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(2019/C 65/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 13 December 2018 — European Union, represented by the Court of Justice of the European Union v Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH, Gascogne SA, European Commission (C-138/17), Gascogne Sack Deutschland GmbH, Gascogne SA v European Union, represented by the Court of Justice of the European Union, European Commission (C-146/17)

(Joined Cases C-138/17 P and C-146/17 P) ([1])

(Appeal — Actions for damages — Second paragraph of Article 340 TFEU — Excessive duration of the proceedings in two cases before the General Court of the European Union — Damage allegedly suffered by the applicants — Material damage — Bank guarantee charges — Causal link — Default interest — Non material damage)

(2019/C 65/02)

Language of the case: French

Parties

(Case C-138/17 P)

Appellant: European Union, represented by the Court of Justice of the European Union (represented by: J. Inghelram and Á. M. Almendros Manzano, acting as Agents)

Other parties to the proceedings: Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH, Gascogne SA (represented by: F. Puel and E. Durand, avocats), European Commission (represented by: C. Urraca Caviedes, S. Noë and F. Erlbacher, acting as Agents)

(Case C-146/17 P)

Appellants: Gascogne Sack Deutschland GmbH, Gascogne SA (represented by: F. Puel and E. Durand, avocats)

Other parties to the proceedings: European Union, represented by the Court of Justice of the European Union (represented by: J. Inghelram and A.M. Almendros Manzano, acting as Agents), European Commission

Operative part of the judgment

The Court:

1. *Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 10 January 2017, Gascogne Sack Deutschland and Gascogne v European Union (T-577/14, EU:T:2017:1);*

2. *Dismisses the appeal in Case C-146/17 P brought by Gascogne Sack Deutschland GmbH and Gascogne SA;*

3. *Dismisses the claim for damages brought by Gascogne Sack Deutschland GmbH and Gascogne SA inasmuch as it seeks to obtain compensation in the amount of EUR 187 571 for the alleged material damage consisting in the payment of bank guarantee charges beyond a reasonable time for adjudicating in the cases which gave rise to the judgments of 16 November 2011, Groupe Gascogne v Commission (T-72/06, not published, EU:T:2011:671), and of 16 November 2011, Sachsa Verpackung v Commission (T-79/06, not published, EU:T:2011:674);*

4. *Orders Gascogne Sack Deutschland GmbH and Gascogne SA to bear their own costs and to pay all the costs incurred by the European Union, represented by the Court of Justice of the European Union, in relation to the present appeals, and to bear their own costs at first instance;*

5. *Orders the European Union, represented by the Court of Justice of the European Union, to bear its own costs incurred at first instance;*

6. *Orders the Commission to bear its own costs of both the proceedings at first instance and of the appeal in Case C-138/17 P.*

([1]) OJ C 151, 15.5.2017.

Judgment of the Court (First Chamber) of 13 December 2018 — European Union, represented by the Court of Justice of the European Union v Kendrion NV, European Commission

(Case C-150/17 P) ([1])

(Appeal — Actions for damages — Second paragraph of Article 340 TFEU — Excessive duration of the proceedings in a case before the General Court of the European Union — Compensation for damage allegedly suffered by the applicant — Material damage — Bank guarantee charges — Causal link — Default interest — Non-material damage)

(2019/C 65/03)

Language of the case: Dutch

Parties

Appellant: European Union, represented by the Court of Justice of the European Union (represented by: J. Inghelram and E. Beysen, acting as Agents)

Other parties to the proceedings: Kendrion NV (represented by: Y. de Vries, T. Ottervanger and E. Besselink, advocaten), European Commission (represented by: C. Urraca Caviedes, S. Noë and F. Erlbacher, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 1 February 2017, Kendrion v European Union (T-479/14, EU:T:2017:48);*

2. *Dismisses the cross-appeal brought by Kendrion NV;*

3. *Dismisses the claim for damages brought by Kendrion NV, inasmuch as it seeks to obtain compensation for the material damage consisting in the payment of bank guarantee charges beyond a reasonable time for adjudicating in the case which gave rise to the judgment of 16 November 2011, Kendrion v Commission (T-54/06, not published, EU:T:2011:667);*

4. *Orders Kendrion NV to bear its own costs and to pay all the costs incurred by the European Union, represented by the Court of Justice of the European Union, in relation to the present appeal, and to bear its own costs at first instance;*

5. *Orders the European Union, represented by the Court of Justice of the European Union, to bear its own costs incurred at first instance;*

6. *Orders the European Commission to bear its own costs of both the proceedings at first instance and of the present appeal.*

(1) OJ C 161, 22.5.2017.

Judgment of the Court (First Chamber) of 13 December 2018 — European Union, represented by the Court of Justice of the European Union v Plásticos Españoles SA (ASPLA), Armando Álvarez, SA, European Commission (C-174/17 P), Plásticos Españoles, SA (ASPLA), Armando Álvarez, SA v European Union, represented by the Court of Justice of the European Union, European Commission (C-222/17 P)

(Joined Cases C-174/17 P and C-222/17 P) (1)

(Appeal — Actions for damages — Second paragraph of Article 340 TFEU — Excessive duration of the proceedings in two cases before the General Court of the European Union — Compensation for damage allegedly suffered by the applicants — Material damage — Bank guarantee charges — Causal link — Default interest)

(2019/C 65/04)

Language of the case: Spanish

Parties

(Case C-174/17 P)

Appellant: European Union represented by the Court of Justice of the European Union (represented initially by J. Inghelram, Á.M. Almendros Manzano and P. Giusta, acting as Agents, and subsequently by J. Inghelram and Á.M. Almendros Manzano, acting as Agents)

Other parties to the proceedings: Plásticos Españoles SA (ASPLA), Armando Álvarez, SA (represented by: M. Troncoso Ferrer, C. Ruixó Claramunt and S. Moya Izquierdo, abogados), European Commission (represented by: C. Urraca Caviedes, S. Noë, F. Erlbacher and F. Castilla Contreras, acting as Agents)

(Case C-222/17 P)

Appellants: Plásticos Españoles, SA (ASPLA), Armando Álvarez, SA (represented by: S. Moya Izquierdo and M. Troncoso Ferrer, abogados)

Other parties to the proceedings being: European Union, represented by the Court of Justice of the European Union (represented initially by J. Inghelram, Á.M. Almendros Manzano and P. Giusta, acting as Agents, and subsequently by J. Inghelram and Á.M. Almendros Manzano, acting as Agents), European Commission

Operative part of the judgment

The Court:

1. *Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 17 February 2017, ASPLA and Armando Álvarez v European Union (T-40/15, EU:T:2017:105);*

2. *Dismisses the appeal in Case C-222/17 P brought by Plásticos Españoles SA (ASPLA) and Armando Álvarez SA;*

3. *Dismisses the claim for damages brought by Plásticos Españoles SA (ASPLA) and Armando Álvarez SA inasmuch as it seeks to obtain compensation in the amount of EUR 3 495 038,66 for the material damage suffered as a result of the fact that the reasonable time for adjudicating was exceeded in the cases which gave rise to the judgments of 16 November 2011, ASPLA v Commission (T-76/06, not published, EU:T:2011:672), and of 16 November 2011, Álvarez v Commission (T-78/06, not published, EU:T:2011:673);*

4. *Orders Plásticos Españoles SA (ASPLA) and Armando Álvarez SA to bear their own costs and to pay all the costs incurred by the European Union, represented by the Court of Justice of the European Union, in relation to the present appeals, and to bear their own costs at first instance;*

5. *Orders the European Union, represented by the Court of Justice of the European Union, to bear its own costs incurred at first instance;*

6. *Orders the European Commission to bear its own costs of both the proceedings at first instance and of the appeal in Case C-174/17 P.*

([1]) OJ C 161, 22.5.2017.
OJ C 213, 3.7.2017.

Judgment of the Court (Eighth Chamber) of 19 December 2018 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Autorità Garante della Concorrenza e del Mercato — Antitrust, Coopservice Soc. coop. arl v Azienda Socio-Sanitaria Territoriale della Vallecamonica — Sebino (ASST), Azienda Socio-Sanitaria Territoriale del Garda (ASST), Azienda Socio-Sanitaria Territoriale della Valcamonica (ASST)

(Case C-216/17) ([1])

(Reference for a preliminary ruling — Directive 2004/18/EC — Article 1(5) — Article 32(2) — Award of public works contracts, public supply contracts and public service contracts — Framework agreements — Clause extending the framework agreement to other contracting authorities — Principles of transparency and equal treatment of economic operators — No determination of the quantity covered by subsequent public procurement contracts or determination by reference to the usual requirements of the contracting authorities that are not signatories to the framework agreement — Prohibition)

(2019/C 65/05)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Autorità Garante della Concorrenza e del Mercato — Antitrust, Coopservice Soc. coop. arl

Defendants: Azienda Socio-Sanitaria Territoriale della Vallecamonica — Sebino (ASST), Azienda Socio-Sanitaria Territoriale del Garda (ASST), Azienda Socio-Sanitaria Territoriale della Valcamonica (ASST)

Intervener in support of the defendant: Markas Srl, ATI — Zanetti Arturo & C. Srl e in proprio, Regione Lombardia

Operative part of the judgment

Article 1(5) and the fourth subparagraph of Article 32(2) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that:

— *a contracting authority may act on its own behalf and on behalf of other contracting authorities that are specifically indicated but are not direct parties to a framework agreement, provided that the requirements as to advertising and legal certainty and, consequently, those relating to transparency are complied with; and*

— *it cannot be accepted that contracting authorities that are not signatories to the framework agreement refrain from determining the quantity of services that may be required when they conclude contracts pursuant to the framework agreement or determine that quantity by reference to their usual requirements, because, if they do so, the principles of transparency and equal treatment of economic operators with an interest in the conclusion of that framework contract will be infringed.*

([1]) OJ C 277, 21.8.2017.

