Official Journal of the European Union

C 335

English edition

Information and Notices

Volume 59

12 September 2016

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COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2016/C 335/01)

Last publication

OJ C 326, 5.9.2016.

Past publications

OJ C 314, 29.8.2016

OJ C 305, 22.8.2016

OJ C 296, 16.8.2016

OJ C 287, 8.8.2016

OJ C 279, 1.8.2016

OJ C 270, 25.7.2016

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Sixth Chamber) of 30 June 2016 — European Commission v Republic of Poland

(Case C-648/13) ([1])

(Failure of a Member State to fulfil obligations — Environment — European Union water policy — Directive 2000/60/EC — Monitoring of the ecological status and the chemical status of surface waters — River basin management plans)

(2016/C 335/02)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: K. Herrmann and E. Manhaeve, acting as Agents)

Defendant: Republic of Poland (represented by: B. Majczyna, K. Majcher and M. Drwięcki, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by failing to transpose completely or correctly Articles 2(19), (20), (26) and (27), 8(1), 9(2), 10(3) and 11(5) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as amended by Directive 2008/32/EC of the European Parliament and of the Council of 11 March 2008, points 1.3, 1.3.4, 1.3.5, 1.4 and 2.4.1 of Annex V to that directive and points 7.2 to 7.10 of Part A of Annex VII to that directive, the Republic of Poland has failed to fulfil its obligations under those provisions and Article 24 of that same directive;*

2. *Orders the Republic of Poland to pay the costs.*

([1]) OJ C 45, 15.2.2014.

Judgment of the Court (Second Chamber) of 30 June 2016 (request for a preliminary ruling from the Tribunalul Sibiu — Romania) — Silvia Georgiana Câmpean v Administrația Finanțelor Publice a Municipiului Mediaș, now Serviciul Fiscal Municipal Mediaș, Administrația Fondului pentru Mediu

(Case C-200/14) ([1])

(Reference for a preliminary ruling — Principle of sincere cooperation — Principles of equivalence and effectiveness — National legislation laying down the detailed rules for the repayment of taxes improperly levied with interest — Enforcement of judicial decisions relating to such rights to repayment stemming from the legal order of the Union — Refund payable over a period of five years — Repayment contingent on the existence of funds received from a tax — No possibility of enforcement)

(2016/C 335/03)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Silvia Georgiana Câmpean

Defendants: Administrația Finanțelor Publice a Municipiului Mediaș, now Serviciul Fiscal Municipal Mediaș, Administrația Fondului pentru Mediu

Operative part of the judgment

The principle of sincere cooperation must be interpreted as precluding a Member State from adopting provisions making repayment of a tax which has been held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such a repayment; it is for the referring court to determine whether that principle has been complied with in the present case.

The principle of equivalence must be interpreted as precluding a Member State from providing procedural rules which are less favourable for applications for the repayment of a tax based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to make the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it.

The principle of effectiveness must be interpreted as precluding a system of repayment with interest of taxes levied in breach of EU law, the amount of which was established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the repayment of such taxes by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their obligations if they do not do so voluntarily. It is for the referring court to ascertain whether legislation such as that which would be applicable in the case at issue in the main proceedings in the absence of such a system of repayment meets the requirements of the principle of effectiveness.

([1]) OJ C 235, 21.7.2014.

Judgment of the Court (Second Chamber) of 30 June 2016 (request for a preliminary ruling from the Tribunalul Timiș — Romania) — Silvia Ciup v Administrația Județeană a Finanțelor Publice (AJFP) Timiș — Direcția Generală Regională a Finanțelor Publice (DGRFP) Timișoara

(Case C-288/14) ([1])

(Reference for a preliminary ruling — Principle of sincere cooperation — Principles of equivalence and effectiveness — National legislation laying down the detailed rules for the repayment, with interest, of taxes improperly levied — Enforcement of judicial decisions relating to such rights to repayment stemming from the legal order of the European Union — Repayment by instalments spread over five years — Repayment contingent on the existence of funds received from a tax — No possibility of enforcement)

(2016/C 335/04)

Language of the case: Romanian

Referring court

Tribunalul Timiș

Parties to the main proceedings

Applicant: Silvia Ciup

Defendant: Administrația Județeană a Finanțelor Publice (AJFP) Timiș — Direcția Generală Regională a Finanțelor Publice (DGRFP) Timișoara

Operative part of the judgment

1. *The principle of sincere cooperation must be interpreted as precluding a Member State from adopting provisions making repayment of a tax which has been held to be contrary to EU law by a judgment of the Court, or the incompatibility of which with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such repayment; it is for the referring court to determine whether that principle has been complied with in the present case.*

2. *The principle of equivalence must be interpreted as precluding a Member State from providing for procedural rules which are less favourable for actions based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to carry out the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it.*

3. *The principle of effectiveness must be interpreted as precluding a system of repayment of sums owed under EU law and the amount of which has been established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the repayment of such sums by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their obligations if they do not do so voluntarily.*

([1]) OJ C 303, 8.9.2014.

Judgment of the Court (Third Chamber) of 14 July 2016 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie — Poland) — Wrocław — Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju

(Case C-406/14) ([1])

(Reference for a preliminary ruling — Directive 2004/18/EC — Public works contracts — Regularity of the obligation imposed on tenderers to perform a certain percentage of the contract without using subcontractors — Regulation (EC) No 1083/2006 — General provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund — Obligation for the Member States to carry out a financial correction in relation to the irregularities identified — Concept of 'irregularity' — Need for a financial correction in the event of infringement of EU law on public procurement)

(2016/C 335/05)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Warszawie

Parties to the main proceedings

Applicant: Wrocław — Miasto na prawach powiatu

Defendant: Minister Infrastruktury i Rozwoju

Operative part of the judgment

1. *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No 2083/2005 of 19 December 2005, must be interpreted as meaning that a contracting authority is not authorised to require, by a stipulation in the tender specifications of a public works contract, that the future contractor of that contract perform with its own resources a certain percentage of the works covered by that contract.*

2. *Article 98 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, read in conjunction with Article 2(7) of that regulation, must be interpreted as meaning that the fact that a contracting authority imposed a requirement, in the context of a public works contract relating to a project receiving EU financial aid, that the future contractor perform by means of its own resources at least 25 % of those works, in infringement of Directive 2004/18, constitutes an 'irregularity' within the meaning of Article 2(7) of that regulation, justifying the need to apply a financial correction under Article 98 thereof, in so far as it cannot be excluded that that infringement had an impact on the budget of the Fund at issue. The amount of that correction must be calculated by taking into account all of the specific circumstances which are relevant in the light of the criteria referred to in the first subparagraph of Article 98(2) of that regulation, namely the nature and gravity of the irregularity and the resulting financial loss to the Fund concerned.*

([1]) OJ C 431, 1.12.2014.

Judgment of the Court (Fifth Chamber) of 14 July 2016 (requests for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia and the Tribunale amministrativo regionale per la Sardegna — Italy) — Promoimpresa srl (Case C 458/14) v Consorzio dei comuni della Sponda Bresciana del Lago di Garda e del Lago di Idro, Regione Lombardia and Mario Melis and Others (C 67/15) v Comune di Loiri Porto San Paolo, Provincia di Olbia Tempio

(Joined Cases C-458/14 and C-67/15) ([1])

(Reference for a preliminary ruling — Public contracts and freedom of establishment — Article 49 TFEU — Directive 2006/123/EC — Article 12 — Concessions of State-owned maritime, lakeside and waterway property of an economic interest — Automatic extension — Lack of tender procedure)

(2016/C 335/06)

Language of the case: Italian

Referring courts

Tribunale amministrativo regionale per la Lombardia and the Tribunale amministrativo regionale per la Sardegna

Parties to the main proceedings

Applicants: Promoimpresa srl (Case C 458/14) and Mario Melis and Others (C 67/15)

Defendants: Consorzio dei comuni della Sponda Bresciana del Lago di Garda e del Lago di Idro, Regione Lombardia (C-458/14), Comune di Loiri Porto San Paolo, Provincia di Olbia Tempio (C-67/15)

Interveners: Alessandro Piredda and Others

Operative part of the judgment

1. *Article 12(1) and (2) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as precluding a national measure, such as that at issue in the main proceedings, which permits the automatic extension of existing authorisations of State-owned maritime and lakeside property for tourist and leisure-oriented business activities, without any selection procedure for potential candidates.*

2. *Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits the automatic extension of existing concessions of State-owned property for tourist and leisure-oriented business activities, in so far as those concessions are of certain cross-border interest.*

([1]) OJ C 448, 15.12.2014
OJ C 146, 4.5.2015.

Judgment of the Court (Fourth Chamber) of 7 July 2016 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Citroën Commerce GmbH v Zentralvereinigung des Kraftfahrzeuggewerbes zur Aufrechterhaltung lauteren Wettbewerbs e.V. (ZLW)

(Case C-476/14) ([1])

(Reference for a preliminary ruling — Directives 98/6/EC and 2005/29/EC — Consumer protection — Advertisement containing an indication of price — Concepts of 'offer' and 'price inclusive of taxes' — Obligation to include in the price of a motor vehicle the additional costs necessarily incurred in connection with the transfer of the vehicle)

(2016/C 335/07)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Citroën Commerce GmbH

Defendant: Zentralvereinigung des Kraftfahrzeuggewerbes zur Aufrechterhaltung lauteren Wettbewerbs e.V. (ZLW)

Operative part of the judgment

Article 3 of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, read in conjunction with Article 1 and Article 2(a) of that directive, must be interpreted as meaning that costs in connection with the transfer of a motor vehicle from the manufacturer to the dealer, which are payable by the consumer, must be included in the selling price of that vehicle indicated in an advertisement made by the trader when, having regard to all the features of that advertisement, in the eyes of the consumer it sets out an offer concerning that vehicle. It is for the referring court to determine whether all those conditions are satisfied.

([1]) OJ C 462, 22.12.2014.

Judgment of the Court (Grand Chamber) of 29 June 2016 (request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg — Germany) — Criminal proceedings against Piotr Kossowski

(Case C-486/14) ([1])

(Reference for a preliminary ruling — Convention Implementing the Schengen Agreement — Articles 54 and 55(1)(a) — Charter of Fundamental Rights of the European Union — Article 50 — Ne bis in idem principle — Whether an accused may be prosecuted in a Member State after criminal proceedings brought against him in another Member State have been terminated by the public prosecutor's office without a detailed investigation — No examination of the merits of the case)

(2016/C 335/08)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht Hamburg

Party in the main proceedings

Piotr Kossowski

Other party: Generalstaatsanwaltschaft Hamburg

Operative part of the judgment

The principle of ne bis in idem laid down in Article 54 of the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, which was signed in Schengen (Luxembourg) on 19 June 1990, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, cannot be characterised as a final decision for the purposes of those articles when it is clear from the statement of reasons for that decision that the procedure was closed without a detailed investigation having been carried out; in that regard, the fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation took place.

([1]) OJ C 16, 19.1.2015.

Judgment of the Court (First Chamber) of 7 July 2016 (request for a preliminary ruling from the Cour d'appel de Paris — France) — Genentech Inc. v Hoechst GmbH, Sanofi-Aventis Deutschland GmbH

(Case C-567/14) ([1])

(Reference for a preliminary ruling — Competition — Article 101 TFEU — Non-exclusive licence agreement — Patent — No infringement — Obligation to pay royalties)

(2016/C 335/09)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Genentech Inc.

Defendants: Hoechst GmbH, Sanofi-Aventis Deutschland GmbH

Operative part of the judgment

Article 101(1) TFEU must be interpreted as not precluding the imposition on the licensee, under a licence agreement such as that at issue in the main proceedings, of a requirement to pay a royalty for the use of a patented technology for the entire period in which that agreement was in effect, in the event of the revocation or non-infringement of a licensed patent, provided that the licensee was able freely to terminate that agreement by giving reasonable notice.

