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(2022/C 119/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 20 January 2022 — Deutsche Lufthansa AG v European Commission, Land Rheinland-Pfalz

(Case C-594/19 P) [1]

(Appeal — State aid — Aid for airports and airlines — Decision classifying the measures in favour of Frankfurt Hahn airport as State aid compatible with the internal market and finding no State aid in favour of airlines using that airport — Inadmissibility of an action for annulment — Fourth paragraph of Article 263 TFEU — Natural or legal person not directly and individually concerned by the decision at issue — Effective judicial protection)

(2022/C 119/02)

Language of the case: German

Parties

Appellant: Deutsche Lufthansa AG (represented by: A. Martin-Ehlers, Rechtsanwalt)

Other parties to the proceedings: European Commission (represented by: T. Maxian Rusche and S. Noë, acting as Agents), Land Rheinland-Pfalz (represented by: Professor C. Koenig)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Deutsche Lufthansa AG to bear its own costs and to pay those incurred by the European Commission and by Land Rheinland-Pfalz.

[1] OJ C 319, 23.9.2019.

Judgment of the Court (Grand Chamber) of 25 January 2022 — European Commission v European Food SA and Others

(Case C-638/19 P) ([1])

(Appeal — State aid — Articles 107 and 108 TFEU — Bilateral Investment Treaty — Arbitration clause — Romania — Accession to the European Union — Repeal of a tax incentives scheme prior to accession — Arbitral award granting payment of damages after accession — European Commission decision declaring that payment to be State aid incompatible with the internal market and ordering its recovery — Competence of the Commission — Application ratione temporis of EU law — Determination of the date at which the right to receive aid is conferred on the beneficiary — Article 19 TEU — Articles 267 and 344 TFEU — Autonomy of EU law)

(2022/C 119/03)

Language of the case: English

Parties

Applicant: European Commission (represented by: T. Maxian Rusche and P.J. Loewenthal, acting as Agents)

Other parties to the proceedings: European Food SA, Starmill SRL, Multipack SRL, Scandic Distilleries SA, Ioan Micula (represented by: K. Struckmann, Rechtsanwalt, and G. Forwood, avocat, and by A. Kadri, Solicitor), Viorel Micula, European Drinks SA, Rieni Drinks SA, Transilvania General Import-Export SRL, West Leasing SRL, formerly West Leasing International SRL (represented by: J. Derenne, D. Vallindas and O. Popescu, avocats), Kingdom of Spain (represented: initially by S. Centeno Huerta, acting as Agent, and subsequently by A. Gavela Llopis, acting as Agent), Hungary

Interveners in support of the applicant: Federal Republic of Germany (represented by: D. Klebs, R. Kanitz and J. Möller, acting as Agents), Republic of Latvia (represented by: K. Pommere, acting as Agent), Republic of Poland (represented by: D. Lutostańska, B. Majczyna and M. Rzotkiewicz, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 18 June 2019, European Food and Others v Commission (T-624/15, T-694/15 and T-704/15, EU:T:2019:423);

2. Declares that there is no need to adjudicate on the cross-appeal;

3. Refers the case back to the General Court of the European Union for it to adjudicate on the pleas and arguments raised before it on which the Court of Justice of the European Union has not given a ruling;

4. Reserves the costs.

([1]) OJ C 348, 14.10.2019.

Judgment of the Court (First Chamber) of 27 January 2022 — European Commission v Kingdom of Spain

(Case C-788/19) ([1])

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Free movement of capital — Obligation to provide information concerning assets or rights held in other Member States of the European Union or the European Economic Area (EEA) — Failure to comply with that obligation — Limitation — Penalties)

(2022/C 119/04)

Language of the case: Spanish

Parties

Applicant: European Commission (represented: initially by C. Perrin, N. Gossement and M. Jáuregui Gómez, acting as Agents, and subsequently by C. Perrin and N. Gossement, acting as Agents)

Defendant: Kingdom of Spain (represented by: L. Aguilera Ruiz and S. Jiménez García, acting as Agents)

Operative part of the judgment

The Court:

1. — Declares that, by providing that the failure to comply with or the partial or late compliance with the obligation to provide information concerning assets and rights located abroad entails the taxation of undeclared income corresponding to the value of those assets as 'unjustified capital gains', with no possibility, in practice, of benefiting from limitation;

— by subjecting the failure to comply with or the partial or late compliance with the obligation to provide information concerning assets or rights located abroad to a proportional fine of 150 % of the tax calculated on amounts corresponding to the value of those assets or those rights, which may be applied concurrently with flat-rate fines, and

— by subjecting the failure to comply with or the partial or late compliance with the obligation to provide information concerning assets or rights located abroad to flat-rate fines the amount of which is disproportionate to the penalties imposed in respect of similar infringements in a purely national context and the total amount of which is not capped,

the Kingdom of Spain has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area;

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

(1) OJ C 432, 23.12.2019.

Judgment of the Court (Third Chamber) of 20 January 2022 — European Commission v Hubei Xinyegang Special Tube Co. Ltd, ArcelorMittal Tubular Products Roman SA, Válcovny trub Chomutov a.s., Vallourec Deutschland GmbH

(Case C-891/19 P) (1)

(Appeal — Dumping — Implementing Regulation (EU) 2017/804 — Imports of certain seamless pipes and tubes originating in China — Definitive anti-dumping duty — Regulation (EU) 2016/1036 — Article 3(2), (3) and (6), and Article 17 — Determination of injury — Examination of the effect of dumped imports on the prices of like products sold on the EU market — Analysis of price undercutting — Application of the product control number (PCN) method — Obligation of the European Commission to take into account the different market segments relating to the product under consideration and all sales of like products by the sampled EU producers)

(2022/C 119/05)

Language of the case: English

Parties

Applicant: European Commission (represented initially by T. Maxian Rusche and N. Kuplewatzky, and subsequently by T. Maxian Rusche and A. Demeneix and, finally, by T. Maxian Rusche and by K. Blanck, acting as Agents)

Other parties to the proceedings: Hubei Xinyegang Special Tube Co. Ltd (represented by E. Vermulst and J. Cornelis, advocaten), ArcelorMittal Tubular Products Roman SA, Válcovny trub Chomutov a.s., Vallourec Deutschland GmbH (represented by G. Berrisch, Rechtsanwalt)

Operative part of the judgment

The Court:

1. Annuls the judgment of the General Court of the European Union of 24 September 2019, Hubei Xinyegang Special Tube v Commission (T-500/17, not published, EU:T:2019:691);

2. Refers the case back to the General Court;

3. Reserves the costs.

(1) OJ C 45, 10.2.2020.

Judgment of the Court (Fourth Chamber) of 20 January 2022 — Romania v European Commission, Hungary

(Case C-899/19 P) (1)

(Appeal — Law governing the institutions — Citizens' initiative — Regulation (EU) No 211/2011 — Article 4(2)(b) — Registration of a proposed citizens' initiative — Condition requiring that that proposed citizens' initiative does not manifestly fall outside the framework of the European Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties — Decision (EU) 2017/652 — Citizens' initiative 'Minority SafePack — one million signatures for diversity in Europe' — Registration in part — Article 5(2) TEU — Principle of conferral — Article 296 TFEU — Obligation to state reasons — Audi alteram partem rule)

(2022/C 119/06)

Language of the case: Romanian

Parties

Appellant: Romania (represented by: E. Gane, L. Lițu, M. Chicu and L. E. Bațagoi, acting as Agents)

Other parties to the proceedings: European Commission (represented by: initially by I. Martínez del Peral, H. Stancu and H. Krämer, subsequently by I. Martínez del Peral and H. Stancu, acting as Agents, Hungary (represented by: M. Z. Fehér and K. Szíjjártó, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

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

3. Orders Hungary to bear its own costs.

(1) OJ C 54, 17.2.2020.

Judgment of the Court (Second Chamber) of 20 January 2022 — European Commission v Hellenic Republic

(Case C-51/20) (1)

(Failure of a Member State to fulfil obligations — State aid — Aid declared unlawful and incompatible with the internal market — Obligation of recovery — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Non-compliance — Failure to comply with the obligation to recover unlawful and incompatible aid — Financial penalties — Proportionality and dissuasiveness — Periodic penalty payment — Lump sum — Ability to pay — Weighting of the Member State's voting rights in the European Parliament)

(2022/C 119/07)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: K. Boskovits and A. Samoni-Rantou, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt all the measures necessary to comply with the judgment of 9 November 2017, Commission v Greece (C-481/16, not published, EU:C:2017:845), the Hellenic Republic has failed to fulfil its obligations under Article 260(1) TFEU;

2. Orders the Hellenic Republic to pay the European Commission a periodic penalty payment in the amount of EUR 4 368 000 per six-month period from the date of delivery of the present judgment up to the date of full compliance with the judgment of 9 November 2017, Commission v Greece (C-481/16, not published, EU:C:2017:845);

3. Orders the Hellenic Republic to pay to the European Commission a lump sum of EUR 5 500 000;

4. Orders the Hellenic Republic to pay the costs.

(1) OJ C 87, 16.3.2020.

Judgment of the Court (Second Chamber) of 20 January 2022 (request for a preliminary ruling from the Højesteret — Denmark) — Apcoa Parking Danmark A/S v Skatteministeriet

(Case C-90/20) (1)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(c) — Scope — Taxable transactions — Activities carried out by a company incorporated under private law — Operation of car parks on private land — Control fees levied by that company in the event of failure by the motorists to comply with the general terms and conditions for use of those car parks — Characterisation — Economic and commercial realities of the transactions)

(2022/C 119/08)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Apcoa Parking Danmark A/S

Defendant: Skatteministeriet

Operative part of the judgment

Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the control fees levied by a company incorporated under private law, tasked with the operation of private car parks, in the event of failure by the motorists to comply with the general terms and conditions for use of those car parks must be regarded as consideration for a supply of services within the meaning of that provision and, as such, subject to value added tax (VAT).

(1) OJ C 161, 11.5.2020.

Judgment of the Court (Grand Chamber) of 18 January 2022 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — JY v Wiener Landesregierung

(Case C-118/20) ([1])

(Reference for a preliminary ruling — Citizenship of the Union — Articles 20 and 21 TFEU — Scope — Renunciation of the nationality of one Member State in order to obtain the nationality of another Member State in accordance with the assurance given by the latter to naturalise the person concerned — Revocation of that assurance on grounds of public policy or public security — Principle of proportionality — Statelessness)

(2022/C 119/09)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: JY

Defendant: Wiener Landesregierung

Operative part of the judgment

1. The situation of a person who, having the nationality of one Member State only, renounces that nationality and loses, as a result, his or her status of citizen of the Union, with a view to obtaining the nationality of another Member State, following the assurance given by the authorities of the latter Member State that he or she will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where that assurance is revoked with the effect of preventing that person from recovering the status of citizen of the Union.

2. Article 20 TFEU must be interpreted as meaning that the competent national authorities and, as the case may be, the national courts of the host Member State are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality of that Member State, which makes the loss of the status of citizen of the Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

([1]) OJ C 209, 22.6.2020.

Judgment of the Court (Fifth Chamber) of 20 January 2022 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — ET acting as insolvency administrator of Air Berlin PLC & Co. Luftverkehrs KG v Bundesrepublik Deutschland

(Case C-165/20) ([1])

(Reference for a preliminary ruling — Scheme for greenhouse gas emission allowance trading — Directive 2003/87/EC — Article 3e — Inclusion of aviation activities — Directive 2008/101/EC — Allocation and issue of allowances free of charge to aircraft operators — Cessation, by such an operator, of its activities due to insolvency — Decision of the competent national authority refusing to issue allowances to the insolvency administrator of the company in liquidation)

(2022/C 119/10)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: ET acting as insolvency administrator of Air Berlin PLC & Co. Luftverkehrs KG

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 3e of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017, must be interpreted as meaning that the number of greenhouse gas emission allowances allocated free of charge to an aircraft operator must, in the event of cessation of that operator's aviation activities during the period of greenhouse gas emission allowance trading in question, be reduced in proportion to the part of that period during which those activities are no longer carried out.

(1) OJ C 255, 3.8.2020.

Judgment of the Court (Fifth Chamber) of 27 January 2022 (request for a preliminary ruling from the Curtea de Apel Bucureşti — Romania) — Fondul Proprietatea SA v Guvernul României, SC Complexul Energetic Hunedoara SA, in liquidation, SC Complexul Energetic Oltenia SA and Compania Națională de Transport al Energiei Electrice 'Transelectrica' SA

(Case C-179/20) (1)

(Reference for a preliminary ruling — Internal market in electricity — Directive 2009/72/EC — Article 15(4) — Priority dispatch — Security of supply — Article 32(1) — Free third-party access — Guaranteed access to transmission systems — Directive 2009/28/EC — Article 16(2) — Guaranteed access — Article 107(1) TFEU — Article 108(3) TFEU — State aid)

(2022/C 119/11)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Applicant: Fondul Proprietatea SA

Defendants: Guvernul României, SC Complexul Energetic Hunedoara SA, in liquidation, SC Complexul Energetic Oltenia SA and Compania Națională de Transport al Energiei Electrice 'Transelectrica' SA

Intervener: Ministerul Economiei, Energiei și Mediului de Afaceri

Operative part of the judgment

1. Article 32(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC must be interpreted as not precluding a Member State from granting certain electricity producers whose installations use indigenous primary energy fuel sources a right of guaranteed access to transmission systems in order to ensure security of electricity supply, provided that that right of guaranteed access is based on objective and reasonable criteria and is proportionate to the legitimate aim pursued, which it is for the referring court to ascertain.

