

Official Journal of the European Union

C 296



English edition

Information and Notices

Volume 59

16 August 2016

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IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
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COURT OF JUSTICE OF THE EUROPEAN UNION

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(2016/C 296/01)

Last publication

OJ C 287, 8.8.2016

Past publications

OJ C 279, 1.8.2016

OJ C 270, 25.7.2016

OJ C 260, 18.7.2016

OJ C 251, 11.7.2016

OJ C 243, 4.7.2016

OJ C 232, 27.6.2016

These texts are available on:
EUR-Lex: <http://eur-lex.europa.eu>

GENERAL COURT

Method of designation of the Judge replacing a Judge prevented from acting

(2016/C 296/02)

On 13 July 2016, the General Court decided that, with effect from 20 September 2016, where a Judge is prevented from acting in the circumstances referred to in the second sentence of Article 17(2) and in the second sentence of Article 24(2) respectively of the Rules of Procedure, the President is to designate the Vice-President to replace the Judge prevented from acting.

If the Vice-President is prevented from acting, the President of the General Court is to designate the Judge replacing the Judge prevented from acting following the order laid down in Article 8 of the Rules of Procedure, with the exception of the Presidents of Chambers. However, in order to ensure an even spread of the workload, the President of the General Court may derogate from that order.

Composition of the Grand Chamber

(2016/C 296/03)

On 13 July 2016, the General Court decided that, for the period from 20 September 2016 to 31 August 2019, in accordance with Article 15(2) of the Rules of Procedure, the fifteen Judges of which the Grand Chamber is composed are to be the President of the General Court, the Vice-President, the nine Presidents of Chambers, the two Judges sitting in the formation of three Judges initially seised of the case and the two Judges who would additionally have had to sit in the case in question if it had been assigned to a Chamber of five Judges.

Criteria for the assignment of cases to Chambers

(2016/C 296/04)

At its plenum on 11 May 2016, the General Court laid down, in accordance with Article 25 of the Rules of Procedure, the following criteria for the assignment of cases to Chambers:

1. Appeals against decisions of the Civil Service Tribunal shall be assigned as soon as possible after the application has been lodged, without prejudice to any subsequent application of Article 28 of the Rules of Procedure, to the Appeal Chamber composed of the members of that chamber still in office after 19 September 2016, irrespective of their capacity as President, Vice-President or President of a Chamber.
2. Cases other than those referred to in paragraph 1 shall be assigned to Chambers of three Judges as soon as possible after the application has been lodged and without prejudice to any subsequent application of Article 28 of the Rules of Procedure.

The cases referred to in this paragraph shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following four separate rotas:

- for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures;

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- for cases concerning intellectual property rights referred to in Title IV of the Rules of Procedure;
 - for civil service cases;
 - for all other cases.

The President of the General Court may derogate from these rotas in order to take account of a connection between cases or with a view to ensuring an even spread of the workload.

In the light of the decision of the General Court, taken at its plenum on 15 June 2016, on the conduct of the activity of the General Court from 1 to 19 September 2016 (OJ C 270, 2016, p. 2), providing that the decision of the General Court of 23 September 2013 on the criteria for assigning cases to Chambers (OJ C 313, 2013, p. 4) will continue to apply between 1 and 19 September 2016, the criteria for the assignment of cases to Chambers set out above shall be laid down for the period from 20 September 2016 to 31 August 2019.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 9 June 2016 — *Compañía Española de Petróleos (CEPSA) SA v European Commission*

(Case C-608/13 P) ⁽¹⁾

(Appeal — Agreements, decisions and concerted practices — Article 81 EC — Spanish market for penetration bitumen — Market sharing and price coordination — Excessive duration of the proceedings before the General Court of the European Union — Excessive duration of the procedure before the European Commission — Appeal on the costs)

(2016/C 296/05)

Language of the case: Spanish

Parties

Appellant: Compañía Española de Petróleos (CEPSA) SA (represented by: O. Armengol i Gasull and J. M. Rodríguez Cárcamo, abogados)

Other party to the proceedings: European Commission (represented by: C. Urraca Caviedes and F. Castillo de la Torre, acting as Agents, and by A.J. Rivas, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders *Compañía Española de Petróleos (CEPSA) SA* to pay the costs.

⁽¹⁾ OJ C 24, 25.1.2014.

Judgment of the Court (Fifth Chamber) of 9 June 2016 — *Productos Asfálticos (PROAS) SA v European Commission*

(Case C-616/13 P) ⁽¹⁾

(Appeal — Agreements, decisions and concerted practices — Article 81 EC — Spanish market for penetration bitumen — Market sharing and price coordination — Excessive duration of the proceedings before the General Court of the European Union — Excessive duration of the procedure before the European Commission — Appeal on the costs)

(2016/C 296/06)

Language of the case: Spanish

Parties

Appellant: Productos Asfálticos (PROAS) SA (represented by: C. Fernández Vicién, abogada)

Other party to the proceedings: European Commission (represented by: C. Urraca Caviedes and F. Castillo de la Torre, acting as Agents, and by A.J. Rivas, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders *Productos Asfálticos (PROAS) SA* to pay the costs.

⁽¹⁾ OJ C 24, 25.1.2014.

Judgment of the Court (Fifth Chamber) of 9 June 2016 — *Repsol Lubricantes y Especialidades SA, formerly Repsol Lubricantes YPF y Especialidades SA, Repsol Petróleo SA, Repsol SA v European Commission*

(Case C-617/13 P) ⁽¹⁾

(Appeal — Article 81 EC — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Market sharing and price coordination — Notice on immunity from fines and reduction of fines in cartel cases (2002) — Final paragraph of point 23(b) — Partial immunity from fines — Evidence of facts previously unknown to the Commission)

(2016/C 296/07)

Language of the case: Spanish

Parties

Appellants: Repsol Lubricantes y Especialidades SA, formerly Repsol Lubricantes YPF y Especialidades SA, Repsol Petróleo SA, Repsol SA (represented by: L. Ortiz Blanco, J. Buendía Sierra, M. Muñoz de Juan, A. Givaja Sanz and A. Lamadrid de Pablo, abogados)

Other party to the proceedings: European Commission (represented by: C. Urraca Caviedes and F. Castillo de la Torre, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders *Repsol Lubricantes y Especialidades SA, Repsol Petróleo SA and Repsol SA* to pay the costs.

⁽¹⁾ OJ C 24, 25.1.2014.

Judgment of the Court (Sixth Chamber) of 9 June 2016 (request for a preliminary ruling from the Gyulai törvényszék — Hungary) — *Eurospeed Ltd v Szegedi törvényszék*

(Case C-287/14) ⁽¹⁾

(Reference for a preliminary ruling — Road transport — Regulation (EC) No 561/2006 — Driver's liability for infringements of the obligation to use a tachograph)

(2016/C 296/08)

Language of the case: Hungarian

Referring court

Gyulai törvényszék

Parties to the main proceedings

Applicant: Eurospeed Ltd

Defendant: Szegedi törvényszék

Operative part of the judgment

Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 must be interpreted as not precluding national legislation which, instead of or in addition to the transport undertaking employing the driver, holds the driver liable for infringements of that regulation which he has himself committed.

⁽¹⁾ OJ C 303, 8.9.2014.

Judgment of the Court (Fourth Chamber) of 9 June 2016 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR v Finanzamt Krefeld

(Case C-332/14) ⁽¹⁾

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 77/388/EEC — Third subparagraph of Article 17(5) — Field of application — Deduction of input tax — Goods and services used for both taxable and exempt transactions (mixed-use goods and services) — Determination of the assignation of goods and services purchased for the construction, use, conservation and maintenance of a building that serves to carry out, in part, transactions in respect of which VAT is deductible and, in part, transactions in respect of which VAT is not deductible — Amendment of the national legislation laying down the method of calculating the deductible proportion — Article 20 — Adjustment of deductions — Legal certainty — Legitimate expectations)

(2016/C 296/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR

Defendant: Finanzamt Krefeld

Operative part of the judgment

1. Article 17(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that, where a building is used in order to carry out certain output transactions in respect of which value added tax is deductible and others in respect of which it is not, the Member States are not required to prescribe that the input goods and services used for the construction, acquisition, use, conservation or maintenance of that building must, in a first stage, be assigned to those various transactions when such assignation is difficult to carry out, in order that, in a second stage, only the deduction entitlement due in respect of those of the goods and services which are used both for certain transactions in respect of which value added tax is deductible and for others in respect of which it is not is determined by applying a turnover-based allocation key or, provided that this method guarantees a more precise determination of the deductible proportion, on the basis of floor area.

2. Article 20 of Sixth Directive 77/388, as amended by Directive 95/7, must be interpreted as requiring value-added-tax deductions made in respect of goods or services falling within Article 17(5) of that directive to be adjusted following the adoption, during the adjustment period in question, of a value-added-tax allocation key used to calculate those deductions that departs from the method provided for by the directive for determining the deduction entitlement.
3. The general principles of EU law of legal certainty and of the protection of legitimate expectations must be interpreted as not precluding applicable national legislation which does not expressly prescribe an input tax adjustment, within the meaning of Article 20 of the Sixth Directive, as amended by Directive 95/7, following amendment of the value-added-tax allocation key used to calculate certain deductions or lay down transitional arrangements although the input tax allocation applied by the taxable person in accordance with the allocation key applicable before that amendment had been recognised as generally reasonable by the supreme court.

