

# Official Journal of the European Union

C 383



English edition

## Information and Notices

Volume 59

17 October 2016

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## IV

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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 383/01)

**Last publication**

OJ C 371, 10.10.2016

**Past publications**

OJ C 364, 3.10.2016

OJ C 350, 26.9.2016

OJ C 343, 19.9.2016

OJ C 335, 12.9.2016

OJ C 326, 5.9.2016

OJ C 314, 29.8.2016

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

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## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Request for a preliminary ruling from the Tribunale di Novara (Italy) lodged on 4 July 2016 — Bruno Dell'Acqua v Eurocom Srl, Regione Lombardia**

(Case C-370/16)

(2016/C 383/02)

*Language of the case: Italian*

**Referring court**

Tribunale di Novara

**Parties to the main proceedings**

*Applicant:* Bruno Dell'Acqua

*Defendants:* Eurocom Srl, Regione Lombardia

**Question referred**

'Is prior authorisation in accordance with the [last] sentence of Article 1 of the "Protocol on the Privileges and Immunities of the European Union" (Official Journal of the European Union C 310/261 of 16.12. 2004) necessary or not, when in attachment proceedings against a third party the sums to be attached are no longer held by the payer, the [European] Commission, but have already been transferred to the national paying agencies?'

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**Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 19 July 2016 — Soufiane El Hassani v Minister Spraw Zagranicznych**

(Case C-403/16)

(2016/C 383/03)

*Language of the case: Polish*

**Referring court**

Naczelny Sąd Administracyjny

**Parties to the main proceedings**

*Appellant:* Soufiane El Hassani

*Respondent:* Minister Spraw Zagranicznych

**Question referred**

Must Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), <sup>(1)</sup> having regard to recital 29 of the Visa Code and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as requiring the Member States to guarantee an effective remedy (appeal) before a court of law?

<sup>(1)</sup> OJ 2009 L 243, p. 1.

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**Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 21 July 2016 — Compania Națională de Autostrăzi și Drumuri Naționale din România SA v Ministerul Fondurilor Europene — Direcția Generală Managementul Fondurilor Externe**

**(Case C-408/16)**

(2016/C 383/04)

*Language of the case: Romanian*

**Referring court**

Curtea de Apel București

**Parties to the main proceedings**

*Applicant:* Compania Națională de Autostrăzi și Drumuri Naționale din România SA

*Defendants:* Ministerul Fondurilor Europene — Direcția Generală Managementul Fondurilor Externe

**Questions referred**

1. Is Article 15(c) of Directive 2004/18 <sup>(1)</sup> to be interpreted as permitting a Member State not to apply the directive, following its accession to the European Union, if it has the benefit of a finance agreement concluded with the European Investment Bank which was signed before the accession and under which specific requirements imposed by the lending institution, such as those at issue in the present case, which are more restrictive than those laid down by the directive, are applied to public contracts to be awarded?
2. Is Directive 2004/18 to be interpreted as precluding a legislative measure under national law, such as O.U.G. No 72/2007 (Decree Law No 72/2007), which provides for the application of the European Investment Bank Guide to Procurement, by way of derogation from the legislative measure by which the directive was transposed into national law, namely, in the present case, O.U.G. No 34/2006 (Decree Law No 34/2006), on grounds such as those set out in the explanatory memorandum, for the purpose of compliance with the finance agreement concluded prior to accession?
3. On a proper interpretation of Article 9(5) and Article 60(a) of Regulation No 1083/2006, <sup>(2)</sup> may such a public contract, concluded in compliance with the European Investment Bank Guide to Procurement and with national law, be regarded as consistent with EU law and eligible for European non-reimbursable financial support, granted retrospectively?

4. In the event that Question 3 is answered in the negative, if such a public contract was nonetheless considered to be consistent with EU law at the time the check was carried out to verify compliance with the qualification requirements for the Programului operațional sectorial ‘Transport’ 2007-2013 (Sectoral Operational Programme ‘Transport’ 2007 2013), does such an alleged breach of EU public procurement law (determination of certain pre-selection criteria for the tenderers which are similar to those set out in the European Investment Bank Guide to Procurement and more restrictive than those laid down in Directive 2004/18 — as set out in paragraphs 12 to 14 of the present order for reference) constitute an ‘irregularity’ within the meaning of Article 2(7) of Regulation No 1083/2006, giving rise to an obligation on the part of the Member State concerned to make a financial correction/percentage reduction pursuant to Article 98 (2) of the regulation?

<sup>(1)</sup> 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 (OJ 2004 L 134, p. 114).

<sup>(2)</sup> 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 (OJ 2006 L 210, p. 25).

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**Request for a preliminary ruling from the Tribunal Judicial da Comarca de Faro (Portugal) lodged on 27 July 2016 — Luís Manuel Piscarreta Ricardo v Portimão Urbis, EM, SA — in liquidation and Others**

**(Case C-416/16)**

(2016/C 383/05)

*Language of the case: Portuguese*

**Referring court**

Tribunal Judicial da Comarca de Faro

**Parties to the main proceedings**

*Applicant:* Luís Manuel Piscarreta Ricardo

*Defendants:* Portimão Urbis, EM, SA — in liquidation, Município de Portimão, and EMARP — Empresa Municipal de Águas e Resíduos de Portimão, EM, SA

**Questions referred**

1. Does Article 1, and in particular paragraph (b) thereof, of Council Directive 2001/23/EC <sup>(1)</sup> of 12 March 2001 apply to a situation such as that of the present case, in which a municipal undertaking (whose sole shareholder is the municipality) is dissolved (by decision of the municipality’s executive body), and the activities carried on by it are allocated in part to the municipality and in part to another municipal undertaking (whose objects were altered to that end — and which is also wholly owned by the municipality), that is, in those circumstances may it be considered that there has been a transfer of a business within the meaning of the abovementioned directive?
2. Must an employee not in active service (that is, having had his employment contract suspended) be considered included in the concept of ‘employee’ within the meaning of Article 2(1)(d) of Directive 2001/23/EC and, accordingly, must the rights and obligations arising from the contract of employment be considered transferred to the transferee, in accordance with Article 3(1) of Directive 2001/23/EC?



3. Is the introduction of restrictions on the transfer of employees, that is, according to the type of employment relationship or its duration, in the context of a transfer of a business, in particular restrictions of the type referred to in Article 62(5), (6) and (11) of the RJAEL, <sup>(2)</sup> permissible and therefore consistent with EU law?

<sup>(1)</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

<sup>(2)</sup> Regime Jurídico da Atividade Empresarial Local e das Participações Locais (Portuguese legal regime for local businesses and the shareholdings held by local authorities).

