith or did not take every reasonable measure in his power to satisfy himself that the transaction carried out by him does not result in his participation in tax evasion — a matter which it is for the referring court to determine.

(1) OJ C 48, 8.2.2016.

Judgment of the Court (Grand Chamber) of 16 May 2017 (request for a preliminary ruling from the Cour administrative — Luxembourg) — Berlioz Investment Fund SA v Directeur de l'administration des contributions directes

(Case C-682/15) ([1])

(Reference for a preliminary ruling — Directive 2011/16/EU — Administrative cooperation in the field of taxation — Article 1(1) — Article 5 — Request for information sent to a third party — Refusal to respond — Penalty — Concept of 'foreseeable relevance' of the information requested — Review by the requested authority — Review by a court — Scope — Charter of Fundamental Rights of the European Union — Article 51 — Implementation of EU law — Article 47 — Right to an effective judicial remedy — Access of the court and of the third party to the request for information sent by the requesting authority)

(2017/C 239/10)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Applicant: Berlioz Investment Fund SA

Defendant: Directeur de l'administration des contributions directes

Operative part of the judgment

1. *Article 51(1) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a Member State implements EU law within the meaning of that provision, and that the Charter of Fundamental Rights of the European Union is therefore applicable, when that Member State makes provision in its legislation for a pecuniary penalty to be imposed on a person who may be the subject of administrative measures (a 'relevant person') who refuses to supply information in the context of an exchange between tax authorities based, in particular, on the provisions of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.*

2. *Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a relevant person on whom a pecuniary penalty has been imposed for failure to comply with an administrative decision directing that person to provide information ('information order') in the context of an exchange between national tax administrations pursuant to Directive 2011/16 is entitled to challenge the legality of that decision.*

3. *Article 1(1) and Article 5 of Directive 2011/16 must be interpreted as meaning that the 'foreseeable relevance' of the information requested by one Member State from another Member State is a condition which the request for information must satisfy in order for the requested Member State to be required to comply with that request, and thus a condition of the legality of the information order addressed by that Member State to a relevant person and of the penalty imposed on that person for failure to comply with that information order.*

4. *Article 1(1) and Article 5 of Directive 2011/16 must be interpreted as meaning that verification by the requested authority to which a request for information has been submitted by the requesting authority pursuant to that directive is not limited to the procedural regularity of that request but must enable the requested authority to satisfy itself that the information sought is not devoid of any foreseeable relevance having regard to the identity of the taxpayer concerned and that of any third party asked to provide the information, and to the requirements of the tax investigation concerned. Those provisions of Directive 2011/16 and Article 47 of the Charter must be interpreted as meaning that, in the context of an action brought by a relevant person against a penalty imposed on that person by the requested authority for non-compliance with an information order issued by that authority in response to a request for information sent by the requesting authority pursuant to Directive 2011/16, the national court not only has jurisdiction to vary the penalty imposed but also has jurisdiction to review the legality of that information order. As regards the condition of legality of that information order, which relates to the foreseeable relevance of the requested information, the courts' review is limited to verification that the requested information manifestly has no such relevance.*

5. *The second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, in the context of a judicial review by a court of the requested Member State, that court must have access to the request for information addressed to the requested Member State by the requesting Member State. The relevant person does not, however, have a right of access to the whole of that request for information, which is to remain a secret document in accordance with Article 16 of Directive 2011/16. In order for that person to be given a full hearing of his case in relation to the lack of any foreseeable relevance of the requested information, it is sufficient, in principle, that he be in possession of the information referred to in Article 20(2) of that directive.*

([1]) OJ C 78, 29.2.2016.

Judgment of the Court (Grand Chamber) of 10 May 2017 (request for a preliminary ruling from the Cour administrative d'appel de Douai — France) — Wenceslas de Lobkowicz v Ministère des Finances et des Comptes publics

(Case C-690/15) ([1])

(Reference for a preliminary ruling — Officials of the European Union — Staff Regulations — Compulsory affiliation to the social security scheme of the EU institutions — Real estate income received in a Member State — Liability to pay General Social Contribution, social levy and additional contributions under the law of a Member State — Participating in the funding of the social security scheme of that Member State)

(2017/C 239/11)

Language of the case: French

Referring court

Cour administrative d'appel de Douai

Parties to the main proceedings

Applicant: Wenceslas de Lobkowicz

Defendant: Ministère des Finances et des Comptes publics

Operative part of the judgment

Article 14 of Protocol (No 7) on the privileges and immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, and the provisions of the Staff Regulations of Officials of the European Union on the joint social security scheme of the EU institutions must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that income from real estate received in a Member State by an official of the European Union who has his or her domicile for tax purposes in that Member State is subject to contributions and social levies that are allocated for the funding of the social security scheme of that same Member State.

([1]) OJ C 98, 14.3.2016.

Judgment of the Court (Second Chamber) of 11 May 2017 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Minister Finansów v Posnania Investment SA

(Case C-36/16) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Article 2(1)(a) — Article 14(1) — Taxable transactions — Meaning of 'supply of goods for consideration' — Transfer to the State or to a local authority of immovable property in order to settle a tax debt — Not included)

(2017/C 239/12)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Minister Finansów

Defendant: Posnania Investment SA

Operative part of the judgment

Articles 2(1)(a) and 14(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the transfer of ownership of immovable property by a person subject to value added tax, for the benefit of the State Treasury or a local authority of a Member State, occurring, as in the main proceedings, in payment of tax arrears, does not constitute a supply of goods for consideration that is subject to value added tax.

([1]) OJ C 145, 25.4.2016.

Judgment of the Court (Ninth Chamber) of 11 May 2017 — Dyson Ltd v Commission

(Case C-44/16 P) ([1])

(Appeal — Directive 2010/30/EU — Indication of energy consumption by labelling and standard product information — Delegated Regulation (EU) No 665/2013 — Energy labelling of vacuum cleaners — Energy efficiency — Measurement method — Limits of delegated powers — Distortion of the evidence — Duty of the General Court to state reasons)

(2017/C 239/13)

Language of the case: English

Parties

Appellant: Dyson Ltd (represented by: E. Batchelor and M. Healy, Solicitors, F. Carlin, Barrister, and A. Patsa, Advocate)

Other party to the proceedings: European Commission (represented by: K. Herrmann and E. White, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 11 November 2015, Dyson v Commission (T-544/13, EU:T:2015:836), in so far as it rejected the first part of the first plea in law and the third plea in law put forward at first instance;*

2. *Refers the case back to the General Court of the European Union for it to give judgment on the first part of the first plea in law and the third plea in law put forward at first instance;*

3. *Reserves the costs.*

(1) OJ C 145, 25.4.2016.

Judgment of the Court (Fourth Chamber) of 17 May 2017 (request for a preliminary ruling from the Okresný súd Dunajská Streda — Slovakia) — ERGO Poisťovňa a.s. v Alžbeta Barlíková

(Case C-48/16) (1)

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653/EEC — Commercial agent's commission — Article 11 — Partial non-execution of the contract between the third party and the principal — Consequences for the right to commission — Concept of 'reason for which the principal is to blame')

(2017/C 239/14)

Language of the case: Slovak

Referring court

Okresný súd Dunajská Streda

Parties to the main proceedings

Applicant: ERGO Poisťovňa a.s.

Defendant: Alžbeta Barlíková

Operative part of the judgment

1. *The first indent of Article 11(1) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that it covers not only cases of complete non-execution of the contract concluded between the principal and the third party, but also cases of partial non-execution of that contract, such as non-compliance with the volume of transactions or the duration envisaged by that contract.*

2. *Article 11(2) and (3) of Directive 86/653 must be interpreted as meaning that the clause of a contract for commercial agency pursuant to which the agent is required to refund, on a pro-rata basis, a part of his commission in the event of partial non-execution of the contract concluded between the principal and the third party does not constitute a 'derogation to the detriment of the commercial agent', for the purposes of that Article 11(3), if the part of the commission subject to the refund obligation is proportionate to the extent to which that contract has not been executed and on condition that that non-execution is not due to a reason for which the principal is to blame.*

3. *The second indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that the concept of 'a reason for which the principal is to blame' does not relate only to the legal reasons which led directly to the termination of the contract concluded between the principal and the third party, but covers all the legal and factual circumstances for which the principal is to blame, which are the cause of the non-execution of that contract.*

(1) OJ C 136, 18.4.2016.

Judgment of the Court (Tenth Chamber) of 11 May 2017 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — The Shirtmakers BV v Staatssecretaris van Financiën

(Case C-59/16) ([1])

(Reference for a preliminary ruling — Customs union — Regulation (EEC) No 2913/92 — Community Customs Code — Article 32(1)(e)(i) — Customs value — Transaction value — Determination — Concept of 'cost of transport')

(2017/C 239/15)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: The Shirtmakers BV

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the concept of 'cost of transport', within the meaning of that provision, includes the supplement charged by the forwarding agent to the importer, corresponding to that agent's profit margin and costs, in respect of the service which it provided in organising the transport of the imported goods to the customs territory of the European Union.

([1]) OJ C 145, 25.4.2016.

Judgment of the Court (Third Chamber) of 18 May 2017 (request for a preliminary ruling from the Tribunal de grande instance de Lyon — France) — Jean-Philippe Lahorgue v Ordre des avocats du barreau de Lyon, Conseil national des barreaux (CNB), Conseil des barreaux européens (CCBE), Ordre des avocats du barreau de Luxembourg

(Case C-99/16) ([1])

(Reference for a preliminary ruling — Freedom to provide services — Directive 77/249/EEC — Article 4 — Practice of the legal profession — Router for accessing the private virtual network for lawyers (RPVA) — Router for RPVA access — Refusal to issue to a lawyer registered at a Bar of another Member State — Discriminatory measure)

(2017/C 239/16)

Language of the case: French

Referring court

Tribunal de grande instance de Lyon

Parties to the main proceedings

Applicant: Jean-Philippe Lahorgue

Defendants: Ordre des avocats du barreau de Lyon, Conseil national des barreaux (CNB), Conseil des barreaux européens (CCBE), Ordre des avocats du barreau de Luxembourg

Intervening party: Ministère public

Operative part of the judgment

The refusal, on the part of the competent authorities of a Member State, to issue a router for access to the private virtual network for lawyers to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of services, in situations where the obligation to work in conjunction with another lawyer is not imposed by law, constitutes a restriction on the freedom to provide services under Article 4 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, read in the light of Article 56 TFEU and the third paragraph of Article 57 TFEU. It is for the national court to determine whether such a refusal, in the light of the context in which it is put forward, genuinely serves the objectives of consumer protection and the proper administration of justice which might justify it and whether the resulting restrictions do not appear to be disproportionate in regard to those objectives.

([1]) OJ C 165, 10.5.2016.

Judgment of the Court (Eighth Chamber) of 11 May 2017 (request for a preliminary ruling from the Krajowa Izba Odwoławcza — Poland) — Archus sp. z o.o., Gama Jacek Lipik v Polskie Górnictwo Naftowe i Gazownictwo S.A.

(Case C-131/16) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2004/17/EC — Principles of awarding contracts — Article 10 — Principle of equal treatment of tenderers — Requirement for contracting authorities to request tenderers to amend or supplement their tender — Right of the contracting authority to retain the bank guarantee in the event of refusal — Directive 92/13/EEC — Article 1(3) — Review procedures — Decision to award a public contract — Exclusion of a tenderer — Actions for annulment — Interest in bringing proceedings)

(2017/C 239/17)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Applicant: Archus sp. z o.o., Gama Jacek Lipik

Defendant: Polskie Górnictwo Naftowe i Gazownictwo S.A.

Intervener: Digital-Center sp. z o.o.

Operative part of the judgment

1. *The principle of equal treatment of economic operators set out in Article 10 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors must be interpreted as precluding, in a public procurement procedure, the contracting authority from inviting a tenderer to submit declarations or documents whose communication was required by the tender specification and which have not been submitted within the time limit given for the submission of tenders. On the other hand, that article does not preclude the contracting authority from inviting a tenderer to clarify a tender or to correct an obvious clerical error in that tender, on condition, however, that such an invitation is sent to all tenderers in the same situation, that all tenderers are treated equally and fairly, and that that clarification or correction may not be equated with the submission of a new tender, which is for the referring court to determine.*

2. *Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which, in a public procurement procedure two tenders have been submitted and the contracting authority has adopted two simultaneous decisions rejecting the offer of one tenderer and awarding the contract to the other, the unsuccessful tenderer who brings an action against those two decisions must be able to request the exclusion of the tender of the successful tenderer, so that the concept of 'a particular contract' within the meaning of Article 1(3) of Directive 92/13, as amended by Directive 2007/66, may, where appropriate, apply to the possible initiation of a new public procurement procedure.*

(1) OJ C 211, 13.6.2016.

Judgment of the Court (Fifth Chamber) of 18 May 2017 (request for a preliminary ruling from the Curtea de Apel Craiova — Romania) — Fondul Proprietatea SA v Complexul Energetic Oltenia SA

(Case C-150/16) (1)

(Reference for a preliminary ruling — State aid — Debt owed to a company of which the Romanian State is the majority shareholder by a company of which that State is the sole shareholder — Transfer in lieu of payment — Definition of 'State aid' — Obligation to notify the European Commission)

(2017/C 239/18)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicant: Fondul Proprietatea SA

Defendant: Complexul Energetic Oltenia SA

Operative part of the judgment

1. *In circumstances such as those in the main proceedings, the decision of a company of which a Member State is the main shareholder to accept, in order to extinguish a debt, a transfer in lieu of payment of an asset which is the property of another company of which that Member State is the only shareholder and to pay a sum corresponding to the difference between the estimated value of that asset and the amount of that debt is liable to constitute State aid within the meaning of Article 107 TFEU if:*

   — *that decision constitutes an advantage granted directly or indirectly by means of State resources and is imputable to the State,*

   — *the beneficiary undertaking has not obtained facilities comparable to a private creditor, and*

   — *that decision is liable to affect trade between the Member States and distort competition.*

   It is for the referring court to ascertain whether those conditions are met.

2. *If a national court classifies as State aid the decision of a company of which a Member State is the majority shareholder to accept a transfer in lieu of payment of an asset owned by another company of which that Member State is the sole shareholder, in order to extinguish a debt, and to refund a sum corresponding to the difference between the estimated value of that asset and the amount of the debt, the authorities of that Member State are required to notify that aid to the Commission before it is put into effect, in accordance with Article 108(3) TFEU.*

(1) OJ C 200, 6.6.2016.