⁽¹⁾ OJ C 329, 22.9.2014.

Judgment of the Court (Fourth Chamber) of 9 June 2016 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Derechos de Autor de Medios Audiovisuales (DAMA), Visual Entidad de Gestión de Artistas Plásticos (VEGAP) v Administración del Estado, Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los contenidos Digitales (Ametic)

(Case C-470/14) ⁽¹⁾

(Reference for a preliminary ruling — Intellectual and industrial property — Copyright and related rights — Directive 2001/29/EC — Article 5(2)(b) — Reproduction right — Exceptions and limitations — Private copying — Fair compensation — Financing from the General State Budget — Whether permissible — Conditions)

(2016/C 296/10)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Derechos de Autor de Medios Audiovisuales (DAMA), Visual Entidad de Gestión de Artistas Plásticos (VEGAP)

Defendants: Administración del Estado, Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los contenidos Digitales (Ametic)

Intervening parties: Artistas Intérpretes, Sociedad de Gestión (AISGE), Centro Español de Derechos Reprográficos (CEDRO), Asociación de Gestión de Derechos Intelectuales (AGEDI), Entidad de Gestión, Artistas, Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), Sociedad General de Autores y Editores (SGAE),

Operative part of the judgment

Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as precluding a scheme for fair compensation for private copying which, like the one at issue in the main proceedings, is financed from the General State Budget in such a way that it is not possible to ensure that the cost of that compensation is borne by the users of private copies.

⁽¹⁾ OJ C 7, 12.1.2015.

Judgment of the Court (First Chamber) of 8 June 2016 (request for a preliminary ruling from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf — Germany)) — Sabine Hünnebeck v Finanzamt Krefeld

(Case C-479/14) ⁽¹⁾

(Reference for a preliminary ruling — Free movement of capital — Articles 63 TFEU and 65 TFEU — Gift tax — Gift of immovable property situated within national territory — National law providing for a higher tax-free allowance for residents than for non-residents — Existence of an optional regime allowing any person resident in an EU Member State to benefit from the higher tax-free allowance)

(2016/C 296/11)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Sabine Hünnebeck

Defendant: Finanzamt Krefeld

Operative part of the judgment

Articles 63 TFEU and 65 TFEU must be interpreted as precluding rules of national law that provide, in respect of gifts between non-residents, in the absence of a specific request by the beneficiary, for recourse to a method of calculation of taxation by application of a lower tax-free allowance. Those articles also preclude, in any event, rules of national law which provide, at the request of such a beneficiary, for recourse to a method of calculation of taxation by application of a higher tax-free allowance which applies to gifts in respect of which at least one party is a resident, the exercise of that option by the non-resident beneficiary involving the aggregation, for the purpose of the calculation of tax due on the gift in question, of all the gifts received by that beneficiary from the same person over the course of the 10 years preceding and the 10 years following that gift.

⁽¹⁾ OJ C 34, 2.2.2015.

Judgment of the Court (Fifth Chamber) of 9 June 2016 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Jørn Hansson v Jungpflanzen Grünewald GmbH

(Case C-481/14) ⁽¹⁾

(Reference for a preliminary ruling — Intellectual and industrial property — Community plant variety rights — Regulation (EC) No 2100/94 — Infringement — Reasonable compensation — Compensation for damage — Costs of proceedings and out-of-court expenses)

(2016/C 296/12)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Jørn Hansson

Defendant: Jungpflanzen Grünewald GmbH

Operative part of the judgment

1. Article 94 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights must be interpreted as meaning that the right to compensation which it establishes for the holder of a plant variety right that has been infringed encompasses all the damage sustained by that holder, although that article cannot serve as a basis either for the imposition of a flat-rate 'infringer supplement' or, specifically, for the restitution of the profits and gains made by the infringer.
2. The concept of 'reasonable compensation', provided for in Article 94(1) of Regulation No 2100/94, must be interpreted as meaning that it covers, in addition to the fee that would normally be payable for licensed production, all damage that is closely connected to the failure to pay that fee, which may include, inter alia, payment of default interest. It is for the referring court to determine the circumstances which require that fee to be increased, bearing in mind that each of them may be taken into account only once for the purpose of determining the amount of reasonable compensation.
3. Article 94(2) of Regulation No 2100/94 must be interpreted as meaning that the amount of the damage referred to in that provision must be determined on the basis of the specific matters put forward in that regard by the holder of the variety infringed, if need be using a lump-sum method if those matters are not quantifiable. It is not contrary to that provision if the costs incurred in an unsuccessful interlocutory application are left out of account in the determination of that damage or if the out-of-court expenses incurred in connection with the main action are not taken into consideration. However, a condition for not taking those expenses into account is that the amount of the legal costs that are likely to be awarded to the victim of the infringement is not such, in view of the sums he has incurred in respect of out-of-court expenses and their utility in the main action for damages, as to deter him from bringing legal proceedings in order to enforce his rights.

⁽¹⁾ OJ C 34, 2.2.2015.

Judgment of the Court (Ninth Chamber) of 9 June 2016 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania)) — Vasile Budişan v Administraţia Judeţeană a Finanţelor Publice Cluj

(Case C-586/14) ⁽¹⁾

(Reference for a preliminary ruling — Internal taxation — Article 110 TFEU — Tax levied by a Member State on motor vehicles at the time of their first registration or of the first transfer of the right of ownership — Fiscal neutrality as between second-hand motor vehicles imported from other Member States and similar motor vehicles available on the domestic market)

(2016/C 296/13)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant: Vasile Budişan

Respondent: Administraţia Judeţeană a Finanţelor Publice Cluj

Operative part of the judgment

Article 110 TFEU must be interpreted as:

- not precluding a Member State from introducing a tax on motor vehicles which is levied on imported second-hand vehicles at the time of their first registration in that Member State and on vehicles already registered in that Member State at the time of the first transfer, within that Member State, of the ownership of those vehicles;
- precluding that Member State from exempting from that tax vehicles already registered and in respect of which a tax previously in force but found to be incompatible with EU law has been paid and not repaid.

⁽¹⁾ OJ C 107, 30.3.2015.

Judgment of the Court (Fifth Chamber) of 9 June 2016 (request for a preliminary ruling from the Budapest Környéki Törvényszék — Hungary) — proceedings against István Balogh

(Case C-25/15) ⁽¹⁾

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Right to interpretation and translation — Directive 2010/64/EU — Scope — Definition of criminal proceedings — Procedure laid down by a Member State for the recognition of a decision in criminal proceedings handed down by a court in another Member State and for the entry in the criminal record of the conviction handed down by that court — Costs in connection with the translation of that decision — Framework Decision 2009/315/JHA — Decision 2009/316/JHA)

(2016/C 296/14)

Language of the case: Hungarian

Referring court

Budapest Környéki Törvényszék

Party to the main proceedings

István Balogh

Operative part of the judgment

Article 1(1) of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings must be interpreted as meaning that that directive is not applicable to a national special procedure for the recognition by the court of a Member State of a final judicial decision handed down by a court of another Member State convicting a person for the commission of an offence.

Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315 must be interpreted as precluding the implementation of national legislation establishing such a special procedure.

⁽¹⁾ OJ C 127, 20.4.2015.

Judgment of the Court (Grand Chamber) of 7 June 2016 (request for a preliminary ruling from the Cour de cassation — France) — Sélina Affum v Préfet du Pas-de-Calais, Procureur général de la cour d'appel de Douai

(Case C-47/15) ⁽¹⁾

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2008/115/EC — Common standards and procedures for returning illegally staying third-country nationals — Police custody — National legislation providing for a sentence of imprisonment in the event of illegal entry — Situation of ‘transit’ — Multilateral readmission arrangement)

(2016/C 296/15)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Sélina Affum

Respondents: Préfet du Pas-de-Calais, Procureur général de la cour d'appel de Douai

Operative part of the judgment

1. Article 2(1) and Article 3(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that a third-country national is staying illegally on the territory of a Member State and therefore falls within the scope of that directive when, without fulfilling the conditions for entry, stay or residence, he passes in transit through that Member State as a passenger on a bus from another Member State forming part of the Schengen area and bound for a third Member State outside that area.

2. Directive 2008/115 must be interpreted as precluding legislation of a Member State which permits a third country national in respect of whom the return procedure established by that directive has not yet been completed to be imprisoned merely on account of illegal entry across an internal border, resulting in an illegal stay.

That interpretation also applies where the national concerned may be taken back by another Member State pursuant to an agreement or arrangement within the meaning of Article 6(3) of the directive.

⁽¹⁾ OJ C 118, 13.4.2015.