Judgment of the Court (Grand Chamber) of 19 December 2018 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Silvio Berlusconi, Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia, Istituto per la Vigilanza Sulle Assicurazioni (IVASS)

(Case C-219/17) ([1])

(Reference for a preliminary ruling — Approximation of laws — Prudential supervision of credit institutions — Acquisition of a qualifying holding in a credit institution — Procedure governed by Directive 2013/36/EU and by Regulations (EU) No 1024/2013 and No 468/2014 — Composite administrative procedure — Exclusive decision-making power of the European Central Bank (ECB) — Action brought against preparatory acts adopted by the national competent authority — Claim that the force of res judicata attaching to a national decision has been disregarded)

(2019/C 65/06)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Silvio Berlusconi, Finanziaria d'investimento Fininvest SpA (Fininvest)

Defendants: Banca d'Italia, Istituto per la Vigilanza Sulle Assicurazioni (IVASS)

Third parties: Ministero dell'Economia e delle Finanze, Banca Mediolanum SpA, Holding Italiana Quarta SpA, Fin. Prog. Italia di E. Doris & C. s.a.p.a., Sirefid SpA, Ennio Doris

Operative part of the judgment

Article 263 TFEU must be interpreted as precluding national courts from reviewing the legality of decisions to initiate procedures, preparatory acts or non-binding proposals adopted by competent national authorities in the procedure provided for in Articles 22 and 23 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, in Articles 4(1)(c) and 15 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions and in Articles 85 to 87 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation). It is immaterial in that regard that a specific action for a declaration of invalidity on the ground of alleged disregard of the force of res judicata attaching to a national judicial decision has been brought before a national court.

([1]) OJ C 283, 28.8.2017.

Judgment of the Court (Fourth Chamber) of 13 December 2018 (request for a preliminary ruling from the Conseil d'État — France) — France Télévisions SA v Playmédia, Conseil supérieur de l'audiovisuel (CSA)

(Case C-298/17) ([1])

(Reference for a preliminary ruling — Directive 2002/22/EC — Electronic communications networks and services — Universal service and users' rights — Undertaking providing an electronic communications network used for the distribution of radio or television broadcasts to the public — Undertaking offering the live streaming of television programmes online — 'Must carry' obligation)

(2019/C 65/07)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: France Télévisions SA

Defendants: Playmédia, Conseil supérieur de l'audiovisuel (CSA)

Intervener: Ministry of Culture and Communication

Operative part of the judgment

1. *Article 31(1) of 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), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that an undertaking which offers the live streaming of television programmes online must not, based on that fact alone, be regarded as an undertaking which provides an electronic communications network used for the distribution of radio or television channels to the public.*

2. *The provisions of Directive 2002/22, as amended by Directive 2009/136, must be interpreted as not precluding a Member State from imposing, in a situation such as that at issue in the main proceedings, a 'must carry' obligation on undertakings which, without providing electronic communication networks, offer the live streaming of television programmes online.*

([1]) OJ C 256, 7.8.2017.

Judgment of the Court (First Chamber) of 19 December 2018 (request for a preliminary ruling from the Bundespatentgericht — Germany) — S v EA, EB, EC

(Case C-367/17) ([1])

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 510/2006 — Article 4(2)(e) — Regulation (EU) No 1151/2012 — Article 7(1)(e) — Protection of geographical indications and designations of origin — Application to amend the product specification — Ham originating from the Black Forest, Germany ('Schwarzwälder Schinken') — Requirements to package in the area of production — Applicability of Regulation (EC) No 510/2006 or of Regulation (EU) No 1151/2012)

(2019/C 65/08)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: S

Defendants: EA, EB, EC

Operative part of the judgment

Article 4(2)(e) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, in conjunction with Article 8 of Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Regulation No 510/2006, and Article 7(1)(e) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, must be interpreted as meaning that the requirement to package a product covered by a protected geographical indication in its geographical area of production is justified, under Article 4(2)(e), if it constitutes a necessary and proportionate means to safeguard the quality of the product, to guarantee its origin or to ensure the verification of the specification of the protected geographical indication. It is for the national court to assess whether that requirement is duly justified by one of the objectives mentioned above, regarding the protected geographical indication 'Schwarzwälder Schinken'.

([1]) OJ C 293, 4.9.2017.

Judgment of the Court (Grand Chamber) of 19 December 2018 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt B v A- Brauerei

(Case C-374/17) ([1])

(Reference for a preliminary ruling — State aid — Article 107(1) TFEU — Real property transfer tax — Exemption — Transfers in ownership of a property occurring as a result of restructuring procedures carried out within certain groups of companies — Concept of 'State aid' — Condition relating to selectivity — Justification)

(2019/C 65/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt B

Defendant: A-Brauerei

Intervener: Bundesministerium der Finanzen

Operative part of the judgment

Article 107(1) TFEU must be interpreted as meaning that a tax advantage, such as that at issue in the main proceedings, which consists in exempting from real property transfer tax the transfer of ownership of a property which occurred because of a restructuring procedure involving only companies of the same group, linked by a shareholding of at least 95 % during a minimum, uninterrupted period of five years prior to that procedure and of five years thereafter, does not fulfil the condition relating to the selectivity of the advantage concerned, laid down in Article 107(1) TFEU.

([1]) OJ C 309, 18.9.2017.

Judgment of the Court (Second Chamber) of 19 December 2018 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Stanley International Betting Ltd, Stanleybet Malta Ltd v Ministero dell'Economia e delle Finanze, Agenzia delle Dogane e dei Monopoli

(Case C-375/17) ([1])

(Reference for a preliminary ruling — Articles 49 and 56 TFEU — Freedom of establishment and freedom to provide services — Games of chance — Concession for management of the computerised Lotto and other fixed-odds numerical games according to the sole concessionaire model — Restriction — Overriding reasons in the public interest — Proportionality)

(2019/C 65/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Stanley International Betting Ltd, Stanleybet Malta Ltd

Defendants: Ministero dell'Economia e delle Finanze, Agenzia delle Dogane e dei Monopoli

Interveners in support of the defendants: Lottomatica SpA, Lottoitalia Srl

Operative part of the judgment

1. *Articles 49 and 56 TFEU must be interpreted as not precluding national rules, such as those at issue in the main proceedings, which provide, for the concession for management of the computerised Lotto and other fixed-odds numerical games, a sole concessionaire model, unlike other games, prediction games and betting, to which a multiple concessionaire model applies, provided that the national court establishes that the national rules actually pursue, in a consistent and systematic manner, the objectives relied on by the Member State concerned.*

2. *Articles 49 and 56 TFEU and the principles of non-discrimination, transparency and proportionality must be interpreted as meaning that they do not preclude national rules and the relevant implementing acts, such as those at issue in the case in the main proceedings, which provide, for the concession for management of the computerised Lotto and other fixed-odds numerical games, a high basic contract value, provided that that value is formulated in a clear, precise and unambiguous manner and that it is objectively justified, which is for the national court to determine.*

3. *Articles 49 and 56 TFEU must be interpreted as not precluding a provision, such as that at issue in the main proceedings, contained in a model concession contract relating to a call for tenders and which provides for the withdrawal of the concession for management of the computerised Lotto and other fixed-odds numerical games:*

   — *for any type of offence in relation to which indictment is provided for and which, because of its nature, seriousness, method of commission and connection with the activity for which the concession was awarded, the contracting authority takes the view that it is such as to preclude the concessionaire possessing the requisite reliability, professionalism and moral quality,*

   — *or if the concessionaire infringes the rules on the prevention of irregular, unlawful and covert gaming and, in particular, where the concessionaire itself, or a company controlled by or linked to it, wherever located, markets other games comparable to the computerised Lotto and other fixed-odds numerical games, without possessing the requisite licence,*

provided that those clauses are justified and are proved to be proportionate to the objective pursued and comply with the principle of transparency, which is for the national court to determine in the light of the guidance set out in the present judgment.

([1]) OJ C 330, 2.10.2017.

Judgment of the Court (Fourth Chamber) of 13 December 2018 (request for a preliminary ruling from the Arbeitsgericht Verden — Germany) — Torsten Hein v Albert Holzkamm GmbH & Co.

(Case C-385/17) ([1])

(Reference for a preliminary ruling — Social policy — Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Article 7(1) — Legislation of a Member State under which collective agreements may provide for account to be taken of periods of short-time working when calculating remuneration to be paid in respect of annual leave — Temporal effects of judgments ruling on interpretation)

(2019/C 65/11)

Language of the case: German

Referring court

Arbeitsgericht Verden

Parties to the main proceedings

Applicant: Torsten Hein

Defendant: Albert Holzkamm GmbH & Co.

Operative part of the judgment

1. *Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide for account to be taken of reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, with the consequence that the worker receives, for the duration of the minimum period of annual leave to which he is entitled under Article 7 (1) of the directive, remuneration for annual leave that is lower than the normal remuneration which he receives during periods of work. It is for the referring court to interpret the national legislation, so far as possible, in the light of the wording and the purpose of Directive 2003/88, in such a way that the remuneration for annual leave paid to workers in respect of the minimum annual leave provided for in Article 7(1) is not less than the average of the normal remuneration received by those workers during periods of actual work.*

2. *It is not appropriate to limit the temporal effects of the present judgment and EU law must be interpreted as precluding national courts from protecting, on the basis of national law, the legitimate expectation of employers that the case-law of the highest national courts, which confirmed the lawfulness of the provisions concerning paid annual leave in the Bundesrahmentarifvertrag für das Baugewerbe (Federal collective framework agreement for the construction industry), will continue to apply.*

([1]) OJ C 318, 25.9.2017.

Judgment of the Court (Second Chamber) of 13 December 2018 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v Touring Tours und Travel GmbH (C-412/17), Sociedad de Transportes SA (C-474/17)

(Joined Cases C-412/17 and C-474/17) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 562/2006 — Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) — Articles 20 and 21 — Abolition of internal border controls in the Schengen area — Checks within the territory of a Member State — Measures having an effect equivalent to border checks — Rules of a Member State requiring a coach travel operator on routes crossing the internal borders of the Schengen area to check passengers' passports and residence permits — Penalty — Threat to impose a recurring fine)

(2019/C 65/12)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: Touring Tours und Travel GmbH (C-412/17), Sociedad de Transportes SA (C-474/17)

Operative part of the judgment

Article 67(2) TFEU and Article 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, must be interpreted to the effect that they preclude legislation of a Member State, such as that at issue in the main proceedings, which requires every coach transport undertaking providing a regular cross-border service within the Schengen area to the territory of that Member State to check the passports and residence permits of passengers before they cross an internal border in order to prevent the transport of third-country nationals not in possession of those travel documents to the national territory, and which allows, for the purposes of complying with that obligation to carry out checks, the police authorities to issue orders prohibiting such transport, accompanied by a threat of a recurring fine, against transport undertakings which have been found to have conveyed to that territory third-country nationals who were not in possession of the requisite travel documents.

([1]) OJ C 330, 2.10.2017.
OJ C 382, 13.11.2017.