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**Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Belgium) lodged on 1 August 2016 — Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others v Vlaams Gewest**

(Case C-426/16)

(2016/C 383/06)

*Language of the case: Dutch*

**Referring court**

Nederlandstalige rechtbank van eerste aanleg Brussel

**Parties to the main proceedings**

*Applicants:* Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen, VZW, Unie van Moskeeën en Islamitische Verenigingen van Limburg, VZW, Unie van Moskeeën en Islamitische Verenigingen Oost-Vlaanderen, VZW, Unie der Moskeeën en Islamitische Verenigingen van West-Vlaanderen, VZW, Unie der Moskeeën en Islamitische Verenigingen van Vlaams-Brabant, VZW, Association Internationale Diyanet de Belgique, IVZW, Islamitische Federatie van België, VZW, Rassemblement des Musulmans de Belgique, VZW, Erkan Konak, Chaibi El Hassan

*Defendant:* Vlaams Gewest

*Intervening party:* Global Action in the Interest of Animals, VZW

**Question referred**

Is Article 4(4), read in conjunction with Article 2(k), of Council Regulation (EC) No 1099/2009 <sup>(1)</sup> of 24 September 2009 on the protection of animals at the time of killing invalid due to the infringement of Article 9 of the European Convention on Human Rights, Article 10 of the Charter of Fundamental Rights of the European Union and/or Article 13 of the Treaty on the functioning of the European Union, in that they provide that animals may be slaughtered in accordance with special methods required by religious rites without being stunned only if such slaughter takes place in a slaughterhouse falling within the scope of Regulation No 853/2004, <sup>(2)</sup> whereas there is insufficient capacity in the Vlaams Gewest (Flemish Region) to meet the annual demand for the ritual slaughter of unstunned animals on the occasion of the Islamic Festival of Sacrifice, and the costs of converting temporary slaughter establishments, approved and monitored by the authorities, for the purpose of the Islamic Festival of Sacrifice, into slaughterhouses falling within the scope of Regulation (EC) No 853/2004, do not appear relevant to achieving the objectives pursued of animal welfare and public health and do not appear proportionate thereto?

<sup>(1)</sup> Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ 2009 L 303, p. 1).

<sup>(2)</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55).

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**Reference for a preliminary ruling from the Court of Appeal (Ireland) made on 8 August 2016 —  
Florea Gusa v Minister for Social Protection, Attorney General**

(Case C-442/16)

(2016/C 383/07)

*Language of the case: English*

**Referring court**

Court of Appeal

**Parties to the main proceedings**

*Applicant:* Florea Gusa

*Defendants:* Minister for Social Protection, Attorney General

**Questions referred**

1. Does an EU citizen who (1) is a national of another Member State; (2) has lawfully resided in and worked as a self-employed person in a host Member State for approximately four years; (3) has ceased his work or economic activity by reason of absence of work and (4) has registered as a jobseeker with the relevant employment office retain the status of self-employed person pursuant to Article 7(1)(a) whether pursuant to Article 7(3)(b) of Directive 2004/38/EC <sup>(1)</sup> or otherwise.
2. If not, does he retain the right to reside in the host Member State not having satisfied the criteria in Article 7(1) (b) or (c) of Directive 2004/38/EC or is he only protected from expulsion pursuant to Article 14(4) (b) of Directive 2004/38/EC.
3. If not, in relation to such a person is a refusal of a jobseeker's allowance (which is a non-contributory special benefit within the meaning of Article 70 of Regulation 883/2004/EC <sup>(2)</sup>) by reason of a failure to establish a right to reside in the host Member State compatible with EU law, and in particular Article 4 of Regulation 883/2004/EC.

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<sup>(1)</sup> 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 OJ 2004 L 158, p. 77

<sup>(2)</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems OJ 2004L 166, p. 1

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**Reference for a preliminary ruling from the Supreme Court of the United Kingdom (United Kingdom) made on 12 August 2016 — MB v Secretary of State for Work and Pensions**

(Case C-451/16)

(2016/C 383/08)

*Language of the case: English*

**Referring court**

Supreme Court of the United Kingdom

**Parties to the main proceedings**

*Applicant:* MB

*Defendant:* Secretary of State for Work and Pensions

**Question referred**

The question referred is whether Council Directive 79/7/EEC<sup>(1)</sup> precludes the imposition in national law of a requirement that, in addition to satisfying the physical, social and psychological criteria for recognizing a change of gender, a person who has changed gender must also be unmarried in order to qualify for a state retirement pension.

<sup>(1)</sup> Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security OJ 1979 L 6, p. 24

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**Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 16 August 2016 — Openbaar Ministerie v Krzysztof Marek Poltorak****(Case C-452/16)**

(2016/C 383/09)

*Language of the case: Dutch***Referring court**

Rechtbank Amsterdam

**Parties to the main proceedings***Applicant:* Openbaar Ministerie*Defendant:* Krzysztof Marek Poltorak**Questions referred**

1. Are the expressions 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584/JHA,<sup>(1)</sup> and 'judicial decision', within the meaning of Article 1(1) of Framework Decision 2002/584/JHA, autonomous terms of EU law?
2. If the answer to Question 1 is in the affirmative: what are the criteria for determining whether an authority of the issuing Member State is such a 'judicial authority' and whether the EAW issued by it is consequently such a 'judicial decision'?
3. If the answer to Question 1 is in the affirmative: is the Swedish National Police Board covered by the term 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584/JHA, and is the EAW issued by that authority consequently a 'judicial decision' within the meaning of Article 1(1) of Framework Decision 2002/584/JHA?
4. If the answer to Question 1 is in the negative: is the designation of a national police authority, such as the Swedish National Police Board, as the issuing judicial authority in conformity with EU law?

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

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**Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 16 August 2016 — Openbaar Ministerie v Halil Ibrahim Özçelik****(Case C-453/16)**

(2016/C 383/10)

*Language of the case: Dutch***Referring court**

Rechtbank Amsterdam

**Parties to the main proceedings**

*Applicant:* Openbaar Ministerie

*Defendant:* Halil Ibrahim Özçelik

**Questions referred**

1. Is the expression 'judicial decision', within the meaning of Article 8(1)(c) of Framework Decision 2002/584/JHA, <sup>(1)</sup> a term of EU law which must be given an autonomous and uniform interpretation?
2. If so, what is the meaning of that term?
3. Does the confirmation, as in the present case, by a member of the Public Prosecutor's Office of a national arrest warrant previously issued by the police constitute such a 'judicial decision'?

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

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**Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on  
2 September 2016 — Openbaar Ministerie v Ruslanas Kovalkovas**

**(Case C-477/16)**

(2016/C 383/11)

*Language of the case: Dutch*

**Referring court**

Rechtbank Amsterdam

**Parties to the main proceedings**

*Applicant:* Openbaar Ministerie

*Defendant:* Ruslanas Kovalkovas

**Questions referred**

1. Are the expressions 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584/JHA, <sup>(1)</sup> and 'judicial decision', within the meaning of Article 1(1) of Framework Decision 2002/584/JHA, autonomous terms of EU law?
2. If the answer to Question 1 is in the affirmative: what are the criteria for determining whether an authority of the issuing Member State is such a 'judicial authority' and whether the EAW issued by it is consequently such a 'judicial decision'?
3. If the answer to Question 1 is in the affirmative: is the Ministry of Justice of the Republic of Lithuania covered by the term 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584/JHA, and is the EAW issued by that authority consequently a 'judicial decision' within the meaning of Article 1(1) of Framework Decision 2002/584/JHA?

4. If the answer to Question 1 is in the negative: is the designation of an authority such as the Ministry of Justice of the Republic of Lithuania as the issuing judicial authority in conformity with EU law?