**Judgment of the Court (Grand Chamber) of 7 June 2016 (request for a preliminary ruling from the
Rechtbank Den Haag, sitting in Hertogenbosch — Netherlands) — Mehrdad Ghezelbash v
Staatssecretaris van Veiligheid en Justitie**

(Case C-63/15) ⁽¹⁾

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national — Article 12 — Issue of residence documents or visas — Article 27 — Remedies — Extent of judicial scrutiny)

(2016/C 296/16)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in Hertogenbosch

Parties to the main proceedings

Applicant: Mehrdad Ghezelbash

Defendant: Staatssecretaris van Veiligheid en Justitie

Operative part of the judgment

Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.

⁽¹⁾ OJ C 138, 27.4.2015.

Judgment of the Court (Fourth Chamber) of 9 June 2016 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Court of Public Administration and Labour, Hungary)) — Nutrivet D.O.O.E.L. v Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

(Case C-69/15) ⁽¹⁾

(References for a preliminary ruling — Environment — Waste — Transfers — Regulation (EC) No 1013/2006 — Article 2(35)(g)(iii) — Illegal shipment — Incorrect or inconsistent information entered in the document listed in Annex VII to that regulation — Article 50(1) — Penalties applicable in the event of infringement of the provisions of that regulation — Proportionality)

(2016/C 296/17)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Court of Public Administration and Labour, Hungary)

Parties to the main proceedings

Applicant: Nutrivet D.O.O.E.L.

Defendant: Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

Operative part of the judgment

1. Article 2(35)(g)(iii) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended by Commission Regulation (EU) No 255/2013 of 20 March 2013, must be interpreted as meaning that shipments of waste, such as those referred to in Annex III to that regulation, intended for recovery, must be considered illegal within the meaning of that provision when the document referred to in Annex VII to that same regulation relating to a shipment contains incorrect or inconsistent information, such as that contained in the accompanying documents at issue in the main proceedings, regarding the importer/consignee, the recovery facility and the countries/States concerned, irrespective of whether that information is given correctly in other documents made available to the competent authorities, the intention to mislead the authorities and the implementation of the procedures provided for in Article 24 of that same regulation by the authorities.
2. Article 50(1) of Regulation No 1013/2006, as amended by Regulation No 255/2013, under which the penalties imposed by the Member States in the event of infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that a waste shipment for which the accompanying document referred to in Annex VII thereto contains incorrect or inconsistent information may, in principle, be penalised by a fine the amount of which is the same as the fine imposed for infringement of the obligation to complete that document. In the review of proportionality of such a penalty, the referring court must take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.

⁽¹⁾ OJ C 138, 27.4.2015.

Judgment of the Court (Grand Chamber) of 7 June 2016 (request for a preliminary ruling from the Kammarrätten i Stockholm — Migrationsöverdomstolen — Sweden) — George Karim v Migrationsverket

(Case C-155/15) ⁽¹⁾

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national — Article 18 — Taking back an asylum seeker whose application is being examined — Article 19 — Cessation of responsibility — Absence from the territory of the Member States for a period of at least three months — New procedure for determining the Member State responsible — Article 27 — Remedy — Extent of judicial review)

(2016/C 296/18)

Language of the case: Swedish

Referring court

Kammarrätten i Stockholm — Migrationsöverdomstolen

Parties to the main proceedings

Applicant: George Karim

Defendant: Migrationsverket

Operative part of the judgment

1. Article 19(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted to the effect that that provision, in particular its second subparagraph, is applicable to a third-country national who, after having made a first asylum application in a Member State, provides evidence that he left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.
2. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rule set out in the second subparagraph of Article 19(2) of that regulation.

⁽¹⁾ OJ C 198, 15.6.2015.

Judgment of the Court (Sixth Chamber) of 9 June 2016 (request for a preliminary ruling from the Raad van State — Netherlands) — Elektriciteits Produktiemaatschappij Zuid-Nederland EPZ NV v Bestuur van de Nederlandse Emissieautoriteit

(Case C-158/15) ⁽¹⁾

(Reference for a preliminary ruling — Atmospheric pollution — Scheme for greenhouse gas emission allowance trading — Directive 2003/87/EC — Concept of ‘installation’ — Inclusion of the fuel storage site — Regulation (EU) No 601/2012 — Concept of ‘fuel exported from the installation’)

(2016/C 296/19)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Elektriciteits Produktiemaatschappij Zuid-Nederland EPZ NV

Defendant: Bestuur van de Nederlandse Emissieautoriteit

Operative part of the judgment

1. A fuel storage site of a coal-fired power plant such as that at issue in the main proceedings and as described by the referring court is part of an 'installation' within the meaning of Article 3(e) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Directive 96/61/EC, as amended by Decision No 1359/2013/EU of the European Parliament and of the Council of 17 December 2013.
2. The first subparagraph of Article 27(2) of Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87, as amended by Commission Regulation (EU) No 206/2014 of 4 March 2014, must be interpreted as meaning that coal lost as a result of the process by which it naturally self-heats while in storage on a site that is part of an installation within the meaning of Article 3(e) of Directive 2003/87 cannot be regarded as coal exported from that installation.

⁽¹⁾ OJ C 205, 22.6.2015.

Judgment of the Court (Eighth Chamber) of 9 June 2016 (reference for a preliminary ruling from the Finanzgericht München (Munich Finance Court, Germany)) — Medical Imaging Systems GmbH (MIS) v Hauptzollamt München

(Case C-288/15) ⁽¹⁾

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Common Customs Tariff — Tariff classification — Subheading 6211 3310 00 0 — Aprons — Anti-radiation protective coats)

(2016/C 296/20)

Language of the case: German

Referring court

Finanzgericht München (Munich Finance Court, Germany)

Parties to the main proceedings

Applicant: Medical Imaging Systems GmbH (MIS)

Defendant: Hauptzollamt München

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that an anti-radiation protective apron-coat, such as that at issue in the main proceedings, must be classified in subheading 6211 33 10 00 0 of the CN due to its objective characteristics and properties, including, in particular, its external appearance, without it being necessary to refer to the components conferring on the product in question its essential character.

⁽¹⁾ OJ C 394, 7.9.2015.

Judgment of the Court (Eighth Chamber) of 9 June 2016 (request for a preliminary ruling from the Tribunal Supremo (Supreme Court, Spain)) — María del Pilar Planes Bresco v Comunidad Autónoma de Aragón

(Joined Cases C-333/15 and C-334/15) ⁽¹⁾

(Reference for a preliminary ruling — Common Agricultural Policy — Integrated administration and control system for certain aid schemes — Regulation (EC) No 1782/2003 — Single payment scheme — Articles 43 and 44 — Payment entitlements based on areas — Hectares eligible for area aid — Permanent pasture — National legislation making the eligibility of permanent pasture areas which exceed the forage areas initially taken into account for the purposes of determining the payment entitlements subject to conditions that they be used for the purposes of rearing livestock on the farm)

(2016/C 296/21)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: María del Pilar Planes Bresco

Defendant: Comunidad Autónoma de Aragón

Operative part of the judgment

Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 2012/2006 of 19 December 2006 must be interpreted to the effect that it precludes national legislation, such as that at issue in the main proceedings, which prevents areas of permanent pasture declared by a farmer which exceed the area of permanent pasture initially taken into account for determining the amount of her payment entitlements per hectare being taken into account as hectares eligible for area aid for an agricultural year, unless the farmer demonstrates that those areas are actually being used for the purposes of rearing livestock on her farm in that agricultural year.

⁽¹⁾ OJ C 302, 14.9.2015

Judgment of the Court (First Chamber) of 9 June 2016 (requests for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio — Italy) — Giovanni Pesce and Others (C-78/16), Cesare Serinelli and Others (C-79/16) v Presidenza del Consiglio dei Ministri (C-79/16) Presidenza del Consiglio dei Ministri — Dipartimento della Protezione Civile, Commissario Delegato Per Fronteggiare il Rischio Fitosanitario Connesso alla Diffusione della Xylella nel Territorio della Regione Puglia, Ministero delle Politiche Agricole Alimentari e Forestali, Regione Puglia

(Joined Cases C-78/16 and C-79/16) ⁽¹⁾

(Preliminary ruling — Protection of plant health — Directive 2000/29/EC — Protection against the introduction into and the spread within the Union of organisms harmful to plants or plant products — Implementing Decision (EU) 2015/789 — Measures designed to avoid the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells and Raju) — Article 6(2)(a) — Obligation to carry out the immediate removal of host plants, regardless of their health status, within a radius of 100 metres around the infected plants — Validity — Article 16(3) of Directive 2000/29 — Principle of proportionality — Precautionary principle — Obligation to state reasons — Right to compensation)

(2016/C 296/22)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Giovanni Pesce and Others (C-78/16), Cesare Serinelli and Others (C-79/16)

Defendants: Presidenza del Consiglio dei Ministri (C-79/16) Presidenza del Consiglio dei Ministri — Dipartimento della Protezione Civile, Commissario Delegato Per Fronteggiare il Rischio Fitosanitario Connesso alla Diffusione della Xylella nel Territorio della Regione Puglia, Ministero delle Politiche Agricole Alimentari e Forestali, Regione Puglia

Operative part of the judgment

*The examination of the questions referred has disclosed no factor such as to affect the validity of Article 6(2)(a) of Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.), in the light of Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, as amended by Council Directive 2002/89/EC of 28 November 2002, read in the light of the precautionary principle and the principle of proportionality and in the light of the obligation to state reasons provided for in Article 296 TFEU and in Article 41 of the Charter of Fundamental Rights of the European Union.*

⁽¹⁾ OJ C 156, 2.5.2016.

