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Information and Notices

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(2022/C 11/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 11 November 2021 (request for a preliminary ruling from the Rechtbank Amsterdam- Netherlands) — Stichting Cartel Compensation, Equilib Netherlands BV v Koninklijke Luchtvaart Maatschappij NV and Others

(Case C-819/19) [1]

(Reference for a preliminary ruling — Articles 81, 84 and 85 EC — Article 53 of the EEA Agreement — Cartels — Conduct of undertakings in the air transport sector between the European Economic Area (EEA) and third countries which took place when Articles 84 and 85 EC were in force — Action for damages — Jurisdiction of national courts to apply Article 81 EC and Article 53 of the EEA Agreement)

(2022/C 11/02)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicants: Stichting Cartel Compensation, Equilib Netherlands BV

Defendants: Koninklijke Luchtvaart Maatschappij NV, Martinair Holland NV, Deutsche Lufthansa AG, Lufthansa Cargo AG, British Airways plc, Air France SA, Singapore Airlines Ltd, Singapore Airlines Cargo Pte Ltd, Swiss International Air Lines AG, Air Canada, Cathay Pacific Airways Ltd, Scandinavian Airlines System Denmark-Norway-Sweden, SAS AB, SAS Cargo Group A/S

Operative part of the judgment

Articles 81, 84 and 85 EC and Article 53 of the Agreement on the European Economic Area of 2 May 1992 must be interpreted as meaning that a national court has jurisdiction to apply Article 81 EC and Article 53 of the Agreement on the European Economic Area in a private law dispute concerning an action for damages brought before it after the entry into force of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 [EC] to the conduct of undertakings in the air transport sector between a Member State and a third country other than Switzerland which took place before 1 May 2004, to the conduct of undertakings in the air transport sector between a Member State and Switzerland which took place before 1 June 2002 and to the conduct of undertakings in the air transport sector between a European Economic Area country which is not a Member State and a third country which took place before 19 May 2005, even though no decision under Article 84 EC or Article 85 EC had been adopted as regards that conduct, in so far as that conduct was liable to affect trade between Member States and the contracting parties to the Agreement on the European Economic Area, respectively.

[1] OJ C 95, 23.3.2020.

Judgment of the Court (First Chamber) of 11 November 2021 (request for a preliminary ruling from the Spetsializiran nakazatelen sad — Bulgaria) — Criminal proceedings against Ivan Gavanozov

(Case C-852/19) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2014/41/EU — European Investigation Order in criminal matters — Article 14 — Legal remedies — Charter of Fundamental Rights of the European Union — Article 47 — Absence of legal remedies in the issuing Member State — Decision ordering searches, seizures and a hearing of a witness by videoconference)

(2022/C 11/03)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Criminal proceedings against

Ivan Gavanozov

Operative part of the judgment

1. Article 14 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, read in conjunction with Article 24(7) of that directive and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of a Member State which has issued a European Investigation Order that does not provide for any legal remedy against the issuing of a European Investigation Order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.

2. Article 6 of Directive 2014/41, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 4(3) [of the Treaty on European Union], must be interpreted as precluding the issuing, by the competent authority of a Member State, of a European Investigation Order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, where the legislation of that Member State does not provide any legal remedy against the issuing of such a European Investigation Order.

([1]) OJ C 68, 2.3.2020.

Judgment of the Court (Second Chamber) of 11 November 2021 — Autostrada Wielkopolska S.A. v European Commission, Republic of Poland

(Case C-933/19 P) ([1])

(Appeal — State aid — Toll-motorway concession — Law providing for an exemption from tolls for certain vehicles — Compensation granted to the concession holder by the Member State for loss of revenue — Shadow toll — Compensation found by the European Commission to be excessive and to include State aid — Commission decision declaring that aid incompatible with the internal market and ordering its recovery — Procedural rights of the aid beneficiary — Commission's obligation to exercise particular vigilance — Concept of 'State aid' — Advantage — Improvement of the concession holder's expected financial situation — Criterion of the private operator in a market economy — Distortion of the evidence — Breach of the obligation to state reasons — Misreading of the decision at issue — Substitution of grounds — Reversal of the burden of proof — Breach of the principle of primacy of EU law — Judicial review to be conducted by the General Court — Requirements and limits)

(2022/C 11/04)

Language of the case: English

Parties

Appellant: Autostrada Wielkopolska S.A. (represented by: O. Geiss, Rechtsanwalt, and T. Siakka, dikigoros)

Other parties to the proceedings: European Commission (represented by: L. Armati, K. Herrmann and S. Noë, acting as Agents), Republic of Poland (represented by: B. Majczyna and M. Rzotkiewicz, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Autostrada Wielkopolska S.A. to bear its own costs and to pay those incurred by the European Commission;

3. Orders the Republic of Poland to bear its own costs.

([1]) OJ C 87, 16.3.2020.

Judgment of the Court (Fifth Chamber) of 11 November 2021 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — Energieversorgungscenter Dresden-Wilschdorf GmbH & Co. KG v Bundesrepublik Deutschland

(Case C-938/19) ([1])

(Reference for a preliminary ruling — Environment — Directive 2003/87/EC — Greenhouse gas emission allowance trading scheme — Article 2(1) — Scope — Article 3(e) — Concept of 'installation' — Effect on emissions and pollution — Ancillary units not generating as such greenhouse gas emissions — Article 10a — Transitional rules for free allocation of allowances — Data Collection Template — Corrected eligibility ratio — Method of calculation — Decision 2011/278/EU — Third subparagraph of Article 6(1) — Export of cooling to an entity that belongs to a sector exposed to a significant risk of carbon leakage)

(2022/C 11/05)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Energieversorgungscenter Dresden-Wilschdorf GmbH & Co. KG

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1. Article 2(1) and Article 3(e) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009, must be interpreted as not precluding national legislation which permits the inclusion, within the boundaries of an installation subject to the greenhouse gas emission allowance trading scheme at EU level, of ancillary units which do not emit greenhouse gases, provided that they meet the criteria set out in Article 3(e) of that directive, as amended, and, in particular, that they could have an effect on emissions and pollution relating to the greenhouse gases listed in Annex II to that directive, as amended.

2. The corrected eligibility ratio referred to in the Data Collection Template drawn up by the European Commission pursuant to Article 7(5) 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 constitutes, even where the measurable heat imported from an installation not subject to the greenhouse gas emission allowance trading scheme at EU level can be attributed to a particular heat flow, a single ratio that must, for the purpose, in particular, of calculating the number of emission allowances allocated free of charge to a heat benchmark sub-installation, be calculated and applied on the basis of a comprehensive approach to the heat flows for that sub-installation.

3. The third subparagraph of Article 6(1) of Decision 2011/278 must be interpreted as meaning that a process of a heat benchmark sub-installation does not relate to a sector or subsector that is deemed to be exposed to a significant risk of carbon leakage where that process concerns heat consumed in order to produce cooling that is exported and consumed within an entity which is not subject to the greenhouse gas emission allowance trading scheme at EU level and which belongs to a sector or subsector that is deemed to be exposed to a significant risk of carbon leakage, since it is not that entity that is consuming the heat.

([1]) OJ C 103, 30.3.2020.

Judgment of the Court (Second Chamber) of 11 November 2021 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — UAB 'Manpower Lit' v E.S., M.L., M.P., V.V., R.V.

(Case C-948/19) ([1])

(Reference for a preliminary ruling — Social policy — Temporary work — Directive 2008/104/EC — Article 1 — Scope of application — Concepts of 'public undertaking' and 'pursuit of an economic activity' — EU agencies — The European Institute for Gender Equality (EIGE) as a 'user undertaking', pursuant to Article 1(2) of that Directive — Article 5(1) — Principle of equal treatment — Basic working and employment conditions — Concept of 'same job' — Regulation (EC) No 1922/2006 — Article 335 TFEU — Principle of administrative autonomy of an EU institution — Article 336 TFEU — Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union)

(2022/C 11/06)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: UAB 'Manpower Lit'

Defendants: E.S., M.L., M.P., V.V., R.V.