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

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**Action brought on 2 September 2016 — European Commission v Hellenic Republic**

**(Case C-481/16)**

(2016/C 383/12)

*Language of the case: Greek*

**Parties**

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

*Defendant:* Hellenic Republic

**Form of order sought**

The applicant claims that the Court should:

- declare that the Hellenic Republic, by failing to take within the prescribed time-limits all the measures required for the implementation of the Commission Decision of 27 March 2014 in Case SA.34572 on the State aid implemented by Greece for Larco General Mining & Metallurgical Company S.A. or, in any event, by failing adequately to inform the Commission of the measures taken in accordance with Article 5 of the Decision, failed to fulfil its obligations under Articles 3, 4 and 5 of that decision and under the Treaty on the Functioning of the European Union;
- order the Hellenic Republic to pay the costs.

**Pleas in law and main arguments**

1. In accordance with the European Commission Decision of 27 March 2014 in Case SA.34572, the Hellenic Republic was obliged to recover within four months the incompatible aid granted by it to Larco, and to provide adequate information to the European Commission on the measures required for that purpose. The aid at issue consisted of State guarantees to Larco in 2008, 2010 and 2011 and the State's participation in the company's capital increase in 2009.
  2. However, the Hellenic Republic did not recover the aid at issue within four months, as it was obliged to do. In addition, the Hellenic Republic continues to fail to undertake the action required in order to implement the Decision. In any event, the Hellenic Republic has not provided adequate information to the European Commission on the relevant action with respect to the implementation of the Decision.
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## GENERAL COURT

### Judgment of the General Court of 8 September 2016 — Sun Pharmaceuticals Industries and Ranbaxy (UK) v Commission

(Case T-460/13) <sup>(1)</sup>

*(Competition — Agreements, decisions and concerted practices — Market for antidepressant medicinal products containing the active pharmaceutical ingredient citalopram — Concept of restriction of competition by object — Potential competition — Generic medicinal products — Barriers to market entry resulting from the existence of patents — Agreement concluded between a patent holder and a generic undertaking — Fines — Legal certainty — Principle that penalties must have a proper legal basis — 2006 Guidelines on the method of setting fines — Duration of the Commission’s investigation)*

(2016/C 383/13)

Language of the case: English

#### Parties

*Applicants:* Sun Pharmaceuticals Industries Ltd, formerly Ranbaxy Laboratories Ltd (Vadodara, India) and Ranbaxy (UK) Ltd (London, United Kingdom) (represented by: R. Vidal, A. Penny, Solicitors, and B. Kennelly, Barrister)

*Defendant:* European Commission (represented by: C. Vollrath, F. Castilla Contreras and B. Mongin, acting as Agents, and by D. Bailey, Barrister)

#### Re:

Application for annulment in part of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck) and for reduction of the amount of the fine imposed on the applicants by that decision.

#### Operative part of the judgment

*The Court:*

1. Dismisses the action;
2. Orders Sun Pharmaceuticals Industries Ltd and Ranbaxy (UK) Ltd to pay the costs.

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<sup>(1)</sup> OJ C 325, 9.11.2013.

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### Judgment of the General Court of 8 September 2016 — Arrow Group and Arrow Generics v Commission

(Case T-467/13) <sup>(1)</sup>

*(Competition — Agreements, decisions and concerted practices — Market for antidepressant medicinal products containing the active pharmaceutical ingredient citalopram — Concept of restriction of competition ‘by object’ — Potential competition — Generic medicinal products — Barriers to market entry resulting from the existence of patents — Agreements concluded between a patent holder and a generic undertaking — Fines — Legal certainty — Principle that penalties must have a proper legal basis — Duration of the Commission’s investigation — Rights of the defence — Single and continuous infringement)*

(2016/C 383/14)

Language of the case: English

#### Parties

*Applicants:* Arrow Group ApS (Roskilde, Denmark) and Arrow Generics Ltd (London, United Kingdom) (represented by: S. D. Kon, C. Firth and C. Humpe, Solicitors)

*Defendant:* European Commission (represented by: F. Castilla Contreras and B. Mongin, acting as Agents, and by G. Peretz, Barrister)

**Re:**

Application for annulment in part of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck) and for reduction of the amount of the fine imposed on the applicants by that decision.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Arrow Group ApS and Arrow Generics Ltd to pay the costs.

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<sup>(1)</sup> OJ C 313, 26.10.2013.

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**Judgment of the General Court of 8 September 2016 — Generics (UK) v Commission**

(Case T-469/13) <sup>(1)</sup>

*(Competition — Agreements, decisions and concerted practices — Market for antidepressant medicinal products containing the active pharmaceutical ingredient citalopram — Concept of restriction of competition ‘by object’ — Potential competition — Generic medicinal products — Barriers to market entry resulting from the existence of patents — Agreements concluded between a patent holder and a generic undertaking — Error of law — Error of assessment — Rights of defence — Fines)*

(2016/C 383/15)

*Language of the case:* English

**Parties**

*Applicant:* Generics (UK) Ltd (Potters Bar, United Kingdom) (represented by: I. Vandenborre and T. Goetz, lawyers)

*Defendant:* European Commission (represented initially by J. Bourke, F. Castilla Contreras and T. Vecchi, and subsequently by F. Castilla Contreras, T. Vecchi, B. Mongin and C. Vollrath, acting as Agents, assisted by S. Kingston, Barrister)

**Re:**

Application for annulment of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck), and for reduction of the amount of the fine imposed on the applicant by that decision.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Generics (UK) Ltd to pay the costs.

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<sup>(1)</sup> OJ C 325, 9.11.2013.

**Judgment of the General Court of 8 September 2016 — Merck v Commission**(Case T-470/13) <sup>(1)</sup>

*(Competition — Agreements, decisions and concerted practices — Market for antidepressant medicinal products containing the active pharmaceutical ingredient citalopram — Concept of restriction of competition ‘by object’ — Potential competition — Generic medicinal products — Barriers to market entry resulting from the existence of patents — Agreements concluded between a patent holder and a generic undertaking — Error of law — Error of assessment — Imputability of infringements — Liability of a parent company for infringements of the competition rules committed by its subsidiaries — Legal certainty — Reasonable time — Fines)*

(2016/C 383/16)

Language of the case: English

**Parties**

*Applicant:* Merck KGaA (Darmstadt, Germany) (represented initially by B. Bär-Bouyssière, K. Lillerud, L. Voldstad, B. Marschall, P. Sabbadini, R. De Travieso, M. Holzhäuser and S. O, lawyers, M. Marelus, Solicitor, and R. Kreisberger and L. Osepciu, Barristers, and subsequently by B. Bär-Bouyssière, L. Voldstad, M. Holzhäuser, A. Cooke, M. Gampp, lawyers, M. Marelus, R. Kreisberger and L. Osepciu)

*Defendant:* European Commission (represented initially by J. Bourke, F. Castilla Contreras and T. Vecchi, and subsequently by F. Castilla Contreras, T. Vecchi, B. Mongin and C. Vollrath, acting as Agents, assisted by S. Kingston, Barrister)

*Intervener in support of the defendant:* Generics (UK) Ltd (Potters Bar, United Kingdom) (represented initially by G. Drauz, M. Rosenthal and B. Record, lawyers, and subsequently by G. Drauz and M. Rosenthal)

**Re:**

Application for annulment of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck), and for reduction of the amount of the fine imposed on the applicant by that decision.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Merck KGaA to bear its own costs and those incurred by the European Commission;
3. Orders Generics (UK) Ltd to bear its own costs.

