Official Journal of the European Union

C 347

English edition

Information and Notices

Volume 60

16 October 2017

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 31 May 2017 by Windrush Aka LLP against the judgment of the General Court (First Chamber) delivered on 22 March 2017 in Case T-336/15: Windrush Aka LLP v EUIPO

(Case C-325/17 P)

(2017/C 347/02)

Language of the case: English

Parties

Appellant: Windrush Aka LLP (represented by: S. Britton, Solicitor, S. Malynicz QC, S. Tregear, Solicitor)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Jerry Dammers

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the General Court in Case T-366/15 dated 22 March 2017;

— order the EUIPO and Mr Jerry Dammers (the EUTM proprietor) to pay their own costs and pay those of the appellant

Pleas in law and main arguments

1) First, the General Court distorted the evidence and incorrectly assessed the facts, and its decision contains a substantive inaccuracy in the findings attributable to the documents submitted to it.

2) Secondly, the General Court breached Article 113 of the Rules of Procedure of the General Court of 4 March 2015 (OJ 2015, L 105, p. 1), by declining to hold a hearing in the light of the abandonment by the EUTM proprietor of material parts of its purported evidence of use of the contested EUTM following the hearing.

3) Thirdly, the General Court wrongly held that the appellant raised a new plea for the first time at the hearing.

4) Fourthly, the General Court failed to appreciate the effect in law of an assignment of a right to a name i.e. that the assignment gives no further right to the assignor (i.e., the EUTM proprietor) to grant or refuse consent to the use of the name (i.e., the contested EUTM), with the result that there is no further consent under Union law following the date of the assignment.

Appeal brought on 7 June 2017 by Alcohol Countermeasure Systems (International) Inc. against the judgment of the General Court (First Chamber) delivered on 29 March 2017 in Case T-638/15: Alcohol Countermeasure Systems (International) v EUIPO

(Case C-340/17 P)

(2017/C 347/03)

Language of the case: English

Parties

Appellant: Alcohol Countermeasure Systems (International) Inc. (represented by: E. Baud and P. Marchiset, avocats)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court should:

— as a preliminary ruling and absent EUIPO's written approval to suspend enforcement of the judgment, suspend the application of the judgment;

— cancel and set aside the judgment on the grounds laid down in this Petition […];

— cancel EUIPO's First Board of Appeal decision R 1323/2014-1 dated August 11, 2015;

— alternatively cancel the judgment and order a stay on proceedings until the end of the Brexit process or at the earliest May 31, 2019 corresponding to the deadline set forth in article 50 of the Treaty;

— order Lion Laboratories and the European Union Intellectual Property Office to bear their own costs and to pay the costs of ACS relating both to the proceedings at first instance in Case T-638/15 and to the appeal.

Pleas in law and main arguments

1) the first ground lies on distortion of ACS' statements in its petition in paragraph 86 of the judgment by stating that 64 devices were sold 'during the relevant periods', while such (undisputed) figure related to the First Period only (from October 5, 2004 to October 4, 2009).

2) the second ground also lies on distortion of a letter dated March 21, 2013 sent by Lion Laboratories' counsel to EUIPO and also a violation of Regulation 207/2009 ([1]) and article 57(2) and Regulation 2868/95 ([2]) (articles 22(2) and 40(5)). Such letter did not mention the registration number of the earlier mark (UK trade mark No. 2040518), but instead two references to UK trade mark No. 2371210, implying that Lion Laboratories (i) did not fulfil its obligation to provide evidence of use to the effect of evidencing use of UK trade mark No. 2040518 or of the opposing trade mark, and/or (ii) substituted the trade mark on which the proceedings were based.

3) The third ground addresses how the General Court (i) violated the notion of 'genuine use', as provided in Regulation 207/2009, interpreted in the Ansul case (C-40/01, 11 March 2003) and (ii) applied a wrong methodology. The General Court failed to analyze the First Period solely and to take into account the projected sales figures agreed upon in an exclusive licence agreement. Besides, and in light of the very low and time limited quantitative use during First Period, genuine use was not established by reference to several factors not analyzed by the General Court (such as (i) the Parties' projected sales figures in the licence agreement, (ii) the characteristics of the market (comprising 30 million customers), (iii) the nature of the goods (including breathalyzers) and (iv) the existence of UK trade mark No.2371210 filed in 2004). The General Court gave disproportionate consideration to some documents, including elements relating to services while the earlier mark was opposed for goods in class 9 only.

4) The fourth ground analyzes how the General Court also violated the notion of 'genuine use' by applying an improper standard while determining if the earlier mark was used as a trade mark. Besides, the Céline case from this Court (C-17/06, 11 September 2007) cannot be applied when (i) other marks are affixed on the products, (ii) such products had other names and (iii) the mark was also perceived as a common name by some customers. These circumstances further prevent a link to be established in the mind of the customer between the earlier mark and the sign used as a common name or a corporate name.

5) The fifth ground raises a public order issue: a UK earlier right shall not permit the cancellation of a EU mark in light of the Brexit process and article 50 of the European Union Treaty notification sent by the United Kingdom. Permitting such a cancellation would increase expenses and create unnecessary and disproportionate obstacles to unitary trade mark protection, while in 2 years or less, the United Kingdom will no longer be part of the EU unitary trade mark system. The General Court therefore violated the territoriality principle recognized by the 1883 Paris Convention and Article 17 of the Charter of Fundamental Rights of the European Union.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009, 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 1995, L 303, p. 1).

Appeal brought on 20 June 2017 by Agria Polska sp. z o.o., Agria Chemicals Poland sp. z o.o., Star Agro Analyse und Handels GmbH, and Agria Beteiligungsgesellschaft mbH against the judgment of the General Court of 16 May 2017 in Case T-480/15, Agria Polska and Others v Commission

(Case C-373/17 P)

(2017/C 347/04)

Language of the case: Polish

Parties

Appellants: Agria Polska sp. z o.o., Agria Chemicals Poland sp. z o.o., Star Agro Analyse und Handels GmbH, and Agria Beteiligungsgesellschaft mbH (represented by: P. Graczyk and W. Rocławski)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside in full the judgment of the General Court of 16 May 2017 in Case T-480/15;

— give a final ruling in the dispute, that is to say, annul the Commission's decision;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

The first ground of appeal alleges that the General Court infringed Article 101 TFEU and Article 102 TFEU, read in conjunction with the second sentence of Article 17(1) TEU, Article 7(2) of Commission Regulation (EC) No 773/2004, and Article 7(1) and (2) of Council Regulation (EC) No 1/2003, through its disregarding of obvious errors made by the Commission in its assessment of the likelihood of infringement of Article 101 TFEU or Article 102 TFEU, whether there was any EU interest in opening an investigation, and the scope of the necessary measures of inquiry.

In this first ground of appeal the appellants give details of the alleged infringements by the General Court, which consisted, inter alia, in: (i) the finding that the simultaneous nature of the appellants' competitors' activities (the bringing of complaints before the national bodies) was justified, solely and exclusively on the basis of the explanations put forward by those competitors; (ii) the failure to take account of the fact that the majority of the administrative decisions issued as a result of the competitors' complaints and consequently imposing penalties on the appellants had been overruled; (iii) the failure to take account of the fact that complaints were also addressed to non-competent bodies and the Court's confining itself to stating that, having regard to the risks of damage to the competitors' reputation or of adverse effects on the original condition of the products traded, their informing the competent bodies could be legitimate; (iv) the confirmation of the Commission's finding that there was insufficient EU interest in opening an investigation, notwithstanding the fact that the activities covered by the request concerned the territory of several Member States and undertakings operating on a number of markets; the incorrect finding that the bringing by the appellants of complaints before the national competition authority meant that that authority had exclusive competence; (v) the failure to take account of the fact that the scope of the necessary measures of inquiry and the need to employ substantial resources indicates that the Commission has competence; (vi) the finding that the conditions for so-called 'vexatious proceedings' were not met in the present case.

The second ground of appeal alleges infringement of the principle that full effect must be given to EU law (*effet utile*) and misinterpretation of that principle in relation to the practical application of Articles 101 TFEU and 102 TFEU, read in conjunction with Article 105 TFEU and Article 17(1) TEU, through: (i) the failure to take account of the role played by the Commission within the EU competition protection system and the acceptance that the Commission is not obliged to establish whether national bodies have the appropriate means by which to fulfil their tasks under Regulation No 1/2003; (ii) the failure to take account of the appellants' arguments concerning the ineffectiveness of seeking redress before the Polish courts through private enforcement of the rules on competition, given the lack of suitable procedures and the fact that the statutory limitation periods under Polish law had expired; and (iii) the finding by the General Court that the appellants had failed to show that the Polish competition authority (the President of the Office of Competition and Consumer Protection) had no intention effectively to prosecute and penalise infringements, even though it was not disputed that the President of the Office of Competition and Consumer Protection had refused to open an investigation on the ground that the then legally binding one-year statutory limitation period had expired.

The third ground of appeal alleges infringement of the principle of effective judicial protection (Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), of the right to an effective remedy before a tribunal (first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union) and of the right to good administration (Article 41(1) of the Charter of Fundamental Rights of the European Union) through: (i) confirmation of the Commission's decision rejecting the appellants' request, without stating whether an infringement had occurred, despite the national competition authority's earlier refusal to prosecute the infringements in view of the formal requirements and the lack of a genuine possibility of redress in the form of damages through private enforcement; (ii) the incorrect finding that an infringement of the principle of effective judicial protection had not occurred, on the ground that the appellants could have lodged a complaint against the Commission's decision rejecting the request; and (iii) the failure to take account of the fact that the right to effective judicial protection, to an effective remedy and to good administration also includes the right to have a case decided within a reasonable time, something which was not observed in the present case, because the Commission did not issue the decision refusing to open an investigation until four and a half years after the date on which the request had been submitted by the appellants.

Action brought on 30 June 2017 — European Commission v Kingdom of the Netherlands

(Case C-395/17)

(2017/C 347/05)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: J.-F. Brakeland and A. Caeiros, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

The applicant claims that the Court should:

— declare that the Kingdom of the Netherlands has failed to comply with its obligations pursuant to Article 5 (subsequently Article 10) of the Treaty establishing the European Community (now Article 4(3) of the Treaty on European Union) in not compensating the loss of the amounts of own resources which had to be established and made available for the Union budget pursuant to Articles 2, 6, 10, 11 and 17 of Regulation 1552/1989 ([1]) (now Articles 2, 6, 10, 11 and 17 of Regulation 1150/2000 ([2])) if no movement certificates EUR.1 were issued in breach of Article 101(1) of Council Decision 91/482 ([3]) and Article 12(6) of Annex II to that decision for the import of milk powder and rice from Curacao in the period 1997-2000, Article 35(1) of Council Decision 2001/822 ([4]) and Article 15(4) of Annex III to that decision respectively for the import of groats and meal from Aruba in the period 2002-2003;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The customs authorities of Curacao and Aruba, two overseas countries of the Kingdom of the Netherlands, wrongly issued certificates of origin EUR.1 for milk powder, rice, groats and meal. It is indeed undisputed that the conditions for according preferential status under the relevant decisions concerning the association of the overseas countries and territories with the European Economic Community were not met. The irregularities in the certificates led to a loss of own resources for the Union of EUR 18 192 641,95 for the administrative errors in Curacao and of EUR 298 080 for the administrative errors in Aruba.