([1]) OJ C 73, 2.3.2015.

Judgment of the Court (Grand Chamber) of 5 July 2016 (request for a preliminary ruling from the Sofiyski gradski sad — Bulgaria) — Criminal proceedings against Atanas Ognyanov

(Case C-614/14) ([1])

(Reference for a preliminary ruling — Article 267 TFEU — Article 94 of the Rules of Procedure of the Court — Content of a request for a preliminary ruling — National rule providing that the national court is to be disqualified because it stated a provisional opinion in the request for a preliminary ruling when setting out the factual and legal context — Charter of Fundamental Rights of the European Union — Second paragraph of Article 47 and Article 48(1))

(2016/C 335/10)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Party in the main proceedings

Atanas Ognyanov

Intervener: Sofiyska gradska prokuratura

Operative part of the judgment

1. *Article 267 TFEU and Article 94 of the Rules of Procedure of the Court, read in the light of the second paragraph of Article 47 and of Article 48(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a national rule which is interpreted in such a way as to oblige the referring court to disqualify itself from a pending case, on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case.*

2. *EU law, and in particular Article 267 TFEU, must be interpreted as meaning that it does not require the referring court, after the delivery of the preliminary ruling, to hear the parties again and to undertake further inquiries, which might lead it to alter the findings of fact or law made in the request for a preliminary ruling, nor does it prohibit the referring court from doing so, provided that the referring court gives full effect to the interpretation of EU law adopted by the Court of Justice of the European Union.*

3. *EU law must be interpreted as precluding a referring court from applying a national rule, such as that at issue in the main proceedings, which is deemed to be contrary to EU law.*

([1]) OJ C 96, 23.3.2015.

Judgment of the Court (Fourth Chamber) of 14 July 2016 (request for a preliminary ruling from the Raad van State — Belgium) — TNS Dimarso NV v Vlaams Gewest

(Case C-6/15) ([1])

(Reference for a preliminary ruling — Public supply contracts — Directive 2004/18/EC — Article 53 (2) — Award criteria — Most economically advantageous tender — Method of evaluation — Weighting rules — Obligation for the contracting authority to specify in the call for tenders the weighting of the award criteria — Scope of the obligation)

(2016/C 335/11)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: TNS Dimarso NV

Defendant: Vlaams Gewest

Operative part of the judgment

Article 53(2) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, read in the light of the principle of equal treatment and of the consequent obligation of transparency, must be interpreted as meaning that, in the case of a public service contract to be awarded pursuant to the criterion of the most economically advantageous tender in the opinion of the contracting authority, that authority is not required to bring to the attention of potential tenderers, in the contract notice or the tender specifications relating to the contract at issue, the method of evaluation used by the contracting authority in order to specifically evaluate and rank the tenders. However, that method may not have the effect of altering the award criteria and their relative weighting.

([1]) OJ C 118, 13.4.2015.

Judgment of the Court (Fifth Chamber) of 13 July 2016 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Brisal — Auto Estradas do Litoral SA, KBC Finance Ireland v Fazenda Pública

(Case C-18/15) ([1])

(Reference for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Restrictions — Tax legislation — Taxation of interest received — Difference in treatment between resident financial institutions and non-resident financial institutions)

(2016/C 335/12)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicants: Brisal — Auto Estradas do Litoral SA, KBC Finance Ireland

Defendant: Fazenda Pública

Operative part of the judgment

Article 49 EC does not preclude national legislation under which a procedure for withholding tax at source is applied to the income of financial institutions that are not resident in the Member State in which the services are provided, whereas the income received by financial institutions that are resident in that Member State is not subject to such withholding tax, provided that the application of the withholding tax to the non-resident financial institutions is justified by an overriding reason in the general interest and does not go beyond what is necessary to attain the objective pursued.

Article 49 EC precludes national legislation, such as that at issue in the main proceedings, which, as a general rule, taxes non-resident financial institutions on the interest income received within the Member State concerned without giving them the opportunity to deduct business expenses directly related to the activity in question, whereas such an opportunity is given to resident financial institutions.

It is for the national court to assess, on the basis of its national law, which business expenses may be regarded as being directly related to the activity in question.

([1]) OJ C 118, 13.4.2015.

Judgment of the Court (Third Chamber) of 14 July 2016 (request for a preliminary ruling from the Landgericht München I — Germany) — Verband Sozialer Wettbewerb eV v Innova Vital GmbH

(Case C-19/15) ([1])

(Reference for a preliminary ruling — Consumer protection — Regulation (EC) No 1924/2006 — Nutrition and health claims made on foods — Article 1(2) — Scope — Foods to be delivered as such to the final consumer — Claims made in a commercial communication addressed exclusively to health professionals)

(2016/C 335/13)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Verband Sozialer Wettbewerb eV

Defendant: Innova Vital GmbH

Operative part of the judgment

Article 1(2) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, as amended by Commission Regulation (EU) No 1047/2012 of 8 November 2012, must be interpreted as meaning that nutrition or health claims made in a commercial communication on a food which is intended to be delivered as such to the final consumer, if that communication is addressed not to the final consumer, but exclusively to health professionals, falls within the scope of that regulation.

([1]) OJ C 127, 20.4.2015.

Judgment of the Court (Fifth Chamber) of 7 July 2016 (request for a preliminary ruling from the Tribunal Central Administrativo Sul — Portugal) — Ambisig — Ambiente e Sistemas de Informação Geográfica SA v AICP — Associação de Industriais do Concelho de Pombal

(Case C-46/15) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Article 48(2)(a)(ii), second indent — Technical abilities of economic operators — Direct effect — Means of evidence — Hierarchical relationship between the private purchaser's certification and the tenderer's unilateral declaration — Principle of proportionality — Prohibition on introducing substantive changes to the means of evidence provided for)

(2016/C 335/14)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Sul

Parties to the main proceedings

Applicant: Ambisig — Ambiente e Sistemas de Informação Geográfica SA

Defendant: AICP — Associação de Industriais do Concelho de Pombal

Intervener: Índice — ICT & Management Lda

Operative part of the judgment

1. *The second indent of Article 48(2)(a)(ii) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that, even if not transposed into national law, it satisfies the conditions for conferring on individuals rights that they may assert against a contracting authority before national courts, provided that that authority is a public entity or has been given responsibility, pursuant to a measure adopted by the State, for providing a public-interest service under the control of the State and which has, for that purpose, special powers beyond those which result from the normal rules applicable in relations between individuals.*

2. *The second indent of Article 48(2)(a)(ii) of Directive 2004/18 must be interpreted as meaning that it does not preclude the application of rules laid down by a contracting authority, such as those at issue in the main proceedings, which do not allow an economic operator to provide evidence of his technical abilities by a unilateral declaration, unless he proves that it is impossible or very difficult to obtain a certification from the private purchaser.*

3. *The second indent of Article 48(2)(a)(ii) of Directive 2004/18 must be interpreted as meaning that it precludes the application of rules laid down by a contracting authority, such as those at issue in the main proceedings, which, on pain of exclusion of the tenderer's application, require the private purchaser's certification to contain authentication of the signature by a notary, lawyer or other competent entity.*

([1]) OJ C 146, 4.5.2015.

Judgment of the Court (Second Chamber) of 7 July 2016 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — Emmanuel Lebek v Janusz Domino

(Case C-70/15) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 34(2) — Defendant not entering an appearance — Recognition and enforcement of judgments — Grounds for refusing enforcement — Document instituting proceedings not served on the defendant in sufficient time — Concept of 'proceedings to challenge a judgment' — Application for relief — Regulation (EC) No 1393/2007 — Article 19(4) — Service of judicial and extrajudicial documents — Period within which an application for relief may be submitted)

(2016/C 335/15)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Emmanuel Lebek

Respondent: Janusz Domino

Operative part of the judgment

1. *The concept of 'proceedings to challenge a judgment' referred to in Article 34(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as also including applications for relief when the period for bringing an ordinary challenge has expired.*

2. *The last subparagraph of Article 19(4) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 must be interpreted as excluding the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired.*

([1]) OJ C 171, 26.5.2015.

Judgment of the Court (Ninth Chamber) of 14 July 2016 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Sprengen/Pakweg Douane BV v Staatssecretaris van Financiën

(Case C-97/15) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Combined Nomenclature — Headings 8471 and 8521 — Explanatory notes — Agreement on trade in information technology products — 'Screenplays')

(2016/C 335/16)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Sprengen/Pakweg Douane BV

Defendant: Staatssecretaris van Financiën

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, in the versions resulting, successively, from Commission Regulation (EC) No 1549/2006 of 17 October 2006 and Commission Regulation (EC) No 1214/2007 of 20 September 2007, must be interpreted as meaning that devices such as the screenplays at issue in the main proceedings, whose function is both to store multimedia files and to reproduce them on a television or video monitor, come under heading 8521 of that nomenclature.

([1]) OJ C 171, 26.5.2015.

Judgment of the Court (Fifth Chamber) of 7 July 2016 (request for a preliminary ruling from the Upravno sodišče Republike Slovenije — Slovenia) — Občina Gorje v Republika Slovenija

(Case C-111/15) ([1])

(Reference for a preliminary ruling — Common agricultural policy — Regulation (EC) No 1698/2005 — Regulation (EU) No 65/2011 — Financing by the EAFRD — Support for rural development — Rules on eligibility of operations and expenditure — Temporal condition — Complete exclusion — Reduction of the aid)

(2016/C 335/17)

Language of the case: Slovenian

Referring court

Upravno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Občina Gorje

Defendant: Republika Slovenija

Operative part of the judgment

1. *Article 71 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which expenditure is eligible for a European Agricultural Fund for Rural Development contribution to the co-financing of an operation selected by the Managing Authority of the rural development programme in question or under its responsibility only where it is incurred after the adoption of the decision granting such support.*

2. *Article 71(3) of Regulation No 1698/2005, read in conjunction with Article 30 of Commission Regulation (EU) No 65/2011 of 27 January 2011, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for the rejection in its entirety of a payment claim relating to an operation selected for European Agricultural Fund for Rural Development co-financing where certain expenditure incurred in respect of that operation was incurred prior to the adoption of the decision granting such support, where the beneficiary of the support did not intentionally make a false declaration in its payment claim.*

([1]) OJ C 245, 27.7.2015.

Judgment of the Court (First Chamber) of 30 June 2016 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Secretary of State for the Home Department v NA

(Case C-115/15) ([1])

(Reference for a preliminary ruling — Articles 20 and 21 TFEU — Directive 2004/38/EC — Article 13(2)(c) — Regulation (EEC) No 1612/68 — Article 12 — Right of residence of family members of a Union citizen — Marriage of a Union citizen and a third country national — Domestic violence — Divorce after the departure of the Union citizen — Retention of right of residence of a third country national with custody of children who are Union citizens)

(2016/C 335/18)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: NA

Intervening party: Aire Centre

Operative part of the judgment

1. *Article 13(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that a third-country national, who is divorced from a Union citizen at whose hands she has been the victim of domestic violence during the marriage, cannot rely on the retention of her right of residence in the host Member State, on the basis of that provision, where the commencement of divorce proceedings post-dates the departure of the Union citizen spouse from that Member State.*

2. *Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as meaning that a child and a parent who is a third-country national and who has sole custody of that child qualify for a right of residence in the host Member State, under that provision, in a situation, such as that in the main proceedings, where the other parent is a Union citizen and worked in that Member State, but ceased to reside there before the child began to attend school in that Member State.*

3. *Article 20 TFEU must be interpreted as meaning that it does not confer a right of residence in the host Member State either on a minor Union citizen, who has resided since birth in that Member State but is not a national of that State, or on a parent who is a third-county national and who has sole custody of that minor, where they qualify for a right of residence in that Member State under a provision of secondary EU law.*

4. *Article 21 TFEU must be interpreted as meaning that that it confers on that minor Union citizen a right of residence in the host Member State, provided that that citizen satisfies the conditions set out in Article 7(1) of Directive 2004/38, which it is for the referring court to determine. If so, that same provision allows the parent who is the primary carer of that Union citizen to reside with that citizen in the host Member State.*

([1]) OJ C 171, 26.5.2015.