Appeal brought on 29 March 2016 by Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG against the judgment of the General Court (Sixth Chamber) delivered on 4 February 2016 in Case T-247/14: Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG v European Union Intellectual Property Office

(Case C-182/16 P)

(2016/C 296/23)

Language of the case: English

Parties

Appellant: Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG (represented by: S. Labesius, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Salumificio Fratelli Beretta SpA

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal partially and annul the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office insofar as the remainder of the action before the General Court has been dismissed, in the alternative, to refer the case back to the General Court insofar, and
- order the defendant and the intervener to bear the costs of the proceedings before the General Court and the defendant to bear the cost of the proceedings before the Court of Justice.

Pleas in law and main arguments

The appeal is based on an infringement of Union law by the General Court in so far as the General Court in its judgment of 4 February 2016 infringed Article 8 (1) (b) of Council Regulation No. 207/2009 ⁽¹⁾ on the Community trade mark and Art. 296 (2) TFEU.

In summary, the General Court erred in its assessment of the likelihood of confusion based on the level of distinctiveness of the earlier mark 'MINI WINI' and of the similarity of signs and goods with the EUTM application 'Stick MiniMINI ...', also regarding the independent distinctive role of the element 'MiniMINI' within the application. In addition, the General Court did not consider that also inherently weak elements of a trademark contribute to a likelihood of confusion, as well as the specific circumstances of the distribution of products influencing the level of attention of the relevant public and its tendency to abbreviate a mark by a weak, but visually dominant element.

Further, the General Court erred in law, because even if a verbal element should be considered to have a purely descriptive character, such character does not preclude that element from being acknowledged as dominant for the purposes of assessing the similarity of the signs. Also, the decision of the General Court was based on a distortion of the facts regarding the assessment of the dominant elements regarding their size and position within the sign of the contested EUTM application. In addition, the General Court erred in law when it stated that visual similarity is to be assessed dependently from the degree of the distinctiveness of visual elements of the contested EUTM application. Finally, the judgment under appeal was not properly motivated insofar as the General Court failed to deliver reasons concerning the level of attention of the relevant public concerning the specific goods at issue.

⁽¹⁾ OJ L 78, p. 1

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 3 May 2016 — Glencore Grain Hungary Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-254/16)

(2016/C 296/24)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Glencore Grain Hungary Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Questions referred

1. Must Article 183 of Directive 2006/112⁽¹⁾ be interpreted as precluding national legislation under which the period within which overpaid VAT must be refunded is to be extended up to the date on which the report drawn up following an investigation is delivered in the case where, in the course of a tax investigation procedure initiated within 30 days from the receipt of the application for a refund, a fine is imposed on the taxable person for non-compliance with an obligation?
2. Having regard to the principles of fiscal neutrality and proportionality, does Article 183 of Directive 2006/112 preclude national legislation under which, in the event of late payment of a sum, payment of default interest is excluded in the case where, in the context of an investigation concerning the refund of that sum, the taxable person was fined by the authority in connection with the obligation to cooperate, even though the investigation, which lasted several years, was significantly delayed for reasons which cannot principally be attributed to the taxable person?
3. Must Article 183 of Directive 2006/112 and the principle of effectiveness be interpreted as meaning that a claim for payment of interest in connection with tax withheld or not allocated contrary to EU law is a substantive right which flows directly from EU law itself, such that an infringement of EU law is sufficient for a right to interest to be claimed before the courts and other authorities of the Member States?
4. If, in the light of the answers given to the preceding questions, the referring court should conclude that the domestic legislation of the Member State is incompatible with Article 183 of the VAT Directive, would it be acting in accordance with EU law if it were to take the view that the refusal, in the decisions of the Member State's authorities, to pay default interest was incompatible with Article 183 of the VAT Directive?

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 23 May 2016 — Slovak Republic v Achmea BV

(Case C-284/16)

(2016/C 296/25)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Slovak Republic

Defendant: Achmea BV

Questions referred

1. Does Article 344 TFEU preclude the application of a provision in a bilateral investment protection agreement between Member States of the European Union (a so-called BIT internal to the European Union) under which an investor of a contracting State, in the event of a dispute concerning investments in the other contracting State, may bring proceedings against the latter State before an arbitration tribunal, where the investment protection agreement was concluded before one of the contracting States acceded to the European Union but the arbitration proceedings are not to be brought until after that date?

If Question 1 is to be answered in the negative:

2. Does Article 267 TFEU preclude the application of such a provision?

If Questions 1 and 2 are to be answered in the negative:

3. Does the first paragraph of Article 18 TFEU preclude the application of such a provision under the circumstances described in Question 1?

**Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 23 May 2016 —
SC Exmitiani SRL v Direcția Generală a Finanțelor Publice Cluj**

(Case C-286/16)

(2016/C 296/26)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: SC Exmitiani SRL

Defendant: Direcția Generală a Finanțelor Publice Cluj

Questions referred

1. In a situation such as that in the main proceedings, in which the disputed administrative measure was adopted before the accession [of the Republic of Romania to the European Union] and the appeal against that measure was decided on by provision of the tax authorities after the accession, does the principle of cooperation in good faith imply that national legislation is to be interpreted in the light of the EU directives applicable to VAT? ⁽¹⁾

2. Having regard to the circumstances of the main proceedings, is the principle of legal certainty to be interpreted as precluding the practice of tax authorities whereby, on the basis of the same factual circumstances, those authorities reach different conclusions from those reached by the prosecution authorities as regards the exemption from VAT of the provision of services directly connected with international passenger transport?

3. Is the principle of cooperation in good faith to be interpreted as precluding domestic legislation which provides that, where pleas based on provisions of EU law are not raised in an appeal against an administrative measure, such pleas may not be raised subsequently before the courts?

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

**Request for a preliminary ruling from the Sąd Rejonowy dla Łodzi — Śródmieścia w Łodzi (Poland)
lodged on 25 May 2016 — Criminal proceedings against J.Z.**

(Case C-294/16)

(2016/C 296/27)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Łodzi — Śródmieścia

Party/parties to the main proceedings

J.Z.

Question referred

Must Article 26(1) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ⁽¹⁾ (2002/584/JHA), in conjunction with Article 6(1) and (3) of the Treaty on European Union and Article 49(3) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the term ‘detention’ also covers measures applied by the executing State, in connection with a curfew, consisting in the electronic monitoring of the place of residence of the person to whom the arrest warrant applies?

⁽¹⁾ OJ 2002, L 190, p. 1.

**Request for a preliminary ruling from the Kúria (Supreme Court, Hungary) lodged on 2 June 2016 —
József Lingurár v Miniszterelnökséget vezető miniszter**

(Case C-315/16)

(2016/C 296/28)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: József Lingurár

Defendant: Miniszterelnökséget vezető miniszter

Questions referred

1. Is Article 42(1) of Council Regulation (EC) No 1698/2005 ⁽¹⁾ (‘Regulation No 1698/2005’) — also taking into account Article 46 — to be interpreted as not wholly precluding individuals from aid for the sustainable use of forest land where the land is also partly State owned?

2. If aid is not wholly precluded, is Article 46 of Regulation No 1698/2005 to be interpreted as meaning that, in relation to the land concerned — which is partly State owned — the private forester or private owner is entitled to aid in proportion to his share of ownership?

⁽¹⁾ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1)

Request for a preliminary ruling from the Tribunal de grande instance de Lille (Regional Court, Lille) (France) lodged on 6 June 2016 — Criminal proceedings against Uber France SAS

(Case C-320/16)

(2016/C 296/29)

Language of the case: French

Referring court

Tribunal de grande instance de Lille

Party to the main proceedings

Uber France SAS

Question referred

Does Article L.3124-13 of the Code des transports, inserted by Law No 2014-1104 of 1 October 2014 on taxis and private hire vehicles, constitute a new technical regulation that is not implicit and that relates to one or more information society services, within the meaning of Directive 98/34/EC of 22 June 1998 ⁽¹⁾, such that, pursuant to Article 8 of that directive, it had to be notified in advance to the European Commission, or does it fall within the scope of Directive 2006/123/EC ⁽²⁾ of 12 December 2006 on services, Article 2(d) of which excludes transport?

In the event that that question is answered in the affirmative, does a failure to satisfy the notification requirement laid down in Article 8 of the directive mean that Article L.3124-13 of the Code des transports is unenforceable against individuals?

