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(2021/C 35/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 3 December 2020 — Changmao Biochemical Engineering Co. Ltd v Distillerie Bonollo SpA and Others

(Case C-461/18 P) [1]

(Appeal — Dumping — Imports of tartaric acid originating in China — Appeal brought by an intervener at first instance — Second sentence of the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union — Partial interim review — Loss of market economy treatment during the review procedure — Modification of the definitive anti-dumping duty — Determination of the normal value — Article 11(9) of Regulation (EC) No 1225/2009 — Cross-appeal — Action for annulment brought by competing producers established in the European Union — Admissibility — Direct concern — Allocation of powers to comply with a judgment)

(2021/C 35/02)

Language of the case: English

Parties

Appellant: Changmao Biochemical Engineering Co. Ltd (represented by: K. Adamantopoulos, dikigoros, and P. Billiet, advocaat)

Other parties to the proceedings: Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA, Distillerie Mazzari SpA, Caviro Distillerie Srl (represented by: R. MacLean, Solicitor, and A. Bochon, avocat), Comercial Química Sarasa SL, Council of the European Union (represented by: H. Marcos Fraile and B. Driessen, acting as Agents, and by N. Tuominen, avocată), European Commission (represented by: M. França, J.-F. Brakeland and A. Demeneix, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the main appeal;

2. Sets aside point 2 of the operative part of the judgment of the General Court of the European Union of 3 May 2018, Distillerie Bonollo and Others v Council (T-431/12, EU:T:2018:251), in so far as the General Court of the European Union thereby required the Council of the European Union to take the measures necessary to comply with that judgment;

3. Dismisses the cross-appeal as to the remainder;

4. Orders Changmao Biochemical Engineering Co. Ltd to bear its own costs and to pay those incurred by Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA, Distillerie Mazzari SpA and Caviro Distillerie Srl as well as by the Council of the European Union and the European Commission in relation to the main appeal;

5. Orders the European Commission to bear its own costs and to pay four fifths of the costs incurred by Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA, Distillerie Mazzari SpA and Caviro Distillerie Srl in relation to the cross-appeal;

6. Orders Changmao Biochemical Engineering Co. Ltd and the Council of the European Union to bear their own costs relating to the cross-appeal.

(1) OJ C 341, 24.9.2018.

Judgment of the Court (Seventh Chamber) of 26 November 2020 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Skatteverket v Sögård Fastigheter AB

(Case C-787/18) (1)

(Reference for a preliminary ruling — National legislation providing for the adjustment of deductions of value added tax (VAT) by a taxable person other than the person who initially applied the deduction — Sale by a company to individuals of a building let by that company and by the previous owning company — End of VAT liability when the property is sold to individuals)

(2021/C 35/03)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Sögård Fastigheter AB

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation which, while providing, on the basis of Article 188(2) of that directive, that the transferor of immovable property is not required to adjust a deduction of value added tax carried out in advance where the transferee will use that property only for transactions in respect of which VAT is deductible, also requires the transferee to adjust that deduction for the remaining duration of the adjustment period, where he or she, in turn, transfers the property in question to a third party who will not use it for such transactions.

(1) OJ C 72, 25.2.2019.

Judgment of the Court (Grand Chamber) of 1 December 2020 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Federatie Nederlandse Vakbeweging v Van den Bosch Transporten BV, Van den Bosch Transporte GmbH, Silo-Tank Kft

(Case C-815/18) (1)

(Reference for a preliminary ruling — Directive 96/71/EC — Article 1(1) and (3) and Article 2(1) — Posting of workers in the framework of the provision of services — Drivers working in international road transport — Scope — Concept of 'posted worker' — Cabotage operations — Article 3(1), (3) and (8) — Article 56 TFEU — Freedom to provide services — Collective agreements declared universally applicable)

(2021/C 35/04)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Federatie Nederlandse Vakbeweging

Defendant: Van den Bosch Transporten BV, Van den Bosch Transporte GmbH, Silo-Tank Kft

Operative part of the judgment

1. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as applying to the transnational provision of services in the road transport sector;

2. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that a worker working as a driver in the international road transport sector under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in a Member State other than that in which the person concerned normally works is a worker posted to the territory of a Member State for the purposes of those provisions, where the performance of that person's work has a sufficient connection with that territory for the limited period at issue. The existence of such a connection is determined in the context of an overall assessment of factors such as the nature of the activities carried out by the worker concerned in that territory, the degree of connection between the worker's activities and the territory of each Member State in which the worker operates, and the proportion represented by those activities in the entire transport service;

   The fact that a driver working in international road transport, who has been hired out by an undertaking established in one Member State to an undertaking established in another Member State, receives the instructions related to his or her tasks, starts or finishes them at the place of business of that second undertaking is not sufficient in itself to consider that that driver has been posted to the territory of that other Member State for the purposes of Directive 96/71, provided that the performance of that driver's work does not have a sufficient connection with that territory on the basis of other factors;

3. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that the existence of a group affiliation between undertakings that are parties to a contract for the hiring-out of workers is not, as such, relevant in order to determine whether there has been a posting of workers;

4. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that a worker working as a driver in the road transport sector, who, under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in another Member State, carries out cabotage operations in the territory of a Member State other than the Member State in which he or she normally works, must, as a rule, be regarded as being posted to the territory of the Member State in which those operations are carried out. The duration of cabotage operations is irrelevant when determining whether there has been such a posting, without prejudice to the possible application of Article 3(3) of that directive;

5. Article 3(1) and (8) of Directive 96/71 must be interpreted as meaning that the question of whether a collective agreement has been declared universally applicable must be assessed by reference to the applicable national law. A collective labour agreement which has not been declared universally applicable, but compliance with which is a precondition, for undertakings covered by it, for exemption from another collective labour agreement which, for its part, has been declared universally applicable and the provisions of which are essentially identical to those of that other collective labour agreement, falls within the definition referred to in Article 3(1) and (8) of Directive 96/71.

(1) OJ C 122, 1.4.2019.

Judgment of the Court (Second Chamber) of 25 November 2020 — European Commission v GEA Group AG

(Case C-823/18 P) ([1])

(Appeal — Agreements, decisions and concerted practices — European markets for tin-based heat stabilisers and for heat stabilisers with epoxised soybean oil and esters as their base — Price fixing, market allocation and exchange of commercially sensitive information — Application of the ceiling of 10 % of turnover to one of the entities forming the undertaking — Annulment of the decision amending the fine imposed in the initial infringement decision — Fines — Concept of an 'undertaking' — Joint and several liability for payment of the fine — Principle of equal treatment — Date on which the fine is payable in the event of amendment)

(2021/C 35/05)

Language of the case: English

Parties

Appellant: European Commission (represented by: initially, T. Christoforou, P. Rossi and V. Bottka, and, subsequently, P. Rossi and V. Bottka, acting as Agents)

Other party to the proceedings: GEA Group AG (represented by: C. Wagner and I. du Mont, Rechtsanwälte)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 18 October 2018, GEA Group v Commission (T-640/16, EU:T:2018:700);

2. Refers Case T-640/16 back to the General Court of the European Union;

3. Reserves the costs.

([1]) OJ C 93, 11.3.2019.

Judgment of the Court (Fifth Chamber) of 3 December 2020 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Repsol Petróleo SA v Administracíon General del Estado

(Case C-44/19) ([1])

(Reference for a preliminary ruling — Directive 2003/96/EC — Taxation of energy products and electricity — Article 21(3) — Absence of chargeable event giving rise to taxation — Consumption of energy products within the curtilage of an establishment in which they were produced for the production of final energy products from which non-energy products are also inevitably produced)

(2021/C 35/06)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Repsol Petróleo SA

Defendant: Administracíon General del Estado

Operative part of the judgment

The first sentence of Article 21(3) of Council Directive 2003/93/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity must be interpreted as meaning that, where an establishment producing energy products intended for use as motor fuel or as heating fuel consumes energy products which it has itself produced and that, by that process, also inevitably obtains non-energy products from which economic value is derived, the portion of the consumption leading to the production of such non-energy products does not fall within the exemption concerning the chargeable event giving rise to the taxation of energy products provided for in that provision.

(1) OJ C 155, 6.5.2019.

Judgment of the Court (Fifth Chamber) of 25 November 2020 — European Commission v Portuguese Republic

(Case C-49/19) (1)

(Failure of a Member State to fulfil obligations — Electronic communications — Universal service and users' rights relating to electronic communications networks and services — Directive 2002/22/EC — Networks and services — Article 13 — Financing of universal service obligations — Sharing mechanism — Principles of transparency, least market distortion, non-discrimination and proportionality)

(2021/C 35/07)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented: initially by L. Nicolae, P. Costa de Oliveira and G. Braga da Cruz, and subsequently by L. Nicolae and G. Braga da Cruz, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, P. Barros da Costa and J. Marques, acting as Agents, and D. Silva Morais, advogado)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the European Commission to pay the costs.

(1) OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 24 November 2020 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Wikingerhof GmbH & Co. KG v Booking.com BV

(Case C-59/19) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction — Article 7, points 1 and 2 — Special jurisdiction in matters relating to tort, delict or quasi-delict — Action seeking an injunction against commercial practices considered to be contrary to competition law — Allegation of abuse of a dominant position occurring in commercial practices covered by contractual provisions — Online accommodation booking platform booking.com)

(2021/C 35/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Wikingerhof GmbH & Co. KG

Respondent in the appeal on a point of law: Booking.com BV

Operative part of the judgment

Point 2 of Article 7 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to an action seeking an injunction against certain practices implemented in the context of the contractual relationship between the applicant and the defendant, based on an allegation of abuse of a dominant position by the latter in breach of competition law.

(1) OJ C 155, 6.5.2019.

Judgment of the Court (Fourth Chamber) of 3 December 2020 (request for a preliminary ruling from the Tribunalul Bucureşti — Romania) — Star Taxi App SRL v Unitatea Administrativ Teritorială Municipiul Bucureşti prin Primar General and Consiliul General al Municipiului Bucureşti

(Case C-62/19) (1)

(Reference for a preliminary ruling — Article 56 TFEU — Applicability — Purely internal situation — Directive 2000/31/EC — Article 2(a) — Concept of 'information society services' — Article 3(2) and (4) — Article 4 — Applicability — Directive 2006/123/EC — Services — Chapters III (Freedom of establishment for providers) and IV (Free movement of services) — Applicability — Articles 9 and 10 — Directive (EU) 2015/1535 — Article 1(1)(e) and (f) — Concept of 'rule on services' — Concept of 'technical regulation' — Article 5(1) — No prior communication — Enforceability — Activity consisting in putting persons wishing to be transported around the city in touch, by means of a smartphone application, with authorised taxi drivers — Classification — National legislation making that activity subject to a prior authorisation scheme)

(2021/C 35/09)

Language of the case: Romanian

Referring court

Tribunalul Bucureşti

Parties to the main proceedings

Applicant: Star Taxi App SRL

Defendants: Unitatea Administrativ Teritorială Municipiul Bucureşti prin Primar General and Consiliul General al Municipiului Bucureşti

Interveners: IB, Camera Națională a Taximetriştilor din România, D'Artex Star SRL, Auto Cobălcescu SRL and Cristaxi Service SRL

Operative part of the judgment

1. Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), which refers to Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, must be interpreted as meaning that an intermediary service consisting in putting persons wishing to be transported around the city in touch, by means of a smartphone application, with authorised taxi drivers in exchange for payment, where the provider of that service has entered into contracts for the provision of services with those taxi drivers for that purpose, in exchange for the payment of a monthly subscription fee, but does not transfer orders to them, does not set the fare for the journey and does not collect that fare from the passengers, who pay the fare directly to the taxi driver, and has no control over the quality of the vehicles and their drivers or the behaviour of those drivers, constitutes an 'information society service' within the meaning of those provisions.

2. Article 1(1)(f) of Directive 2015/1535 must be interpreted as meaning that legislation of a local authority which makes the provision of an intermediary service — the purpose of which is to put persons wishing to be transported around the city in touch, by means of a smartphone application, with authorised taxi drivers in exchange for payment, and which is classified as an 'information society service' within the meaning of Article 1(1)(b) of Directive 2015/1535 — subject to obtaining prior approval to which other providers of taxi booking services are already subject, does not constitute a 'technical regulation' within the meaning of the former provision.

3. Article 56 TFEU, Article 3(2) and (4) of Directive 2000/31 and Article 16 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as not applying to a dispute where all the relevant elements are confined to a single Member State.

   Article 4 of Directive 2000/31 must be interpreted as not applying to legislation of a Member State which makes the provision of an intermediary service — the purpose of which is to put persons wishing to be transported around the city in touch, by means of a smartphone application, with authorised taxi drivers in exchange for payment, and which is classified as an 'information society service' within the meaning of Article 2(a) of Directive 2000/31, which refers to Article 1(1)(b) of Directive 2015/1535 — subject to obtaining prior approval to which other providers of taxi booking services are already subject.

   Articles 9 and 10 of Directive 2006/123 must be interpreted as precluding legislation of a Member State which makes the provision of an intermediary service — the purpose of which is to put persons wishing to be transported around the city in touch, by means of a smartphone application, with authorised taxi drivers in exchange for payment — subject to obtaining prior approval to carry out that activity, where the conditions for obtaining that approval do not meet the requirements laid down in those articles, in that they impose, inter alia, technical requirements that are inappropriate for the service in question, which is a matter for the referring court to ascertain.

(1) OJ C 164, 13.5.2019.

