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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2022/C 191/01)

Last publication

OJ C 171, 25.4.2022

Past publications

OJ C 165, 19.4.2022

OJ C 158, 11.4.2022

OJ C 148, 4.4.2022

OJ C 138, 28.3.2022

OJ C 128, 21.3.2022

OJ C 119, 14.3.2022

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 17 March 2022 (Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — AllianzGI-Fonds AEVN v Autoridade Tributária e Aduaneira

(Case C-545/19) [1]

(Reference for a preliminary ruling — Article 63 TFEU — Free movement of capital — Taxation of dividends paid to undertakings for collective investment (UCIs) — Resident and non-resident UCIs — Difference in treatment — Withholding tax imposed solely on dividends paid to non-resident UCIs — Comparability of the situations — Assessment — Account to be taken of the tax regime applicable to shareholders or unitholders in UCIs and of whether resident undertakings are subject to other taxes — None)

(2022/C 191/02)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: AllianzGI-Fonds AEVN

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding legislation of a Member State under which dividends distributed by resident companies to a non-resident undertaking for collective investment (UCI) are subject to withholding tax, whereas dividends distributed to a resident UCI are exempt from such withholding tax.

[1] OJ C 399, 25.11.2019.

Judgment of the Court (Second Chamber) of 17 March 2022 (request for a preliminary ruling from the Landesarbeitsgericht Berlin-Brandenburg — Germany) — NP v Daimler AG, Mercedez-Benz Werk Berlin

(Case C-232/20) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2008/104/EC — Temporary agency work — Article 1(1) — 'Temporarily' assigned — Concept — Employment in a permanent job — Article 5(5) — Successive assignments — Article 10 — Sanctions — Article 11 — Derogation by the parties to a collective agreement from the maximum assignment period prescribed by the national legislature)

(2022/C 191/03)

Language of the case: German

Referring court

Landesarbeitsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: NP

Defendant: Daimler AG, Mercedez-Benz Werk Berlin

Operative part of the judgment

1. Article 1(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, is to be interpreted as meaning that the term 'temporarily', referred to in that provision, does not preclude the assignment of a worker with a contract of employment or an employment relationship with a temporary-work agency to a user undertaking for the purpose of filling a job which is permanent and which is not performed to provide cover.

2. Articles 1(1) and 5(5) of Directive 2008/104 are to be interpreted as meaning that the renewal of successive assignments for the same job to a user undertaking for a duration of 55 months constitutes a misuse of the attribution of successive assignments to a temporary agency worker, should the successive assignments of the same temporary agency worker to the same user undertaking result in a period of service with that undertaking which is longer than can reasonably be characterised as 'temporary', in the light of all the relevant circumstances, which include in particular the specific nature of the sector, and in the context of the national legislative framework, no explanation having been given for the user undertaking having had recourse to a series of successive temporary agency contracts, which is for the referring court to decide.

3. Directive 2008/104 is to be interpreted as precluding a national law which prescribes a maximum assignment period of the same temporary agency worker to that same user undertaking, where that law excludes, by means of a transitional provision, for the purposes of calculating that period, account being taken of periods predating the entry into force of that law, which deprive the national court of the possibility of taking into account the actual period of assignment of a temporary agency worker for the purpose of establishing whether that assignment was 'temporary', within the meaning of that directive, which is for that court to decide. A national court before which a dispute exclusively between private parties has been brought is not required, solely on the basis of EU law, to disapply such a transitional provision which is contrary to EU law.

4. Article 10(1) of Directive 2008/104 is to be interpreted as meaning that in the absence of a provision of national law intended to impose penalties for non-compliance with that directive by temporary work agencies or by user undertakings, the temporary agency worker cannot derive an individual right from EU law at the establishment of an employment relationship with a user undertaking.

5. Directive 2008/104 is to be interpreted as not precluding a national law which empowers the social partners to derogate, at the level of the branch of user undertakings, from the maximum assignment period of a temporary agency worker prescribed by such a provision.

(1) OJ C 279, 24.8.2020.

Judgment of the Court (Grand Chamber) of 15 March 2022 (request for a preliminary ruling from the Cour d'appel de Paris — France) — Mr A v Autorité des marchés financiers (AMF)

(Case C-302/20) (1)

(Reference for a preliminary ruling — Single Market for financial services — Market abuse — Directives 2003/6/EC and 2003/124/EC — 'Inside information' — Concept — Information 'of a precise nature' — Information relating to the forthcoming publication of a press article reporting a market rumour about an issuer of financial instruments — Unlawfulness of the disclosure of inside information — Exceptions — Regulation (EU) No 596/2014 — Article 10 — Disclosure of inside information in the normal exercise of a profession — Article 21 — Disclosure of inside information for the purpose of journalism — Freedom of the press and freedom of expression — Disclosure by a journalist, to a usual source, of information relating to the forthcoming publication of a press article)

(2022/C 191/04)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Mr A

Defendant: Autorité des marchés financiers (AMF)

Operative part of the judgment

1. Article 1(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) must be interpreted as meaning that, for the purposes of classification as inside information, information relating to the forthcoming publication of a press article reporting a market rumour about an issuer of financial instruments is capable of constituting information 'of a precise nature', within the meaning of that provision and of Article 1(1) of Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6 of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation, and that the fact that that press article mentions the price at which the securities of that issuer would be purchased in the context of a possible takeover bid and the identity of the journalist who authored that article and of the media organisation that published it are relevant factors for the purpose of assessing that precise nature, in so far as they were disclosed before that publication. As regards the actual effect of that publication on the prices of the securities to which it relates, while it may constitute *ex post* evidence of the precise nature of that information, it is not sufficient, in itself, in the absence of an examination of other factors known or disclosed prior to that publication, to establish that precise nature.

2. Article 21 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6 of the European Parliament and of the Council and Commission Directives 2003/124, 2003/125/EC and 2004/72/EC must be interpreted as meaning that the disclosure by a journalist, to one of his or her usual sources of information, of information relating to the forthcoming publication of a press article authored by him or her reporting a market rumour is made 'for the purpose of journalism', within the meaning of that provision, where that disclosure is necessary for the purpose of carrying out a journalistic activity, which includes investigative work in preparation for publication.

3. Articles 10 and 21 of Regulation No 596/2014 must be interpreted as meaning that a disclosure of inside information by a journalist is lawful where it must be regarded as being necessary for the exercise of his or her profession and as complying with the principle of proportionality.

(1) OJ C 313, 21.9.2020.

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 28 June 2021 — Bursa Română de Mărfuri SA v Autoritatea națională de reglementare în domeniul energiei (ANRE)

(Case C-394/21)

(2022/C 191/05)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Appellant: Bursa Română de Mărfuri SA

Respondent: Autoritatea națională de reglementare în domeniul energiei (ANRE)

Intervening party: Federația Europeană a Comercianților de Energie

Questions referred

1. Having regard to the provisions of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, (1) does Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, (2) in particular Article 1(b) and Article 3 thereof, prohibit, from the time of its entry into force, a Member State from continuing to grant one single licence to organise and operate the centralised electricity markets? Is there an obligation on the Romanian State, as of 1 January 2020, to bring to an end an existing monopoly on operation of the electricity market?

2. Does the scope *ratione personae* of the principles of free competition laid down in Regulation (EU) 2019/943, in particular in Article 1(b) and (c) and in Article 3 respectively, include the operator of an electricity market such as a commodities exchange? Is it relevant to this answer that, for the definition of the electricity market, point (40) of Article 2 of Regulation (EU) 2019/943 refers to the definition of electricity markets set out in point (9) of Article 2 of Directive (EU) 2019/944?

3. Must the grant by a Member State of one single licence to operate the electricity market be regarded as constituting a restriction of competition within the meaning of Articles 101 and 102 TFEU, in conjunction with Article 4(3) TEU and Article 106(1) TFEU?

(1) OJ 2019 L 158, p. 125.
(2) OJ 2019 L 158, p. 54.

Appeal brought on 20 September 2021 by Svenska Metallkompaniet AB against the order of the General Court (Fifth Chamber) delivered on 5 July 2021 in Case T-191/21, Svenska Metallkompaniet v EUIPO — Otlav (Window fittings)

(Case C-610/21 P)

(2022/C 191/06)

Language of the case: English

Parties

Appellant: Svenska Metallkompaniet AB

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

By order of 11 February 2022, the Vice-President of the Court of Justice held that the appeal was dismissed as inadmissible and that Svenska Metallkompaniet AB should bear its own costs.