Judgment of the Court (Fourth Chamber) of 19 December 2018 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — AREX CZ a.s. v Odvolací finanční ředitelství

(Case C-414/17) ([1])

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Article 2(1)(b)(i) and (iii) — Article 3(1) — Intra-Community acquisitions of goods subject to excise duties — Article 138(1) and (2)(b) — Intra-Community supply of goods — Chain transactions with a single transport — Transaction to which the transport should be ascribed — Transport under an excise duty suspension arrangement — Impact on the classification of an intra-Community purchase)

(2019/C 65/13)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: AREX CZ a.s.

Defendant: Odvolací finanční ředitelství

Operative part of the judgment

1. *Article 2(1)(b)(iii) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that it applies to intra-Community acquisitions of excise goods, in respect of which the excise duty is chargeable in the Member State of destination of the dispatch or transport of those goods, carried out by a taxable person whose other acquisitions are not subject to value added tax pursuant to Article 3(1) of that directive.*

2. *Article 2(1)(b)(iii) of Directive 2006/112 must be interpreted as meaning that, in a chain of successive transactions which gave rise only to a single intra-Community transport of excise goods under an excise duty suspension arrangement, the acquisition carried out by the trader liable for payment of the excise duty in the Member State of destination of the dispatch or transport of those goods cannot be classified as an intra-Community acquisition subject to value added tax under that provision, where that transport cannot be ascribed to that acquisition.*

3. *Article 2(1)(b)(i) of Directive 2006/112 must be interpreted as meaning that, where there is a chain of successive acquisitions concerning the same excise goods and which gave rise only to a single intra-Community transport of those goods under an excise duty suspension arrangement, the fact that those goods are transported under that arrangement does not constitute a decisive factor in determining to which acquisition the transport is to be ascribed for the purposes of applying value added tax under that provision.*

([1]) OJ C 300, 11.9.2017.

Judgment of the Court (Fourth Chamber) of 19 December 2018 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Szef Krajowej Administracji Skarbowej v Skarpa Travel sp. z o.o.

(Case C-422/17) ([1])

(Reference for a preliminary ruling — Harmonisation of tax legislation — Common system of value added tax (VAT) — Directive 2006/112/EC — Chargeable event — Special scheme for travel agents — Articles 65 and 308 — Margin obtained by a travel agent — Determination of the margin — Payments on account made before the supply of travel services by the travel agent — Actual cost borne by the travel agent)

(2019/C 65/14)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Szef Krajowej Administracji Skarbowej

Defendant: Skarpa Travel sp. z o.o.

Operative part of the judgment

1. *Articles 65 and 306 to 310 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 meaning that, when a travel agent, subject to the special scheme laid down in Articles 306 to 310 of that directive, receives a payment on account for tourist services which it will provide to the traveller, the value added tax (VAT) is chargeable, in accordance with that Article 65, on receipt of that payment on account, provided that, at that time, the tourist services to be supplied are precisely designated.*

2. *Article 308 of Directive 2006/112, as amended by Directive 2010/45, must be interpreted as meaning that the margin of the travel agent, and, consequently, its taxable amount, corresponds to the difference between the total amount, exclusive of value added tax (VAT), to be paid by the traveller and the actual input cost incurred by the travel agent in respect of supplies of goods and services provided by other taxable persons, in so far as those transactions are for the direct benefit of the traveller. When the amount of the payment on account corresponds to the total price of the tourist service or to a significant part of that price, and the travel agent has not yet incurred any actual cost, or has incurred only a limited part of the individual total cost of that service, or even when the individual actual cost of the trip incurred by the travel agent cannot be determined at the time when the payment on account is made, the profit margin can be determined on the basis of an estimate of the total actual cost which it will ultimately have to incur. For the purpose of such an estimate, the travel agent must take into account, where relevant, the costs which it has already actually incurred at the time of receipt of the payment on account. For the purpose of the calculation of the margin, the estimated total actual cost is deducted from the total price of the trip and the taxable amount for VAT to be paid at the time of receipt of the payment on account is obtained by multiplying the amount of that payment on account by the percentage corresponding to the part of the total cost of the trip that the estimated profit margin, thus determined, represents.*

([1]) OJ C 357, 23.10.2017.

Judgment of the Court (Fourth Chamber) of 13 December 2018 (request for a preliminary ruling from the Landgericht Tübingen — Germany) — Südwestrundfunk v Tilo Rittinger, Patrick Wolter, Harald Zastera, Dagmar Fahner, Layla Sofan, Marc Schulte

(Case C-492/17) ([1])

(Reference for a preliminary ruling — State aid — Article 107(1) TFEU — Article 108(3) TFEU — Public broadcasting institutions — Financing — Legislation of a Member State under which all adults possessing a dwelling within the country are required to pay a contribution to public broadcasters)

(2019/C 65/15)

Language of the case: German

Referring court

Landgericht Tübingen

Parties to the main proceedings

Applicant: Südwestrundfunk

Defendants: Tilo Rittinger, Patrick Wolter, Harald Zastera, Dagmar Fahner, Layla Sofan, Marc Schulte

Operative part of the judgment

1. *Article 1(c) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] must be interpreted as meaning that an alteration to the system of financing the public broadcasting of a Member State which, like that at issue in the main proceedings, consists in replacing a broadcasting fee payable on the basis of possession of a receiving device by a broadcasting contribution payable in particular on the basis of occupation of a dwelling or business premises does not constitute an alteration to existing aid within the meaning of that provision which should be notified to the Commission under Article 108(3) TFEU.*

2. *Articles 107 and 108 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which confers on public broadcasters powers, as exceptions to the general law, allowing those broadcasters themselves to enforce claims in respect of unpaid broadcasting contributions.*

(1) OJ C 402, 27.11.2017.

Judgment of the Court (Grand Chamber) of 11 December 2018 (request for a preliminary ruling from the Bundesverfassungsgericht — Germany) — proceedings brought by Heinrich Weiss and Others

(Case C-493/17) (1)

(Reference for a preliminary ruling — Economic and monetary policy — Decision (EU) 2015/774 of the European Central Bank — Validity — Secondary markets public sector asset purchase programme — Articles 119 and 127 TFEU — Powers of the ECB and the European System of Central Banks — Maintenance of price stability — Proportionality — Article 123 TFEU — Prohibition of monetary financing of Member States in the euro area)

(2019/C 65/16)

Language of the case: German

Referring court

Bundesverfassungsgericht

Parties to the main proceedings

Applicants: Heinrich Weiss, Jürgen Heraeus, Patrick Adenauer, Bernd Lucke, Hans-Olaf Henkel, Joachim Starbatty, Bernd Kölmel, Ulrike Trebesius, Peter Gauweiler, Johann Heinrich von Stein, Gunnar Heinsohn, Otto Michels, Reinhold von Eben-Worlée, Michael Göde, Dagmar Metzger, Karl-Heinz Hauptmann, Stefan Städter, Markus C. Kerber

Interested parties: Bundesregierung, Bundestag, Deutsche Bundesbank

Operative part of the judgment

1. *Consideration of the first to fourth questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme, as amended by Decision (EU) 2017/100 of the European Central Bank of 11 January 2017.*

2. *The fifth question is inadmissible.*

(1) OJ C 402, 27.11.2017.

Judgment of the Court (First Chamber) of 13 December 2018 (request for a preliminary ruling from the Cour d'appel de Liège — Belgium) — Execution of a European arrest warrant issued against Marin-Simion Sut

(Case C-514/17) (1)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 4(6) — Grounds for optional non-execution of the European arrest warrant — Offence underlying the imposition of a custodial sentence in the issuing Member State being punishable in the executing Member State by fine only)

(2019/C 65/17)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Marin-Simion Sut

Operative part of the judgment

Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where, as in the case in the main proceedings, a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence resides in the executing Member State and has family, social and working ties in that Member State, the executing judicial authority may, for reasons related to the social rehabilitation of that person, refuse to execute that warrant, despite the fact that the offence which provides the basis for that warrant is, under that national law of the executing Member State, punishable by fine only, provided that, in accordance with its national law, that fact does not prevent the custodial sentence imposed on the person requested from actually being enforced in that Member State, which is for the referring court to ascertain.

([1]) OJ C 347, 16.10.2017.

Judgment of the Court (Fourth Chamber) of 19 December 2018 — Mykola Yanovych Azarov v Council of the European Union

(Case C-530/17 P) ([1])

(Appeal — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds and economic resources — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the appellant's name — Decision by an authority of a third State — Council's obligation to verify that that decision was taken in accordance with the rights of the defence and the right to effective judicial protection)

(2019/C 65/18)

Language of the case: German

Parties

Appellant: Mykola Yanovych Azarov (represented by: A. Egger and G. Lansky, Rechtsanwälte)

Other party to the proceedings: Council of the European Union (represented by: J.-P. Hix and F. Naert, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 7 July 2017, Azarov v Council (T-215/15, EU:T:2017:479);*

2. *Annuls Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as they concern Mr Mykola Yanovych Azarov;*

3. *Orders the Council of the European Union to pay the costs incurred both in the proceedings at first instance and in the present appeal.*

([1]) OJ C 374, 6.11.2017.

Judgment of the Court (Fourth Chamber) of 19 December 2018 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Alpenchalets Resorts GmbH v Finanzamt München Abteilung Körperschaften

(Case C-552/17) ([1])

(Reference for a preliminary ruling — Taxation — Harmonisation of fiscal legislation — Common system of value added tax (VAT) — Directive 2006/112/EC — Special scheme for travel agents — Supply of a holiday residence rented from other taxable persons — Additional services — Ancillary or principal services — Reduced rate of tax — Accommodation supplied by a travel agent in his own name)

(2019/C 65/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Alpenchalets Resorts GmbH

Defendant: Finanzamt München Abteilung Körperschaften

Operative part of the judgment

1. *Articles 306 to 310 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 mere supply by a travel agent of holiday accommodation rented from other taxable persons or such a supply of a holiday residence combined with the supply of additional ancillary services, regardless of the importance of those ancillary services, each amount to a single service covered by the special scheme for travel agents.*

2. *Article 98(2) of Directive 2006/112 must be interpreted as meaning that the supply of travel agent services consisting of the supply of holiday accommodation, covered by Article 307 of that directive, cannot be subject to a reduced tax rate or one of the reduced rates set out in Article 98(2).*

([1]) OJ C 437, 18.12.2017.