Judgment of the Court (Eighth Chamber) of 18 May 2017 (request for a preliminary ruling from the Augstākās tiesas Administratīvo lietu departaments — Latvia) — 'Latvijas Dzelzceļš' VAS v Valsts ienemumu dienests

(Case C-154/16) ([1])

(Reference for a preliminary ruling — Community Customs Code — Regulation (EEC) No 2913/92 — Article 94(1) and Article 96 — External Community transit procedure — Liability of the principal — Articles 203, 204 and Article 206(1) — Incurrence of a customs debt — Unlawful removal from customs supervision — Non-fulfilment of one of the obligations flowing from the use of a customs procedure — Total destruction or irretrievable loss of the goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure — Article 213 — Payment of the customs debt under joint and several liability — Directive 2006/112/EC — Value added tax (VAT) — Article 2(1), Articles 70 and 71 — Chargeable event and chargeability of the tax — Articles 201, 202 and 205 — Persons liable for payment of the tax — Finding by the customs office at the destination of a freight deficit — Lower unloading device of a wagon-tank incorrectly closed or damaged)

(2017/C 239/19)

Language of the case: Latvian

Referring court

Augstākās tiesa

Parties to the main proceedings

Applicant: 'Latvijas Dzelzceļš' VAS

Defendant: Valsts ienemumu dienests

Operative part of the judgment

1. *Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 must be interpreted as meaning that it does not apply where the total volume of the goods placed under the external Community transit procedure has not been presented to the customs office of destination provided for in that procedure, owing to the total destruction or irretrievable loss of some of the goods, which is proven to a satisfactory standard.*

2. *Article 204(1)(a) of Regulation No 2913/92 of 12 October 1992, as amended by Regulation No 648/2005 must be interpreted as meaning that where the total volume of goods placed under the external Community transit procedure has not been produced at the customs office of destination laid down in that procedure owing to the total destruction or irretrievable loss of some of the goods, proven to a satisfactory standard, that situation, which constitutes the non-fulfilment of one of the obligations under that procedure, namely to produce goods intact at the customs office of destination, gives rise, in principle, to a customs debt on importation for the part of the goods which was not produced at that customs office. It is for the national court to determine whether a circumstance such as damage to an unloading device meets, in the present case, the criteria of 'force majeure' or an 'unforeseeable circumstance', within the meaning of Article 206(1) of Regulation No 2913/92, as amended by Regulation No 648/2005, namely, whether it is an abnormal circumstance for a trader in the business of the transportation of liquid substances and extraneous to that trader, and whether the consequences could not have been avoided even if all due care had been exercised. In the context of that determination, that court must, in particular, take into account compliance, by operators such as the principal and the carrier, with the rules and obligations in force regarding the technical condition of tanks and the safety of transportation of liquid substances such as a solvent.*

3. *Article 2(1)(d) and Articles 70 and 71 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that VAT is not due on the totally destroyed or irretrievably lost part of goods placed under the external Community transit procedure.*

4. *Article 96(1)(a) in conjunction with Article 204(1)(a) and (3) of Regulation No 2913/92, as amended by Regulation No 648/2005, must be interpreted as meaning that the principal is liable for the payment of the customs debt arising in relation to goods placed under the external Community transit procedure, even if the carrier did not fulfil the obligations to which he was subject under Article 96(2) of that regulation, in particular the requirement to produce those goods intact at the customs office of destination within the prescribed period.*

5. *Article 96(1)(a) and (2), Article 204(1)(a) and (3) and Article 213 of Regulation No 2913/92, as amended by Regulation No 648/2005, must be interpreted as meaning that the customs authority of a Member State is not obliged to declare the joint and several liability of the carrier who, together with the principal, must be regarded as liable for payment of the customs debt.*

([1]) OJ C 191, 30.5.2016

Judgment of the Court (Eighth Chamber) of 11 May 2017 (request for a preliminary ruling from the Rechtbank Noord-Nederland — Netherlands) — Bas Jacob Adriaan Krijgsman v Surinaamse Luchtvaart Maatschappij NV

(Case C-302/16) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(1)(c) — Compensation and assistance to passengers in the event of cancellation of a flight — Exemption from the obligation to pay compensation — Contract for carriage concluded through an online travel agent — Air carrier having informed the travel agent in good time of a change to the scheduled time for the flight — Travel agent having communicated that information to a passenger by email 10 days before the flight)

(2017/C 239/20)

Language of the case: Dutch

Referring court

Rechtbank Noord-Nederland

Parties to the main proceedings

Applicant: Bas Jacob Adriaan Krijgsman

Defendant: Surinaamse Luchtvaart Maatschappij NV

Operative part of the judgment

Article 5(1)(c) and Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that the operating air carrier is required to pay the compensation specified in those provisions in the case where a flight was cancelled and that information was not communicated to the passenger at least two weeks before the scheduled time of departure, including in the case where the air carrier, at least two weeks before that time, communicated that information to the travel agent via whom the contract for carriage had been entered into with the passenger concerned and the passenger had not been informed of that cancellation by that agent within that period.

([1]) OJ C 326, 5.9.2016.

Judgment of the Court (Sixth Chamber) of 17 May 2017 — Portuguese Republic v European Commission

(Case C-337/16 P) ([1])

(Appeal — EAGF and EAFRD — European Commission implementing decision — Notification to the addressee — Subsequent rectification of the print lay-out of the annex — Publication of the decision in the Official Journal of the European Union — Time limit for bringing an action — Point from which time starts to run — Delay — Inadmissibility)

(2017/C 239/21)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, J. Saraiva de Almeida and P. Estêvão, acting as Agents)

Other party to the proceedings: European Commission (represented by: D. Triantafyllou and M. França, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Portuguese Republic to pay the costs.*

([1]) OJ C 326, 5.9.2016.

Judgment of the Court (Sixth Chamber) of 17 May 2017 — Portuguese Republic v European Commission

(Case C-338/16 P) ([1])

(Appeal — EAGF and EAFRD — European Commission implementing decision — Notification to the addressee — Subsequent rectification of the print lay-out of the annex — Publication of the decision in the Official Journal of the European Union — Time limit for bringing an action — Point from which time starts to run — Delay — Inadmissibility)

(2017/C 239/22)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, J. Saraiva de Almeida and P. Estêvão, acting as Agents)

Other party to the proceedings: European Commission (represented by: D. Triantafyllou and M. França, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Portuguese Republic to pay the costs.*

([1]) OJ C 326, 5.9.2016.

Judgment of the Court (Sixth Chamber) of 17 May 2017 — Portuguese Republic v European Commission

(Case C-339/16 P) ([1])

(Appeal — EAGF and EAFRD — European Commission implementing decision — Notification to the addressee — Subsequent rectification of the print lay-out of the annex — Publication of the decision in the Official Journal of the European Union — Time limit for bringing an action — Point from which time starts to run — Delay — Inadmissibility)

(2017/C 239/23)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, J. Saraiva de Almeida and P. Estêvão, acting as Agents)

Other party to the proceedings: European Commission (represented by: D. Triantafyllou and M. França, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Portuguese Republic to pay the costs.*

([1]) OJ C 326, 5.9.2016.

Judgment of the Court (First Chamber) of 17 May 2017 (request for a preliminary ruling from the Conseil d'État — France) — Association française des entreprises v Ministre des Finances et des Comptes publics

(Case C-365/16) ([1])

(Reference for a preliminary ruling — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Directive 2011/96/EU — Prevention of double taxation — Contribution of 3 % in addition to corporation tax)

(2017/C 239/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Association française des entreprises privées (AFEP), Axa SA, Compagnie générale des établissements Michelin SCA, Danone SA, ENGIE SA, formerly GDF Suez, Eutelsat Communications SA, LVMH Moët Hennessy-Louis Vuitton SE, Orange SA, Sanofi SA, Suez Environnement Company SA, Technip SA, Total SA, Vivendi SA, Eurazeo SA, Safran SA, Scor SE, Unibail-Rodamco SE, Zodiac Aerospace SA

Defendant: Ministre des Finances et des Comptes publics

Operative part of the judgment

Article 4(1)(a) of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2014/86/EU of 8 July 2014, must be interpreted as precluding a tax measure laid down by the Member State of a parent company, such as that at issue in the main proceedings, providing for the levy of a tax when the parent company distributes dividends and the basis of assessment of which tax is the amounts of the dividends distributed, including those coming from that company's non-resident subsidiaries.

([1]) OJ C 335, 12.9.2016.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sicilia (Italy) lodged on 23 November 2016 — Emmea Srl and Commercial Hub Srl v Comune di Siracusa and Others

(Case C-595/16)

(2017/C 239/25)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Sicilia

Parties to the main proceedings

Applicants: Emmea Srl and Commercial Hub Srl

Defendants: Comune di Siracusa, Assessorato delle Attività Produttive per la Regione Siciliana, Libera Consorzio Comunale (formerly Provincia) di Siracusa, and Camera di Commercio di Siracusa

By order of 27 April 2017, the Court (Tenth Chamber) declared that the request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sicilia, made by order of 20 October 2016, is manifestly inadmissible.

Request for a preliminary ruling from the Consiglio di Stato (Italia) lodged on 1 February 2017 — Autorità Garante della Concorrenza e del Mercato v Wind Telecomunicazioni SpA

(Case C-54/17)

(2017/C 239/26)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità Garante della Concorrenza e del Mercato

Respondent: Wind Telecomunicazioni SpA

Questions referred ([1])

1. Do Articles 8 and 9 of Directive 2005/29/EC ([2]) of the European Parliament and of the Council of 11 May 2005 preclude an interpretation of the corresponding national implementing provisions (namely: Articles 24 and 25 respectively of the Consumer Code) which considers that the conduct of a mobile telephone operator in failing to provide information regarding the pre-loading on to SIM cards of specific telephony services (that is, answering or internet-enabling services) may be classified as 'undue influence' and, therefore, as an 'aggressive commercial practice' likely 'significantly' to curtail the average consumer's freedom of choice or of action, particularly in circumstances in which no further different material conduct is imputed to that mobile telephone operator?

2. Can point 29 of Annex I of Directive 2005/29/EC (…) be interpreted as meaning that there is an 'unsolicited supply' where a mobile telephone operator asks its customer to pay for telephone answering or internet-enabling services, and does so in a situation with the following features:

   — at the time when the mobile phone contract was entered into, the telephone operator did not properly inform the consumer that the answering and internet-enabling services were pre-loaded on to the SIM card, with the result that those services could potentially be used by the consumer without specifically configuring them;

   — in order actually to make use of such services, the consumer must, however, perform the necessary procedures (for instance, dial the number of the answering service or activate the commands that enable internet access);

   — there is no complaint about the technical and operational processes whereby the services are actually used by the consumer, nor about the information relating to those processes and the actual cost of the services, the sole complaint against the operator being the abovementioned failure to provide the information that the services were pre-loaded on to the SIM card?

3. Does the *raison d'être* of the 'general' Directive 2005/29/EC as the 'safety net' for consumer protection, and recital 10 in the preamble and Article 3(4) of that directive as well, preclude national rules which bring within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directive 2002/22/EC ([3]) for consumer protection, thereby excluding action by the authority empowered to penalise violations of the sectoral directive in all cases in which the prerequisites establishing an improper/unfair commercial practice may also be satisfied?

4. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general system and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between authorities responsible for regulating and monitoring the relevant sectors?

5. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific sectoral aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices in relation to the particular features of the sector, such as to give rise to a conflict of laws ('Normenkollision') in a specific case?

6. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?

7. Do the speciality principle, established in recital 10 in the preamble and Article 3(4) of Directive 2005/29/EC and Articles 20 and 21 of Directive 2002/22/EC, Articles 3 and 4 of Directive 2002/21/EC ([4]) as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/59/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I of Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even when there are sectoral rules adopted to protect consumers and based on provisions of EU law, that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper practices'?

([1]) N.B. The progressive numbering of the questions used here differs from that used in the order for reference, in which there were two groups of questions not numbered consecutively.

([2]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance) (OJ 2005 L 149, p. 22).

([3]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

([4]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

Request for a preliminary ruling from the Consiglio di Stato (Italia) lodged on 1 February 2017 — Autorità Garante della Concorrenza e del Mercato v Vodafone Omnitel NV

(Case C-55/17)

(2017/C 239/27)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità Garante della Concorrenza e del Mercato

Respondent: Vodafone Omnitel NV

Questions referred ([1])

1. Do Articles 8 and 9 of Directive 2005/29/EC ([2]) of the European Parliament and of the Council of 11 May 2005 preclude an interpretation of the corresponding national implementing provisions (namely: Articles 24 and 25 respectively of the Consumer Code) which considers that the conduct of a mobile telephone operator in failing to provide information regarding the pre-loading on to SIM cards of specific telephony services (that is, answering or internet-enabling services) may be classified as 'undue influence' and, therefore, as an 'aggressive commercial practice' likely 'significantly' to curtail the average consumer's freedom of choice or of action, particularly in circumstances in which no further different material conduct is imputed to that mobile telephone operator?

2. Can point 29 of Annex I of Directive 2005/29/EC (…) be interpreted as meaning that there is an 'unsolicited supply' where a mobile telephone operator asks its customer to pay for telephone answering or internet-enabling services, and does so in a situation with the following features:

   — at the time when the mobile phone contract was entered into, the telephone operator did not properly inform the consumer that the answering and internet-enabling services were pre-loaded on to the SIM card, with the result that those services could potentially be used by the consumer without specifically configuring them;

   — in order actually to make use of such services, the consumer must, however, perform the necessary procedures (for instance, dial the number of the answering service or activate the commands that enable internet access);

   — there is no complaint about the technical and operational processes whereby the services are actually used by the consumer, nor about the information relating to those processes and the actual cost of the services, the sole complaint against the operator being the abovementioned failure to provide the information that the services were pre-loaded on to the SIM card?

3. Does the *raison d'être* of the 'general' Directive 2005/29/EC as the 'safety net' for consumer protection, and recital 10 in the preamble and Article 3(4) of that directive as well, preclude national rules which bring within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directive 2002/22/EC ([3]) for consumer protection, thereby excluding action by the authority empowered to penalise violations of the sectoral directive in all cases in which the prerequisites establishing an improper/unfair commercial practice may also be satisfied?

4. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general system and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between authorities responsible for regulating and monitoring the relevant sectors?

5. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific sectoral aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices in relation to the particular features of the sector, such as to give rise to a conflict of laws ('Normenkollision') in a specific case?

6. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?

7. Do the speciality principle, established in recital 10 in the preamble and Article 3(4) of Directive 2005/29/EC and Articles 20 and 21 of Directive 2002/22/EC, Articles 3 and 4 of Directive 2002/21/EC ([4]) as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/59/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I of Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even when there are sectoral rules adopted to protect consumers and based on provisions of EU law, that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper practices'?

([1]) N.B. The progressive numbering of the questions used here differs from that used in the order for reference, in which there were two groups of questions not numbered consecutively.

([2]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance) (OJ 2005 L 149, p. 22).

([3]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

([4]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

Appeal brought on 30 March 2017 by the Republic of Poland against the judgment of the General Court (Ninth Chamber) delivered on 19 January 2017 in Case T-701/15, Stock Polska v EUIPO — Lass & Steffen (LUBELSKA)

(Case C-162/17 P)

(2017/C 239/28)

Language of the case: Polish

Parties

Appellant: Republic of Poland (represented by: B. Majczyna)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union (Ninth Chamber) of 19 January 2017 in Case T-701/15, *Stock Polska* v *EUIPO — Lass & Steffen (LUBELSKA)*, in its entirety;

— order that the case be referred back to the General Court for judgment;

— order each of the parties to bear their own costs.

Grounds of appeal and main arguments

The Republic of Poland seeks the setting aside of the judgment of the General Court of the European Union (Ninth Chamber) of 19 January 2017 in Case T-701/15, *Stock Polska* v *EUIPO — Lass & Steffen (LUBELSKA)*, EU:T:2017:16, and the referring of the case back to that court for judgment.

In the judgment under appeal, the General Court dismissed the action brought by Stock Polska sp. z o.o., established in Lublin, against the decision of the Board of Appeal of the then Office for Harmonisation in the Internal Market (OHIM; now, following a change of name, known as the European Union Intellectual Property Office (EUIPO)) of 24 September 2015 in Case R 1788/2014-5 upholding the decision of EUIPO of 14 May 2014 rejecting the EU trade mark application submitted by Stock Polska sp. z o.o..