2. Article 107(1) TFEU must be interpreted as meaning that a series of measures introduced by a government decision and consisting of, first, priority dispatch by the system operator, in which the State has the majority shareholding, of the electricity generated by certain electricity producers whose installations use indigenous primary energy fuel sources, second, guaranteed access to transmission systems for the electricity generated by those producers' installations, and, third, an obligation for those producers to provide ancillary services for a certain quantity of megawatts to the system operator, which is to reserve for them a right to supply that quantity at prices fixed in advance and deemed to exceed the prices on the market, may be classified as 'State aid' within the meaning of Article 107(1) TFEU. If this is the case, such a series of measures must be regarded as new aid and is, on that ground, subject to the obligation of prior notification to the European Commission, in accordance with Article 108(3) TFEU.

(1) OJ C 297, 7.9.2020.

Judgment of the Court (Grand Chamber) of 25 January 2022 (request for a preliminary ruling from the Nejvyšší soud — Czech Republic) — VYSOČINA WIND a.s. v Česká republika — Ministerstvo životního prostředí

(Case C-181/20) (1)

(Reference for a preliminary ruling — Environment — Directive 2012/19/EU — Waste electrical and electronic equipment — Obligation to finance the costs relating to the management of waste from photovoltaic panels — Retroactive effect — Principle of legal certainty — Incorrect transposition of a directive — Liability of the Member State)

(2022/C 119/12)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: VYSOČINA WIND a.s.

Defendant: Česká republika — Ministerstvo životního prostředí

Operative part of the judgment

1. Article 13(1) of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) is invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012.

   Article 13(1) of Directive 2012/19 must be interpreted as precluding national legislation which imposes on users of photovoltaic panels, and not on producers of those panels, the obligation to finance the costs relating to the management of waste from such panels placed on the market from 13 August 2012, the date on which that directive entered into force.

2. EU law must be interpreted as meaning that the fact that a Member State adopted legislation contrary to an EU directive prior to the adoption of that directive does not constitute, in itself, a breach of EU law, since the achievement of the result prescribed by the directive cannot be regarded as seriously compromised before the directive forms part of the EU legal order.

(1) OJ C 222, 6.7.2020.

Judgment of the Court (Third Chamber) of 27 January 2022 (request for a preliminary ruling from the Augstākā tiesa (Senāts) — Latvia) — 'Sātiņi-S' SIA

(Case C-234/20) [1]

(Reference for a preliminary ruling — European Agricultural Fund for Rural Development (EAFRD) — Regulation (EU) No 1305/2013 — Support for rural development — Article 30(6)(a) — Natura 2000 payments — Compensation for income foregone in agricultural and forest areas — Peat bogs — Prohibition of establishing plantations of cranberries — No compensation for damage — Charter of Fundamental Rights of the European Union — Article 17 — Right to property)

(2022/C 119/13)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicant: 'Sātiņi-S' SIA

Intervening party: Lauku atbalsta dienests

Operative part of the judgment

1. Article 30(6)(a) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 must be interpreted as meaning that it does not exclude, in principle, peat bogs from Natura 2000 payments, in so far as those peat bogs are situated in Natura 2000 areas designated pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and fall within the concept of 'agricultural area' or 'forest', within the meaning of, respectively, points (f) and (r) of Article 2(1) or of Article 2(2) of Regulation No 1305/2013, which may thus be eligible for the payments referred to in Article 30(1) of that regulation as 'Natura 2000 agricultural and forest areas' within the meaning of Article 30(6)(a) thereof;

2. Article 30(6)(a) of Regulation No 1305/2013 must be interpreted as allowing a Member State to exclude from Natura 2000 payments, first, 'Natura 2000 agricultural areas' within the meaning of that provision, including, in that case, peat bogs which come within such areas and, second, and in accordance with Article 2(2) of Regulation No 1305/2013, peat bogs situated in Natura 2000 areas, which, in principle, come within the concept of 'forest', within the meaning of Article 2(1)(r) of that regulation, and thus of 'Natura 2000 forest areas' within the meaning of Article 30(6)(a) of that regulation. The latter provision must also be interpreted as permitting a Member State to limit such payments for Natura 2000 forest areas, including, where appropriate, peat bogs, to situations where the designation of those areas as 'Natura 2000 areas' has the effect of adversely affecting the exercise of a specific type of economic activity, in particular forestry;

3. Article 30 of Regulation No 1305/2013, read in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a Natura 2000 payment must not be granted to the owner of a peat bog that comes within the Natura 2000 network on the basis that a restriction has been made to an economic activity which may be carried out on such a peat bog, in particular the prohibition on planting cranberries, where, at the time when he or she acquired the immovable property concerned, the owner was aware of such restriction.

[1] OJ C 262, 10.8.2020.

Judgment of the Court (Third Chamber) of 27 January 2022 (request for a preliminary ruling from the Augstākā tiesa (Senāts) — Latvia) — 'Sātiņi-S' SIA

(Case C-238/20) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 17 — Right to property — Directive 2009/147/EC — Compensation for the damage caused to aquaculture by protected wild birds in a Natura 2000 area — Compensation less than the damage actually suffered — Article 107(1) TFEU — State aid — Concept of 'advantage' — Conditions — Regulation (EU) No 717/2014 — De minimis rule)

(2022/C 119/14)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicant: 'Sātiņi-S' SIA

Intervening party: Dabas aizsardzības pārvalde

Operative part of the judgment

1. Article 17 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding the compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 area under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds being significantly less than the damage actually incurred by that operator;

2. Article 107(1) TFEU must be interpreted as meaning that compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under Directive 2009/147 confers an advantage capable of constituting 'State aid' for the purposes of that provision, where the other conditions relating to such a classification are satisfied;

3. Article 3(2) of Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 [TFEU] to de minimis aid in the fishery and aquaculture sector must be interpreted as meaning that, in a case where the compensation such as that described in point 2 of this operative part fulfils the conditions of Article 107(1) TFEU, the de minimis ceiling of EUR 30 000, provided for in that Article 3(2) of Regulation No 717/2014, is applicable to that compensation.

([1]) OJ C 262, 10.8.2020.

Judgment of the Court (Grand Chamber) of 18 January 2022 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Thelen Technopark Berlin GmbH v MN

(Case C-261/20) ([1])

(Reference for a preliminary ruling — Freedom to provide services — Article 49 TFEU — Directive 2006/123/EC — Article 15 — Architects' and engineers' fees — Fixed minimum tariffs — Direct effect — Judgment establishing a failure to fulfil obligations delivered during proceedings before a national court or tribunal)

(2022/C 119/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: Thelen Technopark Berlin GmbH

Respondent in the appeal on a point of law: MN

Operative part of the judgment

EU law must be interpreted as meaning that a national court, when hearing a dispute which is exclusively between private individuals, is not required, solely on the basis of EU law, to disapply a piece of national legislation which, in breach of Article 15(1), (2)(g) and (3) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, sets minimum rates for fees for services provided by architects and engineers and which renders invalid agreements derogating from that legislation, without prejudice, however, to, first, the possibility for that court to disapply that legislation on the basis of domestic law in the context of such a dispute, and, second, the right of a party which has been harmed as a result of national law not being in conformity with EU law to claim compensation for the ensuing loss or damage sustained by that party.

(1) OJ C 313, 21.9.2020.

Judgment of the Court (Fifth Chamber) of 27 January 2022 (request for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — SIA 'Zinātnes parks' v Finanšu ministrija

(Case C-347/20) (1)

(Reference for a preliminary ruling — Structural Funds — European Regional Development Fund (ERDF) — Regulation (EU) No 1303/2013 — Co-financing programme — State aid — Regulation (EU) No 651/2014 — Scope — Limits — Concepts of 'subscribed share capital' and 'undertaking in difficulty' — Exclusion of undertakings in difficulty from ERDF support — Conditions for the taking effect of an increase of the subscribed share capital — Date of submission of evidence of that increase — Principles of non-discrimination and transparency)

(2022/C 119/16)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: SIA 'Zinātnes parks'

Defendant: Finanšu ministrija

Operative part of the judgment

1. Article 2(18)(a) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] must be interpreted as meaning that, in order to determine whether a company is 'in difficulty' within the meaning of that provision, the expression 'subscribed share capital' must be understood as referring to all contributions which current or future members or shareholders of a company have made or have irrevocably undertaken to make.

2. Article 3(3) of Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 must be interpreted as meaning that, in order to determine whether a project applicant is to be regarded as not being 'in difficulty' within the meaning of Article 2(18) of Regulation No 651/2014, the competent managing authority must take account only of evidence which complies with the requirements laid down when the project selection procedure was drawn up, provided that those requirements comply with the principles of effectiveness and equivalence, as well as with the general principles of EU law, such as, in particular, the principles of equal treatment, transparency and proportionality.

3. Article 125(3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, together with the principles of non-discrimination and transparency to which that provision refers, must be interpreted as not precluding national legislation under which project applications may not be the subject of clarification after the deadline for submission of those applications. However, in accordance with the principle of equivalence, that impossibility, for project applicants, to complete their file after the deadline for submission of project applications must concern all procedures which may, where appropriate, be regarded as comparable with regard to their purpose, cause of action and essential characteristics to that laid down for receipt of support from the European Regional Development Fund.

(1) OJ C 339, 12.10.2020.

Judgment of the Court (Third Chamber) of 20 January 2022 (request for a preliminary ruling from the Verwaltungsgericht Wien — Austria) — ZK

(Case C-432/20) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Immigration policy — Directive 2003/109/EC — Article 9(1)(c) — Loss of the status of long-term resident third-country national — Absence from the territory of the European Union for a period of 12 consecutive months — Interruption of that period of absence — Irregular and short-term stays in the territory of the European Union)

(2022/C 119/17)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Applicant: ZK

Intervener: Landeshauptmann von Wien

Operative part of the judgment

Article 9(1)(c) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as meaning that any physical presence of a long-term resident in the territory of the European Union during a period of 12 consecutive months, even if such a presence does not exceed, during that period, a total duration of only a few days, is sufficient to prevent the loss, by that resident, of his or her right to long-term resident status under that provision.

(1) OJ C 390, 16.11.2020.

Order of the Court (Eighth Chamber) of 13 December 2021 (request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha — Spain) — Servicio de Salud de Castilla-La Mancha (SESCAM) v BF

(Case C-151/21) ([1])

(Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — Field of public health — Calculation of length-of-service increments — National legislation refusing to take into account, as regards permanent staff regulated under administrative law, for the purpose of calculating length-of-service increments, periods corresponding to activities temporarily exercised in a higher professional category)

(2022/C 119/18)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Appellant: Servicio de Salud de Castilla-La Mancha (SESCAM)

Respondent: BF

Operative part of the order

Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation which provides that, for a permanent worker who temporarily performs duties in a professional category that is higher than the one to which he or she belongs, the three-yearly length-of-service increments to which he or she is entitled are those corresponding to that latter category, even though, for a fixed-term worker placed in the same situation, the three-yearly length-of-service increments correspond to those of the professional category in which his or her duties were actually performed.

([1]) Date lodged: 9 March 2021.

Order of the Court (Eighth Chamber) of 13 December 2021 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 1 de Toledo — Spain) — KQ v Servicio de Salud de Castilla-La Mancha (SESCAM)

(Case C-226/21) ([1])

(Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — Concept of 'employment conditions' — Exemption from providing on-call medical services on the grounds of age granted solely to permanent workers)

(2022/C 119/19)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 1 de Toledo

Parties to the main proceedings

Applicant: KQ

Defendant: Servicio de Salud de Castilla-La Mancha (SESCAM)

Operative part of the order

Clause 4(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation pursuant to which the right to an exemption from providing on-call services is granted to permanent workers but not to fixed-term workers.

([1]) Date lodged: 8 April 2021.

Order of the President of the Court of 5 January 2022 (request for a preliminary ruling from the Landgericht Düsseldorf — Germany) — SN and Others v Eurowings GmbH

(Case C-740/21) ([1])

(Air transport — Compensation to air passengers in the event of denied boarding — Passengers who arrived at the airport in good time — Flight missed owing to the unusually long duration of the check-in process — Organisational shortcomings or disruptions affecting the airport)

(2022/C 119/20)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Appellants: SN and DR, as well as GI, legally represented by SN and DR

Respondent: Eurowings GmbH

Operative part of the order

Case C-740/21 is removed from the Register of the Court.

([1]) Date of filing: 1/12/2021.

Appeal brought on 15 March 2021 by Sergio Spadafora against the judgment of the General Court (Fourth Chamber) delivered on 10 February 2021 in Case T-130/19, Spadafora v Commission

(Case C-169/21 P)

(2022/C 119/21)

Language of the case: Italian

Parties

Appellant: Sergio Spadafora (represented by: G. Belotti, avvocato)

Other parties to the proceedings: European Commission, CC

By order of 25 January 2022, the Court (Ninth Chamber) dismissed the appeal as manifestly inadmissible in part and manifestly unfounded in part and ordered Mr Sergio Spadafora to bear his own costs.