Judgment of the Court (Seventh Chamber) of 3 December 2020 — Suzanne Saleh Thabet, Gamal Mohamed Hosni Elsayed Mubarak, Alaa Mohamed Hosni Elsayed Mubarak, Heddy Mohamed Magdy Hussein Rassekh, Khadiga Mahmoud El Gammal v Council of the European Union

(Joined Cases C-72/19 P and C-145/19 P) (1)

(Appeal — Restrictive measures adopted in view of the situation in Egypt — Freezing of funds and economic resources — List of the persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicants' names — Decision of an authority of a third State — Obligation of the Council of the European Union to verify that that decision was taken in accordance with the rights of the defence and the right to effective judicial protection — Obligation to state reasons)

(2021/C 35/10)

Language of the case: English

Parties

(Case C-72/19 P)

Appellants: Suzanne Saleh Thabet, Gamal Mohamed Hosni Elsayed Mubarak, Alaa Mohamed Hosni Elsayed Mubarak, Heddy Mohamed Magdy Hussein Rassekh, Khadiga Mahmoud El Gammal (represented by: Lord Anderson QC, B. Kennelly QC, J. Pobjoy, Barrister, and G. Martin, C. Enderby Smith and F. Holmey, Solicitors)

Other party to the proceedings: Council of the European Union (represented initially by: J. Kneale and V. Piessevaux, and subsequently by: A. Antoniadis and V. Piessevaux, acting as Agents)

(Case C-145/19 P)

Appellants: Gamal Mohamed Hosni Elsayed Mubarak, acting in his own name and on behalf of Ms Suzanne Saleh Thabet and Mr Alaa Mohamed Hosni Elsayed Mubarak, all three heirs of Mr Mohamed Hosni Elsayed Mubarak (represented by: Lord Anderson QC, B. Kennelly QC, J. Pobjoy, Barrister, and G. Martin, C. Enderby Smith and F. Holmey, Solicitors)

Other party to the proceedings: Council of the European Union (represented initially by: J. Kneale and V. Piessevaux, and subsequently by: M. Balta and V. Piessevaux, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 22 November 2018, Saleh Thabet and Others v Council (T-274/16 and T-275/16, not published, EU:T:2018:826), in so far as, by that judgment, the General Court dismissed the actions seeking the annulment of Council Decision (CFSP) 2016/411 of 18 March 2016 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt and of Council Decision (CFSP) 2017/496 of 21 March 2017 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt;

2. Sets aside the judgment of the General Court of the European Union of 12 December 2018, Mubarak v Council (T-358/17, not published, EU:T:2018:905);

3. Annuls Decisions 2016/411 and 2017/496, in so far as they concern Ms Suzanne Saleh Thabet, Mr Gamal Mohamed Hosni Elsayed Mubarak, Mr Alaa Mohamed Hosni Elsayed Mubarak, Ms Heddy Mohamed Magdy Hussein Rassekh and Ms Khadiga Mahmoud El Gammal;

4. Annuls Decision 2017/496, Council Implementing Regulation (EU) 2017/491 of 21 March 2017 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt, Council Decision (CFSP) 2018/466 of 21 March 2018 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt, and Council Implementing Regulation (EU) 2018/465 of 21 March 2018 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt, in so far as those acts concern Mr Mohamed Hosni Elsayed Mubarak;

5. Orders the Council of the European Union to pay the costs incurred both in the proceedings at first instance and in the present appeals.

(1) OJ C 155, 6.5.2019.
OJ C 148, 29.4.2019.

Judgment of the Court (Grand Chamber) of 24 November 2020 (requests for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Haarlem — Netherlands) — R.N.N.S. (C-225/19), K.A. (C-226/19) v Minister van Buitenlandse Zaken

(Joined Cases C-225/19 and C-226/19) ([1])

(References for a preliminary ruling — Area of freedom, security and justice — Community Code on Visas — Regulation (EC) No 810/2009 — Article 32(1) to (3) — Decision to refuse a visa — Annex VI — Standard form — Statement of reasons — Threat to public policy, internal security or public health, or to the international relations of any of the Member States — Article 22 — Procedure of prior consultation of central authorities of other Member States — Objection to the issuing of a visa — Appeal against a decision to refuse a visa — Scope of judicial review — Article 47 of the Charter of Fundamental Rights of the European Union — Right to an effective remedy)

(2021/C 35/11)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Haarlem

Parties to the main proceedings

Applicants: R.N.N.S. (C-225/19), K.A. (C-226/19)

Defendant: Minister van Buitenlandse Zaken

Operative part of the judgment

Article 32(2) and (3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning, first, that a Member State which has adopted a final decision refusing to issue a visa on the basis of Article 32(1)(a)(vi) of Regulation No 810/2009, as amended by Regulation No 610/2013, because another Member State objected to the issuing of that visa is required to indicate, in that decision, the identity of the Member State which raised that objection, the specific ground for refusal based on that objection, accompanied, where appropriate, by the essence of the reasons for that objection, and the authority which the visa applicant may contact in order to ascertain the remedies available in that other Member State and, secondly, that, where an appeal is lodged against that decision on the basis of Article 32(3) of Regulation No 810/2009, as amended by Regulation No 610/2013, the courts of the Member State which adopted that decision cannot examine the substantive legality of the objection raised by another Member State to the issuing of the visa.

([1]) OJ C 187, 3.6.2019.

Judgment of the Court (First Chamber) of 25 November 2020 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — Banca B. SA v A.A.A.

(Case C-269/19) ([1])

(Reference for a preliminary ruling — Consumer protection — Unfair terms in consumer contracts — Directive 93/13/EEC — Consequences of a term being found to be unfair — Replacement of the unfair term — Method for calculating the variable interest rate — Whether permissible — Referral of the parties to negotiations)

(2021/C 35/12)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant: Banca B. SA

Respondent: A.A.A.

Operative part of the judgment

Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that, after terms establishing the mechanism for determining the variable interest rate in a loan agreement such as that at issue in the main proceedings have been found to be unfair, and when that contract cannot continue to exist following the removal of the unfair terms in question, annulment of the contract would have particularly unfavourable consequences for the consumer and there are no supplementary provisions under national law, the national court must, while taking into account all of its national law, take all the measures necessary to protect the consumer from the particularly unfavourable consequences which could result from annulment of the loan agreement in question. In circumstances such as those in question in the main proceedings, nothing precludes the national court from, inter alia, inviting the parties to negotiate with the aim of establishing the method for calculating the interest rate, provided that that court sets out the framework for those negotiations and that those negotiations seek to establish an effective balance between the rights and obligations of the parties taking into account in particular the objective of consumer protection underlying Directive 93/13.

([1]) OJ C 238, 15.7.2019.

Judgment of the Court (Fifth Chamber) of 25 November 2020 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Istituto nazionale della previdenza sociale v WS

(Case C-302/19) ([1])

(Reference for a preliminary ruling — Directive 2011/98/EU — Rights for third country workers who hold single permits — Article 12 — Right to equal treatment — Social security — Legislation of a Member State excluding, for the purposes of determining entitlement to a family benefit, the family members of the holder of a single permit who do not reside in the territory of that Member State)

(2021/C 35/13)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Istituto nazionale della previdenza sociale

Defendant: WS

Operative part of the judgment

Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State must be interpreted as precluding the legislation of a Member State under which, for the purpose of determining entitlement to a social security benefit, the family members of the holder of a single permit, within the meaning of Article 2(c) thereof, who do not reside in the territory of that Member State but in a third country are not be taken into account, whereas account is taken of family members of nationals of that Member State residing in a third country.

([1]) OJ C 288, 26.8.2019.

Judgment of the Court (Fifth Chamber) of 25 November 2020 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Istituto nazionale della previdenza sociale v VR

(Case C-303/19) ([1])

(Reference for a preliminary ruling — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Article 11 — Right to equal treatment — Social security — Legislation of a Member State excluding, for the determination of rights to a family benefit, the family members of a long-term resident who do not reside in the territory of that Member State)

(2021/C 35/14)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Istituto nazionale della previdenza sociale

Defendant: VR

Operative part of the judgment

Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding legislation of a Member State under which, for the purposes of determining entitlement to a social security benefit, the family members of a long-term resident, within the meaning of Article 2(b) thereof, who do not reside in the territory of that Member State, but in a third country are not taken into account, whereas the family members of a national of that Member State who reside in a third country are taken into account, where that Member State has not expressed its intention of relying on the derogation to equal treatment permitted by Article 11(2) of that directive by transposing it into national law.

([1]) OJ C 288, 26.8.2019.

Judgment of the Court (Fourth Chamber) of 3 December 2020 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — BONVER WIN, a.s. v Ministerstvo financí ČR

(Case C-311/19) ([1])

(Reference for a preliminary ruling — Freedom to provide services — Restrictions — National legislation prohibiting the operation of gambling in certain places — Applicability of Article 56 TFEU — Existence of a cross-border element)

(2021/C 35/15)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Appellant: BONVER WIN, a.s.

Respondent: Ministerstvo financí ČR

Operative part of the judgment

Article 56 TFEU must be interpreted as meaning that it applies to the situation of a company established in a Member State which has lost its licence to operate games of chance following the entry into force, in that Member State, of legislation determining the places in which it is permitted to organise such games, which is applicable without distinction to all service providers operating in that Member State, regardless of whether those services are provided to nationals of that Member State or to those of other Member States, where some of its customers come from a Member State other than the Member State in which it is established.

(1) OJ C 213, 24.6.2019.

Judgment of the Court (Fifth Chamber) of 3 December 2020 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — Ingredion Germany GmbH v Bundesrepublik Deutschland

(Case C-320/19) (1)

(Reference for a preliminary ruling — Environment — Directive 2003/87/EC — Greenhouse gas emission allowance trading scheme — Article 3(h) — New entrants — Article 10a — Transitional rules for free allocation of emission allowances — Decision 2011/278/EU — Article 18(1)(c) — Fuel-related activity level — Second subparagraph of Article 18(2) — Relevant capacity utilisation factor)

(2021/C 35/16)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Ingredion Germany GmbH

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

The second subparagraph of Article 18(2) of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council must be interpreted as meaning that, for the purposes of allocating emission allowances free of charge to new entrants, the relevant capacity utilisation factor is limited to a value of less than 100 %.

(1) OJ C 246, 22.7.2019.

Judgment of the Court (First Chamber) of 3 December 2020 — Région de Bruxelles-Capitale v European Commission

(Case C-352/19 P) (1)

(Appeal — Regulation (EC) No 1107/2009 — Placing of plant protection products on the market — Implementing Regulation (EU) 2017/2324 — Renewal of the approval of the active substance glyphosate — Article 263 TFEU — Standing to bring proceedings of a regional body — Whether directly concerned)

(2021/C 35/17)

Language of the case: French

Parties

Appellant: Région de Bruxelles-Capitale (represented by: A. Bailleux, avocat)

Other party to the proceedings: European Commission (represented by: X. Lewis, F. Castillo de la Torre, I. Naglis and F. Castilla Contreras, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Région de Bruxelles-Capitale to pay the costs.

(1) OJ C 220, 1.7.2019.

Judgment of the Court (Fifth Chamber) of 25 November 2020 (request for a preliminary ruling from the Ondernemingsrechtbank Antwerpen — Belgium) — Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v BVBA Weareone.World, NV Wecandance

(Case C-372/19) (1)

(Reference for a preliminary ruling — Competition — Article 102 TFEU — Abuse of a dominant position — Concept of 'unfair price' — Copyright collecting society — De facto monopoly — Dominant position — Abuse — Performance of musical works during music festivals — Scale based on gross revenue from the sale of admission tickets — Reasonable in relation to the service provided by the collecting society — Determination of the share of the musical repertoire of the collecting society actually performed)

(2021/C 35/18)

Language of the case: Dutch

Referring court

Ondernemingsrechtbank Antwerpen

Parties to the main proceedings

Applicant: Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM)

Defendants: Weareone.World BVBA, Wecandance NV

Operative part of the judgment

Article 102 TFEU must be interpreted as meaning that, the imposition, by a collecting society having a de facto monopoly in a Member State, on organisers of musical events, for the right of communication to the public of musical works, a scale with the following attributes, does not constitute an abuse of a dominant position, within the meaning of that article:

— royalties due in respect of copyright are calculated on the basis of a rate applied to the gross revenue from the sale of admission tickets, without all of the costs relating to the organisation of the festival that are unrelated to the musical works performed there being deducted from that revenue, provided that, having regard to all the relevant circumstances of the case, the royalties actually imposed by the collecting society on application of that scale are not excessive in view, in particular, of the nature and extent of the use of the works, the economic value generated by that use and the economic value of the services provided by that collecting society, which it is for the national court to verify, and

— a staggered flat-rate system is used to determine which proportion of the musical works performed were taken from the repertoire of that collecting society, provided that another method does not exist which enables those works to be identified and quantified more precisely and which is capable of achieving the same legitimate aim, namely the protection of the interests of authors, composers and music publishers, without however leading to a disproportionate increase in the costs incurred in relation to the management of the contracts and the supervision of the use of musical works protected by copyright; it is for the national court to verify that, in the light of the particular case before it and taking into account all the relevant circumstances, including the availability and reliability of the data provided as well as the existing technological tools.

(1) OJ C 270, 12.8.2019.

Judgment of the Court (Grand Chamber) of 24 November 2020 (request for a preliminary ruling from the Østre Landsret — Denmark) — Viasat Broadcasting UK Ltd v TV2/Danmark A/S, Kingdom of Denmark

(Case C-445/19) (1)

(Reference for a preliminary ruling — State aid — Public-service broadcaster — Article 106(2) TFEU — Services of general economic interest — Aid compatible with the internal market — Article 108(3) TFEU — Notification — Failure to notify — Recipient's obligation to pay interest in respect of the period during which that aid was unlawful — Calculation of interest — Amounts to be included)

(2021/C 35/19)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Viasat Broadcasting UK Ltd

Defendants: TV2/Danmark A/S, Kingdom of Denmark

Operative part of the judgment

1. Article 108(3) TFEU must be interpreted as meaning that the obligation incumbent on national courts to order the recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid also applies where, by its final decision, the European Commission finds that that aid is compatible with the internal market pursuant to Article 106(2) TFEU.