The judgment of the General Court and the decision of EUIPO preceding that judgment refuse to register the trade mark 'Lubelska' ('the sign') on account of its similarity to the trade mark 'Lubeca', a similarity giving rise to a likelihood of confusion on the part of the public in Germany (the territory in which the earlier trade mark 'Lubeca' is protected) as regards the origin of the goods designated by that mark within the meaning of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark.

The Republic of Poland invokes the following grounds against the judgment under appeal:

1. Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark ([1]) through failure to carry out a global assessment of the existence of a likelihood of confusion based on an overall impression and taking into account the signs' dominant and distinctive elements, on account of, inter alia, the unjustified restricting of the assessment of the similarity between the sign and the earlier trade mark to a single element of the sign (the word element).

   The General Court erred in accepting that it is possible to restrict the assessment of the similarity between two trade marks to an assessment consisting in examining only one of the elements forming the composite trade mark (the word element) and comparing that element with the other trade mark, eliminating the graphical element from that assessment without first establishing that the word element constitutes the dominant element, while the graphical element is meaningless. The General Court established only that the graphical element is weakly distinctive, failing to take into account that the fact that a particular element of a sign is weakly distinctive does not mean that that element may not be the dominant element.

2. Infringement of Article 8(1)(b) of Regulation No 207/2009 and infringement of the principles of equal treatment, sound administration and legal certainty through failure to take into consideration the fact that EUIPO had neglected to follow its previous decision-making practice as set out in the EUIPO Guidelines and, consequently, through acceptance of a decision running counter to that practice.

   The General Court disregarded the fact that EUIPO had departed from its previous decision-making practice as set out in the Guidelines in relation to the application of Article 8(1)(b) of Regulation No 207/2009 and that there were no special circumstances justifying a departure from that practice.

3. Infringement of Article 8(1)(b) of Regulation No 207/2009 through carrying out an assessment of the existence of a likelihood of confusion by accepting as true so-called facts which do not tally with common knowledge and by disregarding widely-known, relevant facts, which as a result has led to a misrepresentation of the facts and evidence, namely:

   (a) accepting as a widely-known fact that the average German consumer does not know the meaning of the name Lubeca, disregarding the fact that a person's degree of familiarity with Latin names of cities (such as 'Lubeca' for Lübeck) has no bearing on that person's degree of familiarity with Latin names as such and that consumers of alcoholic beverages attach great significance to the geographical origin of those beverages,

   (b) accepting as a widely-known fact that the graphical element in the form of a crown is widely used on labels of alcoholic beverages.

4. Infringement of the obligation to state reasons when applying Article 8(1)(b) of Regulation No 207/2009 through:

   (a) failure to specify which of the elements of the sign was recognised by the General Court as being the dominant element,

   (b) failure to specify the grounds for the assertion that the average German consumer is not familiar with the meaning of the word 'Lubeca'.

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 13 April 2017 — Bundeskammer für Arbeiter und Angestellte v ING-DiBa Direktbank Austria Niederlassung der ING-DiBa AG

(Case C-191/17)

(2017/C 239/29)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Bundeskammer für Arbeiter und Angestellte

Defendant: ING-DiBa Direktbank Austria Niederlassung der ING-DiBa AG

Question referred

Must Article 4(14) of Directive 2007/64/EC ([1]) on payment services in the internal market (the Payment Services Directive) be interpreted as meaning that an online savings account with which a customer (without notice and without any particular involvement of the bank) may by way of telebanking make deposits into and withdrawals from a reference account (a current account in Austria) held in his name is also to be included within the term 'payment account' (Article 4(14) of that directive) and thus falls within the scope of that directive?

([1]) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1).

Request for a preliminary ruling from the Rechtbank Den Haag, sitting in Amsterdam (Netherlands) lodged on 25 April 2017 — X v Staatssecretaris van Veiligheid en Justitie

(Case C-213/17)

(2017/C 239/30)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in Amsterdam

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Veiligheid en Justitie

Questions referred

1. Must Article 23(3) of the Dublin Regulation ([1]) be interpreted as meaning that Italy has become responsible for examining the application for international protection lodged by the applicant in that country on 23 October 2014, despite the fact that the Netherlands were the Member State primarily responsible on the basis of the applications for international protection, within the meaning of Article 2(d) of the Dublin Regulation, previously lodged in that country, the last of which was still under examination in the Netherlands at that time, because the Administrative Law Division of the Raad van State had not yet delivered judgment in the appeal brought by the applicant against the ruling [AWB 14/13866] of the Rechtbank [Den Haag, sitting in Middelburg] of 7 July 2014 …?

2. Does it follows from Article 18(2) of the Dublin Regulation that the application for international protection which was still under examination in the Netherlands when the claim request of 5 March 2015 was submitted should have been suspended by the Netherlands authorities immediately after that claim request had been submitted and should have been halted following the expiry of the period specified in Article 24 through revocation or amendment of the earlier decision of 11 June 2014 rejecting the asylum application of 4 June 2014?

3. If the answer to Question 2 is in the affirmative, has the responsibility for examining the applicant's application for international protection not been transferred to Italy but remained with the Netherlands authorities, because the defendant has not revoked or amended the decision of 11 June 2014?

4. Did the Netherlands authorities, by not mentioning the appeal in the second asylum procedure pending before the Administrative Law Division of the Raad van State in the Netherlands, fall short of the responsibility resting on them pursuant to Article 24(5) of the Dublin Regulation to supply the Italian authorities with such information as would enable those authorities to check whether Italy is the Member State responsible on the basis of the criteria laid down in that regulation?

5. If the answer to Question 4 is in the affirmative, does that shortcoming lead to the conclusion that the responsibility for examining the applicant's application for international protection has thereby not been transferred to Italy, but has remained with the Netherlands authorities?

6. If the responsibility has not remained with the Netherlands, ought the Netherlands authorities then, with regard to the surrender of the applicant by Italy to the Netherlands in the context of the criminal proceedings against him, pursuant to Article 17(1) of the Dublin Regulation, in derogation from Article 3(1) of the Dublin Regulation, to have examined the application for international protection lodged by the applicant in Italy, and, by extension, ought those authorities, in all reasonableness, not to have made use of the power laid down in Article 24(1) of the Dublin Regulation to request the Italian authorities to take back the applicant?

([1]) 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 (OJ 2013 L 180, p. 31).

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 27 April 2017 — Planta Tabak-Manufaktur Dr. Manfred Obermann GmbH & Co. KG v Land Berlin

(Case C-220/17)

(2017/C 239/31)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Planta Tabak-Manufaktur Dr. Manfred Obermann GmbH & Co. KG

Defendant: Land Berlin

Questions referred

1. (a) Is Article 7(1) and (7) of Directive 2014/40/EU ([1]) in conjunction with Article 7(14) of Directive 2014/40/EU invalid on the ground of breach of the principle of legal certainty because it requires Member States to prohibit the placing on the market of particular tobacco products even though it is not clear precisely which of those tobacco products are to be prohibited from as early as 20 May 2016 and which only from 20 May 2020?

   (b) Is Article 7(1) and (7) of Directive 2014/40/EU in conjunction with Article 7(14) of Directive 2014/40/EU invalid on the ground of breach of the principle of equal treatment because it differentiates, as regards the prohibitions to be adopted by Member States, on the basis of sales volumes, without any valid reason for doing so?

(c) Is Article 7(1) and (7) of Directive 2014/40/EU invalid on the ground of breach of the principle of proportionality and/or infringement of Article 34 TFEU because it requires Member States to prohibit, from as early as 20 May 2016, the placing on the market of tobacco products with a characterising flavour whose Union-wide sales volumes represent less than 3 % in a particular product category?

(d) If the answers to Question 1(a) to 1(c) are in the negative, how is the term 'product category' in Article 7(14) of Directive 2014/40/EU to be construed? Must assignment to 'product categories' be based on the type of characterising flavour, on the type of (flavoured) tobacco product, or on a combination of both criteria?

(e) If the answers to Question 1(a) to 1(c) are in the negative, how is it to be ascertained whether the 3 % limit in Article 7(14) of Directive 2014/40/EU has been reached, in the absence of any official and publicly accessible figures and statistics in that regard?

2. (a) When transposing Articles 8 to 11 of Directive 2014/40/EU into national law, are Member States allowed to adopt supplementary transitional arrangements?

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

(1) Are Article 9(6) and point (f) of the second sentence of Article 10(1) of Directive 2014/40/EU invalid on the ground of breach of the principle of proportionality and/or infringement of Article 34 TFEU because they delegate the determination of certain labelling and packaging requirements to the Commission without setting it a time limit in that respect and without providing for more extensive transitional arrangements or time limits to ensure that affected undertakings have adequate time to adapt to the requirements of that directive?

(2) Are the second sentence of Article 9(1) (text of the warning); the second sentence of point (a) of Article 9(4) (font size); point (b) (smoking cessation information) and point (e) (positioning of the warnings) of the second sentence of Article 10(1); and the first sentence of Article 11(1) (labelling) of Directive 2014/40/EU invalid on the ground of breach of the principle of proportionality and/or infringement of Article 34 TFEU because they confer on Member States various rights of selection and design without setting them a time limit in that respect and without providing for more extensive transitional arrangements or time limits to ensure that affected undertakings have adequate time to adapt to the requirements of that directive?

3. (a) Must Article 13(1)(c) in conjunction with Article 13(3) of Directive 2014/40/EU be interpreted as meaning that Member States are required to prohibit the use of information referring to taste, smell, flavourings or other additives even where that information is not promotional information and the use of the ingredients is still permitted?

(b) Is Article 13(1)(c) of Directive 2014/40/EU invalid on the ground that it infringes Article 17 of the Charter of Fundamental Rights of the European Union?

([1]) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 27 April 2017 — M.G. Tjebbes and Others v Minister van Buitenlandse Zaken

(Case C-221/17)

(2017/C 239/32)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: M.G. Tjebbes, G.J.M. Koopman, E. Saleh Abady, L. Duboux

Defendant: Minister van Buitenlandse Zaken

Questions referred

Must Articles 20 and 21 of the Treaty on the Functioning of the European Union, in the light of, inter alia, Article 7 of the Charter of Fundamental Rights of the European Union, be interpreted — in view of the absence of an individual assessment, based on the principle of proportionality, with regard to the consequences of the loss of nationality for the situation of the person concerned from the point of view of EU law — as precluding legislation such as that in issue in the main proceedings, which provides:

(a) that an adult, who is also a national of a third country, loses, by operation of law, the nationality of his or her Member State, and consequently loses citizenship of the Union, on the ground that, for an uninterrupted period of 10 years, that person had his or her principal residence abroad and outside the European Union, although there are possibilities for interrupting that 10-year period;

(b) that under certain circumstances a minor loses, by operation of law, the nationality of his or her Member State, and consequently loses citizenship of the Union, as a consequence of the loss of the nationality of his or her parent, as referred to under (a) above?

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 4 May 2017 — XC and Others

(Case C-234/17)

(2017/C 239/33)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: XC, YB, ZA

Question referred

Is EU law, in particular Article 4(3) TEU in conjunction with the principles of equivalence and effectiveness inferred from it, to be interpreted as requiring the Oberster Gerichtshof (Supreme Court, Austria), upon application by the person concerned, to review a final decision delivered by a criminal court with respect to an alleged infringement of EU law (in this case, Article 50 of the Charter of Fundamental Rights of the European Union and Article 54 of the Convention implementing the Schengen Agreement), where national law (Paragraph 363a of the Strafprozeßordnung (Austrian Code of Criminal Procedure)) provides for such a review only with respect to an alleged violation of the European Convention on Human Rights and Fundamental Freedoms or one of the protocols thereto?

Appeal brought on 8 May 2017 by Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Csi Cells Co. Ltd, Csi Solar Power (China), Inc. against the judgment of the General Court (Fifth Chamber) delivered on 28 February 2017 in Case T-162/14: Canadian Solar Emea GmbH and Others v Council

(Case C-236/17 P)

(2017/C 239/34)

Language of the case: English

Parties

Appellants: Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Csi Cells Co. Ltd, Csi Solar Power (China), Inc. (represented by: J. Bourgeois, avocat, S. De Knop, advocaat, M. Meulenbelt, advocaat, A. Willems, avocat)

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

Form of order sought

The appellants claim that the Court should:

— quash the judgment of the General Court in case T-162/14;

— uphold the application at first instance and annul the contested regulation in so far as it concerns appellants;

— order the respondent to pay the appellants' costs, and its own costs, both at first instance and on appeal;

— order any other parties to the appeal to pay their own costs;

In the alternative

— quash the judgment of the General Court in case T-162/14;

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

— reserve the costs at first instance and on appeal for final judgment by the General Court;

— order any other parties to the appeal to pay their own costs.

Pleas in law and main arguments

1. The General Court erred in law by requiring appellants to show an interest in raising the first and second pleas; in any event, the General Court erred in its legal characterization of the facts as the appellants have such an interest.

2. The General Court erred in law by requiring appellants to show an interest in raising the third plea; the General Court erred in its interpretation of Article 2(7)(a) of Regulation 1225/2009 ('Basic Regulation'). ([1])

3. The General Court erred in law by finding that Regulation 1168/2012 applied to the present anti-dumping investigation ([2]); the General Court erred in law by finding that the Commission's failure to make a determination on the appellants' request for market economy treatment does not vitiate the contested regulation.

4. The General Court erred in law by permitting the Institutions to set the anti-dumping duty at the level to counter injury caused by factors other than dumped imports; the General Court erred in law by unduly reversing the burden of proof.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51). Article 2(7)(a) of the Basic Regulation has since been replaced by the identical Article 2(7)(a) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016, L 176, p. 21).

([2]) Regulation (EU) No 1168/2012 of the European Parliament and the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 (OJ 2012, L 344, p. 1).

Appeal brought on 8 May 2017 by Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Csi Cells Co. Ltd, Csi Solar Power (China), Inc. against the judgment of the General Court (Fifth Chamber) delivered on 28 February 2017 in Case T-163/14: Canadian Solar Emea and Others v Council

(Case C-237/17 P)

(2017/C 239/35)

Language of the case: English

Parties

Appellants: Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Csi Cells Co. Ltd, Csi Solar Power (China), Inc. (represented by: J. Bourgeois, avocat, S. De Knop, advocaat, M. Meulenbelt, advocaat, A. Willems, avocat)

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

Form of order sought

The appellants claim that the Court should:

— quash the judgment of the General Court in case T-163/14;

— uphold the application at first instance and annul the contested regulation in so far as it concerns appellants;

— order the respondent to pay the appellants' costs, and its own costs, both at first instance and on appeal;

— order any other parties to the appeal to pay their own costs;

In the alternative

— quash the judgment of the General Court in case T-163/14;

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

— reserve the costs at first instance and on appeal for final judgment by the General Court;

— order any other parties to the appeal to pay their own costs.

Pleas in law and main arguments

The General Court erred in law by requiring appellants to show an interest in raising the first and second pleas; in any event, the General Court erred in its legal characterization of the facts as the appellants have such an interest.

Action brought on 10 May 2017 — European Commission v Council of the European Union

(Case C-244/17)

(2017/C 239/36)

Language of the case: English

Parties

Applicant: European Commission (represented by: L. Gussetti, P. Aalto, L. Havas, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision (EU) 2017/477 of 3 March 2017 on the position to be adopted on behalf of the European Union within the Cooperation Council established under the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part as regards the working arrangements of the Cooperation Council, the Cooperation Committee, specialised subcommittees or any other bodies ([1]),

— order Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission argues that the addition of a procedural legal basis under Common Foreign and Security Policy (CFSP), notably Article 31(1) TEU requiring unanimity, violates the Treaty as interpreted in the case law of the Court.