Appeal brought on 20 September 2021 by Lajos Bese against the order of the General Court (Fifth Chamber) delivered on 5 July 2021 in Case T-128/21, Bese v EUIPO — Mixtec (rubyred CRANBERRY)

(Case C-611/21 P)

(2022/C 191/07)

Language of the case: English

Parties

Appellant: Lajos Bese

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

By order of 11 February 2022, the Vice-President of the Court of Justice held that the appeal was dismissed as inadmissible and that Mr Lajos Bese should bear his own costs.

Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Romania) lodged on 11 October 2021 — S.H. v Administrația Județeană a Finanțelor Publice Sibiu, Direcția Generală Regională a Finanțelor Publice Brașov

(Case C-627/21)

(2022/C 191/08)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Appellant: S.H.

Respondents: Administrația Județeană a Finanțelor Publice Sibiu, Direcția Generală Regională a Finanțelor Publice Brașov

Question referred

Can the principle of neutrality of VAT, [recital 30] and Articles 16, 184, 186, 187, 188 and 192 of Directive 112/2006/EC ([1]) be interpreted as being compatible with national legislation relating to adjustment of the deductible tax in respect of capital goods (in particular Article 305(4)(a) of Legea nr. 227/2015 privind Codul fiscal (Law No 227/2015 establishing the Tax Code) and point 79(14)(b) of the Normele metodologice de aplicare a Legii nr. 227/2015 privind Codul fiscal (Rules for applying Law No 227/2015 establishing the Tax Code), approved by Hotărârea Guvernului nr. 1/2016 (Government Decision No 1/2016), laid down pursuant to Article 305(4)(a) of the Tax Code, in conjunction with Article 316(11)(e) of Law No 227/2015 establishing the Tax Code), and with the practice of the tax administration affecting the initial deductibility of VAT paid in respect of the purchases of capital goods by requiring the taxable person to adjust downwards the deductible VAT on the ground that the tax authority annulled, of its own motion, the taxable person's registration for VAT purposes for a certain period because of a failure to carry on economic activities in relation to the time during which the capital goods were not the subject of supplies of services or goods during the period between the annulment of the tax authority's own motion and re-registration for the purposes of VAT?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, Special edition in Romanian: Chapter 09 Volume 003 P. 7).

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 15 December 2021 — Blue Air Aviation SA v UCMR — ADA Asociația pentru Drepturi de Autor a Compozitorilor

(Case C-775/21)

(2022/C 191/09)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Appellant (defendant at first instance): Blue Air Aviation SA

Respondent (applicant at first instance): UCMR — ADA Asociația pentru Drepturi de Autor a Compozitorilor

Questions referred

1. Must Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([1]) be interpreted as meaning that the broadcasting, inside a commercial aircraft occupied by passengers, of a musical work or a fragment of a musical work on take-off, on landing or at any time during a flight, via the aircraft's public address system, constitutes a communication to the public within the meaning of that provision, particularly (but not exclusively) in the light of the criterion relating to the profit-making objective of the communication?

   If the answer to the first question is in the affirmative:

2. Does the existence on board the aircraft of an address system required by air traffic safety legislation constitute a sufficient basis for making a rebuttable presumption as to the communication to the public of musical works on board that aircraft?

If the answer to that question is in the negative:

3. Does the presence on board the aircraft of an address system required by air traffic safety legislation and of software which enables the communication of phonograms (containing protected musical works) via that system constitute a sufficient basis for making a rebuttable presumption as to the communication to the public of musical works on board that aircraft?

(1) OJ 2001 L 167, p. 10.

Appeal brought on 22 December 2021 by YG against the judgment of the General Court (Fourth Chamber) delivered on 20 October 2021 in Case T-599/20, YG v European Commission

(Case C-818/21 P)

(2022/C 191/10)

Language of the case: English

Parties

Appellant: YG (represented by: A. Champetier, avocate, S. Rodrigues, avocat)

Other party to the proceedings: European Commission

Form of order sought

The Appellant claims that the Court should:

— set aside the contested judgment, declare the Appellant's requests in Case T-599/20 admissible and well-founded, and consequently

— annul the contested decisions in first instance;

or, if this is not possible,

— refer the case before the General Court for judgment, and, in any case,

— order the Commission to bear the costs.

Pleas in law and main arguments

The appeal is lodged against the judgment of 20 October 2021 adopted by the General Court of the European Union, dismissing the action lodged by the Appellant in case T-599/20, YG v European Commission.

In support of his appeal, the Appellant raises the following pleas in law:

— Distortions of evidence;

— Misconstructions of pleas — Errors of reasoning — Breach of rights of defence;

— Errors of law.

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 22 December 2021 — Uniunea Producătorilor de Fonograme din România (UPFR) v Societatea Națională de Transport Feroviar de Călători (SNTFC) 'CFR Călători' SA

(Case C-826/21)

(2022/C 191/11)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant at first instance and appellant: Uniunea Producătorilor de Fonograme din România (UPFR)

Defendant at first instance and respondent: Societatea Națională de Transport Feroviar de Călători (SNTFC) 'CFR Călători' SA

Questions referred

1. Does a rail carrier which uses train carriages in which sound systems intended for the communication of information to passengers are installed thereby make a communication to the public within the meaning of Article 3 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([1])?

2. Does Article 3 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society preclude national legislation which establishes a rebuttable presumption of communication to the public on the basis of the existence of sound systems, where those sound systems are required by other provisions of law governing the carrier's activity?

([1]) OJ 2001 L 167, p. 10.

Request for a preliminary ruling from the Curtea de Apel Pitești (Romania) lodged on 5 January 2022 — EF, GH, IJ v KL

(Case C-13/22)

(2022/C 191/12)

Language of the case: Romanian

Referring court

Curtea de Apel Pitești

Parties to the main proceedings

Applicants: EF, GH, IJ

Defendant: KL

Questions referred

1. Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, preclude a provision of national law, such as that contained in Article 148(2) of the Romanian Constitution, as interpreted by the Curtea Constituțională (Constitutional Court, Romania) in Decision No 390/2021, according to which national courts no longer have jurisdiction to examine the conformity with EU law of a provision of national law that has been found to be constitutional by a decision of the Constitutional Court?

2. Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, preclude a provision of national law, such as that contained in Article 99(ș) of Legea nr. 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the rules governing judges and prosecutors), which provides for the initiation of disciplinary proceedings and the application of disciplinary penalties in respect of a judge for failure to comply with a decision of the Constitutional Court, where that judge is called upon to acknowledge the primacy of EU law over the grounds of a decision of the Constitutional Court, that provision of national law depriving him or her of the possibility of applying a judgment of the Court of Justice of the European Union which he or she regards as taking precedence?

Request for a preliminary ruling from the Tribunal du travail francophone de Bruxelles (Belgium) lodged on 20 January 2022 — HK v Service fédéral des Pensions (SFP)

(Case C-45/22)

(2022/C 191/13)

Language of the case: French

Referring court

Tribunal du travail francophone de Bruxelles

Parties to the main proceedings

Applicant: HK

Defendant: Service fédéral des Pensions (SFP)

Questions referred

— Must the rule laid down in Article 55(1)(a) of Regulation (EC) No 883/2004 [1] that the competent institutions are to divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules be interpreted as meaning that the income as such taken into account when applying the rule to prevent overlapping must be divided by the number of survivors' pensions impacted by the rules against overlapping?

— On the contrary, must the rule laid down in Article 55(1)(a) of Regulation (EC) No 883/2004 that the competent institutions are to divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules be interpreted as meaning that it is not the income as such taken into account when applying the rule to prevent overlapping, but rather it is the portion of the income which exceeds a ceiling in respect of overlapping, as, for example, laid down by the national rule at issue, that must be divided by the number of survivors' pensions impacted by the rules against overlapping?