Judgment of the Court (Second Chamber) of 30 June 2016 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Max-Heinz Feilen v Finanzamt Fulda

(Case C-123/15) ([1])

(Reference for a preliminary ruling — Taxation — Free movement of capital — Inheritance tax — Legislation of a Member State providing for a reduction in inheritance tax applicable to estates containing assets which have already formed part of an inheritance giving rise to the imposition of inheritance tax in that Member State — Restriction — Justification — Coherence of the tax system)

(2016/C 335/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Max-Heinz Feilen

Respondent: Finanzamt Fulda

Operative part of the judgment

Articles 63(1) TFEU and 65 TFEU do not preclude legislation of a Member State, such as that at issue in the main proceedings, which provides for a reduction in inheritance tax in the case of inheritance by persons within a particular tax class where the estate includes assets that had already been acquired, by way of inheritance, by persons within that tax class during the 10 years prior to the acquisition, on condition that inheritance tax was levied in that Member State in respect of that earlier acquisition.

([1]) OJ C 213, 29.6.2015.

Judgment of the Court (Second Chamber) of 30 June 2016 (request for a preliminary ruling from the Sächsisches Oberverwaltungsgericht — Germany) — Lidl GmbH & Co. KG v Freistaat Sachsen

(Case C-134/15) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 543/2008 — Agriculture — Common organisation of the markets — Marketing standards — Fresh pre-packaged poultrymeat — Obligation to indicate the total price and the price per weight unit on the pre-packaging or on a label attached thereto — Charter of Fundamental Rights of the European Union — Article 16 — Freedom to conduct a business — Proportionality — Second subparagraph of Article 40(2) TFEU — Non-discrimination)

(2016/C 335/20)

Language of the case: German

Referring court

Sächsisches Oberverwaltungsgericht

Parties to the main proceedings

Applicant: Lidl GmbH & Co. KG

Defendant: Freistaat Sachsen

Operative part of the judgment

1. *Consideration of the first question referred has not disclosed any factor of such a kind as to affect the validity of Article 5(4)(b) of Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultry meat, in the light of the freedom to conduct a business, as provided by Article 16 of the Charter of Fundamental Rights of the European Union.*

2. *Consideration of the second question referred has not disclosed any factor of such a kind as to affect the validity of Article 5(4)(b) of Regulation No 543/2008 in the light of the principle of non-discrimination referred to in the second subparagraph of Article 40(2) TFEU.*

([1]) OJ C 205, 22.6.2015.

Judgment of the Court (Sixth Chamber) of 30 June 2016 (request for a preliminary ruling from the Tribunal de première instance de Liège — Belgium) — Guy Riskin, Geneviève Timmermans v État belge

(Case C-176/15) ([1])

(Reference for a preliminary ruling — Free movement of capital — Articles 63 and 65 TFEU — Article 4 TEU — Direct taxation — Taxation of dividends — Bilateral convention for the avoidance of double taxation — Third State — Scope)

(2016/C 335/21)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Guy Riskin, Geneviève Timmermans

Defendant: État belge

Operative part of the judgment

Articles 63 TFEU and 65 TFEU, read in conjunction with Article 4 TEU, must be interpreted as not precluding a Member State from not extending, in a situation such as that at issue in the main proceedings, the benefit of the advantageous treatment accorded to a resident shareholder as a result of a bilateral double taxation convention concluded between that Member State and a third State — by which tax deducted at source by the third State is allowed unconditionally as a credit against tax payable in the shareholder's Member State of residence — to a resident shareholder in receipt of dividends from a Member State with which that Member State of residence has concluded a bilateral double taxation convention under which the granting of such a set-off is subject to compliance with additional conditions provided for by national law.

([1]) OJ C 221, 6.7.2015.

Judgment of the Court (Tenth Chamber) of 30 June 2016 (request for a preliminary ruling from the Sąd Rejonowy dla Wrocławia-Śródmieścia — Poland) — Alicja Sobczyszyn v Szkoła Podstawowa w Rzeplinie

(Case C-178/15) ([1])

(Reference for a preliminary ruling — Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Teachers — Convalescence leave — Annual leave coinciding with convalescence leave — Right to take the annual leave in another period)

(2016/C 335/22)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Wrocławia-Śródmieścia

Parties to the main proceedings

Applicant: Alicja Sobczyszyn

Defendant: Szkoła Podstawowa w Rzeplinie

Operative part of the judgment

Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national legislation or a national practice, such as that at issue in the main proceedings, under which a worker who is on convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his paid annual leave in a subsequent period, provided that the purpose of the right to convalescence leave is different from that of the right to annual leave, a matter which is for the national court to determine.

([1]) OJ C 245, 27.7.2015.

Judgment of the Court (First Chamber) of 13 July 2016 (request for a preliminary ruling from the Verwaltungsgericht Düsseldorf — Germany) — Joachim Pöpperl v Land Nordrhein-Westfalen

(Case C-187/15) ([1])

(Reference for a preliminary ruling — Article 45 TFEU — Freedom of movement for workers — Civil servant of a Member State who has left the public service in order to be employed in another Member State — National legislation providing in that case for loss of the retirement pension rights acquired in the civil service and for retrospective insurance under the general old-age insurance scheme)

(2016/C 335/23)

Language of the case: German

Referring court

Verwaltungsgericht Düsseldorf

Parties to the main proceedings

Applicant: Joachim Pöpperl

Defendant: Land Nordrhein-Westfalen

Operative part of the judgment

1. *Article 45 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a person having the status of civil servant in a Member State who leaves his post voluntarily in order to be employed in another Member State loses his retirement pension rights under the retirement pension scheme for civil servants and is insured retrospectively under the general old-age insurance scheme, conferring entitlement to a retirement pension lower than the retirement pension that would result from those rights.*

2. *Article 45 TFEU must be interpreted as meaning that is incumbent on the national court to give full effect to that article and to grant workers, in a situation such as that at issue in the main proceedings, retirement pension rights which are comparable to those of the civil servants who retain retirement pension rights corresponding, despite a change in public-sector employer, to the years of pensionable service that they have completed, by interpreting domestic law in conformity with that article or, if such an interpretation is not possible, by disapplying any contrary provision of domestic law in order to apply the same arrangements as those applicable to those civil servants.*

([1]) OJ C 245, 27.7.2015.

Judgment of the Court (Second Chamber) of 14 July 2016 (request for a preliminary ruling from the Cour d'appel de Paris — France) — Granarolo SpA v Ambrosi Emmi France SA

(Case C-196/15) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001 — Article 5(1) and (3) — Court having jurisdiction — Concepts of 'matters relating to a contract' and 'matters relating to tort or delict' — Abrupt termination of a long-standing business relationship — Action for damages — Concepts of 'sale of goods' and 'provision of services')

(2016/C 335/24)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Granarolo SpA

Defendant: Ambrosi Emmi France SA

Operative part of the judgment

1. *Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for damages founded on an abrupt termination of a long-standing business relationship, such as the termination at issue in the main proceedings, is not a matter relating to tort, delict or quasi-delict within the meaning of that regulation if a tacit contractual relationship existed between the parties, a matter which is for the referring court to ascertain. Demonstration of the existence of a tacit contractual relationship of that kind must be based on a body of consistent evidence, which may include in particular the existence of a long-standing business relationship, the good faith between the parties, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged.*

2. *Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a long-standing business relationship, such as that at issue in the main proceedings, is to be classified as a 'contract for the sale of goods' if the characteristic obligation of the contract at issue is the supply of goods or as a 'contract for the provision of services' if the characteristic obligation is a supply of services, a matter which is for the referring court to determine.*

([1]) OJ C 213, 29.6.2015.

Judgment of the Court (Second Chamber) of 30 June 2016 (request for a preliminary ruling from the Judecătoria Sibiu — Romania) — Direcția Generală Regională a Finanțelor Publice Brașov (DGRFP) v Vasile Toma, Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci

(Case C-205/15) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 47 — Right of access to a court — Principle of equality of arms — Principles of equivalence and effectiveness — Proceedings for the enforcement of a judicial decision ordering the repayment of a tax levied in breach of EU law — Exemption of public authorities from certain legal costs — Jurisdiction of the Court)

(2016/C 335/25)

Language of the case: Romanian

Referring court

Judecătoria Sibiu

Parties to the main proceedings

Applicant: Direcția Generală Regională a Finanțelor Publice Brașov (DGRFP)

Defendants: Vasile Toma, Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci

Operative part of the judgment

Article 47 of the Charter of Fundamental Rights of the European Union and the principles of equivalence and effectiveness must be interpreted as not precluding legislation such as that at issue in the main proceedings which exempts legal persons governed by public law from judicial stamping fees when they lodge an objection to the enforcement of a judicial decision relating to the repayment of taxes levied in breach of EU law and exempts those persons from the obligation to lodge a security at the time of bringing an application for a stay of such enforcement proceedings, while the applications submitted by legal and natural persons governed by private law in the context of such procedures remain, in principle, subject to court costs.

(1) OJ C 245, 27.7.2015.

Judgment of the Court (Eighth Chamber) of 7 July 2016 — Republic of Poland v European Commission

(Case C-210/15 P) (1)

(Appeal — EAGGF and EAFRD — Expenditure excluded from EU financing — Regulations (EC) No 1257/1999 and No 1698/2005 — Early retirement of farmers and farm workers — Definitive cessation of all commercial farming activity)

(2016/C 335/26)

Language of the case: Polish

Parties

Appellant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Other party to the proceedings: European Commission (represented by: A. Szmytkowska and D. Triantafyllou, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Republic of Poland to pay the costs.*

(1) OJ C 236, 20.7.2015.

Judgment of the Court (Second Chamber) of 7 July 2016 (request for a preliminary ruling from the Pécsi Törvényszék — Hungary) — Hőszig Kft. v Alstom Power Thermal Services

(Case C-222/15) (1)

(Reference for a preliminary ruling — Jurisdiction clause — Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Article 23 — Clause inserted in the general conditions — Consent of the parties to those conditions — Validity and precision of such a clause)

(2016/C 335/27)

Language of the case: Hungary

Referring court

Pécsi Törvényszék

Parties to the main proceedings

Applicant: Hőszig Kft.

Defendant: Alstom Power Thermal Services,

Operative part of the judgment

Article 23(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a jurisdiction clause, such as that at issue in the main proceedings, which, first, is set out in the client's general terms and conditions, referred to in the instruments witnessing the contracts between those parties and forwarded upon their conclusion, and, secondly, designates as courts with jurisdiction those of a city of a Member State, meets the requirements of that provision relating to the consent of the parties and the precision of the content of such a clause.

([1]) OJ C 245, 27.7.2015.

Judgment of the Court (Second Chamber) of 14 July 2016 (request for a preliminary ruling from the Rechtbank Den Haag — Netherlands) — Brite Strike Technologies Inc. v Brite Strike Technologies SA

(Case C-230/15) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 22(4) — Jurisdiction in intellectual property disputes — Article 71 — Conventions concluded by the Member States on particular matters — Benelux Convention on Intellectual Property — Jurisdiction in disputes concerning Benelux trade marks and designs — Article 350 TFEU)

(2016/C 335/28)

Language of the case: Dutch

Referring court

Rechtbank Den Haag

Parties to the main proceedings

Applicant: Brite Strike Technologies Inc.