The Commission is of the view that the Netherlands, as Member State, is responsible under EU law for this loss of own resources caused by its subregions, and that, under the obligation of loyal cooperation, the Netherlands must make the total amount of unestablished and uncollected customs duties and charges (plus rent) available to the EU budget.

([1]) Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1).

([2]) Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1).

([3]) Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1).

([4]) Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') (OJ 2001 L 314, p. 1).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 3 July 2017 — Martin Leitner v Landespolizeidirektion Tirol

(Case C-396/17)

(2017/C 347/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Martin Leitner

Defendant: Landespolizeidirektion Tirol

Questions referred

1.1. Is EU law, in particular Articles 1, 2 and 6 of Directive 2000/78/EC, ([1]) in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation that, for the purpose of eliminating discrimination against currently employed civil servants, establishes a transitional rule under which reclassification from the previous biennial system to a new biennial system, on the basis of a 'transition amount', which, while calculated in money, nevertheless corresponds to a certain grading that can be specifically allocated, that in and of itself is non-discriminatory for newly hired civil servants, such that age discrimination against currently employed civil servants still continues?

1.2. Is EU law, in particular Article 17 of Directive 2000/78/EC and Article 47 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation that, in accordance with the interpretation of the Court of Justice of Articles 9 and 16 of Directive 2000/78 in its judgment of 11 November 2014 in *Schmitzer* (C-530/13, EU:C:2014:2359), prevents currently employed civil servants from having their remuneration status determined, in reliance on Article 2 of Directive 2000/78, as at the time prior to transition to the new system by declaring that the corresponding legal bases are no longer applicable retroactively to the date on which its historical original law entered into force and, in particular, that previous service periods completed before the age of 18 may not be accredited?

1.3. If the answer to Question 1.2. is in the affirmative:

Does the judgment of the Court of Justice of 22 November 2005 in *Mangold* (C-144/04, EU:C:2005:709) and in other cases specifying that EU law takes precedence over national legislation mandate that provisions applicable to currently employed civil servants at the time prior to transition, which had been retroactively repealed, must continue to be applied so that those civil servants can be retroactively classified in the old system in a non-discriminatory manner and are thus reclassified in the new remuneration system in a non-discriminatory manner?

1.4. Is EU law, in particular Articles 1, 2 and 6 of Directive 2000/78, in conjunction with Articles 21 and 47 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation that eliminates existing age discrimination (with respect to the accreditation of previous service periods completed before the age of 18) in a merely declaratory manner by specifying that the periods actually completed under conditions of discrimination are retroactively to be considered no longer discriminatory even though discrimination in fact still continues?

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Amtsgericht Nürnberg (Germany) lodged on 10 July 2017 — Andreas Fabri, Elisabeth Mathes v Sun Express Deutschland GmbH

(Case C-418/17)

(2017/C 347/07)

Language of the case: German

Referring court

Amtsgericht Nürnberg

Parties to the main proceedings

Applicants: Andreas Fabri, Elisabeth Mathes

Defendant: Sun Express Deutschland GmbH

Questions referred

1. Does a change in reservation to another flight constitute a situation covered by Article 4(3) of Regulation (EC) No 261/2004? ([1])

If the first question is to be answered in the affirmative:

2. Must that provision also be applied to a change in reservation which was not instigated by the air carrier, but by the tour operator alone?

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

Request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 14 July 2017 — Günter Hartmann Tabakvertrieb GmbH & Co. KG v Stadt Kempten

(Case C-425/17)

(2017/C 347/08)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Günter Hartmann Tabakvertrieb GmbH & Co. KG

Defendant: Stadt Kempten

Intervening party: Landesanwaltschaft Bayern

Questions referred

1. Must Article 2(8) of Directive 2014/40/EU (1) be interpreted as meaning that only chewing tobacco products in the traditional sense constitute 'products intended to be chewed'?

2. Must Article 2(8) of Directive 2014/40/EU be interpreted as meaning that 'products intended to be chewed' are synonymous with 'chewing tobacco' within the meaning of Article 2(6) of the directive?

3. Must the question of whether a tobacco product is 'intended to be chewed' within the meaning of Article 2(8) of Directive 2014/40/EU be determined on the basis of an objective consideration of the product and not on the basis of the information supplied by the manufacturer or the actual use by consumers?

4. Must Article 2(8) of Directive 2014/40/EU be interpreted as meaning that, in order for a tobacco product to be intended to be chewed, that product must in terms of its consistency and firmness be objectively suitable for being chewed and chewing it must result in the ingredients in the product being released?

5. Must Article 2(8) of Directive 2014/40/EU be interpreted as meaning that, in order for a tobacco product to be intended 'to be chewed', it is additionally necessary, but also sufficient, for the repeated exertion of light pressure on the tobacco product using the teeth or tongue to cause more of the ingredients in the product to be released than if the product is simply kept in the mouth?

6. Or, in order for a tobacco product to be 'intended to be chewed', is it necessary that merely keeping the product in the mouth or sucking it does not cause ingredients to be released?

7. Can the suitability of a tobacco product 'to be chewed', within the meaning of Article 2(8) of Directive 2014/40/EU, also be imparted by the method of dispensation outside the processed tobacco, such as a cellulose sachet?

(1) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ 2014 L 127, p. 1.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 17 July 2017 — Walbusch Walter Busch GmbH & Co. KG v Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV

(Case C-430/17)

(2017/C 347/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Walbusch Walter Busch GmbH & Co. KG

Respondent in the appeal on a point of law: Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV

Questions referred

1. For the purposes of applying Article 8(4) of Directive 2011/83/EU, ([1]) does the answer to the question whether a means of distance communication (in this instance, an advertising leaflet containing a mail order coupon) allows limited space or time to display information depend on whether

   (a) (in the abstract) the means of distance communication allows only limited space or time by its very nature

   or

   (b) (in the particular case) it offers limited space or time in the design selected for it by the trader?

2. Is it compatible with Article 8(4) and Article 6(1)(h) of Directive 2011/83/EU for information on the right of withdrawal to be restricted to an indication of the existence of a right of withdrawal, in the case, as provided for in Article 8(4) of Directive 2011/83/EU, where there is limited scope for displaying that information?

3. Do Article 8(4) and Article 6(1)(h) of Directive 2011/83/EU make it a mandatory requirement in all cases, including in the case where there is limited scope for displaying information, for the model withdrawal form set out in Annex I(B) to Directive 2011/83/EU to be attached to the means of distance communication before a distance contract is concluded?

([1]) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ 2011 L 304, p. 64.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 20 July 2017 — Federal Republic of Germany v Taus Magamadov

(Case C-438/17)

(2017/C 347/10)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Federal Republic of Germany

Respondent: Taus Magamadov

Questions referred

1. Does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU ([1]) preclude the application of national legislation which, in transposition of the power conferred in Article 33(2)(a) of Directive 2013/32/EU, which is more extensive than that conferred in the directive that preceded it, provides that an application for international protection is inadmissible if the applicant has been granted subsidiary protection in another Member State, in so far as the national legislation, in the absence of any national transitional provisions, is applicable even to applications lodged before 20 July 2015? Is that in any event the case if, in accordance with Article 49 of Regulation (EU) No 604/2013, the asylum application still falls entirely within the scope of Regulation (EC) No 343/2003?

2. In particular, does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU allow the Member States, in particular, to transpose the extended power conferred in Article 33(2)(a) of Directive 2013/32/EU retroactively, with the result that even applications that were lodged before the entry into force of Directive 2013/32/EU and before that extended power was transposed into national law, but that were not yet the subject of a final decision at the time of transposition, are inadmissible?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Request for a preliminary ruling from the Verwaltungsgericht Hamburg (Germany) lodged on 20 July 2017 — British American Tobacco (Germany) GmbH v Freie und Hansestadt Hamburg

(Case C-439/17)

(2017/C 347/11)

Language of the case: German

Referring court

Verwaltungsgericht Hamburg

Parties to the main proceedings

Applicant: British American Tobacco (Germany) GmbH

Defendant: Freie und Hansestadt Hamburg

Questions referred

1. Is the first sentence of Article 7(7) of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ([1]) (hereinafter: 'the directive') to be interpreted as meaning that the prohibition on the placing on the market of tobacco products containing flavourings in any of their components does not cover tobacco products which have a characterising flavour, within the meaning of the definition in Article 2(25) of the directive, on account of the flavourings contained in their components?

2. If Question 1 is to be answered in the negative:

   Is Article 7(14) to be interpreted as meaning that the transitional provision covers only the prohibition on the placing on the market of tobacco products with a characterising flavour under the first sentence of Article 7(1) of the directive or — also — the prohibition on the placing on the market of tobacco products containing flavourings in any of their components under the first sentence of Article 7(7) of the directive?

3. If Question 1 is to be answered in the affirmative or Question 2 is to be answered to the effect that Article 7(14) of the directive also covers the prohibition on the placing on the market of tobacco products containing flavourings in any of their components under the first sentence of Article 7(7) of the directive:

   How are the expressions 'tobacco products with a characterising flavour' and 'particular product category' in Article 7 (14) of the directive to be construed?

(1) OJ 2001 L 127, p. 1.

Request for a preliminary ruling from the Commissione Tributaria Regionale del Lazio (Italy) lodged on 24 July 2017 — Agenzia delle Dogane e dei Monopoli v Pilato SpA

(Case C-445/17)

(2017/C 347/12)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale del Lazio

Parties to the main proceedings

Applicant: Agenzia delle Dogane e dei Monopoli

Defendant: Pilato SpA

Question referred

Has CN heading 8704 of the Combined Nomenclature to be interpreted to the effect that it must include hearses? If the answer to the first question is in the negative, are hearses to be classified under CN heading 8705 or CN heading 8703?

Request for a preliminary ruling from the Tribunal de commerce de Liège (Belgium) lodged on 27 July 2017 — Zako SPRL v Sanidel SA

(Case C-452/17)

(2017/C 347/13)

Language of the case: French

Referring court

Tribunal de commerce de Liège

Parties to the main proceedings

Applicant: Zako SPRL

Defendant: Sanidel SA

Questions referred

1. Must Article 1(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (1) be interpreted as requiring the commercial agent to seek and visit customers or suppliers outside of the business premises of the principal?

2. Must Article 1(2) of Directive 86/653/EEC be interpreted as requiring the commercial agent to carry out no tasks other than those relating to the negotiation of the sale or purchase of goods on behalf of the principal or to the negotiation and conclusion of such transactions on behalf of and in the name of the principal?

3. If the second question is answered in the negative, must Article 1(2) of Directive 86/653/EEC be interpreted as requiring the commercial agent to carry out tasks other than those relating to the negotiation of the sale or purchase of goods on behalf of the principal, or to the negotiation and conclusion of such transactions on behalf of and in the name of the principal, only secondarily?