<sup>(1)</sup> OJ C 325, 9.11.2013.

**Judgment of the General Court of 7 September 2016 — Victor international v EUIPO — Ovejero Jiménez and Becerra Guibert (VICTOR)**(Case T-204/14) <sup>(1)</sup>

*(EU Trade Mark — Opposition proceedings — Application for the EU word mark VICTOR — Earlier national figurative mark victoria — Relative ground for refusal — Genuine use of the earlier mark — Nature of use — Form differing in elements which do not alter the distinctive character — Article 15(1) and Article 42(2) and (3) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)*

(2016/C 383/17)

Language of the case: English

**Parties**

*Applicant:* Victor International GmbH (Elmshorn, Germany) (represented by: R. Kaase and J.-C. Plate, lawyers)



*Defendant:* European Union Intellectual Property Office (represented by: J. García Murillo and A. Folliard-Monguiral, acting as Agents)

*Other parties to the proceedings before the Board of Appeal of EUIPO, interveners before the Court:* Gregorio Ovejero Jiménez (Alicante, Spain) and María Luisa Cristina Becerra Guibert (Alicante) (represented by: M. Veiga Serrano, lawyer)

**Re:**

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 January 2014 (Case R 2208/2012-2), relating to opposition proceedings between Mr Ovejero Jiménez and Ms Becerra Guibert, on the one hand, and Victor International, on the other.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*
2. *Orders Victor International GmbH to pay the costs.*

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<sup>(1)</sup> OJ C 245, 28.7.2014.

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**Judgment of the General Court of 7 September 2016 — Beiersdorf v EUIPO (Q10)**

(Case T-4/15) <sup>(1)</sup>

*(EU trade mark — Application for EU figurative mark Q10 — Refusal to register a disclaimer as to the scope of the protection — Article 37(2) of Regulation (EC) No 207/2009 — Absolute grounds for refusal — Descriptive Character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation No 207/2009)*

(2016/C 383/18)

*Language of the case: German*

**Parties**

*Applicant:* Beiersdorf AG (Hamburg, Germany) (represented initially by: A. Renck and J. Fuhrmann, and subsequently by J. Fuhrmann, lawyers)

*Defendant:* European Union Intellectual Property Office (represented by: S. Hanne, acting as Agent)

**Re:**

Action brought against the decision of the First Board of Appeal of EUIPO of 8 October 2014 (Case R 2050/2013-1), relating to an application for registration of the figurative sign Q10 as an EU trademark.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*
2. *Orders Beiersdorf AG to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

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<sup>(1)</sup> OJ C 65, 23.2.2015.

**Judgment of the General Court of 8 September 2016 — Dr Vita v EUIPO (69)****(Case T-360/15) <sup>(1)</sup>****(EU trade mark — Application for EU figurative mark 69 — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)**

(2016/C 383/19)

*Language of the case: Polish***Parties***Applicant:* Dr Vita sp. z o.o. (Olsztyn, Poland) (represented by: D. Rzążewska, lawyer)*Defendant:* European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)**Re:**

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 1 April 2015 (Case R 2513/2014-5), relating to an application for registration of the figurative sign 69 as an EU trade mark.

**Operative part of the judgment***The Court:*

1. *Dismisses the action;*
2. *Orders Dr Vita sp. z o.o. to pay the costs.*

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<sup>(1)</sup> OJ C 279, 24.8.2015.

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**Action brought on 18 July 2016 — Basicmed Enterprises a.o. v Council a.o.****(Case T-379/16)**

(2016/C 383/20)

*Language of the case: English***Parties***Applicants:* Basicmed Enterprises Ltd (Limassol, Cyprus) and 19 others (represented by: P. Tridimas, Barrister, K. Kakoulli, P. Panayides and C. Pericleous, lawyers)*Defendants:* Council of the European Union, European Commission, European Central Bank, Eurogroup, European Union**Form of order sought**

The applicants claim that the Court should:

- order the defendants to pay the applicants the sums shown in the Schedule annexed to the application plus interest accruing from 16 March 2013 until the judgment of the Court; and
- order the defendants to pay the costs.

In the alternative, by way of subsidiary claim, the applicants request the Court to:

- find that the European Union and/or the defendant institutions have incurred non-contractual liability;

- determine the procedure to be followed in order to establish the recoverable loss actually suffered by the applicants; and
- order the defendants to pay the costs.

### **Pleas in law and main arguments**

The applicants seek compensation pursuant to Articles 268, 340(2) and 340(3) TFEU, governing the extra-contractual liability of the EU and the ECB, for damage suffered by the diminution of the applicants' deposits as a result of the bail-in scheme for the Republic of Cyprus adopted by the defendants.

The applicants consider that the bail-in measures adopted by the Republic of Cyprus were introduced solely in order to implement measures adopted by the defendants and were also approved by the defendant institutions. The applicants consider that the bail-in scheme is a serious violation and in support of their action, they rely on four pleas in law.

1. First plea in law, alleging violation of the right to property, as protected by Article 17(1) of the Charter of Fundamental Rights of the EU and Article 1 of Protocol 1 of the European Convention for the Protection of Fundamental Rights and Freedoms.
2. Second plea in law, alleging violation of the principle of proportionality.
3. Third plea in law, alleging violation of the principle of protection of legitimate expectations.
4. Fourth plea in law, alleging violation of the principle of non-discrimination.

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### **Action brought on 22 July 2016 — Falegnameria Universo dei F.lli Priarollo v EUIPO — Zanini Porte (silente PORTE & PORTE)**

(Case T-386/16)

(2016/C 383/21)

*Language in which the application was lodged: Italian*

### **Parties**

*Applicant:* Falegnameria Universo dei F.lli Priarollo Snc (Caerano di San Marco, Italy) (represented by: B. Osti, lawyer)

*Defendant:* European Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Zanini Porte (Corbiolo di Bosco Chiesanuova, Italy)

### **Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* EU figurative mark containing the word elements 'silente PORTE & PORTE' — European Union trade mark No 4 191 425

*Procedure before EUIPO:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 28 April 2016 in Case R 240/2015-1

### **Form of order sought**

The applicant claims that the Court should:

- as a preliminary point, ascertain that the Board of Appeal went beyond what had been sought and, in consequence, refer the decision back to the Board of Appeal of EUIPO for infringement of Articles 75 and 76 of Regulation No 207/2009, taking into account Article 1(d) of Commission Regulation (EC) No 216/96 of 5 February 1996, as amended, concerning the referral of a case to a Board of Appeal that has not already heard the case;

- on the merits, alter the contested decision and, consequently, order EUIPO to pay the fees and costs incurred by the applicant in the proceedings before the Board of Appeal because the decision is unfounded in fact and in law, and at all events to pay the costs, on an equitable basis;
- by way of measure of inquiry, order production of the files relating to proceedings No 000008977 C before the Cancellation Division of EUIPO and resulting Case No R0240/2015.

#### **Pleas in law**

- Infringement of Articles 75 and 76 of Regulation No 207/2009;
- Infringement of Rule 37(b)(1) and of Rule 50 of Regulation No 2868/95.