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

⁽²⁾ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36)

Request for a preliminary ruling from the Conseil d'État (Council of State) (France) lodged on 13 June 2016 — Syndicat national de l'industrie des technologies médicales (SNITEM) and Philips France v Premier ministre and Ministre des Affaires sociales et de la Santé

(Case C-329/16)

(2016/C 296/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Syndicat national de l'industrie des technologies médicales (SNITEM) and Philips France

Defendants: Premier ministre and Ministre des Affaires sociales et de la Santé

Question referred

Must [Council] Directive 93/42/EEC of 14 June 1993 [concerning medical devices (OJ 1993 L 169, p. 1)] be interpreted as meaning that software, the purpose of which is to offer to prescribers practising in towns, a health establishment or a medico-social establishment support for determining a drug prescription, in order to improve the safety of prescription, facilitate the work of the prescriber, encourage conformity of the prescription with national regulatory requirements and reduce the cost of treatment at the same quality, constitutes a medical device within the meaning of that directive, where that software has at least one function that permits the use of data specific to a patient to help his doctor issue his prescription, in particular by detecting contraindications, drug interactions and excessive doses, even though it does not itself act in or on the human body?

Request for a preliminary ruling from the Općinski sud u Velikoj Gorici (Croatia) lodged on 15 June 2016 — VG Čistoća d.o.o. v Đuro Vladika, Ljubica Vladika

(Case C-335/16)

(2016/C 296/31)

Language of the case: Croatian

Referring court

Općinski sud u Velikoj Gorici

Parties to the main proceedings

Applicant: VG Čistoća d.o.o.

Defendants: Đuro Vladika, Ljubica Vladika

Question referred

How is the fee for the collection and transport of household waste calculated in accordance with EU law? How do Union citizens pay the invoices for the collection and transport of municipal waste, that is, do they pay for the collection and transport of household waste according to the volume of the empty bins or containers, or according to the volume of refuse collected, and is any other item included within the fee?

GENERAL COURT

Action brought on 13 June 2016 — Scheffler v. EUIPO — Doc Generici (docfauna)

(Case T-299/16)

(2016/C 296/32)

Language in which the application was lodged: English

Parties

Applicant: Manfred Scheffler (Leininingen, Germany) (represented by: T. Büttner, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Doc Generici Srl (Milano, Italy)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'docfauna' — Application for registration No 12 660 056

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 1 April 2016 in Case R 885/2015-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- annul the decision of the Opposition Division of 6 March 2015 upholding opposition No B 2 354 523.

Plea in law

- Infringement of Article 8(1)(b) Regulation No 207/2009;

Action brought on 14 June 2016 — Novartis Europharm v Commission

(Case T-303/16)

(2016/C 296/33)

Language of the case: English

Parties

Applicant: Novartis Europharm Ltd (Camberley, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Decision by the European Commission of 4 April 2016 (C(2016) 2083(final)); and
- order the European Commission to pay its own costs and those of Novartis.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission's Decision of 4 April 2016 is unlawful in that it constitutes an infringement of the orphan market exclusivity rights of Novartis for its product TOBI Podhaler pursuant to Article 8(1) of Regulation (EC) No 141/2000⁽¹⁾ on orphan medicinal products and because the conditions in Article 8(3) of that regulation for granting a derogation from these orphan market exclusivity rights have not been fulfilled.
2. Second plea in law, alleging that the Commission's Decision of 4 April 2016 has been prepared and adopted in violation of the 'Duty of Care' also known as the 'Principle of Diligence', specifically because of a failure to take into account all relevant scientific data about the medicinal products concerned, and because of a failure to consult Novartis as an interested party in the scientific assessment.

⁽¹⁾ Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ L 18, 22.1.2000, p. 1)

Action brought on 15 June 2016 — bet365 Group v EUIPO — Hansen (BET365)**(Case T-304/16)**

(2016/C 296/34)

*Language in which the application was lodged: English***Parties**

Applicant: bet365 Group Limited (Stoke-on-Trent, United Kingdom) (represented by: S. Malynicz, QC (Queen's Counsel), R. Black and J. Bickle, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Robert Hansen (München, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'BET365'

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 March 2016 in Case R 3243/2014-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and the other party to pay their own costs and pay those of the applicant.

Plea in law

- Infringement of Article 7(3) of Regulation No 207/2009.

Action brought on 13 June 2016 — Gamet v EUIPO — ‘Metal-Bud’ Robert Gubała (Door handle)
(Case T-306/16)
(2016/C 296/35)

Language in which the application was lodged: English

Parties

Applicant: Gamet S.A. (Toruń, Poland) (represented by: A. Rolbiecka, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Firma produkcyjno-handlowa ‘Metal-Bud’ Robert Gubała (Świątniki Górne, Poland)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design ‘Door handle’ — Community design No 2 208 066-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 17/03/2016 in Case R 2040/2014-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision of the Third Board of Appeal of EUIPO dated 17 march 2016 given in case R 2040/2014-3, concerning proceedings for a declaration of invalidity of the RCD 002208066-0001;
- order the EUIPO and the other party to the proceedings before the Board of Appeal to bear the costs of the proceedings.

Pleas in law

- Infringement of Article 63(2) of Regulation No 6/2002 by accepting belated evidence — a declaration of the representative of the undertaking Klamex, regardless of the fact that the subject evidence contained information strictly new for the proceedings, not confirmed by evidence presented before the Invalidity Division;
- Infringement of Article 63(1) of Regulation No 6/2002 by incorrect and arbitrary finding that evidence presented by the other party confirmed that there were no material differences between the RCD and the design of the ‘DORA’ handle in:

- the shape and the proportions of the shaft,
 - the proportions of the shaft and grip part,
 - the depth of the grip handle,
 - the degree of beveling of the grip handle,
 - rounding of the edges of handle.
- Infringement of Articles 4 and 6(2) of Regulation No 6/2002, read in conjunction with Article 25(1)(b) of Regulation No 6/2002 through incorrect assessment of freedom in designing door handles by stating that the designer's degree of freedom in designing door handles was almost unlimited and resulted from the fact that the Board had not taken into consideration features which a designer should have taken into consideration by designing the door handle;
- Infringement of Articles 4 and 6 of Regulation No 6/2002 by incorrect finding that the RCD does not produce an overall impression on the informed user that is different from the impression produced by the 'DORA' handle.

Action brought on 19 June 2016 — Cafés Pont v EUIPO — Giordano Vini (Art's Café)

(Case T-309/16)

(2016/C 296/36)

Language in which the application was lodged: Spanish

Parties

Applicant: Cafés Pont, SL (Sabadell, Spain) (represented by: E. Manresa Medina and J. M. Manresa Medina, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Giordano Vini SpA (Diano d'Alba, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word elements 'Art's Café' — European Union trade mark No 5 622 345

Procedure before EUIPO: Revocation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 01/04/2016 in Case R 1110/2015-2

Form of order sought

The applicant claims that the Court should:

- deliver a judgment granting the application, revoking the cancellation on the grounds of non-use of European Union trade mark No 5 622 345 and confirming the use of that trade mark; and

— order the defendant and any interveners to pay the costs.

Pleas in law

— Infringement of Article 51(1)(a) and (b) and Article 15(1)(a) of Regulation No 207/2009.

Action brought on 24 June 2016 — Make up for ever v EUIPO — L'Oréal (MAKE UP FOR EVER)

(Case T-320/16)

(2016/C 296/37)

Language in which the application was lodged: French

Parties

Applicant: Make up for ever (Paris, France) (represented by: C. Caron, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: L'Oréal SA (Paris, France)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union word mark 'MAKE UP FOR EVER' — EU trade mark No 3 416 443

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 March 2016 in Case R 985/2015-5

Form of order sought

The applicant claims that the Court should:

- declare the Community word mark 'MAKE UP FOR EVER' No 003416443 valid for all of the goods and services remaining referred to in the application;
- annul the contested decision;
- remit the case to EUIPO for further prosecution if necessary;
- render the company l'OREAL liable for the costs resulting from the proceedings before the Cancellation Division of EUIPO, the Board of Appeal of EUIPO and the present action before the General Court.

Pleas in law

- Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009;
 - Infringement of Article 7(3) of Regulation No 207/2009.
-

Action brought on 24 June 2016 — Ansell Healthcare Europe v Commission**(Case T-321/16)**

(2016/C 296/38)

*Language of the case: English***Parties**

Applicant: Ansell Healthcare Europe NV (Anderlecht, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium;
- in the alternative, annul Articles 2-4 of the Decision;
- in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an ‘excess profit ruling’ as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary’s tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration;
- order the Commission to pay the costs of the proceedings.

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 a manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium alleges the existence of an aid scheme.
 2. Second plea in law, alleging a violation of Article 107 TFUE and of the duty to state reasons and manifest error of assessment in so far as the contested decision qualifies the purported scheme as a selective measure.
 3. Third plea in law, alleging a violation of Article 107 TFUE and manifest error of assessment in so far as the contested decision asserts that the purported scheme gives rise to an advantage.
 4. Fourth plea in law, alleging a violation of Article 107 TFUE, infringement of legitimate expectations, manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision order Belgium to recover aid.
-

Action brought on 24 June 2016 — Banco Cooperativo Español v SRB**(Case T-323/16)**

(2016/C 296/39)

*Language of the case: Spanish***Parties**

Applicant: Banco Cooperativo Español, SA (Madrid, Spain) (represented by: D. Sarmiento Ramirez-Escudero, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

- declare inapplicable Article 5(1) of Delegated Regulation 2015/63, and
- annul the decision of the Single Resolution Board, addressed to Banco Cooperativo Español, regarding the settlement of the *ex ante* contribution corresponding to the financial year 2016.