[1] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Appeal brought on 20 January 2022 by Google LLC and Alphabet, Inc. against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 10 November 2021 in Case T-612/17, Google and Alphabet v Commission

(Case C-48/22 P)

(2022/C 191/14)

Language of the case: English

Parties

Appellants: Google LLC, Alphabet, Inc. (represented by: T. Graf, Rechtsanwalt, R. Snelders, advocaat, C. Thomas, avocat, A. Bray, avocate, M. Pickford QC, and by D. Gregory and H. Mostyn, Barristers)

Other parties to the proceedings: Computer & Communications Industry Association, European Commission, Federal Republic of Germany, EFTA Surveillance Authority, Bureau européen des unions de consommateurs (BEUC), Infederation Ltd, Kelkoo, Verband Deutscher Zeitschriftenverleger eV, Visual Meta GmbH, BDZV — Bundesverband Digitalpublisher und Zeitungsverleger eV, formerly Bundesverband Deutscher Zeitungsverleger eV, Twenga

Form of order sought

The appellants claim that the Court should:

— annul the judgment under appeal;

— annul the Decision ([1]) or in the alternative remand the case to the General Court;

— order the Commission to bear the appellants' costs and expenses in connection with these proceedings and the proceedings before the General Court.

Pleas in law and main arguments

In support of the appeal, the appellants rely on four pleas in law.

First plea in law: The General Court erred in upholding the Decision despite the Decision's failure to meet the legal test for a duty to supply access to comparison shopping services.

— The General Court impermissibly deviated from the Decision by holding that the duty to supply conditions were fulfilled.

— The General Court erred in finding that the duty to supply conditions were not applicable.

Second plea in law: The General Court erred in upholding the Decision despite the Decision's failure to identify conduct that deviated from competition on the merits.

— The General Court wrongly held that circumstances relevant to the likely effects of Google's conduct were capable of determining whether Google competed on the merits.

— The General Court impermissibly rewrote the Decision by advancing additional reasons why Google's conduct supposedly deviated from competition on the merits.

— The General Court's additional reasons as to why Google did not compete on the merits are legally invalid.

Third plea in law: The General Court erred in its review of the causal link between the alleged abuse and likely effects.

— The General Court erred in holding that the burden to conduct a counterfactual analysis was on Google, rather than the Commission.

— The General Court erred in holding that a counterfactual for an abuse that consists of the combination of two lawful practices requires removing both practices.

— The General Court's approach vitiates its assessment of both effects and objective justification.

Fourth plea in law: The General Court erred by holding that the Commission did not have to examine whether the conduct was capable of foreclosing as-efficient competitors.

([1]) Commission Decision C(2017) 4444 final of 27 June 2017 relating to proceedings under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.39740 — Google Search (Shopping)).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 24 January 2022 — Austrian Airlines AG v TW

(Case C-49/22)

(2022/C 191/15)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Appellant: Austrian Airlines AG

Respondent: TW

Questions referred

1. Must Article 5(1)(a) and Article 8(1)(b) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1]) (Air Passenger Rights Regulation) be interpreted as meaning that a repatriation flight operated in the exercise of the State's sovereign activity is also to be regarded as re-routing, under comparable transport conditions, to the final destination — as must be offered by the operating air carrier in the event of cancellation — where the operating air carrier cannot establish legal entitlement to transport the passenger but could register the passenger for that purpose and bear the costs and, by virtue of a contractual agreement with the State, ultimately operates the flight with the same aircraft and at the same flight times as scheduled for the flight originally cancelled?

2. Must Article 8(1) of the Air Passenger Rights Regulation be interpreted as meaning that a passenger who registers himself or herself for a repatriation flight as described in Question 1 and who makes an obligatory contribution to costs to the State for that flight has a claim for reimbursement of those expenses against the air carrier, arising directly from the Air Passenger Rights Regulation, even if the costs do not consist exclusively of purely flight-related costs?

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

Request for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 25 January 2022 — SOGEFINANCEMENT v RW, UV

(Case C-50/22)

(2022/C 191/16)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: SOGEFINANCEMENT

Defendants: RW, UV

Questions referred

1. Does the principle that penalties must be effective, deriving from Article 23 of Directive 2008/48/EC, ([1]) in the light of the principles of legal certainty and of States' procedural autonomy, preclude a situation whereby a court may not raise of its own motion a national legal provision, resulting from Article 14 of that directive and penalised under national law by the nullity of the agreement, beyond the five-year limitation period within which the consumer may seek the annulment of the credit agreement by bringing legal proceedings or by raising an objection?

2. Does the principle that penalties must be effective, deriving from Article 23 of Directive 2008/48/EC, in the light of the principles of legal certainty and of States' procedural autonomy and the principle that the subject matter of an action is delimited by the parties, preclude a situation whereby a court may not declare a credit agreement null and void after raising of its own motion a provision of national law, resulting from Article 14 of that directive, where the consumer has not applied for or at least acquiesced in such annulment?

([1]) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Reference for a preliminary ruling from the High Court (Irlande) made on 8 February 2022 — Right to Know CLG v An Taoiseach

(Case C-84/22)

(2022/C 191/17)

Language of the case: English

Referring court

High Court (Irlande)

Parties to the main proceedings

Applicant: Right to Know CLG

Respondent: An Taoiseach

Questions referred

1. Are records of formal meetings of the executive branch of government of a Member State, at which members of the government are required to meet and act as a collective authority, to be characterised, for the purpose of a request for access to environmental information contained therein, as '*internal communications*' or as '*proceedings*' of a public authority within the meaning of those terms as set out, respectively, in Article 4(1)(e) and Article 4(2), first paragraph, indent (a), respectively, of Directive 2003/4/EC [1] of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC?

2. Does the principle of *res judicata* (as discussed in Köbler, Case C-224/01 [2], and subsequent case law) extend beyond the operative or dispositive part of the earlier judgment, and include, in addition, findings of fact and law featuring in the earlier judgment? Put otherwise, is the principle of *res judicata* confined to cause of action estoppel, or does it extend to issue estoppel?

3. In ongoing proceedings between parties regarding alleged non-compliance with Directive 2003/4/EC concerning a specific request for environmental information, where an applicant/requester has succeeded in having a decision quashed with some grounds of challenge based on EU law upheld and others rejected, does EU law, and in particular, the principle of effectiveness preclude a national rule of *res judicata* based on issue estoppel that requires a national court, in fresh proceedings concerning a further decision on the same request, to exclude such an applicant/requester from challenging the said further decision on EU-law based grounds that were previously rejected but not, in the circumstances, appealed?

4. Is the answer to Question (3) above affected by the facts that: (i) no reference was made to the Court of Justice; and (ii) relevant case law of the Court of Justice had not been brought to the national court's attention by either of the parties?

[1] OJ 2003, L 41, p. 26.
[2] Judgment of 30 September 2003 (EU:C:2003:513)

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 9 February 2022 — Fenice — Qualità per l'ambiente SpA v Ministero della Transizione Ecologica and Others

(Case C-91/22)

(2022/C 191/18)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Fenice — Qualità per l'ambiente SpA

Defendants: Ministero della Transizione Ecologica, Ministero dello Sviluppo Economico, Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto

Questions referred

1. Is the decision taken by the Italian national committee for the management of Directive 2003/87/EC ([1]) and for support in the management of project activities under the Kyoto Protocol, considering the adoption procedure and, in particular, the mechanism for dialogue with the European Commission provided for in Delegated Regulation (EU) 2019/331, ([2]) concerning the inclusion of installations in the list for the allocation of CO_2 allowances, open to appeal before the General Court pursuant to the fourth paragraph of Article 263 TFEU, where the contested measure produces binding legal effects and directly affects the applicant as an economic operator?

2. In the alternative, can the private economic operator directly affected by the exclusion from the allocation of CO_2 allowances, on the basis of the joint investigation conducted by the European Commission and the Italian national committee for the management of Directive 2003/87/EC and for support in the management of project activities under the Kyoto Protocol, challenge the decision taken by the European Commission to reject the inclusion of the installation in the list pursuant to Article 14(4) of Delegated Regulation (EU) 2019/331 before the General Court pursuant to the fourth paragraph of Article 263 TFEU?

3. Does the concept of 'electricity generator' within the meaning of Article 3(u) of Directive 2003/87/EC, as was evident from the judgment of the Court of Justice (Fifth Chamber) of 20 June 2019 in Case C-682/17, *ExxonMobil Production Deutschland GmbH* v *Bundesrepublik Deutschland*, concerning the request for a preliminary ruling submitted to the Court of Justice pursuant to Article 267 TFEU by the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) by decision of 28 November 2017, also cover situations in which the installation marginally generates electricity from non-high-efficiency cogeneration, characterised by a variety of thermal energy sources other than cogeneration qualifying for the allocation of free emission allowances?

4. Is such an interpretation of the definition of 'electricity generator' compatible with the general principles of EU law on respect for competition between operators where incentives are granted, and with the principle of proportionality of the measure, where it completely excludes an installation that uses a variety of energy sources, without separating out the emission values relating to heat sources other than cogeneration, which are fully entitled to receive the benefits provided for?