Reference for a preliminary ruling from the Court of Appeal (Ireland) made on 20 August 2021 — LU v Minister for Justice and Equality

(Case C-514/21)

(2022/C 119/22)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Appellant: LU

Respondent: Minister for Justice and Equality

Questions referred

1. (a) Where the surrender of the requested person is sought for the purpose of serving a custodial sentence which was suspended ab initio but which was subsequently ordered to be enforced as a result of the conviction of the requested person for a further criminal offence, and where that enforcement order was made by the court that convicted and sentenced the requested person for that further criminal offence, are the proceedings leading to that subsequent conviction and enforcement order part of the 'trial resulting in the decision' for the purposes of Article 4a(l) of Council Framework Decision 2002/584/JHA ([1])?

   (b) Is it relevant to the answer 1 (a) above whether the court that made the enforcement order was obliged to make that order as a matter of law or whether it had a discretion to make such an order?

2. In the circumstances set out in question 1 above, is the executing judicial authority entitled to inquire into whether the proceedings leading to the subsequent conviction and enforcement order, which took place in the absence of the requested person, were conducted in compliance with Article 6 of the European Convention on Human Rights and Fundamental Freedoms and, in particular, whether the absence of the requested person involved a violation of the rights of the defence and/or the requested person's right to a fair trial?

3. (a) In the circumstances set out in question 1 above, if the executing judicial authority is satisfied that the proceedings leading to the subsequent conviction and enforcement order were not conducted in compliance with Article 6 of the European Convention on Human Rights and Fundamental Freedoms and, in particular, that the absence of the requested person involved a violation of the rights of the defence and/or of the requested person's right to a fair trial, is the executing judicial authority entitled and/or obliged (a) to refuse surrender of the requested person on the basis that such surrender would be contrary to Article 6 of the Convention and/or Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union and/or (b) to require the issuing judicial authority as a condition of surrender to provide a guarantee that the requested person will, upon surrender, be entitled to a retrial or appeal, in which they will have a right to participate and which allows for the merits of the case, including fresh evidence, to be re-examined which may lead to the original decision being reversed, in respect of the conviction leading to the enforcement order?

(b) For the purposes of question 3 (a) above, is the applicable test whether the surrender of the requested person would breach the essence of their fundamental rights under Article 6 of the Convention and/or Articles 47 and 48(2) of the Charter and, if so, is the fact that the proceedings leading to the subsequent conviction and enforcement order were conducted in absentia, and that, in event of his surrender, the requested person will not have a right to a retrial or appeal, sufficient to permit the executing judicial authority to conclude that surrender would breach the essence of those rights?

(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 Court of Appeal (Ireland) made on 20 August 2021 — PH v Minister for Justice and Equality

(Case C-515/21)

(2022/C 119/23)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Appellant: PH

Respondent: Minister for Justice and Equality

Questions referred

1. Where the surrender of the requested person is sought for the purpose of serving a custodial sentence which was suspended ab initio but which was subsequently ordered to be enforced as a result of the subsequent conviction of the requested person for a further criminal offence, in circumstances where the order for enforcement was mandatory by reason of that conviction, are the proceedings leading to that subsequent conviction and/or the proceedings leading to the making of the enforcement order part of the 'trial resulting in the decision' for the purposes of Article 4a(I) of Council Framework Decision 2002/584/JHA (1)?

2. In the circumstances set out in question 1 above, is the executing judicial authority entitled and/or obliged to inquire into whether the proceedings leading to the subsequent conviction and/or the proceedings leading to the enforcement order, all of which were conducted in the absence of the requested person, were conducted in compliance with Article 6 of the European Convention on Human Rights and Fundamental Freedoms and, in particular, whether the absence of the requested person from those proceedings involved a violation of the rights of the defence and/or of the requested person's right to a fair trial?

3. (a) In the circumstances set out in question 1 above, if the executing judicial authority is satisfied that the proceedings leading to the subsequent conviction and enforcement order were not conducted in compliance with Article 6 of the European Convention on Human Rights and Fundamental Freedoms and, in particular, that the absence of the requested person involved a violation of the rights of the defence and/or of the requested person's right to a fair trial, is the executing judicial authority entitled and/or obliged (a) to refuse surrender of the requested person on the basis that such surrender would be contrary to Article 6 of the Convention and/or Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union and/or (b) to require the issuing judicial authority as a condition of surrender to provide a guarantee that the requested person will, upon surrender, be entitled to a retrial or appeal, in which they will have a right to participate and which allows for the merits of the case, including fresh evidence, to be re-examined which may lead to the original decision being reversed, in respect of the conviction leading to the enforcement order?

(b) For the purposes of question 3 (a) above, is the applicable test whether the surrender of the requested person would breach the essence of their fundamental rights under Article 6 of the Convention and/or Articles 47 and 48(2) of the Charter and, if so, is the fact that the proceedings leading to the subsequent conviction and enforcement order were conducted in absentia, and that, in event of his surrender, the requested person will not have a right to a retrial or appeal, sufficient to permit the executing judicial authority to conclude that surrender would breach the essence of those rights?

(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).

Appeal brought on 20 August 2021 by FT and Others against the judgment of the General Court (Eighth Chamber) delivered on 9 June 2021 in Case T-699/19 FT and Others v Commission

(Case C-518/21 P)

(2022/C 119/24)

Language of the case: French

Parties

Appellants: FT, FU, FV, FY, FZ, GA, GB, GC, GD, GG, GE, GF, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU (represented by: J.-N. Louis, avocat)

Other party to the proceedings: European Commission

By order of 27 January 2022, the Court of Justice (Seventh Chamber) dismissed the appeal as manifestly inadmissible and ordered the appellants to bear their own costs.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 25 November 2021 — A v Finanzamt X

(Case C-713/21)

(2022/C 119/25)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: A

Defendant: Finanzamt X

Questions referred

In relation to the meaning of Article 2(1)(c) of Directive 2006/112/EC, (1) as interpreted in the judgment of the Court of Justice of the European Union of 10 November 2016, *Baštová*: (2)

Does the owner of a competition horse training stable provide the horse owner with a single supply, consisting in the stabling and training of horses and the participation of horses in competitions, for consideration even where the horse owner remunerates that supply by assigning half of the claim to prize money to which he or she is entitled in the event of successful participation in a competition?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
(2) C 432/15 (EU:C:2016:855).

Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 1 December 2021 — GP v juris GmbH

(Case C-741/21)

(2022/C 119/26)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: GP

Defendant: juris GmbH

Questions referred

1. In the light of recital 85 and the third sentence of recital 146 of the GDPR, (1) is the concept of 'non-material damage' in Article 82(1) of the GDPR to be understood as covering any impairment of the protected legal position, irrespective of the other effects and materiality of that impairment?

2. Is liability for compensation under Article 82(3) of the GDPR excluded by the fact that the infringement is attributed to human error in the individual case on the part of a person acting under the authority of the processor or controller within the meaning of Article 29 of the GDPR?

3. Is it permissible or necessary to base the assessment of compensation for non-material damage on the criteria for determining fines set out in Article 83 of the GDPR, in particular in Article 83(2) and 83(5) of the GDPR?

4. Must the compensation be determined for each individual infringement, or are several infringements — or at least several infringements of the same nature — penalised by means of an overall amount of compensation, which is not determined by adding up individual amounts but is based on an evaluative overall assessment?

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

Appeal brought on 2 December 2021 by Altice Group Lux Sàrl, formerly New Altice Europe BV, in liquidation against the judgment of the General Court (Sixth Chamber) delivered on 22 September 2021 in Case T-425/18, Altice Europe v Commission

(Case C-746/21 P)

(2022/C 119/27)

Language of the case: English

Parties

Appellant: Altice Group Lux Sàrl, formerly New Altice Europe BV, in liquidation (represented by: R. Allendesalazar Corcho, H. Brokelmann, abogados)

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

Form of order sought

The appellant claims that the Court should:

— Annul Articles 1, 2, 3 and 4 of Commission Decision C(2018) 2418 final of 24 April 2018 imposing a fine for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of Council Regulation (EC) No. 139/2004 ([1]) (Case M. 7993-Altice/PT Portugal, Article 14 (2) procedure) ('the contested decision');

— In the alternative, exercise its unlimited jurisdiction to substantially reduce the fines imposed in Article 3 and Article 4 of the contested decision, the latter as amended by the Judgment of the General Court;

— In the further alternative, to refer the case back to the General Court for it to decide, bound by the decision of the Court on points of law;

— Order the Commission to pay the appellant's costs, both in the appeal and in the proceedings before the General Court.

Pleas in law and main arguments

First: The Judgment under appeal erred in law in rejecting Altice's objection of illegality

The Judgment under appeal erred in law and infringed the principle of proportionality and the prohibition of double punishment rooted in the general principles common to the legal systems of the Member States governing the concurrence of laws, in rejecting Altice's objection of illegality (Article 277 TFEU) regarding Article 14(2)(a) in conjunction with Article 4(1) of Regulation 139/2004 (EUMR). There is no 'notification obligation' in Article 4(1) EUMR distinct from the 'standstill obligation' of Article 7(1) EUMR, as infringing Article 4(1) necessarily requires the 'implementation' of a concentration. Article 4(1) and the first limb of Article 7(1) apply to the same conduct and pursue the same legal interest. The possibility of imposing two cumulative fines under letters (a) and (b) of Article 14(2) EUMR therefore contravenes the said general principles of EU law.

Second: The Judgment under appeal erred in law in rejecting that, by imposing two cumulative fines for the same conduct, the Contested Decision infringed the principles of proportionality and the prohibition of double punishment

The case-law of the Court requires that, where the principle of ne bis in idem does not preclude the imposition of two fines on an undertaking in a single decision for the same facts, the authority 'must nevertheless ensure that the fines are proportionate to the nature of the infringement'. The Judgment under appeal does not comply with this mandate. Only one fine imposed pursuant to Article 14(2)(b) EUMR for infringing Article 7(1) EUMR can be compatible with the proportionality requirement. A second fine imposed pursuant to Article 14(2)(a) EUMR is, by definition, excessive and therefore disproportionate and also contrary to the prohibition of double punishment rooted in the general principles common to the legal systems of the Member States governing the concurrence of laws.

Third Ground: The Judgment under appeal erred in law in interpreting the notion of 'implementation' in Articles 4(1) and 7(1) EUMR

By holding that the 'possibility of exercising decisive influence' already amounts to the implementation of a concentration, the Judgment under appeal erred in law as it confounds the notions of 'concentration' and 'implementation', and relies on an inaccurate interpretation of the judgment of 31 May 2018 in case C-633/16, Ernst & Young, which clarified that transactions that are not necessary to achieve such a change of control do not fall under Article 7(1) EUMR because they do not present a functional link with its implementation.

Fourth Ground: The Judgment under appeal erred in law in interpreting the notion of 'veto right' for the purposes of Articles 3(2), 4(1) and 7(1) EUMR or, alternatively, distorted the SPA by interpreting that it conferred 'veto rights'

Assuming -quod non- that the mere 'possibility of exercising decisive influence' amounts to an 'implementation' of a concentration, Article 3(2) EUMR requires a change of control on a lasting basis resulting from means which confer 'veto rights over strategic business decisions', i.e., 'the power to block' the strategic behaviour of an undertaking. The Judgment under appeal erred in law by extending the notion of 'veto rights' to situations which do not confer the power to block strategic decisions. Alternatively, the Judgment under appeal distorted the SPA by interpreting its pre-closing covenants as conferring 'veto rights' on Altice.

Fifth Ground: The General Court erred in law in concluding that exchanges of information amount to an 'implementation' of a concentration within the meaning of Articles 4(1) and 7(1) EUMR

The Judgment under appeal erred in law in considering that exchanges of information in the context of a concentration fall under Articles 4(1) and 7(1) EUMR, whereas Article 101 TFEU and Regulation (EC) 1/2003 [2] presuppose an ex-post mechanism. This is inconsistent with the judgment in case C-633/16 and would reduce the scope of Regulation (EC) 1/2003. The Judgment under appeal also distorts the Contested Decision in finding that it interprets that the exchanges of information did not in themselves infringe Articles 4(1) and 7(1) EUMR but merely 'contributed' to demonstrate the infringement.

Sixth: The General Court erred in law in rejecting Altice's pleas of illegality and lack of proportionality of the fines

The Judgment under appeal erred in law in considering that Altice was negligent. Furthermore, the level of the fines resulting from the Judgment under appeal is not only inappropriate, but also excessive to the point of being disproportionate. The General Court therefore erred in law by not substantially reducing the amount of the fines in exercise of its unlimited jurisdiction.

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[1] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004, L 24, p. 1).

[2] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1).

Appeal brought on 8 December 2021 by the European Parliament against the judgment of the General Court (Eighth Chamber) delivered on 29 September 2021 in Case T-384/19, Parliament v Axa Assurances Luxembourg SA and Others

(Case C-766/21 P)

(2022/C 119/28)

Language of the case: French

Parties

Appellant: European Parliament (represented by: E. Paladini and B. Schäfer, acting as Agents)

Other parties to the proceedings: Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA, La Luxembourgeoise SA, Nationale-Nederlanden Schadeverzekering Maatschappij NV

Form of order sought

— annul the second and fourth paragraphs of the operative part of the judgment under appeal;

— refer the case back to the General Court;

— reserve costs, with the exception of those which are subject to the third paragraph of the operative part of the judgment under appeal.

In the alternative,

— annul the second and fourth paragraphs of the operative part of the judgment under appeal;

— grant the form of order sought by the European Parliament at first instance in respect of Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA and La Luxembourgeoise SA.