(1) OJ 1986 L 382, p. 17.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 31 July 2017 — Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV

(Case C-457/17)

(2017/C 347/14)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Heiko Jonny Maniero

Respondent: Studienstiftung des deutschen Volkes eV

Questions referred

1. Is the award by a registered association of scholarships intended to promote projects for research and studies abroad covered by the concept of 'education' within the meaning of Article 3(1)(g) of Directive 2000/43/EC? (1)

2. If Question 1 is to be answered in the affirmative:

   In the case of the award of scholarships referred to in Question 1, does the participation requirement relating to the passing of the First State Law Examination in Germany constitute indirect discrimination against an applicant within the meaning of Article 2(2)(b) of Directive 2000/43/EC where the applicant, who is a Union citizen, has indeed acquired a comparable qualification in a State which does not belong to the European Union, without the choice of this place of qualification being related to the ethnic origin of the applicant, but, on account of his residence in national territory and fluent command of German, had, in the same way as a national, the possibility of taking the First State Law Examination after studying law in national territory?

   Is any difference made by the fact that the objective pursued by the scholarship programme is, without being linked to any discriminatory characteristics, to provide law graduates in Germany with knowledge of foreign legal systems, experience of being abroad and knowledge of languages by promoting a project for research and studies abroad?

(1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180, p. 22.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 31 July 2017 — SGI v Ministre de l'Action et des Comptes Publics

(Case C-459/17)

(2017/C 347/15)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: SGI

Respondent: Ministre de l'Action et des Comptes Publics

Question referred

Must the provisions of Article 17 of the Sixth VAT Directive of 17 May 1977, ([1]) which have, in essence, been reproduced in Article 168 of Directive [2006/112/EC] of 28 November 2006 on the common system of value added tax, ([2]) be interpreted as meaning that, in order to refuse a taxable person the right to deduct, from the value added tax that he is liable to pay by reason of his own transactions, tax levied on invoices corresponding to goods or services that the tax authorities establish have not actually been supplied to the taxable person, it is necessary, in all cases, to examine whether it has been established that that taxable person knew, or ought to have known, that the transaction was connected with value-added-tax fraud, regardless of whether that fraud was committed on the initiative of the issuer of the invoice, its recipient or a third party?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).
([2]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 31 July 2017 —Valériane SNC v Ministre de l'Action et des Comptes Publiques

(Case C-460/17)

(2017/C 347/16)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Valériane SNC

Respondent: Ministre de l'Action et des Comptes Publiques

Question referred

Must the provisions of Article 17 of the Sixth VAT Directive of 17 May 1977, ([1]) which have, in essence, been reproduced in Article 168 of Directive [2006/112/EC] of 28 November 2006 on the common system of value added tax, ([2]) be interpreted as meaning that, in order to refuse a taxable person the right to deduct, from the value added tax that he is liable to pay by reason of his own transactions, tax levied on invoices corresponding to goods or services that the tax authorities establish have not actually been supplied to the taxable person, it is necessary, in all cases, to examine whether it has been established that that taxable person knew, or ought to have known, that the transaction was connected with value-added-tax fraud, regardless of whether that fraud was committed on the initiative of the issuer of the invoice, its recipient or a third party?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).
([2]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Request for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 1 August 2017 — Tänzer & Trasper GmbH v Altenweddinger Geflügelhof Kommanditgesellschaft

(Case C-462/17)

(2017/C 347/17)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Tänzer & Trasper GmbH

Defendant: Altenweddinger Geflügelhof Kommanditgesellschaft

Question referred

Are the components listed in category 41 of Annex II to Regulation (EC) No 110/2008 ([1]) the minimum components that a spirit drink must contain in order to be permitted to bear the sales denomination 'egg liqueur' (a minimum specification) or is category 41 of Annex II to Regulation (EC) No 110/2008 an exhaustive list of the components that are permissible in a product seeking to bear the sales denomination 'egg liqueur'?

([1]) Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, OJ 2008 L 39, p. 16.

Request for a preliminary ruling from the Tribunale di Trento (Italy) lodged on 3 August 2017 — Chiara Motter v Provincia autonoma di Trento

(Case C-466/17)

(2017/C 347/18)

Language of the case: Italian

Referring court

Tribunale di Trento

Parties to the main proceedings

Applicant: Chiara Motter

Defendant: Provincia autonoma di Trento

Questions referred

1. For the purposes of applying the principle of non-discrimination pursuant to clause 4 of the framework agreement, is the requirement to pass an initial objective test of professional qualifications in a public selection procedure a factor that can be ascribed to the training requirements that the national court must take into account in order to determine whether there is comparability between the situation of a permanent worker and that of a fixed-term worker and in order to decide whether this constitutes an objective ground capable of justifying a difference in treatment between permanent workers and fixed-term workers?

2. Does the principle of non-discrimination under clause 4 of the framework agreement preclude a national provision (such as that contained in Article 485(1) of Legislative Decree No 297 of 16 April 1994) which lays down that, in order to determine seniority at the time of admittance to the permanent staff under a permanent employment contract, the first four years of service performed on a fixed-term basis are counted in full but subsequent periods are reduced by one-third for legal purposes and by two-thirds for salary purposes if one considers the absence, for the purposes of fixed-term employment, of a requirement to pass an initial objective test of professional qualifications in a public selection procedure?

3. Does the principle of non-discrimination under clause 4 of the framework agreement preclude a national provision (such as that contained in Article 485(1) of Legislative Decree No 297 of 16 April 1994) which lays down that, in order to determine seniority at the time of admittance to the permanent staff under a permanent employment contract, the first four years of service performed on a fixed-term basis are counted in full but subsequent periods are reduced by one-third for legal purposes and by two-thirds for salary purposes, if one considers the objective of preventing reverse discrimination against career civil servants recruited after passing a general competition?

Request for a preliminary ruling from the Giudice di pace di L'Aquila (Italy) lodged on 7 August 2017 — Gabriele Di Girolamo v Ministero della Giustizia

(Case C-472/17)

(2017/C 347/19)

Language of the case: Italian

Referring court

Giudice di pace di L'Aquila

Parties to the main proceedings

Applicant: Gabriele Di Girolamo

Defendant: Ministero della Giustizia

Questions referred

(1) Is the work carried out by the applicant *Giudice di Pace* (magistrate) covered by the term 'fixed-term worker' for the purpose of Articles 1(3) and 7 of Directive 2003/88, ([1]) in conjunction with Clause 2 of the framework agreement on fixed-term work implemented by Directive 1999/70 ([2]) and Article 31(2) of the Charter of Fundamental Rights of the European Union?

(2) If Question 1 is answered in the affirmative, may an [ordinary] or *'togato'* judge [a career judge engaged on a permanent basis and salaried] be regarded as a permanent worker indistinguishable from a '*Giudice di Pace*' fixed-term worker for the purposes of the application of Clause 4 of the framework agreement on fixed-term work implemented by Directive 1999/70?

(3) If Question 2 is answered in the affirmative, do the differences between the procedure for the permanent recruitment of ordinary judges and the selective procedures laid down by law for the fixed-term recruitment of *giudici di pace* constitute objective grounds, within the meaning of Clause 4(1) and/or (4) of the framework agreement on fixed-term work implemented by Directive 1999/70, justifying a refusal to apply: (1) — as in the recent case-law of the Combined Chambers of the Corte di cassazione (Court of Cassation) in judgement No 13721/2017 and of the Consiglio di Stato (Council of State) in Opinion No 464/2017 of 8 April 2017 — to *Giudici di Pace*, such as the applicant fixed-term worker, the same employment conditions as those applied to comparable permanent ordinary judges; and (2) measures to prevent and impose penalties in respect of abusive use of fixed-term contracts, as referred to in Clause 5 of the framework agreement implemented by Directive 1999/70 and the domestic implementing provision in Article 5(4bis) of Legislative Decree No 368/2001, in the absence of any fundamental principle under domestic law or any constitutional rule justifying either discrimination as regards employment conditions or an absolute prohibition on engaging *Guidici di Pace* on a permanent basis, bearing in mind, inter alia, the previous domestic provision (Article 1 of Law No 217/1974), which provided that the employment conditions of *giudici onorari* were indistinguishable from those of ordinary judges and that there was no longer to be recourse to successive fixed-term employment contracts for such judges?

(4) In any event, in a situation such as that in the main proceedings, is it contrary to Article 47(2) of the Charter of Fundamental Rights of the European Union and to the concept under EU law of an independent and impartial tribunal for a *Giudice di Pace* who has an interest in the case before him being resolved in favour of the applicant, who, as his sole form of employment, performs exactly the same judicial functions, to stand in the place of the tribunal established by law as having jurisdiction because of the refusal by the highest domestic judicial body — the Combined Chambers of the Court of Cassation — to grant effective protection for the rights claimed, thus obliging the tribunal established as competent by law to decline, when requested, jurisdiction for the purpose of recognising the right claimed, notwithstanding the fact that the right in question — like the right to paid leave at issue in the main proceedings — is enshrined in primary and secondary EU law in a situation in which 'Community' law is directly and vertically applicable to the Member State in question? In the event that the Court finds that there is infringement of Article 47(2) of the Charter, it is requested to indicate domestic remedies to avoid a situation in which infringement of a provision of primary EU law coincides with an absolute refusal under domestic law to protect fundamental rights ensured by EU law in the particular circumstances of the case.

([1]) 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 (OJ 2003 L 299, p. 9).

([2]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 8 August 2017 — AS Viking Motors, OÜ TKM Beauty Eesti, AS TKM King, Kaubamaja AS, Selver AS v Tallinna linn, Maksu- ja Tolliamet

(Case C-475/17)

(2017/C 347/20)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicants: AS Viking Motors, OÜ TKM Beauty Eesti, AS TKM King, Kaubamaja AS, Selver AS

Defendants: Tallinna linn, Maksu- ja Tolliamet

Question referred

Is Article 401 of Council Directive 2006/112/EC ([1]) to be interpreted as precluding a national tax which applies generally and is proportionate to the price, but which, pursuant to the relevant provisions, is to be levied only at the stage of the sale of goods or services to a consumer, with the result that the final tax burden rests ultimately with the consumer, and which compromises the operation of the common system of value added tax and distorts competition?

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 4 August 2017 — Pelham GmbH, Moses Pelham, Martin Haas v Ralf Hütter, Florian Schneider-Esleben

(Case C-476/17)

(2017/C 347/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellants on a point of law: Pelham GmbH, Moses Pelham, Martin Haas

Respondents in the appeal on a point of law: Ralf Hütter, Florian Schneider-Esleben

Questions referred

1. Is there an infringement of the phonogram producer's exclusive right under Article 2(c) of Directive 2001/29/EC ([1]) to reproduce its phonogram if very short audio snatches are taken from its phonogram and transferred to another phonogram?

2. Is a phonogram which contains very short audio snatches transferred from another phonogram a copy of the other phonogram within the meaning of Article 9(1)(b) of Directive 2006/115/EC ([2])?

3. Can the Member States enact a provision which — in the manner of Paragraph 24(1) of the Gesetz über Urheberrecht und verwandte Schutzrechte (German Law on Copyright and Related Rights) — inherently limits the scope of protection of the phonogram producer's exclusive right to reproduce (Article 2(c) of Directive 2001/29/EC) and to distribute (Article 9(1)(b) of Directive 2006/115/EC) its phonogram in such a way that an independent work created in free use of its phonogram may be exploited without the phonogram producer's consent?