Defendant: Brite Strike Technologies SA

Operative part of the judgment

Article 71 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in the light of Article 350 TFEU, does not preclude the application to those disputes of the rule of jurisdiction for disputes relating to Benelux trademarks and designs, laid down in Article 4.6 of the Benelux Convention on Intellectual Property (Trade Marks and Designs) of 25 February 2005, signed in The Hague by the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.

([1]) OJ C 254, 3.8.2015.

Judgment of the Court (Sixth Chamber) of 30 June 2016 — Kingdom of Belgium v European Commission

(Case C-270/15 P) ([1])

(Appeal — Aid granted by the Belgian authorities to finance screening tests of transmissible spongiform encephalopathies in bovine animals — Selective advantage — Decision declaring that aid incompatible in part with the internal market)

(2016/C 335/29)

Language of the case: Dutch

Parties

Appellant: Kingdom of Belgium (represented by: C. Pochet and J.-C. Halleux, acting as Agents, assisted by L. Van den Hende, advocaat)

Other party to the proceedings: European Commission (represented by: S. Noë and H. van Vliet, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Kingdom of Belgium to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 254, 3.8.2015.

Judgment of the Court (Ninth Chamber) of 14 July 2016 — Sea Handling SpA, in liquidation v European Commission

(Case C-271/15 P) ([1])

(Appeal — Public right of access to documents of the EU institutions — Regulation (EC) No 1049/2001 — Third indent of Article 4(2) — Exceptions to the right of access to documents — Incorrect interpretation — Obligation to state reasons — Documents relating to a procedure for reviewing State aid — Protection of the purpose of inspections, investigations and audits — General presumption of application of the exception to the right of access to all documents in the administrative file — Scope of the presumption of confidentiality — Application for access to the complaint which gave rise to an inquiry procedure — Refusal of access — Overriding public interest)

(2016/C 335/30)

Language of the case: Italian

Parties

Appellant: Sea Handling SpA, in liquidation (represented by: B. Nascimbene and M. Merola, avvocati)

Other party to the proceedings: European Commission (represented by: F. Clotuche-Duvieusart, D. Grespan and D. Nardi, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Sea Handling SpA to pay the costs.*

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (Eighth Chamber) of 14 July 2016 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Maria Cristina Elisabetta Ornano v Ministero della Giustizia, Direzione Generale dei Magistrati del Ministero

(Case C-335/15) ([1])

(Reference for a preliminary ruling — Social policy — Article 119 of the EC Treaty (subsequently Article 141 EC) — Directive 75/117/EEC — Equal pay for men and women — Article 1 — Directive 92/85/EEC — Measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Article 11(2)(b) and Article 11(3) — National law providing for an allowance for ordinary magistrates in respect of expenses which they incur in the performance of their professional functions — No entitlement for an ordinary magistrate to that allowance in the case of compulsory maternity leave taken prior to 1 January 2005)

(2016/C 335/31)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Maria Cristina Elisabetta Ornano

Defendant: Ministero della Giustizia, Direzione Generale dei Magistrati del Ministero

Operative part of the judgment

Article 119 of the EC Treaty (subsequently Article 141 EC), Article 1 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, and Article 11(2)(b) and 11(3) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) must be interpreted, in a situation where the Member State concerned did not provide for the maintenance of all the elements of pay to which an ordinary magistrate was entitled before her maternity leave, as not precluding a national law, such as that at issue in the main proceedings, under which, in the case of a period of compulsory maternity leave taken prior to 1 January 2005, an ordinary magistrate is not entitled to receive an allowance in respect of costs that ordinary magistrates incur in the performance of their professional functions, provided that that worker received, during that period, an income in an amount at least equivalent to that of the benefit provided for under national social security legislation which she would have received in the event of a break in her activities on grounds connected with her state of health, this being a matter for the national court to determine.

([1]) OJ C 294, 7.9.2015.

Judgment of the Court (Ninth Chamber) of 30 June 2016 (request for a preliminary ruling from the Curtea de Apel Bucureşti — Romania) — Selena România SRL v Direcția Generală Regională a Finanțelor Publice (DGRFP) București

(Case C-416/15) ([1])

(Reference for a preliminary ruling — Commercial policy — Regulation (EC) No 1225/2009 — Article 13 — Circumvention — Council Implementing Regulation (EU) No 791/2011 — Open mesh fabrics of glass fibres originating in the People's Republic of China — Anti-dumping duties — Council Implementing Regulation (EU) No 437/2012 — Consignment from Taiwan — Initiation of an investigation — Implementing Regulation (EU) No 21/2013 — Extension of the anti-dumping duty — Temporal scope — Principle of non-retroactivity — Community Customs Code — Post-clearance recovery of import or export duties)

(2016/C 335/32)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Applicant: Selena România SRL

Defendant: Direcția Generală Regională a Finanțelor Publice (DGRFP) București

Operative part of the judgment

Article 1(1) of Council Implementing Regulation (EU) No 21/2013 of 10 January 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of those same goods consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not, is to be interpreted as meaning that the definitive anti-dumping duty extended by that provision is not applicable retroactively to goods consigned from Taiwan, released for free circulation in the Union after the date of entry into force of Council Implementing Regulation (EU) No 791/2011 of 3 August 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China, but before that of Commission Regulation (EU) No 437/2012 of 23 May 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation No 791/2011, and making such imports subject to registration. Nevertheless, the anti-dumping duty imposed by Article 1(1) of Regulation No 791/2011 applies to imports of such goods, if it is established that, despite being consigned from Taiwan and declared as originating in that country, those goods in fact originate in the People's Republic of China.

([1]) OJ C 346, 19.10.2015.

Judgment of the Court (Eighth Chamber) of 7 July 2016 (request for a preliminary ruling from the Krajský soud v Ostravě — Czech Republic) — Ivo Muladi v Krajský úřad Moravskoslezského kraje

(Case C-447/15) ([1])

(Reference for a preliminary ruling — Transport — Directive 2003/59/EC — Obligation to obtain an initial qualification — Article 4 — Acquired rights — Holders of driving licences issued before the dates laid down in Article 4 — Exemption from the obligation to obtain an initial qualification — National legislation setting an additional requirement for periodic training of 35 hours duration in order to benefit from that exemption)

(2016/C 335/33)

Language of the case: Czech

Referring court

Krajský soud v Ostravě

Parties to the main proceedings

Applicant: Ivo Muladi

Defendant: Krajský úřad Moravskoslezského kraje

Operative part of the judgment

Article 4 of Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which, before the driving activity in question may be carried out, periodic training of 35 hours duration has to be completed by persons who are exempted, under Article 4, from the requirement that drivers of certain road vehicles for the carriage of goods or passengers obtain an initial qualification.

([1]) OJ C 389, 23.11.2015.

Judgment of the Court (Seventh Chamber) of 30 June 2016 (request for a preliminary ruling from the Landesgericht Wiener Neustadt — Austria) — Admiral Casinos & Entertainment AG v Balmatic Handelsgesellschaft mbH and Others

(Case C-464/15) ([1])

(Reference for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Games of chance — Legislation of a Member State prohibiting, on pain of criminal penalties, the operation of low-prize gaming machines ('kleines Glücksspiel') where no licence has been granted by the competent authority — Restriction — Justification — Proportionality — Assessment of proportionality on the basis of both the objective of the legislation at the time of its adoption and its effects when implemented — Effects empirically and definitely determined)

(2016/C 335/34)

Language of the case: German

Referring court

Landesgericht Wiener Neustadt

Parties to the main proceedings

Applicant: Admiral Casinos & Entertainment AG

Defendants: Balmatic Handelsgesellschaft mbH, Robert Schnitzer, Suayip Polat KG, Ülkü Polat, Attila Juhas, Milazim Rexha

Operative part of the judgment

Article 56 TFEU must be interpreted as meaning that a review of the proportionality of restrictive national legislation in the area of games of chance must be based not only on the objective of that legislation at the time of its adoption, but also on the effects of the legislation, assessed after its adoption.

([1]) OJ C 398, 30.11.2015.

Judgment of the Court (Second Chamber) of 7 July 2016 (request for a preliminary ruling from the Nejvyšší soud České republiky — Czech Republic) — Tommy Hilfiger Licensing LLC and Others v Delta Center a.s.

(Case C-494/15) ([1])

(Reference for a preliminary ruling — Approximation of laws — Directive 2004/48/EC — Enforcement of intellectual property rights — Notion of 'intermediary whose services are being used by a third party to infringe an intellectual property right' — Tenant of market halls subletting sales points — Possibility of an injunction against that tenant — Article 11)

(2016/C 335/35)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicants: Tommy Hilfiger Licensing LLC, Urban Trends Trading BV, Rado Uhren AG, Facton Kft., Lacoste SA, Burberry Ltd

Defendant: Delta Center a.s.

Operative part of the judgment

1. *The third sentence of Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as meaning that the tenant of market halls who sublets the various sales points situated in those halls to market-traders, some of whom use their pitches in order to sell counterfeit branded products, falls within the concept of 'an intermediary whose services are being used by a third party to infringe an intellectual property right' within the meaning of that provision.*

2. *The third sentence of Article 11 of Directive 2004/48 must be interpreted as meaning that the conditions for an injunction within the meaning of that provision against an intermediary who provides a service relating to the letting of sales points in market halls are identical to those for injunctions which may be addressed to intermediaries in an online marketplace, set out by the Court in the judgment of 12 July 2011 in L'Oréal and Others (C-324/09, EU:C:2011:474).*

([1]) OJ C 414, 14.12.2015.

Appeal brought on 12 February 2016 by Kenzo Tsujimoto against the judgment of the General Court (First Chamber) delivered on 2 December 2015 in Case T-414/13: Kenzo Tsujimoto v European Union Intellectual Property Office

(Case C-85/16 P)

(2016/C 335/36)

Language of the case: English

Parties

Appellant: Kenzo Tsujimoto (represented by: A. Wenninger-Lenz, M. Ring, Rechtsanwältinnen, W. von der Osten-Sacken, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Kenzo

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (First Chamber) of 2 December 2015 in Case T-414/13;

— give a final ruling on the dispute;

— order EUIPO and Kenzo S.A. to pay the costs of the proceedings, including the costs of the proceedings before the Board of Appeal.

Pleas in law and main arguments

1. **Infringement of Article 76 (2) CTMR**

Both oppositions brought by KENZO S.A. are based on Article 8 (5) CTMR ([1]). In both cases, the Board of Appeal took into account evidence in support of the reputation claim which was filed by the Opponent before the Opposition Division in order to establish genuine use of the mark. It is undisputed that the documents concerned were filed after the expiry of the time limits for submitting evidence of the existence, validity and scope of protection of the earlier right pursuant to Rule 19 (1) CTMIR ([2]). It follows from Rule 19 (1), (2) and 20 (1) CTMIR that an opposition based on Article 8 (5) must be rejected if the opponent fails to prove the reputation of the earlier trademark within the period specified by the Office. Nevertheless, the General Court comes to the conclusion that the Board of Appeal had discretion as to whether the evidence concerned should be taken into account in support of the reputation claim, that the Board recognized and did exercise its discretion and provided proper reasons for taking that evidence into account. The appellant, on the other hand, is of the opinion that the finding of the General Court awarding discretion to the Board of Appeal is flawed by an error in law and amounts to misapplication of Rules 19 (1), (2) and 20 (1) CTMIR.