Grounds of appeal and main arguments

In support of its appeal, the European Parliament raises three grounds of appeal.

The first ground of appeal alleges an error of law consisting in the infringement of the principles of interpretation of EU law. The Parliament considers that the General Court disregarded, in particular, the rule of interpretation consisting in taking account of the purpose of the contract and the context in which its terms, and more specifically the term 'flooding', appear. In the alternative, the Parliament takes the view that the General Court distorted the exclusion clause relating to flooding.

The second ground of appeal alleges an error relating to reasoning of the judgment under appeal, which is, in the Parliament's view, vitiated by a contradiction in the reasoning of the General Court on the interpretation of the term 'flooding'.

Thirdly, the Parliament considers that the judgment under appeal contains several distortions of the facts and evidence: the General Court distorted the Parliament's position on the interpretation of the term 'flooding'; it assessed the situation of the building site at the time of the damage in a manifestly erroneous manner, and also distorted the findings of the expert report on the causes of the damage.

Appeal brought on 14 December 2021 by the European Commission against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 29 September 2021 in Joined Cases T-344/19 and T-356/19, Front Polisario v Council

(Case C-778/21 P)

(2022/C 119/29)

Language of the case: French

Parties

Appellant: European Commission (represented by: A. Bouquet, F. Castillo de la Torre, A. Stobiecka-Kuik, acting as Agents)

Other parties to the proceedings: Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario), Council of the European Union, Kingdom of Spain, French Republic, Chambre des pêches maritimes de la Méditerranée, Chambre des pêches maritimes de l'Atlantique Nord, Chambre des pêches maritimes de l'Atlantique Centre, Chambre des pêches maritimes de l'Atlantique Sud

Form of order sought

The appellant claims that the Court should:

— set aside paragraphs 1 and 2 of the operative part of the judgment under appeal and consequently;

— dismiss the action brought at first instance by the Front Polisario, or, if the state of proceedings does not permit the Court of Justice to give final judgment in the matter, refer the case back to the General Court;

— order the Front Polisario to pay the costs of both sets of proceedings in their entirety.

Grounds of appeal and main arguments

— First ground of appeal: errors in law based on the Front Polisario's lack of capacity to be a party to legal proceedings.

— Second ground of appeal: errors in law based on the Front Polisario's lack of direct concern.

— Third ground of appeal: errors in law based on the Front Polisario's lack of individual concern.

— Fourth ground of appeal: errors in law regarding the scope of judicial review, the institutions' margin of appreciation and the need to find that there had been a manifest error; regarding the consent of the people of Western Sahara not being a requirement; regarding the fact that the concept of consent adopted is too strict and theoretical, that the consultation that obtained the favourable opinion is considered insufficient and that the examination of the benefits is rejected; regarding the Front Polisario's identification as the entity that would be responsible for giving such consent, given its limited status and representativeness.

— Fifth ground of appeal: errors in law regarding the possibility of relying on customary international law when examining the validity of an EU act.

Appeal brought on 14 December 2021 by the European Commission against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 29 September 2021 in Case T-279/19, Front Polisario v Council

(Case C-779/21 P)

(2022/C 119/30)

Language of the case: French

Parties

Appellant: European Commission (represented by: A. Bouquet, F. Castillo de la Torre, F. Clotuche-Duvieusart, B. Eggers, acting as Agents)

Other parties to the proceedings: Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario), Council of the European Union, French Republic, Confédération marocaine de l'agriculture et du développement rural (Comader)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal and consequently;

— dismiss the action brought at first instance by the Front Polisario, or, if the state of proceedings does not permit the Court of Justice to give final judgment in the matter, refer the case back to the General Court;

— order the Front Polisario to pay the costs of both sets of proceedings in their entirety.

Grounds of appeal and main arguments

— First ground of appeal: errors in law based on the Front Polisario's lack of capacity to be a party to legal proceedings.

— Second ground of appeal: errors in law based on the Front Polisario's lack of direct concern.

— Third ground of appeal: errors in law based on the Front Polisario's lack of individual concern.

— Fourth ground of appeal: errors in law regarding the scope of judicial review, the institutions' margin of appreciation and the need to find that there had been a manifest error; regarding the consent of the people of Western Sahara not being a requirement; regarding the fact that the concept of consent adopted is too strict and theoretical, that the consultation that obtained the favourable opinion is considered insufficient and that the examination of the benefits is rejected; regarding the Front Polisario's identification as the entity that would be responsible for giving such consent, given its limited status and representativeness.

— Fifth ground of appeal: errors in law regarding the possibility of relying on customary international law when examining the validity of an EU act.

Appeal brought on 16 December 2021 by the Council of the European Union against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 29 September 2021 in Joined Cases T-344/19 and T-356/19, Front Polisario v Council

(Case C-798/21 P)

(2022/C 119/31)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: F. Naert, V. Piessevaux, acting as Agents)

Other parties to the proceedings: Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario), Kingdom of Spain, French Republic, European Commission, Chambre des pêches maritimes de la Méditerranée, Chambre des pêches maritimes de l'Atlantique Nord, Chambre des pêches maritimes de l'Atlantique Centre, Chambre des pêches maritimes de l'Atlantique Sud

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in so far as it annuls Decision 2019/441 ([1]);

— give final judgment in the matters that are the subject of the appeal and dismiss the action brought by Front Polisario in Case T-344/19;

— order Front Polisario to pay the costs of the appeal and of Case T-344/19;

— in the alternative: maintain the effects of Decision 2019/441 for a period of 12 months from the date on which judgment is delivered.

Grounds of appeal and main arguments

The first ground of appeal alleges infringement of the fourth paragraph of Article 263 TFEU and concerns the judgment under appeal in so far as it concluded that Front Polisario has the capacity to bring proceedings before the Courts of the European Union.

The second ground of appeal alleges infringement of the fourth paragraph of Article 263 TFEU and breach of the principle that documents must be construed in accordance with their actual terms, and concerns the judgment under appeal in so far as it concluded that the contested decision is of direct and individual concern to Front Polisario.

The third ground of appeal alleges an error of law as regards the possibility of relying on rules of international law and concerns the judgment under appeal in so far as it concluded that Front Polisario can rely on the principle of self-determination and the principle of the relative effect of treaties.

The fourth ground of appeal alleges misinterpretation and misapplication of the general principle of the relative effect of treaties and of the right of self-determination, breach of the principle that documents must be construed in accordance with their actual terms, distortion of the Council's arguments and infringement of Article 36, read in conjunction with the first paragraph of Article 53, of the Statute of the Court of Justice. It concerns the judgment under appeal in so far as it concluded that the people of Western Sahara did not give their consent to the agreements with which Decision 2019/441 is concerned.

([1]) Council Decision (EU) 2019/441 of 4 March 2019 on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the Exchange of Letters accompanying the Agreement (OJ 2019 L 77, p. 4).

Appeal brought on 16 December 2021 by the Council of the European Union against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 29 September 2021 in Case T-279/19, Front Polisario v Council

(Case C-799/21 P)

(2022/C 119/32)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: F. Naert, V. Piessevaux, acting as Agents)

Other parties to the proceedings: Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario), French Republic, European Commission, Confédération marocaine de l'agriculture et du développement rural (Comader)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— give final judgment in the matters that are the subject of the appeal and dismiss the action brought by Front Polisario;

— order Front Polisario to pay the costs of the appeal and of Case T-279/19;

— in the alternative: maintain the effects of Decision 2019/217 ([1]) for a period of 12 months from the date on which judgment is delivered.

Grounds of appeal and main arguments

The first ground of appeal alleges infringement of the fourth paragraph of Article 263 TFEU and concerns the judgment under appeal in so far as it concluded that Front Polisario has the capacity to bring proceedings before the Courts of the European Union.

The second ground of appeal alleges infringement of the fourth paragraph of Article 263 TFEU and breach of the principle that documents must be construed in accordance with their actual terms, and concerns the judgment under appeal in so far as it concluded that the contested decision is of direct and individual concern to Front Polisario.

The third ground of appeal alleges an error of law as regards the possibility of relying on rules of international law and concerns the judgment under appeal in so far as it concluded that Front Polisario can rely on the principle of self-determination and the principle of the relative effect of treaties.

The fourth ground of appeal alleges misinterpretation and misapplication of the general principle of the relative effect of treaties and of the right of self-determination, breach of the principle that documents must be construed in accordance with their actual terms, distortion of the Council's arguments and infringement of Article 36, read in conjunction with the first paragraph of Article 53, of the Statute of the Court of Justice. It concerns the judgment under appeal in so far as it concluded that the people of Western Sahara did not give their consent to the agreement with which Decision 2019/217 is concerned.

([1]) Council Decision (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 1).

Action brought on 30 December 2021 — Republic of Latvia v Kingdom of Sweden

(Case C-822/21)

(2022/C 119/33)

Language of the case: Swedish

Parties

Applicant: Republic of Latvia (represented by: K. Pommere, J. Davidoviča and I. Romanovska)

Defendant: Kingdom of Sweden

Form of order sought

The Republic of Latvia claims that the Court should:

— hold that the Kingdom of Sweden has failed to fulfil its obligations under:

  — Article 14(3) of Directive 2014/49/EU, ([1]) in so far as, by refusing to transfer to the Latvian DGF (Deposit Guarantee Fund) the contributions paid by the Latvian branch of *Nordea Bank AB*, calculated for the contribution period in accordance with Article 14(3) of Directive 2014/49/EU, the Kingdom of Sweden has acted contrary to the objective pursued by that directive and has not ensured the effectiveness of the provisions of that directive;

— Article 4(3) TEU, in so far as, by refusing to transfer to the Lavian DGF the contributions paid by the Latvian branch of *Nordea Bank AB*, calculated for the contribution period in accordance with Article 14(3) of Directive 2014/49/EU, the Kingdom of Sweden has adversely affected the integration of the single market and in so doing undermines the mutual trust between EU Member States, which is a pre-requisite for cross-border integration.

If the Court finds that the Kingdom of Sweden has failed to fulfil its obligations under Article 14(3) of Directive 2014/49/EU and Article 4(3) TEU:

— order the Kingdom of Sweden to put an end to the infringement by having the Swedish DGF transfer to the Latvian DGF the full amount of the contributions paid by the Latvian branch of *Nordea Bank AB*, calculated for the contribution period in accordance with Article 14(3) of Directive 2014/49/EU;

— if Article 14(3) of Directive 2014/49/EU is to be interpreted strictly, specify its compatibility with the objective of Directive 2014/49/EU and the obligation of the Swedish DGF to transfer to the Lavian DGF the contributions paid by the Latvian branch of *Nordea Bank AB*;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant puts forward pleas in law alleging an infringement of Article 14(3) of Directive 2014/49/EU and an infringement of the EU Treaty (the principle of sincere cooperation).

1. By refusing to transfer to the Lavian DGF the contributions paid by the Latvian branch of *Nordea Bank AB*, calculated for the contribution period in accordance with Article 14(3) of Directive 2014/49/EU, the Kingdom of Sweden has acted contrary to the objective pursued by Directive 2014/49/EU.

2. By refusing to transfer to the Lavian DGF the contributions paid by the Latvian branch of *Nordea Bank AB*, calculated for the contribution period in accordance with Article 14(3) of Directive 2014/49/EU, the Kingdom of Sweden has adversely affected the integration of the single market and in so doing undermines the mutual trust between EU Member States, which is a pre-requisite for cross-border integration. Accordingly, the Kingdom of Sweden has infringed Article 4(3) TEU.

3. The Republic of Latvia submits that, by refusing to transfer the contributions paid and in formally justifying that refusal by the date on which those contributions were actually paid, the Kingdom of Sweden has infringed Directive 2014/49/EU and that that infringement compromises the achievement of EU objectives and strips Latvia of the right to contributions which compensate the risk associated with deposits guaranteed by a credit institution transferred under its responsibility, resulting in a breach of the principle of sincere cooperation enshrined in Article 4(3) TEU and the achievement of the objectives of Directive 2014/49/EU being compromised.

(1) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149).

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 27 December 2021 — Beverage City & Lifestyle GmbH and Others v Advance Magazine Publishers, Inc.

(Case C-832/21)

(2022/C 119/34)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Defendants and appellants: Beverage City & Lifestyle GmbH, MJ, Beverage City Polska Sp.z.o.o., FE

Applicant and respondent: Advance Magazine Publishers, Inc.

Question referred

The Higher Regional Court, Düsseldorf, refers the following question to the Court of Justice of the European Union for a preliminary ruling concerning the interpretation of Article 122 of Regulation (EU) 2017/1001 ([1]) in conjunction with Article 8(1) of Regulation (EU) No 1215/2012. ([2])

Are claims 'so closely connected' that it is expedient to hear and determine them together to prevent irreconcilable judgments, within the meaning of Article 8(1) of Regulation No 1215/2012, where, in infringement proceedings for infringement of an EU trade mark, the connection consists in the fact that the defendant domiciled in a Member State (here, Poland) supplied the goods which infringe an EU trade mark to a defendant domiciled in another Member State (here, Germany) whose legal representative, against whom infringement proceedings have also been brought, is the anchor defendant, if the parties are connected to each other only through the mere supply relationship beyond which there is no legal or factual connection?