([1]) 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 (OJ 2003 L 275, p. 32).

([2]) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 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 (OJ 2019 L 59, p. 8).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 9 February 2022 — Fenice — Qualità Per L'ambiente SpA v Ministero della Transizione Ecologica and Others

(Case C-92/22)

(2022/C 191/19)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Fenice — Qualità Per L'ambiente SpA

Defendants: Ministero della Transizione Ecologica, Ministero dello Sviluppo Economico, Comitato nazionale per la gestione della Direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto

Questions referred

1. Is the decision taken by the Italian national committee for the management of Directive 2003/87/EC ([1]) and for support in the management of project activities under the Kyoto Protocol, considering the adoption procedure and, in particular, the mechanism for dialogue with the European Commission provided for in Delegated Regulation (EU) 2019/331, ([2]) concerning the inclusion of installations in the list for the allocation of CO_2 allowances, open to appeal before the General Court pursuant to the fourth paragraph of Article 263 TFEU, where the contested measure produces binding legal effects and directly affects the applicant as an economic operator?

2. In the alternative, can the private economic operator directly affected by the exclusion from the allocation of CO_2 allowances, on the basis of the joint investigation conducted by the European Commission and the Italian national committee for the management of Directive 2003/87/EC and for support in the management of project activities under the Kyoto Protocol, challenge the decision taken by the European Commission to reject the inclusion of the installation in the list pursuant to Article 14(4) of Delegated Regulation (EU) 2019/331 before the General Court pursuant to the fourth paragraph of Article 263 TFEU?

3. Does the concept of 'electricity generator' within the meaning of Article 3(u) of Directive 2003/87/EC, as was evident from the judgment of the Court of Justice (Fifth Chamber) of 20 June 2019 in Case C-682/17, *ExxonMobil Production Deutschland GmbH* v *Bundesrepublik Deutschland*, concerning the request for a preliminary ruling submitted to the Court of Justice pursuant to Article 267 TFEU by the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) by decision of 28 November 2017, also cover situations in which the installation marginally generates electricity from non-high-efficiency cogeneration, characterised by a variety of thermal energy sources other than cogeneration qualifying for the allocation of free emission allowances?

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([1]) 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 (OJ 2003 L 275, p. 32).

([2]) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 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 (OJ 2019 L 59, p. 8).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 9 February 2022 — Fenice — Qualità Per L'ambiente SpA v Ministero della Transizione Ecologica and Others

(Case C-93/22)

(2022/C 191/20)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Fenice — Qualità Per L'ambiente SpA

Defendants: Ministero della Transizione Ecologica, Ministero dello Sviluppo Economico, Comitato nazionale per la gestione della Direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto

Questions referred

1. Is the decision taken by the Italian national committee for the management of Directive 2003/87/EC ([1]) and for support in the management of project activities under the Kyoto Protocol, considering the adoption procedure and, in particular, the mechanism for dialogue with the European Commission provided for in Delegated Regulation (EU) 2019/331, ([2]) concerning the inclusion of installations in the list for the allocation of CO_2 allowances, open to appeal before the General Court pursuant to the fourth paragraph of Article 263 TFEU, where the contested measure produces binding legal effects and directly affects the applicant as an economic operator?

2. In the alternative, can the private economic operator directly affected by the exclusion from the allocation of CO_2 allowances, on the basis of the joint investigation conducted by the European Commission and the Italian national committee for the management of Directive 2003/87/EC and for support in the management of project activities under the Kyoto Protocol, challenge the decision taken by the European Commission to reject the inclusion of the installation in the list pursuant to Article 14(4) of Delegated Regulation (EU) 2019/331 before the General Court pursuant to the fourth paragraph of Article 263 TFEU?

3. Does the concept of 'electricity generator' within the meaning of Article 3(u) of Directive 2003/87/EC, as was evident from the judgment of the Court of Justice (Fifth Chamber) of 20 June 2019 in Case C-682/17, *ExxonMobil Production Deutschland GmbH* v *Bundesrepublik Deutschland*, concerning the request for a preliminary ruling submitted to the Court of Justice pursuant to Article 267 TFEU by the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) by decision of 28 November 2017, also cover situations in which the installation marginally generates electricity from non-high-efficiency cogeneration, characterised by a variety of thermal energy sources other than cogeneration qualifying for the allocation of free emission allowances?

4. Is such an interpretation of the definition of 'electricity generator' compatible with the general principles of EU law on respect for competition between operators where incentives are granted, and with the principle of proportionality of the measure, where it completely excludes an installation that uses a variety of energy sources, without separating out the emission values relating to heat sources other than cogeneration, which are fully entitled to receive the benefits provided for?

([1]) 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 (OJ 2003 L 275, p. 32).

([2]) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 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 (OJ 2019 L 59, p. 8).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 9 February 2022 — Gruppo Mauro Saviola Srl v Ministero della Transizione Ecologica, Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto

(Case C-94/22)

(2022/C 191/21)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Gruppo Mauro Saviola Srl

Defendants: Ministero della Transizione Ecologica, Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto

Questions referred

1. Is the decision taken by the Italian national committee for the management of Directive 2003/87/EC ([1]) and for support in the management of project activities under the Kyoto Protocol, considering the adoption procedure and, in particular, the mechanism for dialogue with the European Commission provided for in Delegated Regulation (EU) 2019/331, ([2]) concerning the inclusion of installations in the list for the allocation of CO_2 allowances, open to appeal before the General Court pursuant to the fourth paragraph of Article 263 TFEU, where the contested measure produces binding legal effects and directly affects the applicant as an economic operator?

2. In the alternative, can the private economic operator directly affected by the exclusion from the allocation of CO_2 allowances, on the basis of the joint investigation conducted by the European Commission and the Italian national committee for the management of Directive 2003/87/EC and for support in the management of project activities under the Kyoto Protocol, challenge the decision taken by the European Commission to reject the inclusion of the installation in the list pursuant to Article 14(4) of Delegated Regulation (EU) 2019/331 before the General Court pursuant to the fourth paragraph of Article 263 TFEU?

3. Does the concept of 'electricity generator' within the meaning of Article 3(u) of Directive 2003/87/EC, as was evident from the judgment of the Court of Justice (Fifth Chamber) of 20 June 2019 in Case C-682/17, *ExxonMobil Production Deutschland GmbH* v *Bundesrepublik Deutschland*, concerning the request for a preliminary ruling submitted to the Court of Justice pursuant to Article 267 TFEU by the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) by decision of 28 November 2017, also cover situations in which the installation produces electricity entirely for its own consumption, feeding that electricity into the public grid intermittently only when the installations intended to receive the energy are temporarily shut down for operational reasons?

4. Is such an interpretation of the definition of 'electricity generator' compatible with the general principles of EU law on respect for competition between operators where incentives are granted, and with the principle of proportionality of the measure, where it does not provide an incentive for own consumption of electricity through the allocation of free CO_2 emission allowances for those installations that use it?

([1]) 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 (OJ 2003 L 275, p. 32).

([2]) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 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 (OJ 2019 L 59, p. 8).

Request for a preliminary ruling from the Symvoulio tis Epikrateias (Greece) lodged on 14 February 2022 — Kapniki A. Michailides AE v Organismos Pliromon kai Elegchou Koinotikon Enischyseon Prosanatolismou kai Eggyiseon (OPEKEPE), Ypourgos Agrotikis Anaptyxis kai Trofimon

(Case C-99/22)

(2022/C 191/22)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Appellant: Kapniki A. Michailides SA

Respondents: Organismos Pliromon kai Elegchou Koinotikon Enischyseon Prosanatolismou kai Eggyiseon (OPEKEPE), Ypourgos Agrotikis Anaptyxis kai Trofimon

Question referred

Does Article 3(3) of Council Regulation (EEC) No 2062/92 of 30 June 1992, [1] which states that, where the quantity of tobacco of low class purchased by a processor exceeds, relative to his total purchases of the variety in question, the percentage indicated in Annex IV, the premium shall be reduced by 30 % in respect of the quantity in excess of the percentage in question, infringe the principle of the non-retroactivity of legal rules and the principle of the protection of legitimate expectations?

[1] Council Regulation (EEC) No 2062/92 of 30 June 1992 fixing, for the 1992 harvest, the norm and intervention prices and the premiums granted to purchasers of leaf tobacco, the derived intervention prices for baled tobacco, the reference qualities, and the production areas (OJ 1992 L 215, p. 22).