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### **Action brought on 29 July 2016 — Spain v Commission**

**(Case T-401/16)**

(2016/C 383/22)

*Language of the case: Spanish*

#### **Parties**

*Applicant:* Kingdom of Spain (represented by: S. Centeno Huerta and M. García-Valdecasas Dorrego, Agents)

*Defendant:* European Commission

#### **Form of order sought**

The applicant claims that the General Court should:

- annul the notice of open competition EPSO/AD/323/16 — Investigators (AD 7) and EPSO/AD/324/16 — Investigators (AD 9): Team leaders;
- order the Commission to pay the costs.

#### **Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Articles 1 and 2 of Regulation 1/58, Article 22 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 1d of the Staff Regulations, by restricting the system of communication between EPSO and the applicant, which extends to the application form.
2. Second plea in law, alleging infringement of Articles 1 and 6 of Regulation 1/58, Article 22 of the Charter, Articles 1d(1) and (6), 27 and 28(f) of the Staff Regulations and Article 1 of Annex III to the Staff Regulations because the choice of second language is improperly restricted to solely three languages, namely English, French and German, to the exclusion of the other official languages of the European Union.
3. Third plea in law, alleging discrimination on the ground of language prohibited by Article 1 of Regulation 1/58, Article 22 of the Charter, Articles 1d(1) and (6), 27 and 28(f) of the Staff Regulations and Article 1 of Annex III to the Staff Regulations, since the choice of English, French and German was arbitrary.

The applicant states, in that regard, that those grounds of challenge must be read in the light of the judgment of the Court of Justice of 27 November 2012 in Case C-566/10 P, *Italy v Commission*, and of the judgments of the General Court of 24 September 2015, in the Joined Cases *Spain v Commission* and *Italy v Commission* (T-191/13 and T-124/13), and 17 December 2015 (T-275/13, T-295/13 and T-510/13, *Italy v Commission*), which have become final, since they have not been appealed by the Commission, and the implementation of which is not reflected in the present notice.

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**Action brought on 11 August 2016 — Mr. Kebab v EUIPO — Mister Kebab (Mr. KEBAB)**

**(Case T-448/16)**

(2016/C 383/23)

*Language in which the application was lodged: Slovak*

**Parties**

*Applicant:* Mr. Kebab s.r.o. (Košice-Západ, Slovakia) (represented by: L. Vojčík, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Mister Kebab, SL (Finestrat, Spain)

**Details of the proceedings before EUIPO**

*Applicant for the trade mark at issue:* Applicant

*Trade mark at issue:* Figurative mark containing the word elements 'Mr. KEBAB' — Application for registration No 12 551 222

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 11 May 2016 in Case R 987/2015-2

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- amend the contested decision so that the opposition of the other party to the proceedings before the Board of Appeal of 20 November 2014, No B 002370594, to the application for registration of the composite European Union trade mark 'Mr. KEBAB' is dismissed in its entirety;
- order EUIPO and possibly the other party to the proceedings to pay the costs.

**Plea in law**

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

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**Appeal brought on 14 August 2016 by Elia Fernández González against the judgment of the Civil Service Tribunal of 14 June 2016 in Case F-121/15, Fernández González v Commission**

**(Case T-455/16 P)**

(2016/C 383/24)

*Language of the case: French*

**Parties**

*Appellant:* Elia Fernández González (Brussels, Belgium) (represented by M. Casado García-Hirschfeld and É. Boigelot, lawyers)

*Other party to the proceedings:* European Commission

### **Form of order sought by the appellant**

- Set aside the judgment of the Civil Service Tribunal (Single Judge) in Case F-121/15 delivered on 14 June 2016 in *Elia Fernández González v European Commission*;
- Order the Commission to pay all the costs, including those incurred before the CST.

### **Pleas in law and main arguments**

In support of the appeal, the appellant relies on a single plea in law, alleging a distortion of the facts by the judgment under appeal and manifest errors of assessment resulting in an imprecise reasoning in law. The appellant contests in particular paragraphs 29 to 31 and 36 to 39 of the judgment under appeal.

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**Action brought on 16 August 2016 — Galletas Gullón v EUIPO — Hug (GULLON DARVIDA)**  
**(Case T-456/16)**  
(2016/C 383/25)

*Language in which the application was lodged: English*

### **Parties**

*Applicant:* Galletas Gullón, SA (Aguilar de Campoo, Spain) (represented by: M. Escudero Pérez, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Hug AG (Malters, Switzerland)

### **Details of the proceedings before EUIPO**

*Applicant:* Applicant

*Trade mark at issue:* EU word mark 'GULLON DARVIDA' — Application for registration No 11 705 738

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 13 June 2016 in Case R 773/2015-4

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and the other party, should it intervene, to pay the costs.

**Plea in law**

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

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**Action brought on 19 August 2016 — Kaddour v Council****(Case T-461/16)**

(2016/C 383/26)

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

*Applicant:* Khaled Kaddour (Damas, Syrie) (represented by: V. Davies and V. Wilkinson, Solicitors and R. Blakeley, Barrister)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- annul the Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria in so far as they relate and/or refer to the applicant;
- order the Council to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the contested measures (i) are an abuse of process and so a misuse of powers; and (ii) amount to a breach of the applicant's fundamental rights as protected by the EU Charter of Fundamental Rights and/or the European Convention of Human Rights in regard to the applicant's right to good administration and right to an effective remedy and a fair trial.
2. Second plea in law, alleging a violation of Article 66 TFUE.
3. Third plea in law, alleging that the contested measures are vitiated by a manifest error of assessment.
4. Fourth plea in law, alleging that the contested measures amount to a breach of the applicant's fundamental rights as protected by the EU Charter of Fundamental Rights and/or the European Convention of Human Rights in regard to the applicant's rights to respect for his reputation and peaceful enjoyment of his property and the principle of proportionality.
5. Fifth plea in law, alleging that the contested measures violate the principle of non-discrimination.

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**Action brought on 19 August 2016 — Flir Systems Trading Belgium v Commission****(Case T-467/16)**

(2016/C 383/27)

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

*Applicant:* Flir Systems Trading Belgium (Meer, Belgium) (represented by: N. Reypens, C. Docclo and T. Verstraeten, lawyers)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the Court should:

- join the present case and Case T-131/16 on account of the connection between them, for the purposes of the oral part of the procedure and of the judgment;
- admit and uphold the pleas for annulment raised in the present application;
- annul Articles 1 and 2 of the contested decision <sup>(1)</sup>;
- in the alternative, annul Article 2 of the contested decision in so far as it does not lay down transitional measures;
- order the Commission to pay the costs of this procedure.

### **Pleas in law and main arguments**

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

1. First plea in law, alleging a manifest error of assessment in the identification of the legal acts that provide for the alleged State aid and an error of law in the interpretation of Article 1(d) of Regulation No 2015/1589 <sup>(2)</sup>.
2. Second plea in law, alleging an error of fact in the description of the reference system, a manifest error of assessment in the analysis of it and an error of law in the application of Article 107(1) TFEU and Article 1(a) of Regulation No 2015/1589.
3. Third plea in law, alleging an error in the assessment of an economic advantage and an error of law in the application of Article 107(1) TFEU and Article 1(a) of Regulation No 2015/1589.
4. Fourth plea in law, alleging an error in assessing the selectivity necessary to characterise the disputed regime as state aid within the meaning of Article 107(1) TFEU and Article 1(a) of Regulation No 2015/1589 and an error of assessment in analysing the mechanisms of the disputed regime.
5. Fifth plea in law, alleging an error of assessment in the analysis of the justification of the conditions for the application of the disputed regime.
6. Sixth plea in law, alleging an error of assessment when evaluating the alleged advantage derived from the disputed regime and a lack of precision in the examination of the disputed regime.
7. Seventh plea in law, alleging a violation of the taxpayers' legitimate expectations and legal certainty.