2. Article 108(3) TFEU must be interpreted as meaning that the obligation which is incumbent on national courts to order the recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid applies also to aid which that recipient has transferred to affiliated undertakings and to aid received by it from a publicly controlled undertaking.

(1) OJ C 270, 12.8.2019.

Judgment of the Court (Grand Chamber) of 24 November 2020 (request for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Criminal proceedings against AZ

(Case C-510/19) ([1])

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 6(2) — Concept of 'executing judicial authority' — Article 27(2) — Rule of speciality — Article 27(3)(g) and 27(4) — Derogation — Prosecution for an 'offence other' than that for which surrendered — Consent of the executing judicial authority — Consent of the Public Prosecutor's Office of the executing Member State)

(2021/C 35/20)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main criminal proceedings

AZ

Interveners: Openbaar Ministerie, YU, ZV

Operative part of the judgment

1. The concept of 'executing judicial authority' within the meaning of Article 6(2) 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, constitutes an autonomous concept of EU law which must be interpreted to the effect that it covers the authorities of a Member State which, without necessarily being judges or courts, participate in the administration of criminal justice in that Member State, acting independently in the exercise of the responsibilities inherent in the execution of a European arrest warrant and which exercise their responsibilities under a procedure which complies with the requirements inherent in effective judicial protection;

2. Article 6(2) and Article 27(3)(g) and 27(4) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the public prosecutor of a Member State who, although he or she participates in the administration of justice, may receive in exercising his or her decision-making power an instruction in a specific case from the executive, does not constitute an 'executing judicial authority' within the meaning of those provisions.

([1]) OJ C 312, 16.9.2019.

Judgment of the Court (Tenth Chamber) of 3 December 2020 — European Commission v Kingdom of Belgium

(Case C-767/19) ([1])

(Failure of a Member State to fulfil obligations — Directives 2009/72/EC and 2009/73/EC — Internal market in electricity and natural gas — Effective separation between the operation of electricity and gas transmission networks on the one hand, and supply and production activities on the other — Establishment of independent national regulatory authorities)

(2021/C 35/21)

Language of the case: French

Parties

Applicant: European Commission (represented by: O. Beynet and Y. G. Marinova, acting as Agents)

Defendant: Kingdom of Belgium (represented by: L. Van den Broeck, M. Jacobs and C. Pochet, acting as Agents, and by G. Block, avocat)

Operative part of the judgment

The Court:

1. Declares that the Kingdom of Belgium has failed to fulfil its obligations under Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, by failing to correctly transpose:

   — Article 9(1)(a) of both Directive 2009/72 and Directive 2009/73;

   — Article 37(4)(a) and (b) of Directive 2009/72 and Article 41(4)(a) and (b) of Directive 2009/73, and

   — Article 37(6)(a) to (c) and Article 37(9) of Directive 2009/72 and Article 41(6)(a) to (c) and Article 41(9) of Directive 2009/73.

2. Orders the Kingdom of Belgium to pay the costs.

(1) OJ C 10, 13.1.2020.

Judgment of the Court (Eighth Chamber) of 25 November 2020 (request for a preliminary ruling from the Okresný súd Košice I — Slovakia) — NI, OJ, PK v Sociálna poisťovňa

(Case C-799/19) (1)

(Reference for a preliminary ruling — Social policy — Directive 2008/94/EC — Articles 2 and 3 — Protection of employees in the event of the insolvency of their employer — Concepts of 'employees' outstanding claims' and 'insolvency of an employer' — Accident at work — Death of the employee — Compensation for non-material damage — Recovery of the claim against the employer — Impossible — Guarantee institution)

(2021/C 35/22)

Language of the case: Slovak

Referring court

Okresný súd Košice I

Parties to the main proceedings

Applicants: NI, OJ, PK

Defendant: Sociálna poisťovňa

Operative part of the judgment

1. Article 2(1) of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that an employer cannot be deemed to be in a 'state of insolvency' where an action for enforcement has been brought against that employer in connection with a judicially recognised claim for compensation, but the claim is deemed irrecoverable in the enforcement proceedings on account of that employer's informal insolvency. It is, however, for the referring court to ascertain whether, in accordance with Article 2(4) of Directive 2008/94, the Member State concerned has decided to extend employee protection as provided for under that directive to such a situation of insolvency, established by proceedings which are different from those mentioned in Article 2(1) and which are provided for under national law;

2. Article 1(1) and Article 3 of Directive 2008/94 must be interpreted as meaning that compensation due from an employer to surviving close relatives for non-material damage suffered as a result of the death of an employee caused by an accident at work may only be regarded as constituting 'employees' claims arising from contracts of employment or employment relationships' within the meaning of Article 1(1) of that directive where it is covered by the concept of 'pay' as defined under national law, that being a matter for the national court to determine.

(1) OJ C 19, 20.1.2020.

Appeal brought on 12 July 2018 by Oliver Spieker against the order of the General Court (Seventh Chamber) delivered on 8 May 2018 in Case T-92/18, Oliver Spieker v European Union Intellectual Property Office

(Case C-455/18 P)

(2021/C 35/23)

Language of the case: German

Parties

Appellant: Oliver Spieker (represented by: A. Schönfleisch, O. Spieker, M. Alber and N. Willich, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court should:

— set aside the order of the General Court of the European Union of 8 May 2018 in Case T-92/18, *Spieker* v *EUIPO (Science for a better skin)*, by which the General Court dismissed the action for annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 December 2017 (R 1067/2017-4) which had dismissed the appellant's appeal against the decision of the EUIPO examiner of 20 March 2017;

— annul the decision of the Fourth Board of Appeal of EUIPO of 12 December 2017 (R 1067/2017-4);

— order EUIPO to pay the costs of the proceedings, including those necessarily incurred by the appellant before the Fourth Board of Appeal and the General Court of the European Union.

By order of 8 December 2020, the Court of Justice of the European Union (Eighth Chamber) dismissed the appeal and ordered the unsuccessful party to pay the costs.

Appeal brought on 11 June 2020 by João Miguel Barata against the judgment of the General Court (Second Chamber) delivered on 2 April 2020 in Case T-81/18, Barata v Parliament

(Case C-259/20 P)

(2021/C 35/24)

Language of the case: English

Parties

Appellant: João Miguel Barata (represented by: G. Pandey, avocat, D. Rovetta, avocat, V. Villante, avvocato)

Other party to the proceedings: European Parliament

By order of 3 December 2020, the Court of Justice (Sixth Chamber) decided that the appeal should be dismissed as being in part manifestly inadmissible and in part manifestly unfounded and ordered the appellant to bear his own costs.

Appeal brought on 9 July 2020 by Peek & Cloppenburg KG, Düsseldorf against the judgment of the General Court (Fourth Chamber) delivered on 13 May 2020 in Case T-445/18, Peek & Cloppenburg KG, Düsseldorf v European Union Intellectual Property Office (EUIPO)

(Case C-307/20 P)

(2021/C 35/25)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG, Düsseldorf (represented by: P. Lange, A. Auler, M. Wenz and C. Möller, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Peek & Cloppenburg KG, Hamburg

By order of 29 October 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 9 July 2020 by Peek & Cloppenburg KG, Düsseldorf against the judgment of the General Court (Fourth Chamber) delivered on 13 May 2020 in Case T-535/18, Peek & Cloppenburg KG, Düsseldorf v European Union Intellectual Property Office (EUIPO)

(Case C-308/20 P)

(2021/C 35/26)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG, Düsseldorf (represented by: P. Lange, A. Auler, M. Wenz and C. Möller, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Peek & Cloppenburg KG, Hamburg

By order of 29 October 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 9 July 2020 by Peek & Cloppenburg KG, Düsseldorf against the judgment of the General Court (Fourth Chamber) delivered on 13 May 2020 in Case T-443/18, Peek & Cloppenburg KG, Düsseldorf v European Union Intellectual Property Office (EUIPO)

(Case C-309/20 P)

(2021/C 35/27)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG, Düsseldorf (represented by: P. Lange, A. Auler, M. Wenz and C. Möller, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Peek & Cloppenburg KG, Hamburg

By order of 29 October 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 10 July 2020 by Peek & Cloppenburg KG, Düsseldorf against the judgment of the General Court (Fourth Chamber) delivered on 13 May 2020 in Case T-446/18, Peek & Cloppenburg KG, Düsseldorf v European Union Intellectual Property Office (EUIPO)

(Case C-310/20 P)

(2021/C 35/28)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG, Düsseldorf (represented by: P. Lange, A. Auler, M. Wenz and C. Möller, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Peek & Cloppenburg KG, Hamburg

By order of 29 October 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 10 July 2020 by Peek & Cloppenburg KG, Düsseldorf against the judgment of the General Court (Fourth Chamber) delivered on 13 May 2020 in Case T-444/18, Peek & Cloppenburg KG, Düsseldorf v European Union Intellectual Property Office (EUIPO)

(Case C-311/20 P)

(2021/C 35/29)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG, Düsseldorf (represented by: P. Lange, A. Auler, M. Wenz and C. Möller, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Peek & Cloppenburg KG, Hamburg

By order of 29 October 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 10 July 2020 by Peek & Cloppenburg KG, Düsseldorf against the judgment of the General Court (Fourth Chamber) delivered on 13 May 2020 in Case T-534/18, Peek & Cloppenburg KG, Düsseldorf v European Union Intellectual Property Office (EUIPO)

(Case C-312/20 P)

(2021/C 35/30)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG, Düsseldorf (represented by: P. Lange, A. Auler, M. Wenz and C. Möller, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office, Peek & Cloppenburg KG, Hamburg

By order of 29 October 2020, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) dismissed the appeal and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Tribunal Judicial da Comarca dos Açores (Portugal) lodged on 16 July 2020 — VO and Others v SATA International — Azores Airlines SA

(Case C-316/20)

(2021/C 35/31)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca dos Açores

Parties to the main proceedings

Applicants: VO, ZO, ML, NB, KE, JE, PI, VY

Defendant: SATA International — Azores Airlines SA

Question referred

Does the concept of travel at a reduced fare not available directly or indirectly to the public cover passengers who paid part of their fare, the remainder being borne by the airline, in the context of sponsorship of a sports competition?

By order of 26 November 2020, the Court of Justice (Ninth Chamber) held:

Article 3(3) of Regulation (EC) No 261/2004 [1] **of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that that regulation does not apply to passengers travelling on tickets issued at a preferential fare by an air carrier in the context of an event sponsorship transaction, the benefit of which is restricted to certain specific persons and the issuing of which presupposes prior individual authorisation on the part of the air carrier.**

[1] OJ 2004 L 46, p. 1.

Appeal brought on 21 August 2020 by Dermavita Co. Ltd against the judgment of the General Court (Third Chamber) delivered on 25 June 2020 in Case T-104/19, Dermavita v EUIPO — Allergan Holdings France (JUVÉDERM)

(Case C-400/20 P)

(2021/C 35/32)

Language of the case: English

Parties

Appellant: Dermavita Co. Ltd (represented by: D. Todorov, адвокат)

Other parties to the proceedings: European Union Intellectual Property Office, Allergan Holdings France

By order of 3 December 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Appeal brought on 25 September 2020 by European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 15 July 2020 in Joined Cases T-778/16 and T-892/16, Ireland and Others v Commission

(Case C-465/20 P)

(2021/C 35/33)

Language of the case: English

Parties

Appellant: European Commission (represented by: L. Flynn, P.-J. Loewenthal and F. Tomat, Agents)

Other parties to the proceedings: Ireland, Apple Sales International (ASI), Apple Operations Europe (AOE), Grand Duchy of Luxembourg, Republic of Poland, EFTA Surveillance Authority

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— reject the first to fourth and eighth pleas in Case T-778/16 and the first to fifth, eighth and fourteenth pleas in Case T-892/16;

— refer the case back to the General Court for reconsideration of the pleas not already assessed; and

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The Commission puts forward two grounds of appeal.

First ground of appeal: the General Court committed several errors of law in rejecting the Decision's ([1]) primary finding of advantage. This ground of appeal consists of three parts.

— First, in paragraphs 125, 183 to 187, 228, 242, 243 and 249 of the judgment under appeal, the General Court misinterprets the Decision by concluding that the primary finding of advantage relied solely on the lack of employees and physical presence in the head offices of ASI and AOE and did not attempt to show that the Irish branches of ASI and AOE in fact performed functions justifying the allocation of the Apple IP licences to those branches. Recitals 281 to 305 of the Decision analyse the actual functions performed both by the head offices and by the Irish branches to justify the allocation of the Apple IP licences to the Irish branches. The General Court's failure to properly consider the structure and content of the Decision and the explanations in the Commission's written submissions on the functions performed by the head offices and the Irish branches is a breach of procedure. The General Court's subsequent acknowledgement, in paragraphs 268 to 283, 286 and 287 of the Judgment, that the Decision examines the functions performed by the Irish branches in justifying the attribution of the Apple IP licences to them constitutes contradictory reasoning, which amounts to a failure to state reasons.

— Second, in paragraphs 267, 269, 273, 274, 275, 277, 281, 283, 298 to 302 of the judgment under appeal, the General Court violates the separate entity approach and the ALP (arm's length principle), which constitutes an infringement of Article 107(1) TFEU and/or a distortion of national law, by invoking functions performed by Apple Inc. to reject the Decision's allocation of the Apple IP licences to the Irish branches. The General Court's failure to consider the explanations in recitals 308 to 318 of the Decision and the Commission's written submissions why functions performed by Apple Inc. are irrelevant for the attribution of profit within ASI and AOE is a breach of procedure and a failure to state reasons.