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 17 February 2022 — NG v Direktor na Glavna direktsia 'Natsionalna politsia' pri MVR — Sofia

(Case C-118/22)

(2022/C 191/23)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant on a point of law: NG

Respondent in the appeal on a point of law: Direktor na Glavna direktsia 'Natsionalna politsia' pri MVR — Sofia

Question referred

Does the interpretation of Article 5 in conjunction with Article 13(2)(b) and (3) of Directive (EU) 2016/680 [1] of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA permit national legislative measures which lead to a virtually unrestricted right of competent authorities to process personal data for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and/or to the elimination of the data subject's right to have the processing of his or her data restricted or to have them erased or destroyed?

[1] OJ 2016 L 119, p. 89.

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 22 February 2022 — Balgarska telekomunikatsionna kompania EAD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia

(Case C-127/22)

(2022/C 191/24)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant: Balgarska telekomunikatsionna kompania EAD

Respondent: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia

Questions referred

1. Is Article 185(1) of Directive 2006/112/EC ([1]) to be interpreted as meaning that, where goods are written off, in the sense that assets or inventories are derecognised on the taxable person's statement of financial position because they are not expected to be of any further economic benefit, for example because they are worn, faulty or unsuitable or cannot be used for their intended purpose, that is a change in the factors used to determine the amount to be deducted in relation to the VAT already paid when the goods were purchased, which occurred after the VAT return was made in accordance with the Zakon za danak varhu dobavenata stoinost (Law on value added tax, 'the ZDDS') and which therefore gives rise to the obligation to adjust the deduction if the goods written off were subsequently sold as goods listed in Annex 2 and hence as a taxable supply?

2. Is Article 185(1) of Directive 2006/112/EC to be interpreted as meaning that, where goods are written off, in the sense that assets or inventories are derecognised on the taxable person's statement of financial position because they are not expected to be of any further economic benefit, for example because they are worn, faulty or unsuitable or cannot be used for their intended purpose, that is a change in the factors used to determine the amount to be deducted in relation to the VAT already paid when the goods were purchased, which occurred after the VAT return was made in accordance with the ZDDS and which therefore gives rise to the obligation to adjust the deduction if the goods written off were subsequently destroyed or disposed of and that fact can be duly proved or confirmed?

3. If the answer to Question 1 or Question 2 or both is in the affirmative, is Article 185(2) of Directive 2006/112/EC to be interpreted as meaning that, where goods are written off under the circumstances described above, that is a duly proved or confirmed case of the destruction or loss of goods, for which the obligation arises to adjust the deduction in relation to the VAT paid when the goods were acquired?

4. If the answer to Question 1 or Question 2 or both is in the affirmative, is Article 185(2) of Directive 2006/112/EC to be interpreted as meaning that, where goods are written off under the circumstances described above, that is a duly proved or confirmed case of the destruction or loss of goods, for which the obligation arises to adjust the deduction in relation to the VAT paid when the goods were acquired?

5. If the answer to Question 1 or Question 2 or both is in the negative, does Article 185(1) of Directive 2006/112/EC preclude national legislation, such as Article 79(3) of the ZDDS in the version applicable up to 31 December 2016, or Article 79(1) of the ZDDS in the version applicable from 1 January 2017, which requires the deduction to be adjusted where goods are written off, even where the goods are subsequently sold as a taxable supply of goods within the meaning of Annex 2 or where they are destroyed or disposed of and that fact is duly proved or confirmed?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, Special edition in Bulgarian: Chapter 9, Volume 3, p. 7).

Request for a preliminary ruling from the Amtsgericht Frankfurt am Main (Germany) lodged on 25 February 2022 — flightright GmbH v Swiss International Air Lines AG

(Case C-131/22)

(2022/C 191/25)

Language of the case: German

Referring court

Amtsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: flightright GmbH

Defendant: Swiss International Air Lines AG

Questions referred

1. Do extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004 ([1]) exist where meteorological conditions occur which are incompatible with the operation of a flight, irrespective of their specific nature?

2. If the answer to Question 1 is in the negative, can the extraordinary nature of the meteorological conditions be determined by reference to their regional and seasonal frequency at the place and time at which they occur?

3. Do extraordinary circumstances within the meaning of Article 5(3) of the regulation exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay or the cancellation of one or more flights by that aircraft, irrespective of the reason for that decision?

4. If the answer to Question 3 is in the negative, must the reason for the decision also be extraordinary, such that it need not be expected?

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

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 2 March 2022 — Criminal proceedings against OE

(Case C-142/22)

(2022/C 191/26)

Language of the case: English

Referring court

Supreme Court

Criminal proceedings against

OE

Questions referred

1. Should Article 27 of the Framework Decision ([1]) be interpreted as meaning that a decision to surrender a person creates a legal relationship between him, the executing State and the requesting State such that any issue taken to have been finally determined in that decision must also be taken to have been determined for the purposes of the procedure for obtaining consent to further prosecution or punishment for other offences?

2. If the answer to Question 1 is that Article 27 does not require that interpretation, does a national procedural rule breach the principle of effectiveness if it operates so as to prevent the person concerned from relying, in the context of the consent application, upon a relevant judgment of the Court of Justice of the European Union delivered in the period of time after the order for surrender?

(1) 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002, L 190, p. 1).

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 2 March 2022 — Merck Sharp & Dohme Corp v Clonmel Healthcare Limited

(Case C-149/22)

(2022/C 191/27)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Plaintiff: Merck Sharp & Dohme Corp

Defendant: Clonmel Healthcare Limited

Questions referred

1. (a) For the purpose of the grant of a supplementary protection certificate, and for the validity of that SPC in law, under Article 3(a) of Regulation (EC) No 469/2009 (1) concerning the supplementary protection certificate for medicinal products, does it suffice that the product for which the SPC is granted is expressly identified in the patent claims, and covered by it; or is it necessary for the grant of an SPC that the patent holder, who has been granted a marketing authorisation, also demonstrate novelty or inventiveness or that the product falls within a narrower concept described as the invention covered by the patent?

   (b) If the latter, the invention covered by the patent, what must be established by the patent holder and marketing authorisation holder to obtain a valid SPC?

2. Where, as in this case, the patent is for a particular drug, ezetimibe, and the claims in the patent teach that the application in human medicine may be for the use of that drug alone or in combination with another drug, here, simvastatin, a drug in the public domain, can an SPC be granted under Article 3(a) of the Regulation only for a product comprising ezetimibe, a monotherapy, or can an SPC also be granted for any or all of the combination products identified in the claims in the patent?

3. Where a monotherapy, drug A, in this case ezetimibe, is granted an SPC, or any combination therapy is first granted an SPC for drugs A and B as a combination therapy, which are part of the claims in the patent, though only drug A is itself novel and thus patented, with other drugs being already known or in the public domain; is the grant of an SPC limited to the first marketing of either that monotherapy of drug A or that first combination therapy granted an SPC, A+B, so that, following that first grant, there cannot be a second or third grant of an SPC for the monotherapy or any combination therapy apart from that first combination granted an SPC?

4. If the claims of a patent cover both a single novel molecule and a combination of that molecule with an existing and known drug, perhaps in the public domain, or several such claims for a combination, does Article 3(c) of the Regulation limit the grant of an SPC;

a) only to the single molecule if marketed as a product;

b) the first marketing of a product covered by the patent whether this is the monotherapy of the drug covered by the basic patent in force or the first combination therapy, or

c) either (a) or (b) at the election of the patentee irrespective of the date of market authorisation?

And if any of the above, why?

(1) Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009, L 152, p. 1).

Appeal brought on 3 March 2022 by Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo sp. z o.o. against the judgment delivered by the General Court on 21 December 2021 in Case T-263/15 RENV, Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo v Commission

(Case C-163/22 P)

(2022/C 191/28)

Language of the case: Polish

Parties

Appellants: Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo sp. z o.o. (represented by: K. Gruszecka-Spychała and P. K. Rosiak, radcy prawni)

Other parties to the proceedings: European Commission, Republic of Poland

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court delivered on 21 December 2021 in Case T-263/15 RENV, *Gmina Miasto Gdynia and Port Lotniczy Gdynia-Kosakowo* v *Commission*;

— give final judgment in the case, declaring the first, fourth and sixth pleas in law of the original action well founded in so far as the present appeal is concerned and annulling the contested decision in accordance with the original form of order sought;

— rule in the judgment referred to in the second indent above on the costs of the proceedings at first instance and of the appeal proceedings.