The appellant is aware that the other parties to the proceedings claim that the admissibility of the consideration of documents filed in support of genuine use in support of the reputation claim is to be guided not by Rule 20 (1) CTMIR, but by Rule 50, paragraph 1, alinea 3, of Regulation No 2868/95 as a special procedural Rule before the Board of Appeal.

Even if the discretion of the Board of Appeal were to be construed in line with Rule 50 (1) (iii) CTMR, that discretion was exercised incorrectly by the Board of Appeal and the General Court misapplied Article 76 (2) by approving the Board of Appeal's considerations on the indissociable link between proof of use and proof of reputation as proper exercising of its discretion. In fact, the Board of Appeal did not even determine the scope of its discretion, i.e. by determining whether the discretion in the subject case must be exercised restrictively or not. If the Board of Appeal had exercised its discretion

correctly, it should have recognized that the discretion must, in conformity with the Rintisch judgment (Case C-120/12 P, Bernhard Rintisch v. OHIM) be exercised restrictively. In the circumstances, the only way of correctly exercising discretion would have been not to take into consideration the documents supporting the reputation claim. The General Court overlooked the fact that the Board of Appeal failed to correctly determine the scope of its discretion and to apply its discretion within that scope and, by so doing, infringed Article 76 (2) CTMR.

2. **Infringement of Article 8 (5) CTMR**

The appellant claims that the General Court failed to compare the marks 'KENZO' and 'KENZO ESTATE' as a whole and so infringed Article 8 (5) CTMR. In addition, the appellant claims that the reputation claim was confirmed by the General Court on the basis of documents which should, under proper application of the law and proper exercising of its discretion by the Board of Appeal, not have been taken into account. The appellant further claims that the General Court failed to undertake the necessary global assessment when it concluded that the contested trademark would be likely to be associated with the earlier mark and would take unfair advantage of the earlier mark's reputation. Finally, the appellant submits that the Board of Appeal and the General Court erred when concluding that the appellant had failed to substantiate 'due cause' within the meaning of Article 8 (5) CTMR.

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

(2) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark OJ L 303, p. 1

Appeal brought on 12 February 2016 by Kenzo Tsujimoto against the judgment of the General Court (First Chamber) delivered on 2 December 2015 in Case T-522/13: Kenzo Tsujimoto v European Union Intellectual Property Office

(Case C-86/16 P)

(2016/C 335/37)

Language of the case: English

Parties

Appellant: Kenzo Tsujimoto (represented by: A. Wenninger-Lenz, M. Ring, Rechtsanwältinnen, W. von der Osten-Sacken, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Kenzo

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (First Chamber) of 2 December 2015 in Case T-522/13;

— give final judgment on the dispute;

— order EUIPO and Kenzo S.A. to pay the costs of the proceedings, including the costs of the proceedings before the Board of Appeal.

Pleas in law and main arguments

1. **Infringement of Article 76 (2) CTMR**

Both oppositions brought by KENZO S.A. are based on Article 8 (5) CTMR ([1]). In both cases, the Board of Appeal took into account evidence in support of the reputation claim which was filed by the Opponent before the Opposition Division in order to establish genuine use of the mark. It is undisputed that the documents concerned were filed after the expiry of the time limits for submitting evidence of the existence, validity and scope of protection of the earlier right pursuant to Rule 19 (1) CTMIR ([2]). It follows from Rule 19 (1), (2) and 20 (1) CTMIR that an opposition based on Article 8 (5) must be rejected if the opponent fails to prove the reputation of the earlier trademark within the period specified by the Office. Nevertheless, the General Court comes to the conclusion that the Board of Appeal had discretion as to whether the evidence concerned should be taken into account in support of the reputation claim, that the Board recognized and did exercise its discretion and provided proper reasons for taking that evidence into account. The appellant, on the other hand, is of the opinion that the finding of the General Court awarding discretion to the Board of Appeal is flawed by an error in law and amounts to misapplication of Rules 19 (1), (2) and 20 (1) CTMIR.

The appellant is aware that the other parties to the proceedings claim that the admissibility of the consideration of documents filed in support of genuine use in support of the reputation claim is to be guided not by Rule 20 (1) CTMIR, but by Rule 50 paragraph 1, alinea 3, of Regulation No 2868/95 as a special procedural Rule before the Board of Appeal.

Even if the discretion of the Board of Appeal were to be construed in line with Rule 50 (1) (iii) CTMIR, that discretion was exercised incorrectly by the Board of Appeal and the General Court misapplied Article 76 (2) by approving the Board of Appeal's considerations on the indissociable link between proof of use and proof of reputation as proper exercising of its discretion. In fact, the Board of Appeal did not even determine the scope of its discretion, i.e. by determining whether the discretion in the subject case must be exercised restrictively or not. If the Board of Appeal had exercised its discretion correctly, it should have recognized that the discretion must, in conformity with the Rintisch judgment (Case C-120/12 P, Bernhard Rintisch v. OHIM) be exercised restrictively. In the circumstances, the only way of correctly exercising discretion would have been not to take into consideration the documents supporting the reputation claim. The General Court overlooked the fact that the Board of Appeal failed to correctly determine the scope of its discretion and to apply its discretion within that scope and, by so doing, infringed Article 76 (2) CTMR.

2. **Infringement of Article 8 (5) CTMR**

The appellant claims that the General Court failed to compare the marks 'KENZO' and 'KENZO ESTATE' as a whole and so infringed Article 8 (5) CTMR. In addition, the appellant claims that the reputation claim was confirmed by the General Court on the basis of documents which should, under proper application of the law and proper exercising of its discretion by the Board of Appeal, not have been taken into account. The appellant further claims that the General Court failed to undertake the necessary global assessment when it concluded that the contested trademark would be likely to be associated with the earlier mark and would take unfair advantage of the earlier mark's reputation. Finally, the appellant submits that the Board of Appeal and the General Court erred when concluding that the appellant had failed to substantiate 'due cause' within the meaning of Article 8 (5) CTMR.

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

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark
OJ L 303, p. 1

Appeal brought on 12 February 2016 by European Dynamics Luxembourg SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the General Court (Fourth Chamber) delivered on 2 December 2015 in Case T-553/13: European Dynamics Luxembourg and Evropaïki Dynamiki v Fusion for Energy

(Case C-88/16 P)

(2016/C 335/38)

Language of the case: English

Parties

Appellants: European Dynamics Luxembourg SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: M. Sfyri, C.-N. Dede, D. Papadopoulou, dikigoroi)

Other party to the proceedings: European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy)

By order of 7 July 2016 the Court of Justice (Ninth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Sąd Okręgowy w Gorzowie Wielkopolskim (Poland) lodged on 19 April 2016 — Aleksandra Kubicka

(Case C-218/16)

(2016/C 335/39)

Language of the case: Polish

Referring court

Sąd Okręgowy w Gorzowie Wielkopolskim

Applicant in the main proceedings

Aleksandra Kubicka

Question referred

Must Article 1(2)(k), Article 1(2)(1) and Article 31 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession ([1]) be interpreted as permitting refusal to recognise the material effects of a legacy by vindication (*legatum per vindicationem*), as provided for by [Polish] succession law, if that legacy concerns the right of ownership of immovable property located in a Member State the law of which does not provide for legacies having direct material effect?

([1]) OJ 2012 L 201, p. 107.

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 17 May 2016 — Polkomtel Sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej

(Case C-277/16)

(2016/C 335/40)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Polkomtel Sp. z o.o.

Respondent: Prezes Urzędu Komunikacji Elektronicznej

Questions referred

(1) Must Article 13, in conjunction with Article 8(4), of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), ([1]) in its original version, be interpreted as meaning that, where an obligation for cost orientation of prices is imposed on an operator with significant market power, the national regulatory authority may, in order to promote efficiency and sustainable competition, set the price for the service covered by that obligation below the level of the costs of supplying that service that are incurred by the operator, verified by the national regulatory authority and regarded as costs attributable to that service?

(2) Must Article 13(3), in conjunction with Article 8(4), of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), in its original version, in conjunction with Article 16 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the national regulatory authority may impose on an operator obliged to orientate prices to costs an obligation to set the price annually on the basis of the most up-to-date data on costs and submit the price thus set, together with a cost justification, to the national regulatory authority for verification before that price becomes applicable in trade?

(3) Must Article 13(3) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), in its original version, in conjunction with Article 16 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the national regulatory authority may request the operator required to orientate prices to costs to adjust the price only where that operator first sets the amount of the price independently and starts to apply it, or also where the operator applies the price at the amount set previously by the national regulatory authority but it follows from the cost justification for the subsequent reporting period that the price set previously by the national regulatory authority is above the level of costs incurred by the operator?

([1]) OJ 2002 L 108, p. 7.

Request for a preliminary ruling from the Landgericht Aachen (Germany) lodged on 19 May 2016 — Frank Sleutjes

(Case C-278/16)

(2016/C 335/41)

Language of the case: German

Referring court

Landgericht Aachen

Parties to the main proceedings

Applicant: Frank Sleutjes

Other party: Staatsanwaltschaft Aachen

Question referred

Is Article 3 of Directive 2010/64/EU ([1]) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (Celex No 32010L0064) to be interpreted as meaning that the term 'judgment' in Paragraph 37(3) of the [Strafprozessordnung (StPO); the Code of Criminal Procedure] also includes penal orders within the meaning of Paragraph 407 et seq. of the Code of Criminal Procedure?

([1]) OJ L 280, 26.10.2010, p. 1.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 30 May 2016 — Stanisław Pieńkowski v Dyrektor Izby Skarbowej w Lublinie

(Case C-307/16)

(2016/C 335/42)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Stanisław Pieńkowski

Defendant: Dyrektor Izby Skarbowej w Lublinie

Question referred

Must Articles 146(1)(b), 147, 131 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) be interpreted as precluding national legislation which excludes application of the exemption to a taxable person who does not satisfy the condition relating to attainment of the relevant turnover ceiling for the previous tax year and who also has not concluded an agreement with a person authorised to refund tax to travellers?

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

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 30 May 2016 — Kozuba Premium Selection sp. z o.o., established in Warsaw, v Dyrektor Izby Skarbowej w Warszawie

(Case C-308/16)

(2016/C 335/43)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Kozuba Premium Selection sp. z o.o., established in Warsaw

Respondent: Dyrektor Izby Skarbowej w Warszawie

Question referred

Must Article 135(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) be interpreted as precluding a national provision (point 10 of Article 43(1) of the Ustawa o podatku od towarów i usług [Law on the tax on goods and services] of 11 March 2004 [Dz. U. No 54, item 535, as amended; 'the Law on VAT']) under which the supply of buildings, civil engineering works or parts thereof is exempt from VAT save where:

(a) the supply is made within the framework of the first occupation or prior to the first occupation,

(b) the period between the first occupation and the supply of the building, civil engineering works or parts thereof was shorter than 2 years, insofar as point 14 of Article 2 of the Law on VAT defines first occupation as release for use of buildings, civil engineering works or parts thereof, in performance of taxable activities, to the first customer or user, following their:

(a) erection or

(b) upgrade, if the expenditure incurred for the upgrade, as defined in the regulations on income tax, constituted at least 30 % of the initial value?

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

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 31 May 2016 — Corbin Opportunity Fund, L.P. and Others

(Case C-309/16)

(2016/C 335/44)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Corbin Opportunity Fund, L.P., Corbin Capital Partners, Redwood Drawdown Master Fund, L.P., Redwood Opportunity Master Fund Ltd, Redwood Capital Management LLC, Pontus Holdings Ltd, RMF Financial Holdings Sàrl

Defendant: FMA Österreichische Finanzmarktaufsichtsbehörde

Questions referred

1. Is Directive 2014/59/EU ([1]) of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, in particular Article 1(1) and Article 2(1)(2) thereof, applicable *ratione temporis* and *ratione materiae* to the case of a resolution company like that in the main proceedings whose resolution had already been started, through mechanisms provided for at national level, before the expiry of the period for transposition of the directive and continues to be carried out in the period after the expiry of the period for transposition on the basis of the national rules transposing the abovementioned directive?