<sup>(1)</sup> Commission decision of 11 January 2016 on the excess profit exemption implemented by Belgium [state aid scheme SA.37667 (2015/C) (ex 2015/NN)]

<sup>(2)</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015, L 248, p. 9)

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**Action brought on 22 August 2016 — X-cen-tek v EUIPO (Representation of a triangle)**

**(Case T-470/16)**

(2016/C 383/28)

*Language of the case: German*

### **Parties**

*Applicant:* X-cen-tek GmbH & Co. KG (Wardenburg, Germany) (represented by: H. Hillers, lawyer)



*Defendant:* European Union Intellectual Property Office (EUIPO)

### **Details of the proceedings before EUIPO**

*Mark at issue:* EU figurative mark (Representation of a triangle) — Application No 14 167 654

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 17 June 2016 in case R 2565/2015-4

### **Form of order sought**

The applicant claims that the Court should:

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

### **Plea in law**

- Infringement of Article 7(1)(b) of Regulation No 207/2009.

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## **Action brought on 19 August 2016 — Marsh v EUIPO (LegalPro)**

**(Case T-472/16)**

(2016/C 383/29)

*Language of the case: German*

### **Parties**

*Applicant:* Marsh GmbH (Frankfurt am Main, Germany) (represented by: W. Riegger, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

### **Details of the procedure before EUIPO**

*Trade mark at issue:* EU word mark ‘LegalPro’ — Application No 13 954 177

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 17 June 2016 in Case R 146/2016-4

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs, including those incurred in the course of the appeal proceedings.

### **Pleas in law**

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

**Action brought on 26 August 2016 — FTI Touristik v EUIPO — Prantner and Giersch (Fl)****(Case T-475/16)**

(2016/C 383/30)

*Language in which the application was lodged: German***Parties***Applicant:* FTI Touristik GmbH (Munich, Germany) (represented by: A. Parr, lawyer)*Defendant:* European Union Intellectual Property Office (EUIPO)*Other parties to the proceedings before the Board of Appeal:* Harald Prantner (Hamburg, Germany) and Daniel Giersch (Monaco, Monaco)**Details of the proceedings before EUIPO***Proprietor of the mark at issue:* the other parties to the proceedings before the Board of Appeal*Mark at issue:* EU figurative mark with the word element 'Fl' — Application No 12 201 273*Proceedings before EUIPO:* opposition proceedings*Contested decision:* Decision of the Fifth Board of Appeal of EUIPO of 16 June 2016 in Case R 480/2015-5**Form of order sought**

The applicant claims that the Court should:

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

**Plea in law**

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

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**Action brought on 30 August 2016 — Colgate-Palmolive v EUIPO (AROMASENSATIONS)****(Case T-479/16)**

(2016/C 383/31)

*Language of the case: English***Parties***Applicant:* Colgate-Palmolive Co. (New York, New York, United States) (represented by: M. Zintler, A. Stolz, lawyers)*Defendant:* European Union Intellectual Property Office (EUIPO)**Details of the proceedings before EUIPO***Trade mark at issue:* EU figurative mark containing the word element 'AROMASENSATIONS' — Application for registration No 14 198 824*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 6 June 2016 in Case R 2482/2015-2

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision to the extent that it dismisses the appeal insofar as it is based on Article 7(1)(b);
- order EUIPO to pay the costs.

**Pleas in law**

- Infringement of Article 7(1)(b) of Regulation No 207/2009;
- Infringement of principles of equal treatment and sound administration.

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**Action brought on 31 August 2016 — sheepworld v EUIPO (Alles wird gut)****(Case T-622/16)**

(2016/C 383/32)

*Language of the case: German***Parties**

*Applicant:* sheepworld AG (Ursensollen, Germany) (represented by: S. von Rüden, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the proceedings before EUIPO**

*Mark at issue:* EU figurative mark 'Alles wird gut' — Application No 14 170 062

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 16 June 2016 in Case R 212/2016-4

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs, including those of the proceedings before the Board of Appeal.

**Plea in law**

- Infringement of Article 7(1)(b) of Regulation No 207/2009.

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**Action brought on 31 August 2016 — Volkswagen v EUIPO — Paalupaikka (MAIN AUTO WHEELS)****(Case T-623/16)**

(2016/C 383/33)

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

*Applicant:* Volkswagen AG (Wolfsburg, Germany) (represented by: H. Schrammek, C. Drzymalla, S. Risthaus, and J. Engberding, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Paalupaikka Oy (Iisalmi, Finland)

### **Details of the proceedings before EUIPO**

*Applicant:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* EU figurative mark containing the word elements 'MAIN AUTO WHEELS' — Application No 12 863 643

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 1 July 2016 in Case R 2189/2015-4

### **Form of order sought**

The applicant claims that the Court should:

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

### **Pleas in law**

- Infringement of Article 8(1)(b) of Regulation No 207/2009;
- Infringement of Article 8(5) of Regulation No 207/2009;
- Infringement of Article 75 of Regulation No 207/2009.

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## **Action brought on 5 September 2016 — Gollnisch v Parliament**

**(Case T-624/16)**

(2016/C 383/34)

*Language of the case: French*

### **Parties**

*Applicant:* Bruno Gollnisch (Villiers-le-Mahieu, France) (represented by: N. Fakiroff, lawyer)

*Defendant:* European Parliament

### **Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Secretary-General of the European Parliament, dated 1 July 2016, notified on 6 July, relating to the wrongful payment of a sum of EUR 275 984,23 to Mr Bruno GOLLNISCH and ordering the authorising officer responsible and the Institution's accounting officer to recover that sum;
- also annul the notification and measures implementing that decision set out in the letter of the Director-General for Finance of 6 July 2016, ref. D 201920;
- annul simultaneously debit note No 2016-914 signed by the Director-General for Finance on 5 July 2016;
- award to the applicant the sum of EUR 40 000 as compensation for the non-material damage resulting all at once from the unfounded accusations made before any investigation findings were issued, the harm to his reputation, and the very significant disruption to his personal and political life caused by the contested decision;

- also award him the sum of EUR 24 500 in respect of costs incurred for fees for the provision of legal advice, the preparation of the present action, the costs of photocopying and lodging these proceedings and the documents annexed to it;
- order the European Parliament to pay the costs in their entirety;
- in the alternative, if the Court is not entirely persuaded of the relevance and truthfulness of the applicant's pleas of law and fact, in the interests of the sound administration of justice taking into account the undeniable relationship between the alleged facts upon which the contested decision is based, and those that are the subject of the criminal investigation initiated by the President of the European Parliament:
  - stay the proceedings pending a final decision, with the authority of 'res judicata', delivered by the French ordinary court before which the proceedings initiated by the President of the European Parliament have been brought;
  - order, consequently, the suspension of the operation of the contested decision until the end of the proceedings.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on 11 pleas in law.