This plea is substantiated by the following arguments:

First, according to established case-law of the Court, a decision based on Article 218(9) TFEU is to be taken by qualified majority, even if one or more of the substantive legal bases would otherwise require unanimity for the conclusion of an international agreement. The addition of any legal basis otherwise aimed at ensuring unanimity has no effect on the procedure by which it was adopted within the Council.

The Council decision adopted under the procedure set out in Article 218(9) TFEU does not aim at supplementing or amending the institutional framework of the agreement or changing its structure and thus cannot be assimilated to the conclusion or amendment of an international agreement, but it is aimed at ensuring its efficient implementation. Such a decision, in accordance with Article 218(8) first subparagraph and Article 218(9), should be adopted by qualified majority. Requiring the adoption of the decision by unanimity is illegal.

Second, as also clarified by the Court's case-law, Article 218 TFEU provides 'a single procedure of general application concerning the negotiation and conclusion of international agreements by the European Union in all the fields of its activity, including the CFSP'. The specific nature of the CFSP is reflected in the fact that the proposal is made jointly by the Commission (on account of the non-CFSP elements) and the High Representative (on account of the CFSP). This, however, cannot change the conclusion that a decision under Article 218(9) TFEU is to be adopted by qualified majority.

A combination of these two strands of case-law leads to the conclusion that not only the negotiation and conclusion of an international agreement, but also the adoption of positions implementing such an agreement is governed by the single procedure provided for in Article 218 TFEU, in that case Article 218(9) TFEU, which provides for decision-making by qualified majority. No further procedural provision may be added. Even if such provision is added by the Council, it cannot have the effect of altering the decision making procedure.

([1]) OJ 2017, L 73, p. 15

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 16 May 2017 — Oikeusministeriö v Denis Raugevicius

(Case C-247/17)

(2017/C 239/37)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: Oikeusministeriö

Defendant: Denis Raugevicius

Questions referred

1. Are national provisions on extradition to be assessed with respect to the freedom of movement of nationals of another Member State in the same way regardless of whether the extradition request of a third State on the basis of an extradition convention concerns the enforcement of a custodial sentence or a prosecution as in the *Petruhhin* case? ([1]) Is it relevant that the person sought to be extradited, as well as being a citizen of the Union, is a national of the State which has made the request for extradition?

2. Does a national law under which only its own nationals are not extradited outside the EU for the enforcement of a penalty unjustifiably disadvantage nationals of another Member State? Are the mechanisms of EU law by means of which an objective, acceptable as such, may be achieved in a less prejudicial manner applicable also in an enforcement situation? How is a request for extradition to be answered in a situation in which, such mechanisms being applied, the request is notified to another Member State which, however, does not, for example because of legal obstacles, adopt measures concerning its nationals?

([1]) Judgment of 6.9.2016, C-182/15, ECLI:EU:C:2016:630.

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 12 May 2017 — Virgílio Tarragó da Silveira v Massa Insolvente da Espírito Santo Financial Group, SA

(Case C-250/17)

(2017/C 239/38)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: Virgílio Tarragó da Silveira

Defendant: Massa Insolvente da Espírito Santo Financial Group, SA

Question referred

Must the rule in Article 15 of Regulation No 1346/2000 ([1]) of 29 May 2000 be interpreted to the effect that its scope includes a lawsuit pending before a Member State seeking an order that a debtor pay a monetary sum due under a service contract and pay monetary damages for failure to comply with that obligation, bearing in mind that: (i) the debtor was declared bankrupt in proceedings commenced in a court in another Member State; and (ii) the declaration of insolvency applies to all of the debtor's assets?

([1]) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

Request for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 16 May 2017 — Anodiki Services EPE v GNA 'Evangelismos — Ofthalmiatrio Athinon — Polikliniki', GNA 'Georgios Gennimatas', Geniko Onkologiko Nosokomio Kifisias — (GONK) 'Agioi Anargiroi'

(Case C-260/17)

(2017/C 239/39)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Anodiki Ipiresies Diacheirisis Perivallontos, Oikonomias, Dioikisis EPE (Anodiki Services EPE)

Defendants: GNA 'Evangelismos — Ofthalmiatrio Athinon — Polikliniki', GNA 'Georgios Gennimatas', Geniko Onkologiko Nosokomio Kifisias — (GONK) 'Agioi Anargiroi'

Questions referred

1. For the purposes of Article 10(g) of Directive 2014/24, ([1]) is it sufficient ground, for the classification of a contract as an 'employment contract' under that provision, that it constitutes a contract with an employer-employee relationship or is it necessary that that contract have particular characteristics (for example with respect to the nature of the work, the contract terms, the qualifications of candidates, the procedural rules for their selection), so that the selection of each employee should be the result of an individualised judgment and subjective assessment of his or her personal qualities by the employer? Can fixed-term work contracts which are allocated on the basis of objective criteria, such as the length of time the candidate has been unemployed, the candidate's previous experience or the number of minor children he or she has, as the result of a formal check of supporting documents and a predetermined weighting of the above criteria, such as contracts under Article 63 of Law 4430/2016, be regarded as 'employment contracts' within the meaning of Article 10(g) of Directive 2014/24?

2. For the purposes of the provisions of Directive 2014/24 (Articles 1(4), 18(1) and (2), 19(1), 32 and 57, read together with recital (5) thereof), of the Treaty on the Functioning of the European Union (Articles 49 and 56) and of the Charter of Fundamental Rights (Articles 16 and 52), and the principles of equal treatment, transparency and proportionality, is it permitted for the public authorities to have recourse to other means, including employment contracts, to the exclusion of public contracts, in order to meet the same public interest requirements, and if so, on what conditions, when that recourse is not part of the recurrent organisation of the public service, but — as in the case of Article 63 of Law 4430/2016 — takes place for a defined period of time and to deal with extraordinary circumstances, as well as for reasons that relate to the effectiveness of competition or the legitimacy of the operations of undertakings who are active in the public procurement market? Can reasons of that kind, as well as circumstances such as the weakness of the unhindered performance of public contracts or the realisation of greater financial benefit compared with a public contract, be regarded as overriding reasons in the public interest, which justify the adoption of a measure which leads to a serious restriction, in extent and duration, on business activity in the field of public procurement?

3. For the purposes of Article 1 of Directive 89/665, ([2]) as currently in force, does the scope of that provision exclude judicial protection against the decision of a public authority, such as the contested decisions in the main proceedings, with respect to the award of contracts that are treated as not falling within the scope of Directive 2014/24 (for example, as an 'employment contract'), when an action is brought by an economic operator who would have a legal right to be awarded a comparable public contract and who claims that Directive 2014/24 has been unlawfully not implemented on the view that its non-implementation was permissible?

([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).

([2]) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Margarethe Yüce, Ali Yüce, Emin Yüce, Emre Yüce v TUIfly GmbH

(Case C-274/17)

(2017/C 239/40)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Margarethe Yüce, Ali Yüce, Emin Yüce, Emre Yüce

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Friedemann Schoen, Brigitta Schoen v TUIfly GmbH

(Case C-275/17)

(2017/C 239/41)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Friedemann Schoen, Brigitta Schoen

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Michael Siegberg v TUIfly GmbH

(Case C-276/17)

(2017/C 239/42)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Michael Siegberg

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? (1) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Heinz-Gerhard Albrecht v TUIfly GmbH

(Case C-277/17)

(2017/C 239/43)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Heinz-Gerhard Albrecht

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Susanne Meyer and Others v TUIfly GmbH

(Case C-278/17)

(2017/C 239/44)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Susanne Meyer, Sophie Meyer, Jan Meyer

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Thomas Kiehl v TUIfly GmbH

(Case C-279/17)

(2017/C 239/45)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Thomas Kiehl

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? (1) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Ralph Eßer v TUIfly GmbH

(Case C-280/17)

(2017/C 239/46)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Ralph Eßer

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Thomas Schmidt v TUIfly GmbH

(Case C-281/17)

(2017/C 239/47)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Thomas Schmidt

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Werner Ansorge v TUIfly GmbH

(Case C-282/17)

(2017/C 239/48)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Werner Ansorge

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 22 May 2017 — Angelina Fell, Florian Fell, Vincent Fell v TUIfly GmbH

(Case C-290/17)

(2017/C 239/49)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Angelina Fell, Florian Fell, Vincent Fell

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? (1) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 22 May 2017 — Helga Jordan-Grompe, Sven Grompe, Yves-Felix Grompe, Justin Joel Grompe v TUIfly GmbH

(Case C-291/17)

(2017/C 239/50)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Helga Jordan-Grompe, Sven Grompe, Yves-Felix Grompe, Justin Joel Grompe

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Action brought on 23 May 2017 — European Commission v Romania

(Case C-301/17)

(2017/C 239/51)

Language of the case: Romanian

Parties

Applicant: European Commission (represented by: L. Nicolae and E. Sanfrutos Cano, acting as Agents)

Defendant: Romania

Form of order sought

The applicant claims that the Court should:

— declare, pursuant to Article 258 TFEU, that, having failed to comply, as regards 68 landfill sites, with the obligation to adopt all necessary measures to close down as soon as possible, under Articles 7(g) and 13 of Council Directive 1999/31/EC of 29 April 1999 on the landfill of waste, sites which have not been granted, in accordance with Article 8, a permit to continue to operate, Romania is in breach of its obligations under Article 14(b) in conjunction with Article 13 of that directive;

— order Romania to pay the costs.

Pleas in law and main arguments

The action brought by the European Commission against Romania concerns the latter's failure to fulfil its obligations under Article 14(b) in conjunction with Article 13 of Directive 1999/31/EC, in so far as concerns 68 landfill sites which were not granted, in accordance with Article 8, a permit to continue to operate and, accordingly, should have been closed, in accordance with Articles 7(g) and 13 of that directive.

The Commission maintains that Article 14 of Directive 1999/31/EC lays down transitional derogating rules for landfill sites which had been granted a permit or were already in operation at the time of transposition of the directive, with a view to ensuring that, by 16 July 2009 at the latest, those sites complied with the new environmental requirements laid down in Article 8 of that directive. Under Article 14(b), following the presentation of the conditioning plan, the competent authorities are to take a definite decision on whether operations may continue on the basis of the said conditioning plan and the directive. Member States are to take the necessary measures required to close down as soon as possible, in accordance with Articles 7(g) and 13, sites which have not been granted, in accordance with Article 8, a permit to continue to operate.

Article 13 provides that a landfill, or part of it, may be considered definitively closed only after the competent authority has carried out a final on-site inspection, has assessed all the reports submitted by the operator and has communicated to the operator its approval for the closure.

As regards the 68 landfill sites specified in the application, the Commission considers that Romania has failed to provide information that would enable it to confirm that, not only had those landfill sites ceased to operate, but also the process for their closure had, in fact, been completed in accordance with the requirements laid down in Directive 1999/31/EC. In that regard, the Commission maintains that Romania, in justifying the failure to meet the obligations arising under the directive, cannot rely on purely domestic situations, such as the bankruptcy of operators, disputes relating to property law, the conduct of administrative proceedings or the responsibility of local authorities.

The time-limit for the transposition of the directive into domestic law expired on 16 July 2009.

Appeal brought on 26 May 2017 by George Haswani against the judgment of the General Court (Seventh Chamber) delivered on 22 March 2017 in Case T-231/15 Haswani v Council

(Case C-313/17 P)

(2017/C 239/52)

Language of the case: French

Parties

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

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

Form of order sought

— annul paragraphs 39 to 47 of the judgment of the General Court of 22 March 2017 (Case T-231/15), which declare the application for annulment of Council Decision (PESC) 2016/850 of 27 May 2016, amending Decision 2013/255/CFSP concerning restrictive measures against Syria ([1]) and of Council Implementing Regulation (EU) No 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria ([2]), to be inadmissible, and annul provisions 1, 3, 4 and 5 of the operative part of that judgment;

— consequently, order that Mr George Haswani's name be removed from the annexes to the above-mentioned acts;

— disposing of the case, annul Decision 2015/1836 ([3]) and Implementing Regulation 2015/1828 ([4]);

— disposing of the case, order the Council to pay EUR 700 000 in damages to compensate all forms of loss suffered;

— set aside provisions 4 and 5 of the operative part and paragraphs 91 to 93 of the judgment under appeal in so far as it orders Mr George Haswani to bear two thirds of the costs incurred by the Council as well as the costs related to his own applications;

— order the Council to pay the entirety of the costs in accordance with subparagraph 4 of Article 184 of the Rules of Procedure of the Court of Justice.

Pleas in law and main arguments

The first ground of appeal alleges an error of law in that, in paragraphs 39 to 47 of its judgment, the General Court declares that, in the light of the requirements of Article 86(4) of its Rules of Procedure, the forms of order seeking the annulment of Decision 2016/850 and of Implementing Regulation 2016/840, submitted by Mr Haswani in his second statement of modification, are inadmissible. That error of law is particularly noticeable in paragraph 45 of the judgment under appeal.

The second ground of appeal alleges an error of law in that, in paragraphs 39 to 47 of its judgment — in particular paragraph 47 — the General Court held that, where the requirements referred to in Article 86(4) of its Rules of Procedure are omitted, it could reject as inadmissible the forms of order sought in the statement of modification, without even considering whether or not the applicant had received a request for rectification of the defects from the Registrar.

The third ground of appeal alleges an error of law in paragraphs 39 to 47 of the judgment under appeal, and more specifically in paragraph 46, in that the General Court considered that it was necessary for Mr Haswani to include in his statement of modification, in addition to the modified forms of order sought, a new presentation of the modified pleas in law.

Fourth, in the context of its power of dispose of the case, the Court can only find that the decision and the 2015 Implementing Regulation (2015/1836 and 2015/1828) are unlawful, according to which funds and economic resources belonging to influential businessmen and women carrying out their activities in Syria are frozen.

([1]) OJ 2016 L 141, p. 125.
([2]) OJ 2016 L 141, p. 30.
([3]) OJ 2015 L 266, p. 75.
([4]) OJ 2015 L 266, p. 1.

GENERAL COURT

Judgment of the General Court of 1 June 2017 — Changmao Biochemical Engineering v Council

(Case T-442/12) ([1])

(Dumping — Imports of tartaric acid originating in China — Modification of the definitive anti-dumping duty — Partial interim review — Market economy treatment — Costs of major inputs substantially reflecting market values — Change in circumstances — Obligation to state reasons — Period for adopting a decision on market economy treatment — Rights of the defence — Article 20(2) of Regulation (EC) No 1225/2009)

(2017/C 239/53)

Language of the case: English

Parties

Applicant: Changmao Biochemical Engineering Co. Ltd (Changzhou, China) (represented by: E. Vermulst, S. van Cutsem, F. Graafsma and J. Cornelis, lawyers)

Defendant: Council of the European Union (represented by: S. Boelaert, acting as Agent, assisted initially by G. Berrisch, lawyer, and N. Chesaites, Barrister, and subsequently by G. Berrisch)

Interveners in support of the defendant: European Commission (represented initially by M. França and A. Stobiecka-Kuik, and subsequently by M. França and J.-F. Brakeland, acting as Agents) and Distillerie Bonollo SpA (Formigine, Italy), Industria Chimica Valenzana SpA (Borgoricco, Italy), Distillerie Mazzari SpA (Sant'Agata sul Santerno, Italy), Caviro Distillerie Srl (Faenza, Italy) and Comercial Química Sarasa, SL (Madrid, Spain) (represented by: R. MacLean, Solicitor)

Re:

Application under Article 263 TFEU for the annulment of Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (OJ 2012 L 182, p. 1), in so far as it applies to the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Council Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China in so far as that regulation applies to Changmao Biochemical Engineering Co. Ltd.;*

2. *Orders the Council of the European Union to pay half of the costs incurred by Changmao Biochemical Engineering and to bear its own costs;*

3. *Orders Changmao Biochemical Engineering to bear half of its own costs;*

4. *Orders the European Commission to bear its own costs;*

5. *Orders Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie Srl and Comercial Química Sarasa, SL to bear their own costs.*

([1]) OJ C 366, 24.11.2012.