Judgment of the Court (Fourth Chamber) of 19 December 2018 (request for a preliminary ruling from the Högsta domstolen — Sweden) — Criminal proceedings against Imran Syed

(Case C-572/17) ([1])

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Article 4 (1) — Distribution right — Infringement — Goods bearing a copyrighted motif intended for sale — Storage for commercial purposes — Storage facility separate from place of sale)

(2019/C 65/20)

Language of the case: Swedish

Referring court

Högsta domstolen

Party in the main proceedings

Imran Syed

Operative part of the judgment

Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the storage by a retailer of goods bearing a motif protected by copyright on the territory of the Member State where the goods are stored may constitute an infringement of the exclusive distribution right, as defined by that provision, when that retailer offers for sale, without the authorisation of the copyright holder, goods identical to those which he is storing, provided that the stored goods are actually intended for sale on the territory of the Member State in which that motif is protected. The distance between the place of storage and the place of sale cannot, on its own, be a decisive element in determining whether the stored goods are intended for sale on the territory of that Member State.

([1]) OJ C 412, 4.12.2017.

Judgment of the Court (Tenth Chamber) of 19 December 2018 (request for a preliminary ruling from the Commissione Tributaria Provinciale di Cagliari — Italy) — Francesca Cadeddu v Agenzia delle Entrate — Direzione provinciale di Cagliari, Regione autonoma della Sardegna, Regione autonoma della Sardegna — Agenzia regionale per il lavoro

(Case C-667/17) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 1083/2006 — Article 2(4) — Concept of beneficiary — Article 80 — Prohibition on making a deduction or withholding sums paid — Other specific charge or charge with equivalent effect — Concept — Study grant co-financed by the European Social Fund — Treatment as income from employment — Retention on account of income tax increased by additional regional and municipal taxes)

(2019/C 65/21)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Cagliari

Parties to the main proceedings

Applicant: Francesca Cadeddu

Defendants: Agenzia delle Entrate — Direzione provinciale di Cagliari, Regione autonoma della Sardegna, Regione autonoma della Sardegna — Agenzia regionale per il lavoro

Operative part of the judgment

Article 80 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, read in conjunction with Article 2(4) of that regulation, must be interpreted as not precluding national tax legislation, such as that at issue in the main proceedings, which applies personal income tax to the amounts awarded to natural persons in the form of study grants by the public body responsible for implementing the project selected by the managing authority for the operational programme at issue, for the purposes of Article 2(3) of that regulation, and financed through the European structural funds.

([1]) OJ C 52, 12.2.2018.

Judgment of the Court (Tenth Chamber) of 19 December 2018 (request for a preliminary ruling from the Tribunalul Mureș — Romania) — Criminal proceedings against Virgil Mailat, Delia Elena Mailat, Apcom Select SA

(Case C-17/18) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Articles 19 and 29 and Article 135(1)(l) — Transfer of a totality of assets or part thereof — Exemption for lettings of immovable property — Rental contract concerning an immovable property used for commercial purposes and the movable property necessary for that use — Supply of services relating to that immovable property which gave rise to the deduction of VAT — Adjustment)

(2019/C 65/22)

Language of the case: Romanian

Referring court

Tribunalul Mureș

Parties in the main proceedings

Virgil Mailat, Delia Elena Mailat, Apcom Select SA

Operative part of the judgment

1. *The concept of 'transfer of a totality of assets or part thereof', within the meaning of Article 19 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as not covering the transaction by which an immovable property which was used for commercial purposes is let with all capital equipment and inventory items necessary for that use, even if the lessee pursues the activity of the lessor under the same name.*

2. *Article 135(1)(l) of Directive 2006/112 must be interpreted as meaning that a lease contract for an immovable property which was used for commercial purposes and for all capital equipment and inventory items necessary for that use constitutes a single supply in which the letting of the immovable property is the principal supply.*

([1]) OJ C 123, 9.4.2018.

Judgment of the Court (Eighth Chamber) of 19 December 2018 — European Commission v Republic of Austria

(Case C-51/18) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 2(1) — Administrative practice of imposing VAT on the royalty payable to an author of an original work of art on the basis of the resale right)

(2019/C 65/23)

Language of the case: German

Parties

Applicant: European Commission (represented by: N. Gossement and B.-R. Killmann, acting as Agents)

Defendant: Republic of Austria (represented by: G. Hesse, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by providing that the royalty payable to an author of an original work of art on the basis of the resale right is subject to value added tax, the Republic of Austria has failed to fulfil its obligations under Article 2(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;*

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

([1]) OJ C 112, 26.3.2018.

Judgment of the Court (Full Chamber) of 10 December 2018 (request for a preliminary ruling from the Court of Session (Scotland), Edinburgh — United Kingdom) — Andy Wightman and Others v Secretary of State for Exiting the European Union

(Case C-621/18) ([1])

(Reference for a preliminary ruling — Article 50 TEU — Notification by a Member State of its intention to withdraw from the European Union — Consequences of the notification — Right of unilateral revocation of the notification — Conditions)

(2019/C 65/24)

Language of the case: English

Referring court

Court of Session (Scotland), Edinburgh

Parties to the main proceedings

Applicants: Andy Wightman, Ross Greer, Alyn Smith, David Martin, Catherine Stihler, Jolyon Maugham, Joanna Cherry

Defendant: Secretary of State for Exiting the European Union

Interveners: Chris Leslie, Tom Brake

Operative part of the judgment

Article 50 TEU must be interpreted as meaning that, where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State — for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired — to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.

([1]) OJ C 445, 10.12.2018.

Request for a preliminary ruling from the Tribunalul de Arbitraj Instituționalizat Galați (Romania) lodged on 5 June 2018 — Uniunea Națională a Barourilor din România v Marcel-Vasile Holunga

(Case C-370/18)

(2019/C 65/25)

Language of the case: Romanian

Referring court

Tribunalul de Arbitraj Instituționalizat Galați

Parties to the main proceedings

Applicant: Uniunea Națională a Barourilor din România

Defendant: Marcel-Vasile Holunga

By Order of 13 December 2018, the Court (Eighth Chamber) declared the request for a preliminary ruling manifestly inadmissible.

Appeal brought on 21 June 2018 by Senetic S.A. against the judgment of the General Court (Second Chamber) delivered on 24 April 2018 in Case T-207/17: Senetic v EUIPO

(Case C-408/18 P)

(2019/C 65/26)

Language of the case: English

Parties

Appellant: Senetic S.A. (represented by: M. Krekora, adwokat)

Other parties to the proceedings: European Union Intellectual Property Office, HP Hewlett Packard Group LLC

By order of 13 December 2018 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 21 June 2018 by Senetic S.A. against the judgment of the General Court (Second Chamber) delivered on 24 April 2018 in Case T-208/17: Senetic v EUIPO

(Case C-409/18 P)

(2019/C 65/27)

Language of the case: English

Parties

Appellant: Senetic S.A. (represented by: M. Krekora, adwokat)

Other parties to the proceedings: European Union Intellectual Property Office, HP Hewlett Packard Group LLC

By order of 13 December 2018 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 14 August 2018 by Emcur Gesundheitsmittel aus Bad Ems GmbH against the judgment of the General Court (Ninth Chamber) delivered on 14 June 2018 in Case T-165/17: Emcur v EUIPO

(Case C-533/18 P)

(2019/C 65/28)

Language of the case: English

Parties

Appellant: Emcur Gesundheitsmittel aus Bad Ems GmbH (represented by: K. Bröcker, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 8 January 2019 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Sąd Rejonowy w Słupsku (Poland) lodged on 11 October 2018 — Criminal proceedings against JI

(Case C-634/18)

(2019/C 65/29)

Language of the case: Polish

Referring court

Sąd Rejonowy w Słupsku

Party to the main proceedings

JI

Questions referred

1. Must the rule of EU law contained in Article 4(2)(a) of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, ([1]) read in conjunction with Article 2(1)(c) thereof, be interpreted as meaning that that rule does not preclude the expression 'a significant quantity of drugs' from being interpreted on a case-by-case basis as part of the individual assessment of a national court, and that that assessment does not require the application of any objective criterion, in particular that it does not require a finding that the offender possesses drugs for the purpose of performing acts covered by Article 4(2)(a) of that framework decision, that is to say production, offering, offering for sale, distribution, brokerage, or delivery on any terms whatsoever?

2. In so far as the Polish Law on combating drug addiction contains no precise definition of 'a significant quantity of drugs' and leaves the interpretation thereof to the bench adjudicating in a specific case in the exercise of its 'judicial discretion', are the judicial remedies necessary to ensure the effectiveness and efficiency of the rules of EU law contained in Framework Decision 2004/757/JHA, and in particular Article 4(2)(a) of that framework decision, read in conjunction with Article 2(1)(c) thereof, sufficient to afford Polish citizens effective protection resulting from the rules of EU law laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking?

3. Is the rule of national law contained in Article 62(2) of the Law on combating drug addiction compatible with EU law, and in particular with the rule contained in Article 4(2)(a) of Framework Decision 2004/757/JHA, read in conjunction with Article 2(1)(c) thereof, and, if so, is the interpretation which the national Polish courts place on the expression 'a significant quantity of psychotropic substances and narcotic drugs' contrary to the rule of EU law pursuant to which a person who has committed the offence of possessing large quantities of drugs to perform activities covered by Article 2 (1)(c) of Framework Decision 2004/757/JHA is to be subject to stricter criminal liability?

4. Is Article 62(2) of the Law on combating drug addiction, which lays down stricter criminal liability for the offence of possessing a significant quantity of psychotropic substances and narcotic drugs, as interpreted by the Polish national courts, contrary to the principles of equality and non-discrimination (Article 14 of the European Convention on Human Rights and Articles 20 and 21 of the Charter of Fundamental Rights [of the European Union], read in conjunction with Article 6(1) TEU)?

(1) OJ 2004 L 335, p. 8.

Request for a preliminary ruling from the Sąd Rejonowy w Chełmnie (Poland) lodged on 29 October 2018 — Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) v ZP

(Case C-671/18)

(2019/C 65/30)

Language of the case: Polish

Referring court

Sąd Rejonowy w Chełmnie

Parties to the main proceedings

Applicant: Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (Central Fine Collection Agency, Ministry of Justice and Security) (CJIB)

Defendant: ZP

Questions referred

1. Should Article 7(2)(i)(iii) and Article 20(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, (1) as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (2) ('the Framework Decision'), be interpreted as authorising a court to refuse to enforce a decision of an authority of an issuing State other than a court if it finds that the service of that decision was effected in such a way as to infringe a party's right to an effective defence before a court?

2. In particular, can a finding that, despite the service procedures in force in the issuing State and the time limits laid down for appealing a decision as referred to in Article 1(a)(ii) and (iii) of Council Framework Decision 2005/214/JHA having been observed, the party residing in the State enforcing the decision did not have a real and effective opportunity to protect his rights at the pre-litigation stage of the proceedings due to not having been given sufficient time to respond to the notification of the imposition of the penalty in a proper manner constitute grounds for refusal?