2. Does Directive 2014/59/EU confer on creditors of such a resolution company which have applied to the resolution authority, requesting it to 'examine and prohibit' the conclusion with other creditors of certain legal transactions planned or already entered into by the resolution company (for example a court arrangement with creditors), rights for whose protection they have access to an administrative and judicial procedure?

(1) OJ 2014 L 173, p. 190.

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 10 June 2016 — Piotr Zarski v Andrzej Stadnicki

(Case C-330/16)

(2016/C 335/45)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Appellant: Piotr Zarski

Respondent: Andrzej Stadnicki

Questions referred

1. Does the letting of premises constitute a service within the meaning of Articles 2(1) and 3 (and recitals 2, 3, 7, 11, 18 and 23) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions? ([1])

2. If the answer to Question 1 is in the affirmative, where a letting contract of indefinite duration is concluded, does the contract or the single, separate 'transaction', which is what each individual rental payment in return for access to the premises and utilities is, constitute a commercial transaction within the meaning of Articles 1(1), 2(1), 3, 6 and 8 (and recitals 1, 3, 4, 8, 9, 26 and 35) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions?

3. If in the answer to Question 2 it is established that each individual payment of rent in return for access to the premises and utilities does constitute a commercial transaction, must Articles 1(1), 2(1) and 12(4) (and recital 3) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions be interpreted as meaning that the Member States can exclude application of the directive to letting contracts concluded before 16 March 2013 in cases where late individual payments of rent occur after that date?

([1]) OJ 2011 L 48, p. 1.

Reference for a preliminary ruling from the Amtsgericht Kehl (Germany) lodged on 21 June 2016 — Criminal proceedings against C

(Case C-346/16)

(2016/C 335/46)

Language of the case: German

Referring court

Amtsgericht Kehl

Parties to the main proceedings

C

Other party: Staatsanwaltschaft Offenburg

Questions referred

'1. Must Article 67(2) TFEU and Article 20 and Article 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders ([1]) (Schengen Borders Code), or any other rules of EU law, be interpreted as precluding national legislation which grants the police authorities of the Member State in question the power to search, within an area of up to 30 kilometres from the land border of that Member State with the States party to the Convention implementing the Schengen Agreement of 14 June 1985 (Convention implementing the Schengen Agreement), for an article, irrespective of the behaviour of the person carrying this article and of specific circumstances, with a view to impeding or stopping unlawful entry into the territory of that Member State or to preventing certain criminal acts directed against the security or protection of the border or committed in connection with the crossing of the border, in the absence of any temporary reintroduction of border controls at the relevant internal border pursuant to Article 23 et seq. of the Schengen Borders Code?

2. If the answer to the first question is in the affirmative: Must Article 67(2) TFEU and Article 20 and Article 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), or any other rules of EU law, be interpreted as precluding national legislation or practice which permits a criminal court in that Member State to use evidence to the detriment of the accused, although that evidence was obtained as a result of a State measure that infringes EU law?'

(1) OJ L 105, p. 1.

Request for a preliminary ruling from the Nederlandstalige Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 24 June 2016 — T.KUP SAS v Belgische Staat

(Case C-349/16)

(2016/C 335/47)

Language of the case: Dutch

Referring court

Nederlandstalige rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: T.KUP SAS

Defendant: Belgische Staat

Questions referred

1. Is Regulation No 1294/2009 (1) invalid in respect of an importer such as that in the present case, on the ground of infringement of Article 17(1) of the basic regulation, (2) given that the Commission, in its review, used a sample of only eight importers, notwithstanding the fact that a manageable number of 21 importers ought to have been examined?

2. Is Regulation No 1294/2009 invalid in respect of an importer such as that in the present dispute, on the ground of infringement of the third subparagraph of Article 11(2) of the basic regulation, given that the Commission, in its review, did not take sufficient account of the evidence supplied in that it included five large importers in the sample as against only three small importers, and in that it primarily took into account the information provided by the five large importers?

3. Is Regulation No 1294/2009 invalid in respect of an importer such as that in the present dispute, on the ground of infringement of Articles 2 and 3 of the basic regulation and/or of Article 11(2), (5) and (9) of the basic regulation, given that the Commission, in its review, had before it inadequate information to enable it to determine that there were continued imports resulting in dumping and injury?

4. Is Regulation No 1294/2009 invalid in respect of an importer such as that in the present dispute, on the ground of infringement of Article 21 of the basic regulation, given that the Commission, in its review, requires that there be specific indications that an importer is being disproportionately burdened by an extension?

(1) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 28 June 2016 — Christian Picart v Ministre des finances et des comptes publics

(Case C-355/16)

(2016/C 335/48)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Christian Picart

Respondent: Ministre des finances et des comptes publics

Questions referred

1. May the right of establishment as a self-employed person, as defined in Articles 1 and 4 of the Agreement of 21 June 1999 and Article 12 of Annex I to that agreement, be regarded as equivalent to the freedom of establishment which Article 43 of the Treaty establishing the European Community, now Article 49 of the Treaty on the Functioning of the European Union, guarantees in respect of activities pursued as a self-employed person?

2. In this case, account being taken of the provisions in Article 16 of the agreement, should the case-law deriving from the judgment of 7 September 2006 in Case C-470/04, which was made after the agreement, be applied in the case of a national of a Member State who transferred his residence to Switzerland and who merely keeps his shareholding in companies under the law of that Member State (which gives him a definite influence over the decisions of those companies and enables him to determine their activities), without claiming to have the intention to pursue in Switzerland an activity as a self-employed person which is different to the activity he pursued in the Member State of which he was a national and which consists in the management of his shareholdings?

3. If that right is not equivalent to the freedom of establishment, must it be interpreted in the same way as the Court of Justice of the European Union interpreted the freedom of establishment in its judgment of 7 September 2006 in Case C-470/04?

Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Belgium) lodged on 27 June 2016 — Criminal proceedings against Wamo BVBA, Luc Cecile Jozef Van Mol

(Case C-356/16)

(2016/C 335/49)

Language of the case: Dutch

Referring court

Nederlandstalige rechtbank van eerste aanleg Brussel

Parties to the main proceedings

Wamo BVBA,

Luc Cecile Jozef Van Mol

Question referred

Should Directive 2005/29/EC ([1]) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market be interpreted as precluding a national law which prohibits any natural or legal person from disseminating advertising relating to interventions involving aesthetic surgery or non-surgical aesthetic medicine, as provided by Article 20(1) of the Wet van 23 mei 2013 tot regeling van de vereiste kwalificaties om ingrepen van niet-heelkundige esthetische geneeskunde en esthetische heelkunde uit te voeren en tot regeling van de reclame en informatie betreffende die ingrepen (Law of 23 May 2013 regulating the qualifications required to perform non-surgical aesthetic interventions and aesthetic surgery and regulating the advertising and information relating to such interventions) (*B.S.*, 2 July 2013), inserted by the Wet van 10 [April] 2014 houdende diverse bepalingen inzake gezondheid 2014 (Law of 10 April 2014 containing various provisions relating to health) (*B.S.*, 30 April 2014)?

([1]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22).

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 28 June 2016 — UAB 'Gelvora' v Valstybinė vartotojų teisių apsaugos tarnyba

(Case C-357/16)

(2016/C 335/50)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: UAB 'Gelvora'

Other party: Valstybinė vartotojų teisių apsaugos tarnyba

Questions referred

1. Does the legal relationship between a company that has acquired the right to a debt under an assignment of claim agreement and a natural person whose indebtedness arose under a consumer credit agreement, where the company carries out acts of debt recovery, fall within the scope of Directive 2005/29/EC ([1]) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council?

2. If the answer to the first question is in the affirmative, does the term 'product' used in Article 2(c) of the Directive cover acts performed in exercising the right to the debt acquired under the assignment of claim agreement in the context of debt recovery from a natural person whose indebtedness arose under a consumer credit agreement entered into with the original creditor?

3. Does the legal relationship between a company that has acquired the right to a debt under an assignment of claim agreement and a natural person whose indebtedness arose under a consumer credit agreement and has already been established by a final judicial decision and passed to the bailiff for enforcement, where the company is carrying out parallel acts of debt recovery, fall within the scope of the Directive?

4. If the answer to the third question is in the affirmative, does the term 'product' used in Article 2(c) of the Directive cover acts performed in exercising the right to the debt acquired under the assignment of claim agreement in the context of debt recovery from a natural person whose indebtedness arose under a consumer credit agreement entered into with the original creditor and has been established by a final judicial decision and passed to the bailiff for enforcement?

([1]) OJ 2005 L 149, p. 22.

Request for a preliminary ruling from the Cour administrative (Luxembourg) lodged on 24 June 2016 — UBS (Luxembourg) SA, Alain Hondequin, Holzem and Others

(Case C-358/16)

(2016/C 335/51)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Applicants: UBS (Luxembourg) SA, Alain Hondequin, Holzem and Others

Questions referred

'1. Against the background in particular of Article 41 of the Charter of Fundamental Rights of the European Union (the Charter) enshrining the principle of good administration, does the exception of "cases covered by criminal law" — found at the end of Article 54(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, ([1]) and at the beginning of Article 54(3) — cover a situation concerning, according to national law, an administrative sanction, but considered from the point of view of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to be part of criminal law, such as the sanction at issue in the main proceedings, imposed by the national regulator, the national supervisory authority, and consisting in ordering a member of the national bar association to cease holding a post as director or any other post subject to accreditation in an entity supervised by that regulator and ordering him to resign from all his posts at the earliest opportunity?

2. Inasmuch as the aforementioned administrative sanction, regarded as such under national law, stems from administrative proceedings, to what extent is the obligation of professional secrecy, which a national supervisory authority may invoke under Article 54 of Directive 2004/39/EC, subject to the requirements for a fair trial including an effective remedy as laid down in Article 47 of the Charter, examined in relation to the parallel requirements of Articles 6 and 13 ECHR relating to a fair trial and an effective remedy, which together constitute the safeguards provided for by Article 48 of the Charter, in particular as regards full access for the person on whom the administrative sanction has been imposed to the administrative file of the author of the sanction, which is also the national supervisory authority, for the purpose of protecting the interests and civil rights of the person on whom the sanction has been imposed?'

([1]) OJ L 145, p. 1.

Request for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 24 June 2016 — Ömer Altun and Others, Absa NV and Others v Openbaar Ministerie

(Case C-359/16)

(2016/C 335/52)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Appellants: Ömer Altun, Abubekir Altun, Sedrettin Maksutogullari, Yunus Altun, Absa NV, M. Sedat BVBA, Alnur BVBA

Respondent: Openbaar Ministerie

Question referred

Can an E101 certificate issued under Article 11(1) of Regulation (EEC) No 574/72 ([1]) of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as applicable before its repeal by Article 96(1) of Regulation (EC) No 987/2009 ([2]) laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, be annulled or disregarded by a court other than that of the sending Member State if the facts which are submitted to its scrutiny support the conclusion that the certificate was obtained or invoked fraudulently?