Judgment of the General Court of 8 June 2017 — Groupe Léa Nature v EUIPO — Debonair Trading Internacional (SO'BiO ētic)

(Case T-341/13 RENV) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark SO'BiO ētic — Earlier EU and national word marks SO…? — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Detriment to reputation — Article 8(5) of Regulation No 207/2009)

(2017/C 239/54)

Language of the case: English

Parties

Applicant: Groupe Léa Nature SA (Périgny, France) (represented by: S. Arnaud, lawyer)

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

The other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Debonair Trading Internacional Lda (Funchal, Portugal) (represented by: T. Alkin, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 26 March 2013 (Case R 203/2011-1), relating to opposition proceedings between Debonair Trading Internacional and Groupe Léa Nature.

Operative part of the judgment

The Court:

1. *Dismisses the action*

2. *Orders Groupe Léa Nature SA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by the intervener before the General Court and the Court of Justice.*

([1]) OJ C 260, 7.9.2013.

Judgment of the General Court of 7 June 2017 — Guardian Europe v European Union

(Case T-673/15) ([1])

(Non-contractual liability — Representation of the European Union — Barring of actions — Nullification of the legal effects of a decision which has become final — Precision of the application — Admissibility — Article 47 of the Charter of Fundamental Rights — Obligation to adjudicate within a reasonable time — Equal treatment — Material damage — Losses sustained — Loss of profit — Non-material damage — Causal link)

(2017/C 239/55)

Language of the case: English

Parties

Applicant: Guardian Europe Sàrl (Bertrange, Luxembourg) (represented by: F. Louis, lawyer, and C. O'Daly, Solicitor)

Defendant: European Union represented by the European Commission (represented by: N. Khan, A. Dawes and P. van Nuffel, Agents), and by the Court of Justice of the European Union (represented by: J. Inghelram and K. Sawyer, Agents).

Re:

Application on the basis of Article 268 TFEU seeking compensation for the damage allegedly sustained by the applicant because of, first, the length of the proceedings in the case giving rise to the judgment of 27 September 2012, *Guardian Industries and Guardian Europe* v *Commission* (T-82/08, EU:T:2012:494), and, secondly, the infringement of the principle of equal treatment in Commission Decision C(2007) 5791 final of 28 November 2007 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (Case COMP/39165 — Flat glass) and in the judgment of 27 September 2012, *Guardian Industries and Guardian Europe* v *Commission* (T-82/08, EU:T:2012:494).

Operative part of the judgment

The Court:

1. *Orders the European Union, represented by the Court of Justice of the European Union, to pay compensation of EUR 654 523,43 to Guardian Europe Sàrl for the material damage sustained by that company because of the infringement of the obligation to adjudicate within a reasonable time in the case giving rise to the judgment of 27 September 2012, Guardian Industries and Guardian Europe v Commission (T-82/08, EU:T:2012:494). That compensation is to be adjusted by applying compensatory interest, starting from 27 July 2010 and continuing up to the date of delivery of the present judgment, at the annual rate of inflation determined, for the period in question, by Eurostat (the statistical office of the European Union) in the Member State where that company is established;*

2. *The compensation referred to in point 1 shall be increased by default interest, starting from the date of delivery of the present judgment until full payment, at the rate set by the European Central Bank (ECB) for its main refinancing operations, increased by two percentage points;*

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

4. *Orders Guardian Europe to bear the costs incurred by the European Union, represented by the European Commission;*

5. *Orders Guardian Europe, on the one hand, and the European Union, represented by the Court of Justice of the European Union, on the other, to bear their own costs.*

([1]) OJ C 59, 15.2.2016.

Judgment of the General Court of 7 June 2017 — Blaž Jamnik and Blaž v Parliament

(Case T-726/15) ([1])

(Public service contracts — Property market — Tender procedure — Negotiated procedure without publication of a contract notice — Premises for the European Union House in Ljubljana — Rejection of the tender after prospecting the local market — Award of the contract to another tenderer — Failure to examine the documents annexed to the tender — Error of law — Manifest error of assessment)

(2017/C 239/56)

Language of the case: Slovenian

Parties

Applicants: Jožica Blaž Jamnik and Brina Blaž (Ljubljana, Slovenia) (represented by: D. Mihevc, lawyer)

Defendant: European Parliament (represented by: V. Naglič, P. López-Carceller and B. Simon, Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of the decision of the Parliament of 12 October 2015 rejecting, after prospection of the local market, the tender submitted by the applicants in connection with building contract INLO. AO-2013-051-LUX-UGIMBI 06 concerning the future European Union House in Ljubljana and of the decision to award the contract to another tenderer and, in the alternative, a claim under Article 268 TFEU for compensation for the damage allegedly suffered by the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Jožica Blaž Jamnik and Brina Blaž to pay the costs.*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 8 June 2016 — AWG v EUIPO — Takko (*Southern Territory 23°48'25''S*)

(Case T-6/16) ([1])

(EU trade mark — Proceedings for a declaration of invalidity — EU word mark Southern Territory 23°48'25''S — Earlier EU word mark SOUTHERN — Relative ground for refusal — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009)

(2017/C 239/57)

Language of the case: German

Parties

Applicant: AWG Allgemeine Warenvertriebs GmbH (Köngen, Germany) (represented by: T. Sambuc, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Takko Holding GmbH (Telgte, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 10 November 2015 (Case R 735/2015-4), concerning invalidity proceedings between Takko Holding and AWG.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders AWG Allgemeine Warenvertriebs GmbH to bear its own costs and those of the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 8 June 2017 — Kaane American International Tobacco v EUIPO — Global Tobacco (GOLD MOUNT)

(Case T-294/16) ([1])

(EU trade mark — Revocation proceedings — EU figurative mark GOLD MOUNT — No genuine use of the trade mark — No proper reasons for non-use — Article 51(1)(a) of Regulation (EC) No 207/2009)

(2017/C 239/58)

Language of the case: English

Parties

Applicant: Kaane American International Tobacco Company FZE, formerly Kaane American International Tobacco Co. Ltd. (Jebel Ali, United Arab Emirates) (represented by: G. Hinarejos Mulliez and I. Valdelomar, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Global Tobacco FZCO (Dubai, United Arab Emirates) (represented by: G. Hussey, Solicitor, and B. Brandreth, Barrister)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 April 2016 (Case R 1857/2015-4) relating to revocation proceedings between Global Tobacco and Kaane American International Tobacco.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kaane American International Tobacco Company FZE to pay the costs.*

([1]) OJ C 279, 1.8.2016.

Action brought on 15 April 2017 — Mémora Servicios Funerarios v EUIPO — Chatenoud (MEMORAME)

(Case T-221/17)

(2017/C 239/59)

Language in which the application was lodged: Spanish

Parties

Applicant: Mémora Servicios Funerarios SLU (Zaragoza, Spain) (represented by: C. Marí Aguilar and J. Gallego Jiménez, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Georges Chatenoud (Thiviers, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark 'MEMORAME' – Application for registration No 12 929 071

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 10/02/2017 in Case R 1308/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the decision of EUIPO of 10 February 2017 in Case R 1308/2016-4 which in part granted the application for EU trade mark No 12929071 'MEMORAME' and, consequently, reject in its entirety EU trade mark application No 12929071 'MEMORAME';

— order EUIPO to pay the costs incurred by the applicant in accordance with Article 87(2) and (3) of the Rules [of Procedure of the General Court of 2 May 1991].

Pleas in law

— Infringement of Article 8(1)(b and (5) of Regulation No 207/2009.

— The applicant submits that the Board of Appeal of EUIPO did not properly take into account the high degree of recognition enjoyed by the earlier mark 'MEMORA' in the European Union.

Action brought on 30 April 2017 — Metrans v Commission and INEA

(Case T-262/17)

(2017/C 239/60)

Language of the case: English

Parties

Applicant: Metrans a.s. (Prague, Czech Republic) (represented by: A. Schwarz, lawyer)

Defendants: European Commission and Innovation and Networks Executive Agency (INEA)

Form of order sought

The applicant claims that the Court should:

— annul with immediate effect item listed under the code 2015-CZ-TM-0330-M, entitled Multimodal Container Terminal Paskov, Phase III and item listed under the code 2015-CZ-TM-0406-W, entitled Intermodal Terminal Melnik, Phases 2 and 3, in the Annex to the Commission Implementing Decision of 5 August 2016 establishing the list of proposals selected for receiving EU financial assistance in the field of Connecting Europe Facility (CEF)-Transport sector following the calls for proposals launched on 5 November 2015 based on the Multi-Annual Work Programme;

— annul or alternatively declare that the grant agreement under the connecting Europe facility (CEF) — transport sector No INEA/CEF/TRAN/M2015/1133813 concluded between Innovation and Networks Executive Agency (INEA) and Advanced World Transport a.s. (AWT) (relating to action 2015-CZ-TM-0330-M titled Multimodal Container Terminal Paskov) is null and void or order INEA to terminate the said grant agreement relating to Paskov;

— annul or alternatively declare that the grant agreement under the connecting Europe facility (CEF) — transport sector No INEA/CEF/TRAN/M2015/1138714 concluded between Innovation and Networks Executive Agency and České přístavy, a.s. (Czech Ports) (relating to action 2015-CZ-TM-0406-W titled Intermodal Terminal Melnik, Phases 2 and 3) is null and void or order INEA to terminate the said grant agreement relating to Melnik;

— order INEA and the Commission to pay jointly and severally the applicant's costs connected with the legal 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 that the contested measure is in breach of fundamental principles of the EU Treaties relating to the protection of free market and competition on the internal market.

   — The applicant argues, inter alia, that establishing and ensuring the functioning of the internal market are fundamental principles and obligations upon which the Union is based (Article 26 TFEU). Any measures adopted by the Union must be always in compliance with this defining principle and any measures contrary to it must be always adopted proportionately and in subsidiary manner.

2. Second plea in law, alleging that the contested measure is in breach of Article 93 TFEU and further articles of the TFEU (Articles 3, 26, 93, 107, 119, 170(2), 171(1), Protocol 8 and its Article 1, Protocol 27).

   — The applicant argues, inter alia, that the contested measure represents aid, which does not meet the need of coordination of transport.

3. Third plea in law, alleging that the contested measure is in breach of Regulation (EU) No 1316/2013 and of Regulation (EU) No 1315/2013 and ancillary laws.

   — The applicant argues, inter alia, that the award of grants has not complied with all pre-requisite conditions (even if it were compliant with other EU laws), thus the grants should not have been awarded.

Action brought on 3 May 2017 — SD v EIGE

(Case T-263/17)

(2017/C 239/61)

Language of the case: English

Parties

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

Defendant: European Institute for Gender Equality (EIGE)

Form of order sought

The applicant claims that the Court should:

— annul EIGE's implicit decision of 26 August 2016, rejecting the applicant's request dated 26 April 2016 for a second renewal of his contract of employment;

— annul also, in so far as necessary, EIGE's decision of 20 January 2017, notified to the applicant on 23 January 2017, rejecting the applicant's complaint lodged on 3 October 2016 against EIGE's implicit decision;

— compensate the applicant for the material and moral prejudice suffered;

— reimburse all the costs incurred in the present appeal.

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 violation of the duty to state reasons and accordingly of the principle of good administration.

   — The defendant failed to provide the applicant with a reasoned decision on the substance of the request and subsequent complaint. This total lack of statement of reasons infringes the duty to state reasons and the principle of good administration.

2. Second plea in law, alleging infringement of Article 8 of the Conditions of Employment of other servants of the EU and of EIGE Decision No 82 of 28 July 2014 on contract renewal/non-renewal procedure applicable to temporary and contract agents ('Decision 82').

   — The defendant failed properly to exercise the discretionary powers granted to it under the above provisions and did not carry out a full or detailed examination of all the relevant facts of the case.

3. Third plea in law, alleging procedural irregularities including the violation of the internal procedural rules set out in Decision 82, the breach of the rights of defence, the right to be heard, the principle of good administration and the duty of care.

   — The defendant not only failed to follow the procedure provided for by Decision 82 but also failed to hear the applicant's views effectively in any other way. It thus failed, before taking the decision of 26 August 2016, to obtain relevant information from the applicant as to his interests and did not allow the applicant to properly prepare his defence.

Action brought on 10 May 2017 — Michela Curto v Parliament

(Case T-275/17)

(2017/C 239/62)

Language of the case: English

Parties

Applicant: Michela Curto (Genoa, Italy) (represented by: L. Levi and C. Bernard-Glanz, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the contested decision of 30 June 2016, rejecting the applicant's request for assistance, and, so far as necessary, the decision rejecting the complaint;

— order the defendant to award the applicant an amount of EUR 10 000, or any other amount which the Court will deem appropriate, as compensation for the non-material harm suffered, together with interest at the legal rate until payment in full has been made;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error of assessment

   — The applicant maintains that the defendant erred in holding that the disputed conduct was not improper and further erred in finding that it did not have the effect of undermining the applicant's personality, dignity or physical or psychological integrity.

2. Second plea in law, alleging the breach of Article 24 of the Staff Regulations and the duty to provide assistance

   — The applicant argues, inter alia, that the defendant failed to deal with the request for assistance seriously and expeditiously, as prescribed by the applicable case-law.

Action brought on 15 May 2017 — Keolis CIF and Others v Commission

(Case T-289/17)

(2017/C 239/63)

Language of the case: French

Parties

Applicants: Keolis CIF (Le Mesnil-Amelot, France), Keolis Val d'Oise (Bernes-sur-Oise, France), Keolis Seine Sénart (Draveil, France), Keolis Seine Val de Marne (Athis-Mons, France), Keolis Seine Esonne (Ormoy, France), Keolis Vélizy (Versailles, France), Keolis Yvelines (Versailles) and Keolis Versailles (Versailles) (represented by: D. Epaud and R. Sermier, lawyers)

Defendant: European Commission

Form of order sought

— Principally, annul in part the decision of the European Commission of 2 February 2017 concerning the aid schemes SA.26763 2014/C (ex 2012/NN) implemented by France in favour of bus transport undertakings in the Île de France region insofar as it declares, in Article 1 thereof, that the aid scheme has been 'unlawfully' implemented, although the aid scheme at issue was already in existence;

— In the alternative, annul in part the decision of the European Commission of 2 February 2017 concerning the aid schemes SA.26763 2014/C (ex 2012/NN) implemented by France in favour of bus transport undertakings in the Île de France region insofar as it declares, in Article 1 thereof, that the aid scheme has been 'unlawfully' implemented, with respect to the period before 25 November 1998;

— Order the Commission 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 and primary plea in law, alleging that the regional aid scheme was not unlawfully implemented, since it was not subject to any obligation of prior notification. The regional aid scheme is, in fact, an existing aid scheme, within the meaning of Article 108(1) TFEU and the provisions of Article 1(b) and Chapter VI of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9; 'Regulation No 2015/1589'). Under the rules applicable to existing aid schemes, their implementation is not unlawful since the Commission may merely lay down, if necessary, appropriate measures to enable them to develop or be closed in the future.