4. Can it be said that a work or other subject matter is being used for quotation purposes within the meaning of Article 5(3)(d) of Directive 2001/29/EC if it is not evident that another person's work or another person's subject matter is being used?

5. Do the provisions of EU law on the reproduction right and the distribution right of the phonogram producer (Article 2(c) of Directive 2001/29/EC and Article 9(1)(b) of Directive 2006/115/EC) and the exceptions or limitations to those rights (Article 5(2) and (3) of Directive 2001/29/EC and Article 10(2), first sentence, of Directive 2006/115/EC) allow any latitude in terms of implementation in national law?

6. In what way are the fundamental rights set out in the Charter of Fundamental Rights of the European Union to be taken into account when ascertaining the scope of protection of the exclusive right of the phonogram producer to reproduce (Article 2(c) of Directive 2001/29/EC) and to distribute (Article 9(1)(b) of Directive 2006/115/EC) its phonogram and the scope of the exceptions or limitations to those rights (Article 5(2) and (3) of Directive 2001/29/EC and Article 10(2), first sentence, of Directive 2006/115/EC)?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ 2001 L 167, p. 10.

([2]) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ 2006 L 376, p. 28.

Request for a preliminary ruling from the Tribunalul Cluj (Romania) lodged on 9 August 2017 — IQ v JP

(Case C-478/17)

(2017/C 347/22)

Language of the case: Romanian

Referring court

Tribunalul Cluj

Parties to the main proceedings

Appellant: IQ

Respondent: JP

Questions referred

1. Does the expression 'the courts of a Member State having jurisdiction as to the substance of the matter' which appears in Article 15 of the Brussels II Regulation ([1]) refer equally to courts hearing the case at first instance and to courts of appeal? It is important to know whether the case may be transferred, on the basis of that provision, to a court better placed to hear it if the court having jurisdiction and being asked to transfer the case to a better placed court is a court of appeal, while the better placed court is a court of first instance.

2. If the answer to Question 1 is in the affirmative, how is the court having jurisdiction and transferring the case to a better placed court to deal with the judgment at first instance?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Reference for a preliminary ruling from Court of Appeal (Ireland) made on 9 August 2017 — Neculai Tarola v Minister for Social Protection

(Case C-483/17)

(2017/C 347/23)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: Neculai Tarola

Defendant: Minister for Social Protection

Question referred

Where a citizen of another EU member state after his first twelve months of exercising his right of free movement arrives in the host state and works (otherwise than for a fixed term contract) for a two week period for which he is remunerated and thereafter becomes involuntarily unemployed, does that citizen thereby retain the status of a worker for no less than a further six months for the purposes of Article 7(3)(c) and Article 7(1)(a) of Directive 2004/38/EC ([1]) such as would entitle him to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a resident citizen of the host State?

([1]) 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 L 158, p. 77)

Reference for a preliminary ruling from the Supreme Court of the United Kingdom (United Kingdom) made on 14 August 2017 — Hoteles Piñero Canarias, S.L. v Keefe (by his litigation friend Eyton)

(Case C-491/17)

(2017/C 347/24)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Appellant: Hoteles Piñero Canarias, S.L.

Respondent: Keefe (by his litigation friend Eyton)

Questions referred

1) Is it a requirement of Article 11.3 ([1]) that the injured person's claim against the policy holder/insured involves a matter relating to insurance in the sense that it raises a question about the validity or effect of the policy?

2) Is it a requirement of Article 11.3 that there is a risk of inconsistent judgments unless joinder is permitted?

3) Does the court have a discretion whether or not to permit joinder of a claim which falls within Article 11.3?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 17 August 2017 — Deutsche Post AG v Hauptzollamt Köln

(Case C-496/17)

(2017/C 347/25)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Deutsche Post AG

Defendant: Hauptzollamt Köln

Question referred

1. Is the second subparagraph of Article 24(1) of Commission Implementing Regulation (EU) 2015/2447 ([1]) of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code to be interpreted as meaning that this provision permits the customs authority to request the applicant to inform it of the tax identification numbers issued by the German Bundeszentralamt für Steuern (Federal Central Tax Office) for the purpose of income tax collection and the tax offices responsible for the income tax assessment of the members of the applicant's supervisory board, its managing directors, heads of department, head of accounts, head of the customs department as well as those individuals responsible for customs matters and those dealing with customs matters employed by the applicant?

([1]) OJ 2015 L 343, p. 558.

Request for a preliminary ruling from the Cour administrative d'appel de Versailles (France) lodged on 10 July 2017 — Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'agriculture et de l'alimentation, Premier minister, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)

(Case C-497/17)

(2017/C 347/26)

Language of the case: French

Referring court

Cour administrative d'appel de Versailles

Parties to the main proceedings

Appellant: Oeuvre d'assistance aux bêtes d'abattoirs (OABA)

Respondents: Ministre de l'agriculture et de l'alimentation, Premier ministre, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)

Question referred

Must the applicable rules of European Union law, deriving from, inter alia:

— Article 13 of the Treaty on the Functioning of the European Union,

— Council Regulation (EC) No 834/2007 of 28 June 2007, ([1]) the detailed rules for the implementation of which are laid down by Commission Regulation (EC) No 889/2008 of 5 September 2008, ([2]) and

— Council Regulation (EC) No 1099/2009 of 24 September 2009 ([3])

be interpreted as permitting or prohibiting approval of the use of the European label '*organic farming*' in relation to products derived from animals which have been slaughtered in accordance with religious rites without first being stunned, where such slaughter is conducted in accordance with the requirements laid down by Regulation (EC) No 1099/2009?

([1]) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1).

([2]) Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1).

([3]) 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).

Request for a preliminary ruling from Vestre Landsret (Denmark) dated 18 August 2017, C&D Foods Acquisition ApS v Skatteministeriet

(Case C-502/17)

(2017/C 347/27)

Language of the case: Danish

Referring Court

Vestre Landsret

Parter

Applicant: C&D Foods Acquisition ApS

Defendant: Skatteministeriet

Questions referred

1) Should Article 168 of Directive 2006/112/EC ([1]) be interpreted as meaning that a holding company, in circumstances such as those in the main proceedings, is entitled to a full deduction of VAT on input services related to due diligence investigations before an envisaged, but not completed, sale of shares in a subsidiary to which the holding company supplies management and IT services that are subject to VAT?

2) Is the answer to the above question affected by the fact that the price for the VAT taxable management and IT services, which the holding company supplies for the purposes of its economic activity, is a fixed amount corresponding to the holding company's expenditure on employees' salaries, with the addition of a 'mark-up' of 10 %?

3) Irrespective of the answer to the foregoing questions, can a right of deduction exist if the consultancy costs at issue in the main proceedings are regarded as general costs, and if so, on what conditions?

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

Action brought on 21 August 2017 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-503/17)

(2017/C 347/28)

Language of the case: English

Parties

Applicant: European Commission (represented by: F. Tomat, J. Tomkin, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by allowing the use of marked fuel for the purpose of fuelling private pleasure craft, the United Kingdom has breached its obligations under Directive 95/60/EC ([1]);

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The Commission considers that permitting the sale of marked fuel for propelling private pleasure craft is fundamentally incompatible with the Directive 95/60/EC (the 'Fiscal Marking Directive'). The obligation to mark fuel that has been subject to a reduced rate of excise duty is intended specifically to ensure that those fuels are readily distinguishable from fuel in respect of which full duty has been paid. However, the effect of the national measure is that where marked fuel is found in a tank of a private pleasure craft that has been refuelled in the United Kingdom, it is not possible to determine by reference to the marking, whether or not the fuel used was subject to a full or discounted rate of excise duty.

([1]) Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene (OJ 1995, L 291, p. 46).

Action brought on 21 August 2017 — European Commission v Ireland

(Case C-504/17)

(2017/C 347/29)

Language of the case: English

Parties

Applicant: European Commission (represented by: F. Tomat, J. Tomkin, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that by not ensuring the application of the minimum levels of taxation for motor fuels prescribed by Council Directive 2003/96/EC ([1]) of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, Ireland has failed to fulfil its obligations under Articles 4 and 7 of that Directive;

— declare that by allowing the use of marked fuel for the purposes of propelling private pleasure craft, even where such fuel has not been subject to any exemption or reduction of excise duty, Ireland has failed to fulfil its obligations under Directive 95/60/EC ([2]) of 27 November 1995 on fiscal marking of gas oils and kerosene;

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission considers that the system by which Ireland imposes and collects excise duties on fuel used to propel private pleasure craft is incompatible with its obligations under Council Directive 2003/96/EC (the 'Energy Taxation Directive') and Directive 95/60/EC (the 'Fiscal Marking Directive').

Concerning the payment of excise duties, it is apparent that only a very small minority of owners of pleasure-craft actually submit returns to pay the full rate of tax duty. The Commission further considers that permitting the sale of marked fuel for uses that are subject to a full rate of excise duty is fundamentally incompatible with the Fiscal Marking Directive. The obligation to mark fuel that has been subject to a reduced rate of excise duty is intended specifically to ensure that those fuels are readily distinguishable from fuel in respect of which full duty has been paid. However, the effect of the national measure is that where marked fuel is found in a tank of a private pleasure craft that has been refuelled in Ireland, it is not possible to determine by reference to the marking, whether or not the fuel used was subject to a full or discounted rate of excise duty.

([1]) OJ 2003, L 283, p. 51.
([2]) OJ 1995, L 291, p. 46.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 21 August 2017 — Google Inc. v Commission nationale de l'informatique et des libertés (CNIL)

(Case C-507/17)

(2017/C 347/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Google Inc.

Defendant: Commission nationale de l'informatique et des libertés (CNIL)

Other parties: Wikimedia Foundation Inc., Fondation pour la liberté de la presse, Microsoft Corp., Reporters Committee for Freedom of the Press and Others, Article 19 and Others, Internet Freedom Foundation and Others, Défenseur des droits

Questions referred

1. Must the 'right to de-referencing', as established by the Court of Justice of the European Union in its judgment of 13 May 2014 ([1]) on the basis of the provisions of Articles 12(b) and 14(a) of Directive [95/46/EC] of 24 October 1995, ([2]) be interpreted as meaning that a search engine operator is required, when granting a request for de-referencing, to deploy the de-referencing to all of the domain names used by its search engine so that the links at issue no longer appear, irrespective of the place from where the search initiated on the basis of the requester's name is conducted, and even if it is conducted from a place outside the territorial scope of Directive [95/46/EC] of 24 October 1995?

2. In the event that Question 1 is answered in the negative, must the 'right to de-referencing', as established by the Court of Justice of the European Union in the judgment cited above, be interpreted as meaning that a search engine operator is required, when granting a request for de-referencing, only to remove the links at issue from the results displayed following a search conducted on the basis of the requester's name on the domain name corresponding to the State in which the request is deemed to have been made or, more generally, on the domain names distinguished by the national extensions used by that search engine for all of the Member States of the European Union?