3. Under Article 3 of Council Framework Decision 2005/214/JHA, can the scope of legal protection afforded to persons against whom a financial penalty is to be recognised depend on whether the procedure for imposing the penalty was an administrative procedure, a procedure concerning a petty offence or a criminal procedure?

4. In the light of the objectives and principles set out in Council Framework Decision 2005/214/JHA, including Article 3 thereof, are the decisions of non-judicial authorities which are issued pursuant to the laws of the State issuing the decision concerned, under which the person in whose name a vehicle is registered is held liable for road traffic offences (that is to say, decisions issued solely on the basis of information obtained within the framework of the cross-border exchange of vehicle registration data and without any investigation being carried out in that case, including determining the actual offender), enforceable?

([1]) OJ 2005 L 76, p. 16.

([2]) Council Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24).

Request for a preliminary ruling from Tribunalul Bucureşti (Romania) lodged on 6 November 2018 — TK v Asociația de Proprietari bloc M5A Scara-A

(Case C-708/18)

(2019/C 65/31)

Language of the case: Romanian

Referring court

Tribunalul Bucureşti

Parties to the main proceedings

Applicant: TK

Defendant: Asociația de Proprietari bloc M5A-Scara A

Questions referred

1. Are Articles 8 and 52 of the Charter of Fundamental Rights of the European Union and Article 7(f) of Directive 95/46/EC, ([1]) on the protection of individuals with regard to the processing of personal data, to be interpreted as precluding a provision of national law such as that at issue in the main proceedings, namely Article 5(2) of Law No 677/2001, and Article 6 of Decision No 52/2012 of the ANSPDCP (Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, the National Authority for the Supervision of the Processing of Personal Data), in accordance with which video surveillance may be used to ensure the safety and protection of individuals, property and valuables and for the pursuit of legitimate interests, without the consent of the person concerned?

2. Are Articles 8 and 52 of the Charter of Fundamental Rights of the European Union to be interpreted as meaning that the limitation of rights and freedoms which results from video surveillance is in accordance with the principle of proportionality, satisfies the requirement of being necessary and meets objectives of general interest or the need to protect the rights and freedoms of others, where the controller is able to take other measures to protect the legitimate interest in question?

3. Is Article 7(f) of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data to be interpreted as meaning that the 'legitimate interests' of the controller must be proven, present and effective at the time of the data processing?

4. Is Article 6(1)(e) of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data to be interpreted as meaning that data processing (video surveillance) is excessive or inappropriate where the controller is able to take other measures to protect the legitimate interest in question?

(1) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Request for a preliminary ruling from the Curtea de Apel Timișoara (Romania) lodged on 14 November 2018 — CT v Administrația Județeană a Finanțelor Publice Caraș-Severin — Serviciul inspecție persoane fizice, Direcția Generală Regională a Finanțelor Publice Timișoara — Serviciul soluționare contestații 1

(Case C-716/18)

(2019/C 65/32)

Language of the case: Romanian

Referring court

Curtea de Apel Timișoara

Parties to the main proceedings

Appellant: CT

Respondents: Administrația Județeană a Finanțelor Publice Caraș-Severin — Serviciul inspecție persoane fizice, Direcția Generală Regională a Finanțelor Publice Timișoara — Serviciul soluționare contestații 1

Questions referred

1. In circumstances such as those here at issue, in which a natural person carries on an economic activity by practising several liberal professions and by letting out immovable property and thereby obtaining income of a continuous nature, do the provisions of Article 288 [first paragraph] point 4 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (1) require the identification of a particular professional activity as being the principal activity in order to verify whether the letting can be classified as an ancillary transaction thereto and, if so, on the basis of what criteria is that principal activity to be identified, or must those provisions be interpreted as meaning that all of the professional activities by which the economic activity of that natural person is carried on constitute the 'principal activity'?

2. In the event that the immovable property let by a natural person to a third party is not intended and used for the performance of the remainder of his economic activity, so that it is not possible to establish any connection between that letting and the practice of the various professions of that person, do the provisions of Article 288 [first paragraph] point (4) of Directive 2006/112 permit the classification of the letting as an 'ancillary transaction', with the consequence that it is excluded from the calculation of the turnover which serves as a reference for the purpose of applying the special exemption scheme for small undertakings?

3. In the situation described in the second question, is it relevant to the classification of the letting transaction as 'ancillary' that it is for the benefit of a third party — a legal person of which the natural person is a shareholder and director — established in the property let and carrying on professional activities of the same kind as those of the natural person in question?

(1) OJ 2006 L 347, p. 1.

Appeal brought on 23 November 2018 by Bank for Development and Foreign Economic Affairs (Vnesheconombank) against the judgment of the General Court (Sixth Chamber) delivered on 13 September 2018 in Case T-737/14 Vnesheconombank (VEB) v Council

(Case C-731/18 P)

(2019/C 65/33)

Language of the case: Spanish

Parties

Appellant: Bank for Development and Foreign Economic Affairs (represented by: J. Viñals Camallonga and J. Iriarte Ángel, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— set aside the judgment of the General Court (Sixth Chamber) of 13 September 2018 in Case T-737/14;

— give final judgment in the proceedings by granting the forms of order sought by the applicant, now the appellant, at first instance; that is to say, annul Article 1 of Decision 2014/512/CFSP (1) of 31 July 2014, Article 5 of Regulation (EU) No 833/2014 (2) of 31 July 2014, the new Article 1 in accordance with Decision 2014/659/CFSP (3) of 8 September 2014 and the new Article 5 in accordance with Regulation (EU) No 960/2014 (4) of 8 September 2014, in so far as they concern VEB and remove its name from the annexes in which it is included;

— Order the Council to pay the costs of both actions.

Grounds of appeal and main arguments

The appellant relies on four grounds in support of its appeal:

1. Error in law in that the General Court erroneously ruled that the Council had met its duty to state reasons.

2. Error in law in that the General Court erroneously ruled that there was no manifest error in the assessment of the facts on which the relevant provisions of the contested measures are based; this also amounts to a misuse of powers.

3. Error in law in that the General Court erroneously ruled that the right to an effective remedy had been respected.

4. Error in law in that that the General Court erroneously ruled that VEB's right to property had been respected; this also amounts to an infringement of the principle of equality.

(1) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13)
(2) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1)
(3) Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 271, p. 54)
(4) Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 271, p. 3)

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 30 November 2018 — Föreningen Svenska Tonsättares Internationella Musikbyrå u.p.a. (Stim), Svenska artisters och musikers intresseorganisation ek. för. (SAMI) v Fleetmanager Sweden AB, Nordisk Biluthyrning AB

(Case C-753/18)

(2019/C 65/34)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Appellants: Föreningen Svenska Tonsättares Internationella Musikbyrå u.p.a. (Stim), Svenska artisters och musikers intresseorganisation ek. för. (SAMI)

Respondents: Fleetmanager Sweden AB, Nordisk Biluthyrning AB

Questions referred

1. Does the hiring out of cars which are equipped as standard with radio receivers mean that the person who hires the cars out is a user who makes a communication to the public within the meaning of Article 3(1) of Directive 2001/29 (1) and within the meaning of Article 8(2) of Directive 2006/115? (2)

2. What is the significance, if any, of the volume of the car hire activities and the duration of the hires?

(1) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).
(2) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

Request for a preliminary ruling from the Judecătoria Rădăuți (Romania) lodged on 3 December 2018 — OF v PG

(Case C-759/18)

(2019/C 65/35)

Language of the case: Romanian

Referring court

Judecătoria Rădăuți

Parties to the main proceedings

Applicant: OF

Defendant: PG

Questions referred

1. Should Article 3(1) of Regulation (EC) No 2201/2003 ([1]) be interpreted as meaning that a failure on the part of the defendant to raise an objection that the Romanian courts lack international jurisdiction to give a ruling on a case concerning a 'divorce involving a minor' amounts to his giving tacit consent to the case being decided by the court seised by the applicant, where the parties have their habitual residence in another Member State [of the European Union] (in the present case, Italy) and the divorce proceedings have been brought before a court of the State of which the parties are nationals?

2. Should [Article] 3(1) and [Article] 17 of Regulation (EC) No 2201/2003 be interpreted as meaning that a court may or must raise, of its own motion, an objection that the Romanian courts lack international jurisdiction to give a ruling on a case concerning a 'divorce involving a minor', where there has been no agreement between the parties, who are resident in another Member State [of the European Union] (in the present case, Italy), regarding the choice of the court having jurisdiction (resulting in the action being dismissed as not falling within the jurisdiction of the Romanian courts), which has priority over Article 915(2) of the Codul de procedură civilă (Code of Civil Procedure), pursuant to which an objection may be raised that the Judecătoria Rădăuți (Court of First Instance, Rădăuți) does not have exclusive territorial jurisdiction (resulting in its declining jurisdiction to give a ruling on the case in favour of the Judecătoria Sectorului 5 Bucureşti (Court of First Instance, Sector 5, Bucharest) and the case being decided on the merits), especially given that those provisions are less favourable than the provision of national legislation concerned (Article 915(2) of the Codul de procedură civilă (Code of Civil Procedure))?

3. Should the expression contained in Article 12(1)(b) of Regulation (EC) No 2201/2003, namely 'the jurisdiction of the courts has been accepted … otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised', be interpreted as meaning that, where the parties, who are habitually resident in another Member State [of the European Union] (in the present case, Italy), choose as the court having jurisdiction to give a ruling in divorce proceedings a court of the State of which they are nationals (the Judecătoria Rădăuți (Court of First Instance, Rădăuți) in Romania), that court automatically also has jurisdiction to rule on heads of claim concerning 'the exercise of parental authority, the child's place of habitual residence and the determination of parental contributions towards the costs of the child's care and upbringing'?