([1]) (OJ 1972 L 74, p. 1).
([2]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

Request for a preliminary ruling from the Conseil d'Etat (France) lodged on 4 July 2016 — Association française des entreprises privées (AFEP) and Others v Ministre des finances et des comptes publics

(Case C-365/16)

(2016/C 335/53)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Association française des entreprises privées (AFEP), Axa, Compagnie générale des établissements Michelin, Danone, ENGIE, formerly GDF Suez, Eutelsat Communications, LVMH Moët Hennessy-Louis Vuitton SA, Orange SA, Sanofi SA, Suez Environnement Company, Technip, Total SA, Vivendi, Eurazeo, Safran, Scor SE, Unibail-Rodamco SE, Zodiac Aerospace

Defendant: Ministre des finances et des comptes publics

Questions referred

1. Does Article 4 of Council Directive 2011/96/EU of 30 November 2011, ([1]) and in particular paragraph 1(a) thereof, preclude a levy such as that provided for in Article 235*ter* ZCA of the General Tax Code, which is payable on the distribution of profits by parent companies that are liable to corporation tax in France and is assessed on the basis of the sums distributed?

2. In the event that the first question is answered in the negative, is a levy such as that provided for in Article 235*ter* ZCA of the General Tax Code to be regarded as a 'withholding tax' from which, pursuant to Article 5 of the directive, profits distributed by a subsidiary must be exempt?

([1]) Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8).

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 5 July 2016 — Openbaar Ministerie v Dawid Piotrowski

(Case C-367/16)

(2016/C 335/54)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellant: Openbaar Ministerie

Respondent: Dawid Piotrowski

Questions referred

1. Should Article 3.3 of the Framework Decision [1] on the European arrest warrant be interpreted as meaning that surrender can be granted only in respect of persons who are regarded as having attained the age of majority under the law of the executing Member State, or does that provision allow the executing Member State also to grant the surrender of minors who, on the basis of national rules, can be held criminally responsible from a certain age (and whether or not there has been compliance with various conditions)?

2. On the hypothesis that the surrender of minors is not prohibited by Article 3.3 of the Framework Decision, should that provision then be interpreted:

   (a) as meaning that the existence of a (theoretical) possibility of being able to punish minors from a certain age in accordance with national law suffices as a criterion for granting the surrender (in other words, by carrying out an assessment *in abstracto* on the basis of the criterion of the age from which someone can be regarded as criminally responsible, without taking into account any possible further conditions)?; or

   (b) as meaning that neither the principle of mutual recognition, as referred to in Article 1.2 of the Framework Decision, nor the text of Article 3.3 of the Framework Decision precludes the executing Member State from carrying out an assessment *in concreto* on a case-by-case basis, where it may be required that, so far as concerns the person whose surrender is sought, the same conditions for criminal responsibility must be met as those that apply to the nationals of the executing Member State, having regard to their age at the time of the acts, having regard to the nature of the alleged offence and possibly even having regard to the preceding judicial interventions in the issuing Member State which led to a measure of an educational nature, even if those conditions did not exist in the issuing Member State?

3. If the executing Member State may carry out an assessment *in concreto*, is then, in order to avoid impunity, no distinction to be made between a surrender *for the purposes* of a criminal prosecution and a surrender *for the purposes* of the enforcement of a sentence?

[1] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 11 July 2016 — Salvador Benjumea Bravo de Laguna v Esteban Torras Ferrazzuolo

(Case C-381/16)

(2016/C 335/55)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala Primera de lo Civil

Parties to the main proceedings

Applicant: Salvador Benjumea Bravo de Laguna

Defendant: Esteban Torras Ferrazzuolo

Question referred

Is the claim for the recovery of ownership of a Community trade mark on grounds other than those set out in Article 18 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark ([1]) and, in particular, in accordance with the cases provided for in Article 2(2) of Spanish Law 17 of 7 December 2001 on Trade Marks (BOE No 294 of 8 December 2001), compatible with EU law and in particular with that regulation?

([1]) OJ 2009 L 78, p. 1.

Appeal brought on 11 July 2016 by Sharif University of Technology against the judgment of the General Court (Seventh Chamber) delivered on 28 April 2016 in Case T-52/15: Sharif University of Technology v Council of the European Union

(Case C-385/16 P)

(2016/C 335/56)

Language of the case: English

Parties

Appellant: Sharif University of Technology (represented by: M. Happold, Barrister)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber) of 28 April 2016 in Case T-52/15 Sharif University of Technology v Council of the European Union;

— grant the forms of order sought by the Appellant in the proceedings before the General Court: and

— order the Council to pay the Appellant's costs of both sets of proceedings.

Pleas in law and main arguments

The Appellant requests the Court of Justice to set aside the judgment of the General Court, to annul the acts at issue (the Annexes to Council Decision 2014/776/CFSP ([1]) and to Council Implementing Regulation (EU) No 1202/2014 ([2]), and of Annex II to Council Decision 2010/413/CFSP ([3]) and Annex IX to Council Regulation (EU) No 267/2012 ([4]) (as amended, respectively, by Article 1 of Decision 2014/776/CFSP and Article 1 of Implementing regulation (EU) No 1202/2014)) insofar as they designate the Appellant as an entity subject to restrictive measures under Article 23(2) of Council Regulation (EU) No 267/2012, to award it compensation for the damage sustained to its reputation by virtue of the Council's acts, and to order the Council to pay the costs incurred by it at first instance and on appeal.

The Appellant puts forward the following two pleas in law in support of its claim that the judgment of the General Court was vitiated by legal error, and that the Court of Justice should set it aside and decide the case for itself:

First, that the General Court wrongly failed to rule that the Council failed to comply with an essential procedural requirement and/or made a manifest error of assessment when adopting the decision to list SUT because it failed to undertake the decision-making exercise it was obliged to undertake.

Secondly, that the General Court wrongly interpreted the legal criterion of 'support' to the Government of Iran in Article 20 (1)(c) of Council Decision 2010/413/CFSP (as amended) and Article 23(2)(d) of Regulation (EU) No 267/2012 of 23 march 2012 (as amended) relied upon by the Council as justifying the Appellant's designation as subject to restrictive measures with the result that it wrongly concluded that the evidence presented by the Council supported the Appellant's listing.

([1]) Council Decision 2014/776/CFSP of 7 November 2014 amending Decision 2010/413/CFSP concerning restrictive measures against Iran
OJ L 325, p. 19

([2]) Council Implementing Regulation (EU) No 1202/2014 of 7 November 2014 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran
OJ L 325, p. 3

([3]) Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP
OJ L 195, p. 39

([4]) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010
OJ L 88, p. 1

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 15 July 2016 — T — 2, družba za ustvarjanje, razvoj in trženje elektronskih komunikacij in opreme, d.o.o. (currently in a state of insolvency) v Republika Slovenija

(Case C-396/16)

(2016/C 335/57)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Appellant: T — 2, družba za ustvarjanje, razvoj in trženje elektronskih komunikacij in opreme, d.o.o. (currently in a state of insolvency)

Respondent: Republika Slovenija

Questions referred

1. Should the reduction of the obligations on the basis of an arrangement with creditors, as in the main proceedings, which has been approved by judicial decree and has acquired the force of *res judicata* be treated as a change in the factors used to determine the amount of input VAT to be deducted, within the meaning of Article 185(1) of the VAT Directive, ([1]) or should it be treated as a different situation, in which the deduction is higher or lower than that to which the taxable person was entitled, within the meaning of Article 184 of the VAT Directive?

2. Should the reduction of the obligations on the basis of an arrangement with creditors, as in the main proceedings, which has been approved by judicial decree and has acquired the force of *res judicata* be regarded as a (partial) non-payment of a transaction, within the meaning of the first subparagraph of Article 185(2) of the VAT Directive?

3. Must a Member State, taking into account the requirements of clarity and certainty in legal situations imposed by the EU legislature and having regard for Article 186 of the VAT Directive, lay down, for the purpose of requiring adjustment of the deduction in the event of failure to make complete or partial payment, as permitted by the second subparagraph of Article 185(2) of that directive, detailed rules, in national law, to cover cases of non-payment, or may it include, in those rules, an arrangement with creditors approved by judicial decree which has acquired the force of *res judicata* (should this come within the concept of non-payment)?

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

GENERAL COURT

Order of the General Court of 12 July 2016 — Yanukovych v Council

(Case T-347/14) ([1])

(Action for annulment — Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Inclusion of the applicant's name — Modification of the form of order sought — Death of the applicant — Inadmissibility — Proof that inclusion on the list is justified — Manifestly well founded action)

(2016/C 335/58)

Language of the case: English

Parties

Applicant: Olga Stanislavivna Yanukovych, as heir of Viktor Viktorovych Yanukovych (Kiev, Ukraine) (represented by: T. Beazley QC)

Defendant: Council of the European Union (represented by: initially E. Finnegan and J.-P. Hix, and subsequently J.-P. Hix and P. Mahnič Bruni, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: S. Bartelt and D. Gauci, acting as Agents)

Re:

Action pursuant to Article 263 TFEU for annulment, first, of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26), as amended by Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119 (OJ 2014 L 111, p. 91), and of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), as amended by Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation No 208/2014 (OJ 2014 L 111, p. 33), and secondly, of Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119 (OJ 2015 L 24, p. 16), of Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1), of Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119 (OJ 2015 L 62, p. 25), and of Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1), in so far as they concern Mr Viktorovych Yanukovych.

Operative part of the order

1. *Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in their original versions, are annulled in so far as they concern Mr Viktor Viktorovych Yanukovych.*

2. *The action is dismissed as to the remainder.*

3. *The Council of the European Union shall bear its own costs and shall pay those incurred by Mrs Olga Stanislavivna Yanukovych, as heir of Mr Viktorovych Yanukovych, in relation to the claim for annulment made in the application.*

4. *Mrs Stanislavivna Yanukovych, as heir of Mr Viktorovych Yanukovych, shall bear her own costs and shall pay those incurred by the Council in relation to the claim for annulment made in the statement of modification.*

5. *The European Commission shall bear its own costs.*

(1) OJ C 253, 4.8.2014.

Order of the General Court of 10 June 2016 — Pshonka v Council

(Case T-380/14) (1)

(Action for annulment — Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Period allowed for commencing proceedings — Admissibility — Proof that inclusion on the list is justified — Manifestly well-founded action)

(2016/C 335/59)

Language of the case: English

Parties

Applicant: Artem Viktorovych Pshonka (Moscow, Russia) (represented by: C. Constantina and J.-M. Reymond, lawyers)

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

Intervener in support of the defendant: European Commission (represented by: S. Bartelt and D. Gauci, acting as Agents)

Re:

Application for annulment of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), in so far as they relate to the applicant.

Operative part of the order

1. *Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine are annulled in so far as they relate to Mr Artem Viktorovych Pshonka.*

2. *The Council of the European Union shall bear its own costs and pay those incurred by Mr Pshonka.*

3. *The European Commission shall bear its own costs.*

(1) OJ C 261, 11.8.2014.

Order of the General Court of 19 July 2016 — Italy v Commission

(Case T-770/14) ([1])

(ERDF — Regulation (EC) No 1083/2006 — Italy-Malta Cross-border Cooperation Programme 2007-2013 — Failure to comply with the deadlines — Automatic decommitment — Proportionality — Principle of cooperation — Principle of partnership — Force majeure — Obligation to state reasons — Action manifestly lacking any foundation in law)

(2016/C 335/60)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri and P. Gentili, Agents)

Defendant: European Commission (represented by: B.-R. Killmann and D. Recchia, Agents)

Re:

Action based on Article 263 TFEU and seeking, first, annulment of Commission note Ares (2014) 2975571 of 11 September 2014, by which the Commission notified the Italian Republic of the automatic decommitment, on 31 December 2013, of a part of the resources relating to European Regional Development Fund (ERDF) commitments referred to in the Italy-Malta Cross-border Cooperation Programme 2007-2013, and, secondly, that the General Court declare the expenditure relating to the ImaGenX, Simit and PIM Energethica projects eligible for financing.