Grounds of appeal and main arguments

First ground of appeal, alleging that the General Court erred in law in interpreting Article 107(1) TFEU in the context of the analysis of the first part of the first plea in law of the original action in respect of the incorrect identification of the advantage and the incorrect determination, raised in the context of the fourth plea in law of the original action, of the amount of aid to be recovered.

Second ground of appeal, alleging that the General Court erred in law by failing to take into account, when examining the second complaint of the sixth plea in law of the original action concerning the unlawfulness of the withdrawal of Decision 2014/883/EU (1) and its replacement by the contested decision, the principle of the protection of legitimate expectations, the principle of legal certainty, and the principle of effective legal protection, in that it adopted an unlawful interpretation that enables the Commission to freely withdraw its own legal measure which has already been contested before the General Court and to freely amend its content, without taking into account the interests and expectations of the party that has contested that measure.

Third ground of appeal, alleging that the General Court erred in law when considering the third complaint of the sixth plea in law of the original action concerning infringement of the applicants' procedural rights, and of the principle of sound administration, the principle of sincere cooperation and the principle of the protection of legitimate expectations, by failing to recognise the Commission's obligation to amend the decision to initiate the procedure or to adopt a new decision in that regard, where the conditions presented in the judgment under appeal for correcting or extending the decision to initiate the procedure have been satisfied.

(1) Commission Decision 2014/883/EU of 11 February 2014 on the measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo Airport (notified under document C(2014) 759) (OJ 2014 L 357, p. 51).

Action brought on 4 March 2022 — European Commission v Kingdom of Denmark

(Case C-167/22)

(2022/C 191/29)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: L. Grønfeldt and P. Messina, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

The applicant claims that the Court should:

— declare that, by limiting to 25 hours the maximum period during which it is possible to park at State-owned rest areas along the motorway network in Denmark, the Kingdom of Denmark has failed to fulfil its obligations under the provisions on the freedom to provide transport services, as laid down in Articles 1, 8 and 9 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council; (1)

— order the Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

The Commission submits that the 25-hour rule, although it does not amount to direct discrimination, nevertheless constitutes an obstacle to the freedom to provide services, since the rule does not affect Danish hauliers and non-Danish hauliers in the same way. Drivers working for non-Danish hauliers will find it more difficult to comply with their driving and rest time obligations arising from EU law, in particular from Regulation (EC) No 561/2006, (2) than will drivers working for Danish hauliers, which have operating centres in Denmark to which the drivers can return and park during their rest periods.

According to the Commission, the rule cannot be justified by the objectives, relied on by Denmark, of (i) providing greater capacity for drivers to take their breaks and short rest periods, (ii) eliminating illegal and dangerous parking on motorway lay-bys, (iii) ensuring orderly conditions at rest areas by countering the negative effects caused by long-term parking, and (iv) improving the drivers' environmental and working conditions, since that rule is not suitable for attaining those objectives and, moreover, goes beyond what is necessary to attain them.

(1) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72).

(2) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

Request for a preliminary ruling from the Varhoven kasatsionen sad (Bulgaria) lodged on 8 March 2022 — Criminal proceedings against EV

(Case C-174/22)

(2022/C 191/30)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Party to the main proceedings

EV

Question referred

Do the provisions of Regulation (EC) No 273/2004 ([1]) of the European Parliament and of the Council of 11 February 2004, which supplement the blanket provision of Article 354a of the Nakazatelen kodeks (Criminal Code) in conjunction with Article 3(4) of the Zakon za kontrol varhu narkotichnite veshtestva i prekursorite (Law on the control of narcotic substances and drug precursors), allow a person to be found guilty of possession of a category 3 substance as per Annex I, namely toluene in a quantity of two litres?

([1]) Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (OJ 2004 L 47, p. 1).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 8 March 2022 — Criminal proceedings against BK

(Case C-175/22)

(2022/C 191/31)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

BK

Questions referred

Does Article 6(3) and (4) of Directive 2012/13/EU ([1]) preclude an interpretation of national legal provisions — Article 301(1)(2), in conjunction with Article 287(1), of the Nakazatelno protsesualen kodeks (Code of Criminal Procedure, Bulgaria; 'the NPK') — in the case-law according to which the court may, in its judgment, give a legal classification of the offence that differs from that set out in the bill of indictment, provided that it is not classified as an offence attracting a more severe penalty, on the ground that the accused person was not properly informed of the new, different legal classification before the delivery of the judgment and was unable to defend himself against it?

If Question 1 is answered in the affirmative: Does the second paragraph of Article 47 of the Charter prohibit the court from informing the accused person that it could base its decision on the merits on a different legal classification of the offence, and also from giving him the opportunity to prepare his defence against that classification, because the initiative for this different legal classification did not come from the public prosecutor's office?

([1]) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 8 March 2022 — Criminal proceedings against BK and ZhP

(Case C-176/22)

(2022/C 191/32)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Parties to the main proceedings

BK and ZhP

Question referred

Is Article 23 of the Statute of the Court of Justice to be interpreted as imposing an obligation on a national court that has made a request for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union to stay the main proceedings in their entirety, or is it sufficient to stay only that part of the main proceedings that relates to the question referred for a preliminary ruling?

Action brought on 22 March 2022 — European Commission v Grand Duchy of Luxembourg

(Case C-214/22)

(2022/C 191/33)

Language of the case: French

Parties

Applicant: European Commission (represented by: E. Manhaeve, A. Azéma, I. Zaloguin, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt, by 4 October 2016 at the latest, the laws, regulations and administrative provisions necessary to comply with Article 8(7), Article 9 and Article 10(2) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union ([1]) or, in any event, by not communicating those provisions to the Commission, Luxembourg has failed to fulfil its obligations under Article 12 of that directive;

— impose on Luxembourg, in accordance with Article 260(3) TFEU, a penalty payment in the amount of EUR 7 096,50 per day from the date of delivery of the judgement in the present case for failure to fulfil its obligation to communicate to the Commission the measures transposing Article 8(7), Article 9 and Article 10(2) of Directive 2014/42;

— order Luxembourg to pay the costs.

Pleas in law and main arguments

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union allows Member States to recover more easily the benefits attained by criminals as a result of serious organised crime. Member States were obliged to transpose the directive by 4 October 2016. The Commission opened the infringement procedure against Luxembourg in November 2016 and then sent it a reasoned opinion in March 2019. To date, Luxembourg has not notified the Commission of complete transposition of the directive into its national law.

([1]) OJ 2014 L 127, p. 39.

GENERAL COURT

Judgment of the General Court of 2 March 2022 — VeriGraft v Eismea

(Case T-688/19) ([1])

(Arbitration clause — Grant agreement concluded in the context of the 'Horizon 2020' Framework Programme for Research and Innovation — Termination of the agreement — Misconduct — Capacity as beneficiary of the grant or as a natural person acting in his or her name or on his or her behalf)

(2022/C 191/34)

Language of the case: English

Parties

Applicant: VeriGraft AB (Gothenburg, Sweden) (represented by: P. Hansson and A. Johansson, lawyers)

Defendant: European Innovation Council and SMEs Executive Agency (represented by: A. Galea, acting as Agent, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application based on Article 272 TFEU seeking a declaration of invalidity of the termination by the Executive Agency for Small and Medium-sized Enterprises (EASME) of the grant agreement concerning the project 'Personalised Tissue Engineered Veins as the first Cure for Patients with Chronic Venous Insufficiency — P TEV', concluded in the context of the instrument to support innovation in small and medium-sized enterprises of Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020).

Operative part of the judgment

The Court:

1. Declares that the termination by the Executive Agency for Small and Medium-sized Enterprises of the grant agreement for the project 'Personalised Tissue Engineered Veins as the first Cure for Patients with Chronic Venous Insufficiency — P-TEV', bearing reference 778620, is invalid;

2. Orders the European Innovation Council and SMEs Executive Agency to pay the costs.

([1]) OJ C 432, 23.12.2019.

Judgment of the General Court of 2 March 2022 — Mood Media Netherlands v EUIPO — Tailoradio (MOOD MEDIA)

(Case T-615/20) ([1])

(EU trade mark — Revocation proceedings — EU word mark MOOD MEDIA — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001) — Article 15(1)(a) of Regulation No 207/2009 (now Article 18(1)(a) of Regulation 2017/1001) — Proof of genuine use)

(2022/C 191/35)

Language of the case: English

Parties

Applicant: Mood Media Netherlands BV (Naarden, Netherlands) (represented by: A.M. Pecoraro, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Tailoradio Srl (Milan, Italy) (represented by: M. Franzosi, A. Sobol, F. Santonocito and S. Bernardini, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 24 July 2020 (Case R 1767/2019-1), relating to revocation proceedings between Tailoradio and Mood Media Netherlands.