([1]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

([2]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

Appeal brought on 4 January 2022 by RQ against the judgment of the General Court (Third Chamber) delivered on 17 November 2021 in Case T-147/17, Anastassopoulos and Others v Council and Commission

(Case C-7/22 P)

(2022/C 119/35)

Language of the case: French

Parties

Appellant: RQ (represented by: M. Meng-Papantoni, H. Tagaras, avocats)

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

Form of order sought

— Allow the appeal and set aside the judgment under appeal;

— decide on the further course of action as a matter of right;

— order the defendants to pay the costs.

Grounds of appeal and main arguments

In the first place, the appellant submits that the General Court distorted the appellant's application as regards the act adversely affecting it.

In the second place, the appellant submits that the General Court made several errors of law:

As regards, first, the liability of the European Union for unlawful conduct, the General Court disregarded the principles of the rule of law and Article 47 of the Charter of Fundamental Rights by holding that the acts and omissions of the Eurogroup could not, in any event, give rise to non-contractual liability on the part of the European Union. The General Court also failed to have regard to the principle of equal treatment by holding that the mere acquisition of bonds, subsequently discounted, by natural and legal persons, was sufficient to consider them to be in an identical or comparable situation within the meaning of the case-law.

Next, the General Court made errors of law concerning strict liability. First, according to the appellant, the General Court wrongly excluded the very existence of strict liability. Second, the General Court erred in law in its assessment of the 'abnormal' nature of the damage.

Request for a preliminary ruling from the Tribunale ordinario di Roma (Italy) lodged on 5 January 2022 — Liberi editori e autori (LEA) v Jamendo SA

(Case C-10/22)

(2022/C 119/36)

Language of the case: Italian

Referring court

Tribunale ordinario di Roma

Parties to the main proceedings

Applicant: Liberi editori e autori (LEA)

Defendant: Jamendo SA

Question referred

Must Directive 2014/26/EU [1] be interpreted as precluding national legislation that reserves access to the copyright intermediation market, or in any event the granting of licences to users, solely to entities which can be classified, according to the definition in that directive, as collective management organisations, to the exclusion of those which can be classified as independent management entities incorporated in that Member State or in other Member States?

[1] Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ 2014 L 84, p. 72).

Request for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 5 January 2022 — Est Wind Power OÜ v AS Elering

(Case C-11/22)

(2022/C 119/37)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Est Wind Power OÜ

Defendant: AS Elering

Questions referred

1. Must the EU rules on State aid, in particular the first alternative of the definition of 'start of works' in paragraph 19(44) of the Commission Communication 'Guidelines on State aid for environmental protection and energy 2014-2020', [1] namely 'start of construction works on the investment', be interpreted as meaning the start of construction works connected with any investment project or only the start of construction works connected with the installation of the investment project which will produce renewable energy?

2. Must the EU rules on State aid, in particular the first alternative of the definition of 'start of works' in paragraph 19(44) of the Commission Communication 'Guidelines on State aid for environmental protection and energy 2014-2020', namely 'start of construction works on the investment', be interpreted as meaning that, in a situation in which the competent authority of the Member State has established the start of the construction works in connection with an investment, that authority must, in accordance with the principle of the protection of legitimate expectations, additionally assess the stage of development of the investment project and the likelihood of completion of that project?

3. If the previous question is answered in the affirmative: can other objective circumstances, such as pending litigation which prevents the continuation of the investment project, be taken into account in the assessment of the stage of development of the investment project?

4. Is it relevant in the present case that the Court of Justice of the European Union held, in Case C-349/17, ([2]) *Eesti Pagar*, paragraphs 61 and 68, that the question as to whether or not an incentive effect exists cannot be regarded as being a criterion that is clear and easily applicable by the national authorities, since its verification would necessitate, on a case-by-case basis, complex economic assessments, with the consequence that such a criterion would not comply with the requirement that the criteria for the application of an exemption must be clear and easily applicable by the national authorities?

5. If the previous question is answered in the affirmative: must the EU rules on State aid, in particular footnote 66 to paragraph 126 of the Commission Communication 'Guidelines on State aid for environmental protection and energy 2014-2020', in conjunction with paragraph 19(44) of that communication, be interpreted as meaning that the national authority is not required to make an economic assessment of the investment project, on a case-by-case basis, when examining the criterion of start of works?

6. If the previous question is answered in the affirmative: must the EU rules on State aid, in particular the last alternative of the definition of 'start of works' in paragraph 19(44) of the Commission Communication 'Guidelines on State aid for environmental protection and energy 2014-2020', namely 'other commitment that makes the investment irreversible', be interpreted as meaning that any other commitment, with the exception of the buying of land and preparatory works (such as obtaining permits), makes the investment irreversible, irrespective of the cost of the commitment entered into?

7. Must the EU rules on State aid, in particular the concept of 'start of works' in paragraph 19(44) of the Commission Communication 'Guidelines on State aid for environmental protection and energy 2014-2020', be interpreted as meaning that the existence of a right to use the land held by the energy producer and the existence of State authorisation for implementing the investment project are essential conditions for the start of works?

8. If the previous question is answered in the affirmative: must the concept 'State authorisation for implementing the investment project' be interpreted in the light of national law, and can it be only the authorisation on the basis of which the construction work relating to the investment project is carried out?

([1]) OJ 2014 C 200, p. 1.
([2]) EU:C:2019:172.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 10 January 2022 — Syndicat Les Entreprises du Médicament (LEEM) v Ministre des Solidarités et de la Santé

(Case C-20/22)

(2022/C 119/38)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Syndicat Les Entreprises du Médicament (LEEM)

Defendant: Ministre des Solidarités et de la Santé

Question referred

Must Article 4 of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems ([1]) be interpreted as meaning that the concept of a '*price freeze […] on all medicinal products or on certain categories of medicinal products*' applies to a measure whose purpose is to control the prices of medicinal products but which concerns only certain medicinal products, on an individual basis, and is not intended to apply to all medicinal products or even to certain categories of them, when the safeguards which that article attaches to the existence of such a price-freezing measure as defined by that article appear, for such a measure, meaningless and pointless?

([1]) OJ 1989 L 40, p. 8.

Appeal brought on 20 January 2022 by Liam Jenkinson against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 10 November 2021 in Case T-602/15 RENV, Jenkinson v Council and Others

(Case C-46/22 P)

(2022/C 119/39)

Language of the case: French

Parties

Appellant: Liam Jenkinson (represented by: N. de Montigny, avocate)

Other parties to the proceedings: Council of the European Union, European Commission, European External Action Service, Eulex Kosovo

Form of order sought

The appellant claims that the Court should:

— uphold the appeal and set aside the judgment under appeal;

— dispose of the case and grant the form of order sought by the applicant at first instance;

— in the alternative, refer the case back to the General Court for judgment;

— order the respondents to pay all the costs incurred in the appeal proceedings and in each of the earlier proceedings (T-602/15; C-43/17 P; T-602/15 RENV).

Grounds of appeal and main arguments

The first ground of appeal alleges misinterpretation of the claims and pleas put forward in that the General Court excluded from its review all principal claims based on a plea of illegality.

The second ground of appeal alleges a reduction of the factual and legal considerations set out by the applicant and therefore of the subject matter of the action in that the General Court exclusively analysed the applicant's last post in the Eulex Kosovo Mission.

The third ground of appeal is directed against the judgment under appeal in so far as it rejected the first principal head of claim.

The fourth ground of appeal alleges misapplication of the principle of equal treatment between staff members of the Union and infringement of Article 336 TFEU, the General Court having reversed the intention of the EU legislature to offer minimum social security coverage to all employees. In the appellant's view, the General Court also infringed the concept of the rule of law by excluding all non-contractual liability of the defendants.

The fifth ground of appeal is directed against the rejection, on grounds of inadmissibility, of the third head of claim put forward in the alternative at first instance. In any event, the appellant submits that the General Court should have raised of its own motion certain pleas involving matters of public policy and analysed the merits of the case.

GENERAL COURT

Judgment of the General Court of 26 January 2022 — Mylan IRE Healthcare v Commission

(Case T-303/16) ([1])

(Medicinal products for human use — Orphan medicinal products — Marketing authorisations for the medicinal products Tobramycin VVB and associated names — Derogation from the market exclusivity of Tobi Podhaler, containing the active substance tobramycin — Article 8(3)(c) of Regulation (EC) No 141/2000 — Concept of 'significant benefit' — Concept of 'clinical superiority' — Article 3(2) and (3)(d) of Regulation (EC) No 847/2000 — Duty of care — Manifest error of assessment)

(2022/C 119/40)

Language of the case: English

Parties

Applicant: Mylan IRE Healthcare Ltd (Dublin, Ireland) (represented by: I. Vernimme, M. Campolini and D. Gillet, lawyers)

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

Intervener in support of the defendant: UAB VVB (Kaunas, Lithuania) (represented by: E. Rivas Alba, V. Horcajuelo Rivera and M. Martens, lawyers)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Implementing Decision C(2016) 2083 final of 4 April 2016 concerning, in the framework of Article 29 of Directive 2001/83/EC of the European Parliament and of the Council, the marketing authorisations for 'Tobramycin VVB and associated names', medicinal products for human use which contain the active substance 'tobramycin'.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mylan IRE Healthcare Ltd to bear its own costs and pay those incurred by the European Commission and by UAB VVB, including those relating to procedure for the replacement of a party.

([1]) OJ C 296, 16.8.2016.

Judgment of the General Court of 19 January 2022 — Koinopraxia Touristiki Loutrakiou v Commission

(Case T-757/18) ([1])

(State aid — Greek casinos — System providing for a levy of 80 % on admission fees of different amounts — Differentiation between public and private casinos — Complaint — Decision declaring the aid incompatible with the internal market and unlawful and ordering its recovery — Annulment of the decision by a decision of the General Court — Decision finding no State aid — Action for annulment — Challengeable act — Admissibility — Rights of the defence)

(2022/C 119/41)

Language of the case: English

Parties

Applicant: Koinopraxia Touristiki Loutrakiou AE OTA — Loutraki AE — Klab Otel Loutraki Kazino Touristikes kai Xenodocheiakes Epicheiriseis AE (Loutraki, Greece) (represented by: S. Pappas and A. Pappas, lawyers)

Defendant: European Commission (represented by: A. Bouchagiar and P.-J. Loewenthal, acting as Agents)

Interveners in support of the defendant: Regency Entertainment Psychagogiki kai Touristiki AE (Maroussi, Greece), Elliniko Kazino Parnithas AE (Maroussi) (represented by: N. Niejahr, B. Hoorelbeke, I. Drillerakis and E. Rantos, lawyers)

Re:

Application pursuant to Article 263 TFEU seeking annulment of Commission Decision (EU) 2018/1575 of 9 August 2018 on the measures to certain Greek casinos SA.28973 — C 16/2010 (ex NN 22/2010, ex CP 318/2009) implemented by Greece (OJ 2018 L 262, p. 61).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Koinopraxia Touristiki Loutrakiou AE OTA — Loutraki AE — Klab Otel Loutraki Kazino Touristikes kai Xenodocheiakes Epicheiriseis AE to pay the costs.

([1]) OJ C 72, 25.2.2019.

Judgment of the General Court of 19 January 2022 — Deutsche Telekom v Commission

(Case T-610/19) ([1])

(Action for annulment and for damages — Competition — Abuse of dominant position — Slovak market for broadband telecommunications services — Decision finding an infringement of Article 102 TFEU and Article 54 of the EEA Agreement — Judgment annulling the decision in part and reducing the amount of the fine imposed — Refusal of the Commission to pay default interest — Article 266 TFEU — Article 90(4)(a) of Delegated Regulation (EU) No 1268/2012) — Sufficiently serious breach of a rule of law conferring rights on individuals — Loss of use of the amount of the fine that had been unduly paid — Loss of profits — Default interest — Rates — Harm)

(2022/C 119/42)

Language of the case: French

Parties

Applicant: Deutsche Telekom AG (Bonn, Germany) (represented by: P. Linsmeier, U. Soltész, C. von Köckritz and P. Lohs, lawyers)

Defendant: European Commission (represented by: P. Rossi and L. Wildpanner, acting as Agents)

Re:

First, application under Article 263 TFEU for annulment of the Commission's Decision of 28 June 2019 refusing to pay default interests to the applicant on the principal amount of the portion of the fine repaid following the judgment of 13 December 2018, *Deutsche Telekom* v *Commission* (T-827/14, EU:T:2018:930), and, second, application under Article 268 TFEU for compensation for lost revenue as a result of the loss of use of that principal amount or, in the alternative, for the harm resulting from the Commission's refusal to pay default interest on that amount.

Operative part of the judgment

The Court:

1. Orders the European Commission to pay Deutsche Telekom AG compensation in the amount of EUR 1 750 522,83 for the harm suffered;

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

3. Annuls the Commission's decision of 28 June 2019 refusing to pay default interest to Deutsche Telekom for the period from 16 January 2015 to 19 February 2019 on the principal amount of the fine repaid following the judgment of 13 December 2018, Deutsche Telekom v Commission (T-827/14, EU:T:2018:930);

4. Dismisses the action as to the remainder;

5. Orders the European Commission to bear its own costs and to pay half of the costs incurred by Deutsche Telekom;

6. Orders Deutsche to bear half of its own costs.

(1) OJ C 363, 28.10.2019.