1. First plea in law, alleging the Secretary-General lacks competence to adopt the contested acts. By contrast, the Bureau of the European Parliament has competence for financial decisions relating to members and their groups.
2. Second plea in law, alleging infringement of the general principles of law, as well as the requirements related to good administration, in that the administration of the Parliament ought to have waited for the results of the investigation and proceedings it had initiated before adopting the contested acts.
3. Third plea in law, alleging infringement of the applicant's rights of defence. The contested acts infringed the presumption of the applicant's innocence, his right of access to justice, his ability to comment on any document that the administration intends to use against him, and violated his right to cross-examination.
4. Fourth plea in law, alleging the unlawful reversal of the burden of proof, in that the administration of the Parliament requested from the applicant evidence of the work carried out by his assistant and his remuneration after the event.
5. Fifth plea in law, alleging failure to state adequate reasons for the contested acts, which are of a totally arbitrary nature.
6. Sixth plea in law, alleging prejudice to the principles of legal certainty and legitimate expectations, as well as the application of inexistent or retroactive norms.
7. Seventh plea in law, alleging prejudice the political rights of parliamentary assistants.
8. Eighth plea in law, alleging the contested acts are discriminatory and misuse of powers that led to their adoption.
9. Ninth plea in law, alleging prejudice to the independence of members and failure to have regard to the role of local parliamentary assistants.
10. Tenth plea in law, alleging that the claims of the administration of the Parliament are unfounded in fact.
11. Eleventh plea in law, raised in the alternative, alleging a breach of the principle of proportionality.

**Action brought on 2 September 2016 — Mylène Troszczynski v Parliament****(Case T-626/16)**

(2016/C 383/35)

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

*Applicant:* Mylène Troszczynski (Noyon, France) (represented by: M. Ceccaldi, lawyer)

*Defendant:* European Parliament

**Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Secretary-General of the European Parliament, dated 23 June 2016, taken pursuant to Articles 33, 43, 62, 67 and 68 of Decision 2009/C 159/01 of the Bureau of the European Parliament of 19 May and 9 July 2008 ‘concerning implementing measures for the Statute for Members of the European Parliament’ as amended, finding a debt on the part of the applicant amounting to EUR 56 554,00 in respect of amounts overpaid in the context of parliamentary assistance and giving reasons for its recovery under Article 68 of the implementing measures [for the Statute for Members] and Articles 78, 79 and 80 of the Financial Regulation;
- annul debit note No 2016-888, undated, informing the applicant that a debt had been found with respect to her by decision of the General Secretary of 23 June 2016 — recovery of sums overpaid in respect of parliamentary assistance — application of Article 68 of the implementing measures for the Statute for Members and Articles 78, 79 and 80 of the Financial Regulation;
- order the European Parliament to pay all the costs of the proceedings;
- order the European Parliament to pay Ms Mylène Troszczynski the sum of EUR 50 000 by way of reimbursement of recoverable costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging defects affecting the external legality of the contested acts. This plea is divided into three parts.
  - First part, according to which the Bureau of the European Parliament, and not the Secretary General, has competence with respect to financial decisions affecting political parties and, therefore, the Members.
  - Second part, according to which the Bureau of the European Parliament does not have the power to decide on its own competence and, therefore, is unable to modify its nature and scope. The Secretary General fails to show that the President of the Bureau of the European Parliament delegated powers to him enabling him to adopt, sign and notify the contested acts concerning the settlement of financial questions affecting a Member.
  - Third part, according to which the author of the contested acts failed to give a statement of reasons. Thus, the justification provided does not cover the factual situation set out in those acts and it contains an irreconcilable contradiction between the complaint that the applicant’s assistant actually carries out two functions concurrently and the complaint that the assistant carries out only one function to the exclusion of any other; only the Secretary General refers to that latter situation.
2. Second plea in law, alleging defects affecting the internal legality of the contested acts. This plea is divided into nine parts.

- First part, according to which the events complained of in support of the contested acts did not occur.
- Second part, according to which the adoption of the contested acts infringed the rules and general principles of law applicable to establishing proof and the burden of proof.
- Third part, according to which the Secretary General's decision to recover the sum overpaid infringed the principle of proportionality. The amount claimed is furthermore not justified by either detail or a method of calculation.
- Fourth part, according to which the contested acts prejudice the political rights of the local assistants of MEPs.
- Fifth part, according to which the contested acts are vitiated by misuse of power, in that the Secretary General assumed compulsion powers of a financial nature which he does not possess for the purpose of restricting a Member's means of acting, whose ideals and the political agenda it is of undeniable public knowledge he does not share.
- Sixth part, according to which the contested acts are discriminatory and that these presuppose the intention of causing political damage to the applicant; thus there is a *fumus persecutionis*.
- Seventh part, according to which the contested acts prejudice the independence of the applicant in her capacity as MEP.
- Eighth part, according to which the contested acts violate the principle of 'electa una via' and raise question of the impartiality of OLAF which only conducts its investigation by seeking evidence against the party concerned where that party is a French MEP from the Front National's list.
- Ninth part, according to which the contested acts amount to an infringement of the general legal principle that 'civil proceedings must await the outcome of criminal proceedings' in that the proceedings for recovery of overpayment ought to be suspended until the outcome of the other proceedings, in particular the French proceedings, and an infringement of the principle *non bis in idem*.

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**Action brought on 6 September 2016 — Bilde v Parliament**

**(Case T-633/16)**

(2016/C 383/36)

*Language of the case: French*

**Parties**

*Applicant:* Dominique Bilde (Lagarde, France) (represented by: G. Sauveur, lawyer)

*Defendant:* European Parliament

**Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Secretary-General of the European Parliament of 23 June 2016, notified on 6 July 2016, determining 'that a sum of EUR 40 320 was wrongfully paid to Ms Dominique BILDE' and ordering the authorising officer responsible and the institution's accounting officer to recover that amount;
- also annul the notification and measures implementing that decision contained in the letters of the Director-General for Finance of 30 June and July 2016, ref. D 201921 and D 31255; and
- annul the entirety of the debit note No. 2016-889 signed by that Director-General for Finance dated 29 June 2016;

- award the applicant the sum of EUR 20 000 as compensation for the non-material damage resulting simultaneously from the unfounded accusations made before any conclusion of the investigation, from the harm to her reputation, and the very significant disruption to her personal and political life caused by the contested decision;
- in addition award her the sum of EUR 15 000 in respect of expenses incurred for fees for the provision of legal advice, the preparation of the present action, photocopying costs and lodging this action and the annexed documents, and order the European Parliament to pay that amount;
- order the European Parliament to pay the entirety of the costs;
- alternatively, in the event that the Court should not be entirely persuaded of the relevance and truthfulness of the applicant's pleas in law and fact, in the interests of the sound administration of justice taking account of the undeniable relationship between the alleged facts on which the contested decision is based and those which are the subject of the criminal investigation opened by the President of the European Parliament:
- stay the proceedings pending a final decision, which is *res judicata*, delivered by the French ordinary court hearing the proceedings initiated by the President of the European Parliament;
- consequently order a stay of execution of the contested decision until the end of the proceedings.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on eleven pleas in law which are in essence identical or similar to those relied on in Case T-624/16, *Gollnisch v Parliament*.