— Third, in paragraphs 301 and 303 to 309 of the judgment under appeal, the General Court violates the separate entity approach and the ALP, which constitutes an infringement of Article 107(1) TFEU and/or a distortion of national law, by finding that formal acts taken by the directors of ASI and AOE constitute functions performed by their head offices in relation to the Apple IP licences. The General Court's failure to consider the Commission's explanations in the Decision and in its written submissions why those acts do not constitute functions performed by the head offices for the application of the separate entity approach and the ALP is a breach of procedure and a failure to state reasons. The General Court's reliance on inadmissible evidence in support of its finding is a breach of procedure.

Second ground of appeal: the General Court committed errors of law by rejecting the Decision's subsidiary finding of advantage. This ground of appeal consists of three parts.

— First, in paragraphs 349, 416, 434 and 435 of the judgment under appeal, the General Court commits an error of law in the application of the rules on the standard of proof the Commission must meet to show an advantage.

— Second, in paragraphs 315 to 481 of the judgment under appeal, the General Court commits a breach of procedure when it relies on arguments to reject the subsidiary finding of advantage that neither Ireland nor ASI/AOE made in their applications at first instance.

— Third, in paragraphs 315 to 481 of the judgment under appeal, the General Court misrepresented the Decision and infringed Article 107(1) TFEU and/or distorted national law in concluding that the Decision had not established the existence of an advantage under its subsidiary line of reasoning.

([1]) Commission Decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple (OJ 2017, L 187, p. 1).

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 5 October 2020 — TP v Institut des Experts en Automobiles

(Case C-502/20)

(2021/C 35/34)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: TP

Defendant: Institut des Experts en Automobiles

Questions referred

1. Can the provisions of Article 5[(1)(2)](b) and Article 6 of the Belgian Law of 15 May 2007 on the recognition and protection of the profession of automotive expert, read in conjunction with the provisions of the Law of 12 February 2008 establishing a general framework for the recognition of EU professional qualifications, in particular Articles 6, 8 and 9 thereof, be interpreted as meaning that a service provider who changes his or her place of establishment to another Member State cannot, after that change, be entered, in his or her country of origin (in this instance, Belgium), in the IEA's register of temporary and occasional service providers with a view to pursuing temporary and occasional activity in that country? Is such an interpretation compatible with the freedom of establishment granted under EU law?

2. Are the provisions of Article 5[(1)(2)](b) and Article 6 of the Belgian Law of 15 May 2007 on the recognition and protection of the profession of automotive expert, read in conjunction with the provisions of the Law of 12 February 2008 establishing a general framework for the recognition of EU professional qualifications, in particular Articles 6, 8 and 9 thereof, interpreted as meaning that the concept of temporary and occasional activity precludes the possibility for a service provider established in one Member State to provide services in another Member State if those services are to a degree recurrent, without being regular, or to possess some forms of infrastructure in that other Member State, compatible with the abovementioned provisions of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications? ([1])

([1]) OJ 2005 L 255, p. 22.

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 19 October 2020 — J.P. v B.d.S.L.

(Case C-521/20)

(2021/C 35/35)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Complainant: J.P.

Defendant authority: B.d.S.L.

Question referred

Is Article 50 of the Charter of Fundamental Rights of the European Union (in particular in conjunction with the Eurovignette Directive 1999/62/EC) ([1]) to be interpreted as meaning that the combination of national rules which — as in the case of Paragraph 20(2) of the BStMG in conjunction with Paragraph 22(2) of the VStG — requires the cumulative prosecution and punishment of serial breaches of the obligation to pay tolls committed on separate stretches of road is contrary to the prohibition of multiple prosecution and punishment if there is not simultaneously, at the legislative level, both an obligation of coordination for all the authorities and courts competent to conduct such proceedings and an explicit obligation to apply the principle of proportionality effectively in relation to the amount of the overall penalty?

([1]) Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ 1999 L 187, p. 42).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 19 October 2020 — OE v VY

(Case C-522/20)

(2021/C 35/36)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: OE

Defendant: VY

Questions referred

1. Does the sixth indent of Article 3(1)(a) of Council Regulation (EC) No 2201/2003 [1] of 27 November 2003 infringe the prohibition of discrimination in Article 18 TFEU on the ground that it provides, as a precondition to the jurisdiction of the courts of the State of residence, depending on the nationality of the applicant, for a shorter period of residence than the fifth indent of Article 3(1)(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003?

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

   Does that infringement of the prohibition of discrimination mean that, based on the fundamental rule laid down in the fifth indent of Article 3(1)(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003, a period of residence of 12 months is required for all applicants, irrespective of their nationality, in order to rely upon the jurisdiction of the courts in the place of residence or is it to be assumed that a period of 6 months' residence is the precondition for all applicants?

[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).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 19 October 2020 — Association France Nature Environnement v Premier ministre and Ministre de la Transition écologique et solidaire

(Case C-525/20)

(2021/C 35/37)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Association France Nature Environnement

Defendants: Premier ministre, Ministre de la Transition écologique et solidaire

Questions referred

1. Should Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [1] be interpreted as permitting Member States, when authorising a programme or project, not to take into account their temporary, short-term impacts on surface water status which are without lasting consequences?

2. If so, what conditions should those programmes and projects meet for the purposes of Article 4 of that directive and in particular paragraphs 6 and 7 thereof?

[1] OJ 2000 L 327, p. 1.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 October 2020 — Finanzamt B v W AG

(Case C-538/20)

(2021/C 35/38)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: Finanzamt B

Respondent in the appeal on a point of law: W AG

Other Party: Bundesministerium der Finanzen

Questions referred

1. Is Article 43, in conjunction with Article 48, of the Treaty establishing the European Community (now Article 49, in conjunction with Article 54, of the Treaty on the Functioning of the European Union) to be interpreted as precluding legislation of a Member State which prevents a resident company from deducting losses incurred by a permanent establishment in another Member State from its taxable profits where, first, the company has exhausted the possibilities to deduct those losses available under the law of the Member State in which the permanent establishment is situated and, second, it has ceased to receive any income from that establishment, so that there is no longer any possibility of account being taken of the losses in that Member State ('final' losses), if the legislation in question concerns an exemption for profits and losses under a bilateral convention for the avoidance of double taxation between the two Member States?

2. If the first question is answered in the affirmative:

   Is Article 43, in conjunction with Article 48, of the Treaty establishing the European Community (now Article 49, in conjunction with Article 54, of the Treaty on the Functioning of the European Union) to be interpreted as also precluding the legislation under the German Gewerbesteuergesetz (Law on local business tax) which prevents a resident company from deducting from its taxable business earnings 'final' losses of the type referred to in the first question of a permanent establishment in another Member State?

3. If the first question is answered in the affirmative:

   In the event of the closure of the permanent establishment in the other Member State, can there be 'final' losses of the type referred to in the first question, even though there is at least a theoretical possibility that the company might once more open in the Member State concerned a permanent establishment, any profits of which could be offset against the previous losses?

4. If the first and third questions are answered in the affirmative:

   Can the losses of the permanent establishment which, under the law of the State in which that establishment is situated, could have been carried forward to a subsequent tax period on at least one occasion also be considered to be 'final' losses of the type referred to in the first question of which account is to be taken by the State in which the parent establishment is resident?

5. If the first and third questions are to be answered in the affirmative:

   Is the obligation to take account of cross-border 'final' losses limited as to amount by the amounts of losses which the company could have calculated in the State in which the permanent establishment is situated, were the taking account of losses not precluded there?

Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 26 October 2020 — Koch Media GmbH v FU

(Case C-559/20)

(2021/C 35/39)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: Koch Media GmbH

Defendant: FU

Questions referred

1. a) Is Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights '(the Enforcement Directive') ([1]) to be interpreted as meaning that the provision covers necessary lawyers' fees as 'legal costs' or as 'other expenses' incurred by a holder of intellectual property rights within the meaning of Article 2 of the Enforcement Directive by virtue of the fact that he asserts, out of court, a right to apply for a prohibitory injunction against an infringer of those rights by way of a warning notice?

b) In the event that 1a) is answered in the negative: Is Article 13 of the Enforcement Directive to be interpreted as meaning that the provision covers the lawyers' fees referred to in 1a) in the form of damages?

2. a) Is EU law, particularly with regard to

— Articles 3, 13 and 14 of the Enforcement Directive,

— Article 8 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, ([2]) and

— Article 7 of Directive 2009/24/EC the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) ([3])

to be interpreted as meaning that a holder of intellectual property rights within the meaning of Article 2 of the Enforcement Directive is in principle entitled to reimbursement of the full amount of the lawyers' fees referred to in 1a), or at least a reasonable and substantial proportion of those fees, even if

— the alleged infringement has been committed by a natural person outside his trade or profession, and

— a national provision provides, for such a case, that such lawyers' fees are generally recoverable only after the value in dispute has been reduced?

b) In the event that Question 2a) is answered in the affirmative: Is the EU law referred to in Question 2a) to be interpreted as meaning that an exception to the principle referred to in 2a), according to which the rightholder must be reimbursed the full amount of the lawyers' fees referred to in 1a), or at least a reasonable and substantial proportion of those fees,

taking account of other factors (such as, for instance, how current the work is, the period of publication and the infringement by a natural person outside the interests of his trade or profession),

is to be considered

even if the infringement of intellectual property rights within the meaning of Article 2 of the Enforcement Directive consists in file sharing, that is to say making a work available to the public by offering it for free download to all users on a freely accessible exchange platform that has no digital rights management?

([1]) OJ 2004 L 157, p. 45.
([2]) OJ 2001 L 167, p. 10.
([3]) OJ 2009 L 111, p. 16.

Request for a preliminary ruling from the Commissione tributaria provinciale di Parma (Italy) lodged on 30 October 2020 — Casa di Cura Città di Parma SpA v Agenzia delle Entrate

(Case C-573/20)

(2021/C 35/40)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Parma

Parties to the main proceedings

Applicant: Casa di Cura Città di Parma SpA

Defendant: Agenzia delle Entrate

Questions referred

1. [Is there] a conflict between national legislation and [EU] law and, in particular, between Article 19(5) and Article 19bis of Presidential Decree 633/72 (the Italian national legislation which governs the mechanism for calculating the non-deductible proportion of VAT), on the one hand, and Article 17(2)(a) of Directive [77/388/EC] of 17 May 1977, ([1]) on the other?

2. [Is] the difference in treatment between Italian healthcare professionals, deemed to be 'final consumers' (liable to VAT) and healthcare professionals of other Member States of the European Union (such as Belgium, Bulgaria, Germany, Greece, France and Spain), deemed to be 'intermediary operators' (with the right to deduct VAT), [compatible with EU law]?

3. [Is there] unequal treatment as regards the rules on VAT between the various Member States of the European Union, given that unlike the situation in Italy where healthcare services are exempt from VAT, in other Member States of the European Union (Belgium, Bulgaria, Germany, Greece, France and Spain) the same healthcare services are subject to VAT, with the result that different rates of VAT and, therefore, a different right to deduct are applied to the same healthcare services?

4. [Is] the inequality between Italian healthcare professionals (including Casa di Cura Città di Parma) and the professionals of other Member States of the European Union (Belgium, Bulgaria, Germany, Greece, France and Spain) — in that the healthcare services provided by the latter are subject to value added tax and, as a result, unlike Italian healthcare professionals, they have the corresponding right to deduct and/or to reimbursement of VAT paid on purchases — [compatible with EU law]?'

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Request for a preliminary ruling from the Bundesfinanzgericht (Austria) lodged on 3 November 2020 — XO v Finanzamt Waldviertel

(Case C-574/20)

(2021/C 35/41)

Language of the case: German

Referring court

Bundesfinanzgericht

Parties to the main proceedings

Appellant: XO

Respondent authority: Finanzamt Waldviertel

Questions referred

Question 1, concerning the validity of secondary legislation:

Are Articles 4 and 7 of Regulation (EC) No 883/2004, ([1]) as amended by Regulation (EU) No 465/2012, ([2]) ('Regulation No 883/2004', 'the New Coordination Regulation' or 'the Basic Regulation') valid?

Question 2:

Is Article 7 of Regulation No 883/2004, in particular its title 'Waiving of residence rules', to be interpreted as meaning that it precluded the legally valid adoption of the general rules governing the indexation of family allowances by reference to the purchasing-power conditions in the State of residence — Paragraph 8a of the Familienlastenausgleichsgesetz 1967 (1967 Law on compensation for family expenses; 'the FLAG'), point 2 of Paragraph 33(3) of the Einkommensteuergesetz 1988 (1988 Law on income tax; 'the EStG') and the Familienbeihilfe-Kinderabsetzbetrag-EU-Anpassungsverordnung (Order adapting family allowances and tax credits for the European Union — in so far as they entail a decrease in the value of family benefits for certain Member States?

Question 3:

Is the prohibition of the reduction of cash benefits laid down in Article 7 of Regulation No 883/2004, in particular its wording 'cash benefits … shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation', to be interpreted as meaning that that provision did not preclude the legally valid adoption of the provisions governing the indexation of family allowances by reference to the purchasing power conditions in the State of residence — Paragraph 8a of the FLAG and point 2 of Paragraph 33(3) of the EStG — in so far as the value of the family allowances in question is to be increased?

Questions 4 and 5, concerning the expert report on which the legislative amendment was based:

Question 4:

Are Articles 7 and 67 of Regulation No 883/2004 to be interpreted — and delimited in relation to one other — to the effect that Article 7 relates to the law-making process in which the residence rule is created as a general, abstract rule by the Member State's parliament, whereas Article 67 concerns the law-making process for an individual, specific rule in an actual specific case and is addressed directly to the institution, as initially established under Title II of the Basic Regulation?