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 July 2020 (Case R 1767/2019-1);

2. Dismisses the action as to the remainder;

3. Orders EUIPO to bear its own costs and to pay those incurred by Mood Media Netherlands BV;

4. Orders Tailoradio Srl to bear its own costs.

(1) OJ C 390, 16.11.2020.

Judgment of the General Court of 2 March 2022 — Apologistics v EUIPO — Kerckhoff (apo-discounter.de)

(Case T-140/21) (1)

(EU trade mark — Revocation proceedings — EU figurative mark apo-discounter.de — Partial revocation — Genuine use of the trade mark — Article 58(1)(a) of Regulation (EU) 2017/1001 — Proof of genuine use)

(2022/C 191/36)

Language of the case: English

Parties

Applicant: Apologistics GmbH (Markkleeberg, Germany) (represented by: H. Hug, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Markus Kerckhoff (Bergisch Gladbach, Germany) (represented by: M. Douglas, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 8 December 2020 (Case R 1439/2019-5), relating to revocation proceedings between Mr Kerckhoff and Apologistics.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Apologistics GmbH to pay the costs.

(1) OJ C 182, 10.5.2021.

Action brought on 18 February 2022 — Sberbank Europe v ECB

(Case T-99/22)

(2022/C 191/37)

Language of the case: English

Parties

Applicant: Sberbank Europe AG (Vienna, Austria) (represented by: M. Fellner, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the ECB's decision dated 21 December 2021 rendered against Sberbank (No ECB-SSM-2021-ATSBE-12, ESA-2020-00000051) without replacement pursuant to Article 263, 264 TFEU; and,

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB's imposition of absorption interest is an inadmissible double punishment pursuant to Article 50 of the Charter of the Fundamental Rights ('CFR') of the European Union and Article 4 of the European Convention of Human Rights ('ECHR').

2. Second plea in law, alleging that the ECB's decision dated 21 December 2021 violates Article 49 of the CFR and Article 7 of the ECHR by imposing a penalty exceeding the amount limits laid down in Article 18(1) of Regulation (EU) No 1024/2013 ([1]).

3. Third plea in law, alleging that ECB's decision imposing absorption interest on Sberbank violates Article 17 of the CFR and Article 1 of the First additional protocol to the ECHR.

4. Fourth plea in law alleging violation of fundamental rights and fundamental freedoms pursuant to Article 6 of the Treaty on European Union. The principle of res iudicata prohibits the ECB to impose absorption interest on Sberbank for exceeding the large exposure limits pursuant to Art 395 of Regulation (EU) No 575/2013 ([2]).

5. Fifth plea in law alleging violation of the principle of good faith, since the ECB violated the Guide to the method of setting administrative pecuniary penalties pursuant to Article 18(1) and (7) of Regulation (EU) No 1024/2013.

6. Sixth plea in law alleging that the defendant violated Article 6 of the ECHR.

7. Seventh plea in law alleging that the defendant violated the amount of limits for sanctions pursuant to Article 18(1) of Regulation (EU) No 1024/2013.

8. Eighth plea in law alleging violation of the principle of proportionality pursuant to Section 99(e) of the Austrian Banking Act ('BWG').

9. Ninth plea in law alleging that Article 97 of the BWG is not applicable if no advantage is gained or no loss is avoided.

10. Tenth plea in law alleging that the ECB's ability to impose absorption interest is time-barred pursuant to Article 130 of Regulation (EU) No 468/2014 ([3]) and Section 22 of the Austrian Financial Market Supervisory Authorities Act ('FMSA').

11. Eleventh plea in law alleging that Art 395(1) of Regulation (EU) No 575/2013 only stipulates one large exposure limit, which is why Section 97(1) No 2 BWG only sanctions the exceeding of this limit once.

12. Twelfth plea in law alleging that Sberbank did not intentionally exceed the large exposure limit.

13. Thirteenth plea in law alleging that Sberbank did not gain any advantage or avoid any loss to be absorbed.

14. Fourteenth plea in law alleging that by not granting the exemption under 396(1) of Regulation (EU) No 575/2013 the ECB has misused its discretion.

(1) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).
(2) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1).
(3) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ 2014 L 141, p. 1).

Action brought on 22 February 2022 — ON v Commission

(Case T-103/22)

(2022/C 191/38)

Language of the case: Czech

Parties

Applicant: ON (represented by: D. Mimrová, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Delegated Regulation (EU) 2021/2288 of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series, (1) on the grounds that it infringes the principle of equal treatment, the prohibition on discrimination and the principle of proportionality;

— Annul Regulation 2021/2288 on the ground that it lacks a legal basis under Article 168 TFEU so far as concerns the protection of public health or the European Union's reaction to the cross-border health threat of the covid-19 pandemic;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed general principles of Community law and by adopting Regulation 2021/2288 infringed:

   — the principle of equal treatment and the prohibition on discrimination in restricting the validity of the digital certificate to 270 days from the date of completion of the primary vaccination series, in the interests of facilitating freedom of movement for holders of valid digital certificates (that is, persons who have had the booster vaccination, who supposedly have greater immunity against the Omicron variant of the virus), while it excluded from the scope of the contested measure an indeterminate circle of persons defined by their age, profession, lifestyle or other criteria (irrespective of whether they are vaccinated or not at all vaccinated), thereby discriminating against a large group of persons who have completed the primary vaccination series and have caught covid, even though according to the scientific evidence those individuals with so-called 'hybrid immunity' are of a comparable or lower risk to society from the point of view of the transfer of infection and burden on the health system than individuals whose unrestricted digital certificate remains valid or who are otherwise excluded from the scope of the contested measure and who are 'de jure' free of infection.

— the principle of proportionality, in so far as it failed to put forward reasons based on qualitative, and where possible quantitative, data, that is to say failed to assess properly the available scientific data on the group of persons who could pose a risk of covid infection to another individual, and further failed to state due reasons as to why the precise measure chosen, which restricts the validity of the EU Digital COVID Certificate to a period of a maximum of 270 days from the date of receiving the last dose in the primary vaccination series, is the best means of achieving the EU's objectives so far as concerns the reactions to the covid-19 pandemic and the mutations of the SARS-CoV-2 virus, because by such a measure it supports an increase in the vaccination uptake of the so-called 'booster shot' among the population, without weighing up (properly justifying) other potential alternatives.

2. Second plea in law, alleging that the Commission, in adopting Regulation 2021/2288, exceeded its conferred powers, transferred to it under Article 5(2) of Regulation (EU) 2021/953, ([2]) when, instead of the 'static' modification of the data field, in reaction to the development of the SARS-CoV-2 virus and existing epidemiological situation, it restricted the validity of the digital certificate and in that context *de facto* demarcated the limits for the reaction of the European Union to the covid-19 pandemic as for a cross-border threat to heath, without founding the contested measure on a corresponding legal basis under Article 168 of the Treaty on the Functioning of the European Union on the protection of public health.

([1]) OJ 2021 L 458, p. 459.

([2]) Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ 2021 L 211, p. 1).

Action brought on 1 March 2022 — Sopra Steria Benelux and Unisys Belgium v Commission

(Case T-108/22)

(2022/C 191/39)

Language of the case: French

Parties

Applicants: Sopra Steria Benelux (Ixelles, Belgium) and Unisys Belgium (Machelen, Belgium) (represented by: L. Masson and G. Tilman, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision taken by the European Commission in the context of a public contract published under reference TAXUD/2019/OP/0006, entitled 'CCN-Evolution: Specification, development, maintenance and 3rd level support of TAXUD IT platforms — Lot A: Evolution services for the CNN/CSI Platform' and communicated on 20 December 2021, by which the Commission confirms that it rejects the tender submitted by the consortium consisting of the applicants and that it awards the contract to a competing consortium;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the decision of 20 December 2021 is null and void. The applicants claim, in that regard, that the contested decision must be regarded as a decision which merely confirms an earlier decision previously annulled by the Court.