2. Second plea in law, raised in the alternative, alleging that, even if the aid scheme at issue were not to constitute an existing aid scheme, the Commission was not entitled to carry its investigation back beyond the limitation period of 10 years preceding 25 November 2008, the date on which the Commission sent a request for information to the French authorities. Article 17 of Regulation No 2015/1589 provides that the limitation period is to be interrupted only by action taken by the Commission or by a Member State, acting at the request of the Commission. Thus, the applicants are of the opinion that the Commission was entitled to carry its examination back only until 25 November 1998.

Action brought on 15 May 2017 — Buck-Chemie v EUIPO — Henkel (Representation of flushing systems for water closets)

(Case T-296/17)

(2017/C 239/64)

Language in which the application was lodged: German

Parties

Applicant: Buck-Chemie GmbH (Herrenberg, Germany) (represented by: C. Schultze, J. Ossing, R.-D. Härer, C. Weber, H. Ranzinger, C. Brockmann and C. Gehweiler, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Henkel AG & Co. KGaA (Düsseldorf, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: other party to the proceedings before the Board of Appeal

Design at issue: Community design No 1663618-0003

Contested decision: Decision of the Third Board of Appeal of EUIPO of 8 March 2017 in Case R 2113/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant and the other party to pay the costs incurred by the applicant in the proceedings before the Court and before the Board of Appeal.

Pleas in law

— Infringement of Article 62 and Article 63 of Regulation No 6/2002;

— Infringement of Article 25(1)(a) and (b) of Regulation No 6/2002;

— Infringement of Article 3(a) of Regulation No 6/2002;

— Infringement of Article 4(1) of Regulation No 6/2002;

— Infringement of Article 5 and Article 6 of Regulation No 6/2002.

Action brought on 29 May 2017 — Martinair Holland v Commission

(Case T-323/17)

(2017/C 239/65)

Language of the case: English

Parties

Applicant: Martinair Holland NV (Haarlemmermeer, Netherlands) (represented by: M. Smeets, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) in whole for a violation of the prohibition of arbitrariness and the principle of equal treatment in accordance with its first plea; for lack of jurisdiction over air transport from airports outside the EEA to airports within the EEA in accordance with its second plea (in primary order); or

— annul Articles 1(2)(d) and 1(3)(d) of the contested decision, in so far as it is found in these provisions that the applicant committed an infringement in relation to air transport from airports outside the EEA to airports within the EEA, in accordance with its second plea (in subsidiary order); and

— annul Article 1 and Article 1(1)(d), 1(2)(d), 1(3)(d) and 1(4)(d) of the contested decision, in so far as it is found there that the single and continuous infringement included the non-commissioning of surcharges, in accordance with its third plea; and

— order the Commission to pay the costs of these proceedings if the Court annuls the contested decision in whole or in part.

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 violation of the prohibition of arbitrariness and the principle of equal treatment.

   — The applicant puts forward that the contested decision violates the prohibition of arbitrariness by excluding undertakings from the operative part of the contested decision which, according to its statement of reasons, have taken part in the same behaviour as the addressees of the contested decision.

   — The applicant further puts forward that the contested decision violates the principle of equal treatment by sanctioning the applicant for an infringement and imposing a fine on the applicant, and exposing it to civil liability, while undertakings are excluded from the operative part which, according to its statement of reasons, have taken part in the same behaviour as the addressees of the contested decision.

2. Second plea in law, alleging a lack of jurisdiction over air cargo transport from airports outside the EEA to airports in the EEA.

   — The applicant puts forward that the contested decision wrongly relies on the assumption that the single and continuous infringement concerning air transport from airports outside the EEA to airports in the EEA was implemented in the EEA.

   — The applicant further puts forward that the contested decision wrongly relies on the assumption that the single and continuous infringement concerning air transport from airports outside the EEA to airports in the EEA had a substantial, immediate and foreseeable effect on competition in the EEA.

3. Third plea in law, alleging a failure to state reasons and manifest error of assessment in finding that the non-commissioning of surcharges constitutes a separate element of the infringement.

   — The applicant puts forward that the two assumptions on which the contested decision relies to qualify non-commissioning of surcharges as a separate element of the infringement, are contradictory in light of the economic and regulatory context of the industry concerned.

   — The applicant further puts forward that the non-commissioning of surcharges is indistinguishable from the practices regarding the fuel surcharge and the security surcharge, and does not constitute a separate element of the infringement.

Action brought on 29 May 2017 — SAS Cargo Group and Others v Commission

(Case T-324/17)

(2017/C 239/66)

Language of the case: English

Parties

Applicants: SAS Cargo Group A/S (Kastrup, Denmark), Scandinavian Airlines System Denmark-Norway-Sweden (Stockholm, Sweden), SAS AB (Stockholm) (represented by: B. Creve, M. Kofmann and G. Forwood, lawyers and J. Killick, Barrister)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight), in whole or in part;

— in the alternative, reduce the level of the fine imposed in the applicants;

— adopt the requested measures of organization of procedure or measures of inquiry, or any other such measures as the Court deems necessary; and

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

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 a breach of the applicants' right of defence and the principle of equality of arms, in refusing the applicants access to relevant evidence, both inculpatory and exculpatory, including evidence which the Commission received after notification of its Statement of Objections.

2. Second plea in law, alleging a lack of competence with respect to the application of Article 101 TFEU and Article 53 EEA to airfreight services that were inbound into the EEA, as well as routes between Switzerland and the three non EU-EEA States.

3. Third plea in law, alleging an error in the Commission's assessment of the evidence and its conclusion that this proves the applicants' participation in, or knowledge of, the global single and continuous infringement found in the contested decision.

4. Fourth plea in law, alleging a breach of Article 266 TFEU, Article 17 of the EU Charter of Fundamental Rights and Article 296(2) TFEU in that the contested decision is internally inconsistent, in particular as regards the attribution of liability for the alleged infringement.

5. Fifth plea in law, alleging that the Commission was wrong to impose any fine on the applicants, as they cannot be liable for the alleged infringement, and in any case the Commission erred in the fine calculation as regards the values of the sales, the gravity factor related to SAS Cargo's particular situation, the duration, the recidivism uplift and the various mitigating circumstances; as such the fine should be annulled or alternatively significantly reduced.

Action brought on 29 May 2017 — Koninklijke Luchtvaart Maatschappij v Commission

(Case T-325/17)

(2017/C 239/67)

Language of the case: English

Parties

Applicant: Koninklijke Luchtvaart Maatschappij NV (Amstelveen, Netherlands) (represented by: M. Smeets, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) in whole for a violation of the prohibition of arbitrariness and the principle of equal treatment in accordance with its first plea; for lack of jurisdiction over air transport from airports outside the EEA to airports within the EEA in accordance with its second plea (in primary order); for a violation of Article 49 of the EU Charter of Fundamental Rights, Article 101 TFEU, Article 53 EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport and the Fining Guidelines ([1]) in accordance with its fourth plea (in primary order); or

— annul Articles 1(2)(d) and 1(3)(d) of the contested decision, in so far as it is found in these provisions that the applicant committed an infringement in relation to air transport from airports outside the EEA to airports within the EEA, in accordance with its second plea (in subsidiary order); and

— annul Article 1 and Article 1(1)(d), 1(2)(d), 1(3)(d) and 1(4)(d) of the contested decision, in so far as it is found there that the single and continuous infringement included the non-commissioning of surcharges, in accordance with its third plea; and

— in alternative order, if the Court does not annul the contested decision in whole in accordance with its first, second and fourth plea, exercise its full discretion to reduce the fine imposed on the applicant in Article 3(c) and 3(d) of the contested decision in accordance with its first, second, third and fourth plea; and finally,

— order the Commission to pay the costs of these proceedings if the Court annuls the contested decision in whole or in part, or reduces the fine.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of the prohibition of arbitrariness and the principle of equal treatment.

   — The applicant puts forward that the contested decision violates the prohibition of arbitrariness by excluding undertakings from the operative part of the contested decision which, according to its statement of reasons, have taken part in the same behaviour as the addressees of the contested decision.

   — The applicant further puts forward that the contested decision violates the principle of equal treatment by sanctioning the applicant for an infringement and imposing a fine on the applicant, and exposing it to civil liability, while undertakings are excluded from the operative part which, according to its statement of reasons, have taken part in the same behaviour as the addressees of the contested decision.

2. Second plea in law, alleging a lack of jurisdiction over air cargo transport from airports outside the EEA to airports in the EEA.

   — The applicant puts forward that the contested decision wrongly relies on the assumption that the single and continuous infringement concerning air transport from airports outside the EEA to airports in the EEA was implemented in the EEA.

   — The applicant further puts forward that the contested decision wrongly relies on the assumption that the single and continuous infringement concerning air transport from airports outside the EEA to airports in the EEA had a substantial, immediate and foreseeable effect on competition in the EEA.

3. Third plea in law, alleging a failure to state reasons and manifest error of assessment in finding that the non-commissioning of surcharges constitutes a separate element of the infringement.

   — The applicant puts forward that the two assumptions on which the contested decision relies to qualify non-commissioning of surcharges as a separate element of the infringement, are contradictory in light of the economic and regulatory context of the industry concerned.

   — The applicant further puts forward that the non-commissioning of surcharges is indistinguishable from the practices regarding the fuel surcharge and the security surcharge, and does not constitute a separate element of the infringement.

4. Fourth plea in law, alleging that the fine is in violation of the principle of the legality and the proportionality of fines under Article 49 of the EU Charter of Fundamental Rights, Article 101 TFUE and the Fining Guidelines, and that it is manifestly erroneous.

   — The applicant puts forward that the value of KLM's Cargo's sales to which the infringement relates is the value of the fuel and the security surcharge and not KLM Cargo's full turnover.

   — The value of KLM Cargo's sales on which the basic amount of the fine has been based should not include KLM Cargo's sales outside the EEA.

   — The 15 % reduction of the fine on account of governmental intervention does not correspond with the degree of governmental intervention during the period of infringement.

([1]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, p. 2).

Action brought on 29 May 2017 — Air Canada v Commission

(Case T-326/17)

(2017/C 239/68)

Language of the case: English

Parties

Applicant: Air Canada (Saint-Laurent, Quebec, Canada) (represented by: T. Soames, G. Bakker and I.-Z. Prodromou-Stamoudi, lawyers, and J. Joshua, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (AT.39258 — Airfreight), in whole or in part as it relates to the applicant;

— annul or in the alternative reduce substantially the amount of the fine;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a breach of the rights of defence, breach of the right to be heard and breach of essential procedural requirement.

   According to the applicant, the European Commission failed to give notice in the statement of objections of the theory of its entire case as expressed for the first time in the contested decision, thus preventing the applicant from defending itself against the charges, these being sufficient grounds for the annulment of the contested decision in its entirety.

2. Second plea in law, alleging a breach of the rights of defence, a failure to state reasons and a breach of essential procedural requirement.

   According to the applicant, the European Commission violated the applicant's rights of defence by failing to (i) provide any or any adequate reasoning to support the finding of a single and continuous infringement on all routes; (ii) define the nature and scope of the alleged infringement(s) with the particularity required by law; (iii) correct the inherent contradiction between a single and continuous infringement and four separate infringements that led to the annulment of Commission Decision C (2010) 7694 final of 9 November 2010, these being sufficient grounds for the annulment of the Decision in its entirety.

3. Third plea in law, alleging a manifest error of assessment and a manifest error of law relating to the non-ability of non-EU/EEA carriers to operate on intra-European routes.

   The applicant puts forward that the European Commission (i) wrongly found in Articles 1(1) and 1(4) of the contested decision that the applicant had participated in an infringement or infringements on routes within the EEA and between airports within the EU and airports in Switzerland on which it had no legal ability to provide airfreight services; (ii) overlooked or misunderstood the international and EU legal regimes governing aviation traffic rights; (iii) wrongly applied the relevant case law in finding that there were no 'insurmountable barriers' to the applicant offering services on intra-European routes and thus wrongly identifying the applicant as a potential competitor on those routes. According to the applicant, each and all comprise manifest errors of assessment and manifest errors of law, and individually or collectively provide sufficient grounds for the annulment in its entirety of the contested decision in its entirety, or, in the alternative of Articles 1(1) and 1(4) of that decision.

4. Fourth plea in law, alleging a manifest error of law and fact in relation to jurisdiction.

   The applicant puts forward that the contested decision is vitiated by manifest errors of law and fact relating to (i) the wrongful reliance on entirely lawful acts on third country routes to prove or constitute an infringement on intra-European routes which infringement is impossible of commission (grounds for annulment of the contested decision in its entirety); (ii) wrongful assertion of jurisdiction over supposed collusion on 'inbound' traffic on third country routes (ground for annulment of the contested decision in its entirety or in the alternative of Articles 1(2) and 1(3)).

5. Fifth plea in law, alleging a manifest error of assessment in relation to the evidence relied on against the applicant.

   According to the applicant, the European Commission: (i) failed properly to apply the law relating to single and continuous infringement as regards evidence; (ii) failed to establish a reliable evidential basis and to prove the facts against the applicant to the requisite legal standard; and (iii) wrongly refused to accept the applicant's withdrawal of its misconceived leniency application and failed to consider the effect of that withdrawal on the evidence relied on against the applicant, these being sufficient grounds for the annulment of the contested decision in its entirety.

6. Sixth plea in law, in accordance with the First, Second, Third, Fourth and Fifth Pleas in Law, the applicant requests the Court to cancel the fine imposed by Article 3 or in the alternative substantially reduce the fine pursuant to its unlimited jurisdiction under Article 261 TFEU, Article 31 of Regulation 1/2003 and established case law.

Action brought on 26 May 2017 — Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — M. J. Dairies (BBQLOUMI)

(Case T-328/17)

(2017/C 239/69)

Language in which the application was lodged: English

Parties

Applicant: Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (Nicosia, Cyprus) (represented by: S. Malynicz, QC and V. Marsland, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board328 of Appeal: M. J. Dairies EOOD (Sofia, Bulgaria)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word element 'BBQLOUMI' — Application for registration No 13 069 034

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 16/03/2017 in Case R 497/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 31 May 2017 — Cargolux Airlines v Commission

(Case T-334/17)

(2017/C 239/70)

Language of the case: English

Parties

Applicant: Cargolux Airlines International SA (Sandweiler, Luxembourg) (represented by: G. Goeteyn, Solicitor, E. Aliende Rodríguez, lawyer, and C. Rawnsley, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— in the event that the Court upholds the First, Second, Third or Fourth pleas, annul in their entirety Articles 1(1) to 1(4) of Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (AT.39258 — Airfreight), insofar as they relate to Cargolux;

— in the event that the Court upholds the Fifth plea,

  — annul Article 1(1) in its entirety, or if Article 1(1) is not annulled in its entirety, annul Article 1(1): (i) insofar as it relates to Security Surcharge and commissioning; (ii) insofar as it relates to the period 22 January 2001 to end of 2002; and (iii) insofar as it makes any finding of involvement in cartel conduct as that term is normally understood prior to 10 June 2005 at the earliest;

  — annul Article 1(2) in its entirety, or if Article 1(2) is not annulled in its entirety, annul Article 1(2): (i) insofar as it relates to Security surcharge and commissioning; (ii) insofar as it makes any finding of involvement in cartel conduct as that term is normally understood prior to 10 June 2005 at the earliest;

  — annul Articles 1(3) and 1(4) in their entirety.