Operative part of the judgment

1. Article 1 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary work must be interpreted as meaning that the scope of that directive covers the assignment by a temporary-work agency of persons who have concluded a contract of employment with that agency to the European Institute for Gender Equality (EIGE) to perform work there;

2. Article 5(1) of Directive 2008/104 must be interpreted as meaning that the job occupied by a temporary agency worker who is assigned to the European Institute for Gender Equality (EIGE) may be regarded as constituting the 'same post' within the meaning of that provision, even if it is assumed that all the jobs for which the EIGE recruits workers directly involve tasks which can be performed only by persons subject to the Staff Regulations of Officials of the European Union.

(1) OJ C 77, 9.3.2020.

Judgment of the Court (Grand Chamber) of 9 November 2021 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — LW v Bundesrepublik Deutschland

(Case C-91/20) (1)

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection — Directive 2011/95/EU — Articles 3 and 23 — More favourable standards capable of being retained or introduced by the Member States for the purposes of extending the refugee or subsidiary protection status of a beneficiary of international protection to family members — Grant of a parent's refugee status to his or her minor child as a derived right — Maintaining family unity — Best interests of the child)

(2022/C 11/07)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: LW

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 3 and Article 23(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted must be interpreted as not precluding a Member State from granting, under more favourable national provisions, as a derived right and for the purpose of maintaining family unity, refugee status to the minor child of a third-country national who has been recognised as having that status under the system established by that directive, including in the case where that child was born in the territory of that Member State and, through that child's other parent, has the nationality of another third country in which he or she would not be at risk of persecution, provided that the child is not caught by a ground for exclusion referred to in Article 12(2) of that directive and that the child is not, through his or her nationality or any other element characterising his or her personal legal status, entitled to better treatment in that Member State than that resulting from the grant of refugee status. It is not relevant in that regard to ascertain whether it is possible and reasonably acceptable for the child and the child's parents to move to that other third country.

(1) OJ C 209, 22.6.2020.

Judgment of the Court (Ninth Chamber) of 11 November 2021 — Hellenic Republic v European Commission

(Case C-106/20 P) ([1])

(Appeal — Common agricultural policy — EAGF and EAFRD — Expenditure excluded from EU financing — Expenditure incurred by the Hellenic Republic — Conformity clearance procedure — Plea raised for the first time during the oral proceedings at first instance — Regulation (EC) No 796/2004 — Article 2(2) — Regulation (EU) No 1307/2013 — Article 4(1)(h) — Concept of 'permanent pasture' — Distortion of evidence — Delegated Regulation (EU) No 907/2014 — Article 12(4) — One-off correction — Conditions — Burden of proof)

(2022/C 11/08)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: E. Tsaousi, E. Leftheriotou and A. Vasilopoulou, acting as Agents)

Other party to the proceedings: European Commission (represented by: M. Konstantinidis and A. Sauka, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Hellenic Republic to pay the costs.

([1]) OJ C 161, 11.5.2020.

Judgment of the Court (Third Chamber) of 11 November 2021 (request for a preliminary ruling from the High Court of Justice (England & Wales), Chancery Division (Business and Property Courts of England and Wales, Insolvency and Companies List) — United Kingdom) — BJ and OV, joint trustees in bankruptcy of Mr M, v Mrs M, MH, ILA, Mr M

(Case C-168/20) ([1])

(Reference for a preliminary ruling — Freedom of movement of persons — Citizenship of the Union — Article 21 TFEU — Freedom of establishment — Article 49 TFEU — Equal treatment — Directive 2004/38/EC — Article 24(1) — Legislation of the United Kingdom of Great Britain and Northern Ireland making the exclusion, in principle in full and automatically, from the bankruptcy estate of pension rights accrued under a pension scheme dependent on prior registration of the pension scheme with the tax authorities — Application of that requirement in bankruptcy proceedings in respect of an EU citizen who has exercised his right to freedom of movement in order to pursue a self-employed occupation in the United Kingdom on a permanent basis — That EU citizen's pension rights accrued under a pension scheme established and tax approved in his home Member State — Inability to avail of the protection of exclusion from the bankruptcy estate of those pension rights — Application to those pension rights of a system of exclusion from the bankruptcy estate significantly less advantageous to the bankrupt)

(2022/C 11/09)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Chancery Division (Business and Property Courts of England and Wales, Insolvency and Companies List)

Parties to the main proceedings

Applicants: BJ and OV, joint trustees in bankruptcy of Mr M

Defendants: Mrs M, MH, ILA, Mr M

Operative part of the judgment

Article 49 TFEU must be interpreted as precluding a provision of the law of a Member State which makes, in principle, the full and automatic exclusion from the bankruptcy estate of pension rights accrued under a pension scheme dependent on the requirement that, at the time of the bankruptcy, the pension scheme concerned be tax approved in that Member State, where that requirement is imposed in a situation where an EU citizen, who had, prior to becoming bankrupt, exercised his right of free movement by moving permanently to that Member State for the purposes of pursuing a self-employed economic activity there, has pension rights accrued under a pension scheme established and tax approved in his home Member State, unless the restriction on freedom of establishment constituted by that national provision is justified in so far as it furthers an overriding reason relating to the public interest, is appropriate to ensure that the objective it pursues is achieved and does not go beyond what is necessary to achieve that objective.

([1]) OJ C 262, 10.8.2020.

Judgment of the Court (Fifth Chamber) of 11 November 2021 (request for a preliminary ruling from the Labour Court, Ireland — Ireland) — MG v Dublin City Council

(Case C-214/20) ([1])

(Reference for a preliminary ruling — Protection of the safety and health of workers — Organisation of working time — Directive 2003/88/EC — Article 2 — Concept of 'working time' — Retained firefighter — Stand-by time according to a stand-by system — Pursuit, during the period of stand-by time, of a self-employed professional activity — Constraints arising from the stand-by system)

(2022/C 11/10)

Language of the case: English

Referring court

Labour Court, Ireland

Parties to the main proceedings

Applicant: MG

Defendant: Dublin City Council

Operative part of the judgment

Article 2(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as meaning that a period of stand-by time according to a stand-by system served by a retained firefighter, during which that worker, with the permission of his or her employer, carries out a professional activity on his or her own account but must, in the event of an emergency call, reach his or her assigned fire station within 10 minutes, does not constitute 'working time' within the meaning of that provision if it follows from an overall assessment of all the facts of the case, in particular from the scope and terms of that ability to carry out another professional activity and from the absence of obligation to participate in the entirety of the interventions effected from that fire station, that the constraints imposed on the said worker during that period are not of such a nature as to constrain objectively and very significantly the ability that he or she has freely to manage, during the said period, the time during which his or her services as a retained firefighter are not required.

([1]) OJ C 262, 10.8.2020.

Judgment of the Court (Fifth Chamber) of 11 November 2021 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Ferimet SL v Administracíon General del Estado

(Case C-281/20) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 168 — Right of deduction — Article 199 — Reverse charge procedure — Principle of fiscal neutrality — Material conditions governing the right to deduct — Supplier's status as taxable person — Burden of proof — Fraud — Abusive practice — Invoice referring to a fictitious supplier)

(2022/C 11/11)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Ferimet SL

Defendant: Administracíon General del Estado

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with the principle of fiscal neutrality, must be interpreted as meaning that a taxable person must be refused the right to deduct value added tax (VAT) relating to the acquisition of goods supplied to that taxable person where he or she has knowingly mentioned a fictitious supplier on the invoice which that taxable person him- or herself has issued in respect of that transaction under the reverse charge procedure, if, taking into account the factual circumstances and the evidence provided by that taxable person, the information necessary to verify that the true supplier had the status of taxable person is lacking, or if it is established to the requisite legal standard that the taxable person has committed VAT fraud or knew or ought to have known that the transaction relied on as a basis for the right of deduction was connected with such a fraud.

([1]) OJ C 320, 28.9.2020.

Judgment of the Court (Eighth Chamber) of 11 November 2021 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Regione Veneto v Plan Eco Srl

(Case C-315/20) ([1])

(Reference for a preliminary ruling — Environment — Regulation (EC) No 1013/2006 — Shipments of waste — Article 3(5) and Article 11(1)(i) — Directive 2008/98/EC — Waste management — Article 16 — Principles of self-sufficiency and proximity — Decision 2000/532/EC — European Waste Catalogue (EWC) — Mixed municipal waste subject to mechanical treatment which does not alter its nature)

(2022/C 11/12)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Regione Veneto

Respondent: Plan Eco Srl

intervening parties: Futura Srl

Operative part of the judgment

Article 3(5) and Article 11 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste must be interpreted as meaning that, in the light of the principles of self-sufficiency and proximity, the competent authority of dispatch may, on the basis, inter alia, of the ground set out in Article 11(1)(i) of that regulation, object to a shipment of mixed municipal waste which, following mechanical treatment for the purpose of its energy recovery which has not however substantially altered its original properties, has been classified under code 19 12 12 of the list of wastes laid down in the Annex to Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended by Commission Decision 2014/955/EU of 18 December 2014.