Question 5:

Are Articles 67, 68(1) and (2) of Regulation No 883/2004 and Article 60(1) of Regulation No 987/2009 to be interpreted as meaning that, like their predecessor provisions — Articles 73 and 76 of Regulation No 1408/71 and Article 10 of Regulation No 574/72 — they are to be applied in conjunction with one another and therefore understood only in context, and they pursue, in conjunction with one another and in compliance with the anti-accumulation principle, the objective of ensuring that the person concerned does not lose any entitlements, as guaranteed by the classification and hierarchisation of the Member States prescribed in Article 68(1) and (2) and by the express requirement that the competent Member State whose legislation is applicable on a secondary basis will be required to make a supplementary payment if necessary, with the result that an isolated interpretation of Article 67 of Regulation No 883/2004, such as that in the expert report, is not permissible?

Question 6:

Are the concept of 'general application' of a regulation and the wording 'It shall be binding in its entirety and directly applicable' in the second paragraph of Article 288 TFEU to be interpreted as meaning that they also precluded the valid adoption of the competent institutions' individual rules which build on the rules governing indexation and that the administrative decision under appeal in the main proceedings has not acquired the force of formal *res judicata* (*Bestandskraft*)?

Question 7:

Do Paragraph 53(1) of the FLAG, in the original version of the Budgetbegleitgesetz (Law accompanying the budget) of 29 December 2000, BGBl 1142/2000, and Paragraph 53(4) of the FLAG in the original version of the Federal Law of 4 December 2018 amending the 1967 Law on compensation for family expenses, the 1988 Law on income tax and the Entwicklungshelfergesetz (Law on development aid workers), BGBl I 83/2018, infringe the prohibition of the transposition of regulations within the meaning of the second paragraph of Article 288 TFEU?

Questions 8 to 12, which are to be examined together:

Question 8:

Are the requirement of equality of treatment with nationals under Article 4 of Regulation No 883/2004 and the underlying prohibition of discrimination under Article 45(2) TFEU to be interpreted as meaning that they are complied with only if a migrant worker is treated in the same way as a national in a domestic situation and is therefore notified of the family allowance in advance and is paid the family allowance monthly in advance on an ongoing basis pursuant to Paragraph 12, in conjunction with Paragraphs 2 and 8, of the FLAG, or is there compliance with the requirement of equality of treatment with nationals if a migrant worker is treated in the same way as a national who, like him, is in a cross-border situation pursuant to Paragraph 4 of the FLAG, but, in the second case, by way of derogation, it is only annually after the end of the calendar year that he receives the family allowance under Paragraph 4(4) of the FLAG for the calendar year in question?

Question 9:

Is the suspension of entitlements to family benefits by virtue of other conflicting legislative provisions up to the amount provided for by the legislation designated as having priority, as prescribed in the second sentence of Article 68(2) of Regulation No 883/2004, to be interpreted as precluding a Member State's anti-accumulation rule, such as Paragraph 4(1) to (3) of the FLAG, which, in a situation such as the present one, entitles Austria, as the Member State with primary responsibility, to reduce family allowances by entitlements to 'an equivalent foreign allowance' in the other Member State, because the rule of EU law has already prevented anti-accumulation and the anti-accumulation rule in Paragraph 4(1) to (3) of the FLAG therefore serves no purpose?

Question 10:

Is the suspension of entitlements to family benefits by virtue of other conflicting legislative provisions up to the amount provided for by the legislation designated as having priority, as prescribed in the second sentence of Article 68(2) of Regulation No 883/2004, to be interpreted as meaning that the Member State whose legislation is applicable on a secondary basis and which must comply with the suspension of family benefits provided for in its legislation due to the requirement under EU law is obliged to reject an application of a migrant worker or a member of his family or a person otherwise entitled under the legislation of the Member State and not to grant family benefit up to the amount provided for by the legislation designated as having priority, even if an approach based solely on the situation of the Member State — possibly on an alternative legal basis — would permit the granting of that family benefit?

Question 11:

If Question 10 is answered in the affirmative, the question then arises as to whether the Member State whose legislation is applicable on a secondary basis and which must comply with the suspension of family benefits provided for in its legislation due to the requirement under EU law, but which is not required to provide the differential supplement for the sum which exceeds the amount provided for by the first legislation, owing to the lack of such a sum, would have to reject an application on the ground that the suspension under the second sentence of Article 68(2) of Regulation No 882/2004 precludes the granting of entitlements to family allowances?

Question 12:

Must Article 68(1) and (2) of Regulation No 883/2004 be interpreted as meaning that, in a situation such as that at issue in the main proceedings, points 6 and 7 of form E 411 of the Administrative Commission on Social Security for Migrant Workers, which are to be completed by the Member State whose legislation is applicable on a secondary basis, no longer meet the information requirements of the Member State whose legislation is applicable on a primary basis, because the Member State with primary responsibility needs to be informed by the other Member State, within the meaning of Questions 10 and 11, that the latter Member State will be enforcing the suspension under the second sentence of Article 68 (2) of Regulation No 883/2004, as a result of which there is no need to examine the Member State's legal situation, which includes earnings thresholds?

Question 13:

Is the obligation to recast legislation, as developed by the Court of Justice in settled case-law on the basis of the principle of loyalty under Article 4(3) TEU, to be understood as meaning that it could also be discharged by the Verfassungsgerichtshof (Constitutional Court, Austria) pursuant to a request from the referring court?

Question 14:

Are point (b) of the first paragraph of Article 267 TFEU on questions concerning the validity of secondary law, which is mandatory even for a referring court not adjudicating at last instance, and the referring court's obligation, which is linked to questions concerning validity, to ensure the application of valid EU law by adopting, by decision, an interim order refusing leave for an appeal on a point of law, owing to the primacy of application of EU law, to be interpreted as precluding rules of Member States such as Article 133(4) and (9) of the Bundes-Verfassungsgesetz (Federal Constitutional Law; 'the B-VG'), in conjunction with Paragraph 25a(1) to (3) and Paragraph 30a(7) of the Verwaltungsgerichtshofgesetz (Law on the Supreme Administrative Court; 'the VwGG'), which grant, at national level, the parties to the underlying administrative proceedings a review of legal protection conducted by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) against a decision of the Verwaltungsgericht (Administrative Court, Austria) in the form of an 'extraordinary' appeal on a point of law?

([1]) Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, corrigendum in OJ 2004 L 200, p. 1).

([2]) Regulation of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2012 L 149, p. 4).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 4 November 2020 — CC v Pensionsversicherungsanstalt

(Case C-576/20)

(2021/C 35/42)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: CC

Respondent: Pensionsversicherungsanstalt

Questions referred

1. Is Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ([1]) to be interpreted as precluding child-raising periods spent in other Member States from being taken into account by a Member State competent to grant an old-age pension — under whose legislation the applicant for a pension has pursued an activity as an employed or self-employed person throughout her working life, with the exception of those child-raising periods — solely on the ground that the applicant for a pension was not pursuing an activity as an employed or self-employed person at the date when, under the legislation of that Member State, the child-raising period started to be taken into account for the child concerned?

   If the first question is answered in the negative:

2. Is the first clause of Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems to be interpreted as meaning that, under its legislation, the Member State which is competent under Title II of Regulation (EC) No 883/2004 on the coordination of social security systems does not take child-raising periods into account generally, or that it does not take them into account only in a specific case?

([1]) OJ 2009 L 284, p. 1.

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 10 November 2020 — JR v Austrian Airlines AG

(Case C-589/20)

(2021/C 35/43)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Applicant: JR

Defendant: Austrian Airlines AG

Questions referred

1. Is Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, ([1]) to be interpreted as meaning that the concept of 'accident' within the meaning of that provision covers a situation in which a passenger falls on the last third of a mobile boarding stairway when disembarking from an aircraft — for no ascertainable reason — and sustains an injury, which was not caused by an object used when serving passengers within the meaning of the decision of the Court of Justice of 19 December 2019, C-532/18, ([2]) and there was no defect in the quality of the stairway, which, in particular, also was not slippery?

2. Is Article 20 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, to be interpreted as meaning that any liability on the part of the air carrier ceases to exist in its entirety if circumstances such as those described in point 1 exist and the passenger was not holding on to the handrail of the stairway at the time of the fall?

([1]) 2001/539/EC: Council Decision of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ 2001 L 194, p. 38).

([2]) ECLI:EU:C:2019:1127.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 11 November 2020 — Reprensus GmbH v S-V Pavlovi Trejd EOOD

(Case C-591/20)

(2021/C 35/44)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant in the appeal on a point of law: Reprensus GmbH

Defendant and respondent in the appeal on a point of law: S-V Pavlovi Trejd EOOD

Question referred

Are points 1(a) and 2 of Article 7 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) (OJ 2012 L 351) to be interpreted as meaning that jurisdiction for matters relating to tort or delict exists in respect of an action for damages if the applicant was induced to conclude a purchase contract and pay the purchase price by means of intentional deception?

([1]) OJ 2012 L 351, p. 1.

Request for a preliminary ruling from the Markkinaoikeus (Finland) lodged on 12 November 2020 — Kuluttaja-asiamies v MiGame Oy

(Case C-594/20)

(2021/C 35/45)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicant: Kuluttaja-asiamies

Defendant: MiGame Oy

Questions referred

1. Is the first paragraph of Article 21 of Directive 2011/83/EU [1] of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council to be interpreted as precluding a trader from providing, in addition to a telephone number charged at no more than the basic rate, a telephone number which the consumer may use for matters relating to a contract previously concluded and for the use of which a price exceeding the basic rate is charged, and, furthermore, in the event that the provision of a telephone number that charges a rate exceeding the basic rate is deemed to be compatible with Article 21 in certain circumstances, are the factors of, for example, whether it is easy to find the telephone number subject to the basic rate, whether the intended purpose of the telephone numbers is specified with sufficient clarity and whether there are significant differences in the availability or level of customer service relevant to the assessment?

2. Must the concept of 'basic rate' under Article 21 of Directive 2011/83/EU be interpreted as meaning that a trader may provide, as a customer service number for matters relating to a contract concluded previously, only a standard geographic landline or mobile telephone line or a number that is free of charge for consumers, and, furthermore, in the event that the trader is permitted to provide another telephone number, what is the maximum amount that a consumer can be charged for the use of that telephone number if he has concluded a telephone contract as a package deal?

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 13 November 2020 — UE v ShareWood Switzerland AG and VF

(Case C-595/20)

(2021/C 35/46)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: UE

Respondents: ShareWood Switzerland AG, VF

Question referred

Is Article 6(4)(c) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ([1]) to be interpreted as meaning that a contract for the purchase of teak and balsa trees between an undertaking and a consumer, which is intended to confer ownership of the trees, which are then managed, harvested and sold for profit, and which includes for that purpose a lease agreement and a service agreement, is to be regarded as 'a contract relating to a right *in rem* in immovable property or a tenancy of immovable property' within the meaning of that provision?

([1]) OJ 2008 L 177, p. 6.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 12 November 2020 — DuoDecad Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-96/20)

(2021/C 35/47)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: DuoDecad Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must Articles 2(1)(c), 24(1) and 43 of Council Directive 2006/112 be interpreted as meaning that, ([1]) since the acquirer of a know-how licence — a company established in a Member State of the European Union (in the case of the dispute in the main proceedings, Portugal) — does not provide the services available on a website to end users, it cannot be the recipient of the service of technical support for that know-how that is provided by a taxable person established in another Member State (in the case of the dispute in the main proceedings, Hungary) as a subcontractor, that service being provided, rather, by the taxable person to the grantor of the know-how licence established in the latter Member State, in circumstances in which the acquirer of the licence:

   a) had rented offices in the first Member State, IT and other office infrastructure, its own staff and extensive experience in the field of e-commerce, as well as an owner with extensive international connections and a qualified e-commerce manager;

   b) had obtained know-how reflecting the processes for operating the websites and making updates to them, and issued opinions on, suggested modifications to, and approved those processes;

   c) was the recipient of the service that the taxable person provided on the basis of that know-how;

   d) regularly received reports on the services provided by the subcontractors (in particular, on website traffic and payments made from the bank account);

   e) registered in its own name the internet domains allowing access to the websites via the internet;

   f) was listed on the websites as a service provider;

   g) took steps itself to preserve the popularity of the websites;

h) itself concluded, in its own name, the contracts with partners and subcontractors that were necessary in order to provide the service (in particular, with banks offering payment by bank card on the websites, with creators providing content accessible on the websites and with webmasters promoting that content);

i) had a complete system for receiving revenue from providing the service in question to end users, such as bank accounts, full and exclusive powers of disposal over those accounts, an end user database enabling end users to be invoiced for that service and its own invoicing software;

j) indicated on the websites its own headquarters in the first Member State as the physical customer service centre; and

k) is a company independent of both the grantor of the licence and the Hungarian subcontractors responsible for carrying out certain technical processes described in the know-how,

given also that: i) the circumstances set out above were confirmed by the relevant authority in the first Member State, in its capacity as the appropriate body to establish the presence of those objective and externally verifiable circumstances; ii) the fact that the company in the other Member State could not access a payment service provider able to guarantee receipt of payments by bank card on the website, with the result that the company established in that Member State never provided the service available on the websites, either before or after the period under examination, constituted an objective obstacle to the provision of that service in that other Member State via the websites; and iii) the company acquiring the licence and its related undertakings derived a profit from the operation of the website that was higher overall than the difference between applying the rate of VAT in the first Member State and in the second respectively?