Judgment of the General Court of 26 January 2022 — Unger Marketing International v EUIPO — Orben Wasseraufbereitung (Water purifiers)

(Case T-325/20) (1)

(Community design — Invalidity proceedings — Design representing a water purifier — Ground for invalidity — Non-compliance with requirements for protection — Article 25(1)(b) of Regulation (EC) No 6/2002 — Features of appearance of a product solely dictated by its technical function — Article 8(1) of Regulation No 6/2002 — Declaration of invalidity)

(2022/C 119/43)

Language of the case: English

Parties

Applicant: Unger Marketing International, LLC (Bridgeport, Connecticut, United States) (represented by: C. Schulte, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Hanne, D. Hanf and J. Ivanauskas, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Orben Wasseraufbereitung GmbH & Co. KG

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 26 February 2020 (Case R 740/2018-3) relating to invalidity proceedings between Orben Wasseraufbereitung and Unger Marketing International.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Unger Marketing International, LLC to pay the costs.

(1) OJ C 255, 3.8.2020.

Judgment of the General Court of 12 January 2022 — 1031023 B.C. v EUIPO — Bodegas San Valero (Representation of a circle drawn by a brush)

(Case T-366/20) ([1])

(EU trade mark — Opposition proceedings — Application for an EU figurative mark representing a circle drawn by a brush — Earlier national figurative mark ORIGIUM 1944 — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 119/44)

Language of the case: Spanish

Parties

Applicant: 1031023 B.C. Ltd (Richmond, British Columbia, Canada) (represented by: M. González Gordon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Bodegas San Valero, S. Coop. (Cariñena, Spain) (represented by: J. García Domínguez, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 March 2020 (Case R 2142/2019-1) relating to opposition proceedings between Bodegas San Valero and 1031023 B.C.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders 1031023 B.C. Ltd to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Bodegas San Valero, S. Coop.

([1]) OJ C 255, 3.8.2020.

Judgment of the General Court of 19 January 2022 — Tecnica Group v EUIPO — Zeitneu (Shape of a boot)

(Case T-483/20) ([1])

(EU trade mark — Invalidity proceedings — EU three-dimensional mark — Shape of a boot — Declaration of partial invalidity — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Decisions of EU trade mark courts ruling on an action for a declaration of non-infringement — Res judicata)

(2022/C 119/45)

Language of the case: English

Parties

Applicant: Tecnica Group SpA (Giavera del Montello, Italy) (represented by: C. Sala, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zeitneu GmbH (Zürich, Switzerland) (represented by: K. Dumoulin, F. Hagemann, M. Giorcelli and M. Venturello, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 18 May 2020 (Case R 1093/2019-1), relating to invalidity proceedings between Zeitneu and Tecnica Group.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Tecnica Group SpA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Zeitneu GmbH.

([1]) OJ C 320, 28.9.2020.

Judgment of the General Court of 26 January 2022 — Kedrion v EMA

(Case T-570/20) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Collection and processing of plasma — Plasma master file — Refusal to grant access — Exception relating to the protection of the commercial interests of a third party — Incorrect determination of the subject matter of the application — Obligation to base the refusal to grant access on specific and concrete reasons)

(2022/C 119/46)

Language of the case: Italian

Parties

Applicant: Kedrion SpA (Barga, Italy) (represented by: V. Salvatore, lawyer)

Defendant: European Medicines Agency (represented by: S. Marino and C. Schultheiss, acting as Agents)

Interveners in support of the defendant: Baxter AG (Vienna, Austria), Baxter Manufacturing SpA (Cittaducale, Italy) (represented by: F. Borrás Pieri, lawyer, A. Denoon, Solicitor, and C. Thomas, Barrister)

Re:

Application under Article 263 TFEU seeking annulment of the EMA's decision of 10 July 2020 refusing to grant the applicant access to the list of blood collection and processing centres appearing in the plasma master file of the pharmaceutical company Takeda.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Medicines Agency (EMA) of 10 July 2020 refusing to grant Kedrion SpA access to the list of blood collection and processing centres appearing in the plasma master file of the pharmaceutical company Takeda;

2. Orders the EMA to bear its own costs and to pay those incurred by Kedrion;

3. Orders Baxter AG and Baxter Manufacturing SpA to each bear their own costs.

([1]) OJ C 371, 3.11.2020.

Judgment of the General Court of 26 January 2022 — MN v Europol

(Case T-586/20) ([1])

(Civil service — Members of the temporary staff — Non-renewal of a fixed-term contract for an indefinite period — Manifest error of assessment)

(2022/C 119/47)

Language of the case: French

Parties

Applicant: MN (represented by: S. Orlandi, lawyer)

Defendant: European Union Agency for Law Enforcement Cooperation (Europol) (represented by: A. Nunzi, O. Sajin and C. Falmagne, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application under Article 270 TFEU seeking, first, the annulment of Europol's decision of 6 March 2020 not to renew the applicant's employment contract for an indefinite period and, second, compensation for the non-material damage which the applicant claims to have suffered as a result.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders MN to pay the costs.

([1]) OJ C 433, 14.12.2020.

Judgment of the General Court of 12 January 2022 — MW v Parliament

(Case T-630/20) ([1])

(Civil service — Members of the temporary staff — Political group — Dismissal — Breakdown in the relationship of trust — Psychological harassment — Manifest error of assessment — Misuse of powers — Liability)

(2022/C 119/48)

Language of the case: French

Parties

Applicant: MW (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament (represented by: I. Lázaro Betancor and N. Scafarto, acting as Agents)

Re:

Application under Article 270 TFEU seeking, first, the annulment of the Parliament's decision of 11 December 2019 to terminate the contract of employment of the applicant as a member of the temporary staff under Article 2(c) of the Conditions of Employment of Other Servants of the European Union and, second, compensation for the material and non-material damage which the applicant claims to have suffered.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders MW to pay the costs.

([1]) OJ C 9, 11.1.2021.

Judgment of the General Court of 12 January 2022 –Verelst v Council

(Case T-647/20) ([1])

(Law governing the institutions — Enhanced cooperation on the establishment of the European Public Prosecutor's Office — Regulation (EU) 2017/1939 — Appointment of the European Prosecutors of the European Public Prosecutor's Office — Appointment of one of the candidates nominated by Belgium — Rules applicable to the appointment of the European Prosecutors)

(2022/C 119/49)

Language of the case: French

Parties

Applicant: Jean-Michel Verelst (Éghezée, Belgium) (represented by: C. Molitor, lawyer)

Defendant: Council of the European Union (represented by: K. Pleśniak, R. Meyer and K. Kouri, acting as Agents)

Intervener in support of the defendant: Kingdom of Belgium (represented by: C. Pochet, M. Van Regemorter and M. Jacobs, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Council Implementing Decision (EU) 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office (OJ 2020 L 244, p. 18) in so far as it appoints Mr Yves Van Den Berge as a European Prosecutor of the European Public Prosecutor's Office and rejects the candidacy of the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Mr Jean-Michel Verelst to bear his own costs and to pay those incurred by the Council of the European Union;

3. Orders the Kingdom of Belgium to bear its own costs.

([1]) OJ C 9, 11.1.2021.

Judgment of the General Court of 19 January 2022 — Masterbuilders, Heiermann, Schmidtmann v EUIPO — Cirillo (POMODORO)

(Case T-76/21) ([1])

(EU trade mark — Revocation proceedings — EU word mark POMODORO — Genuine use of the trade mark — Article 58(1)(a) of Regulation (EU) 2017/1001 — Statement setting out the grounds of appeal — Period for lodging — Article 58(3) of Delegated Regulation (EU) 2018/625 — Facts or evidence submitted for the first time before the Board of Appeal — Article 27(4) of Delegated Regulation 2018/625 — Proof of genuine use)

(2022/C 119/50)

Language of the case: English

Parties

Applicant: Masterbuilders, Heiermann, Schmidtmann GbR (Tübingen, Germany) (represented by: H. Hillers, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Francesco Cirillo (Berlin, Germany)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 30 November 2020 (Case R 715/2020-5), relating to revocation proceedings between Masterbuilders, Heiermann, Schmidtmann and Mr Cirillo.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Masterbuilders, Heiermann, Schmidtmann GbR to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) in the proceedings before the General Court.

(1) OJ C 110, 29.3.2021.

Judgment of the General Court of 19 January 2022 — Construcciones Electromecánicas Sabero v EUIPO — Magdalenas de las Heras (Heras Bareche)

(Case T-99/21) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Heras Bareche — Earlier EU figurative mark MAGDALENAS DeLasHeras — Relative ground for refusal — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2022/C 119/51)

Language of the case: Spanish

Parties

Applicant: Construcciones Electromecánicas Sabero, SL (Madrid, Spain) (represented by: I. Valdelomar Serrano, P. Román Maestre and D. Liern Cendrero, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Magdalenas de las Heras, SA (Aranda de Duero, Spain)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 2 December 2020 (Case R 1019/2020-5) relating to opposition proceedings between Magdalenas de las Heras and Construcciones Electromecánicas Sabero.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Construcciones Electromecánicas Sabero, SL to pay the costs.

(1) OJ C 138, 19.4.2021.

Judgment of the General Court of 12 January 2022 — Laboratorios Ern v EUIPO — Malpricht (APIRETAL)

(Case T-160/21) ([1])

(EU trade mark — Revocation proceedings — Word mark APIRETAL — Declaration of revocation — No genuine use — No proper reasons for non-use — Article 58(1)(a) of Regulation (EU) 2017/1001)

(2022/C 119/52)

Language of the case: English

Parties

Applicant: Laboratorios Ern, SA (Barcelona, Spain) (represented by: T. González Martínez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: T. Frydendahl and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ingrid Malpricht (Ludwigshafen am Rhein, Germany) (represented by: M.-C. Simon, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 20 January 2021 (Case R 1004/2020 4), relating to revocation proceedings between Ms Malpricht and Laboratorios Ern.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Laboratorios Ern, SA to pay the costs.

([1]) OJ C 206, 31.5.2021.

Judgment of the General Court of 12 January 2022 — Neolith Distribution v EUIPO (Representation of an ornamental pattern)

(Case T-259/21) ([1])

(EU trade mark — Application for an EU pattern mark — Representation of an ornamental pattern — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2022/C 119/53)

Language of the case: Spanish

Parties

Applicant: Neolith Distribution, SL (Madrid, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 12 March 2021 (Case R 2155/2020-4), regarding an application for registration of a pattern sign representing an ornamental pattern as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Neolith Distribution, SL, to pay the costs.

(1) OJ C 252, 28.6.2021.

Judgment of the General Court of 19 January 2022 — Estetica Group Iwona Michalak v EUIPO (PURE BEAUTY)

(Case T-270/21) (1)

(EU trade mark — Application for the EU figurative mark PURE BEAUTY — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2022/C 119/54)

Language of the case: Polish

Parties

Applicant: Estetica Group Iwona Michalak (Warsaw, Poland) (represented by: P. Gutowski, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 March 2021 (Case R 1456/2020-5) concerning an application for registration of the figurative sign PURE BEAUTY as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Estetica Group Iwona Michalak to pay the costs.

(1) OJ C 278, 12.7.2021.

Judgment of the General Court of 26 January 2022 — CNH Industrial v EUIPO (SOILXPLORER)

(Case T-300/21) (1)

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

(2022/C 119/55)

Language of the case: English

Parties

Applicant: CNH Industrial NV (Amsterdam, Netherlands) (represented by: L. Axel Karnøe Søndergaard, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 26 March 2021 (Case R 386/2021-5), relating to an application for registration of the word sign SOILXPLORER as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders CNH Industrial NV to pay the costs.

(1) OJ C 297, 26.7.2021.

Judgment of the General Court of 26 January 2022 — CNH Industrial v EUIPO (CROPXPLORER)

(Case T-301/21) (1)

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

(2022/C 119/56)

Language of the case: English

Parties

Applicant: CNH Industrial NV (Amsterdam, Netherlands) (represented by: L. Axel Karnøe Søndergaard, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 26 March 2021 (Case R 387/2021-5), relating to an application for registration of the word sign CROPXPLORER as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders CNH Industrial NV to pay the costs.

(1) OJ C 297, 26.7.2021.

Order of the General Court of 4 January 2022 — CR and CT v ECB

(Case T-730/19) (1)

(Economic and monetary policy — Applicant having ceased to reply to the Court's requests — No need to adjudicate)

(2022/C 119/57)

Language of the case: English

Parties

Applicants: CR, CT (represented by: O. Behrends, lawyer)

Defendant: European Central Bank (represented by: E. Koupepidou, A. Lefterov and F. Bonnard, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of the ECB's assessment of 15 August 2019 in which it found that PNB Banka AS was failing or likely to fail within the meaning of Article 18(1) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

Operative part of the order

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

2. There is no longer any need to adjudicate on the application for leave to intervene submitted by the Republic of Latvia.

3. CR and CT shall bear their own costs and shall pay the costs incurred by the European Central Bank (ECB), with the exception of those relating to the application for leave to intervene.

4. CR and CT, the ECB and the Republic of Latvia shall each bear their own costs relating to the application for leave to intervene.

(1) OJ C 27, 27.1.2020.