(1) OJ C 304, 14.9.2020.

Judgment of the Court (First Chamber) of 11 November 2021 (request for a preliminary ruling from the Cour de cassation — France) — Bank Sepah v Overseas Financial Limited, Oaktree Finance Limited

(Case C-340/20) (1)

(Reference for a preliminary ruling — Common foreign and security policy (CFSP) — Restrictive measures against the Islamic Republic of Iran — Regulation (EC) No 423/2007 — Freezing of funds of persons, entities or bodies recognised by the Council of the European Union as being engaged in nuclear proliferation — Concepts of 'freezing of funds' and 'freezing of economic resources' — Possibility of applying a protective measure in respect of frozen funds and economic resources — Claim pre-dating the freezing of assets and unrelated to Iran's nuclear and ballistic programme)

(2022/C 11/13)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Bank Sepah

Defendants: Overseas Financial Limited, Oaktree Finance Limited

Operative part of the judgment

1. Article 7(1) of Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran, read in conjunction with Article 1(h) and (j) of Regulation No 423/2007, Article 16(1) of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007, read in conjunction with Article 1(h) and (i) of Regulation No 961/2010, and Article 23(1) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010, read in conjunction with Article 1(j) and (k) of Regulation No 267/2012, must be interpreted as precluding the implementation of protective measures, without prior authorisation from the competent national authority, in respect of funds or economic resources that have been frozen in the context of the common foreign and security policy, which establish a right to be paid on a priority basis in favour of the creditor concerned in relation to other creditors, even if such measures do not have the effect of removing assets from the debtor's estate.

2. The fact that the grounds for the claim for recovery from the person or entity whose funds or economic resources are frozen are unrelated to Iran's nuclear and ballistic programme and pre-date United Nations Security Council Resolution 1737 (2006) of 23 December 2006 is not relevant to the answer to the first question referred for a preliminary ruling.

(1) OJ C 339, 12.10.2020.

Judgment of the Court (Eighth Chamber) of 11 November 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV v Dr. August Oetker Nahrungsmittel KG

(Case C-388/20) (1)

(Reference for a preliminary ruling — Regulation (EU) No 1169/2011 — Provision of food information to consumers — Article 9(1)(l) — Nutrition declaration — Second subparagraph of Article 31(3) — Calculation of the energy value and of the amounts of nutrients — Possibility of providing that information for the food after preparation — Conditions — Second subparagraph of Article 33(2) — Expression on a per portion basis or per consumption unit)

(2022/C 11/14)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

Respondent: Dr. August Oetker Nahrungsmittel KG

Operative part of the judgment

The second subparagraph of Article 31(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 must be interpreted as applying only to foods for which preparation is necessary and the method of preparation is predetermined.

(1) OJ C 433, 14.12.2020.

Judgment of the Court (Sixth Chamber) of 11 November 2021 (request for a preliminary ruling from the Krajský soud v Brně — Czech Republic) — ELVOSPOL v Odvolací finanční ředitelství

(Case C-398/20) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 90 — Reduction of the taxable amount for VAT purposes — Total or partial non-payment of the price on account of the debtor's insolvency — Conditions imposed by national legislation for the adjustment of output VAT — Condition that the claim not paid in whole or in part must not have arisen during the six-month period preceding the declaration of insolvency of the debtor company — Non-compliance)

(2022/C 11/15)

Language of the case: Czech

Referring court

Krajský soud v Brně

Parties to the main proceedings

Applicant: ELVOSPOL

Defendant: Odvolací finanční ředitelství

Operative part of the judgment

Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national provision which makes adjustment of the amount of value added tax subject to the condition that the partially or totally unpaid claim must not have arisen during the six-month period preceding the declaration of insolvency of the debtor company, where it is not ruled out under that condition that such a claim may ultimately be definitively irrecoverable.

([1]) OJ C 359, 26.10.2020.

Appeal brought on 12 July 2021 by Sun Stars & Sons Pte Ltd against the judgment of the General Court (Fifth Chamber) delivered on 12 May 2021 in Case T-638/19, Sun Stars & Sons v EUIPO — Valvis Holding (AC AQUA AC)

(Case C-424/21 P)

(2022/C 11/16)

Language of the case: English

Parties

Appellant: Sun Stars & Sons Pte Ltd (represented by: M. Maček, odvetnica)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Valvis Holding SA

By order of 11 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Sun Stars & Sons Pte Ltd should bear its own costs.

Appeal brought on 12 July 2021 by Sun Stars & Sons Pte Ltd against the judgment of the General Court (Fifth Chamber) delivered on 12 May 2021 in Case T-637/19, Sun Stars & Sons v EUIPO — Carpathian Springs (AQUA CARPATICA)

(Case C-425/21 P)

(2022/C 11/17)

Language of the case: English

Parties

Appellant: Sun Stars & Sons Pte Ltd (represented by: M. Maček, odvetnica)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Carpathian Springs SA

By order of 11 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Sun Stars & Sons Pte Ltd should bear its own costs.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 26 July 2021 — The Navigator Company, S.A., Navigator Pulp Figueira, S.A. v Autoridade Tributária e Aduaneira

(Case C-459/21)

(2022/C 11/18)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicants: The Navigator Company, S.A., Navigator Pulp Figueira, S.A.

Defendant: Autoridade Tributária e Aduaneira

Question referred

Does the principle of equivalence preclude national VAT legislation, such as that laid down in Article 21(1) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code) (CIVA), maintained under the standstill clause, which excludes entirely, or in the proportion of 50 % of input VAT, the right to deduct VAT on motor vehicle expenses, travel and accommodation expenses and entertainment expenses, these being, in the context of corporation tax, fully deductible as expenses (without prejudice to *ex post* verification and subject to certain conditions), or, in the context of autonomous taxation, effectively deductible in a proportion greater than 50 %?

Appeal brought on 29 July 2021 by König Ludwig International GmbH & Co. KG against the order of the General Court (Sixth Chamber) delivered on 31 May 2021 in Case T-332/20, König Ludwig International v EUIPO

(Case C-465/21 P)

(2022/C 11/19)

Language of the case: English

Parties

Appellant: König Ludwig International GmbH & Co. KG (represented by: O. Spuhler, Rechtsanwalt, J. Stock, Rechtsanwältin)

Other party to the proceedings: European Union Intellectual Property Office

By order of 12 November 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that König Ludwig International GmbH & Co. KG should bear its own costs.

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 14 September 2021 — BU v Federal Republic of Germany

(Case C-564/21)

(2022/C 11/20)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: BU

Defendant: Federal Republic of Germany, represented by the Bundesamt für Migration und Flüchtlinge

Questions referred

1. Does it follow from the right to a fair trial under Article 47 of the Charter that the administrative file to be submitted by the authority in the context of an inspection of files or a judicial review is to be submitted in such a way — even where it is in electronic form — that it is complete and paginated, and changes are therefore traceable?

2. Do Articles 23(1) and 46(1) to (3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [1] preclude a national administrative practice according to which, as a general rule, the authority provides the asylum seeker's legal representative and the court with only an extract taken from an electronic document management system and containing an incomplete, unstructured and non-chronological collection of electronic PDF files, whereby the latter do not have a structure or set out the sequence of events in chronological order, let alone reflect the complete content of the electronic file.

3. Does it follow from Articles 11(1) and 45(1)(a) of Directive 2013/32/EU that a decision must be signed by hand by the decision-maker of the determining authority, kept on file or served on the applicant also as a document signed by hand?

4. Is the handwritten form within the meaning of Articles 11(1) and 45(1)(a) of Directive 2013/32/EU respected where the decision is signed by the decision-maker but then scanned and the original destroyed, that is to say, the decision exists in writing only to a certain extent?

[1] OJ 2013 L 180, p. 60.