— in the event that the Court upholds the Sixth plea, to annul Articles 1(2) and 1(3) of the contested decision insofar as they purport to find Cargolux to have participated in any infringement relating to inbound routes (i.e. from third country airports to airports inside the EU or in Iceland and Norway);

— cancel the fine imposed on Cargolux in Article 3 and, if the Court does not cancel the fine in its entirety, substantially reduce it pursuant to its unlimited jurisdiction;

— make the necessary consequential orders in respect of Article 4 insofar as it concerns Cargolux;

— order the Commission to pay Cargolux' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment in that the Commission acted ultra vires by relying on evidence for routes and during periods over which it had no jurisdiction.

   — The applicant puts forward that the Commission has unduly extended its jurisdiction by relying on evidence pre-dating: (a) 1 May 2004 in relation to EU-third country routes; (b) 19 May 2005 in relation to EEA (non EU Member States)-third country routes; and (c) 1 June 2002 in relation to EU-Switzerland routes, in support of its finding an infringement of Article 101 TFEU and Article 53 EEA Agreement in relation to intra-EEA routes.

2. Second plea in law, alleging a breach of essential procedural requirement, a breach of rights of defence and a manifest error of assessment in that the Commission has breached essential procedural requirements and the applicant's rights of defence by not issuing a new statement of objections prior to re-adoption.

   — The applicant puts forward that the Commission was wrong to conclude that it was not required to issue a new statement of objections prior to its re-adoption of the contested decision, thereby breaching the applicant's right of defence.

3. Third plea in law, alleging an error of law and a manifest error of assessment in that the Commission failed to carry out the necessary assessment of the legal and economic context in order to validly find a by object infringement.

4. Fourth plea in law, alleging a breach of essential procedural requirement, a failure to give reasons, a breach of rights of defence and a manifest error of assessment of law and fact in that the Commission failed to identify with sufficient particularity the scope and parameters of the supposed infringement of Article 101 TFEU and the other relevant provisions.

   — The applicant puts forward that the over-stretching of the concept of single continuous infringement has led to an irremediable blurring of the scope of the infringement, making it impossible to grasp its content.

5. Fifth plea in law, alleging a manifest error of assessment in that the Commission failed to establish a reliable evidential basis for its conclusions or to prove the facts on which it bases its findings to the required legal standard.

   — The applicant puts forward that the contested decision contains errors of fact and mistaken assessments in relation to all three constituent elements (FSC, SSC and commissioning of surcharges) of the alleged single and continuous infringement. According to the applicant, the Commission has also misused the concept of single and continuous infringement as a catch all designed to allow it to present as 'evidence' a disparate collection of facts and contacts, including conduct that is legal or irrelevant.

6. Sixth plea in law, alleging an error of law in that the Commission wrongly asserted jurisdiction over supposed anti-competitive coordination in relation to flights from third country airports to airports inside the EEA and erred in law since such activities are outside the territorial scope of Article 101 TFEU and Article 53 of the EEA Agreement.

7. Seventh plea in law, in relation to the request for review of the fine pursuant to the unlimited jurisdiction of the Court, alleging a manifest error of assessment and a breach of the principle of proportionality.

— The applicant puts forward that the Commission incorrectly determined the value of sales by wrongly taking into account inbound flights and grossly overstated the overall gravity of the alleged infringement. In relation to the applicant, the Commission wrongly assessed the gravity and duration of the alleged infringement and mistakenly rejected mitigating factors.

Action brought on 30 May 2017 — Help — Hilfe zur Selbsthilfe v Commission

(Case T-335/17)

(2017/C 239/71)

Language of the case: German

Parties

Applicant: Help — Hilfe zur Selbsthilfe e.V. (Bonn, Germany) (represented by: V. Jungkind and P. Cramer, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 21 March 2017 (Ares(2017)1515573) by which a partial amount of the funding for the assistance project Food Security Promotion for very food insecure farming households in Zimbabwe (ECHO/ZWE/BUD/2009/02002) totalling EUR 643 627,72 was to be recovered as well as the payment request based thereupon of 7 April 2017 (No 3241705513) by which the defendant demanded the payment of the first instalment totalling EUR 321 813,86; and

— order the defendant to pay the cost of the 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: The approach complained about by the defendant is not an infringement of substantive law

— The applicant's action, of which the defendant complains, in the award of two contracts for the delivery of agricultural goods did not infringe binding substantive law requirements for the organisation of calls to tender in the field of humanitarian projects. In particular, it was in conformity with the mandatory procurement principles under Article 184(1) of the Implementing Rules relating to the EU Financial Regulation 2009 and Article 2(3) of the Rules and Procedures in Annex IV to the Framework Partnership Agreement on the EU's cooperation with Non-Governmental Organisations in the field of humanitarian assistance of 2008.

— The action complained of moreover does not infringe the documentation requirement under Article 23(4) of the general rules laid down in Annex III to the Framework Partnership Agreement.

2. Second plea in law: No other grounds for the recovery

— There are also no other grounds for a recovery of the financial assistance. In particular, the undertaking chosen by the applicant delivered the ordered goods on time, in full and of appropriate quality. The applicant moreover carried out the assistance project successfully, which was confirmed by, in total, four independent reviews by third parties.

— There was no criminal conduct on the part of the applicant's staff. The Staatsanwaltschaft Bonn (Public Prosecutor's Office, Bonn, Germany) did not initiate a criminal investigation as a criminal offence was not suspected.

3. Third plea in law (in the alternative): Failure to exercise discretion and disproportionality

— The decision on the recovery of the financial assistance which has been awarded was taken by the defendant on the erroneous assumption that it was subject to a binding recommendation of the European Anti-Fraud Office (OLAF) on the recovery. This is a failure to exercise discretion on the part of the defendant with the result that the recovery is unlawful.

— The recovery of the total partial sum of EUR 643 627,27 is, moreover, unlawful due to the infringement of the principle of proportionality under Article 5(4) TEU. It goes beyond what is necessary to protect the financial budget and, in particular in the light of the assistance project being successfully carried out, would not be proportionate to the applicant's burden.

Action brought on 31 May 2017 — Shenzhen Jiayz Photo Industrial v EUIPO — Seven (sevenoak)

(Case T-339/17)

(2017/C 239/72)

Language in which the application was lodged: English

Parties

Applicant: Shenzhen Jiayz Photo Industrial Ltd (Shenzhen, China) (represented by: M. de Arpe Tejero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Seven SpA (Leinì, Italy)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'SEVENOAK' — Application for registration No 13 521 125

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 23 March 2017 in Case R 1326/2016-1

Form of order sought

The applicant claims that the Court should:

— reject the contested decision;

— grant the EUTM application No 13 521 125 'SEVENOAK' for all the goods included in the application;

— order EUIPO to bear the costs of the proceedings.

Plea in law

— Infringement of Article 8(1) (b) Regulation No 207/2009.

Action brought on 30 May 2017 — Japan Airlines v Commission

(Case T-340/17)

(2017/C 239/73)

Language of the case: English

Parties

Applicant: Japan Airlines Co. Ltd (Tokyo, Japon) (represented by: J.-F. Bellis and K. Van Hove, lawyers, and R. Burton, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) in its entirety as far as the applicant is concerned;

— in the alternative, in the exercise of its unlimited jurisdiction, reduce the fine imposed on the applicant; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission violates the principle of ne bis in idem and Article 266 TFEU in finding the applicant liable for aspects of the infringement for which the Commission cleared the applicant of liability in the 2010 Decision and, in any event, violates the applicable limitation period by imposing a fine on the applicant in relation to those aspects and has demonstrated no legitimate interest in making a formal finding of infringement in relation to those aspects.

2. Second plea in law, alleging that the Commission violates the principle of non-discrimination through the re-adoption of the contested decision in that the applicant finds itself in a less advantageous position than other addressees of the 2010 Decision against which the latter has become final and binding.

3. Third plea in law, alleging that the Commission violates Article 101 TFEU and Article 53 EEA and the scope of its jurisdiction as well as the applicant's rights of defence in finding the applicant liable for an infringement on intra-EEA routes and EU-Switzerland routes during a period when the Commission had no power to enforce Article 101 TFEU and Article 53 EEA in relation to airlines operating only on EEA-third country routes and the applicant's conduct on EEA-third country routes was accordingly legal.

4. Fourth plea in law, alleging that the Commission violates Article 101 TFEU and Article 53 EEA in finding that the applicant participated in one single and continuous infringement that included routes which the applicant did not serve and for which the applicant lacked the necessary legal rights to serve.

5. Fifth plea in law, alleging that the Commission violates Article 101 TFEU and Article 53 EEA in asserting jurisdiction over inbound airfreight services on EEA-third country routes as such services are sold to customers located outside the EEA.

6. Sixth plea in law, alleging that the Commission violates the applicant's rights of defence and the principles of non-discrimination and proportionality in applying different standards of proof to different carriers.

7. Seventh plea in law, alleging that the Commission violates the 2006 Fining Guidelines ([1]) and the principle of proportionality by including the relevant value of sales used as the basis for calculating the fine revenues derived from elements of price for airfreight services unrelated to the infringement set out in the contested decision.

8. Eighth plea in law, alleging that the Commission violates the 2006 Fining Guidelines and the principle of legitimate expectations by including in the relevant value of sales used as the basis for calculating the fine revenues derived from airfreight services on inbound routes between EEA States and third countries.

9. Ninth plea, alleging that the Commission violates the principle of proportionality in limiting the reduction in the fine granted to the applicant on account of the regulatory framework to 15 %.

10. Tenth plea in law, alleging that the Commission violates the principles of non-discrimination and proportionality in as well as the applicant's rights of defence failing to grant the applicant 10 % reduction in the fin on account of limited involvement in the infringement where such a reduction was granted to other addressees of the contested decision and 2010 decision that are in a position objectively similar to that of the applicant.

11. Eleventh plea in law, alleging that the Court should rely on its unlimited jurisdiction and significantly reduce the fine.

(1) Guidelines on the method of setting fines imposed pursuant to Article 32(2)(a) of Regulation No 1/2003 (OJ C 210, p. 2).

Action brought on 31 May 2017 — British Airways v Commission

(Case T-341/17)

(2017/C 239/74)

Language of the case: English

Parties

Applicant: British Airways plc (Harmondsworth, United Kingdom) (represented by: J. Turner, QC, R. O'Donoghue, Barrister and A. Lyle-Smythe, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) in whole or in part;

— further or alternatively, and in the exercise of the General Court's unlimited jurisdiction, annul or reduce the fine imposed on the applicant under the contested decision;

— order the Commission to pay the applicant's costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in law, and/or infringed an essential procedural requirement by adopting an infringement decision which was based on two inconsistent assessments of the relevant facts and law, and which was accordingly incoherent, incompatible with the principle of legal certainty, and liable to give rise to confusion within the EU legal order.

2. Second plea in law, alleging that the Commission acted in breach of its duty under Article 266 TFEU by adopting a measure intended to address the fundamental errors identified by the General Court judgment in Case T-48/11, when re-adopting the decision against the applicant, but which compounded rather than remedied those errors.

3. Third plea in law, alleging that the Commission erred in law and/or breached an essential procedural requirement by failing to state adequate reasons in respect of the imposition of the fine against the applicant. According to the applicant, the imposition of the fine was based on findings of infringement not contained in the measure in question, and which were inconsistent with the findings that were contained in the measure in question. The applicant further or alternatively puts forward that the Commission's approach in this regard was beyond its competence.

4. Fourth plea in law, alleging that the Commission lacked jurisdiction to apply Article 101 TFEU/Article 53 EEA Agreement to alleged restrictions of competition in respect of the provision of airfreight services on routes inbound into the EU/EEA. The applicant further puts forward that such restrictions fell outside the territorial scope of Article 101 TFEU and/or Article 53 EEA.

5. Fifth plea in law, alleging that the Commission erred in its application of Article 101 TFEU/Article 53 EEA Agreement to coordination on surcharges for air freight services to/from certain countries due to the applicable legal and regulatory regimes and their practical effects, and the fine reduction applied in this respect was arbitrary and inadequate. The applicant further puts forward that in any case, as respects certain jurisdictions the Commission's reasoning is manifestly inadequate.

6. Sixth plea in law, alleging that the Commission erred in concluding that the applicant participated in an infringement concerning the (non)payment of commission of surcharges.

7. Seventh plea in law, alleging that the Commission erred in determining the 'value of sales' for the purpose of setting fines in the decision. According to the applicant, it should have determined that only revenue associated with surcharges was relevant and should have excluded turnover associated with services inbound into the EU/EEA.

8. Eighth plea in law, alleging that the Commission erred in finding that the applicant was the ninth leniency applicant and therefore was entitled to only a 10 % reduction in its fine, despite the applicant in fact being the first to apply for leniency after the immunity applicant, and to have added significant value.

9. Ninth plea in law, alleging that the Commission erred in its assessment of the starting date of the applicant's infringement. According to the applicant, the relevant starting date was October 2001, and the evidence put forward to attempt to prove a different earlier date does not satisfy the requisite legal standard.

Action brought on 30 May 2017 — Deutsche Lufthansa and Others v Commission

(Case T-342/17)

(2017/C 239/75)

Language of the case: English

Parties

Applicants: Deutsche Lufthansa AG (Cologne, Germany), Lufthansa Cargo AG (Frankfurt am Main, Germany), Swiss International Air Lines AG (Basel, Switzerland) (represented by: S. Völcker, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1 of Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight);

— order that the Commission bear the costs, including the costs of the applicants.

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 contested decision suffers from a detective statement of reasons by failing to unambiguously set out the geographic scope of the infringement in the operative part and the statement of reasons.

2. Second plea in law, alleging that the contested decision infringes Article 11 of the Agreement between the European Community and the Swiss Confederation on Air Transport by relying on contacts between competitors which took place in Switzerland and predominantly affected air freight transported between Switzerland and third countries.

3. Third plea in law, alleging that the contested decision infringes the principle of non-retroactive application of laws by relying on contacts affecting only routes outside of the EEA that took place before the entry into force of Regulation No 1/2003 ([1]).

4. Fourth plea in law, alleging that the contested decision infringes Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport by characterizing, without proper analysis, contacts taking place outside the EEA, contacts relating to the WOW alliance (alliance among Japan Airlines Cargo, Lufthansa Cargo, SAS Cargo and Singapore Airlines Cargo) and contacts relating to the commissioning of surcharges as part of the same single and continuous infringement with contacts between competitors that took place at headquarter level.

5. Fifth plea in law, alleging that the contested decision infringes Article 101 TFEU and Article 53 of the EEA Agreement in so far as it is premised on the notion that contacts between competitors taking place outside the EEA constitute infringements of Article 101 TFEU and Article 53 of the EEA Agreement. According to the applicants, agreements or concerted practices with respect to EEA inbound cargo shipments do not restrict competition within the EEA, nor do they affect trade between the Member States. Moreover, so the applicants claim, the contested decision applies the wrong legal standard in analysing whether government intervention in a number of relevant jurisdictions precludes the application of Article 101 TFEU and Article 53 of the EEA Agreement.

([1]) 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).

Action brought on 31 May 2017 — Cathay Pacific Airways v Commission

(Case T-343/17)

(2017/C 239/76)

Language of the case: English

Parties

Applicant: Cathay Pacific Airways Ltd (Hong Kong, China) (represented by: R. Kreisberger and N. Grubeck, Barristers, M. Rees, Solicitor and E. Estellon, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul each of the findings of infringement set out in Article 1(1) to 1(4) of Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) insofar as they concern the applicant;

— annul Article 3 of the contested decision insofar as it imposed a fine of EUR 57 120 000 on the applicant or alternatively reduce the amount of that fine, and

— order the Commission to pay the applicant's costs of making this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in law and/or in fact and/or failed to meet the applicable standard of proof by including the applicant in Article 1(1) and 1(4) of the operative part of the contested decision and finding that the applicant participated in the alleged single and continuous infringement.