3. Moreover, in addition to the obligation mentioned in Question 2, must the 'right to de-referencing', as established by the Court of Justice of the European Union in its judgment cited above, be interpreted as meaning that a search engine operator is required, when granting a request for de-referencing, to remove the results at issue, by using the 'geo-blocking' technique, from searches conducted on the basis of the requester's name from an IP address deemed to be located in the State of residence of the person benefiting from the 'right to de-referencing', or even, more generally, from an IP address deemed to be located in one of the Member States subject to Directive [95/46/EC] of 24 October 1995, regardless of the domain name used by the internet user conducting the search?

([1]) Judgment of 13 May 2014, *Google Spain and Google*, C-131/12, EU:C:2014:317.
([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Request for a preliminary ruling from the Cour d'appel de Liège (Belgium) lodged on 23 August 2017 — Ministère public v Marin-Simion Sut

(Case C-514/17)

(2017/C 347/31)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Applicant: Ministère public

Defendant: Marin-Simion Sut

Question referred

Can Article 4(6) of Framework Decision 2002/584 ([1]) be interpreted as being inapplicable to acts for which a custodial sentence has been imposed by a court of an issuing Member State, when those same acts are punishable in the territory of the executing Member State only by a fine, which means, in accordance with the domestic law of the executing Member State, that the custodial sentence cannot be executed in the executing Member State, which would be to the detriment of the social rehabilitation of the person sentenced and of his family, social and other ties?

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

Action brought on 4 September 2017 — European Commission v Italian Republic

(Case C-526/17)

(2017/C 347/32)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Gattinara, P. Ondrůšek and A. Tokár, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that, in deferring expiry of the works contract relating to the A12 Civitavecchia-Livorno motorway until 31 December 2046 without publishing any contract notice, the Italian Republic has failed to fulfil its obligations under Articles 2 and 58 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 (OJ 2004 L 134, p. 114), as subsequently amended;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the extending until 31 December 2046 of the works contract relating to the A12 Civitavecchia-Livorno motorway constitutes an amendment to an essential term of that contract; being a substantial amendment to that contract, that extension is tantamount to concluding a new works contract and, as such, should have been made public through the publication of a contract notice. Since, however, no such publication has taken place, the Italian Republic has failed to fulfil its obligations under Articles 2 and 58 of Directive 2004/18/EC.

GENERAL COURT

Order of the General Court of 19 July 2017 — Yanukovych v Council

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

(Procedure — Interpretation of an order)

(2017/C 347/33)

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 J.-P. Hix and P. Mahnič Bruni, acting as Agents)

Intervener in support of the defendant: European Commission (represented initially by S. Bartelt and D. Gauci, and subsequently by E. Paasivirta and J. Norris-Usher, acting as Agents)

Re:

Application for interpretation of the order of 12 July 2016, *Yanukovych* v *Council* (T-347/14, EU:T:2016:433).

Operative part of the order

1. *Point 3 of the operative part of order of 12 July 2016, Yanukovych v Council (T-347/14), must be interpreted as meaning that, as regards the claim for annulment made in the application, it covers both costs incurred by Mr Viktor Viktorovych Yanukovych and those incurred by Mrs Olga Stanislavivna Yanukovych, as heir of Mr Viktorovych Yanukovych.*

2. *Mrs Stanislavivna Yanukovych, as heir of Mr Viktorovych Yanukovych, on the one hand, and the Council of the European Union, on the other hand, shall each bear their own costs relating to the interpretation proceedings.*

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

4. *The original of this order shall be annexed to the original of the order interpreted, in the margin of which reference shall be made to this order.*

([1]) OJ C 253, 4.8.2014.

Action brought on 4 July 2017 — Arca Capital Bohemia v Commission

(Case T-440/17)

(2017/C 347/34)

Language of the case: English

Parties

Applicant: Arca Capital Bohemia a.s. (Prague, Czech Republic) (represented by: M. Nedelka, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision COMP/D3/PB/2017/026659 of 15 March 2017, refusing access to documents pursuant to Regulation (EC) No 1049/2001 relating to case COMP/SA.17006 — C 27/04 (ex CZ 49/03) — Agrobanka Praha a.s. and GE Capital Bank a.s;

— annul Commission decision N° C(2017) 3130 final of 4 May 2017 confirming Decision N° COMP/D3/PB/2017/026659 of 15 March 2017;

— order the Commission to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the exceptions laid down in Article 4(2), first and third indents, of Regulation (EC) No 1049/2001 were misapplied.

   — The applicant alleges in this regard that the defendant misapplied relevant case-law which, in its view, does not apply to cases in which the administrative file has been closed. Also, in State aid cases, there is a very strong public interest in obtaining as much information as possible in order to control State bodies and different considerations should also apply to arguments based on commercial interests than those which pertain in merger or cartel cases.

2. Second plea in law, alleging that there is an overriding public interest in disclosure.

   — In this regard the applicant advances arguments relating to the reasons behind the privatisation of the bank in question and the stability of the Czech banking sector.

Action brought on 4 July 2017 — Arca Capital Bohemia v Commission

(Case T-441/17)

(2017/C 347/35)

Language of the case: English

Parties

Applicant: Arca Capital Bohemia a.s. (Prague, Czech Republic) (represented by: M. Nedelka, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision COMP/F3/NB/tt*D-2017/025322 of 13 March 2017 partially refusing access to documents pursuant to Regulation (EC) No 1049/2001 relating to case COMP/SA. 25076 (2011/NN) — Privatisation of Rental Housing — Karbon Invest;

— annul Commission decision C(2017) 3129 final of 4 May 2017 confirming Commission decision COMP/F3/NB/tt*D-2017/025322 of 13 March 2017;

— order the Commission to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the exceptions laid down in Article 4(2), first and third indents, of Regulation (EC) No 1049/2001 were misapplied.

   — The applicant alleges in this regard that the defendant misapplied relevant case-law which, in its view, does not apply to cases in which the administrative file has been closed. Also, in State aid cases, there is a very strong public interest in obtaining as much information as possible in order to control State bodies and different considerations should also apply to arguments based on commercial interests than those which pertain in merger or cartel cases.

2. Second plea in law, alleging that there is an overriding public interest in disclosure.

— The applicant advances arguments in this regard to the effect that the privatisation in question had a grossly negative social impact and refers to widespread suspicion that the process involved wrongdoing on the part of State bodies.

Action brought on 18 July 2017 — Bowles v ECB

(Case T-447/17)

(2017/C 347/36)

Language of the case: French

Parties

Applicant: Carlos Bowles (Frankfurt-am-Main, Germany) (represented by: L. Levi, lawyer)

Defendant: European Central Bank

Form of order sought

— Declare the present action admissible and well-founded;

— Consequently,

— Annul the decision of 31 January 2017 communicated to the staff on 1 February 2017 to appoint Mr [X] Adviser to the President and Coordinator of the Counsel to the Executive Board, annul the decision not to appoint the applicant to that post and annul the decision not to have permitted the applicant to apply for that post;

— Annul the decision rejecting the special appeal dated 16 May 2017 received on 23 May 2017;

— Order the payment of compensation for the applicant's material loss consisting of the loss of an opportunity to be appointed to the post of Adviser to the President and Coordinator of the Counsel to the Executive Board;

— Order the payment of compensation for the applicant's non-pecuniary loss assessed *ex aequo et bono* at a symbolic EUR 1;

— Order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principles of publicity, transparency, equal treatment and non-discrimination and of Articles 20.2 of the Rules of Procedure, 8(a) of the Conditions of Employment and 1a.1.1 of the Staff Rules and of Articles 2 TEU and 3 TEU and 20 and 41 of the Charter of Fundamental Rights of the European Union. In that regard, the application is of the view that he did not have the opportunity of submitting his application for the post of Adviser to the President and Coordinator of the Counsel to the Executive Board while Mr [X] did have that opportunity.

2. Second plea in law, alleging infringement of Article 1a.7 of the Staff Rules, in that such a legal basis allows only the appointment of a candidate to a post of Counsel to the Executive Board and not that of a candidate to the post of Adviser to the President and Coordinator of the Counsel to the Executive Board which adds the corresponding responsibilities which equate to a level higher than that of a Counsel.

3. Third plea in law, alleging a failure to consult the Staff Committee on the creation of a new post and on the modification of the post of Coordinator, which was done in breach of Articles 48 and 49 of the Conditions of Employment and the Protocol of Agreement.

4. Fourth plea in law, alleging infringement of the principle of sound administration as a result of the lack of a job description for the post of Adviser to the President and Coordinator of the Counsel to the Executive Board.

Action brought on 20 July 2017 — TL v EDPS

(Case T-452/17)

(2017/C 347/37)

Language of the case: French

Parties

Applicant: TL (represented by: T. Léonard and M. Cock, lawyers)

Defendant: European Data Protection Supervisor

Form of order sought

The applicant claims that the Court should:

— declare that, by rejecting the complaint on the ground that it constituted a request for a review and by failing to respond to the arguments of the claimant, the decision of the European Data Protection Supervisor (EDPS) of 16 May 2017 refusing the request for anonymisation of the judgment in [*confidential*] ([1]) and of the website pages containing personal data, breaches:

  — Article 46(a) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1) and Articles 33 and 34(1) of Decision 2013/504/EU of the European Data Protection Supervisor of 17 December 2012 on the adoption of Rules of Procedure (OJ 2013 L 273, p. 41), adopted pursuant to Article 46(a) of Regulation No 45/2001, which invests the EDPS with the function of examining complaints and informing the data subject of the outcome of its examination;

  — Article 41 of the Charter of Fundamental Rights of the European Union, which imposes on EU institutions and bodies a general obligation to give reasons;

— declare that, by finding that the EDPS had no remit to examine the applicant's complaint, the contested decision infringes Article 46(c) of Regulation No 45/2001, read in the light of Article 8(3) of the Charter of Fundamental Rights of the European Union;

and consequently:

— declare the contested decision null and void;

— order the EDPS to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the EDPS failed to reply to the complaint submitted to it by the applicant. By rejecting the complaint on the ground that it constituted a request for a review and by failing to reply to the arguments raised by the applicant in support of his request for anonymisation, the contested decision breaches Article 46(a) of Regulation No 45/2001, which invests the EDPS with the function of examining complaints and informing the data subject of the outcome of its examination, and Articles 33 and 34(1) of Decision 2013/504/EU of the European Data Protection Supervisor of 17 December 2012 on the adoption of Rules of Procedure, adopted pursuant to Article 46(a) of Regulation No 45/2001, under which the EDPS is required to deal with complaints and to inform the claimant of the outcome of a complaint and the action taken. According to the applicant, the EDPS did not deal with the complaint in so far as it incorrectly classified it as a request for a review. The contested decision also infringes Article 41 of the Charter of Fundamental Rights of the European Union, which imposes on EU institutions and bodies a general obligation to give reasons.

2. Second plea in law, alleging infringement of Article 46(c) of Regulation (EC) No 45/2001, read in the light of Article 8(3) of the Charter of Fundamental Rights of the European Union, in so far as the EDPS erred in finding that it had no remit to examine the applicant's complaint.