Appeal brought on 23 September 2021 by Public.Resource.Org, Inc., Right to Know CLG against the judgment of the General Court (Fifth Chamber, Extended Composition) delivered on 14 July 2021 in Case T-185/19, Public.Resource.Org, Inc. and Right to Know CLG v European Commission

(Case C-588/21 P)

(2022/C 11/21)

Language of the case: English

Parties

Appellants: Public.Resource.Org, Inc. and Right to Know CLG (represented by: F. Logue, Solicitor, J. Hackl, Rechtsanwalt, C. Nüßing, Rechtsanwalt)

Other parties to the proceedings: European Commission, Comité européen de normalisation (CEN), Asociación Española de Normalización (UNE), Asociația de Standardizare din România (ASRO), Association française de normalisation (AFNOR), Austrian Standards International (ASI), British Standards Institution (BSI), Bureau de normalisation/Bureau voor Normalisatie (NBN), Dansk Standard (DS), Deutsches Institut für Normung eV (DIN), Koninklijk Nederlands Normalisatie Instituut (NEN), Schweizerische Normen- Vereinigung SNV, Standard Norge, Suomen Standardisoimisliitto ry (SFS), Svenska institutet för standarder (SIS), Institut za standardizaciju Srbije (ISS)

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal and grant access to the requested documents (EN 71-4:2013, EN 71-5:2015, EN 71-12:2013, and EN 12472:2005+A1:2009);

— in the alternative, refer the matter back to the General Court and

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

Pleas in law and main arguments

1. Error in assessment of the application of the exception in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 ([1]).

   a. In the first part, the General Court committed an error in law in incorrectly assessing copyright protection by:

      — failing to recognise that the requested harmonised standards cannot be protected by copyright since they are part of the EU law and the rule of law requires free access to the law;

      — failing to recognise that even if the requested harmonised standards can be protected by copyright, free access to the law must have priority over copyright protection;

      — wrongly holding that the Commission was not authorised to examine whether the requested harmonised standards were protected by copyright and

      — wrongly holding that the requested harmonised standards constituted an intellectual creation and hence a copyrightable 'work'.

   b. In the second part, the General Court committed an error in law in its assessment of the effect on commercial interests by:

      — wrongly applying a presumption that the requested harmonized standards would undermine the interest protected by the first indent of Article 4(2) of Regulation (EC) No 1049/2001 and

      — not assessing the specific effects on commercial interests.

2. Error in law in not recognising an overriding public interest.

   The General Court committed an error in law in not recognising an overriding public interest by:

   — wrongly finding that the Applicants did not demonstrate specific reasons to justify their request;

   — taking account of an irrelevant factor, namely the functioning of the European standardization system;

   — finding that the decision in *James Elliott* (Case C-613/14) ([2]) does not create an obligation of proactive dissemination for harmonized standards and

— finding that harmonised standards produce only legal effects with regard to the persons concerned.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001, L 145, p. 43).
(2) Judgment of the Court of 27 October 2016 (Case C-613/14, James Elliott Construction, EU:C:2016:821).

Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 28 September 2021 — SP, CI v Všeobecná úverová banka, a.s.

(Case C-598/21)

(2022/C 11/22)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicants: SP, CI

Defendant: Všeobecná úverová banka, a.s.

Questions referred

A. Does Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), in conjunction with Articles 7 and 38 thereof, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ('Directive 93/13/EEC (1) on unfair terms'), Directive 2005/29/EC (2) of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Directive 2005/29/EC on unfair commercial practices') and the principle of effectiveness of EU law preclude legislation such as Paragraph 53(9) and Paragraph 565 of the Občiansky zákonník (Slovak Civil Code), pursuant to which in the event of accelerated repayment no account is taken of the proportionality of that transaction, in particular the gravity of the infringement by the consumer of his or her obligations in relation to the amount of the credit and its term?

B. If the answer to Question A. is in the negative (it is not precluded), the national court asks the following questions:

B.1 Does Article 47 the Charter, in conjunction with Articles 7 and 38 thereof, Directive 93/13/EEC on unfair terms, Directive 2005/29/EC on unfair commercial practices and the principle of effectiveness of EU law preclude case-law which does not preclude the enforcement as to its substance of a lien by means of a private auction of immovable property, consisting of the home of consumers or of other persons and which simultaneously does not have regard to the gravity of the infringement by the consumers of their obligation in relation to the amount of the credit and its term, even where there is another way in which the credit provider's claim may be satisfied through judicial enforcement, in the context of which the sale of the home over which the lien has been granted does not take precedence?

B.2 Is Article 3(1) of Directive 2005/29/EC on unfair commercial practices to be interpreted as meaning that the protection of consumers against unfair commercial practices in the granting of credit to consumers extends to all forms of satisfaction of the credit provider's claim, including the agreement on a new loan granted for repayment of the obligations arising from an earlier loan?

B.3 Is Directive 2005/29/EC on unfair commercial practices to be interpreted as meaning that the conduct of a credit provider who repeatedly grants credit to a consumer who is incapable of repaying the credit such that the result is a chain of credit, which the supplier does not in reality pay to the consumer but itself receives for the repayment of the previous loans and the total costs on the credit, is also regarded as an unfair commercial practice?

B.4 Must Article 2(2)(a) of Directive 2008/48/EC ([3]) of the European Parliament and of the Council on credit agreements for consumers and repealing Council Directive 87/102/EEC ('Directive 2008/48/EEC on consumer credit'), read in conjunction with recital 10 thereof, be interpreted as not excluding the application of that directive even in the case of a loan having all the characteristics of consumer credit, where the purpose of the loan has not been agreed upon, the entirety of which loan, with the exception of an insignificant part thereof, the credit provider used to ensure payment of previous consumer loans and as security for which a lien over immovable property was agreed upon?

B.5 Is the judgment of the Court of Justice of the European Union in Case C-377/14 of 21 April 2016, *Radlinger and Radlingerová*, ECLI:EU:C:2016:283 to be interpreted as meaning that it also applies to a loan agreement granted to a consumer where, under that agreement, part of the credit granted was designated for the repayment of the credit provider's costs?

([1]) OJ 1993 L 95, p. 29.
([2]) OJ 2005 L 149, p. 22.
([3]) OJ 2008 L 133, p. 66

Request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Braga, Juízo Administrativo Comum (Portugal) lodged on 28 September 2021 — Vapo Atlantic, S.A. v Entidade Nacional para o Sector Energético, E.P.E. (ENSE) and Others

(Case C-604/21)

(2022/C 11/23)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Braga, Juízo Administrativo Comum

Parties to the main proceedings

Applicant: Vapo Atlantic, S.A.

Defendant: Entidade Nacional para o Sector Energético, E.P.E. (ENSE)

Other parties to the proceedings: Fundo Ambiental, Fundo de Eficiência Energética (FEE)

Questions referred

1. Must Article 1(3) of Directive 98/34/EC ([1]) be interpreted as meaning that, for the purposes of Article 8(1) of that directive, the concept of 'other requirement' includes the definition of the percentage of biofuels which, in accordance with Article 7a of Directive 98/70/EC, ([2]) introduced by Directive 2009/30/EC, ([3]) and in keeping with the target set out in Article 3(4) of Directive 2009/28/EC, ([4]) a given economic operator is obliged to incorporate into the fuels it releases for consumption, as in the case of the definition given in the national legislation at issue?

2. Must Article 8(1) of Directive 98/34/EC, in particular the expression 'except where [the draft technical regulation] merely transposes the full text of an international or European standard', be interpreted as meaning that it excludes a provision of national law which defines biofuel incorporation percentages, in accordance with Article 7a(2) of Directive 98/70/EC, introduced by Directive 2009/30/EC, and in keeping with the target set out in Article 3(4) of Directive 2009/28/EC?

3. Must the second subparagraph of Article 4(1) of Directive 2009/30/EC and Article 4(1) of Directive (EU) 2015/1513 ([5]) be interpreted as meaning that the provisions in question are safeguard clauses provided for in binding Community acts within the meaning of the third indent of Article 10(1) of Directive 98/34/EC?

4. If the answer to this question is not unnecessary in the light of the answers to the foregoing questions, must Article 8(1) of Directive 98/34/EC be interpreted as meaning that a national provision such as that at issue in this dispute, which defines biofuel incorporation percentages, in transposition of Article 7a(2) of Directive 98/70/EC, introduced by Directive 2009/30/EC, may not be enforced as against an economic operator?

([1]) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37).

([2]) Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ 1998 L 350, p. 58).