Order of the General Court of 19 January 2022 — FC v EASO

(Case T-148/20) (1)

(Action for annulment — Civil service — Members of the temporary staff — Refusal to provide a certificate of good character — Refusal to accept a withdrawal of the resignation — Purely confirmatory act — Time limit for complaints — Irregularity in the pre-litigation procedure — Inadmissibility — Action for damages — Close link with the claim for annulment — Inadmissibility)

(2022/C 119/58)

Language of the case: Greek

Parties

Applicant: FC (represented by: V. Christianos, lawyer)

Defendant: European Asylum Support Office (represented by: P. Eyckmans and M. Stamatopoulou, acting as Agents, and by A. Guillerme and T. Bontinck, lawyers)

Re:

Application under Article 270 TFEU seeking, first, annulment of EASO's decision of [*confidential*] refusing to accept the applicant's withdrawal of her resignation and rejecting the request for a certificate of good character and the decision rejecting the applicant's complaint against it and, second, compensation for the material and non-material damage allegedly suffered.

Operative part of the order

1. The action is dismissed as inadmissible.

2. FC shall bear her own costs.

(1) OJ C 175, 25.5.2020.

Order of the General Court of 21 December 2021 — Luna Italia v EUIPO — Luna (LUNA SPLENDIDA)

(Case T-571/20) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark LUNA SPLENDIDA — Earlier EU figurative mark Luna — Relative ground for refusal — Article 53(1)(a) and Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 60(1)(a) and Article 8(1)(b) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2022/C 119/59)

Language of the case: English

Parties

Applicant: Luna Italia Srl (Cantù, Italy) (represented by: N. Papakostas, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Luna AE (Agios Stefanos, Greece) (represented by: M. Sioufas, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 26 June 2020 (Case R 1895/2019 5), concerning invalidity proceedings between Luna and Luna Italia.

Operative part of the order

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

2. Luna Italia Srl is ordered to bear, in addition to its own costs, those incurred by the European Union Intellectual Property Office (EUIPO) and Luna AE.

([1]) OJ C 44, 8.2.2021.

Order of the General Court of 22 December 2021 — Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology v Commission

(Case T-604/20) ([1])

(Dumping — Imports of aluminium extrusions originating in China — Act making imports subject to registration — Provisional anti-dumping duty — Suspension of the registration obligation — Definitive anti-dumping duty — No longer any interest in bringing proceedings — No need to adjudicate)

(2022/C 119/60)

Language of the case: Italian

Parties

Applicants: Guangdong Haomei New Materials Co. Ltd (Qingyuan, China) and Guangdong King Metal Light Alloy Technology Co. Ltd (Yuan Tan Town, China) (represented by: M. Maresca, C. Malinconico, D. Maresca, A. Cerruti, A. Malinconico, G. La Malfa Ribolla, D. Guardamagna and M. Guardamagna, lawyers)

Defendant: European Commission (represented by: G. Luengo, P. Němečková and F. Tomat, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of Commission Implementing Regulation (EU) 2020/1215 of 21 August 2020 making imports of aluminium extrusions originating in the People's Republic of China subject to registration (OJ 2020 L 275, p. 16).

Operative part of the order

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

2. Guangdong Haomei New Materials Co. Ltd and Guangdong King Metal Light Alloy Technology Co. Ltd shall bear their own costs and shall pay the costs incurred by the European Commission.

3. Guangdong Haomei New Materials, Guangdong King Metal Light Alloy Technology, the Commission and Airoldi Metalli SpA shall each bear their own costs relating to the application for leave to intervene.

([1]) OJ C 390, 16.11.2020.

Order of the General Court of 22 December 2021 — Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology v Commission

(Case T-725/20) ([1])

(Dumping — Imports of aluminium extrusions originating in China — Act imposing a provisional anti-dumping duty — Act not open to challenge — Preparatory act — Inadmissibility — Definitive anti-dumping duty — No longer any interest in bringing proceedings — No need to adjudicate)

(2022/C 119/61)

Language of the case: Italian

Parties

Applicants: Guangdong Haomei New Materials Co. Ltd (Qingyuan, China) and Guangdong King Metal Light Alloy Technology Co. Ltd (Yuan Tan Town, China) (represented by: M. Maresca, C. Malinconico, D. Guardamagna, M. Guardamagna, D. Maresca, A. Cerruti, A. Malinconico and G. La Malfa Ribolla, lawyers)

Defendant: European Commission (represented by: G. Luengo, P. Němečková and F. Tomat, acting as Agents)

Re:

Application under Article 263 TFEU for, primarily, annulment of Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ 2020 L 336, p. 8), and, in the alternative, annulment of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Operative part of the order

1. The action is dismissed as inadmissible.

2. Guangdong Haomei New Materials Co. Ltd and Guangdong King Metal Light Alloy Technology Co. Ltd shall pay the costs.

([1]) OJ C 44, 8.2.2021.

Order of the General Court of 17 January 2022 — Car-Master 2 v Commission

(Case T-743/20) ([1])

(Competition — Agreements, decisions and concerted practices — Motor vehicle repair market in Poland — Decision rejecting a complaint — Article 13(2) of Regulation (EC) No 1/2003 — Case dealt with by a national competition authority — Action lacking any foundation in law)

(2022/C 119/62)

Language of the case: Polish

Parties

Applicant: Car-Master 2 sp. z o.o. sp.k. (Krakow, Poland) (represented by: M. Miśkowicz, lawyer)

Defendant: European Commission (represented by: G. Meessen, J. Szczodrowski and I. Zaloguin, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2020) 7369 final of 22 October 2020 (Case AT.40665 — Toyota Motor Poland) rejecting the complaint lodged by the applicant alleging infringements of Article 101 TFEU.

Operative part of the order

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

2. Car-Master 2 sp. z o.o. sp.k shall pay the costs.

([1]) OJ C 72, 1.3.2021.

Order of the General Court of 14 December 2021 — McCord v Commission

(Cases T-161/21 and T-161/21 AJ I) ([1])

(Action for annulment — Action for failure to act — Draft Commission regulation making the exportation of certain products outside the European Union subject to the production of an export authorisation — Commission proposal to make the exportation of COVID-19 vaccines to Northern Ireland subject to the production of an export authorisation pursuant to Article 16 of the Protocol on Ireland/Northern Ireland to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community — Absence of a published policy of the circumstances in which the European Union will trigger Article 16 of that protocol — Manifest inadmissibility in part — Action in part manifestly lacking any foundation in law)

(2022/C 119/63)

Language of the case: English

Parties

Applicant: Raymond Irvine McCord (Belfast, United Kingdom of Great Britain and Northern Ireland) (represented by: C. O'Hare, Solicitor)

Defendant: European Commission (represented by: H. Krämer and F. Ronkes Agerbeek, acting as Agents)

Re:

Application, first, under Article 263 TFEU for annulment of the draft Commission regulation of 29 January 2021 intended, inter alia, to make the exportation of COVID-19 vaccines to Northern Ireland subject to the production of an export authorisation pursuant to Article 16 of the Protocol on Ireland/Northern Ireland to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7), and of the Commission's decision not to have published a policy on the circumstances in which it will trigger Article 16 of that protocol and, secondly, application under Article 265 TFEU for a declaration that the Commission unlawfully failed to adopt and publish such a policy.

Operative part of the order

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

2. The application for legal aid is dismissed.

3. Mr Raymond Irvine McCord shall pay the costs.

(1) OJ C 252, 28.6.2021.

Order of the General Court of 21 December 2021 — Kewazo v EUIPO (Liftbot)

(Case T-205/21) (1)

(EU trade mark — Application for EU word mark Liftbot — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001 — Action manifestly lacking any foundation in law)

(2022/C 119/64)

Language of the case: German

Parties

Applicant: Kewazo GmbH (Garching, Germany) (represented by: P. Baronikians, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 2 February 2021 (Case R 1160/2020-5), concerning an application for registration of the word sign Liftbot as an EU trade mark.

Operative part of the order

1. The action is dismissed.

2. Kewazo GmbH shall pay the costs.

(1) OJ C 217, 7.6.2021.

Order of the General Court of 22 December 2021 — D&A Pharma v EMA

(Case T-381/21) (1)

(Action for annulment — Medicinal products for human use — Application for marketing authorisation for the medicinal product Hopveus — Non-renewal of a permanent scientific advisory group — No interest in bringing proceedings — Inadmissibility)

(2022/C 119/65)

Language of the case: French

Parties

Applicant: Debregeas et associés Pharma (D&A Pharma) (Paris, France) (represented by: N. Viguié and D. Krzisch, lawyers)

Defendant: European Medicines Agency (represented by: C. Bortoluzzi, H. Kerr, S. Marino and S. Drosos, acting as Agents)

Re:

APPLICATION pursuant to Article 263 TFEU seeking annulment of the decision of EMA not to renew the scientific advisory group on psychiatry within the Committee for Human Medicinal Products, revealed implicitly by the public call for expression of interest for experts to become members of EMA's scientific advisory groups and the press release of EMA of 5 May 2021.

Operative part of the order

1. The action is dismissed as being inadmissible.

2. There is no longer any need to adjudicate on the application for leave to intervene submitted by the European Parliament.

3. Debregeas et associés Pharma (D & A Pharma) shall pay the costs.

4. The Parliament shall bear its own costs relating to its application for leave to intervene.

(1) OJ C 329, 16.8.2021.

Order of the General Court of 4 January 2022 — Vivostore v EUIPO — Linda (VIVO LIFE)

(Case T-540/21) (1)

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

(2022/C 119/66)

Language of the case: German

Parties

Applicant: Vivostore Ltd (Winscombe, United Kingdom) (represented by: T. Urek, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Eberl and E. Markakis, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Linda AG (Cologne, Germany) (represented by: I. Jung, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 6 July 2021 (Case R 1587/2020-2), relating to opposition proceedings between Linda and Vivostore.

Operative part of the order

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

2. Vivostore and Linda AG shall bear their own costs and each pay half of the costs of the European Union Intellectual Property Office (EUIPO).

(1) OJ C 431, 25.10.2021.

Order of the General Court of 21 January 2022 — Santos v EUIPO (Shape of a citrus press)

(Case T-574/21) ([1])

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2022/C 119/67)

Language of the case: French

Parties

Applicant: Santos (Vaulx-en-Velin, France) (represented by: C. Bey, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 July 2021 (Case R 281/2020-1), relating to an application for registration of a three-dimensional sign consisting of the shape of a citrus press as an EU trade mark.

Operative part of the order

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

2. The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay the costs incurred by Santos.

([1]) OJ C 462, 15.11.2021.

Order of the President of the General Court of 22 December 2021 — Civitta Eesti v Commission

(Case T-665/21 R)

(Interim relief — Public supply contracts — Legal, socio-economic and technical assistance in the fields of energy and mobility and transport — Application for interim measures — No urgency)

(2022/C 119/68)

Language of the case: English

Parties

Applicant: Civitta Eesti AS (Tartu, Estonia) (represented by: C. Ginter, lawyer)

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

Re:

Application under Articles 278 TFEU and 279 TFEU to suspend the operation of the decision of the Commission of 12 October 2021 rejecting the applicant's tender for Lot 5 of tendering procedure MOVE/2020/OP/0008, suspend the signature of the contracts to be concluded between the Commission and the other tenderers for Lot 5 of that procedure and, where appropriate, suspend the operation of those contracts.

Operative part of the order

1. The application for interim measures is dismissed.

2. The order of 22 October 2021, Civitta Eesti v Commission (T-665/21 R), is revoked.

3. The costs are reserved.

Order of the President of the General Court of 26 January 2022 — ICA Traffic v Commission

(Case T-717/21 R)

(Application for interim relief — Public procurement — Supply of disinfection robots — Application for interim measures — No urgency)

(2022/C 119/69)

Language of the case: German

Parties

Applicant: ICA Traffic GmbH (Dortmund, Germany) (represented by: S. Hertwig and C. Vogt, lawyers)

Defendant: European Commission (represented by: L. Mantl, B. Araujo Arce and M. Ilkova, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking, first, that the Commission be ordered to not continue with the purchase, announced in its press release of 21 September 2021, of 100 additional disinfection robots on the ground that one of the framework contracts for the supply of a maximum of 200 disinfection robots has ceased to have effect and, second, the grant of any other interim measure necessary to maintain the status quo.

Operative part of the order

1. The application for interim relief is dismissed.

2. The costs are reserved.

Order of the President of the General Court of 24 January 2022 — Společnost pro eHealth databáze v Commission

(Case T-731/21 R)

(Application for interim measures — Grant agreement concluded in the context of the Competitiveness and Innovation Framework Programme (2007-2013) — Recovery of sums paid — Application for suspension of operation — No urgency)

(2022/C 119/70)

Language of the case: Czech

Parties

Applicant: Společnost pro eHealth databáze, a.s. (Prague, Czech Republic) (represented by: P. Konečný, lawyer)

Defendant: European Commission (represented by: J. Estrada de Solà, B. Araujo Arce and J. Hradil, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking suspension of the operation of Commission Decision C(2021) 6597 final of 2 September 2021 concerning the recovery from the applicant of a sum of EUR 861 263, together with default interest and an amount for each additional day of delay as from 1 October 2021.