(1) Confidential information omitted.

Action brought on 20 July 2017 — TV v Council

(Case T-453/17)

(2017/C 347/38)

Language of the case: French

Parties

Applicant: TV (represented by: L. Levi and A. Blot, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare the present action admissible and well-founded;

Consequently,

— Annul the decision of 19 August 2016 dismissing the applicant at the end of his probation period, namely 1 September 2016;

— Annul the decision of the Appointing Authority of 11 April 2017 rejecting the applicant's claim of 4 November 2016;

— Award the applicant the sum of EUR 20 000 in respect of the non-pecuniary harm suffered;

— Order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons.

2. Second plea in law, alleging that the contested decision is unlawful, in that it confirms the conclusion of the opinion of the Reports Committee (CORAP), which substituted its own evaluation for that of the reporting officers.

3. Third plea in law, alleging manifest errors of fact and law vitiating the grounds on which the probation report is based.

4. Fourth plea in law, alleging a lack of normal probation conditions.

5. Fifth plea in law, alleging infringement of the duty of care and the principle of sound administration.

The applicant is of the opinion, moreover, that the illegalities set out in the pleas for annulment are all failings imputable to the defendant. The applicant is therefore also seeking compensation for the non-pecuniary harm allegedly caused by the contested decisions.

Action brought on 21 July 2017 — Shindler and Others v Council

(Case T-458/17)

(2017/C 347/39)

Language of the case: French

Parties

Applicants: Harry Shindler (Porto d'Ascoli, Italy) and 12 other applicants (represented by: J. Fouchet, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the General Court should:

— annul Council Decision (EU, Euratom) XT 21016/17 of 22 May 2017, together with the annex XT 21016/17, ADD 1 REV 2 to that decision, authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for that Member State's withdrawal from the European Union;

— consequently,

  — order the Council of the European Union to pay the costs of the proceedings in full, including legal fees of EUR 5 000;

  — without prejudice, in particular, to the submission by SCP CORNILLE-POUYANE, lawyers at the Bordeaux Bar, of all relevant observations at the hearing to be fixed by the General Court of the European Union.

Pleas in law and main arguments

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

1. First plea in law, alleging formal illegality of Council Decision (EU, Euratom) XT 21016/17 of 22 May 2017, together with the annex XT 21016/17, ADD 1 REV 2, to that decision, authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union ('the contested decision'). That plea is divided into two parts:

   — First part, alleging infringement of the Euratom Treaty in that the contested decision and its annex provide for the automatic withdrawal of the United Kingdom from the European Atomic Energy Community in conjunction with the withdrawal from the European Union without being the subject of a separate withdrawal and negotiation procedure.

   — Second part, alleging interference with the division of powers between the European Union and the Member States in that the contested decision and its annex confer on the European Union an exceptional horizontal competence to institute the negotiations on the agreement for the United Kingdom's withdrawal and exclude the possibility of a mixed agreement, with the result that there is no provision for ratification of the final agreement by the Member States.

2. Second plea in law, alleging substantive illegality of the contested decision; this plea is divided into three parts:

   — First part, alleging infringement of the principle of equality inasmuch as, by adopting the contested decision and its annex, the defendant has allowed a withdrawal procedure to be initiated without expatriate European citizens having had the opportunity to set out their views on the possible loss of their European citizenship. The right to be heard and to express one's opinion by way of a vote in the event of an election with a European scope has thus not been respected. The contested decision therefore validates the existence of a category of second-class citizens, deprived of their right to vote because they have exercised their freedom of movement, and that decision has consequently failed to comply with the principle of equal treatment of citizens. The applicants take the view that discrimination between citizens on the basis of their residence has occurred.

— Second part, alleging infringement of Article 203 TFEU in that the contested decision provides for the withdrawal of the British overseas countries and territories (OCTs), without the inhabitants of those OCTs having been able to vote for withdrawal from the association arrangement laid down by the European Treaty, without reference to the specific procedure under Article 203 TFEU which applies to them, and consequently the freedom of establishment under Article 199 TFEU is infringed by the contested decision.

— Third part, alleging infringement of the principles of legal certainty and of legitimate expectations inasmuch as the applicants consider that the opening of negotiations on the withdrawal agreement, the outcome of which is uncertain, will have a significant impact on the rules governing the rights which they derive from European citizenship, notwithstanding the fact that they have created a private and family life for themselves in another Member State through exercising their freedom of movement. The contested decision and its annex thus do not comply with the requirement of predictability of legal rules imposed by the principles of legal certainty and legitimate expectations, and are also at variance with respect for private and family life.

Action brought on 25 July 2017 — TN v ENISA

(Case T-461/17)

(2017/C 347/40)

Language of the case: English

Parties

Applicant: TN (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Union Agency for Network and Information Security (ENISA)

Form of order sought

The applicant claims that the Court should:

— annul ENISA's decision of 25 November 2016, withdrawing its offer of employment, according to which the applicant was to be appointed to the position of head of the corporate services and stakeholder relations unit;

— annul ENISA's decision of 20 April 2017, rejecting the applicant's complaint;

— award the applicant damages for the material and non-material damage suffered;

— order ENISA to bear the entire costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant infringed its contractual obligations vis-à-vis the applicant.

   — The applicant alleges that the offer could not be withdrawn as a contract had already been concluded and it contests the defendant's arguments to the contrary.

2. Second plea in law, alleging undue treatment of the applicant's personal data and infringement of Article 12 of the Conditions of Employment of other servants of the European Union, of the duty of care, and of the right to good administration.

3. Third plea in law, alleging infringement of the right to be heard.

   — The applicant was not heard before the contested decision to withdraw the offer of employment was taken.

Action brought on 25 July 2017 — TO v EEA

(Case T-462/17)

(2017/C 347/41)

Language of the case: French

Parties

Applicant: TO (represented by: N. Lhoëst, lawyer)

Defendant: European Environment Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Environment Agency (EEA) of 22 September 2016 terminating the applicant's employment as a member of contract staff;

— annul the EEA's decision of 20 April 2017 rejecting the complaint brought by the applicant on 21 December 2016;

— order the EEA to pay the applicant compensation calculated on the basis of the loss of 4 years' salary, subject to deduction of any unemployment benefit received by her during that period;

— order the EEA to pay the applicant a sum of EUR 3 500 by way of compensation for the fees connected with the early termination of her rental contract in Copenhagen, subject to any increase where relevant;

— annul the applicant's payslip for September 2016, particularly in so far as it does not include her salary for 22 September 2016;

— order the EEA to pay the applicant EUR 50 000 by way of compensation for the non-material damage resulting from the dismissal decision of 22 September 2016;

— order the EEA to pay the applicant EUR 5 000 by way of compensation for the non-material damage resulting from the EEA's infringement of Article 26 of the Staff Regulations of Officials of the European Union;

— order the EEA to pay the applicant EUR 10 000 by way of compensation for the non-material damage resulting from the psychological pressure exerted on her by the EEA during her incapacity to work;

— in the alternative, order the EEA to pay the applicant one month's notice and compensation equal to one third of her basic salary per month of probation completed in accordance with Article 84 of the CEOS;

— order the EEA to pay the costs in their entirety.

Pleas in law and main arguments

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

1. First plea in law, alleging that Article 48(b) of the CEOS does not apply.

2. Second plea in law, alleging infringement of Article 48(b) and the second paragraph of Article 16 of the CEOS.

3. Third plea in law, based on a plea of illegality on the ground of discrimination with regard to Article 48(b) of the CEOS.

4. Fourth plea in law, alleging infringement of Article 26 of the Staff Regulations and infringement of the rights of defence.

5. Fifth plea in law, alleging infringement of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1) and of Article 8 of the Charter of Fundamental Rights of the European Union.

6. Sixth plea in law, alleging infringement of Article 84 of the CEOS and of Article 41 of the Charter of Fundamental Rights of the European Union, and breach of the duty to have regard for the welfare of staff.

7. Seventh plea in law, alleging a manifest error of assessment.

8. Eighth plea in law, alleging a misuse of powers.

Action brought on 26 July 2017 — Barata v Parliament

(Case T-467/17)

(2017/C 347/42)

Language of the case: English

Parties

Applicant: Carlos Manuel Henriques Barata (Lisbon, Portugal) (represented by: G. Pandey, D. Rovetta and V. Villante, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul and set aside the following decisions and acts, where appropriate having previously declared illegal and not applicable to the applicant the Notice of Competition EP/CAST/S/16/2016 ([1]) under Article 277 of the TFEU:

  — the decision of 26/10/2016 of the Director for Human Resources Development not to include Mr Barata in the draft list of candidates for a contract staff in function group I as a driver under the so called CAST contract procedure 2016/2017;

  — the decision via email of 28/11/2016 by INLO DG of the Parliament to reconfirm the above decision not to include Mr Barata in the draft list of candidates for a contract staff in function group I as a driver under the so called CAST contract procedure 2016/2017;

  — the decision of 25/04/2017 of the European Parliament's General Secretariat, signed by Mr Klaus Welle, notified to Mr Barata via registered letter, which rejected the applicant's complaint under Article 90(2) of the Staff Regulation of Officials of the European Union, lodged on 09/01/2017;

— order the European Parliament to bear the costs of the present proceedings

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law arguing that there was a breach of Article 25 of the EU staff regulations and of Article 296 TFEU resulting from a manifest error in the assessment of the applicant's theoretical skills and manifest error in the assessment of facts, considering the inauthenticity of the questionnaire certificate allegedly corresponding to the document submitted by the applicant during the competition. The manifest error occurred as a consequence of lack of supervision by the Parliament over the due diligence of a subcontractor entrusted with the assessment of the applications in the 2016 CAST selection proceedings. This as such had an adverse impact on the obligations to state sufficient reasons to the applicant.

The applicant also relies on the breach of the effective judicial protection principle by negating his right of defence and rights to be heard, thus amounting to a breach of Article 41 of the Charter of Fundamental Rights of the European Union and submits a plea of illegality and inapplicability of the Notice of Competition EP/CAST/S/16/2016.

The applicant also submits that the Parliament acted ultra vires by delegating selection procedure to the Ecole de Maîtrise Automobile (hereinafter subcontractor), which has not been bound by the EU Staff Regulations and internal EU Institutions Code of Conducts. According to the applicant, this amounts to a breach of the notice of competition and of Article 30 of the Staff Regulation in combination with Annex III to the Staff Regulation reinforcing abovementioned breach of the duty of sound and good administration.

The applicant further relies on a breach of Article 1 of the Staff Regulations, of the principle of non-discrimination and of the principle of proportionality with regard to the conduct of the competition by the Parliament's and/or the subcontractor and in relation to limiting the choice of a second language for candidates participating in this call for expression of interests.

Finally the applicant argues that there has been a breach of the principle of equal opportunity as well as a breach of Article 296(2) of the TFEU and Article 25 of the Staff Regulations — with regards to EP and the subcontractor's failure to state reasons for their decisions, reinforced by lack of supervision over the latter. Applicant submits that it amounts to a breach of the Notice of Competition EP/CAST/S/16/2016, breach of the Principle of Reasonable and sound Administration and breach of the applicant's legitimate expectations and of the principle of equality.