([3]) Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ 2009 L 140, p. 88).

([4]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

([5]) Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (OJ 2015 L 239, p. 1).

Request for a preliminary ruling from the Szegedi Törvényszék (Hungary) lodged on 4 October 2021 — Napfény-Toll Kft. v Nemzeti Adó — és Vámhivatal Fellebbviteli Igazgatósága

(Case C-615/21)

(2022/C 11/24)

Language of the case: Hungarian

Referring court

Szegedi Törvényszék

Parties to the main proceedings

Applicant: Napfény-Toll Kft.

Defendant: Nemzeti Adó — és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Are the principles of legal certainty and of effectiveness, which form part of Community law, to be interpreted as not precluding legislation of a Member State which does not allow the courts to exercise any discretion, such as Paragraph 164(5) of the az adózás rendjéről szóló 2003. évi XCII. törvény (Law XCII of 2003 establishing a code of tax procedure; 'the former Code of Tax Procedure'), and the practice based on that legislation, under which, in matters of value added tax, the limitation period in respect of the right of the tax authorities to make a tax assessment is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures, with no ceiling on the cumulative duration of the suspensions where there are several rounds of judicial review, one after another, including in cases where the court ruling on a decision of a tax authority taken as part of a repeat procedure following on from an earlier court decision finds that the tax authority failed to comply with the guidance contained in that court decision, that is to say, where it is due to the fault of that authority that the new court proceedings took place?

Action brought on 29 October 2021 — European Parliament v European Commission

(Case C-657/21)

(2022/C 11/25)

Language of the case: English

Parties

Applicant: European Parliament (represented by: R. Crowe, U. Rösslein, C. Burgos, Agents)

Defendant: European Commission

The applicant claims that the Court should:

— establish that, by failing to ensure the full and immediate application Regulation (EU, Euratom) 2020/2092 ([1]) of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, as from its date of application on 1 January 2021, the European Commission infringed the Treaties;

— in the alternative, annul the Commission's unlawful refusal to ensure the full and immediate application of Regulation 2020/2092, as from its date of application;

— order the Commission to pay the costs.

Pleas in law and main arguments

First plea in law, alleging infringement of the Commission's obligation under the second sentence of Article 17(1) TEU to ensure the application of the Treaties and of the measures adopted by the institutions pursuant to them.

The Commission is failing to apply Regulation 2020/2092 in full, since it unlawfully excludes itself from applying the core provisions of Article 6 of the regulation until after it has finalised guidelines on the application of the regulation, which it will do only after the judgments of the Court in the actions for annulment brought by two Member States against the regulation have been delivered. This failure to apply the regulation in full until the Court's judgments in the actions for annulment constitutes an infringement of the Commission's responsibilities under Article 17(1) TEU, which obliges it to ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them.

Second plea in law, alleging infringement of the Commission's obligation under the third paragraph of Article 17(3) TEU to be completely independent in carrying out its responsibilities.

The Commission's failure to ensure the full and immediate application of the regulation, without self-imposed constraints, as from its date of application, pursuant to an instruction from the European Council, represents a violation of its obligation of independence under the third paragraph of Article 17(3) TEU.

Third plea in law, alleging infringement of Article 13(2) TEU and the principles of institutional balance and mutual sincere cooperation.

The Commission's failure to ensure the full and immediate application of the regulation, without self-imposed constraints, as from its date of application, pursuant to an instruction from the European Council, amounts to an infringement of Article 13(2) TEU, according to which each institution shall act within the limits of the powers conferred on it in the Treaties, as well as the principles of institutional balance and mutual sincere cooperation.

([1]) OJ 2020, L 433I, p. 1.

Appeal brought on 5 November 2021 by MKB Multifunds BV against the order of the General Court (Eighth Chamber) delivered on 6 September 2021 in Case T-277/20, *MKB Multifunds* v *Commission*

(Case C-665/21 P)

(2022/C 11/26)

Language of the case: Dutch

Parties

Appellant: MKB Multifunds BV (represented by: J.M.M. van de Hel, R. Rampersad, advocaten)

Other parties to the proceedings: European Commission, Kingdom of the Netherlands

Form of order sought

MKB Multifunds respectfully requests the Court to:

— declare MKB Multifunds' appeal well founded and admissible;

— set aside the order of the General Court;

— substitute the judgment of the Court for it and annul the decision of the Commission, and

— order the European Commission to pay the costs of the dispute that MKB Multifunds has had to incur.

Pleas in law and main arguments

The General Court wrongly found MKB Multifunds' claims to be inadmissible. The General Court's finding demonstrates an error of law. MKB Multifunds puts forward the following grounds of appeal:

First ground: The General Court demonstrates an error of law in paragraphs 36 to 38 of the order in not applying Article 36 of Protocol (No 3) on the Statute of the Court of Justice and Article 51 TEU. According to the General Court, no evidentiary value can be derived from MKB Multifunds' own statements, since it 'is merely a statement'. The General Court does not justify why MKB Multifunds' statements are unreliable. As a result, the order is insufficiently reasoned.

Second ground: The General Court demonstrates an error of law in paragraph 30 of the order in its interpretation of the term 'interested party' as set out in Article 1(h) of Regulation 2015/1589. ([1]) The General Court's interpretation is essentially that MKB Multifunds must show that it was actually active in the fund of funds sector — and was therefore a direct competitor of DVI — and has experienced concrete consequences. This is not in line with settled case-law, from which it is apparent that an undertaking is an interested party to the extent that (i) it is a (potential) competitor which is not active on the same market, and (ii) its interests may be adversely affected by the unlawful grant of aid. Due to the error of law, the General Court applied too strict a test and failed to recognise that MKB Multifunds is at least a potential competitor of DVI and that MKB Multifunds sufficiently argued that its interests were adversely affected by the unlawful grant of aid.

Third ground: The General Court demonstrates an error of law in paragraphs 53 to 55 of the order in construing too narrowly the term 'individual concern' within the meaning of the fourth paragraph of Article 263 TFEU. The consequence of this is that the General Court failed to recognise that MKB Multifunds put forward concrete arguments from which it is apparent that the decision affects MKB Multifunds by reason of certain attributes peculiar to it or by reason of a factual situation which differentiates it from all other persons.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Appeal brought on 9 November 2021 by KN against the judgment of the General Court (Eighth Chamber) delivered on 1 September 2021 in Case T-377/20, KN v EESC

(Case C-673/21 P)

(2022/C 11/27)

Language of the case: French

Parties

Appellant: KN (represented by: M. Casado García-Hirschfeld and M. Aboudi, avocats)

Other party to the proceedings: European Economic and Social Committee

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 1 September 2021, *KN* v *EESC* (T-377/20);

— grant the forms of order sought at first instance;

— order the EESC to pay all the costs, including those incurred before the General Court.

Grounds of appeal and main arguments

In the context of the appeal, the appellant contests in particular paragraphs 102 to 106, 167 to 169, 171 to 177 and 197 of the judgment under appeal.

In support of the appeal, the appellant puts forward a single ground of appeal, alleging a distortion of the facts by the judgment under appeal and manifest errors of assessment resulting in inaccurate legal reasoning.

GENERAL COURT

Judgment of the General Court of 10 November 2021 — Jenkinson v Council and Others

(Case T-602/15 RENV) ([1])

(Arbitration clause — International civilian staff of EU international missions — Recruitment on a contractual basis — Consecutive fixed-term contracts — Claim that all the contractual relationships should be recategorised as a 'contract of indefinite duration' — Action for contractual liability — Action for non-contractual liability)

(2022/C 11/28)

Language of the case: French

Parties

Applicant: Liam Jenkinson (Killarney, Ireland) (represented by: N. de Montigny, lawyer)

Defendants: Council of the European Union (represented by: A. Vitro and M. Bishop, acting as Agents), European Commission (represented by: B. Mongin, D. Bianchi and G. Gattinara, acting as Agents), European External Action Service (represented by: S. Marquardt, R. Spáč and E. Orgován, acting as Agents), Eulex Kosovo (Pristina, Kosovo) (represented by: E. Raoult, lawyer)

Re:

Principally, first, an application pursuant to Article 272 TFEU seeking, on the one hand, to have all of the applicant's employment contracts recategorised as an employment contract of indeterminate duration and, on the other hand, to obtain compensation for the contractual loss that the applicant claims to have suffered as a result and, second, applications under Articles 268 and 340 TFEU seeking to establish the non-contractual liability of the Council, the Commission, the EEAS and the Eulex Kosovo Mission.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Council of the European Union, the European Commission, the European External Action Service (EEAS) and the Eulex Kosovo Mission to bear their own costs and pay those incurred by the applicant relating to the appeal proceedings before the Court of Justice, in Case C-43/17 P, and relating to the initial proceedings before the General Court, in Case T-602/15, as of the point at which they respectively raised objections of inadmissibility by separate documents in Case T-602/15;

3. Orders Liam Jenkinson to bear the costs of the proceedings referred back to the General Court, in Case T-602/15 RENV, including those relating to the lodging of the application and to pay those incurred by the defendants in connection with those proceedings.