4. Should the concept of 'parental responsibility' referred to in Article 2(7) and Article 12 of Regulation (EC) No 2201/2003 be interpreted as also including the concepts of 'parental authority' referred to in Article 483 of the Codul civil (Civil Code), 'the child's place of habitual residence' covered by Article 400 of the Codul civil (Civil Code), and 'parental contributions towards the costs of the child's care and upbringing' covered by Article 402 of the Codul civil (Civil Code)?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Appeal brought on 17 December 2018 by Jean-François Jalkh against the judgment delivered on 17 October 2018 in Case T-26/17 Jalkh v Parliament

(Case C-792/18 P)

(2019/C 65/36)

Language of the case: French

Parties

Appellant: Jean-François Jalkh (represented by: F. Wagner, avocat)

Other party: European Parliament

Form of order sought

The appellant submits that the Court should:

— Set aside the judgment given on 17 October 2018 by the Seventh Chamber of the General Court of the European Union (T-26/17);

Accordingly:

— Annul the decision of the European Parliament of 22 November 2016 adopting Report No A8-0319/2016 on the request for waiver of the immunity and privileges of Jean-François Jalkh, Member of the European Parliament;

— Make an appropriate order on the amount to be awarded to the appellant in respect of the costs of the proceedings;

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

Grounds of appeal and main arguments

The grounds of appeal allege a breach of EU law, error of law and error of characterisation of the legal nature of the facts, as well as manifest error of assessment.

1. The preliminary observations in the judgment

Contrary to the General Court's assertion set out in paragraph 21 of the judgment under appeal, the absence of any waiver of parliamentary immunity does not deprive a party of the possibility of seeking, in France, compensation for the harm suffered solely at civil level, on the ground of fault (Article 1240 of the Civil Code) against a Member of Parliament.

2. The first plea in law analysed by the General Court

The General Court's analysis is based on confusion between two provisions. Point H is part of the reasoning in reference to Article 8 of Protocol No 7, on expressing opinions, whereas the General Court sets out its reasons on that subject in paragraphs 44 to 46, in reference to Article 9 of Protocol No 7 on immunity, which refers to the relevant national provisions.

3. The second and third pleas in law examined by the General Court

It is on account of a manifest error of assessment that the General Court fails to give normative value to the *European Parliament Directorate General for Research Working Paper on 'Parliamentary Immunity in the Member States of the European Community and in the European Parliament, Legal Affairs Series*, and fails to take into account the principles recalled therein, which leads to an erroneous assessment of Article 9 of Protocol No 7 in the light of the facts of the case.

4. The fourth plea in law examined by the General Court

— Existing legal practice

Contrary to the General Court's declaration, an established legal practice of the European Parliament *'consisting in refusing requests for waiver of parliamentary immunity based on facts relating to the political activities of Members of Parliament'* did exist, which ought to have led the General Court to make a different finding on the waiver of parliamentary immunity.

— *Fumus persecutionis*

There is no review on the part of the judicial authorities as to whether an association is partisan, which the General Court ought to have taken into account on a simple reading of the Law of 29 July 1881.

The General Court was able, by examining the statement of the Bureau National de Vigilance contre l'Antisemitisme (National Office for Vigilance against Anti-Semitism; BNVCA), to verify the partisan nature of that association, which seeks the dissolution of the Front National and therefore is indeed a political opponent of Jean-François Jalkh.

This is a clear case of *fumus persecutionis*.

Appeal brought on 17 December 2018 by Jean-François Jalkh against the judgment delivered on 17 October 2018 in Case T-27/17 Jean-François Jalkh v Parliament

(Case C-793/18 P)

(2019/C 65/37)

Language of the case: French

Parties

Appellant: Jean-François Jalkh (represented by: F. Wagner, avocat)

Other party: European Parliament

Form of order sought

The appellant submits that the Court should:

— Set aside the judgment given on 17 October 2018 by the Seventh Chamber of the General Court of the European Union (T-27/17);

Accordingly:

— Annul the decision of the European Parliament of 22 November 2016 adopting Report No A8-0319/2016 on the request for waiver of the immunity and privileges of Jean-François Jalkh, Member of the European Parliament;

— Make an appropriate order on the amount to be awarded to the appellant in respect of the costs of the proceedings;

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

Grounds of appeal and main arguments

The grounds of appeal allege a breach of EU law, error of law and error of characterisation of the legal nature of the facts, as well as manifest error of assessment.

1. The preliminary observations in the judgment

Contrary to the General Court's assertion set out in paragraph 21 of the judgment under appeal, the absence of any waiver of parliamentary immunity does not deprive a party of the possibility of seeking, in France, compensation for the harm suffered solely at civil level, on the ground of fault (Article 1240 of the Civil Code) against a Member of Parliament.

2. The first plea in law analysed by the General Court

The General Court's analysis is based on confusion between two provisions. Point H is part of the reasoning in reference to Article 8 of Protocol No 7, on expressing opinions, whereas the General Court sets out its reasons on that subject in paragraphs 44 to 46, in reference to Article 9 of Protocol No 7 on immunity, which refers to the relevant national provisions.

3. The second and third pleas in law examined by the General Court

It is on account of a manifest error of assessment that the General Court fails to give normative value to the *European Parliament Directorate General for Research Working Paper on 'Parliamentary Immunity in the Member States of the European Community and in the European Parliament, Legal Affairs Series*, and fails to take into account the principles recalled therein, which leads to an erroneous assessment of Article 9 of Protocol No 7 in the light of the facts of the case.

4. The fourth plea in law examined by the General Court

— Existing legal practice

Contrary to the General Court's declaration, an established legal practice of the European Parliament *'consisting in refusing requests for waiver of parliamentary immunity based on facts relating to the political activities of Members of Parliament'* did exist, which ought to have led the General Court to make a different finding on the waiver of parliamentary immunity.

— *Fumus persecutionis*

There is no review on the part of the judicial authorities as to whether an association is partisan, which the General Court ought to have taken into account on a simple reading of the Law of 29 July 1881.

The General Court was able, by examining the terms of the invitation to the conference organised by the Fédération des Maisons des Potes, to verify the partisan nature of that association, which is a political opponent of the Front National and Jean-François Jalkh.

This is a clear case of *fumus persecutionis*.

Appeal brought on 21 December 2018 by the European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 24 October 2018 in Case T-29/17, RQ v Commission

(Case C-831/18 P)

(2019/C 65/38)

Language of the case: French

Parties

Appellant: European Commission (represented by: J.-P. Keppenne, J. Baquero Cruz, acting as Agents)

Other party to the proceedings: RQ

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of the European Union (Seventh Chamber, Extended Composition) of 24 October 2018 in Case T-29/17, in so far as it annuls Commission Decision C(2016) 1449 final of 2 March 2016 concerning a request to waive RQ's immunity from legal proceedings;

— dismiss the application for annulment brought by the respondent to the appeal before the General Court of the European Union and give a final ruling on the questions which form the subject-matter of the present appeal or, if the state of the proceedings does not permit judgment to be given by the Court, refer the case back to the General Court for judgment;

— order the applicant at first instance to pay the costs incurred by the Commission both at first instance and in the present appeal.

Pleas in law and main arguments

In support of its appeal, the Commission relies on three grounds of appeal:

1. First, unlike the General Court, the Commission considers that the decision to waive immunity does not constitute an act adversely affecting the applicant and cannot therefore be the subject of an action for annulment. The judgment under appeal is therefore vitiated by an error in law in so far as it holds the application admissible.

2. Secondly, the Commission considers that the judgment under appeal incorrectly interprets the right to be heard, enshrined in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, in that it is based on a misinterpretation and misapplication of Article 4(3) TEU (principle of cooperation in good faith) and the general principle of mutual confidence and trust between EU bodies and the authorities of the Member States.

3. Thirdly, the Commission considers that the General Court erred in law in the characterisation of the Commission's conduct in the present case by considering that the Commission did not adequately respect the applicant's right to be heard.

GENERAL COURT

Judgment of the General Court of 6 December 2018 — Coveris Rigid France v Commission

(Case T-531/15) ([1])

(Competition — Agreements, decisions and concerted practices — Retail food packaging market — Decision finding an infringement of Article 101 TFEU — Principle of personal liability — No economic continuity — Equal treatment)

(2019/C 65/39)

Language of the case: English

Parties

Applicant: Coveris Rigid France, formerly Coveris Rigid (Auneau) France (Auneau, France) (represented by: H. Meyer-Lindemann, C. Graf York von Wartenburg and L. Stammwitz, lawyers)

Defendant: European Commission (represented by: A. Biolan, F. Jimeno Fernández and L. Wildpanner, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39563 — Retail food packaging) in so far as it applies to the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Coveris Rigid France to pay the costs.*

([1]) OJ C 406, 7.12.2015.

Judgment of the General Court of 6 December 2018 — Tomasz Kawałko Trofeum v EUIPO — Ferrero (KINDERPRAMS)

(Case T-115/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark KINDERPRAMS — Earlier national figurative marks Kinder — Relative ground for refusal — Likelihood of confusion — Identity or similarity of the goods and services — Similarity of the signs — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 65/40)

Language of the case: English

Parties

Applicant: Tomasz Kawałko Trofeum (Gdynia, Poland) (represented by: P. Moksa, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ferrero SpA (Alba, Italy) (represented by: F. Jacobacci and L. Ghedina, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 December 2017 (Case R 1112/2017-4), relating to opposition proceedings between Ferrero and Tomasz Kawałko Trofeum.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tomasz Kawałko Trofeum to pay the costs.*

([1]) OJ C 161, 7.5.2018.

Order of the General Court of 14 December 2018 — GM and Others v Commission

(Case T-539/16) ([1])

(Civil service — Officials — Reform of the Staff Regulations — Regulation (EU, Euratom) No 1023/2013 — Types of posts — Transitional measures relating to classification in the types of posts — Article 31 of Annex XIII to the Staff Regulations — Assistants in transition — Promotion pursuant to Article 45 of the Staff Regulations authorised only within the career streams corresponding to the type of post held — Exclusion of AST 9 officials from the promotion procedure — No act having an adverse effect — Confirmatory measure — Lis pendens — Manifest inadmissibility — Article 129 of the Rules of Procedure — Objection of inadmissibility — Article 130 of the Rules of Procedure)

(2019/C 65/41)

Language of the case: French

Parties

Applicants: GM, GN, GO and GP (represented by: T. Bontinck and A. Guillerme, lawyers)

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

Re:

Action under Article 270 TFEU seeking annulment of the decisions of the Commission by which the appointing authority of that institution classified the applicants as holding the post of 'Assistant in transition', resulting in the loss, with effect from 1 January 2014, of their eligibility for promotion to the next higher grade.