([1]) Call for expressions of interest — contract staff — functional group I — Drivers (f/m) EP/CAST/S/16/2016 (OJ 2016, C 131 A/01)

Action brought on 31 July 2017 — Haswani v Council

(Case T-477/17)

(2017/C 347/43)

Language of the case: French

Parties

Applicant: George Haswani (Yabroud, Syria) (represented by: G. Karouni, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

— Annul 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;

— Annul Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

— Annul Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— Annul Council Implementing Decision (CFSP) 2017/1245 of 10 July 2017 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria;

— Annul Council Implementing Regulation (EU) 2017/1241 of 10 July 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— Consequently,

  — Order the removal of Mr George Haswani's name from the annexes to the abovementioned acts;

  — Order the Council to pay the sum of EUR 10 000 in respect of the applicant's non-pecuniary harm;

  — Order the Council to bear its own costs and to those incurred by the applicant, of which supporting evidence can be shown during the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons flowing from paragraph 2 of Article 296 TFEU. The applicant complains that the Council of the European Union merely set out vague and general considerations and failed to state specific and concrete reasons for its view, in the exercise of its discretionary assessment, that the applicant must be subjected to the restrictive measures at issue. Thus no specific and objective factor has been raised against the applicant which could justify the measures at issue.

2. Second plea in law, based on the requirement for proportionality in the infringement of fundamental rights. The applicant is of the view that the disputed measures ought to be invalidated since they are disproportionate in the light of the objective stated and they constitute excessive interference in the freedom to conduct business and the right to property, enshrined in Articles 16 and 17 respectively of the Charter of Fundamental Rights of the European Union. The disproportion lies in the fact that the measures cover all influential economic activity without any other criterion.

3. Third plea in law, alleging a manifest error of assessment and a lack of proof, in that the Council took as the basis for its successive reasoning in support of the restrictive measures elements which clearly lack any basis in fact, the facts relied on being without any serious foundation.

4. Fourth plea in law, concerning the claim for compensation, in that the imputation of certain serious unproven allegations places the applicant and his family in danger, which illustrates the extent of the loss suffered justifying his claim for compensation.

Action brought on 2 August 2017 — PO v EEAS

(Case T-479/17)

(2017/C 347/44)

Language of the case: French

Parties

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

Defendant: European External Action Service

Form of order sought

The applicant claims that the General Court should:

— annul the calculation note of 10 November 2016 which was sent to him by the EEAS human resources department as well as, to the extent necessary, the email of 24 October 2016 by which that department indicated to him that he is not eligible for reimbursement of the education costs of his two children above the ceiling set out in Article 15 of Annex X to the Staff Regulations of Officials since he is being reassigned;

— annul, to the extent necessary, the reply expressly rejecting his complaint of 16 May 2017;

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

Pleas in law and main arguments

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

1. First plea in law, alleging illegality inasmuch as the calculation note of 10 November 2016 ('the contested individual decision') as well as the note of 15 April 2016 and the note of 22 September 2016 on which it is based and the Guidelines infringe the Staff Regulations of Officials of the European Union ('the Staff Regulations') and Annex X thereto.

2. Second plea in law, alleging illegality inasmuch as the notes on which the contested individual decision is based breach the Guidelines.

3. Third plea in law, based on the illegality of the contested individual decision on the following grounds:

   — infringement of the precautionary principle and of the principles of legitimate expectations and legal certainty, and infringement of the principle of sound administration as well as that of acquired rights;

   — infringement of the right to family and the right to education;

— infringement of the principles of equal treatment and non-discrimination;

— failure to carry out a balancing of interests and failure to observe the principle that the measure adopted must be proportionate.

Action brought on 7 August 2017 — SFP Asset Management and Others v SRB

(Case T-502/17)

(2017/C 347/45)

Language of the case: Spanish

Parties

Applicants: SFP Asset management and Others (Geneva, Switzerland), Twenty First Trade Inc. (Panama, Panama), Merlos Infor, S.L. (Badalona, Spain) (represented by: J. Gálvez Pascual, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— declare that, by adopting in its executive session of 7 June 2017 Decision SRB/EES/2017/08 establishing the resolution scheme in respect of the financial institution Banco Popular Español S.A., the Single Resolution Board ('the SRB') infringed EU law;

— consequently, annul that measure, and any subsequent implementing measures too that the SRB may have adopted, with effect *ex tunc*.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 August 2017 — Ruiz Sacristán and Arias Mosquera v Commission and SRB

(Case T-503/17)

(2017/C 347/46)

Language of the case: Spanish

Parties

Applicants: Jaime Ruiz Sacristán (Cuauhtémoc, Mexico), José María Arias Mosquera (Madrid, Spain) (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín and B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the Court should annul the following measures:

— Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 adopting the resolution scheme regarding the institution Banco Popular Español S.A..

— Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español, S. A.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno* and *SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, y T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 August 2017 — Estévez Puerto and Others v Commission and SRB

(Case T-504/17)

(2017/C 347/47)

Language of the case: Spanish

Parties

Applicants: José Ramón Estévez Puerto (Jeréz de la Frontera, Spain) and 14 other applicants (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín and B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the Court should annul:

— Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 by which the resolution scheme regarding the institution Banco Popular Español S.A was adopted;

— Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español, S. A.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno* y *SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission andSingle Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 August 2017 — Inverni and Others v Commission and SRB

(Case T-505/17)

(2017/C 347/48)

Language of the case: Spanish

Parties

Applicants: Inverni, SL (Madrid, Spain), Inverindesa, SL (Madrid) and Isaac Ignacio Fernández Fernández (Oviedo, Spain) (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín and B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should annul:

— Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 adopting the resolution scheme regarding the institution Banco Popular Español S.A.;

— Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 8 August 2017 — Makhlouf v Council

(Case T-506/17)

(2017/C 347/49)

Language of the case: French

Parties

Applicant: Rami Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well-founded;

— In consequence, annul Council Decision (CFSP) 2017/917 of 29 May 2017 and its subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union 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 acts infringe the applicant's rights of the defence, in particular his right to effective judicial protection, enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR), Article 215 TFEU and Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging that the defendant has infringed the obligation to state reasons, since the reasoning provided does not satisfy the obligation on the EU institutions under Article 6 of the ECHR and Article 296 TFEU and 41 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging a manifest error of assessment committed by the Council as regards the involvement of the applicant in the financing of the Syrian regime.

4. Fourth plea in law, alleging that the contested acts place an unjustified and disproportionate restriction on the fundamental rights of the applicant, in particular on his right to property, enshrined in Article 1 of the First Additional Protocol to the ECHR and Article 17 of the Charter of Fundamental Rights of the European Union, to respect for his reputation, under Articles 8 and 10(2) of the ECHR, to a presumption of innocence, enshrined in Article 6 of the ECHR and Article 48 of the Charter of Fundamental Rights of the European Union, and his freedom of movement, guaranteed in Article 2(2) of Protocol No 4 to the ECHR.

5. Fifth plea in law, alleging infringement of the guidelines on implementation and evaluation of restrictive measures (sanctions) in the context of the EU's Common Foreign and Security Policy (Council Document 15114/05 of 2 December 2005).

Action brought on 4 August 2017 — Fundación Pedro Barrié de la Maza, Conde de Fenosa v Commission and SRB

(Case T-507/17)

(2017/C 347/50)

Language of the case: Spanish

Parties

Applicants: Fundación Pedro Barrié de la Maza, Conde de Fenosa (La Coruña, Spain) (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín y B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the General Court should annul:

— Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 adopting the resolution scheme regarding the institution Banco Popular Español S.A.;

— Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 August 2017 — Financiere Tesalia and Others v Commission and SRB

(Case T-508/17)

(2017/C 347/51)

Language of the case: Spanish

Parties

Applicants: Financiere Tesalia, SA (Luxembourg, Luxembourg), Cartera Zurbano, SA (Madrid, Spain), Finexperta, SA (Madrid), Eurosigma, SA (Madrid) (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín and B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should annul:

— Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 adopting the resolution scheme regarding the institution Banco Popular Español S.A.;

— Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 7 August 2017 — Cartera de Inversiones Melca and Others v Commission and SRB

(Case T-509/17)

(2017/C 347/52)

Language of the case: Spanish

Parties

Applicants: Cartera de Inversiones Melca, SL (Avilés, Spain), Servicios Inmobiliarios Avilés, SL (Avilés), Hotel Avilés, SA (Avilés), Arside Construcciones Mecánicas, SA (Carreño, Spain) (represented by: B. Gutiérrez de la Roza Pérez, P. Rubio Escobar, R. Ruiz de la Torre Esporrín and B. Fernández García, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should annul:

— Decision SRB/EES/2017/08 of the Single Resolution Board taken at its executive session of 7 June 2017 adopting the resolution scheme regarding the institution Banco Popular Español S.A.;

— Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 11 August 2017 — De Loecker v EEAS

(Case T-537/17)

(2017/C 347/53)

Language of the case: French

Parties

Applicant: Stéphane De Loecker (Brussels, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European External Action Service

Form of order sought

— Declare and order that

— the decision of 10 October 2016 by which the European External Action Service requested the request for assistance under Articles 12a and 24 of the Staff Regulations of Officials of the European Union made by Mr De Loecker is annulled;

— the European External Action Service shall pay the applicant the sum of EUR 250 000 as compensation for the non-pecuniary harm suffered;

— the European External Action Service shall bear its own costs and pay the costs incurred by the applicant.

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 infringement of Article 266 TFEU, in that the defendant, by adopting the decision of 10 October 2016 by which it rejected the request for assistance made by the applicant ('the contested decision') disregarded the grounds of the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153). The applicant is also of the opinion that the defendant disregarded the procedure implemented by the Commission Investigating and Disciplinary Office (IDOC) following the judgment of 14 February 2017, *Kerstens* v *Commission* (T-270/16, not published, EU:T:2017:74).

2. Second plea in law, alleging infringement of the rights of the defence and, more particularly, infringement of the right to be heard and of the right of access to the file flowing from Article 41 of the Charter of Fundamental Rights of the European Union.

Action brought on 16 August 2017 — VF International v EUIPO — Virmani (ANOKHI)

(Case T-548/17)

(2017/C 347/54)

Language in which the application was lodged: English

Parties

Applicant: VF International Sagl (Stabio, Switzerland) (represented by: T. van Innis, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ken Virmani (Munich, Germany)

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 element 'ANOKHI' — Application for registration No 13 025 382

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 26 May 2017 in Case R 2307/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the Office to bear its own costs and to pay those of the applicant.

Pleas in law

— Infringement of Articles 8(1)(b) and 8(5) Regulation No 207/2009;

— Infringement of Articles 85 Regulation No 207/2009 and 94 of Regulation No 2868/95.

Action brought on 14 August 2017 — Duym v Council

(Case T-549/17)

(2017/C 347/55)

Language of the case: French

Parties

Applicant: Frederik Duym (Ostend, Belgium) (represented by: M. Velardo, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the decision underlying the letter of 7 October 2016 definitively excluding him from the procedure for appointing a Head of Unit for DGA 3B Unit NL and the subsequent decision appointing Ms [X] as Head of the Dutch Translation Unit ('the contested decision');

— secondly, order the Council to pay the costs of the proceedings.