Pleas in law and main arguments

By the present action, the applicant challenges the decision regarding the *ex ante* contribution to the Single Resolution Fund corresponding to the financial year 2016, adopted by the Single Resolution Board and notified through the Spanish Executive Resolution Authority (Autoridad de Resolución Ejecutiva española, 'FROB') on 26 April 2016 in accordance with Article 6 of Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

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

1. The first plea in law is based, pursuant to Article 277 TFEU, on a plea of illegality, and is seeking that the General Court declare inapplicable Article 5(1) of Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44). It is claimed, in this regard, that Article 5(1) of the Delegated Regulation:
 - infringes Article 103(7) of Directive 2014/59, in that it establishes a system of calculation that imposes on an institution with a conservative risk profile an *ex ante* contribution of an institution with a very high risk profile;
 - infringes Article 16 of the Charter of Fundamental Rights of the European Union, in that it unjustifiably restricts the applicant's fundamental right of freedom to conduct a business;
 - infringes the principle of proportionality, in failing to take into consideration the double counting of certain of the applicant's liabilities, thereby generating a manifestly unjustifiable unnecessary and disproportionate restriction.
2. The second plea in law alleges infringement of the second subparagraph of Article 103(2) of Directive 2014/59 and Article 70 of Regulation No 806/2014, interpreted in the light of Article 16 of the Charter and of the principle of proportionality.

It is claimed, in this regard, that the reasons justifying the inapplicability of Article 5(1) of Delegated Regulation 2015/63 clearly show that it is necessary to adjust the applicant's risk profile to the operative singularity of the cooperative network it leads, as the abovementioned provisions require. Consequently, and to that extent, the contested decision, the content of which corresponds to a strict and literal application of a rule that takes no account of the applicant's risk profile, must be regarded as contrary to the second subparagraph of Article 103(2) of Directive 2014/59 and, in particular, Regulation No 806/2014, Article 70 of which, relating to *ex ante* contributions, refers to the provisions of Directive 2014/59 and to its implementing legislation.

Action brought on 27 June 2016 — Hello Media v EUIPO — Hola (#hello digitalmente diferentes)

(Case T-330/16)

(2016/C 296/40)

Language in which the application was lodged: Spanish

Parties

Applicant: Hello Media, SL (Madrid, Spain) (represented by: A. Alejos Cutuli, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Hola, SL (Madrid, Spain)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: European Union figurative mark containing the word elements ‘#hello digitalmente diferentes’ — Application for registration No 12 440 574

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 21/04/2016 in Case R 1979/2015-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- reject opposition B 2 336 348 to the application for a European Union trade mark No 12 440 574;
- order the grant of European Union trade mark No 12 440 574 ‘#hello digitalmente diferentes’ (with graphic);
- order the defendant to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009.
-

Action brought on 28 June 2016 — Hello Media v EUIPO — Hola (#hello media group)**(Case T-331/16)**

(2016/C 296/41)

*Language in which the application was lodged: Spanish***Parties***Applicant:* Hello Media, SL (Madrid, Spain) (represented by: A. Alejos Cutuli, lawyer)*Defendant:* European Union Intellectual Property Office (EUIPO)*Other party to the proceedings before the Board of Appeal:* Hola, SL (Madrid, Spain)**Details of the proceedings before EUIPO***Applicant:* Applicant*Trade mark at issue:* European Union figurative mark containing the word elements ‘#hello media group’ — Application for registration No 12 441 317*Procedure before EUIPO:* Opposition proceedings*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 21/04/2016 in Case R 2012/2015-2**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- reject opposition B 2 336 371 to the application for a European Union trade mark No 12 441 317;
- order the grant of European Union trade mark No 12 441 317 ‘#hello media group’ (with graphic);
- order the defendant to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 15 June 2016 — Colgate-Palmolive v EUIPO (360°)**(Case T-332/16)**

(2016/C 296/42)

*Language of the case: English***Parties***Applicant:* Colgate-Palmolive Co. (New York, New York, United States) (represented by: M. Zintler and A. Stolz, lawyers)*Defendant:* European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark '360°' — Application for registration No 14 042 162

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 April 2016 in Case R 2288/2015-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 7(1)(b) and (c), (2) and (3) of Regulation No 207/2009 and of the rules of law relating to its application as set out in Article 65(2) of Regulation No 207/2009.

Action brought on 15 June 2016 — Colgate-Palmolive v EUIPO (360°)

(Case T-333/16)

(2016/C 296/43)

Language of the case: English

Parties

Applicant: Colgate-Palmolive Co. (New York, New York, United States) (represented by: M. Zintler and A. Stolz, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word element '360°' — Application for registration No 14 042 188

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 April 2016 in Case R 2287/2015-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 7(1)(b) and (c), (2) and (3) of Regulation No 207/2009 and of the rules of law relating to its application as set out in Article 65(2) of Regulation No 207/2009.
-

Action brought on 28 June 2016 — Esko-Graphics v Commission**(Case T-335/16)**

(2016/C 296/44)

*Language of the case: Dutch***Parties**

Applicant: Esko-Graphics BVBA (Ghent, Belgium) (represented by: H. Viaene, B. Hoorelbeke, D. Gillet and F. Verhaegen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- declare the application for annulment admissible;
- annul the decision of the European Commission of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium, as published on the European Commission website on 4 May 2016;
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 1(d) of Regulation 2015/1589, ⁽¹⁾ Article 107(1) TFEU and Article 296 TFEU in so far as the Commission wrongly classifies the contested measure as an aid measure.
 - The Commission infringes Article 1(d) of Regulation 2015/1589 and Article 107(1) TFEU since it wrongly classifies the contested measure as an aid measure. The contested aid cannot be allocated solely on the basis of Article 185(2)(b) of the *Wetboek van de inkomstenbelastingen van 1992* (Belgian Income Tax Code of 1992; 'the WIB 1992'), but requires additional implementing measures in order for that provision to be applied.
 - The Commission infringes Article 296 TFEU in so far as its statement of reasons contains a contradiction. The contradiction lies in the fact that the Commission does not explain why, when assessing the criterion of selectivity, it takes the view that the previous decisions do not stem directly from Article 185(2)(b) of the WIB 1992, whereby it assumes, in assessing the existence of an aid measure, that the provision referred to does not require any additional implementing measures.
2. Second plea in law, alleging infringement of Article 107(1) TFEU and breach of the obligation to state reasons under Article 296 TFEU, to the extent that the Commission did not correctly assess the existence of an advantage.
 - The Commission failed to investigate whether the contested aid measure led in fact to the conferral of an advantage, as contemplated by Article 107(1) TFEU, on the recipient undertakings. This was in spite of the fact that that condition is a prerequisite for State aid, and that the Commission is thus required to examine it before deciding on whether State aid exists, failing which it will be in breach of its obligation to state reasons under Article 296 TFEU.
3. Third plea in law, alleging infringement of Article 107(1) TFEU and breach of the obligation to state reasons under Article 296 TFEU, to the extent that the Commission did not correctly assess whether the contested measure was selective in nature.

- Article 185(2)(b) of the WIB 1992 and the excess profit exemption system arising out of it are open to all undertakings in a comparable factual and legal situation and which conduct the economic transactions that form the subject matter of the contested measure. The contested measure is therefore not restricted to specific undertakings that can be defined on the basis of particular features, and is thus not selective for the purposes of Article 107(1) TFEU.
 - In the alternative, the Commission committed a manifest error of assessment in finding that the exemption of excess profit did not form part of the reference system. The exemption of excess profit on the basis of synergies and economies of scale in application of the arm's length principle is an integral component of the provisions that determine total taxable income, and thus cannot be regarded as constituting a derogation from the reference system that leads to selectivity.
 - In the further alternative, the Commission is unable to prove that the arm's length principle was incorrectly applied by the Belgische Rulingcommissie (Belgian Tax Ruling Committee) in the context of the application of Article 185(2) (b) of the WIB 1992. The Commission's reasoning is not coherent and takes into account important factors which are, however, contradictory or lack the requisite coherence.
4. Fourth plea in law, alleging breach of the principle of legal certainty in imposing an obligation to recover.
- On the basis of the well-established line of decisions of the Commission that did not call into question the application of the internationally recognised arm's length principle, it would be at variance with the principle of legal certainty if an order for the recovery of the alleged aid were to be applied in the present case. On the basis of the existing line of decisions and case-law, it could not, in any event, have been foreseen that Article 185(2)(b) of the WIB would be contrary to Article 107 TFEU.

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

Action brought on 22 June 2016 — Versace 19.69 Abbigliamento Sportivo v EUIPO — Gianni Versace (VERSACE 19.69 ABBIGLIAMENTO SPORTIVO)

(Case T-336/16)

(2016/C 296/45)

Language in which the application was lodged: Italian

Parties

Applicant: Versace 19.69 Abbigliamento Sportivo Srl (Busto Arsizio, Italy) (represented by: F. Caricato, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gianni Versace SpA (Milan, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word elements 'VERSACE 19.69 ABBIGLIAMENTO SPORTIVO' — Application for registration No 11 992 435

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2016 in Case R 1005/2015-1

Form of order sought

The applicant claims that the Court should:

- uphold the present action;
- annul the contested decision and, consequently, register mark No 11 992 435 in respect of all the goods claimed, without prejudice to those already granted;
- order the other party to pay the costs.