([1]) OJ C 90, 7.3.2016.

Judgment of the General Court of 10 November 2021 — Romania v Commission

(Case T-495/19) ([1])

(Law governing the institutions — European citizen's initiative — Cohesion policy — National minority regions — Registration decision — Action for annulment — Actionable measure — Admissibility — Article 4(2)(b) of Regulation (EU) No 211/2011 — Obligation to state reasons)

(2022/C 11/29)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: E. Gane, R. Hațieganu, L. Lițu and L.-E. Bațagoi, acting as Agents)

Defendant: European Commission (represented by: H. Stancu, I. Martínez del Peral and H. Krämer, acting as Agents)

Intervener in support of the defendant: Hungary (represented by: M. Fehér, M. Tátrai and K. Szíjjártó, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' (OJ 2019 L 122, p. 55).

Operative part of the judgment

The General Court:

1. Dismisses the action;

2. Orders Romania to bear its own costs and to pay those incurred by the European Commission;

3. Orders Hungary to bear its own costs.

(1) OJ C 288, 26.8.2019.

Judgment of the General Court of 10 November 2021 — Sasol Germany and Others v Commission

(Case T-661/19) (1)

(REACH — Substances of very high concern — Establishment of a list of identified substances with a view to their eventual inclusion in Annex XIV to Regulation (EC) No 1907/2006 — Decision identifying the substance 4-tert-butylphenol as a substance meeting the criteria for inclusion in the list — Article 57 of Regulation (EC) No 1907/2006 — Weight of evidence approach — Manifest error of assessment — Proportionality)

(2022/C 11/30)

Language of the case: English

Parties

Applicants: Sasol Germany GmbH (Hamburg, Germany), SI Group — Béthune (Béthune, France), BASF SE (Ludwigshafen am Rhein, Germany) (represented by: C. Mereu and P. Sellar, lawyers)

Defendant: European Commission (represented by: R. Lindenthal and K. Mifsud-Bonnici, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: D. Klebs, J. Möller, S. Heimerl and S. Costanzo, acting as Agents), European Chemicals Agency (represented by: M. Heikkilä, W. Broere, S. Mahoney and A. Hautamäki, acting as Agents)

Re:

Application under Article 263 TFEU seeking the annulment of Commission Implementing Decision (EU) 2019/1194 of 5 July 2019 on the identification of 4 tert-butylphenol (PTBP) as a substance of very high concern pursuant to Article 57(f) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council (OJ 2019 L 187, p. 41).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sasol Germany GmbH, SI Group — Béthune and BASF SE to bear their own costs and to pay those incurred by the European Commission;

3. Orders the Federal Republic of Germany and the European Chemicals Agency (ECHA) to bear their own costs.

(1) OJ C 406, 2.12.2019.

Judgment of the General Court of 10 November 2021 — Di Bernado v Commission

(Case T-41/20) (1)

(Civil Service — Officials — Recruitment — Notice of competition — Open competition — Conditions of admission — Non-inclusion on the reserve list — Insufficient professional experience — Article 266 TFEU — Decision adopted to give effect to a judgment of the General Court — Measures necessary to give effect to a judgment delivered in an action for annulment — Article 2 of Annex III to the Statute — Equal treatment — Manifest error of assessment — Liability)

(2022/C 11/31)

Language of the case: French

Parties

Applicant: Danilo Di Bernado (Brussels, Belgium) (represented by: S. Orlandi, lawyer)

Defendant: European Commission (represented by: M. Brauhoff and D. Milanowska, acting as Agents

Re:

Application under Article 270 TFEU seeking, first, annulment of the decision of the selection board in the open competition on the basis of tests EPSO/AST-SC/03/15 of 13 Mars 2019, taken with a view to complying with the judgment of 29 November 2018, *Di Bernardo* v *Commission* (T-811/16, not published, EU:T:2018:859), not to include the applicant's name on the reserve list for the recruitment of secretaries/clerks at grade SC 1 in the field of financial support and, secondly, compensation for the harm that the applicant claims to have suffered as a result.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Danilo di Bernardo to pay the costs.

(1) OJ C 77, 9.3.2020.

Judgment of the General Court of 10 November 2021 — Alkattan v Council

(Case T-218/20) (1)

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Obligation to state reasons — Rights of the defence — Right to a fair trial — Error of assessment — Determination of listing criteria)

(2022/C 11/32)

Language of the case: French

Parties

Applicant: Waseem Alkattan (Damascus, Syria) (represented by: G. Karouni, lawyer)

Defendant: Council of the European Union (represented by: A. Limonet and V. Piessevaux, acting as Agents)

Re:

First, application under Article 263 TFEU seeking annulment of Council Implementing Decision (CFSP) 2020/212 of 17 February 2020 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 431, p. 6), Council Implementing Regulation (EU) 2020/211 of 17 February 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 431, p. 1), Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1), Council Decision (CFSP) 2021/855 of 27 May 2021 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2021 L 188, p. 90), and Council Implementing Regulation (EU) 2021/848 of 27 May 2021 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2021 L 188, p. 18), in so far as those measures concern the applicant, and, secondly, application under Article 268 TFEU seeking compensation in respect of the harm suffered by the applicant as a result of those measures.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Waseem Alkattan to pay the costs.

([1]) OJ C 201, 15.6.2020.

Judgment of the General Court of 10 November 2021 — Phi Group v EUIPO — Gruppo Cadoro (REDELLO)

(Case T-532/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark REDELLO — Earlier EU figurative mark CADELLO 88 — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 11/33)

Language of the case: English

Parties

Applicant: Phi Group GmbH (Zug, Switzerland) (represented by: P. Campolini and L. Bidaine, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Gruppo Cadoro GmbH (Eglisau, Switzerland)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 22 June 2020 (Case R 2677/2019-4), relating to opposition proceedings between Gruppo Cadoro and Phi Group.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Phi Group GmbH to pay the costs.

([1]) OJ C 348, 19.10.2020.

Judgment of the General Court of 10 November 2021 — Solar Electric and Others v Commission

(Case T-678/20) ([1])

(State aid — Market for electricity produced from renewable energy sources, including photovoltaic energy — Obligation under French law to purchase electricity at a price higher than the market price — Rejection of a complaint — Article 12(1) and Article 24(2) of Regulation (EU) 2015/1589 — Scope)

(2022/C 11/34)

Language of the case: French

Parties

Applicants: Solar Electric Holding (Lamentin, France), Solar Electric Guyane (Lamentin), Solar Electric Martinique (Lamentin), Société de production d'énergies renouvelables (Lamentin) (represented by: S. Manna, lawyer)

Defendant: European Commission (represented by: B. Stromsky and A. Bouchagiar, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Commission's decision of 3 September 2020 rejecting the applicants' complaint of 20 June 2020 concerning unlawful State aid to the applicants' photovoltaic plants.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Solar Electric Holding, Solar Electric Guyane, Solar Electric Martinique and Société de production d'énergies renouvelables to pay the costs.

([1]) OJ C 44, 8.2.2021.

Judgment of the General Court of 10 November 2021 — Monster Energy v EUIPO — Frito-Lay Trading Company (MONSTER and MONSTER ENERGY)

(Joined Cases T-758/20 and T-759/20) ([1])

(EU trade mark — Revocation proceedings — EU word marks MONSTER and MONSTER ENERGY — Genuine use of the marks — Use in connection with the goods in respect of which the marks were registered — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2022/C 11/35)

Language of the case: English

Parties

Applicant: Monster Energy Co. (Corona, California, United States) (represented by: P. Brownlow, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Frito-Lay Trading Company GmbH (Bern, Switzerland) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Re:

Two actions brought against the decisions of the Second Board of Appeal of EUIPO of 5 October 2020 (Cases R 2927/2019-2 and R 2928/2019-2), relating to two revocation proceedings between Frito-Lay Trading Company and Monster Energy.