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 a failure to state reasons, in so far as the Council refused to provide the applicant with a written statement of the reasons, including figures, for his being unsuccessful in the procedure for the appointment of a Head of Unit for the Dutch Translation Unit.

2. Second plea in law, alleging infringement of the principle of sound administration and a manifest error of assessment, inasmuch as not only did the selection board fail to carry out a comparative assessment of the candidates on the basis of numerical marking, but also there is no other document in the file, such as a summary comment, indicating that the selection board was in agreement on the appointment of Ms [X] instead of the applicant.

3. Third plea in law, alleging infringement of the internal vacancy notice, inasmuch as the applicant's assessment also concerned the political role played by the head of a translation unit, whereas the vacancy notice made no reference to such an element and it is also not apparent from the Staff Regulations of Officials of the European Union ('the Staff Regulations') that the head of a translation unit has a political role.

4. Fourth plea in law, alleging disregard of the interests of the service and a manifest error of assessment, in so far as there was no test of candidates' knowledge of Dutch even though the unit was a Dutch-speaking unit. In this connection, the applicant raises an objection of illegality pursuant to Article 277 TFEU vis-à-vis the internal vacancy notice in the light of Article 7 of the Staff Regulations. As that notice does not require a perfect command of Dutch, it is contrary to Article 7 of the Staff Regulations. Consequently, the applicant requests that the unlawfulness of that notice be acknowledged *incidenter tantum* in the present proceedings. Lastly, he argues that, whereas the other translation services within the institutions may rely on a Head of Unit having a perfect command of the language of translation, this is not the case for Dutch. Therefore, that language will be treated differently in relation to other languages, in breach of Article 1 of Regulation No 1/1958, which accords the same dignity to all languages.

5. Fifth plea in law, alleging infringement of the principle of equal treatment and, in particular, infringement of Article 1d of the Staff Regulations on the grounds of gender and language discrimination and infringement of the principle of proportionality. The applicant considers that restricting the languages which may be used during the interview to English constitutes a clear infringement of Article 1d of the Staff Regulations, as Ms [X] had English as her second language, whereas English was only the applicant's third language. Furthermore, he had significantly more management experience than Ms [X], with the result that discrimination on the grounds of gender cannot be ruled out, given that other elements in the file indicate that, in internal selection procedures, the Council has a tendency to choose women in order to compensate for appointing men in external selection procedures. Lastly, the applicant submits that an irrational choice has thus been made, since it gives a single language both an advantage and a preferential status, contrary to the principle of proportionality.

Action brought on 17 August 2017 — Staropilsen v EUIPO — Pivovary Staropramen (STAROPILSEN; STAROPLZEN)

(Case T-556/17)

(2017/C 347/56)

Language in which the application was lodged: English

Parties

Applicant: Staropilsen s. r. o. (Pilsen, Czech Republic) (represented by: A. Kodrasová, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pivovary Staropramen s. r. o. (Prague, Czech Republic)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'STAROPILSEN; STAROPLZEN' — EU trade mark No 9 034 893

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 June 2017 in Case R 236/2017-4

Form of order sought

The applicant claims that the Court should:

— cancel the contested decision;

— order the defendant to pay the costs.

Plea in law

— Infringement of Articles 53(1)(a) and 8(1)(a) Regulation No 207/2009.

Action brought on 9 August 2017 — Abdulkarim v Council

(Case T-559/17)

(2017/C 347/57)

Language of the case: French

Parties

Applicant: Mouhamad Wael Abdulkarim (Dubai, United Arab Emirates) (represented by: J.-P. Buyle and L. Cloquet, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria, insofar as it concerns the applicant;

— Annul Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, insofar as it concerns the applicant;

— Order the Council to pay all the costs of the proceedings, including those incurred by the applicant.

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 a manifest error of assessment of the facts by the defendant in that it took the view that the applicant has played a part in supporting the Syrian regime. Thus, the following arguments are put forward against the findings made in the contested acts:

   — Mr Abdulkarim cannot be classified as an 'influential businessman';

   — He is not connected with the regime, has no influence over it and does not pose a true risk of circumvention of the restrictive measures taken in view of the situation in Syria;

   — His past involvement in Alkarim For Trade and Industry L.L.C. or in other companies active in the Middle Eastern petroleum, industrial oils, lubricants and greases sector could not mean either that he should be classified as an 'important businessman';

   — He does not reside and therefore does not carry on any activities in Syria.

2. Second plea in law, alleging infringement of the general principle of proportionality, in that the measures taken in the contested acts have such effects that they must be regarded as disproportionate in themselves.

3. Third plea in law, alleging disproportionate infringement of the right to property and the right to work, in that the disputed measures prevent the applicant's peaceful enjoyment of his property and his economic freedom.

4. Fourth plea in law, alleging misuse of powers, in that the contested acts were adopted with the aim of achieving objectives other than those stated, namely to remove the applicant from the market in order to favour other operators on that market, and so are vitiated by a misuse of powers.

5. Fifth plea in law, alleging infringement of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU, in that the reasoning given for the contested acts is, in reality, purely a formality and probably was not thought through by the defendant.

Action brought on 15 August 2017 — L-Shop-Team v EUIPO (bags2GO)

(Case T-561/17)

(2017/C 347/58)

Language in which the application was lodged: German

Parties

Applicant: L-Shop-Team GmbH (Dortmund, Germany) (represented by: A. Sautter, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'bags2GO' — Application for registration No 15 356 901

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 June 2017 in Case R 1650/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 18 August 2017 — CheapFlights International v EUIPO — Momondo Group (Cheapflights)

(Case T-565/17)

(2017/C 347/59)

Language in which the application was lodged: English

Parties

Applicant: CheapFlights International Ltd (Speenoge, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Momondo Group Ltd (London, United Kingdom)

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 'Cheapflights' — Application for registration No 3 485 349

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Grand Board of Appeal of EUIPO of 1 June 2017 in Case R 1893/2011-G

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Momondo Group Limited, if it should intervene in these proceedings to bear the costs.

Pleas in law

— Infringement of Article 64(6) of Regulation No 207/2009;

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

— Infringement of Article 8(3) of Commission Regulation (EC) No 216/96;

— The contested decision is replete with statements which question or directly negate the validity of the Applicant's trademarks. The contested decision is detrimental to the interests of the Applicant as proprietor of validly registered trade mark which are not even subject to the jurisdiction of the Defendant.

Action brought on 21 August 2017 — Disney Enterprises v EUIPO — Di Molfetta (DiSNEY FROZEN)

(Case T-567/17)

(2017/C 347/60)

Language in which the application was lodged: English

Parties

Applicant: Disney Enterprises, Inc. (Burbank, California, United States) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fabio Di Molfetta (Bisceglie, Italy)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'DiSNEY FROZEN' — Application for registration No 11 830 965

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 May 2017 in Case R 2342/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 25 August 2017 — thyssenkrupp Electrical Steel and thyssenkrupp Electrical Steel Ugo v Commission

(Case T-577/17)

(2017/C 347/61)

Language of the case: English

Parties

Applicants: thyssenkrupp Electrical Steel GmbH (Gelsenkirchen, Germany) and thyssenkrupp Electrical Steel Ugo (Isbergues, France) (represented by: M. Günes, lawyer)

Defendant: European Commission

Form of order sought

The applicant(s)/appellant(s) claims/claim that the Court should:

— annul the Commission's conclusion, in document Ares(2017)3010674 of 15 June 2017, that the essential interests of Union producers would not be adversely affected by an authorisation for inward processing of certain grain-oriented electrical steel (GOES) products;

— order defendant to pay the costs pursuant to Article 134(1) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons

   — The Commission's conclusion that the economic conditions were fulfilled with respect to the subject authorisation for inward processing fails to state any reasons on which the conclusion is based.

2. Second plea in law, alleging manifest error of assessment of facts

   — The Commission's conclusion that the subject authorisation for inward processing would not adversely affect the essential interests of Union producers is based upon a manifest error of assessment of the facts.

3. Third plea in law, alleging infringement of Article 211(4)(b) UCC ([1]) and the basic Regulation ([2])

   — In concluding that the economic conditions were fulfilled with respect to the subject authorisation for inward processing, the Commission failed to limit its assessment to the factors set out in Article 211(4)(b) of the Union Customs Code (UCC) and based its assessment on factors that can only be reviewed under the procedure set out in the basic Regulation.

4. Fourth plea in law, alleging infringement of Article 259(4) of the UCC IA and the horizontal rules on operation of Commission expert groups

   — To the extent that the Commission delegated the conclusion on economic conditions to the Customs Expert Group, it infringed Article 259(4) of the UCC Implementing Act ([3]) (UCC IA) and the Commission's horizontal rules on the creation and operation of Commission expert groups.

5. Fifth plea in law, alleging infringement of rights of defence

   — By failing to disclose certain important information provided in the subject application for inward processing authorisation or non-confidential summaries of the information in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, the Commission infringed applicants' rights of defence.

([1]) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013, L 269, p. 1).

([2]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 5).

([3]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ 2015, L 343, p. 558).

Action brought on 28 August 2017 — Wall Street Systems UK v ECB

(Case T-579/17)

(2017/C 347/62)

Language of the case: English

Parties

Applicant: Wall Street Systems UK Ltd (London, United Kingdom) (represented by: A. Csaki, lawyer)

Defendant: European Central Bank (ECB)

Form of order sought

The applicant claims that the Court should:

— declare null and void the decision of the European Central Bank (ECB) on the contract award to another tenderer in the form of the appeal decision of 17 August 2017, as well as all future decisions related thereto;

— order the defendant to borne the costs of the proceedings.

Pleas in law and main arguments

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

The applicant is contesting the decision by the defendant regarding the contract award to another tenderer, in the form of the appeal decision of 17 August 2017, with the request for the annulment of this and future associated decisions (particularly any contract award). The aforementioned decision was handed down in breach of Decision (EU) 2016/245 of the European Central Bank ([1]) and applicable European law, in particular in breach of the principles of transparency, non-discrimination and cost-efficiency.

([1]) Decision (EU) 2016/245 of the European Central Bank of 9 February 2016 laying down the rules on procurement (OJ 2016, L 45, p. 15).

Action brought on 28 August 2017 — Unigroup v EUIPO — Pronova Laboratories (nailicin)

(Case T-587/17)

(2017/C 347/63)

Language in which the application was lodged: English

Parties

Applicant: Unigroup ApS (Lyngby, Denmark) (represented by: M. Rijsdijk, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pronova Laboratories BV (Amsterdam, Netherlands)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'nailicin' — Application for registration No 14 096 499

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the fifth Board of Appeal of EUIPO of 9 June 2017 in Case R 2359/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare Benelux registration no. 894 557 unsubstantiated and remit the matter to the Opposition Division or Board of Appeal of EUIPO;

— order EUIPO to pay the costs.

Plea in law

— violation of Rule 19 of Commission Regulation No 2868/95 implementing Council Regulation No 40/94 on the Community trade mark.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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