2. Must Articles 2(1)(c), 24(1) and 43 of the VAT Directive be interpreted as meaning that, since the grantor of the know-how licence — a company established in the other Member State — provides the services available on a website to end users, it is the recipient of the service of technical support for that know-how provided by the taxable person as a subcontractor, that service not being provided by the taxable person to the acquirer of the licence, established in the first Member State, in circumstances in which the company granting the licence:

a) had resources of its own consisting solely of a rented office and a computer used by the company manager;

b) had as its own employees only a manager and a legal adviser who worked a few hours a week on a part-time basis;

c) had as its only contract the know-how development contract;

d) ordered that the domain names that it owned be registered by the acquirer of the licence in its own name, in accordance with the contract concluded with the latter;

e) never appeared as the provider of the services in question in dealings with third parties, in particular end users, banks offering payment by bank card on the websites, creators of content accessible on the websites and webmasters promoting that content;

f) has never issued any supporting documentation in relation to the services available on the websites, other than the invoice for the licence fees; and

g) did not have a system (such as bank accounts and other infrastructure) for receiving revenue from the service provided via the websites;

given also that, in accordance with the judgment of 17 December 2015, *WebMindLicenses* (C-419/14, EU:C:2015:832), the fact that the manager and sole shareholder of the company granting the licence is the creator of the know-how and, moreover, that that person exercises influence or control over the development and exploitation of that know-how and over the supply of the services based on it, with the result that the natural person who is the manager and owner of the company granting the licence is also the manager and/or owner of those subcontracted commercial companies (and, therefore, of the applicant), which work together to provide the service, as subcontractors, on behalf of the acquirer of the licence and perform the abovementioned functions for which they are responsible, does not appear to be decisive in itself?

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

Request for a preliminary ruling from the Satversmes tiesa (Latvia) lodged on 13 November 2020 — AS Pilsētas zemes dienests v Latvijas Republikas Saeima

(Case C-598/20)

(2021/C 35/48)

Language of the case: Latvian

Referring court

Satversmes tiesa

Parties to the main proceedings

Applicant: AS Pilsētas zemes dienests

Institution from which the contested measure emanated: Latvijas Republikas Saeima

Questions referred

1. Must the exemption from value added tax for the leasing of immovable property provided for in Article 135(1)(l) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (1) be interpreted as meaning that that exemption applies to the leasing of land in the case of compulsory leasing?

2. If the answer to the first question is in the affirmative — that is to say that the leasing of land in the case of compulsory leasing is exempt from value added tax — then, where all other instances of the leasing of land are subject to value added tax, is such an exemption not contrary to one of the principles of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, namely the principle of neutrality of value added tax?

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

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 13 November 2020 — *UAB 'Baltic Master'* v *Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos*

(Case C-599/20)

(2021/C 35/49)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: UAB 'Baltic Master'

Defendant: Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Questions referred

1. Must Article 29(1)(d) of Council Regulation (EEC) No 2913/92 [1] of 12 October 1992 establishing the Community Customs Code and Article 143(1)(b), (e) or (f) of Commission Regulation (EEC) No 2454/93 [2] of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that the buyer and the seller are deemed to be related persons in cases where, as in the present case, in the absence of documents (official data) proving business partnership or control, the circumstances surrounding the conclusion of transactions are, however, on the basis of objective evidence, characteristic, not of the performance of economic activities under normal conditions, but rather of cases in which (1) there are particularly close business relations based on a high level of mutual trust between the parties to the transaction, or (2) one party to the transaction controls the other or both parties to the transaction are controlled by a third party?

2. Must Article 31(1) of Regulation (EEC) No 2913/92 be interpreted as prohibiting determination of the customs value on the basis of information contained in a national database relating to one customs value of goods which have the same origin and which, although not similar, within the meaning of Article 142(1)(d) of Regulation (EEC) No 2454/93, are ascribed to the same TARIC heading?

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(1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).
(2) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Request for a preliminary ruling from the Tribunal d'arrondissement (Luxembourg) lodged on 13 November 2020 — SOVIM SA v Luxembourg Business Registers

(Case C-601/20)

(2021/C 35/50)

Language of the case: French

Referring court

Tribunal d'arrondissement

Parties to the main proceedings

Applicant: SOVIM SA

Defendant: Luxembourg Business Registers

Questions referred

Question 1

Is Article 1(15)(c) of Directive (EU) 2018/843, [1] amending the first subparagraph of Article 30(5) of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing …, [2] in so far as it requires Member States to make information on beneficial owners accessible to the general public in all cases, with no requirement for a legitimate interest to be shown, a valid provision:

(a) in the light of the right to respect for private and family life guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union (the 'Charter'), interpreted in accordance with Article 8 of the European Convention on Human Rights, having regard to the objectives stated inter alia in recitals 30 and 31 of Directive 2018/843 relating, in particular, to efforts to combat money laundering and terrorist financing; and

(b) in the light of the right to protection of personal data guaranteed by Article 8 of the Charter, in so far as it is intended, inter alia, to guarantee that personal data are processed lawfully, fairly and in a transparent manner in relation to the data subject, that the purposes for which such data are collected are limited, and that the data are minimised?

Question 2

1. Is Article 1(15)(g) of Directive 2018/843 to be interpreted as meaning that the exceptional circumstances to which it refers, in which Member States can provide for exemptions from access to all or part of the information on beneficial owners, where access on the part of the general public would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, exist only where it is demonstrated that there is a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation which is exceptional, which is actually borne by the beneficial owner as an individual, and which is clear, real and present?

2. Should this be answered in the affirmative, is Article 1(15)(g) of Directive 2018/843, thus interpreted, a valid provision in the light of the right to respect to private and family life guaranteed by Article 7 of the Charter and the right to protection of personal data guaranteed by Article 8 of the Charter?

Question 3

1. Is Article 5(1)(a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [3] (the 'GDPR'), which requires data to be processed lawfully, fairly and in a transparent manner in relation to the data subject, to be interpreted as not precluding:

   (a) that the personal data of a beneficial owner, recorded in a register of beneficial owners established in accordance with Article 30 of Directive 2015/849, as amended by Article 1(15) of Directive 2018/843, are accessible to the general public, with no monitoring of access and no requirement for any member of the public to provide justification, and without any way for the data subject (the beneficial owner) to know who has accessed his personal data; or

   (b) that the data controller responsible for such a register of beneficial owners provides access to the personal data of beneficial owners to an unlimited and indeterminable number of persons?

2. Is Article 5(1)(b) of the GDPR, which requires the purposes of data processing to be limited, to be interpreted as not precluding that the personal data of a beneficial owner, recorded in a register of beneficial owners established in accordance with Article 30 of Directive 2015/849, as amended by Article 1(15) of Directive 2018/843, are accessible to the general public, in circumstances where the data controller cannot guarantee that those data will be used only for the purpose for which they were collected, which, in essence, is that of combating money laundering and terrorist financing — a purpose in relation to which the general public is not the responsible body from which compliance is required?

3. Is Article 5(1)(c) of the GDPR, which requires data to be minimised, to be interpreted as not precluding the general public from having access, through a register of beneficial owners established in accordance with Article 30 of Directive 2015/849, as amended by Article 1(15) of Directive 2018/843, to data indicating, in addition to the beneficial owner's name, month and year of birth, nationality and country of residence, as well as the nature and extent of his beneficial interests, also his day and place of birth?

4. Does Article 5(1)(f) of the GDPR, which requires data to be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing, and thus guarantees the integrity and confidentiality of such data, preclude access to the personal data of beneficial owners contained in a register of beneficial owners established in accordance with Article 30 of Directive 2015/849, as amended by Article 1(15) of Directive 2018/843, from being provided on an unlimited and unconditional basis, with no commitment to keep such data confidential?

5. Is Article 25(2) of the GDPR, which guarantees data protection by default, providing in particular that by default, personal data must not made accessible without the individual's intervention to an indefinite number of natural persons, to be interpreted as not precluding:

   (a) that a register of beneficial owners established in accordance with Article 30 of Directive 2015/849, as amended by Article 1(15) of Directive 2018/843, does not require members of the general public consulting the personal data of a beneficial owner on its website to create an account; or

(b) that no information concerning a consultation of personal data of a beneficial owner contained in such a register is disclosed to that beneficial owner; or

(c) that no restriction on the extent and accessibility of the personal data at issue is applicable in the light of the purpose of their processing?

6. Are Articles 44 to 50 of the GDPR, under which the transfer of personal data to a third country is subject to strict conditions, to be interpreted as not precluding that the personal data of a beneficial owner, contained in a register of beneficial owners established in accordance with Article 30 of Directive 2015/849, as amended by Article 1(15) of Directive 2018/843, are accessible in any circumstances to any member of the general public, with no requirement to demonstrate a legitimate interest and no limitations as to the location of that public?

([1]) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ 2018 L 156, p. 43).

([2]) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73).

([3]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 18 November 2020 — CS v Eurowings GmbH

(Case C-613/20)

(2021/C 35/51)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: CS

Defendant: Eurowings GmbH

Questions referred

1. Does a strike by an air carrier's staff called by a trade union to pursue pay demands and/or social benefits constitute 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation (EC) No 261/2004? ([1])

2. Would it at the very least:

a) where staff of the subsidiary company come out in sympathy with a strike called against the parent company (Lufthansa AG) in order to support parent company cabin crew demands being pursued by the trade union, and

b) in particular where the strike in the subsidiary company becomes an 'independent' strike, after agreement has been reached with the parent company, because the trade union reiterates the call for and even extends the strike for no apparent reason and the cabin crew of the subsidiary company responds to that call?

3. Does it suffice for the purpose of proving extraordinary circumstances that the operating air carrier claims that the call for the strike was continued for no reason, as the parent company had met the demands of the trade union, and was ultimately prolonged by the trade union, and who bears the burden of proof where the precise reasons in fact for that have remained unclear?

4. Can a strike in the defendant's subsidiary company which was announced on 18 October 2019 for 05,00 to 11,00 on 20 October 2019 and which ultimately was spontaneously prolonged at 05,30 on 20 October 2019 to midnight be regarded as circumstances which are now beyond actual control?

5. Are precautions in the form of an alternative flight plan and the use of subcharters for flights cancelled due to a lack of available cabin crew measures appropriate to the situation, taking account in particular of 'water destinations' not easily reached by land and the difference between German domestic flights and internal European flights and, in addition, the fact that only 158 out of a total of 712 flights scheduled for that day had to be cancelled?

6. What requirements should be attached on the operating air carrier's burden of assertion that all technically and economically viable measures were taken?

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

Request for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 18 November 2020 — AS Lux Express Estonia v Majandus- ja Kommunikatsiooniministeerium

(Case C-614/20)

(2021/C 35/52)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: AS Lux Express Estonia

Defendant: Majandus- ja Kommunikatsiooniministeerium

Questions referred

1. Is a situation in which the same obligation to transport free of charge certain categories of passenger (pre-school children, disabled persons up to the age of 16, severely disabled persons aged 16 and over, persons with a significant visual impairment and persons accompanying a person with a severe or significant visual impairment, and guide dogs or assistance dogs of a disabled person) is imposed on all private-law undertakings that operate regular road, water and rail passenger transport services within the national territory on a commercial basis to be treated as a public service obligation within the meaning of Articles 2(e) and 3(2) of Regulation (EC) No 1370/2007 ([1]) of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70?

2. If it does constitute a public service obligation within the meaning of Regulation No 1370/2007: Is a Member State entitled under Article 4(1)(b)(i) of Regulation No 1370/2007 to exclude, by a national law, the payment of compensation to the carrier for the discharge of such an obligation?

   If a Member State is entitled to exclude compensation to the carrier, under what conditions can it do so?

3. Is it permissible under Article 3(3) of Regulation No 1370/2007 to exclude from the scope of that regulation general rules for establishing maximum tariffs for categories of passenger other than those referred to in that provision?

   Does the obligation to notify the European Commission under Article 108 of the Treaty on the Functioning of the European Union apply even if the general rules for establishing maximum tariffs do not provide for compensation for the carrier?

4. If Regulation No 1370/2007 is not applicable in the present case: Can the granting of compensation be based on another legal act of the European Union (such as the Charter of Fundamental Rights of the European Union)?

5. What conditions must the compensation, if any, to be granted to the carrier meet in order to comply with the State aid rules?

(1) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

GENERAL COURT

Judgment of the General Court of 9 December 2020 — Adraces v Commission

(Case T-714/18) ([1])

(Arbitration clause — Framework partnership agreement — local Europe Direct information centre — Termination of the contract without specifying the ground — Legal certainty — Principle of good faith — Proportionality — Observance of the contracting party's rights and legitimate interests — Right to sound administration)

(2021/C 35/53)

Language of the case: Portuguese

Parties

Applicant: Adraces — Associação para o Desenvolvimento da Raia Centro-Sul (Vila Velha de Ródão, Portugal) (represented by: G. Gentil Anastácio, D. Pirra Xarepe, J. Whyte and M. Barros Silva, lawyers)

Defendant: European Commission (represented by: J. Estrada de Solà and M. Ilkova, acting as Agents)

Re:

Application under Article 272 TFEU seeking, first, a declaration that the 'termination' by the Commission of framework partnership agreement COMM/LIS/ED/2018-2020_1 is null and void and, second, an order that the Commission restore the applicant to its position prior to that 'termination'.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Adraces — Associação para o Desenvolvimento da Raia Centro-Sul to pay the costs.

([1]) OJ C 54, 11.2.2019.

Judgment of the General Court of 9 December 2020 — Repsol v EUIPO — Basic (BASIC)

(Case T-722/18) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark BASIC — Earlier national trade names basic and basic AG — Relative grounds for refusal — Use in the course of trade of a sign of more than mere local significance — Article 8(4) and Article 53(1)(c) of Regulation (EC) No 207/2009 (now Article 8(4) and Article 60(1)(c) of Regulation (EU) 2017/1001) — Declaration of partial invalidity — Decision taken following the annulment of an earlier decision by the General Court — Referral of the case back to a Board of Appeal — Lack of competence of the authority referring the case — Article 1(d) of Regulation (EC) No 216/96 — Cross-claim)

(2021/C 35/54)

Language of the case: English

Parties

Applicant: Repsol, SA (Madrid, Spain) (represented by: J.-B. Devaureix and J.C. Erdozain López, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Basic AG Lebensmittelhandel (Munich, Germany) (represented by: D. Altenburg, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 August 2018 (Case R 178/2018-2), relating to invalidity proceedings between Basic Lebensmittelhandel and Repsol.