Operative part of the judgment

The Court:

1. Dismisses the actions;

2. Orders Monster Energy Co. to pay the costs.

(1) OJ C 53, 15.2.2021.

Judgment of the General Court of 10 November 2021 — PIK-KO v EUIPO — Haribo Ricqles Zan (P.I.C. Co.)

(Case T-73/21) (1)

(EU trade mark — Invalidity proceedings — EU figurative mark P.I.C. Co. — Earlier national figurative mark PIK — 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) — Article 53(1)(a) of Regulation No 207/2009 (now Article 60(1)(a) of Regulation 2017/1001) — Declaration of partial invalidity)

(2022/C 11/36)

Language of the case: English

Parties

Applicant: PIK-KO AD (Kazichene, Bulgaria) (represented by: A. Ivanova, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Haribo Ricqles Zan (Marseilles, France)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 27 November 2020 (Case R 1847/2019-5), relating to invalidity proceedings between Haribo Ricqles Zan and PIK-KO.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders PIK-KO AD to pay the costs.

(1) OJ C 138, 19.4.2021.

Action brought on 4 November 2021 — Lyubetskaya v Council

(Case T-556/21)

(2022/C 11/37)

Language of the case: French

Parties

Applicant: Sviatlana Lyubetskaya (Minsk, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of personal responsibility. The applicant submits that the aim and content of the contested measures, interpreted in the light of their wording, context and purposes, are contrary to the principle of proportionality, since the prosecuting authority has failed to fulfil its duty to specify in what way the facts are attributable to the person concerned.

2. Second plea in law, alleging an error of assessment, based on Article 47 of the Charter of Fundamental Rights of the European Union. According to the applicant, the contested measures lack any factual justification and merely draw conclusions that are founded solely on her status as a member of parliament.

3. Third plea in law, alleging infringement of the principle of proportionality. The applicant submits, in that regard, that the aim and content of the contested measures, interpreted in the light of their wording, context and purposes, are contrary to the principle of proportionality, in particular in the light of her status as a member of parliament.

Action brought on 5 November 2021 — Omelyanyuk v Council

(Case T-557/21)

(2022/C 11/38)

Language of the case: French

Parties

Applicant: Aleksandr Omelyanyuk (Minsk, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, identical or similar to those raised in Case T-556/21, *Lyubetskaya* v *Council*.

Action brought on 5 November 2021 — Gusachenka v Council

(Case T-579/21)

(2022/C 11/39)

Language of the case: French

Parties

Applicant: Siarhei Gusachenka (Minsk, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, ([1]) in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, ([2]) in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are, in essence, identical or similar to those raised in Case T-556/21, *Lyubetskaya* v *Council*.

([1]) OJ 2021 L 219I, p. 3.
([2]) OJ 2021 L 219I, p. 70.

Action brought on 5 November 2021 — Haidukevich v Council

(Case T-580/21)

(2022/C 11/40)

Language of the case: French

Parties

Applicant: Aleh Haidukevich (Semkino, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, ([1]) in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, ([2]) in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, identical or similar to those raised in Case T-556/21, *Lyubetskaya* v *Council*.

(1) OJ 2021 L 219I, p. 3.
(2) OJ 2021 L 219I, p. 70.

Action brought on 5 November 2021 — Skryba v Council

(Case T-581/21)

(2022/C 11/41)

Language of the case: French

Parties

Applicant: Siarheï Skryba (Marialivo, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, (1) in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, (2) in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, identical or similar to those raised in Case T-556/21, *Lyubetskaya* v *Council*.

(1) OJ 2021 L 219I, p. 3.
(2) OJ 2021 L 219I, p. 70.

Action brought on 5 November 2021 — Rubnikovich v Council

(Case T-582/21)

(2022/C 11/42)

Language of the case: French

Parties

Applicant: Siarhei Rubnikovich (Tarasovo, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, (1) in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, ([2]) in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, identical or similar to those raised in Case T-556/21, *Lyubetskaya* v *Council*.

([1]) OJ 2021 L 219I, p. 3.
([2]) OJ 2021 L 219I, p. 70.

Action brought on 5 November 2021 — Bakhanovich v Council

(Case T-583/21)

(2022/C 11/43)

Language of the case: French

Parties

Applicant: Aliaksandr Bakhanovich (Brest, Belarus) (represented by: D. Litvinski, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, ([1]) in so far as it concerns the applicant;

— annul Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, ([2]) in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are, in essence, identical or similar to those raised in Case T-556/21, *Lyubetskaya* v *Council*.

([1]) OJ 2021 L 219I, p. 3.
([2]) OJ 2021 L 219I, p. 70.

Action brought on 18 October 2021 — NFL Properties Europe v EUIPO — Groupe Duval (DUUUVAL)

(Case T-671/21)

(2022/C 11/44)

Language of the case: English

Parties

Applicant: NFL Properties Europe GmbH (Eschborn, Germany) (represented by: M. Kloth, R. Briske, D. Habel and M. Tillwich, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Groupe Duval (Boulogne-Billancourt, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark DUUUVAL — Application for registration No 18 066 416

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 August 2021 in Case R 243/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision of the Fifth Board of Appeal of 4 August 2021;

— order the opponent to pay the costs of the proceedings, including those incurred in the course of the appeal proceedings.

Plea in law

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

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Action brought on 18 October 2021 — IR v Commission

(Case T-685/21)

(2022/C 11/45)

Language of the case: French

Parties

Applicants: IR (represented by: S. Pappas and A. Pappas, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 11 December 2020 by which the Brussels Settlement Office refused the renewal of the serious illness scheme in respect of the applicant's son;

— annul the decision of 8 July 2021 by which the appointing authority rejected the applicant's complaint filed under Article 90(2) of the Staff Regulations of Officials of the European Union;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decisions are based unlawfully on the second opinion of the Medical Officer.

2. Second plea in law, alleging a failure to state reasons for the contested decisions.

3. Third plea in law, alleging that the contested decisions are, according to the applicant, vitiated by manifest errors of assessment and a distortion of the facts.

4. Fourth plea in law, alleging infringement of the right to good administration and the right to be heard.

5. Fifth plea in law, alleging that the contested decisions are based unlawfully on an opinion of the Medical Council.

6. Sixth plea in law, alleging breach of the administrative procedure.

Action brought on 2 November 2021 — Zielonogórski Klub Żużlowy Sportowa v EUIPO — Falubaz Polska (FALUBAZ)

(Case T-703/21)

(2022/C 11/46)

Language in which the application was lodged: Polish

Parties

Applicant: Zielonogórski Klub Żużlowy Sportowa S.A. (Zielona Góra, Poland) (represented by: T. Grucelski, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Falubaz Polska S.A. spółka komandytowo-akcyjna (Zielona Góra)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FALUBAZ' — EU trade mark No 14 535 835

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 24 August 2021 in Case R 1681/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— order the unsuccessful party to pay the costs incurred by the applicant in the proceedings before the General Court of the European Union and any costs necessarily incurred by the applicant for the purposes of the proceedings before the Board of Appeal of EUIPO;

— in the event of intervention in the proceedings by the other party, order that party to bear its own costs.

Pleas in law

— Infringements of the principle of free evaluation of evidence through an arbitrary evaluation of the evidence obtained;

— Infringement of Article 52(1)(b) of Council Regulation (EC) No 207/2009 ([1]) (now Article 59(1)(b) of [Regulation (EU) 2017/1001]).

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 4 November 2021 — Roos and Others v Parliament

(Case T-710/21)

(2022/C 11/47)

Language of the case: French

Parties

Applicants: Robert Roos (Poortugaal, Netherlands), Anne-Sophie Pelletier (Ixelles, Belgium), Francesca Donato (Palermo, Italy), Virginie Joron (Durningen, France) and IC (represented by: P. de Bandt, M. Gherghinaru and L. Panepinto, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the General Court should:

— order the annulment of the decision of the Bureau of the European Parliament of 27 October 2021 on exceptional health and safety rules governing access to the European Parliament buildings at its three places of work;

— order the defendant to pay all the costs, including those relating to the application for suspension of operation of the contested decision.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision has no valid legal basis for creating consequences as regards the members of the European Parliament. The applicants challenge the assertion that Article 25 of the Rules of Procedure of the Parliament constitutes a valid legal basis for the adoption of the contested decision and therefore, for imposing the contested measure on them. In addition, they claim that a decision of the Bureau, such as the contested decision, cannot form the basis of measures which involve the processing of very sensitive data, in so far as, in accordance with Article 8 of the Charter of Fundamental Rights of the European Union, the essential elements of such data processing must be laid down in a 'law', which a decision of the Bureau of the Parliament is not.