Operative part of the order

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

2. *The European Commission shall bear its own costs and pay half of the costs incurred by GM, GN, GO and GP.*

3. *GM, GN, GO and GP shall bear half of their own costs.*

4. *The European Parliament and the Council of the European Union shall bear their own costs relating to their respective applications for leave to intervene.*

([1]) OJ C 96, 23.3.2015 (case initially registered before the European Union Civil Service Tribunal under Case No F-16/15 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 11 December 2018 — QC v European Council

(Case T-834/16) ([1])

(Action for annulment — EU-Turkey Statement of 18 March 2016 — Press release — Notion of 'international agreement' — Identification of the author of the act — Scope of the act — Meeting of the European Council — Meeting of the Heads of State or Government of the Member States of the European Union held on the premises of the Council of the European Union — Capacity of the representatives of the Member States of the European Union during a meeting with the representative of a third country — First paragraph of Article 263 TFEU — Lack of jurisdiction)

(2019/C 65/42)

Language of the case: Greek

Parties

Applicant: QC (represented by: C. Ladis, lawyer)

Defendant: European Council (represented by: S. Boelaert, M.-M. Joséphidès and J.-P. Hix, acting as Agents)

Re:

First, application based on Article 263 TFEU seeking annulment of an alleged agreement concluded between the European Council and the Republic of Turkey dated 18 March 2016 and entitled 'EU-Turkey Statement, 18 March 2016' and, secondly, application based on Article 265 TFEU seeking a declaration that the European Council unlawfully failed to take measures.

Operative part of the order

1. *The action is dismissed.*

2. *QC and the European Council shall bear their own respective costs.*

([1]) OJ C 38, 6.2.2017.

Order of the General Court of 13 December 2018 — Scandlines Danmark and Scandlines Deutschland v Commission

(Case T-890/16) ([1])

(Action for annulment — State aid — Public financing of the Fehmarn Belt fixed rail-road link — Individual aid — Act not open to challenge — Purely confirmatory measure — Preparatory act — Inadmissibility)

(2019/C 65/43)

Language of the case: English

Parties

Applicants: Scandlines Danmark ApS (Copenhagen, Denmark) and Scandlines Deutschland GmbH (Hamburg, Germany) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission (represented by: L. Armati and by S. Noë, acting as Agents)

Intervener in support of the defendant: Kingdom of Denmark (represented initially by: C. Thorning, and subsequently by J. Nymann-Lindegren, acting as Agents, and by R. Holdgaard, lawyer)

Re:

Application pursuant to Article 263 TFEU for annulment of the Commission's letter of 30 September 2016 concerning State aid implemented by Denmark for the financing of the Fehmarn Belt fixed rail-road link.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Scandlines Danmark ApS and Scandlines Deutschland GmbH are to bear their own costs and to pay the costs incurred by the European Commission;*

3. *The Kingdom of Denmark is to bear its own costs.*

([1]) OJ C 63, 27.2.2017.

Order of the General Court of 13 December 2018 — Scandlines Danmark and Scandlines Deutschland v Commission

(Case T-891/16) ([1])

(Action for failure to act — State aid — Public financing of the Fehmarn Belt fixed rail-road link — Individual aid — Adoption of a position by the Commission — Inadmissibility)

(2019/C 65/44)

Language of the case: English

Parties

Applicants: Scandlines Danmark ApS (Copenhagen, Denmark) and Scandlines Deutschland GmbH (Hamburg, Germany) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission (represented by: L. Armati and by S. Noë, acting as Agents)

Intervener in support of the defendant: Kingdom of Denmark (represented initially by: C. Thorning, and subsequently by J. Nymann-Lindegren, acting as Agents, and by R. Holdgaard, lawyer)

Re:

Application pursuant to Article 265 TFEU for a declaration that the Commission acted unlawfully by failing to define its position on aid measures concerning the financing, planning, construction and operation of the Fehmarn Belt fixed rail-road link.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Scandlines Danmark ApS and Scandlines Deutschland GmbH are to bear their own costs and to pay the costs incurred by the European Commission;*

3. *The Kingdom of Denmark is to bear its own costs.*

(1) OJ C 63, 27.2.2017.

Order of the General Court of 13 December 2018 — Bowles v ECB

(Case T-447/17) (1)

(Civil Service — ECB Staff — Appointment decision concerning the post of Adviser to the President and Coordinator of the Counsel to the Executive Board — No act adversely affecting the applicant — No interest in bringing proceedings — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2019/C 65/45)

Language of the case: French

Parties

Applicant: Carlos Bowles (Frankfurt am Main, Germany) (represented by: L. Levi, lawyer)

Defendant: European Central Bank (represented by: B. Ehlers and F. Malfrère, acting as Agents, and B. Wägenbaur, lawyer)

Re:

Action under Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union seeking, first, the annulment (i) of the decision of the Executive Board of the ECB of 31 January 2017 to appoint M.S. to the post of Adviser to the President and Coordinator of the Counsel to the Executive Board (ii) of the decision not to appoint the applicant to that post and (iii) of the decision not to allow the applicant to apply for that post and, secondly, compensation for the damage which the applicant claims to have suffered.

Operative part of the order

1. *The action is dismissed as being in part manifestly inadmissible and in part manifestly lacking any foundation in law.*

2. *Mr Carlos Bowles shall pay the costs.*

(1) OJ C 347, 16.10.2017.

Order of the General Court of 11 December 2018 — CheapFlights International v EUIPO — Momondo Group (Cheapflights)

(Case T-565/17) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Cheapflights — Referral of the trade mark application to the examiner for examination of the absolute grounds for refusal — Challenge by the proprietor of the earlier mark — Grounds of the contested decision containing an assessment of the validity of the earlier mark — Challenge by the proprietor of the earlier mark — Partial inadmissibility — Incidental submissions made on the basis on Article 8(3) of Regulation (EC) No 216/96 — Withdrawal of the appeal before the Board of Appeal — No need to adjudicate in part)

(2019/C 65/46)

Language of the case: English

Parties

Applicant: CheapFlights International Ltd (Speenoge, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Momondo Group Ltd (London, United Kingdom)

Re:

Action brought against the decision of the Grand Board of Appeal of EUIPO of 1 June 2017 (R 1893/2011-G) relating to opposition proceedings between CheapFlights International and Momondo Group.

Operative part of the order

1. *There is no longer any need to adjudicate on the action in so far as it is directed against the closure of the appeal proceedings by the decision of the Grand Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 1 June 2017 (Case R 1893/2011-G) with regard to the goods and services in Classes 9, 16, 35 and 42 in respect of which the Opposition Division had rejected the opposition of CheapFlights International Ltd.*

2. *The action is dismissed as inadmissible as to the remainder.*

3. *CheapFlights International shall pay, in addition to its own costs, half of the costs incurred by EUIPO.*

4. *EUIPO shall bear half of its own costs.*

([1]) OJ C 347, 16.10.2017.

Order of the General Court of 13 December 2018 — Euracoal and Others v Commission

(Case T-739/17) ([1])

(Action for annulment — Environment — Directive 2010/75/EU — Best available techniques conclusions — Implementing Decision (EU) 2017/1442 — Lack of direct concern — Inadmissibility)

(2019/C 65/47)

Language of the case: German

Parties

Applicants: Association européenne du charbon et du lignite (Euracoal) (Woluwe-Saint-Pierre, Belgium), Deutscher Braunkohlen-Industrie-Verein eV (Cologne, Germany), Lausitz Energie Kraftwerke AG (Cottbus, Germany), Mitteldeutsche Braunkohlengesellschaft mbH (Zeitz, Germany), eins energie in sachsen GmbH & Co. KG (Chemnitz, Germany) (represented by: W. Spieth and N. Hellermann, lawyers)

Defendant: European Commission (represented by: A. Becker and K. Petersen, acting as Agents)

Re:

Action under Article 263 TFEU for annulment of Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants (OJ 2017 L 212, p. 1).

Operative part of the order

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

2. *There is no need to adjudicate on the applications for leave to intervene submitted by Polska Grupa Energetyczna S.A. (PGE), the French Republic, Elektrárny Opatovice, a.s., and Saale Energie GmbH, Sev.en EC, a.s., Freistaat Sachsen, Elektrárna Počerady, a.s., the European Environmental Bureau (EEB) and Client Earth.*

3. *The Association européenne du charbon et du lignite (Euracoal), Deutscher Braunkohlen-Industrie-Verein eV, Lausitz Energie Kraftwerke AG, Mitteldeutsche Braunkohlengesellschaft mbH and eins energie in sachsen GmbH & Co. KG shall bear their own costs and pay those incurred by the European Commission, with the exception of the costs relating to the applications for leave to intervene.*

4. *Euracoal, Deutscher Braunkohlen-Industrie-Verein, Lausitz Energie Kraftwerke, Mitteldeutsche Braunkohlengesellschaft, eins energie in sachsen, the Commission, PGE, the French Republic, Elektrárny Opatovice and Saale Energie, Sev.en EC, Freistaat Sachsen, Elektrárna Počerady, the EEB and Client Earth shall each bear their own costs relating to the applications for leave to intervene.*

([1]) OJ C 5, 8.1.2018.

Order of the General Court of 11 December 2018 — Hamburg Beer Company v EUIPO (Hamburg BEER COMPANY)

(Case T-5/18) ([1])

(EU trade mark — Application for EU figurative mark Hamburg BEER COMPANY — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) and (2) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (2) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2019/C 65/48)

Language of the case: German

Parties

Applicant: Hamburg Beer Company GmbH (Hamburg, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 6 September 2017 (Case R 436/2017-5) concerning an application for registration of the figurative sign Hamburg BEER COMPANY as an EU trade mark.

Operative part of the order

1. *The action is dismissed as manifestly lacking any foundation in law.*

2. *Hamburg Beer Company GmbH shall pay the costs.*

([1]) OJ C 72, 26.2.2018.

Order of the General Court of 11 December 2018 — Hamburg Beer Company v EUIPO (Hamburg Beer Company)

(Case T-6/18) ([1])

(EU trade mark — Application for EU word mark Hamburg Beer Company — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) and (2) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (2) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2019/C 65/49)

Language of the case: German

Parties

Applicant: Hamburg Beer Company GmbH (Hamburg, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 29 September 2017 (Case R 437/2017-5) concerning an application for registration of the word sign Hamburg Beer Company as an EU trade mark

Operative part of the order

1. *The action is dismissed as manifestly lacking any foundation in law.*

2. *Hamburg Beer Company GmbH shall pay the costs.*

([1]) OJ C 72, 26.2.2018.

Order of the General Court of 13 December 2018 — Sonova Holding v EUIPO (HEAR THE WORLD)

(Case T-70/18) ([1])

(EU trade mark — Application for EU word mark HEAR THE WORLD — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2019/C 65/50)

Language of the case: German

Parties

Applicant: Sonova Holding AG (Stäfa, Switzerland) (represented by: R. Pansch and A. Sabellek, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 21 November 2017 (Case R 1645/2017-5) concerning an application for registration of the word sign HEAR THE WORLD as an EU trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Sonova Holding AG shall pay the costs.*

(1) OJ C 112, 26.3.2018.