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 August 2018 (Case R 178/2018-2);

2. Declares that there is no longer any need to adjudicate on the cross-claim;

3. Orders EUIPO and Basic AG Lebensmittelhandel to bear their own costs and each to pay half of the costs incurred by Repsol, SA.

(1) OJ C 54, 11.2.2019.

Judgment of the General Court of 2 December 2020 — Thunus and Others v EIB

(Case T-247/19) (1)

(Civil service — EIB staff — Remuneration — Annual salary adjustment — Legal certainty — Legitimate expectations — Staff consultation — Obligation to state reasons — Proportionality)

(2021/C 35/55)

Language of the case: French

Parties

Applicants: Vincent Thunus (Contern, Luxembourg) and the other applicants whose names are set out in the annex (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (represented by: T. Gilliams, J. Klein and J. Krueck, acting as Agents, and by P.-E. Partsch, lawyer)

Re:

Application under Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union (i) seeking annulment of the decisions contained in the applicants' pay slips for the month of February 2018 and the subsequent months, applying the decision of the EIB's Board of Directors of 18 July 2017 defining a new approach to the overall increase in staff salaries applicable to all EIB staff members and the decision of the EIB's Management Committee of 30 January 2018 fixing the adjustment rate of salaries for the year 2018 to 0,7 %, and (ii) seeking compensation for the damage allegedly suffered by the applicants as a result of those decisions.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr. Vincent Thunus and the other applicants whose names are set out in the annex to bear their own costs and to pay those incurred by the European Investment Bank (EIB).

(1) OJ C 206, 17.6.2019.

Judgment of the General Court of 2 December 2020 — Thunus and Others v EIB

(Case T-318/19) ([1])

(Civil service — EIB staff — Remuneration — Annual salary adjustment — Legal certainty — Legitimate expectations — Staff consultation — Obligation to state reasons — Proportionality)

(2021/C 35/56)

Language of the case: French

Parties

Applicants: Vincent Thunus (Contern, Luxembourg) and the other applicants whose names are set out in the annex (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (represented by: T. Gilliams, J. Klein and J. Krueck, acting as Agents, and by P.-E. Partsch, lawyer)

Re:

Application under Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union (i) seeking annulment of the decisions contained in the applicants' pay slips for the month of February 2019 and the subsequent months, applying the decision of the EIB's Board of Directors of 18 July 2017 defining a new approach to the overall increase in staff salaries applicable to all EIB staff members, the decision of the Board of Directors of 11 December 2018 setting the salary budget for 2019 and the decision of the EIB's Management Committee of 30 January 2019 fixing the adjustment rate of salaries for the year 2019 to 0,8 %, and (ii) seeking compensation for the damage allegedly suffered by the applicants as a result of those decisions.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr. Vincent Thunus and the other applicants whose names are set out in the annex to bear their own costs and to pay those incurred by the European Investment Bank (EIB).

([1]) OJ C 246, 22.7.2019.

Judgment of the General Court of 9 December 2020 — Ace of spades v EUIPO — Krupp and Borrmann (JC JEAN CALL Champagne ROSÉ)

(Case T-620/19) ([1])

(EU trade mark — Opposition proceedings — Application for the three-dimensional EU trade mark JC JEAN CALL Champagne ROSÉ — Earlier three-dimensional EU trade marks — Relative grounds for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — No damage to reputation — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2021/C 35/57)

Language of the case: English

Parties

Applicant: Ace of spades Holdings LLC (New York, New York, United States) (represented by: A. Gómez López, lawyer)

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

Other parties to the proceedings before the Board of Appeal of EUIPO: Gerhard Ernst Krupp (Munich, Germany), Elmar Borrmann (Reith, Austria)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 26 June 2019 (Case R 1/2019-5), relating to opposition proceedings between Ace of spades Holdings and Messrs Krupp and Borrmann.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 26 June 2019 (Case R 1/2019-5) in so far as it dismissed the appeal brought by Ace of spades Holdings LLC and rejected the opposition based on Article 8(1)(b) of Regulation No 207/2009;

2. Dismisses the action as to the remainder;

3. Orders each party to bear its own costs.

([1]) OJ C 399, 25.11.2019.

Judgment of the General Court of 9 December 2020 — Ace of spades v EUIPO — Krupp and Borrmann (JC JEAN CALL Champagne GRANDE RÉSERVE)

(Case T-621/19) ([1])

(EU trade mark — Opposition proceedings — Application for the three-dimensional EU trade mark JC JEAN CALL Champagne GRANDE RÉSERVE — Earlier three-dimensional EU trade marks — Relative grounds for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — No damage to reputation — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2021/C 35/58)

Language of the case: English

Parties

Applicant: Ace of spades Holdings LLC (New York, New York, United States) (represented by: A. Gómez López, lawyer)

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

Other parties to the proceedings before the Board of Appeal of EUIPO: Gerhard Ernst Krupp (Munich, Germany), Elmar Borrmann (Reith, Austria)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 20 June 2019 (Case R 2/2019-5), relating to opposition proceedings between Ace of spades Holdings and Messrs Krupp and Borrmann.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 20 June 2019 (Case R 2/2019-5) in so far as it dismissed the appeal brought by Ace of spades Holdings LLC and rejected the opposition based on Article 8(1)(b) of Regulation No 207/2009;

2. Dismisses the action as to the remainder;

3. Orders each party to bear its own costs.

(1) OJ C 399, 25.11.2019.

Judgment of the General Court of 9 December 2020 — Ace of spades v EUIPO — Krupp and Borrmann (JC JEAN CALL Champagne PRESTIGE)

(Case T-622/19) (1)

(EU trade mark — Opposition proceedings — Application for the three-dimensional EU trade mark JC JEAN CALL Champagne PRESTIGE — Earlier three-dimensional EU trade marks — Relative grounds for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — No damage to reputation — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2021/C 35/59)

Language of the case: English

Parties

Applicant: Ace of spades Holdings LLC (New York, New York, United States) (represented by: A. Gómez López, lawyer)

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

Other parties to the proceedings before the Board of Appeal of EUIPO: Gerhard Ernst Krupp (Munich, Germany), Elmar Borrmann (Reith, Austria)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 26 June 2019 (Case R 3/2019-5), relating to opposition proceedings between Ace of spades Holdings and Messrs Krupp and Borrmann.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 26 June 2019 (Case R 3/2019-5) in so far as it dismissed the appeal brought by Ace of spades Holdings LLC and rejected the opposition based on Article 8(1)(b) of Regulation No 207/2009;

2. Dismisses the action as to the remainder;

3. Orders each party to bear its own costs.

(1) OJ C 399, 25.11.2019.

Judgment of the General Court of 9 December 2020 — GV v Commission

(Case T-705/19) (1)

(Civil service — Officials — Psychological harassment — Request for assistance — Rejection of the request — Interests of the service — Equivalence of posts — Reasonable period — Absence of prima facie evidence — Responsibility)

(2021/C 35/60)

Language of the case: French

Parties

Applicant: GV (represented by: B.-H. Vincent, lawyer)

Defendant: European Commission (represented by: B. Mongin, M. Brauhoff and T. Lilamand, acting as Agents)

Re:

Application based on Article 270 TFEU seeking, first, annulment of the decision of the Commission of 5 February 2019 rejecting the applicant's request for assistance and, second, compensation for the physical and psychological harm that the applicant allegedly suffered as a result of that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders GV to bear his own costs and to pay those incurred by the European Commission.

(1) OJ C 413, 9.12.2019.

Judgment of the General Court of 9 December 2020 — Man and Machine v EUIPO — Bim Freelance (bim ready)

(Case T-819/19) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark bim ready — Earlier EU figurative mark BIM freelance — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Restriction of the services covered by the mark applied for)

(2021/C 35/61)

Language of the case: English

Parties

Applicant: Man and Machine Ltd (Thame, Oxfordshire, United Kingdom) (represented by: R. Peto and C. Neu, lawyers)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Bim Freelance Corp. (Miami, Florida, United States)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 17 September 2019 (Case R 317/2019-1), relating to opposition proceedings between Bim Freelance and Man and Machine.

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 17 September 2019 (Case R 317/2019-1);

2. Orders EUIPO to pay the costs.

(1) OJ C 27, 27.1.2020.

Judgment of the General Court of 9 December 2020 — easyCosmetic Swiss v EUIPO — UWI (easycosmetic)

(Case T-858/19) ([1])

(EU trade mark — Invalidity proceedings — EU word mark easyCosmetic — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

(2021/C 35/62)

Language of the case: German

Parties

Applicant: easyCosmetic Swiss GmbH (Baar, Switzerland) (represented by: D. Terheggen and S. Sullivan, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Söder and M. Fischer, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: UWI Unternehmensberatungs- und Wirtschaftsinformations GmbH (Bad Nauheim, Germany) (represented by: M. Krisch, T. Guttau and V. Wellens, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 October 2019 (Case R 973/2019-2), relating to invalidity proceedings between UWI and easyCosmetic Swiss.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders EasyCosmetic Swiss GmbH to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);

3. Orders UWI Unternehmensberatungs- und Wirtschaftsinformations GmbH to bear its own costs.

([1]) OJ C 45, 10.2.2020.

Judgment of the General Court of 9 December 2020 — Promed v EUIPO — Centrumelektroniki (Promed)

(Case T-30/20) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Promed — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2021/C 35/63)

Language of the case: English

Parties

Applicant: Promed GmbH kosmetische Erzeugnisse (Farchant, Germany) (represented by: B. Sorg, B. Reinisch and C. Raßmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Centrumelektroniki sp.j. (Tarnowskie Góry, Poland) (represented by: M. Kondrat, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 7 November 2019 (Case R 614/2019 5), relating to invalidity proceedings between Centrumelektroniki and Promed kosmetische Erzeugnisse.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Promed GmbH kosmetische Erzeugnisse to pay the costs.

(1) OJ C 68, 2.3.2020.

Judgment of the General Court of 9 December 2020 — Almea v EUIPO — Sanacorp Pharmahandel (Almea)

(Case T-190/20) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Almea — Earlier national word mark MEA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 35/64)

Language of the case: English

Parties

Applicant: Almea Ltd (London, United Kingdom) (represented by: R. Furneaux and E. Humphreys, Solicitors)

Defendant: European Union Intellectual Property Office (represented by: J. Mrozowski, J. Crespo Carrillo and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Sanacorp Pharmahandel GmbH (Planegg, Germany) (represented by: I. M. Helbig, S. Rengshausen and S. Cobet-Nüse, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 15 January 2020 (Case R 246/2019-2), relating to opposition proceedings between Sanacorp Pharmahandel and Almea.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Almea Ltd to pay the costs.

(1) OJ C 191, 8.6.2020.

Order of the General Court of 7 December 2020 — Militos Symvouleftiki v Commission

(Case T-536/19) ([1])

(Action for annulment — Public service contracts — Tender procedure — Provision of services in the field of the organisation of communication activities on behalf of the Commission's Representation in Greece — Annulment of the call for tenders — No interest in bringing proceedings — Inadmissibility)

(2021/C 35/65)

Language of the case: Greek

Parties

Applicant: Militos Symvouleftiki AE (Athens, Greece) (represented by: K. Farmakidis-Markou, lawyer)

Defendant: European Commission (represented by: J. Estrada de Solà and A. Katsimerou, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the Commission's decision of 29 May 2019 to annul call for tenders PR/2018-16/ATH concerning the provision of services in the field of the organisation of communication activities on behalf of its Representation in Greece.

Operative part of the order

1. The action is dismissed as inadmissible.

2. Militos Symvouleftiki AE shall bear its own costs and pay those incurred by the European Commission.

([1]) OJ C 357, 21.10.2019.

Order of the General Court of 4 December 2020 — Agepha Pharma v EUIPO — Apogepha Arzneimittel (AGEPHA)

(Case T-792/19) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2021/C 35/66)

Language of the case: German

Parties

Applicant: Agepha Pharma s.r.o. (Senec, Slovakia) (represented by: D. Göbel, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Apogepha Arzneimittel GmbH (Dresden, Germany) (represented by: A. Marx and R. Kaase, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 26 August 2019 (Case R 386/2019-2), relating to opposition proceedings between Apogepha Arzneimittel GmbH and Agepha Pharma s.r.o.

Operative part of the order

1. There is no longer any need to adjudicate on the action.

2. Agepha Pharma s.r.o and Apogepha Arzneimittel GmbH shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 10, 13.1.2020.

Order of the General Court of 1 December 2020 — Tikal Marine Systems v EUIPO — Ultra Safety Systems (Tikal Tef-Gel)

(Case T-185/20) (1)

(EU trade mark — Cancellation proceedings — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2021/C 35/67)

Language of the case: English

Parties

Applicant: Tikal Marine Systems GmbH (Norderstedt, Germany) (represented by: M. Mahnkopf, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ultra Safety Systems Inc. (Magonia Park, Florida, United States) (represented by: C. Eckhartt, A. von Mühlendahl and P. Böhner, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 January 2020 (Case R 2500/2018-4), relating to cancellation proceedings between Ultra Safety Systems and Tikal Marine Systems.

Operative part of the order

1. There is no longer any need to adjudicate on the action.

2. Tikal Marine Systems GmbH and Ultra Safety Systems Inc. shall bear their own costs and shall each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 191, 8.6.2020.

Order of the General Court of 1 December 2020 — Tikal Marine Systems v EUIPO — Ultra Safety Systems (Ultra Tef-Gel)

(Case T-192/20) (1)

(EU trade mark — Cancellation proceedings — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2021/C 35/68)

Language of the case: English

Parties

Applicant: Tikal Marine Systems GmbH (Norderstedt, Germany) (represented by: M. Mahnkopf, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ultra Safety Systems Inc. (Magonia Park, Florida, United States) (represented by: C. Eckhartt, A. von Mühlendahl and P. Böhner, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 January 2020 (Case R 2499/2018-4), relating to cancellation proceedings between Ultra Safety Systems and Tikal Marine Systems.