2. Second plea in law, alleging infringement of the principle of the freedom and independence of Members of the Parliament and of the immunities conferred on them by the Treaties. The applicants consider that the contested decision is contrary to Article 2 of the Statute for Members of the Parliament (which lays down the principle that members are free and independent) and Article 7 of Protocol No 7 on the privileges and immunities of the European Union (which provides, in particular, that no administrative or other restriction shall be imposed on the free movement of Members of the Parliament travelling to or from the place of meeting of the Parliament). The consequence of the contested decision is that the applicants must present a valid EU digital COVID certificate each time they wish to visit the Parliament. If they are unable or unwilling to present such a certificate, the applicants will be denied access to the Parliament's buildings.

3. Third plea in law, alleging infringement of the general principles relating to the processing of personal data. This plea is divided into two parts.

   — The first part, alleging infringement of the purpose limitation principle of the processing of data and the principle of legality. In order for the personal data contained in the applicants' EU digital COVID certificates to be used to give them access to the Parliament's buildings, it is legally required that they have been collected for this purpose. In the absence of a legal basis expressly authorising the processing of medical data relating to vaccination, testing or recovery for the purpose of conditioning access to the workplace and to parliamentary assemblies, it is in no way up to the Bureau of the Parliament to authorise such data processing, a fortiori by means of a rule which is not a law in the formal sense of the term.

— The second part, alleging infringement of the principles of fairness, transparency and minimisation since, at the time of the collection of their personal data, the applicants were not informed that those data would be used to grant or deny them access to the place of work where they exercise their mandate as Members of Parliament.

4. Fourth plea in law, alleging that the contested decision unjustifiably infringes the right to privacy and personal data, the right to physical integrity, the right to liberty and security and the right to equality and non-discrimination. This plea is divided into two parts.

— The first part, alleging infringement of the applicants' rights to physical integrity, to liberty and security, to equality and non-discrimination, and of their rights to respect for their privacy and for their personal data.

— The second part, alleging that the infringement by the contested decision of the rights and principles referred to in the first part does not comply with the principle of proportionality laid down in Article 52(1) of the Charter of Fundamental Rights of the European Union, in that the contested measure is not necessary, appropriate and proportionate for the attainment of the objectives pursued.

Action brought on 10 November 2021 — G.J. Riedel v EUIPO — Brew Dog (Punk)

(Case T-720/21)

(2022/C 11/48)

Language of the case: English

Parties

Applicant: G.J. Riedel GmbH (Kufstein, Germany) (represented by: D. Terheggen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Brew Dog plc (Ellon, United Kingdom)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the word mark Punk — International registration designating the European Union No 1 365 577

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 July 2021 in Case R 291/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 11 November 2021 — D'Amato and Others v Parliament

(Case T-722/21)

(2022/C 11/49)

Language of the case: French

Parties

Applicants: Rosa D'Amato (Taranto, Italy), Claude Gruffat (Mulsans, France), Damien Carême (Argenteuil, France) and Benoît Biteau (Sablonceaux, France) (represented by: P. de Bandt, M. Gherghinaru and L. Panepinto, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the General Court should:

— order the annulment of the decision of the Bureau of the European Parliament of 27 October 2021 on exceptional health and safety rules governing access to the European Parliament buildings at its three places of work;

— order the defendant to pay all the costs, including those relating to the application for suspension of operation of the contested decision.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law that are identical or similar to those relied upon in Case T-710/21, *Roos and Others* v *Parliament*.

Action brought on 11 November 2021 — Rooken and Others v Parliament

(Case T-723/21)

(2022/C 11/50)

Language of the case: French

Parties

Applicants: Robert Jan Rooken (Muiderberg, Netherlands) and eight other applicants (represented by: P. de Bandt, M. Gherghinaru and L. Panepinto, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the General Court should:

— order the annulment of the decision of the Bureau of the European Parliament of 27 October 2021 on exceptional health and safety rules governing access to the European Parliament buildings at its three places of work;

— order the defendant to pay all the costs, including those relating to the application for suspension of operation of the contested decision.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law that are identical or similar to those relied upon in Case T-710/21, *Roos and Others* v *Parliament*.

Action brought on 10 November 2021 — Rolex v EUIPO — PWT (Device of a crown)

(Case T-726/21)

(2022/C 11/51)

Language of the case: English

Parties

Applicant: Rolex SA (Geneva, Switzerland) (represented by: C. Sueiras Villalobos, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: PWT A/S (Aalborg, Denmark)

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 (Representation of a crown) — International registration designating the European Union No 1 263 679

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 August 2021 in Case R 2389/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the applicant's costs, or in the alternative (if the other party to the proceedings before the Board of Appeal intervenes) that EUIPO and the other party do severally and jointly pay the applicant's costs.

Pleas in law

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

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

Action brought on 9 November 2021 — TO v EASO

(Case T-727/21)

(2022/C 11/52)

Language of the case: French

Parties

Applicant: TO (represented by: É. Boigelot, lawyer)

Defendant: European Asylum Support Office (EASO)

Form of order sought

The applicant claims that the Court should:

— annul the decision which entered into force on 1 January 20[21] and which was allegedly adopted on 18 December 202[0], of which the applicant became aware on 4 January 2021 via the link [*confidential*], ([1]) taken by [*confidential*], in so far as it does not extend by a first additional year, that is to say until 31 December 2021, the reserve list bearing the following references [*confidential*], which was valid until 31 December 2020;

— re-open and extend accordingly the reserve list, like the 44 other extended lists covered by the contested decision, for one year from the date of its reopening and, consequently, appoint the applicant to the higher grade of AST 3;

— order the defendant to pay the applicant damages in respect of both material and non-material damage, corresponding to:

  — the difference in remuneration between that currently received by a person in grade AST 1, step 3, and that of a person in grade AST 3, step 1, calculated over a period of five years, from the date of the adverse effect, namely 1 January 2021, taking account of a loss of opportunity estimated at 75 %;

  — the difference in pension rights between those currently acquired by a person in grade AST 1, step 3, and those of a person in grade AST 3, step 1, calculated over the same five-year period, from the date of the adverse effect, namely 1 January 2021, taking account of a loss of opportunity estimated at 75 %;

  — an amount of EUR 7 500 for the non-material damage caused;

  — a provisional amount of EUR 1.00 for loss of cover under the sickness fund;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the applicant's trust and legitimate expectations and failure to state reasons for the contested decision.

2. Second plea in law, alleging infringement of the principle of non-discrimination, of Article 1d(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') and of Article 27 and the third and fourth subparagraphs of Article 29(1) of the Staff Regulations.

3. Third plea in law, alleging infringement of Article 12a of the Staff Regulations, the principle of sound administration and the duty to have regard for the welfare of officials, as well as excess of and misuse of powers.

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

([1]) Confidential data redacted.

Action brought on 5 November 2021 — LW v Commission

(Case T-728/21)

(2022/C 11/53)

Language of the case: English

Parties

Applicant: LW (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision to move the applicant inside the same Unit to a different post;

— together with, and in so far as necessary, annul the defendant's contested decision rejecting the complaint lodged by the applicant against the reassignment decision;

— order the compensation of the non-material damages of the applicant and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the reassignment decision affected the applicant's legal interests.

2. Second plea in law, alleging that the reassignment decision has not been taken by the competent appointing authority.

3. Third plea in law, alleging that the reassignment decision and the contested decision have been taken in violation of Article 7(1) of the Staff regulations.

4. Fourth plea in law, alleging that the reassignment decision and the contested decision infringe the principle of duty of care.

5. Fifth plea in law, alleging that the reassignment decision and the contested decision violated the duty to state reasons.

6. Sixth plea in law, alleging that a conflict of interest issue vitiates the reassignment decision and the contested decision.

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