Action brought on 26 November 2018 — Durand and Others v Parliament

(Case T-702/18)

(2019/C 65/51)

Language of the case: English

Parties

Applicants: Pascal Durand (Paris, France) and seven other applicants (represented by: O. Brouwer and E. Raedts, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare that the Parliament has failed to fulfil its obligations under Article 226(1) of the Treaty on the Functioning of the European Union and Article 198(4) of the Rules of Procedure of the European Parliament, by the failure of the Conference of Presidents to submit to the plenary of the European Parliament a proposal for the setting up of a Committee of Inquiry;

— in subsidiary order, in the event that the General Court would hold that the letter of 21 September 2018 of the President of the Parliament contains an unequivocal and final position putting an end to the failure to act, annul the decision contained in the letter of 21 September 2018 to refuse to submit to the plenary of the European Parliament a proposal for the setting up of a Committee of Inquiry;

— order the Parliament to pay the costs of the proceedings, including the costs of possible intervening parties.

Pleas in law and main arguments

In support of the action, the applicants submit that the Conference of Presidents of the Parliament was required to formulate and send to the plenary of the European Parliament a proposal on the setting up of a Committee of Inquiry, concerning the welfare of animals in transport, as requested by 223 Members of the European Parliament, pursuant to Article 198(4) of the Rules of Procedure of the European Parliament and in accordance with Article 226 of the Treaty on the Functioning of the European Union. A decision refusing to do so would breach these same articles.

Action brought on 10 December 2018 — AMVAC Netherlands v EFSA

(Case T-720/18)

(2019/C 65/52)

Language of the case: English

Parties

Applicant: AMVAC Netherlands BV (Amsterdam, Netherlands) (represented by: C. Mereu, M. Grunchard and S. Englebert, lawyers)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

The applicant claims that the Court should:

— annul the EFSA decision of 1 October 2018, notified to the applicant on 2 October 2018, on the assessment of the confidentiality claims made in relation to the application for renewal of the approval process for Ethoprophos as an active substance;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging *ultra vires*

   — The applicant submits that the documents to be published as a result of the contested decision should be published in sanitised form only because the defendant has undertaken an activity (proposal of a classification of substance) which is expressly outside its remit of powers.

2. Second plea in law, alleging the breach of fundamental principles of EU law

   — The applicant submits that the contested decision results from a procedure during which its rights of defence have not been respected.

3. Third plea in law, alleging the infringement of Article 63 of Regulation 1107/2009 ([1])

   — The applicant submits that part of the documents to be published as a result of the contested decision contains information that results from a flawed and partial assessment, and their publication would undermine the commercial interests of the applicant.

([1]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1)

Action brought on 7 December 2018 — Intercontinental Exchange Holdings v EUIPO (BRENT)

(Case T-725/18)

(2019/C 65/53)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark BRENT — Application for registration No 16 710 014

Contested decision: Decision of the Second Board of Appeal of EUIPO of 24 September 2018 in Case R 624/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 7 December 2018 — Melin v Parliament

(Case T-726/18)

(2019/C 65/54)

Language of the case: French

Parties

Applicant: Joëlle Melin (Aubagne, France) (represented by: F. Wagner, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— declare admissible the plea of illegality and, accordingly, find Articles 33 and 68 of the Implementing Measures for the Statute for Members of the European Parliament to be unlawful;

— hold that the Decision of the Secretary General of 4 October 2018 lacks a valid legal basis;

Principally:

— annul the Decision of the Secretary General of the European Parliament dated 4 October 2018, notified by letter No D316037 dated 10 October 2018, taken pursuant to Article 68 of European Parliament Bureau Decision 2009/C 159/01 of 19 May and 9 July 2008 'concerning implementing measures for the Statute of Members of the European Parliament' as amended, finding a debt on the part of the applicant amounting to EUR 130 339,35 in respect of amounts unduly paid in the context of parliamentary assistance and giving reasons for its recovery;

— annul the debit note No 2018-1597, demanding that the applicant pay the sum due pursuant to the decision of the Secretary General of 4 October 2018, 'recovery of sums unduly paid for parliamentary assistance, application of Article 68 of the Implementing Measures for the Statute for Members of the European Parliament and Articles 78-79 of the Financial Regulation';

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

Pleas in law and main arguments

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

1. First plea in law, based on plea of illegality on the grounds of breach of the principles of legal certainty and legitimate expectations by Articles 33 and 68 of the Implementing Measures for the Statute for Members of the European Parliament adopted by European Parliament Bureau Decision 2009/C 159/01 of 19 May and 9 July 2008, on account in particular of their lack of clarity and precision.

2. Second plea in law, alleging infringement of procedural requirements, in so far as the contested decision does not afford precise knowledge of the reasons for the refusal to admit the documents submitted as evidence of work done. Accordingly, the decision fails to state reasons, in breach of Article 41 of the Charter of Fundamental Rights of the European Union, enshrining the right to good administration.

3. Third plea in law, alleging infringement of the applicant's rights, in so far as she has not been heard orally by the Secretary General, but solely through a written procedure.

Action brought on 14 December 2018 — Runnebaum Invest v EUIPO — Berg Toys Beheer (Bergsteiger)

(Case T-736/18)

(2019/C 65/55)

Language of the case: English

Parties

Applicant: Runnebaum Invest GmbH (Diepholz, Germany) (represented by: W. Prinz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Berg Toys Beheer BV (Ede, Netherlands)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark Bergsteiger — Application for registration No 15 145 791

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 22 October 2018 in Case R 572/2018-4

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 47(2) and (3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 December 2018 — Dragnea v Commission

(Case T-738/18)

(2019/C 65/56)

Language of the case: English

Parties

Applicant: Liviu Dragnea (Bucharest, Romania) (represented by: B. O'Connor, Solicitor and S. Gubel, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision (OCM(2018)20575) sent to the legal representative of the applicant by letter dated 1 October 2018;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a breach of articles 9(1), 9(2) and 9(4) of the OLAF Regulation ([1]) and a violation of the rights of defence of the applicant in the investigations, including the right to be heard and the respect of the presumption of innocence.

2. Second plea in law, alleging a breach of the principle of sound administration in relation to the investigations as well as the refusal to open an investigation on the conduct of the OLAF investigation.

3. Third plea in law, alleging a violation of the right of access to documents concerning the OLAF investigation.

([1]) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999

Action brought on 18 December 2018 — Japan Tobacco v EUIPO — I.J. Tobacco Industry (I.J. TOBACCO INDUSTRY)

(Case T-743/18)

(2019/C 65/57)

Language of the case: English

Parties

Applicant: Japan Tobacco, Inc. (Tokyo, Japon) (represented by: J. Gracia Albero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: I.J. Tobacco Industry FZE (Ras Al Khaimah, United Arab Emirates)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European figurative mark in black and white I.J. TOBACCO INDUSTRY — Application for registration No 16 003 551

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 October 2018 in Case R 979/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear the costs of the present proceedings, including the costs deriving from the proceedings before the Opposition Division and the Fourth Board of Appeal.

Plea in law

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

Action brought on 20 December 2018 — Oakley v EUIPO — Xuebo Ye (Representation of a discontinuous ellipse)

(Case T-744/18)

(2019/C 65/58)

Language in which the application was lodged: Spanish

Parties

Applicant: Oakley (Foothill Ranch, California, United States) (represented by: E. Ochoa Santamaría and I. Aparicio Martínez, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Xuebo Ye (Wenzhou, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Representation of a discontinuous ellipsis) — Application for registration No 13 088 191

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 22 October 2018 in Case R 692/2018-1

Form of order sought

The applicant claims that the Court should:

— declare the application admissible, together with all the associated documents;

— rule that the evidence offered may be submitted;

— grant the application, annulling the contested decision;

— order EUIPO to pay the costs.

Pleas in law

Infringement of Article 8(1)(b) and Article 72(6) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 December 2018 — Daimler v EUIPO (ROAD EFFICIENCY)

(Case T-749/18)

(2019/C 65/59)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: P. Kohl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: Application for EU word mark ROAD EFFICIENCY — Application for registration No 15 814 536

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 October 2018 in Case R 2701/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings including the costs incurred in the course of the appeal proceedings.

Pleas in law

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

Action brought on 26 December 2018 — C&A v EUIPO (#BESTDEAL)

(Case T-753/18)

(2019/C 65/60)

Language of the case: French

Parties

Applicant: C&A AG (Zug, Switzerland) (represented by: P. Koch Moreno, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Mark at issue: Application for EU figurative mark #BESTDEAL in white — Application for registration No 17 681 826

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 October 2018 in Case R 1234/2018-2

Form of order sought

The applicant claims that the Court should:

— declare the grounds of the action well-founded and annul the contested decision;

— order EUIPO to pay the costs should it appear in the present proceedings.

Pleas in law

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

— Infringement of the principle of legal certainty and equal treatment.

Order of the General Court of 12 December 2018 — Darmanin v EASO

(Case T-116/18) ([1])

(2019/C 65/61)

Language of the case: French

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

([1]) OJ C 152, 30.4.2018.

Order of the General Court of 14 December 2018 — Lidl Stiftung v EUIPO — Shimano Europe (PRO)

(Case T-122/18) ([1])

(2019/C 65/62)

Language of the case: English

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

([1]) OJ C 142, 23.4.2018.

Order of the General Court of 14 December 2018 — BGC Partners v EUIPO — Bankgirocentralen BGC (BGC PARTNERS)

(Case T-520/18) ([1])

(2019/C 65/63)

Language of the case: English

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

([1]) OJ C 392, 29.10.2018.

Order of the General Court of 14 December 2018 — BGC Partners v EUIPO — Bankgirocentralen BGC (BGC BROKERAGE)

(Case T-521/18) ([1])

(2019/C 65/64)

Language of the case: English

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

([1]) OJ C 392, 29.10.2018.

Order of the General Court of 14 December 2018 — BGC Partners v EUIPO — Bankgirocentralen BGC (AUREL BGC)

(Case T-522/18) ([1])

(2019/C 65/65)

Language of the case: English

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

([1]) OJ C 392, 29.10.2018.

Order of the General Court of 14 December 2018 — BGC Partners v EUIPO — Bankgirocentralen BGC (BGCPRO)

(Case T-523/18) ([1])

(2019/C 65/66)

Language of the case: English

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

([1]) OJ C 392, 29.10.2018.

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