Plea in law

- The applicant maintains that the decision of 6 April 2016 is vitiated by the scant examination of the evidence demonstrating insufficient use of the marks activated by the other party, and by the failure to examine carefully the likelihood of confusion between the marks and the goods in question in the light of all the relevant factors.

Action brought on 22 June 2016 — Versace 19.69 Abbigliamento Sportivo v EUIPO — Gianni Versace (VERSACCINO)

(Case T-337/16)

(2016/C 296/46)

Language in which the application was lodged: Italian

Parties

Applicant: Versace 19.69 Abbigliamento Sportivo Srl (Busto Arsizio, Italy) (represented by: F. Caricato, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gianni Versace SpA (Milan, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word element 'VERSACCINO' — Application for registration No 11 957 685

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2016 in Case R 1172/2015-1

Form of order sought

The applicant claims that the Court should:

- uphold the present action;

- annul the contested decision and, consequently, register mark No 11 957 685 in respect of all the goods claimed, without prejudice to those already granted;
- order the other party to pay the costs.

Plea in law

- The applicant maintains that the decision of 6 April 2016 is undermined from the outset and is vitiated by the scant examination of the evidence, and especially by a superficial examination of the marks as regards the confusion of the Italian language to which EUIPO appears to make reference.

Action brought on 29 June 2016 — Trane v Commission

(Case T-343/16)

(2016/C 296/47)

Language of the case: English

Parties

Applicant: Trane (Zaventem, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium;
- in the alternative, annul Articles 2-4 of the Decision;
- in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an ‘excess profit ruling’ as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary’s tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration;
- order the Commission to pay the costs of the proceedings.

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 a manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium alleges the existence of an aid scheme.
2. Second plea in law, alleging a violation of Article 107 TFUE and of the duty to state reasons and manifest error of assessment in so far as the contested decision qualifies the purported scheme as a selective measure.

3. Third plea in law, alleging a violation of Article 107 TFUE and manifest error of assessment in so far as the contested decision asserts that the purported scheme gives rise to an advantage.
4. Fourth plea in law, alleging a violation of Article 107 TFUE, infringement of legitimate expectations, manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision order Belgium to recover aid.

Action brought on 29 June 2016 — Inox Mare v Commission

(Case T-347/16)

(2016/C 296/48)

Language of the case: Italian

Parties

Applicant: Inox Mare Srl (Rimini, Italy) (represented by: R. Holzeisen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul Commission Decision C(2015) 9672 final of 6 January 2016 finding that repayment of import duties is not justified in a particular case (REM 02/14) and order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested in the present case is the follow-up to the decision contested in Case T-289/16, *Inox Mare v Commission*.

In support of its action, the applicant claims that the contested measure is unlawful as a result of the serious irregularities in the related investigation procedure conducted by OLAF and concluded by the Final Report contested in Case T-289/16, as cited above.

In concrete terms, the contested measure is vitiated by:

- Infringement and incorrect application of the Community legislation on the anti-dumping duty.
- Infringement and incorrect application of the Philippine and Community legislation on the duty, conferred on the Philippine customs authorities, to verify the origins of goods certified by those authorities.
- Infringement and incorrect application of Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Therefore, in its heads of claim the applicant seeks annulment of the contested decision for infringement of the Treaties and the rules of law relating to their application and for infringement of the Charter of Fundamental Rights of the European Union, in particular Article 41 thereof.

Action brought on 27 June 2016 — Aristoteleio Panepistimio Thessalonikis v European Research Council Executive Agency (ERCEA)

(Case T-348/16)

(2016/C 296/49)

Language of the case: Greek

Parties

Applicant: Aristoteleio Panepistimio Thessalonikis (Thessaloniki, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Research Council Executive Agency (ERCEA) (Brussels, Belgium)

Form of order sought

The applicant claims that the General Court should:

- Declare that the demand made by the defendant in debit note numbered 3241606289 of 26/05/2016 that the Aristoteleio Panepistimio Thessalonikis repay part of the grant which it received for the MINATRAN project, a sum of EUR 245 525.43, is unfounded, and declare that that sum constitutes eligible costs; and
- order the European Research Council Executive Agency to pay the applicant's legal costs.

Pleas in law and main arguments

The applicant claims that the General Court of the European Union, under Article 272 TFEU, should declare that the sum disputed by ERCEA constitutes eligible costs.

In support of the action, the applicant argues that the costs disputed by ERCEA and, in particular, the staff costs, travel costs and indirect costs are eligible costs. That argument is supported by the evidence which the applicant submitted to ERCEA during the on-the-spot audit and in subsequent correspondence and, above all, by the comprehensive analysis of the evidence submitted.

Action brought on 1 July 2016 — Kinopolis Group v Commission

(Case T-350/16)

(2016/C 296/50)

Language of the case: English

Parties

Applicant: Kinopolis Group (Brussel, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium;
- in the alternative, annul Articles 2-4 of the Decision;

- in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an ‘excess profit ruling’ as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary’s tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration;
- order the Commission to pay the costs of the proceedings.

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 a manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium alleges the existence of an aid scheme.
2. Second plea in law, alleging a violation of Article 107 TFUE and of the duty to state reasons and manifest error of assessment in so far as the contested decision qualifies the purported scheme as a selective measure.
3. Third plea in law, alleging a violation of Article 107 TFUE and manifest error of assessment in so far as the contested decision asserts that the purported scheme gives rise to an advantage.
4. Fourth plea in law, alleging a violation of Article 107 TFUE, infringement of legitimate expectations, manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision order Belgium to recover aid.

Action brought on 1 July 2016 — adp Gauselmann v EUIPO (MULTI FRUITS)

(Case T-355/16)

(2016/C 296/51)

Language of the case: German

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: P. Koch Moreno, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark ‘MULTI FRUITS’ — Application for registration No 13 646 542

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 April 2016 in Case R 1043/2015-5

Form of order sought

The applicant claims that the Court should:

- uphold the ground of appeal and annul the contested decision;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation No 207/2009;
- Infringement of Article 7(1)(c) in conjunction with Article 7(2) of Regulation No 207/2009.

Action brought on 5 July 2016 — Punch Powertrain v Commission**(Case T-357/16)**

(2016/C 296/52)

*Language of the case: Dutch***Parties**

Applicant: Punch Powertrain (Sint-Truiden, Belgium) (represented by: H. Viaene, B. Hoorelbeke, D. Gillet and F. Verhaegen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- declare the application for annulment admissible;
- annul the decision of the European Commission of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium, as published on the European Commission website on 4 May 2016;
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 1(d) of Regulation 2015/1589, ⁽¹⁾ Article 107(1) TFEU and Article 296 TFEU in so far as the Commission wrongly classifies the contested measure as an aid measure.
 - The Commission infringes Article 1(d) of Regulation 2015/1589 and Article 107(1) TFEU since it wrongly classifies the contested measure as an aid measure. The contested aid cannot be allocated solely on the basis of Article 185(2) (b) of the *Wetboek van de inkomstenbelastingen van 1992* (Belgian Income Tax Code of 1992; 'the WIB 1992'), but requires additional implementing measures in order for that provision to be applied.
 - The Commission infringes Article 296 TFEU in so far as its statement of reasons contains a contradiction. The contradiction lies in the fact that the Commission fails to explain why, when assessing the criterion of selectivity, it takes the view that the previous decisions do not stem directly from Article 185(2)(b) of the WIB 1992, whereby it assumes, in assessing the existence of an aid measure, that the provision referred to does not require any additional implementing measures.
2. Second plea in law, alleging infringement of Article 107(1) TFEU and breach of the obligation to state reasons under Article 296 TFEU, in that the Commission did not correctly assess the existence of an advantage.

- The Commission failed to investigate whether the contested aid measure led in fact to the conferral of an advantage, as contemplated by Article 107(1) TFEU, on the recipient undertakings. This was in spite of the fact that that condition is a prerequisite for State aid, and that the Commission is thus required to examine it before it can decide whether State aid exists, failing which it will be in breach of its obligation to state reasons under Article 296 TFEU.
3. Third plea in law, alleging infringement of Article 107(1) TFEU and breach of the obligation to state reasons under Article 296 TFEU, to the extent that the Commission did not correctly assess whether the contested measure was selective in nature.
- Article 185(2)(b) of the WIB 1992 and the excess profit exemption system arising out of it are open to all undertakings in a comparable factual and legal situation and which conduct the economic transactions that form the subject matter of the contested measure. The contested measure is therefore not restricted to specific undertakings that can be defined according to particular features, and is thus not selective within the meaning of Article 107(1) TFEU.
- In the alternative, the Commission committed a manifest error of assessment in finding that the exemption of excess profit did not form part of the reference system. The exemption of excess profit on the basis of synergies and economies of scale in application of the arm's length principle is a key component of the provisions that determine total taxable income, and thus cannot be regarded as constituting a derogation from the reference system that leads to selectivity.
- In the further alternative, the Commission is unable to prove that the arm's length principle was incorrectly applied by the Belgische Rulingcommissie (Belgian Tax Ruling Committee) in the context of the application of Article 185(2)(b) of the WIB 1992. The Commission's reasoning is not coherent and takes into account important factors which are, however, contradictory or lack the necessary coherence.
4. Fourth plea in law, alleging breach of the principle of legal certainty in imposing an obligation to recover.
- On the basis of the well-established line of decisions of the Commission that did not call into question the application of the internationally recognised arm's length principle, it would be at variance with the principle of legal certainty if an order for the recovery of the alleged aid were to be applied in the present case. On the basis of the existing line of decisions and case-law, it could not, in any event, have been foreseen that Article 185(2)(b) of the WIB 1992 would be contrary to Article 107 TFEU.