Operative part of the order

1. There is no longer any need to adjudicate on the action.

2. Tikal Marine Systems GmbH and Ultra Safety Systems Inc. shall bear their own costs and shall each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 191, 8.6.2020.

Action brought on 16 November 2020 — Asian Gear v EUIPO — Multimox (Scooter)

(Case T-685/20)

(2021/C 35/69)

Language in which the application was lodged: German

Parties

Applicant: Asian Gear BV (Pijnacker, Netherlands) (represented by: B. Gravendeel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Multimox Holding BV (Rijen, Netherlands)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 607 155-0002

Contested decision: Decision of the Third Board of Appeal of EUIPO of 3 September 2020 in Case R 1042/2018-3

Form of order sought

The applicant claims that the Court should:

— annul or vary the contested decision, so that Community design No 607 155-0002 is declared invalid;

— in the alternative, confirm the decision of the Cancellation Division of 30 April 2018 and annul the contested decision;

— order EUIPO to pay the costs to the applicant.

Plea in law

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

Action brought on 16 November 2020 — Asian Gear v EUIPO — Multimox (Scooter)

(Case T-686/20)

(2021/C 35/70)

Language in which the application was lodged: German

Parties

Applicant: Asian Gear BV (Pijnacker, Netherlands) (represented by: B. Gravendeel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Multimox Holding BV (Rijen, Netherlands)

Details of the proceedings before EUIPO

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

Design at issue: Community design No 607 155-0004

Contested decision: Decision of the Third Board of Appeal of EUIPO of 3 September 2020 in Case R 1043/2018-3

Form of order sought

The applicant claims that the Court should:

— annul or vary the contested decision, so that Community design No 607 155-0004 is declared invalid;

— in the alternative, confirm the decision of the Cancellation Division of 30 April 2018 and annul the contested decision;

— order EUIPO to pay the costs to the applicant.

Plea in law

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

Action brought on 18 November 2020 — OG v EIB

(Case T-695/20)

(2021/C 35/71)

Language of the case: French

Parties

Applicant: OG (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Investment Bank

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

and accordingly,

— order the EIB to pay 16 months' salary and 6 months' severance pay, i.e. the sum of EUR 317 668 at the time of the initial claim for compensation of 23 October 2019, an amount to be updated at the time of payment;

— order the EIB to pay compensation for non-material damage assessed *ex aequo et bono* at EUR 50 000;

— where appropriate, annul the decision rejecting the claim for compensation, dated 9 March and received on 10 March 2020;

— where appropriate, annul the decision implicitly dismissing the appeal to a higher court, taken on 8 August 2020;

— order, by way of a measure of organisation of procedure, access to the SSTL report;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action seeking to invoke the liability of the European Investment Bank (EIB), on account of a series of events which, taken individually or collectively, reveal wrongful conduct on the part of the EIB which has caused her harm and illness, the applicant relies on a single plea in law, alleging breaches of the duties to have regard for the welfare of officials, of sound administration and of transparency allegedly committed by the EIB and, more generally, breach of the general duty of care and diligence incumbent on every employer.

In the present case, the applicant claims that, had the EIB regularly taken the appropriate security measures in its building, the tragic suicide of a trainee would not have happened. She also claims that, had the EIB assumed its responsibilities with regard to that suicide and fulfilled its obligations of transparency and support, openness and assistance in respect of it agents and, in particular, those such as the applicant who were affected by that suicide, the applicant would not today be an agent in invalidity, in grief and whose career and recognition of her merits no longer exist in the eyes of the employer whom she has nevertheless served loyally.

The applicant argues that the facts also show that the EIB, far from behaving like a responsible and protective employer, engaged in a policy of discrediting and devaluing the applicant following the trainee's suicide, to the point of her physical and mental breakdown. After 30 years of an exemplary career, the applicant feels she has been treated as a mediocre and dishonest employee.

Action brought on 27 November 2020 — Mylan Ireland v EMA

(Case T-703/20)

(2021/C 35/72)

Language of the case: English

Parties

Applicant: Mylan Ireland Ltd (Dublin, Ireland) (represented by: J. Krens, lawyer)

Defendant: European Medicines Agency (EMA)

Form of order sought

The applicant claims that the Court should:

— declare that a plea of illegality raised by the applicant against the conclusion of the Committee for Medicinal Products for Human Use that the Biogen Idec Ltd medicinal product Tecfidera® has a different active substance status resulting in a new global marketing authorisation as quoted in the decision of 30 January 2014 granting marketing authorisation for 'Tecfidera® — Dimethyl Fumarate' is admissible and well founded;

— annul the decision of the EMA of 1 October 2020 not to validate the applicant's application for a generic version of the medicinal product Tecfidera;

— order the EMA to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that, the exception of illegality being well-founded, the challenged decision is not legally admissible because the EMA erred in fact and law and failed to fulfil its duty to state reasons and to perform a careful and thorough assessment, as provided under Article 296 TFEU.

2. Second plea in law, contesting the legality of the challenged decision, given that the 'different active substance' status should have been examined again upon the filing of the applicant's objections, which were submitted during the application phase. Thus, the EMA has failed to perform its duties appropriately, in particular its duty to perform an effective and careful assessment and to state reasons, pursuant to Article 296 TFEU, which in turn renders the challenged decision illegal.

Action brought on 30 November 2020 — MiMedx Group v EUIPO — DIZG (Epiflex)

(Case T-706/20)

(2021/C 35/73)

Language of the case: English

Parties

Applicant: MiMedx Group, Inc. (Marietta, Georgia, United States) (represented by: J. Bogatz and Y. Stone, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DIZG Deutsches Institut für Zell- und Gewebeersatz gGmbH (Berlin, Germany)

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 word mark Epiflex — European Union trade mark No 1 281 385

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 September 2020 in Case R 133/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision

— order EUIPO and the other Party to the proceedings to pay the costs incurred by the applicant.

Pleas in law

— Infringement of Article 58 of Regulation (EU) 2017/1001 of the European Parliament and of the Council in conjunction with Article 19(1) of Commission Delegated Regulation (EU) 2017/1430;

— Infringement of the principle of equality as laid down in Article 20 in conjunction with Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter');

— Infringement of the right to good administration as laid down in Article 41(1) of the Charter;

— Infringement of right to a fair trial as laid down in Article 47 of the Charter;

— Infringement of Article 95(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in conjunction with Articles 19(1), third sentence, and 10(7) of Commission Delegated Regulation (EU) 2017/1430.

Action brought on 3 December 2020 — Puma v EUIPO — CMS (CMS Italy)

(Case T-711/20)

(2021/C 35/74)

Language of the case: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: P. GonzálezBueno Catalán de Ocón, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: CMS Costruzione macchine speciali SpA (Alonte, Italy)

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: International registration designating the European Union in respect of the figurative mark containing the word element CMS Italy — International registration designating the European Union No 1 150 538

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 September 2020 in Case R 2215/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and CMS Costruzione macchine speciali SpA to pay the costs of the proceedings.

Pleas in law

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council

— Infringement of the principles of legal security, equal treatment and sound administration.

Action brought on 3 December 2020 — Škoda Investement v EUIPO — Škoda Auto (Device of arrow with wing)

(Case T-712/20)

(2021/C 35/75)

Language of the case: English

Parties

Applicant: Škoda Investement a.s. (Plzeň, Czech Republic) (represented by: L. Lorenc, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Škoda Auto a.s. (Mladá Boleslav, Czech Republic)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark (Representation of a device of arrow with wing) — Application for registration No 17 991 861

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 October 2020 in Case R 284/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 9 December 2019 concerning Opposition No B003083007 to the full extent;

— remit the case to the Opposition Division for further examination with respect to all goods and services applied for;

— order EUIPO to bear the costs of the proceedings.

Plea in law

— Incorrect assessment of the legal effects of a procedurally illegal first-instance decision.

Action brought on 4 December 2020 — Degode v EUIPO — Leo Pharma (Skinovea)

(Case T-715/20)

(2021/C 35/76)

Language of the case: English

Parties

Applicant: DEGODE — Dermago Development GmbH (Petershagen, Germany) (represented by: O. Spieker, A. Schönfleisch and N. Willich, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Leo Pharma A/S (Ballerup, Denmark)

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 Skinovea — Application for registration No 17 898 565

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 September 2020 in Case R 337/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

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

Action brought on 9 December 2020 — Clean Sky 2 Joint Undertaking v NG

(Case T-721/20)

(2021/C 35/77)

Language of the case: Italian

Parties

Applicant: Clean Sky 2 Joint Undertaking (represented by: M. Velardo, lawyer, and B. Mastantuono, acting as Agent)

Defendant: NG

Form of order sought

The applicant claims that the Court should:

— order the defendant to pay Clean Sky 2 Joint Undertaking the sum of EUR 141 094,80 in relation to Grant Agreement No 632 506 'Wireless Flexible sensor co-operation for structural health Diagnosis/prognosis' under the Seventh Framework Programme of the European Union, together with interest at the rate of 3,5 % set by the European Central Bank for its main refinancing operations, from 9 July 2019 until the date of actual payment;

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

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea in law:

The defendant failed to fulfil its contractual obligations by failing to reimburse the amount relating to staff costs, held not to be eligible for funding. As a result, the applicant issued, on 23 May 2019, a debit note for the amount of EUR 141 094,80 already paid to Alpha Consulting Service Srl, in accordance with the provisions of the grant agreement. There is no doubt whatsoever in the present case as to the facts giving rise to the obligations incumbent on the defendant as shareholder and representative of Alpha Consulting Service Srl, which has been removed from the commercial register. The objections made by that company after the debit note was issued are generic, incomplete and not supported by evidence and, therefore, appear to be entirely unfounded. As a result, the applicant is entitled to seek recovery and reimbursement of the amount paid, plus default interest.

Action brought on 10 December 2020 — Far Polymers and Others v Commission

(Case T-722/20)

(2021/C 35/78)

Language of the case: Italian

Parties

Applicants: Far Polymers Srl (Filago, Italy), Gamma Chimica SpA (Milan, Italy), Carbochem Srl (Castiglione Olona, Italy), and Jeniuschem Srl (Gallarate, Italy) (represented by: G. Abbatescianni and E. Patti, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should declare the present action admissible and annul Commission Implementing Regulation (EU) 2020/1336 published in the *Official Journal* (L 315) on 29 September 2020, whereby duties have been imposed on polyvinyl alcohol (PVA) imported from the People's Republic of China [('the contested measure')].

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law.

The first plea in law alleges that the Commission infringed regulations and manifestly erred in identifying the Union PVA industry, within which it included, in addition to free market operators, those in the captive market, including producers who are also importers. That error (a) invalidated the assessment of injury to the Union industry, which corresponds in fact to the sole complainant, (b) led to the imposition of duties that do not promote free competition on the Union market, but rather favour the sole complainant and/or third countries, (c) led to the inadequate assessment of the interests of all the other Union industry operators (producers, importers and users) in opposing the duties, [and] (d) placed the [contested measure] in direct opposition to the earlier regulations which stated that the production capacity of the Union industry was insufficient and provided for duty-free quotas. For the same reasons, the contested [measure] is, in addition, vitiated by a misuse of powers.

In the second plea in law, it is argued that the contested measure runs counter to the principles set out in Article 102 TFEU and, in addition, is vitiated by manifest error and a misuse of powers, in so far as its effect is to create, in the PVA market, a dominant position for the complainant, the sole producer which operates on the Union free market and has additional production capacity. The [contested] measure does not take into account the documentary evidence relating to the anticompetitive conduct previously shown by the complainant, which has refused to sell low quality PVA at prices that take into account the lower production costs.

In the third plea in law, the applicants criticise the reasoning set out in the [contested] measure imposing the duties as being in breach of Article 296 TFEU and as being vitiated by manifest error, as the Commission refused to segment the Union market into high and low grades, despite having ascertained that two different grades of PVA are sold, with clearly separate production costs, recipients and prices. Those grades are neither superimposable nor interchangeable. After having segmented the market, the Commission should have exempted low-grade PVA from duties.

The fourth plea in law concerns Vinyl Acetate Monomer (VAM), the main raw material in the production of PVA. The Commission, in determining the normal value for the purpose of determining the dumping margin, failed to take account of the absence of distortion of the prices of Chinese VAM aligned with the prices on the international market. Similarly, the Commission failed to take account, when determining the injury margin, of the lower costs incurred by the Chinese exporters who, being vertically integrated, save on the cost of VAM.

In the fifth plea in law it is argued that the Commission provided an incorrect and inconsistent statement of reasons in the contested measure, in breach of Article 296 TFEU, failing to take into account the impact of methanol on the determination of the Chinese producers' costs and, as a result, failed to recognise, when determining the injury margin, the corresponding adjustment of the export prices for that cost factor.

The sixth plea in law challenges the part of the [contested] measure in which the Commission awarded, pursuant to Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council, an exemption for the import of PVA intended for use in the carton board industry in so far as that exemption (a) was not extended to other end-uses in the exact same situation as the carton board industry and (b) was applied to PVA blending alone, excluding mere import.

The seventh plea in law alleges that the Commission infringed Article 296 TFEU, as well as recital 12 and Article 6(8) of the basic regulation, on account of its decision not to take certain arguments into account for the sole reason that they had been raised by the interested parties and not by the Chinese exporters. In so doing, the Commission arbitrarily introduced the principle that only certain categories of persons may challenge the adoption of a measure by the European institutions.

The eighth and final plea in law alleges infringement of Article 296 TFEU and Article 19 of the basic regulation relating to access to information. The Commission gathered an entire set of non-confidential data without making it accessible to the interested parties. Thus, the interested parties were not in a position to reconstruct the reasoning relied on by the Commission when adopting the contested measure.

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