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### **Action brought on 6 September 2016 — Montel v Parliament**

**(Case T-634/16)**

(2016/C 383/37)

*Language of the case: French*

### **Parties**

*Applicant:* Sophie Montel (Saint-Vit, France) (represented by: G. Sauveur, lawyer)

*Defendant:* European Parliament

### **Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Secretary-General of the European Parliament of 24 June 2016, notified on 6 July 2016, determining 'that a sum of EUR 77 276,42 was wrongfully paid to Ms Sophie MONTEL' and ordering the authorising officer responsible and the institution's accounting officer to recover that amount;
- also annul the notification and measures implementing that decision contained in the letters of the Director-General for Finance of 5 and 6 July 2016, ref. D 201922 and D 201851; and
- annul the entirety of the debit note No. 2016-897 signed by that Director-General for Finance dated 4 July 2016;



- award the applicant the sum of EUR 30 000 as compensation for the non-material damage resulting simultaneously from the unfounded accusations made before any conclusion of the investigation, from the harm to her reputation, and the very significant disruption to her personal and political life caused by the contested decision;
- in addition award her the sum of EUR 15 000 in respect of expenses incurred for fees for the provision of legal advice, the preparation of the present action, photocopying costs and lodging this action and the annexed documents, and order the European Parliament to pay that amount;
- order the European Parliament to pay the entirety of the costs;
- alternatively, in the event that the Court should not be entirely persuaded of the relevance and truthfulness of the applicant's pleas in law and fact, in the interests of the sound administration of justice taking account of the undeniable relationship between the alleged facts on which the contested decision is based and those which are the subject of the criminal investigation opened by the President of the European Parliament:
  - stay the proceedings pending a final decision, which is *res judicata*, delivered by the French ordinary court hearing the proceedings initiated by the President of the European Parliament;
  - consequently order a stay of execution of the contested decision until the end of the proceedings.

#### **Pleas in law and main arguments**

In support of the action, the applicant relies on eleven pleas in law which are in essence identical or similar to those relied on in Case T-624/16, *Gollnisch v Parliament*.

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#### **Order of the General Court of 25 July 2016 — *Moravia Gas Storage v Commission***

**(Case T-465/11 RENV) <sup>(1)</sup>**

(2016/C 383/38)

*Language of the case: English*

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

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<sup>(1)</sup> OJ C 305, 15.10.2011.

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# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Action brought on 12 August 2016 — OT v Commission

(Case F-75/15)

(2016/C 383/39)

*Language of the case: English*

### Parties

*Applicant:* OT (represented by: D. Sobor, lawyer)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the defendant's decision of 26 September 2014 refusing to accept the applicant's candidature for the post of Director of the European Monitoring Centre for Drugs and Drug Addiction and claim for compensation for the material and non-material damage which the applicant alleges to have suffered.

### Form of order sought

- Annul the defendant's decision of 26 September 2014 refusing to accept the applicant's candidature for the post of Director of the European Monitoring Centre for Drugs and Drug Addiction;
- annul the defendant's decision of 9 April 2015 rejecting the applicant's complaint;
- order the defendant to pay a sum of EUR 2 836 107 (that is, two million eight hundred and thirty-six thousand one hundred and seven euro) covering the material damages suffered by the Applicant;
- order the defendant to pay a sum of EUR 100 000 (that is one hundred thousand euro) covering the non-material damages suffered by the applicant; and
- order the Defendant to bear the costs of the proceedings.

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## Action brought on 22 December 2015 — ZZ v EIB

(Case F-150/15)

(2016/C 383/40)

*Language of the case: Swedish*

### Parties

*Applicant:* ZZ (represented by: E. Nordh, lawyer)

*Defendant:* European Investment Bank (EIB)

### Subject-matter and description of the proceedings

Application for annulment of the decisions of the EIB pronouncing the 'dispensation from service' of the applicant and other decisions connected with that decision, and application for compensation for the material and non-material damage allegedly suffered.

**Form of order sought**

- Annul the defendant's decisions of 13 April 2015, 12 May 2015, 16 June 2015 and 20 October 2015 pronouncing the 'dispensation from service' of the applicant;
- Annul the defendant's decision of 18 June 2015 to block the applicant's access to his e-mail and to IT connections;
- Annul the defendant's decision not to give the applicant access to his salary slips and to remove him from the list of members of his staff;
- Order the defendant to pay the sum of EUR 950 000 in compensation for the non-material harm suffered by the applicant as a result of those decisions and because of its failures in its duty of care and its infringements of procedural safeguards, which sum is to be paid together with interest;
- Order the defendant to pay the costs.

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**Action brought on 15 August 2016 — OT v Commission****(Case F-4/16)**

(2016/C 383/41)

*Language of the case: English***Parties***Applicant:* OT (represented by: D. Sobor, lawyer)*Defendant:* European Commission**Subject-matter and description of the proceedings**

Annulment of the defendant's decisions refusing to accept the applicant's candidature for the post of Director of the European Monitoring Centre for Drugs and Drug Addiction, to grant the applicant's request for assistance or to open an administrative inquiry with regard to the alleged irregularities and illegalities in the selection procedure concerned, and claim for compensation for the material and non-material damage which the applicant alleges to have suffered.

**Form of order sought**

- Annul the defendant's decision of 26 September 2014 refusing to accept the applicant's candidature for the post of Director of the European Monitoring Centre for Drugs and Drug Addiction;
  - annul the defendant's decision of 9 April 2015 rejecting the applicant's complaint and request for assistance;
  - annul the decision of 22 October 2015 rejecting the applicant's complaint;
  - order the defendant to pay a sum of EUR 2 836 107 (that is two million eight hundred and thirty-six thousand one hundred and seven euro) covering the material damages suffered by the Applicant;
  - order the defendant to pay a sum of EUR 100 000 (that is one hundred thousand euro) covering the non-material damages suffered by the applicant; and
  - order the defendant to bear the costs of the applicant.
-

**Action brought on 1 August 2016 — ZZ v Commission****(Case F-20/16)**

(2016/C 383/42)

*Language of the case: Polish***Parties***Applicant:* ZZ (represented by: A. Żołyński, lawyer)*Defendant:* European Commission**Subject-matter and description of the proceedings**

Annulment of the decision of the selection board in Open Competition EPSO/AD 177/10-ECO2013 of 27 May 2014 not to include the applicant's name on the reserve list.

**Form of order sought**

The applicant requests the Civil Service Tribunal to:

- annul the decision of the selection board in Open Competition EPSO/AD 177/10-ECO2013 of 27 May 2014 refusing to include the applicant's name on the reserve list;
  - require the appointing authority to implement the judgment by adding the applicant's name to the reserve list established on the basis of that open competition subject to the period of validity of the addition being equal to the period of validity of the list;
  - order the defendant to pay the costs incurred by the parties in accordance with the prescribed rules.
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ISSN 1977-091X (electronic edition)  
ISSN 1725-2423 (paper edition)



**Publications Office of the European Union**  
2985 Luxembourg  
LUXEMBOURG

**EN**