2. Second plea in law, alleging a manifest error of assessment, infringement of the tender specifications, breach of the principles of good administration and, in particular, of the principle of *patere legem quam ipse fecisti* and of the duty of thoroughness. According to the applicants, the Commission infringed its own tender specifications by reasoning the tenderer's price as normal on account of 60 % of the services carried out in Romania and Greece being subcontracted. Moreover, the Commission did not take into consideration the start of the performance of the contract by the tenderer, which contradicts the reasoning adopted in the confirmatory decision.

Action brought on 2 March 2022 — Svenska Bankföreningen and Länsförsäkringar Bank v Commission

(Case T-112/22)

(2022/C 191/40)

Language of the case: English

Parties

Applicants: Ideella föreningen Svenska Bankföreningen med firma Svenska Bankföreningen, Näringsverksamhet (Stockholm, Sweden), Länsförsäkringar Bank AB (Stockholm) (represented by: P. Hansson, M. Eriksson and M. Persson, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission's decision of 24 November 2021 in Case SA.56348(2021/N) — Sweden: Swedish tax on credit institutions; ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, alleging that the European Commission infringed the applicants' procedural rights, in that it failed to initiate a formal investigation procedure.

It is argued that the Commission objectively faced serious difficulties during the preliminary examination of the notified measure and should have initiated the formal investigation procedure. For example:

— The applicants allege that the Commission failed to take into account the fact that the parameters of the reference system identified by the Commission were clearly not consistent with the objective of the risk tax.

— The applicants further maintain that the Commission failed to take into account the fact that the credit institutions that fall inside or outside the scope of the risk tax are in a comparable legal and factual situation, in the light of the objective of the tax system.

— In addition, it is argued that the Commission misapplied the case-law of the Court of Justice, when assessing the threshold for taxation.

— The applicants also argue that the Commission failed to take into account the fact that there was no justification of the difference in treatment and that it was under no circumstances proportionate.

— Finally, the applicants assert that the examination carried out by the Commission during the preliminary examination procedure was insufficient and incomplete.

(1) COM(2021) 8637 final and see publication in OJ 2021 C 511, p. 2.

Action brought on 7 March 2022 — OM v Commission

(Case T-118/22)

(2022/C 191/41)

Language of the case: French

Parties

Applicant: OM (represented by: N. de Montigny, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 29 April 2021 not to select the applicant in selection procedure COM/2020/10396 and notifying the appointment of another candidate;

— in so far as necessary, annul the decision rejecting his complaint of 25 November 2021, registered on 26 November 2021 under number Ares(2021)7297231;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of vacancy notice COM/2020/10396 in so far as his skills and abilities were not evaluated by reference to the grid set out in that notice.

2. Second plea in law, alleging infringement of the agenda given to candidates as to the subject on which they would be questioned during the selection interview in so far as no question was put to the applicant on the main analysis he had been asked to prepare, which also entails a breach of his legitimate expectations.

3. Third plea in law, alleging unequal treatment in so far as questions which had been devised by the selection panel to be put to candidates were not put to him and other questions which were put to him did not correspond to that predefined list. The applicant submits, in that regard, that this does not make it possible to ensure that they were also put to other candidates. The applicant further submits that his interview lasted for less time than expected, which may have put him at a disadvantage compared with the other candidates and that it cannot be ruled out that he could have achieved a better result if he had been heard on all aspects of the oral test.

4. Fourth plea in law, alleging that the content of the evaluation grid is manifestly erroneous and insufficient with respect to the answers given by the applicant during the interview.

5. Fifth plea in law, alleging lack of cooperation on the part of the Commission and breach of the duty of sound administration.

Action brought on 10 March 2022 — Société des produits Nestlé v EUIPO — Impossible Foods (IMPOSSIBLE BURGER)

(Case T-131/22)

(2022/C 191/42)

Language in which the application was lodged: English

Parties

Applicant: Société des produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz, M. Goldmann and C. Elkemann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Impossible Foods Inc. (Redwood City, California, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark IMPOSSIBLE BURGER — European Union trade mark No 17 968 798

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 December 2021 in Case R 973/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the General Court and order the intervener to pay the costs before the EUIPO.

Pleas in law

— Infringement of Article 94(1), second sentence, read in conjunction with Article 70(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 95(1), first sentence, read in conjunction with third sentence of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

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

Action brought on 10 March 2022 — Société des produits Nestlé v EUIPO — Impossible Foods (IMPOSSIBLE SAUSAGE)

(Case T-132/22)

(2022/C 191/43)

Language in which the application was lodged: English

Parties

Applicant: Société des produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz, M. Goldmann and C. Elkemann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Impossible Foods Inc. (Redwood City, California, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark IMPOSSIBLE SAUSAGE — European Union trade mark No 18 061 982

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 December 2021 in Case R 972/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings before the General Court and order the intervener to pay the costs before the EUIPO.

Pleas in law

— Infringement of Article 94(1), second sentence, read in conjunction with Article 70(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 95(1), first sentence, read in conjunction with third sentence of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

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

Action brought on 9 March 2022 — OO v EIB

(Case T-134/22)

(2022/C 191/44)

Language of the case: French

Parties

Applicant: OO (represented by: M. Velardo, lawyer)

Defendant: European Investment Bank (EIB)

Form of order sought

The applicant claims that the Court should:

— annul the decision rejecting the complaint of 6 December 2021, notified to the applicant on that date (ARES CS-PERS/S&G/ER1 W2021-00710/CO/ps);

— annul the decision of 27 February 2012 (ref: RH/OPR/2012-0251), which was never notified to the applicant;

— annul the decision of 20 May 2021 (CS-PERS/HROPS/BAP/2021-0360), notified to the applicant's adviser on 8 June 2021 together with the communication of 27 February 2012;

— order the European Investment Bank 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 failure to state reasons for the contested decisions, infringement of Article 31 of the EIB's Rules of Procedure and Articles 6 and 11 of Protocol No 5 on the Statute of the EIB, and lack of a legal basis, and raising a plea of illegality, under Article 277 TFEU, in respect of point 2.1.1 of the administrative provisions.

2. Second plea in law, alleging infringement of the provisions governing *ratione temporis* the secondment of EIB staff, unilateral amendment of the contract contrary to the general rules on the equality of the parties to a contractual relationship and breach of the duty to have regard for the welfare of officials.

3. Third plea in law, alleging breach of the principle of the protection of legitimate expectations.

4. Fourth plea in law, alleging misuse of powers.

Action brought on 10 March 2022 — Sport1 v EUIPO — SFR (SFR SPORT1)

(Case T-141/22)

(2022/C 191/45)

Language in which the application was lodged: English

Parties

Applicant: Sport1 GmbH (Ismaning, Germany) (represented by: J. Krekel and C. Otto, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Société française du radiotelephone — SFR (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark SFR SPORT1 in red, white and black — Application for registration No 16 161 317

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 10 December 2021 in Case R 2329/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

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

Action brought on 11 March 2022 — OP v Parliament

(Case T-143/22)

(2022/C 191/46)

Language of the case: French

Parties

Applicant: OP (represented by: F. Moyse, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decisions of 7 June 2021 and 10 January 2022, or declare them null and void;

— accordingly, acknowledge that the applicant is entitled to receive a survivor's pension as defined by the first paragraph of Article 79 of the Staff Regulations of Officials of the European Union;

— accordingly, acknowledge that Mr [*confidential*] [1] is entitled to receive an orphan's pension as defined in Article 2 of Annex VII to the Staff Regulations. Otherwise, in so far as necessary, grant Mr [*confidential*] the orphan's pension provided for in the first paragraph of Article 80 of the Staff Regulations of Officials of the European Union;

— in any event, order the Parliament to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, raising a plea of illegality in respect of Articles 18 and 20 of Annex VIII to the Staff Regulations of Officials of the European Union ('the Staff Regulations') resulting from a breach of the principle of equal treatment and discrimination on grounds of age.

2. Second plea in law, alleging an error of law in the application of Articles 18 and 20 of Annex VIII to the Staff Regulations.

3. Third plea in law, alleging a manifest error of assessment resulting from the failure to take into account the applicant's particular situation.

4. Fourth plea in law, raising a plea of illegality in respect of Article 2 of Annex VII to the Staff Regulations based on discrimination on grounds of disability.

5. Fifth plea in law, alleging an error of law in the application of Article 2 of Annex VII to the Staff Regulations.

6. Sixth plea in law, raised in the alternative, alleging breach of the administration's duty to have regard for the welfare of officials.

[1] Confidential data omitted.

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