   — The applicant puts forward that there is no lawful basis for being included in the intra-European infringements.

   — The applicant further claims that there is no adequate factual basis for being included in the intra-European infringements.

   — The applicant further alleges that the Commission's reliance on new reasons is in breach of its rights of defence.

— The applicant finally puts forward that the Commission's unlawful inclusion of the applicant within Article 1(1) to 1 (4) is fatal to its attempt to establish that the applicant participated in the alleged single and continuous infringement.

2. Second plea in law, alleging that by adopting a second decision against the applicant, which imputes new infringing conduct to it, the Commission has violated Article 25 of Regulation 1/2003 as well as the principles of legal certainty, justice and the good administration of justice.

3. Third plea in law, alleging that the Commission failed to establish to the requisite standard of proof that the applicant is liable for participation in the alleged single and continuous infringement.

— According to the applicant, the Commission failed to deal with the applicant specifically and to establish the individual components of the single and continuous infringement in relation to the applicant.

— The applicant furthermore claims that the Commission failed to show an overall plan pursuing a common objective.

— The applicant further alleges that the Commission failed to show that the applicant participated or had the requisite intention to participate in the single and continuous infringement.

— The applicant finally puts forward that there is no finding that it had the requisite knowledge.

4. Fourth plea in law, alleging that the Commission failed to give adequate reasons to support its finding that the applicant participated in the alleged single and continuous infringement.

5. Fifth plea in law, alleging that the Commission erred in relying on the applicant's activities in third-country regulated jurisdictions as evidence of participation in the alleged single and continuous infringement and failed to give reasons in that regard.

— According to the applicant, the Commission failed to meet the applicable burden of proof in respect of the applicant's conduct in Hong Kong and/or failed to give adequate reasons.

— The applicant further claims that the Commission failed to establish that the applicant's conduct in Hong Kong has an anti-competitive objective.

— The applicant further alleges that it was compelled by Hong Kong law to submit collective applications.

— The applicant finally claims an infringement of the principles of comity and non-interference.

6. Sixth plea in law, alleging that the Commission had no jurisdiction to apply Article 101 TFEU to conduct relating to inbound flights, *i.e.* airfreight services from third countries to Europe.

7. Seventh plea in law, alleging that the Commission erred in law in calculating the fine imposed on the applicant.

Action brought on 31 May 2017 — Latam Airlines Group and Lan Cargo v Commission

(Case T-344/17)

(2017/C 239/77)

Language of the case: English

Parties

Applicants: Latam Airlines Group SA (Santiago, Chili), Lan Cargo SA (Santiago) (represented by: B. Hartnett, Barrister, O. Geiss, lawyer and W. Sparks, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) insofar as it relates to the applicants;

— in addition or in the alternative, reduce the fines imposed on the applicants; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in fact and in law by misinterpreting the evidence cited against the applicants, misapplying Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Swiss Agreement, and failing to provide adequate reasoning, when attributing liability to the applicants for the infringement so far as it relates to the security surcharge and non-commissioning.

   — The applicants put forward that the Commission wrongly finds that they were aware of anticompetitive conduct in relation to the security surcharge and non-commissioning.

   — Furthermore, the applicants claim that these aspects of the alleged single and continuous infringement are not severable from the whole and consequently the contested decision has to be annulled in full.

2. Second plea in law, alleging that the Commission erred in fact and in law by misinterpreting the evidence cited against the applicants, misapplying the relevant provisions, and failing to provide adequate reasoning, when finding that the applicants participated in the infringement concerning the fuel surcharge.

   — The applicants put forward that the Commission has failed to prove to the required standard that they participated in the alleged infringement so far as it related to the fuel surcharge.

   — The applicants further claim that their receipt of press releases was not capable of making them aware of the alleged cartel.

   — The applicants finally allege that the limited evidence adduced of their contacts with carriers does not prove any anticompetitive conduct by the applicants or show that they knew of or could have foreseen the anticompetitive conduct of other carriers.

3. Third plea in law, alleging that the Commission committed manifest errors in fact and in law by finding the applicants liable for infringement on the routes identified in Articles 1(1), 1(3) and 1(4) of the contested decision, and failed to provide adequate reasoning.

   — The applicants put forward that the Commission wrongly included them in the finding of liability in Articles 1(1), 1 (3) and 1(4) of the contested decision because the limitation period has expired.

   — The applicants further claim that the Commission has no jurisdiction to find them liable for an infringement of Article 101 TFEU on intra-EEA routes before 1 May 2004, or of Article 53 EEA Agreement before 19 May 2005.

   — The applicants further allege that the Commission has no jurisdiction to find the applicants liable for an infringement in relation to EU-Swiss routes.

   — Finally, the applicants put forward that the findings violate the principle of non bis in idem.

4. Fourth plea in law, alleging that the Commission committed manifest errors in fact and in law in finding the existence of the alleged cartel, and failed to provide adequate reasoning.

   — The applicants put forward that the Commission's finding that they participated in the alleged cartel is vitiated by a lack of evidence.

— The applicants further claim that this is based on the incorrect assumption that the infringement affected all routes.

— The applicants further allege that it exceeds Commission's jurisdiction and leads to ambiguity as regards the geographical scope of the alleged infringement.

— The applicants finally put forward that it leads to discrepancies between the grounds and the operative part in relation to its object, which do not allow the applicants to understand the nature and the scope of the infringement alleged.

5. Fifth plea in law, alleging that the Commission committed manifest errors in fact and in law by finding that the alleged conduct constitutes a single and continuous infringement, and failed to provide adequate reasoning for such finding.

— The applicants put forward that the conduct in question did not pursue a single anticompetitive aim.

— The applicants further claim that the conduct in question did not concern a single product or service.

— The applicants further allege that the conduct in question did not concern the same undertaking.

— The applicants further put forward that the alleged infringement did not have a single nature.

— The applicants further claim that the elements of the alleged infringement were not discussed in parallel.

— The applicants finally put forward that the Commission provided insufficient evidence and failed to carry out an analysis under Article 101(3) TFEU in relation to non-commissioning.

6. Sixth plea in law, alleging that the Commission violated the applicants' rights of defence and failed to provide adequate reasoning.

— The applicants put forward that they could not address the Commission's finding that they knew about the infringement relating to security surcharge and non-commissioning.

— The applicants further claim that new allegations were made to support the Commission's finding of the alleged cartel.

— The applicants further allege that the Commission relies on evidence that is inadmissible against them.

— The applicants further put forward that discrepancies between the grounds of the contested decision and the operative part lead to a defective statement of reasons.

— The applicants finally claim that they could not provide their views on the decision to remove 13 carriers and three aspects of the infringement from the investigation after the Statement of Objections, and the Commission provided no reasoning for doing so.

7. Seventh plea in law, alleging that the Commission erred in law and in fact when calculating the applicants' fine, and failed to provide adequate reasoning.

— The applicants put forward a failure to differentiate between the coordination of a final price and coordination in relation to limited elements of a price.

— The applicants further claim a failure to have regard for the limited combined market share of the addressees and regulatory requirements in the industry.

— The applicants further allege that the Commission treated their conduct the same as the far more serious conduct of other addressees, including the 'core group'.

— The applicants finally claim a failure to take account of their more limited participation in the infringement relative to other addressees that also received a fine reduction on account of mitigating circumstances.

Action brought on 31 May 2017 — Hotelbeds Spain v EUIPO — Guidigo Europe (Guidego what to do next)

(Case T-346/17)

(2017/C 239/78)

Language in which the application was lodged: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Guidigo Europe SARL (Paris, France)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU figurative mark containing the words elements 'Guidego what to do next' — Application for registration No 12 944 898

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 March 2017 in Case R 449/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— grant the European Union trade mark application No 12 944 898, in classes 39, 41 and 43.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 1 June 2017 — Singapore Airlines and Singapore Airlines Cargo v Commission

(Case T-350/17)

(2017/C 239/79)

Language of the case: English

Parties

Applicants: Singapore Airlines Ltd (Singapore, Singapore) and Singapore Airlines Cargo Pte Ltd (Singapore) (represented by: J. Kallaugher and J. Poitras, Solicitors and J. Ruiz Calzado, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight), in whole or in part;

— further, or in the alternative, substantially reduce the amount of the fine imposed on the applicants;

— order the Commission to pay the costs; and

— make any other order as may be appropriate in the circumstances of the case.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision should be annulled because its central finding of a single and continuous infringement covering air cargo services on all routes to and from the EU is vitiated by serious errors of law and factual appreciation.

   According to the applicants, the contested decision fails to establish in particular: (i) the existence of a worldwide cartel; (ii) jurisdiction over conduct involving air cargo sales outside the EU; (iii) application of Article 101 TFEU to conduct regulated or required by foreign governments; (iv) a sufficient link between conduct involving the three alleged elements of the single and continuous infringement, being fuel surcharges, security surcharges, and alleged refusal to pay commissions on surcharges; and (v) a sufficient link between airline contacts at headquarters level and conduct in local markets.

2. Second plea in law, alleging that the contested decision should be annulled insofar as it finds an infringement related to coordination regarding payment of commission to forwarders on surcharge revenue.

3. Third plea in law, alleging that the contested decision should be annulled to the extent that the finding on an infringement involving the applicants relies on evidence involving contacts exclusively between members of the WOW air cargo alliance.

   According to the applicants, the contested decision applies the incorrect legal test to assessing a full cooperation airline alliance and makes fundamental errors in assessing how the WOW alliance functioned. The applicants further submit that their contacts with WOW partners were part of a genuine effort to create a successful alliance and therefore were not manifestations of the common scheme or plan that was the supposed basis for the single and continuous infringement.

4. Fourth plea in law, alleging that the contested decision should be annulled because it fails to establish participation by the applicants in the single and continuous infringement.

5. Fifth plea in law, alleging that if (contrary to the arguments set out in the fourth plea), the applicants participated in some aspects of the single and continuous infringement, the contested decision does not establish that the applicants were aware of all other aspects of conduct described in the contested decision, notably the clearly unlawful core group coordination, or that it should have been aware of such conduct as required by the case law.

6. Sixth plea in law, alleging that, if the contested decision is not annulled in full, the fine against the applicants should be reduced because the Commission has failed to follow the clear requirements of the Fining Guidelines ([1]) for identifying the relevant turnover, and because the fine imposed does not reflect the applicants limited participation in the single and continuous infringement and lesser gravity of the applicants' conduct (as shown in the third, fourth and fifth pleas).

([1]) Guidelines on the method of setting fines imposed pursuant to Article 32(2)(a) of Regulation No 1/2003 (OJ 2006, C 210, p. 2).

Action brought on 2 June 2017 — Korwin-Mikke v Parliament

(Case T-352/17)

(2017/C 239/80)

Language of the case: French

Parties

Applicant: Janusz Korwin-Mikke (Jozefow, Poland) (represented by: M. Cherchi, A. Daoût and M. Dekleermaker, lawyers)

Defendant: European Parliament

Form of order sought

— Declare this action admissible and well-founded;

Consequently:

— Annul the decision of the Bureau of the European Parliament of 3 April 2017;

— Annul the earlier decision of the President of the Parliament of 14 March 2017;

— Order reparation of the pecuniary and non-pecuniary loss caused by the contested decisions, or award the applicant the sum of EUR 19 180;

— In any event, order the European Parliament 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 infringement of Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), the general principle of freedom of expression, read in conjunction with Article 10 of the European Convention on Human Rights and Article 52 of the Charter, with the particular circumstance that the remarks referred to in the contested decisions were made by a Member of the European Parliament in the exercise of his functions and inside the premises of the European Union institutions, and infringement of Article 166 of the Rules of Procedure of the European Parliament, of Article 41 of the Charter, of the principle that reasons must be stated for acts of the EU institutions, of Article 296 TFEU, a manifest error of assessment and an act *ultra vires*.

2. Second plea in law, alleging infringement of Article 41 of the Charter, the principle that reasons must be stated for acts of the EU institutions, the general principle of proportionality, a manifest error of assessment and an act *ultra vires*.

Action brought on 2 June 2017 — Daico International v EUIPO — American Franchise Marketing (RoB)

(Case T-355/17)

(2017/C 239/81)

Language in which the application was lodged: English

Parties

Applicant: Daico International BV (Amsterdam, Netherlands) (represented by: M. Kassner, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: American Franchise Marketing Ltd (London, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark 'RoB' — EU trade mark No 5 284 104

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 9 March 2017 in Case R 1405/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 75(1) of Regulation No 207/2009;

— Infringement of Rule 62(3) of Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 2 June 2017 — Daico International v EUIPO — American Franchise Marketing (RoB)

(Case T-356/17)

(2017/C 239/82)

Language in which the application was lodged: English

Parties

Applicant: Daico International BV (Amsterdam, Netherlands) (represented by: M. Kassner, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: American Franchise Marketing Ltd (London, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'RoB' — EU trade mark No 5 752 324

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 21 March 2017 in Case R 1407/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 75(1) of Regulation No 207/2009;

— Infringement of Rule 62(3) of Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 31 May 2017 — Mubarak/Council

(Case T-358/17)

(2017/C 239/83)

Language of the case: English

Parties

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

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2017/496 of 21 March 2017 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (the 'Contested Decision'; OJ 2017, L 76, p. 22), and Council Implementing Regulation (EU) 2017/491 of 21 March 2017 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (the 'Contested Regulation'; OJ 2017, L 76, p. 10), insofar as they apply to the applicant;

— declare that Article 1(1) of Council Decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (the 'Decision'; OJ 2011 L 76, p. 63) and Article 2(1) of Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (the 'Regulation'; OJ 2011 L 76, p. 4) are inapplicable insofar as they apply to the applicants, and, as a consequence, annul the Decision (CFSP) 2016/411, insofar as it applies to the applicant, and

— order the Council to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Article 1(1) of the Decision and Article 2(1) of the Regulation are illegal because (a) they lack a valid legal basis and/or (b) they breach the principle of proportionality.

2. Second plea in law, alleging the violation of the applicant's rights under Article 6, read with Articles 2 and 3, TEU and Articles 47 and 48 of the EU Charter of Fundamental Rights by the Council's assumption that the judicial proceedings in Egypt complied with fundamental human rights.

3. Third plea in law, alleging that the Council has made errors of assessment in considering that the criterion for listing the Applicant in Article 1(1) of the Decision and Article 2(1) of the Regulation was satisfied.

4. Fourth plea in law, alleging that the Council has violated the applicant's right of defence and the right to good administration and effective judicial review. In particular, the Council failed to carefully and impartially examine whether the alleged reasons said to justify re-designation were well founded in light of the representations made by the Applicant prior to re-designation.

5. Fifth plea in law, alleging that the Council has infringed, without justification or proportion, the applicant's fundamental rights, including his right to protection of property and reputation. The impact of the Contested Decision and Contested Regulation on the applicant is far-reaching, both as regards to his property, and to his reputation worldwide. The Council has failed to demonstrate that the freezing of the applicant's assets and economic resources is related to, or justified by, any legitimate aim, still less that it is proportionate to such an aim.

Order of the General Court of 24 April 2017 — Ipuri v EUIPO — van Graaf (IPURI)

(Case T-226/16) ([1])

(2017/C 239/84)

Language of the case: German

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

([1]) OJ C 232, 27.6.2016.

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