Operative part of the order

1. *The action is dismissed.*

2. *The Italian Republic is ordered to pay the costs.*

([1]) OJ C 26, 26.1.2015.

Order of the General Court of 14 July 2016 — Alcimos Consulting v ECB

(Case T-368/15) ([1])

(Action for annulment — Action for compensation — Decisions adopted by the Governing Council of the ECB — Provision of emergency liquidity assistance to Greek banks — Ceiling — Lack of direct concern — Inadmissibility — Infringement of procedural requirements)

(2016/C 335/61)

Language of the case: English

Parties

Applicant: Alcimos Consulting SMPC (Athens, Greece) (represented by: F. Rodolaki, lawyer)

Defendant: European Central Bank (represented by: K. Laurinavičius and M. Szablewska, acting as Agents, assisted by H.-G. Kamann, lawyer)

Re:

Application, first, under Article 263 TFEU, for annulment of the decision of the Governing Council of the ECB of 28 June 2015 by which it was decided to maintain the ceiling to the provision of emergency liquidity assistance to Greek banks at the level decided on 26 June 2015 and for annulment of the decision of the Governing Council of the ECB of 6 July 2015 by which it was decided to maintain that ceiling at that same level and to adjust the haircuts on collateral accepted by the Bank of Greece in that respect, and application, secondly, under Article 268 TFEU, for compensation for the damage which the applicant allegedly suffered as a result of those decisions.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Alcimos Consulting SMPC shall pay the costs.*

(1) OJ C 302, 14.9.2015.

Order of the General Court of 19 July 2016 — Panzeri v Parliament and Commission

(Case T-677/15) (1)

(Action for annulment — Rules governing the payment of expenses and allowances to Members of the Parliament — Parliamentary assistance allowance — Recovery of undue payments — Replacement of the contested measure in the course of the proceedings — No need to adjudicate — Preparatory measure — Inadmissibility)

(2016/C 335/62)

Language of the case: Italian

Parties

Applicant: Pier Antonio Panzeri (Calusco d'Adda, Italy) (represented by: C. Cerami, lawyer)

Defendants: European Parliament (represented by: S. Seyr and G. Corstens, acting as Agents) and European Commission (represented by: J. Baquero Cruz and D. Nardi, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking annulment (i) of the letter from the Director of Directorate B 'Members' Financial and Social Entitlements' of the European Parliament's Directorate-General for Finance dated 21 September 2015 concerning recovery from the applicant of a sum of EUR 83 764,34 and enclosing the related debit note of 18 September 2015 and (ii) of the letter from the Secretary General of the Parliament of 27 July 2012 informing the applicant of the findings of an investigation into the use of his parliamentary allowances.

Operative part of the order

1. *There is no longer any need to adjudicate on the action in so far as it is directed against the letter from the Director of Directorate B 'Members' Financial and Social Entitlements' of the European Parliament's Directorate-General for Finance dated 21 September 2015 and against Debit Note No 2015-1320 of 18 September 2015.*

2. *For the rest, the action is dismissed as inadmissible.*

3. *Mr Pier Antonio Panzeri shall pay, in addition to his own costs, the costs incurred by the European Commission.*

4. *The Parliament shall bear its own costs.*

(1) OJ C 27, 25.1.2016.

Order of the President of the General Court of 20 July 2016 — MSD Animal Health Innovation and Intervet international v EMA

(Case T-729/15 R)

(Application for interim measures — Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA concerning information submitted by an undertaking as part of its application for authorisation to place a medicinal product on the market — Decision to grant a third party access to the documents — Application for suspension of operation of a measure — Urgency — Prima facie case — Weighing up of interests)

(2016/C 335/63)

Language of the case: English

Parties

Applicants: MSD Animal Health Innovation GmbH (Schwabenheim, Germany) and Intervet international BV (Boxmeer, Netherlands) (represented by: P. Bogaert, lawyer, B. Kelly and H. Billson, Solicitors, J. Stratford QC, and C. Thomas, Barrister)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, N. Rampal Olmedo, A. Spina, A. Rusanov and S. Marino, acting as Agents)

Re:

Application based on Articles 278 TFEU and 279 TFEU, in essence, for the suspension of operation of Decision EMA/785809/2015 of the EMA of 25 November 2015, granting to a third party, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to certain documents containing information submitted in the context of an application for marketing authorisation for the veterinary medicinal product Bravecto.

Operative part of the order

1. *The operation of Decision EMA/785809/2015 of the European Medicines Agency (EMA) of 25 November 2015 is suspended, in so far as that decision grants a third party access, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, to toxicity study reports C 45151/28-day dermal (6 hours semi-occlusive) toxicity study in wistar rats, C 45162/28-day oral (gavage) toxicity study in wistar rats, and C 88913/28-day dermal (6 hours semi-occlusive) toxicity study in wistar rats..*

2. *The EMA shall not disclose the reports mentioned in point 1.*

3. *Costs are reserved.*

Action brought on 21 July 2016 — Asna v EUIPO — Wings Software (ASNA WINGS)

(Case T-382/16)

(2016/C 335/64)

Language in which the application was lodged: Spanish

Parties

Applicant: Asna, Inc. (San Antonio, Texas, United States) (represented by: J. Devaureix and J.C. Erdozain López, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wings Software BVBA (Heist-Op-den-Berg, Belgium)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: European Union word mark 'ASNA WINGS' — Application for registration No 11 388 352

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 April 2016 in Case R 436/2015-5

Form of order sought

The applicant claims that the Court should:

— declare the application admissible, together with all of the relevant documents and copies;

— declare the proposed evidence admissible;

— annul and declare inapplicable the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Error as to the proof of use by the other party;

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

Action brought on 22 July 2016 — AIA v EUIPO — Casa Montorsi (MONTORSI F. & F.)

(Case T-389/16)

(2016/C 335/65)

Language in which the application was lodged: Italian

Parties

Applicant: Agricola italiana alimentare SpA (AIA) (San Martino Buon Albergo, Italy) (represented by: S. Rizzo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Casa Montorsi Srl (Vignola, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union word mark 'MONTORSI F. & F.' — EU trade mark No 5 681 663

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 28 April 2016 in Case R 1239/2014-1

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 53(1)(a), in conjunction with Article 8(1)(b), of Regulation No 207/2009;

— Infringement of Article 53(3) of Regulation No 207/2009.

Action brought on 26 July 2016 — Starbucks v EUIPO — Nersesyan (COFFEE ROCKS)

(Case T-398/16)

(2016/C 335/66)

Language in which the application was lodged: English

Parties

Applicant: Starbucks Corp. (Seattle, Washington, United States) (represented by: I. Fowler, Solicitor and J. Schmitt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Hasmik Nersesyan (Borgloon, Belgium)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word elements 'COFFEE ROCKS' — Application for registration No 11 881 943

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 May 2016 in Case R 559/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the decision given by the Office on 24 May 2016 in Case R 559/2015-4; and

— order that the costs of the proceedings be borne by the defendant, or — in the event that the other party intervenes — that they be borne jointly by the defendant and the intervener.

Pleas in law

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

— Infringement of Article 8(5) of Regulation No 207/2009.

Action brought on 22 July 2016 — Berliner Stadtwerke v EUIPO (berlinGas)

(Case T-402/16)

(2016/C 335/67)

Language of the case: German

Parties

Applicant: Berliner Stadtwerke GmbH (Berlin, Germany) (represented by: O. Spieker, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the procedure before EUIPO

Mark at issue: EU word mark 'berlinGas' — application No 14 067 714

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 May 2016 in Case R 291/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear the costs of the proceedings.

Plea in law

— Infringement of Article 7(1)(b) and (c), in conjunction with Article 7(2), of Regulation No 207/2009.

Action brought on 28 July 2016 — Stada Arzneimittel v EUIPO — Vivatech (Immunostad)

(Case T-403/16)

(2016/C 335/68)

Language in which the application was lodged: German

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: R. Kaase and J. Plate, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vivatech (Paris, France)

Details of the procedure before EUIPO

Proprietor of the mark at issue: the applicant

Mark at issue: EU word mark 'Immunostad' — EU trade mark No 9 552 225

Proceedings before EUIPO: invalidity proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 19 April 2016 in Case R 863/2015–5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear the costs, including the costs of the appeal.

Pleas in law

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

— Infringement of Article 75 of Regulation No 207/2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 14 June 2016 — ZZ and Others v Commission

(Case F-29/16)

(2016/C 335/69)

Language of the case: Italian

Parties

Applicants: ZZ and Others (represented by: C. Cortese, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision withholding amounts from a pension adopted by the Commission under Article 85 of the Staff Regulations and determining that an amount of EUR 22 368,13 be withheld from the survivor's pension granted to the applicant and from the orphan's pension granted in respect of his three children.

Form of order sought

The applicants claim that the Tribunal should:

— annul the decision of the Office for Administration and Payment of Individual Entitlements (PMO.4) of 17 August 2015 concerning recovery of sums overpaid in respect of survivor's and orphan's pensions, in relation to the entitlements of ZZ and of his two minor daughters and, to the extent necessary, the express decision rejecting the complaint;

— annul the decision of the Office for Administration and Payment of Individual Entitlements (PMO.4) of 17 August 2015 concerning recovery of sums overpaid in respect of survivor's and orphan's pensions, in relation to the entitlements of X and, to the extent necessary, the implied decision rejecting the complaint;

— order the Commission to compensate the material and non-material damage suffered by the applicants owing to the breach of their right to good administration and of the Administration's duty of care towards them, amounting, respectively:

  — to the difference between the remuneration received by ZZ as a temporary agent of the EFSA in grade AD 9, and the remuneration that he would receive as an official of the Commission in grade AD 12, for a period of one year;

  — to the amount of the recovery sought from the applicants in the contested decision, increased by the difference between the pensions amount determined in Statement of amendment No 2 and the amount determined in Statement of amendment No 3, from the date on which Statement No 3 takes effect until such time as the family will be in a position to resettle in its earlier place of residence, that period being equitably estimated at one year from resolution of the present case;

— order the Commission to pay the costs.

Action brought on 12 July 2016 — ZZ v Commission

(Case F-36/16)

(2016/C 335/70)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision not to promote the applicant to grade AST 7 in the 2015 annual promotions exercise.

Form of order sought

— Annul the decision of 13 November 2015 publishing the list of officials promoted in the 2015 annual promotions exercise in so far as it does not contain the applicant's name;

— Order the Commission to pay the costs.

Action brought on 29 July 2016 — ZZ v EIB

(Case F-37/16)

(2016/C 335/71)

Language of the case: English

Parties

Applicant: ZZ (represented by: B. Maréchal, lawyer)

Defendant: European Investment Bank (EIB)

Subject-matter and description of the proceedings

The annulment of the decision, rendered in the framework of the Dignity at work investigation procedure regarding sexual harassment allegations, rejecting the complaint filed by the applicant as well as the compensation of the moral prejudice and of the medical costs incurred by the applicant.

Form of order sought

— Cancel the decision dated 16 October 2015 rendered in the framework of the Dignity at Work investigation procedure launched by the applicant dated 20 May 2015 against her supervisor, as investigated by the Investigation Panel and annulment of the Report by the Investigation Panel dated 14 September 2015 related to the Dignity at Work request filed by the applicant, in which her complaint has been rejected and inappropriate recommendations have been included, including a sanitization of the report;

— Compensate for medical costs as a result of the damage suffered from the applicant in an amount of (i) 977 EUR to date (including VAT) and (ii) a provisional amount of 5 850 EUR for future medical costs;

— Grant damages in relation to the moral prejudice suffered by the applicant amounting 20 000 EUR;

— Order the defendant to bear the costs.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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