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

Action brought on 4 July 2016 — Axel Springer v EUIPO — Stiftung Warentest (TestBild)
(Case T-359/16)
(2016/C 296/53)

Language in which the application was lodged: German

Parties

Applicant: Axel Springer SE (Berlin, Germany) (represented by: K. Hamacher and G. Müllejans)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Stiftung Warentest (Berlin, Germany)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: European Union word mark 'TestBild' — Application for registration No 4 555 579

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 4 May 2016 in Case R 555/2015-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009.
-

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (3rd Chamber) of 30 June 2016 — Kaufmann v Commission (Case F-69/15)

(Civil service — Social security — Joint Sickness Insurance Scheme — Home nurse services — Prior authorisation — Conditions — Obligation to use service-providers with legal authorisation to provide home nurse or ‘nursing’ services — Principle of non-discrimination — Principle of protection of legitimate expectations — Duty to have regard for the welfare of officials — Limits — Action manifestly lacking any legal basis — Direction to the administration — Manifest inadmissibility — Article 81 of the Rules of Procedure)

(2016/C 296/54)

Language of the case: French

Parties

Applicant: Sandra Kaufmann (Böhl-Iggelheim, Germany) (represented by: F. Turk, lawyer)

Defendant: European Commission (represented by: T.S. Bohr and C. Ehrbar, Agents)

Re:

Application for annulment of the Commission’s decision not to grant a former official, of whom the applicant is the legal successor, prior authorisation for entitlement to the services of a home nurse, and an application for the applicant to be granted the sums to cover payment of the home nurse services provided by the company concerned, with effect as of 1 January 2014.

Operative part of the order

1. *The action is dismissed as in part manifestly inadmissible and in part manifestly unfounded.*
2. *Ms Sandra Kaufmann is to bear her own costs and is ordered to pay the costs incurred by the European Commission.*

Action brought on 22 May 2016 — ZZ v eu-LISA and Commission

(Case F-26/16)

(2016/C 296/55)

Language of the case: English

Parties

Applicant: ZZ (represented by: M. Greinoman, lawyer)

Defendants:

European Agency for the Operational Management of Large-Scale Information Systems in the Area of Freedom, Security and Justice (eu-LISA)

and

European Commission

Subject-matter and description of the proceedings

Annulment of the decision denying the applicant prior authorisation for medical treatment for her husband under the EU Joint Sickness Insurance Scheme.

Form of order sought

- Annul the decision rejecting the prior authorisation for the medical treatment of the applicant's husband covered by the Joint Sickness Insurance Scheme;
- declare that hepatitis C being suffered by the applicant's husband is a serious disease within the meaning of Article 72(1) of the Staff Regulations;
- order the defendants to bear the costs.

Action brought on 25 May 2016 — ZZ v EASA**(Case F-27/16)**

(2016/C 296/56)

*Language of the case: English***Parties**

Applicant: ZZ (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: European Aviation Safety Agency (EASA)

Subject-matter and description of the proceedings

Annulment of the decision transferring the applicant to a new position in the interests of the service.

Form of order sought

- Annul the contested decision and, so far as necessary, the decision rejecting the complaint;
- order the defendant to pay the costs.

Action brought on 2 June 2016 — ZZ v Commission**(Case F-28/16)**

(2016/C 296/57)

*Language of the case: French***Parties**

Applicant: ZZ (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the defendant's decision not to adopt, within a reasonable period, the measures for compliance with the judgment in Case F-96/13 and annulment of the decision of 22 December 2015, which, by reassigning the applicant, with retroactive effect, from the delegation to the West Bank and the Gaza Strip in East Jerusalem to DG Mobility and Transport, Directorate of Shared Resources MOVE/ENER in Brussels, constitutes a decision confirming refusal to comply with the judgment referred to.

Form of order sought

— Annul the Commission's decision not to adopt the measures to comply with the judgment in Case F-96/13 and the decision of 22 December 2015 to reassign the applicant, in the interest of the service, from the EU delegation to the West Bank and the Gaza Strip (East Jerusalem) to the Directorate-General for Mobility and Transport (MOVE) in Brussels with retroactive effect from 1 January 2013, a merely confirmatory decision which has already been implemented for over almost 3 years;

— Order the Commission to pay the costs.

Action brought on 17 June 2016 — ZZ and Others v EIB**(Case F-30/16)**

(2016/C 296/58)

*Language of the case: French***Parties**

Applicant: ZZ and Others (represented by: L.-Y. Levi)

Defendant: European Investment Bank (EIB)

Subject-matter and description of the proceedings

Annulment of the decisions contained in the pay slips for the month of April 2016, fixing the annual adjustment of salaries limited to 0,6 % for the year 2016 and the annulment of subsequent pay slips, and, as far as necessary, the briefing note which the defendant sent to the applicants on 8 March 2016, and an order that the defendant pay damages in respect of the material and non-material harm allegedly suffered.

Form of order sought

— annul the decision contained in the applicants' pay slips for the month of April 2016, a decision fixing the annual adjustment of the basic salary limited to 0,6 % for the year 2016, and, therefore the annulment of the similar decisions contained in the subsequent payslips and, as far as necessary, the annulment of the briefing note which the defendant sent to the applicants on 8 March 2016;

- order the defendant to pay compensation for material harm (i) for the outstanding salary corresponding to the application of the annual adjustment for 2016, that is, an increase of 2,3 % for the period from 1 January 2016 to 31 December 2016; (ii) for the outstanding salary corresponding to the consequences of applying the annual adjustment of 2.9 % for 2016 on the amount of the salaries which will be paid from January 2016; (iii) for default interest on outstanding salaries due until full payment of the amounts due, the rate of default interest to be applied having to be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable during the relevant period, plus three percentage points; and (iv) for damages due to the loss of purchasing power;
- order the defendant to pay to each applicant EUR 1 000 by way of compensation for non-material damage;
- order the defendant to pay the costs.

Action brought on 22 June 2016 — ZZ v CEDEFOP

(Case F-31/16)

(2016/C 296/59)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Pappas, lawyer)

Defendant: European Centre for the Development of Vocational Training (CEDEFOP)

Subject-matter and description of the proceedings

Annulment of the appointing authority's decision not to include the applicant on the list of officials promoted under the 2015 annual promotion procedure at the European Centre for the Development of Vocational Training (CEDEFOP) and an application for damages in respect of the non-material and material harm allegedly suffered.

Form of order sought

The applicant claims that the Tribunal should:

- annul the appointing authority's decision of non-promotion dated 4 November 2015 in so far as it concerns the applicant;
- order the CEDEFOP agency to pay compensation in respect of the harm suffered;
- order CEDEFOP to pay the costs.

Action brought on 23 June 2016 — ZZ v ECDC

(Case F-32/16)

(2016/C 296/60)

Language of the case: English

Parties

Applicant: ZZ (represented by: V. Koliass, lawyer)

Defendant: European Centre for Disease Prevention and Control (ECDC)

Subject-matter and description of the proceedings

Annulment of the decision of 21 September 2015 closing the applicant's appraisal report for the reporting period 2011.

Form of order sought

- Annul the decision of the appeal assessor of 21 September 2015 finalising the applicant's appraisal report for reporting period 2011, and insofar as necessary annul the decision of the authority empowered to conclude contracts of employment of 20 April 2016 rejecting the applicant's complaint of 20 December 2015;
- order ECDC to bear its own costs, and pay those of the applicant, for these proceedings.

Action brought on 27 June 2016 — ZZ v Court of Justice

(Case F-33/16)

(2016/C 296/61)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Tymen, lawyer)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

Application for annulment of the decision to dismiss the applicant at the end of his probationary period and an application for compensation in respect of the material and non-material harm allegedly suffered.

Form of order sought

The applicant claims that the Tribunal should:

- annul the decision of 17 July 2015 to dismiss the applicant;
 - annul the decision of 16 March 2016 rejecting the complaint of 16 October 2015;
 - order the defendant to pay compensation in respect of the material harm suffered by the applicant;
 - order the defendant to pay damages, assessed on equitable principles at EUR 60 000, by way of reparation for the applicant's non-material harm;
 - order the defendant to pay all the costs.
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ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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