Operative part of the order

1. The application for interim measures is rejected.

2. The costs are reserved.

Action brought on 10 January 2022 — uwe JetStream GmbH/EUIPO (JET STREAM)

(Case T-14/22)

(2022/C 119/71)

Language of the case: French

Parties

Applicant: uwe JetStream GmbH (Schwäbisch Gmünd, Germany) (represented by: J. Schneider, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the word mark 'JET STREAM' — Application for registration No 20 809 111

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 November 2021 in Case R 1092/2021-4

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision, as well as the first instance EUIPO decision of 15 December 2020 and of 29 April 2021;

— allow the extension of the protection of international registration No 0809111 for the purposes of its registration in the European Union;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 18 January 2022 — Polynt v ECHA

(Case T-29/22)

(2022/C 119/72)

Language of the case: English

Parties

Applicant: Polynt SpA (Scanzorosciate, Italy) (represented by: C. Mereu and S. Abdel-Qader, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— annul the Decision of the ECHA Board of Appeal of 9 November 2021in case A-009-2020;

— declare — or order ECHA to adopt a new decision declaring — that the applicant is released from the obligation to provide any further information to ECHA following the cease of production due to force majeure; and

— order ECHA to pay all costs of these proceedings and those incurred by the appellant in the proceedings before the Board of Appeal and a refund of the fees paid under those 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, alleging that the Board of Appeal erred in law, when it held that the cease of manufacture of the substance 1,3-dioxo-2-benzofuran-5-carboxylic acid with nonan-1-ol (EC Number 941-303-6) (hereinafter '"the substance') for reasons of force majeure does not relieve the appellant from the obligation to provide the information requested in the initial compliance check decision on the substance.

2. Second plea in law, alleging that the Board of Appeal distorted the evidence on record and on that basis (i) reached a wrong legal conclusion and (ii) required the applicant to bring evidence by reference to unsubstantiated hypothesis.

3. Third plea in law, alleging that the Board of Appeal wrongly interpreted and applied Articles 42(1) and 50(2) of Regulation (EC) N° 1907/2006 ('REACH'). ([1]).

4. Fourth plea in law, alleging that the Board of Appeal wrongly interpreted and applied Articles 5 and 6 of the REACH.

5. Fifth plea in law, alleging that the Board of Appeal wrongly held that the guidance available on the website of ECHA on the consequences of the cease of manufacture did not give the applicant precise assurances and that ECHA did not breach the principles of legal certainty and the protection of legitimate expectations.

6. Sixth plea in law, alleging that the Board of Appeal wrongly interpreted and applied the principle of proportionality and the right to good administration.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) N° 793/93 and Commission Regulation (EC) N° 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

Action brought on 18 January 2022 — Sanoptis v EUIPO — Synoptis Pharma (SANOPTIS)

(Case T-30/22)

(2022/C 119/73)

Language of the case: English

Parties

Applicant: Sanoptis Sàrl (Luxembourg, Luxembourg) (represented by: S. Rost, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Synoptis Pharma sp. z o.o. (Warsaw, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark SANOPTIS — Application for registration No 17 934 770

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 18 November 2021 in Case R 850/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and to pay those incurred by the applicant;

— orders the intervener to bear its own costs.

Pleas in law

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in the failure to state reasons in the contested decision;

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

Action brought on 19 January 2022 — Vallegre v EUIPO — Joseph Phelps Vineyards (PORTO INSÍGNIA)

(Case T-33/22)

(2022/C 119/74)

Language of the case: English

Parties

Applicant: Vallegre, Vinhos do Porto, SA (Sabrosa, Portugal) (represented by: E. Armero Lavie and G. Marín Raigal, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Joseph Phelps Vineyards LLC (St. Helena, California, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark PORTO INSÍGNIA — Application for registration No 16 393 688

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 October 2021 in Case R 894/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to pay the costs.

Plea in law

Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council in the erroneous assessment of the conflicting marks.

Action brought on 20 January 2022 — Kaminski v EUIPO — Polfarmex (SYRENA)

(Case T-35/22)

(2022/C 119/75)

Language of the case: English

Parties

Applicant: Arkadiusz Kaminski (Etobicoke, Ontario, Canada) (represented by: W. Trybowski, E. Pijewska and M. Mazurek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Polfarmex S.A. (Kutno, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark SYRENA — European Union trade mark (EUTM) No 9 262 767

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 26 October 2021 in jointed Cases R 1952/2020-1 and R 1953/2020-1

Form of order sought

The applicant claims that the Court should:

— alter the contested decision in its part concerning the appeal in case R 1952/2020-1, that is, with regard to points 2, 3, 4 and 6 of the sentence (operative part) of the contested decision, by: dismissal of the appeal in case R 1952/2020-1, declaration that the trade mark 'SYRENA' (EUTM 9 262 767) remains registered for 'cars' in Class 12 and ordering Polfarmex S.A. to bear the applicant's costs in the appeal proceedings in case R 1952/2020-1;

— order that the costs of the proceedings are to be paid by EUIPO and by Polfarmex;

alternatively:

— annul the contested decision in the above mentioned part, i.e. to the extent that the Board of Appeal revoked the registration of the trade mark 'SYRENA' (EUTM 9 262 767) in respect of 'cars' other than 'racing cars' in Class 12;

— order that the costs of the proceedings are to be paid by EUIPO and by Polfarmex.

Pleas in law

— Infringement of Article 72(6) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Articles 18(1), 58(1)(a) and (2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Articles 18(1), 58(1)(a) and (2) and 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 January 2022 — Sanrio v EUIPO — Miroglio Fashion (SANRIO CHARACTERS)

(Case T-43/22)

(2022/C 119/76)

Language of the case: English

Parties

Applicant: Sanrio Co. Ltd (Tokyo, Japan) (represented by: V. Schmitz-Fohrmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Miroglio Fashion Srl (Alba, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark SANRIO CHARACTERS — Application for registration No 12 565 974

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 16 November 2021 in Case R 2460/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision to the extent the opposition was upheld and European Union trade mark application No 12 565 974 was rejected and to reject the opposition in its entirety;

— order EUIPO to bear the costs of the proceedings.

Plea in law

— The Board of Appeal made an incorrect global assessment of the likelihood of confusion between the trade marks.

Action brought on 24 January 2022 — International Masis Tabak v EUIPO — Philip Morris Brands (Representation of a pack of cigarettes)

(Case T-44/22)

(2022/C 119/77)

Language of the case: English

Parties

Applicant: International Masis Tabak LLC (Masis, Armenia) (represented by: C. Bercial Arias and K. Dimidjian-Lecompte, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Philip Morris Brands Sàrl (Neuchâtel, Switzerland)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark (Representation of a pack of cigarettes) — International registration designating the European Union No 1 434 506

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 15 November 2021 in Case R 261/2021-5

Form of order sought

The applicant claims that the Court should:

— upheld the appeal and annul the contested decision;

— order EUIPO and the intervener, if it was the case, to bear the costs incurred by the applicant before the General Court.

Plea in law

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

Action brought on 28 January 2022 — Santos v EUIPO (Shape of a citrus press)

(Case T-51/22)

(2022/C 119/78)

Language of the case: French

Parties

Applicant: Santos (Vaulx-en-Velin, France) (represented by: C. Bey, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for a three-dimensional EU trade mark (Shape of a citrus press), claiming the colours (yellow Pantone 1235 C; green NCS S 3050-G50Y) — Application for registration No 18 005 754

Contested decision: Decision of the First Board of Appeal of EUIPO of 29 November 2021 in Case R 281/2020-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those incurred by the applicant for the purposes of the proceedings before the First Board of Appeal of EUIPO.

Pleas in law

— Infringement of Article 165(2) and (5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, Article 36 of Commission Delegated Regulation (EU) 2018/625 and Article 7 of Decision 2020-7 of the Presidium of the Boards of Appeal concerning the organisation of the Boards;

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

Action brought on 23 January 2022 — Swords v Commission and ECDC

(Case T-55/22)

(2022/C 119/79)

Language of the case: English

Parties

Applicant: Patrick Swords (Dublin, Ireland) (represented by: G. M. Byrne, Barrister-at-law)

Defendants: European Commission and European Centre for Disease Prevention and Control

Form of order sought

The applicant claims that the Court should:

— annul the ECDC's risk assessment of 24 November 2021, ECDC's statement of 24 November 2021, ECDC's threat assessments of 26 November 2021 and 2 December 2021 and ECDC's risk assessment of 15 December 2021;

— declare that the Commission's communication to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 1 December 2021 as well as the coordinated approach of the Commission and the Health Security Committee of 10 December 2021 are inapplicable pursuant Article 277 TFUE; and

— order the defendants 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 that ECDC failed to follow essential procedural requirements, including its own internal rules and code of good administrative behaviour. It is argued that ECDC disregarded recognized risk assessment methodology, failed to accord with the requisite standards, including that of scientific excellence and independence, and failed to fulfil its legal obligations in the production and publishing of the contested acts. It is further argued that the contested risk assessment reports are grossly misleading and alarmist, the effects of which were foreseeable to the ECDC and a foregone conclusion due to the reliance placed upon those reports by Union institutions and Member States alike.

2. Second plea in law, alleging that ECDC infringed the EU Treaties, ignored the rule of law, violated his fundamental rights by failing to fulfil its duties and obligations set out in the EU Treaties in the production and publication of the contested acts.

3. Third plea in law, alleging that in producing and publishing the contested acts, the ECDC infringed general principles of EU law including the principles of proportionality, legal certainty and legitimate expectation, as well as infringing the applicant's fundamental rights.

4. Forth plea in law, alleging that ECDC misused its powers.

5. The applicant also raises an objection of inapplicability, pursuant Article 277 TFUE, in respect of the Commission's communication to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 1 December 2021 as well as the coordinated approach of the Commission and the Health Security Committee of 10 December 2021. It is argued that since the aforementioned acts were formulated and published on foot of the contested ECDC's risk assessments, it follows that they have been rendered unlawful.

Action brought on 28 January 2022 — Hungary v Commission

(Case T-57/22)

(2022/C 119/80)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M. Z. Fehér and G. Koós, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2017/2014 of 8 November 2017 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), ([1]) in so far as it relates to Hungary and excludes from European Union financing the financial assistance established for the financial year 2018-2019 in relation to the deficiencies in the functioning of the key controls 'checks to establish the access to the aid claimed' and 'correct calculation of the aid including administrative reductions and penalties';

— order the Commission to pay the costs.

Pleas in law and main arguments

The Hungarian Government maintains that Hungary has not infringed the provisions relating to checks to establish the access to the aid claimed and that the value of the marketed production of each producer organisation was not incorrectly calculated. The practice followed by Hungary is in accordance with Articles 42 and 50(7) of Regulation 543/2011. ([2]) Similarly, there are no deficiencies in relation to the checks to establish the eligibility of operational programmes and the Hungarian authorities acted in accordance with Article 104(2) of Regulation 543/2011.

Hungary has implemented adequate corrective measures in relation to the findings concerning the second deficiency in the functioning of the key control ('correct calculation of the aid including administrative reductions and penalties') and, for that reason, the application of the financial correction is not justified in respect of the expenditure relating to the financial years 2018 and 2019.

([1]) OJ 2021 L 413, p. 10.

([2]) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1).

Action brought on 31 January 2022 — OD v Eurojust

(Case T-61/22)

(2022/C 119/81)

Language of the case: French

Parties

Applicant: OD (represented by: N de Montigny, lawyer)

Defendant: European Union Agency for Criminal Justice Cooperation

Form of order sought

The applicant claims that the Court should:

— annul the decision of 17 June 2021;

— annul, in so far as necessary, inasmuch as it provides an additional statement of reasons, the decision of 21 October 2021;

— order the Agency to provide the applicant with compensation in the sum of EUR 35 000 *ex aequo et bono* for psychological, material and non-material harm;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of confidentiality connected with the request for assistance and a lack of appearance of impartiality as regards the treatment of the applicant's file by Eurojust.

2. Second plea in law, alleging a lack of competence to take the contested decision on the part of the Administrative Director, based on his having a conflict of interest, his lack of impartiality towards the applicant, or at least a lack of appearance of impartiality on his part, and infringement of the rules for replacing an authority empowered to conclude contracts of employment in the event of inability to intervene.

3. Third plea in law, alleging abuse of process and misuse of powers by the Administrative Director.

4. Fourth plea in law, alleging that the transfer of the applicant in the alleged interest of the service was carried out in breach of the duty to have regard for the welfare of staff, without taking into consideration either the interest of the member of staff or the interest of the service and without observance of the right to be heard and the need to state the reasons for the decision affecting the interests of the member of staff concerned.

Order of the General Court of 21 December 2021 — El Corte Inglés v EUIPO — Europull (GREEN COAST)

(Case T-361/20) ([1])

(2022/C 119/82)

Language of the case: English

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

([1]) OJ C 255, 3.8.2020.

Order of the General Court of 21 December 2021 — Senseon Tech v EUIPO — Accuride International (SENSEON)

(Case T-724/20) ([1])

(2022/C 119/83)

Language of the case: English

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

([1]) OJ C 44, 8.2.2021.

Order of the General Court of 27 January 2022 — About You v EUIPO — Safe 1 Immobilieninvest (Y/O/U), (Y/O/U YOUR ORIGINAL U) and (/Y/O/U YOUR ORIGINAL U)

(Joined Cases T-23/21, T-50/21 and T-51/21) ([1])

(2022/C 119/84)

Language of the case: English

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

([1]) OJ C 79, 8.3.2021.

Order of the General Court of 13 January 2022 — Flybe v Commission

(Case T-380/21) ([1])

(2022/C 119/85)

Language of the case: English

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

([1]) OJ C 338, 23.8.2021.

Order of the General Court of 20 January 2022 — Tralux and Others v Parliament

(Case T-488/21) ([1])

(2022/C 119/86)

Language of the case: French

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

([1]) OJ C 422, 18.10.2021.

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